THE IDEA DEMANDS MORE: A REVIEW OF FAPE LITIGATION AFTER *ENDREW F.*

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INTRODUCTION

"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. . . . The [Individuals with Disabilities Education Act ("IDEA")] demands more."[1] Those are the words of Chief Justice Roberts on behalf of a unanimous U.S. Supreme Court in *Endrew F.*, a decision reviewing educational rights guaranteed under the IDEA.[2] *Endrew F.* garnered attention as a rare occasion that the Court would address the nation's special education system—a notoriously underfunded regime[3]

[1] Endrew F. *ex rel.* Joseph F. v. Douglas Cty. Sch. Dist. RE-1, 137 S. Ct. 988, 1001 (2017) (citation omitted).

[2] *Id.*; *see also* 20 U.S.C. §§ 1400–1491 (2018); *infra* Section I.A. Today, more than 7 million students with disabilities are served under the IDEA. *The Condition of Education: Children and Youth with Disabilities*, NAT'L CTR. FOR EDUC. STATISTICS, U.S. DEP'T OF EDUC., https://nces.ed.gov/pubs2019/2019144.pdf (last updated May 2019).

[3] When Congress signed the predecessor of the IDEA into law in 1975, it committed to funding forty percent of the per-pupil excess costs of educating students with disabilities. NAT'L COUNCIL ON DISABILITY, BROKEN PROMISES: THE UNDERFUNDING OF IDEA 9 (2018), https://ncd.gov/sites/default/files/NCD_BrokenPromises_508.pdf [hereinafter BROKEN PROMISES]. Congress has never met that authorized funding level. *Id.* In 2019, it provided for only 14.7% of excess costs of educating students with disabilities—resulting in a funding gap in the order of billions of dollars. Press Release, Chris Van Hollen, U.S. Senator, Van Hollen, Roberts Introduce Bipartisan, Bicameral Legislation to Fully Fund Special Education (Mar. 26, 2019), https://www.vanhollen.senate.gov/news/press-releases/van-hollen-roberts-introduce-bipartisan-bicameral-legislation-to-fully-fund-special-education-; Linda M. Gorczynski, *Full Funding of the IDEA Critical for Our Children*, SPECIAL NEEDS ALLIANCE, https://www.specialneedsalliance.org/blog/full-funding-of-the-idea-critical-for-our-children/ (last visited Mar. 22, 2020). The National Council on Disability, an independent federal agency, reports that inadequate funding has led some states to take drastic measures to help make ends meet. For example, "unlawful caps have been placed on either the number of eligible students or the amount of services provided, or both." BROKEN PROMISES, *supra* at 35.

variously referred to as "a hollow pageant,"[4] "broken,"[5] and "hell"[6]—and potentially bolster student rights in the process. Three years later, this Note seeks to examine the impact *Endrew F.* has made on the special education landscape thus far.

At the heart of *Endrew F.* was the IDEA's requirement that states provide all eligible children with a "free appropriate public education" ("FAPE")[7] through "individualized education programs" ("IEPs") tailored to their unique needs.[8] Although the IDEA provides students with disabilities a "substantive right" to a FAPE[9]—meaning, generally, the right to adequate and individualized curricula and supplementary services—it lacks "any substantive standard prescribing the level of education to be accorded."[10] In other words, the law stops short of detailing the amount of educational benefits that students must receive per its mandate. The judiciary thus has led the development of substantive FAPE doctrine since IDEA first became law.[11]

The Supreme Court considered substantive FAPE for the first time in its 1982 *Rowley* decision.[12] *Rowley* established that a FAPE is provided when a student's IEP is "sufficient to confer some educational benefit,"[13] leaving lower courts to further interpret the dictate's practical implications.[14] Some judicial circuits held that *Rowley* entitled

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[4] Katherine Osnos Sanford, *My Daughter Has Autism but Our Special-Ed System Isn't What She Needs*, TIME (Apr. 17, 2017), https://time.com/4740129/autism-special-education/.

[5] Christina A. Samuels, *Special Education Is Broken*, EDUC. WK. (Jan. 24, 2017), https://www.edweek.org/ew/articles/2019/01/09/special-education-is-broken.html.

[6] Tracy Thompson, *The Special-Education Charade*, ATLANTIC (Jan. 3, 2016), https://www.theatlantic.com/education/archive/2016/01/the-charade-of-special-education-programs/421578/.

[7] 20 U.S.C. §§ 1401(9), (26), (29), 1412(a)(1)(A) (2018).

[8] *Id.* § 1414(d)(1)(A).

[9] Fry v. Napoleon Cmty. Sch., 137 S. Ct. 743, 749 (2017) (citations omitted).

[10] Bd. of Educ. v. Rowley, 458 U.S. 176, 189 (1982).

[11] Perry A. Zirkel, *The Supreme Court's Decision in* Endrew F. v. Douglas County School District Re–1*: A Meaningful Raising of the Bar?*, 341 EDUC. L. REP. 545, 546 (2017) [hereinafter Zirkel, *A Meaningful Raising of the Bar*] ("The courts have developed four dimensions of FAPE, starting with its procedural and substantive aspects . . . to the more recent lower courts' formulation of failure to implement and capacity to implement the IEP." (citations omitted)).

[12] *Rowley*, 458 U.S. at 187 ("This is the first case in which this Court has been called upon to interpret any provision of the [IDEA].").

[13] *Id.* at 200.

[14] Perry A. Zirkel, Endrew F. *After Six Months: A Game Changer?*, 348 EDUC. L. REP. 585, 586 (2017) [hereinafter Zirkel, *After Six Months: A Game Changer*] (explaining the circuit split that arose in *Rowley*'s progeny, stating, "Various circuits were of the

students to "meaningful educational benefits" and the "opportunity for significant learning."[15] Others, and notably the Tenth Circuit, interpreted *Rowley*'s FAPE standard to require "merely more than *de minimis*," or trivial, educational benefit, severely limiting the scope of *Rowley*'s legal innovation.[16] For decades, the Supreme Court remained silent as courts wove this disparate patchwork of student rights.

Thirty-five years later, the Court would finally address IDEA's substantive requirements for a second time in *Endrew F.*[17] *Endrew F.* importantly held that the IDEA demands a "markedly more demanding" approach to FAPE than the *de minimis* standard, which allowed students to "[sit] idly . . . awaiting the time when they were old enough to drop out."[18] Instead, the Court explained, IEPs must be "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances" ("RC").[19] And although it declined to set a bright line rule for this standard,[20] the Court developed upon its analytic framework for FAPE in two key ways that are relevant to this Note. First, the Court held that *all* students are due "the chance to meet challenging objectives" ("CO").[21] Second, the IEPs of students not fully integrated in traditional educational settings "must be appropriately

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view that the applicable standard was 'some' benefit; the Third Circuit instead definitively adopted instead 'meaningful' benefit; and the remaining jurisdictions either were inconsistent or indefinite.").

[15] J.G. v. New Hope-Solebury Sch. Dist., 323 F. Supp. 3d 716, 724 (E.D. Pa. 2018).

[16] *See, e.g.*, Endrew F. *ex rel.* Joseph F. v. Douglas Cty. Sch. Dist. RE-1, 798 F.3d 1329, 1338 (10th Cir. 2015), *vacated sub nom.* Endrew F. v. Douglas Cty. Sch. Dist. RE-1, 694 F. App'x 654 (10th Cir. 2017) (explaining that the Tenth Circuit "long subscribed" to the "merely more than *de minimis*" standard); *see also* Amy J. Goetz et al., *The Devolution of the Rowley Standard in the Eighth Circuit: Protecting the Right to a Free and Appropriate Public Education by Advocating for Standards-Based IEPs*, 34 HAMLINE L. REV. 503, 511–12 (2011) ("[Numerous] Circuits routinely find a FAPE when the facts establish that a disabled student is merely provided some educational benefit through an IEP, no matter how trivial that benefit may be. This *de minimis* test represents the lowest possible measure, as the only increment lower than 'some' is 'none.'").

[17] Zirkel, *A Meaningful Raising of the Bar*, *supra* note 11, at 545 ("The Court had not [addressed the substantive FAPE standard] . . . for 35 years, having originally addressed it in its landmark IDEA decision in [*Rowley*].").

[18] Endrew F. *ex rel.* Joseph F. v. Douglas Cty. Sch. Dist. RE-1, 137 S. Ct. 988, 1000–01 (2017).

[19] *Id.* at 999.

[20] *Id.* at 1001 ("We will not attempt to elaborate on what 'appropriate' progress will look like from case to case. . . . [T]he nature of the Act and the standard we adopt resist[s] such an effort: The adequacy of a given IEP turns on the unique circumstances of the child for whom it was created.").

[21] *Id.* at 1000.

ambitious in light of [their] circumstances" ("AA").[22] These terms—"challenging" and "ambitious" ("CO/AA")—provide concrete guidance for litigants and decision-makers navigating the Court's concededly "cryptic" FAPE standard.[23]

Many advocates and families anticipated that *Endrew F.* might usher in a new era of special education rights, and specifically one more protective of students with disabilities.[24] Others warily predicted that it would have only a limited practical impact on IEP disputes, if any at all.[25] The research discussed herein seeks to contribute both to that dialogue and to a growing body of literature assessing *Endrew F.*'s

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[22] *Id.*

[23] *Id.* at 995 (explaining that the IDEA's FAPE definition "tend[ed] toward the cryptic rather than the comprehensive" (quoting Bd. of Educ. v. Rowley, 458 U.S. 176, 188 (1982))).

[24] *E.g.*, Emma Brown & Ann E. Marimow, *Supreme Court Sets Higher Bar for Education of Students with Disabilities*, WASH. POST (Mar. 22, 2017), https://www.washingtonpost.com/politics/courts_law/supreme-court-sets-higher-bar-for-education-of-students-with-disabilities/2017/03/22/fcb7bc62-0f16-11e7-9d5a-a83e627dc120_story.html ("The Supreme Court . . . unanimously raised the bar for the educational benefits owed to millions of children with disabilities in one of the most significant special-education cases to reach the high court in decades."); Erwin Chemerinsky, *Chemerinsky: Civil Rights Advocates Win Important Victories at SCOTUS*, A.B.A. J. (Mar. 30, 2017, 8:30 AM), http://www.abajournal.com/news/article/chemerinsky_civil_rights_advocates_win_important_victories_at_scotus ("[*Endrew F.*] is a significant victory for children with disabilities . . . . that can make a real difference in many children's lives."); Laura McKenna, *How a New Supreme Court Ruling Could Affect Special Education*, ATLANTIC (Mar. 23, 2017), https://www.theatlantic.com/education/archive/2017/03/how-a-new-supreme-court-ruling-could-affect-special-education/520662/ (quoting one advocate as saying, "Clearly this is the most monumental IDEA case decided by the high court in over 30 years"); Carolyn Thompson & Sam Hananel, *Parents Empowered by Supreme Court Ruling in Special Ed Case*, AP NEWS (Mar. 23, 2017), https://apnews.com/eb41566d999d4be9809b909de7ba1db9 (quoting one advocate referring to *Endrew F.* as a "massive victory for children with disabilities").

[25] *E.g.*, Zirkel, *After Six Months: A Game Changer*, *supra* note 14, at 595 ("[*Endrew F.*] is not likely to point in a markedly parent-favorable or, in the obverse, direction."); *Professor Arlene Kanter Comments on SCOTUS Decision in* Endrew F. v. Douglas County School District, SYRACUSE U.C.L. NEWS (Mar. 22, 2017), http://law.syr.edu/news_events/news/professor-arlene-kanter-comments-on-scotus-decision-in-endrew-f.-v.-douglas ("I believe the decision is a step forward – not a huge step, but one that moves us forward, nonetheless."); Julie J. Weatherly, Ctr. for Tech. Assistance for Excellence in Special Ed., *2019 Spring Special Education Legal Update*, YOUTUBE (Feb. 5, 2019), https://www.youtube.com/watch?v=wnRwP9jaE6A&feature=youtu.be (01:18:02) ("I predicted that most of the circuit courts were in line with the clarified standard—maybe not using the exact language, but most of the courts actually used a standard that required a meaningful educational benefit as the FAPE standard.").

impact on substantive FAPE litigation.[26] More specifically, this Note presents a study of federal court decisions implementing the *Endrew F.* standard through nearly three years of its publication, with the goals of (1) shedding light on trends in the outcomes of IEP disputes in the *Endrew F.* era, and (2) tracking how—and whether—lower federal courts have implemented *Endrew F.*'s RC holding and CO/AA analytic framework.

The Note proceeds in four Parts. Part I summarizes the legal background relevant to this research. It contextualizes the role that *Endrew F.* serves in the trajectory of special education rights since the IDEA's enactment. Part II details this study's research methodology and summarizes its findings. Readers are also referred to Appendix C, where they will find a catalog of the 146 court decisions analyzed here. Part III presents the research findings. In summary: (1) courts have rarely framed *Endrew F.* as a major departure from *Rowley*, the lodestar of substantive FAPE litigation; (2) school district-defendants prevailed in the majority of decisions applying the *Endrew F.* standard (78.8% overall); and (3) nineteen, or 13.4% of all cases applied each of the three variables studied in this research—namely, *Endrew F.*'s RC holding and its CO/AA analytic factors. This Part further attempts to make sense of why post-*Endrew F.* case law has developed in these ways and critiques its current trajectory. In particular, it urges a reading of *Endrew F.* that accounts for the Court's CO/AA factors as a matter of equal access to justice under the IDEA. In addition, this Part refers readers to Appendices A and B, which document key takeaways from case law implementing RC and CO/AA respectively. Part IV explains potential limitations to the research discussed here. It concludes with recommendations that the courts and litigants alike might consider to ensure the proper implementation of the *Endrew F.* doctrine moving forward.

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[26] *See, e.g.*, Zirkel, *After Six Months: A Game Changer*, *supra* note 14. *See generally* Perry A. Zirkel, *The Aftermath of* Endrew F.*: An Outcomes Analysis Two Years Later*, 364 EDUC. L. REP. 1 (2019); Maureen A. MacFarlane, *In Search of the Meaning of an "Appropriate Education": Ponderings on the* Fry *and* Endrew *Decisions*, 46 J.L. & EDUC. 539 (2017).

I.
LEGAL BACKGROUND

A. Individuals with Disabilities Education Act

The IDEA is premised on the belief that "[i]mproving educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities."[27] Congress enacted the statute in 1975 in response to congressional findings that millions of children with disabilities were inadequately served by the nation's education system.[28] Many were "excluded entirely" from public schools on account of their disabilities, and others were deprived of the supports and services they needed to thrive in school.[29] Congress sought, through the IDEA, to ensure that the life chances of students with disabilities would no longer be so severely limited; it recognized that disability status "in no way diminishes the right of individuals to participate in or contribute to society."[30]

To that end, the IDEA "offers federal funds to States in exchange for a commitment: to furnish a [FAPE] . . . to all children with certain physical or intellectual disabilities."[31] FAPE is delivered through IEPs,[32] which are learning plans written by teams comprising a student's parents or guardians, educators, a school district official, and,

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[27] 20 U.S.C. § 1400(c)(1) (2018). For an in-depth account of the historical context of the IDEA and disability rights generally, see JANE WEST ET AL., NAT'L COUNCIL ON DISABILITY, BACK TO SCHOOL ON CIVIL RIGHTS 6 (2000), https://ncd.gov/rawmedia_repository/7bfb3c01_5c95_4d33_94b7_b80171d0b1bc.pdf ("In 1970, before enactment of the federal protections in IDEA, schools in America educated only one in five students with disabilities. More than 1 million students were excluded from public schools, and another 3.5 million did not receive appropriate services."); PETER W.D. WRIGHT, NAT'L COUNCIL ON DISABILITY, INDIVIDUALS WITH DISABILITIES EDUCATION ACT BURDEN OF PROOF: ON PARENTS OR SCHOOLS? (2005), https://ncd.gov/rawmedia_repository/646f94a7_aef2_40f3_ab92_8f7f20111c81.pdf; Gary L. Monserud, *The Quest for a Meaningful Mandate for the Education of Children with Disabilities*, 18 ST. JOHN'S J. LEGAL COMMENT. 675 (2004).

[28] 20 U.S.C. § 1400(c)(2).

[29] *Id.* § 1400(c)(2)(A)–(D).

[30] *Id.* § 1400(c)(1).

[31] Fry v. Napoleon Cmty. Sch., 137 S. Ct. 743, 748 (2017).

[32] 20 U.S.C. § 1414(d)(1)(A). IEPs are considered the "centerpiece" of the IDEA. Honig v. Doe, 484 U.S. 305, 311 (1988).

when appropriate, the student (the "IEP team").[33] When crafting an IEP, the IEP team must consider "the strengths of the child; the concerns of the parents for enhancing the education of their child; the results of the initial evaluation or most recent evaluation of the child; and the academic, developmental, and functional needs of the child."[34] IEPs ultimately detail the child's educational goals in light of their current academic and functional performance,[35] along with the special education and related services to be provided to aid the student's progress.[36]

The IDEA establishes a formal grievance process for parents seeking to challenge their child's IEP.[37] The parent first submits a complaint to the school district "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a [FAPE] to such child."[38] More specifically, parents may allege that the school district acted in derogation of the IDEA's detailed procedural requirements while preparing or implementing the IEP,[39] or that the IEP it proposed was substantively inadequate.[40] Filing a complaint with the school triggers a preliminary, formal meeting of the IEP team.[41] If this meeting fails to resolve the complaint, the parties are entitled to an "impartial due process hearing" before an impartial

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[33] 20 U.S.C. § 1414(d)(1)(B). Although parents, per the statutory text, are meant to play an important role in the IEP development process, school officials are granted substantial deference on matters of educational policy in practice. Endrew F. *ex rel.* Joseph F. v. Douglas Cty. Sch. Dist. RE-1, 137 S. Ct. 988, 1001 (2017) ("[The] absence of a bright-line rule [for evaluating the substantive adequacy of an IEP] . . . should not be mistaken for an invitation to the courts to substitute their own notions of sound educational policy for those of the school authorities which they review." (citation and internal quotation marks omitted)); *see also* H. Rutherford Turnbull et al., *The Supreme Court,* Endrew*, and the Appropriate Education of Students with Disabilities*, 84 EXCEPTIONAL CHILD. 124, 129 (2018) ("*Endrew* [*F.*], in contrast to IDEA and its legislative history, privileges school officials or authorities over parents within the IEP process."); *see infra* Appendix A, Table 1.

[34] 20 U.S.C. § 1414(d)(3)(A)(i)–(iv).

[35] *Id.* § 1414(d)(1)(A)(i)(I)–(II), (3)(B).

[36] *Id.* § 1414(d)(1)(A)(i)(IV).

[37] *See generally id.* § 1415.

[38] *Id.* § 1415(b)(6)(A). The complaint must be filed within two years from the date the parents "knew or should have known" about the alleged IDEA violation. *Id.* § 1415(b)(6)(B).

[39] *See id.* § 1414; Bd. of Educ. v. Rowley, 458 U.S. 176, 206 (1982).

[40] *Rowley*, 458 U.S. at 206–07. As explained below, the IDEA is silent as to particular substantive FAPE requirements; the U.S. Supreme Court's decisions in *Rowley* and *Endrew F.* are the seminal cases interpreting the law's substantive guarantee.

[41] *See* 20 U.S.C. § 1415(f)(1)(B)(i) (2018); *see also Due Process Hearings*, CTR. FOR PARENT INFO. & RESOURCES (Sept. 20, 2017), https://www.parentcenterhub.org/hearings/.

hearing officer ("IHO") or Administrative Law Judge ("ALJ")[42] pursuant to state practices.[43] Once the IHO issues a decision, aggrieved parties generally have the right to challenge it in a federal district court[44]—provided that the moving party has the time and financial resources to do so.[45] Some jurisdictions use a two-tiered system of review, in which disputed IHO decisions must be considered by State Review Officers ("SROs") in the first instance prior to federal appeal.[46] A successful IEP challenge can result in injunctive or declaratory relief, compensatory educational services, and reimbursement for parents who enrolled their child in a private school.[47]

B. Rowley

While the text of the IDEA sets forth detailed procedural requirements to which IEP teams must adhere,[48] it is notably silent as to the law's *substantive* FAPE requirements—meaning, precisely how much educational benefit is due to a student receiving special education

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[42] For purposes of this Note, administrative hearing officers will be referred to as IHOs.

[43] 20 U.S.C. § 1415(f)(1)(A); *see also Due Process Complaints, in Detail*, CTR. FOR PARENT INFO. & RESOURCES (Sept. 17, 2017), https://www.parentcenterhub.org/details-dueprocesscomplaints/.

[44] 20 U.S.C. § 1415(i)(2)(A) (permitting suit in any State court of competent jurisdiction or in federal district court, without regard to amount in controversy).

[45] Elisa Hyman et al., *How IDEA Fails Families Without Means: Causes and Corrections from the Frontlines of Special Education Lawyering*, 20 AM. U. J. GENDER SOC. POL'Y & L. 107, 109 (2011) ("Dissimilar to the progress made under the IDEA for their wealthier peers, low-income children are not reaping the educational benefits that effective advocacy has achieved for students with disabilities who can afford determined advocates, skilled counsel, and knowledgeable experts to navigate the highly technical mandates of the statute and corresponding regulations." (citations omitted)).

[46] *See, e.g.*, *About the Office of State Review*, N.Y. ST. EDUC. DEP'T OFF. ST. REV., https://www.sro.nysed.gov/about-office-state-review (last visited Mar. 22, 2020) (describing New York's state-level review process); OHIO DEP'T OF EDUC., A GUIDE TO PARENT RIGHTS IN SPECIAL EDUCATION: SPECIAL EDUCATION PROCEDURAL SAFEGUARDS NOTICE 26 (2017), https://education.ohio.gov/getattachment/Topics/Special-Education/A-Guide-to-Parent-Rights-in-Special-Education/ODE_ParentRights_040617.pdf.aspx (describing Ohio's state-level review process).

[47] MICHAEL STEIN & MICHAEL WATERSTONE, NAT'L COUNCIL ON DISABILITY, FINDING THE GAPS: A COMPARATIVE ANALYSIS OF DISABILITY LAWS IN THE UNITED STATES TO THE UNITED NATIONS CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES (CRPD) 122 (2008), https://www.ncd.gov/rawmedia_repository/bbae6ede_8719_48b8_b40f_33938b9a2189.pdf.

[48] *See* 20 U.S.C. § 1414 (2018); Bd. of Educ. v. Rowley, 458 U.S. 176, 189 (1982) (noting that the IDEA sets forth "extensive procedural requirements" to ensure "individualized consideration of and instruction for each child").

services.[49] The Supreme Court first interpreted whether the Act contains an implied substantive standard at all in *Board of Education of the Hendrick Hudson Central School District v. Rowley*.[50]

The case centered on Amy Rowley, a deaf student in first grade at the time of the complaint.[51] Upon her enrollment in the Hendrick Hudson Central School District, Amy was placed in a "regular," or general education, kindergarten classroom and provided a sign language interpreter.[52] The interpreter provided services for only two weeks, however, because Amy performed well academically even without his support; in fact, she "perform[ed] better than the average child in her class."[53] She went on to "easily" complete kindergarten fully integrated in the general education curriculum.[54]

When Amy's IEP team convened to plan for her first grade year, the school district proposed various accommodations to attend to her hearing difficulties—with the exception of a sign language interpreter, given her kindergarten performance.[55] Amy's parents protested that she "[was] not learning as much, or performing as well academically, as she would [have] without her handicap," and thus demanded that Amy be provided an interpreter.[56] When their request was denied, they brought an action against the school district alleging that their daughter was deprived a FAPE.[57]

Their claim eventually rose to the Supreme Court, which was tasked with determining whether a FAPE required anything more than IDEA's bare procedural protections.[58] Justice Rehnquist wrote for the majority:

> Implicit in the congressional purpose of providing access to a "[FAPE]" is the requirement that the education to which access is provided be sufficient to confer *some educational benefit* upon the handicapped child. . . . Therefore, [the Court sets out a two-part test for assessing the appropriateness of an IEP, as follows]. First, has

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[49] *Id.* ("Noticeably absent from the language of the statute is any substantive standard prescribing the level of education to be accorded handicapped children.").
[50] *Id.* at 176.
[51] *Id.* at 184–85.
[52] *Id.* at 184.
[53] *Id.* at 184–85 (internal quotation marks omitted).
[54] *Id.*
[55] *Id.*
[56] *Id.* (citations and internal quotation marks omitted).
[57] *Id.* at 185.
[58] *Id.* at 190 (noting that the Court was presented with "the question of whether the [IDEA's] legislative history indicates a congressional intent that [a FAPE] meet some additional substantive standard").

> the State complied with the procedures set forth in the Act? And second, is the [IEP] developed through the Act's procedures *reasonably calculated to enable the child to receive educational benefits*? If these requirements are met, the State has complied with the obligations imposed by Congress and the courts can require no more.[59]

Thus, the Court held that the IDEA's FAPE requirement *does* imply a substantive guarantee—namely, that IEPs be "reasonably calculated to enable the child to receive educational benefits."[60] This language endures today as a cornerstone of special education law. Note that the *Rowley* Court avoided making a bright-line rule as to the level of educational benefit required under the IDEA;[61] for example, it rejected the plaintiffs' call for a standard that would require States to "maximize the potential of each handicapped child commensurate with the opportunity provided nonhandicapped children."[62] The Court did provide some analytic guidance for its flexible FAPE standard, however. *Inter alia*, *Rowley* explained that "if the child is being educated in the regular classrooms of the public education system, [the IEP] should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade."[63] The school district was ultimately found to have carried its burden under the *Rowley* standard; Amy's education continued on without the support of an interpreter.[64]

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[59] *Id.* at 200, 206–07 (emphasis added) (citations omitted).

[60] *Id.* at 207.

[61] *Id.* at 202 ("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.").

[62] *Id.* at 189–90, 200 ("[T]he language of the statute contains no requirement . . . that States maximize the potential of handicapped children commensurate with the opportunity provided to other children. . . . Desirable though that goal might be, it is not the standard that Congress imposed upon States which receive funding under the Act." (citation and internal quotation marks omitted)).

[63] *Id.* at 204.

[64] *Id.* at 209–10. The Court held,

> Amy is receiving an adequate education, since she performs better than the average child in her class and is advancing easily from grade to grade. In light of this finding, and of the fact that Amy was receiving personalized instruction and related services calculated by . . . school administrators to meet her educational needs, the lower courts should not have concluded that the Act requires the provision of a sign-language interpreter.

Id. (citations and internal quotation marks omitted).

Rowley represents the first—and until recently, the last—time that the Supreme Court addressed the IDEA's substantive standard.[65] For decades, courts were divided over precisely how much "educational benefit" must be afforded to satisfy *Rowley*'s substantive FAPE standard.[66] Some federal circuits determined that to be substantively adequate, an IEP must confer a "meaningful educational benefit."[67] Others like the Tenth Circuit, interpreted *Rowley*'s "some educational benefit" language to require "merely [ ] 'more than *de minimis*,'" or trivial, benefit.[68] Another open question following *Rowley* arose from the fact that the decision was limited only to situations analogous to Amy's—specifically, those involving students who are integrated in the regular classroom.[69] But what of students whose disabilities interfere with their ability to progress in the general curriculum?

C. Endrew F.

The Court would not address this question until its decision in *Endrew F. v. Douglas County School District RE-1*.[70] *Endrew F.* concerned the education of a Coloradan boy named Endrew, who was diagnosed with autism at the age of two.[71] Endrew attended public school from preschool through fourth grade,[72] and although he demonstrated certain strengths during that time,[73] he also presented

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[65] Zirkel, *A Meaningful Raising of the Bar*, *supra* note 11, at 545 (explaining that the U.S. Supreme Court has addressed the substantive FAPE standard on only two occasions: in *Rowley* and *Endrew F.*).

[66] Namely, its requirement that IEPs be "reasonably calculated to enable the child to receive educational benefits." *Rowley*, 458 U.S. at 206–07.

[67] E.D. *ex rel.* T.D. v. Colonial Sch. Dist., No. 09-4837, 2017 WL 1207919, at *11 (E.D. Pa. Mar. 31, 2017). In the Third Circuit, "meaningful benefit" has also been operationalized as the "opportunity for significant learning." *Id.* at *12.

[68] *See, e.g.*, Urban *ex rel.* Urban v. Jefferson Cty. Sch. Dist. R-1, 89 F.3d 720, 726–27 (10th Cir. 1996).

[69] *Rowley*, 458 U.S. at 202 ("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.").

[70] Endrew F. *ex rel.* Joseph F. v. Douglas Cty. Sch. Dist. RE-1, 137 S. Ct. 988, 999 (2017).

[71] *Id.* at 996.

[72] *Id.*

[73] For example, Endrew's "teachers described him as a humorous child with a 'sweet disposition' who 'show[ed] concern for friends.'" *Id.* (citations omitted).

several behavioral challenges that interfered with his access to the curriculum.[74]

Endrew's parents grew frustrated that his academic and functional progress essentially halted by fourth grade.[75] They saw, for example, that nearly all of his second and third grade IEP objectives were "discontinued or abandoned" because "he was not able to make adequate progress on them,"[76] and that he generally failed "to make meaningful progress toward his aims."[77] Unsatisfied with these persistently low outcomes, Endrew's parents transferred him to a private school that offered services tailored to children with autism.[78] Endrew thrived there under an education intervention plan specially designed for him; Endrew's behavior "improved significantly" which enabled progress he had not seen for years in his home district.[79] In light of this forward momentum, Endrew's parents later declined to re-enroll their son in public school—and instead brought suit for reimbursement of their private expenses.[80]

Endrew's parents alleged that his repeatedly ineffective learning plans were not "reasonably calculated to enable [Endrew] to receive educational benefits," as required by *Rowley*, and that he was therefore deprived a FAPE.[81] In particular, they challenged Endrew's educational record as "devoid of any demonstrable evidence that [he] made any

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[74] *Id.* ("Endrew would scream in class, climb over furniture and other students, and occasionally run away from school. He was afflicted by severe fears of commonplace things like flies, spills, and public restrooms." (citations omitted)).

[75] *Id.* at 991.

[76] Endrew F. *ex rel.* Joseph F. v. Douglas Cty. Sch. Dist. RE-1, No. 12-cv-2620-LTB, 2014 WL 4548439, at *7 (D. Colo. Sept. 15, 2014), *aff'd sub nom.* Endrew F. *ex rel.* Joseph F. v. Douglas Cty. Sch. Dist. Re-1, 798 F.3d 1329 (10th Cir. 2015), *vacated and remanded*, 137 S. Ct. 988, 197 L. Ed. 2d 335 (2017), *vacated sub nom.* Endrew F. v. Douglas Cty. Sch. Dist. RE-1, 694 F. App'x 654 (10th Cir. 2017).

[77] *Endrew F.*, 137 S. Ct. at 996.

[78] *Id.*

[79] *Id.* at 996–97.

[80] *Id.* at 997.

> In November 2010, some six months after Endrew started classes at Firefly, his parents again met with representatives of the Douglas County School District. The district presented a new IEP. Endrew's parents considered the IEP no more adequate than the [previous] one . . . and rejected it. They were particularly concerned that the stated plan for addressing Endrew's behavior did not differ meaningfully from the plan in his fourth grade IEP, despite the fact that his experience at Firefly suggested that he would benefit from a different approach.

Id.

[81] *Id.*

measurable progress on the goals and objective contained in his IEPs."[82] The district court judge would go on to recognize that Endrew's second, third, and fourth grade IEPs each "provide[d], in essence, the same annual goals," and that he made "minimal progress" from year to year.[83] Yet despite his poor outcomes and years of recycled IEPs, Endrew was still deemed to have received a FAPE under the Tenth Circuit's *de minimis* standard.[84] Endrew's family then brought their case before the U.S. Supreme Court, arguing that the IDEA did not contemplate provision of such minimal educational opportunities as those afforded to their son.[85]

The Supreme Court unanimously agreed.[86] It struck down the d*e minimis* standard in Endrew's favor, and further refined (without overturning) *Rowley*'s "general approach" to assessing the substantive adequacy of an IEP.[87] Specifically, *Endrew F.* held that the IDEA "requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances."[88] The Court stated that "this standard is markedly more

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[82] Endrew F. *ex rel.* Joseph F. v. Douglas Cty. Sch. Dist. RE-1, No. 12-cv-2620-LTB, 2014 WL 4548439, at *6 (D. Colo. Sept. 15, 2014), *aff'd sub nom.* Endrew F. *ex rel.* Joseph F. v. Douglas Cty. Sch. Dist. Re-1, 798 F.3d 1329 (10th Cir. 2015), *vacated and remanded*, 137 S. Ct. 988, 197 L. Ed. 2d 335 (2017), *vacated sub nom.* Endrew F. v. Douglas Cty. Sch. Dist. RE-1, 694 F. App'x 654 (10th Cir. 2017).

[83] *Id.* The court further explained that "some of the objectives carried over from year to year, and some [were] only slightly modified." *Id.* at *9.

[84] *Id.* at *9. As the court described,

> Petitioner made progress towards his academic and functional goals in his IEPs and although this does not mean that he achieved every objective, or that he made progress on every goal, the evidence shows that he received educational benefit while enrolled in the District. As such, Petitioner's parents have failed to show that the District's IEPs—both past and proposed for the future—were not reasonably calculated to provide him with some educational benefit.

Id.; *see also* Endrew F. *ex rel.* Joseph F. v. Douglas Cty. Sch. Dist. RE-1, 798 F.3d 1329, 1342 (10th Cir. 2015), *vacated sub nom.* Endrew F. v. Douglas Cty. Sch. Dist. RE-1, 694 F. App'x 654 (10th Cir. 2017) ("This is without question a close case, but we find there are sufficient indications of Drew's past progress to find the IEP rejected by the parents substantively adequate under our prevailing standard.").

[85] Endrew F. *ex rel.* Joseph F. v. Douglas Cty. Sch. Dist. RE-1, 137 S. Ct. 988, 1001 (2017).

[86] *Id.* at 998 ("We cannot accept the school district's reading of *Rowley*.").

[87] *Id.* at 999–1001.

[88] *Id.* at 1002. Contrast the *Endrew F.* standard with the substantive standard set forth in *Rowley*, requiring IEPs to be "reasonably calculated to enable the child to receive educational benefits." Bd. of Educ. v. Rowley, 458 U.S. 176, 206–07 (1982). *Endrew F.* looks beyond mere conferral of educational benefit and emphasizes, instead, the need to produce student growth.

demanding than the 'merely more than *de minimis*' test applied by the Tenth Circuit"[89]—although it does not require IEPs to be "ideal."[90]

The Court also expanded on its analytic framework for assessing IEPs' substantive adequacy under that FAPE standard. First, it clarified that schools must provide *all* students with "the chance to meet *challenging objectives*."[91] Second, it reiterated *Rowley*'s guidance that students with disabilities who are nonetheless integrated in the regular classroom require IEPs that are "reasonably calculated to enable [them] to achieve passing marks and advance from grade to grade."[92] The Court recognized, however, that students *not* fully mainstreamed in the general curriculum require different educational considerations; thus, although they "need not aim for grade-level advancement," their learning plans must still be "*appropriately ambitious*."[93]

Ultimately, *Endrew F.* works to raise FAPE's substantive floor to somewhere above *de minimis*, and provides lower courts with at least two new factors they must review when evaluating IEPs—namely, the CO/AA requirements.[94] Several authorities support this framing of *Endrew F.*, including legal scholars, the U.S. Department of Education ("DOE"),[95] and several Courts of Appeals.[96] As this research shows, however, few courts have assessed IEPs through the lens of *Endrew F.*'s complete analytic framework.

II.
METHODOLOGY AND SUMMARY OF FINDINGS

Purposive Sampling. The case law involved in this study was identified using Westlaw's Citing References function, which provides access to cases citing to *Endrew F.* Two hundred sixty-nine federal

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[89] *Endrew F.*, 137 S. Ct. at 1000.

[90] *Id.* at 999.

[91] *Id.* at 1000 (emphasis added).

[92] *Id.* at 999 (citations omitted). As of fall 2016, 63.1% of students ages 6 through 21 served under the IDEA spent 80% or more of their school days in the regular classroom—as opposed to, for example, in residential facilities or private schools. U.S. DEP'T OF EDUC., OFFICE OF SPECIAL EDUC. & REHAB. SERVS., 40TH ANNUAL REPORT TO CONGRESS ON THE IMPLEMENTATION OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT 150 (2018), https://www2.ed.gov/about/reports/annual/osep/2018/parts-b-c/40th-arc-for-idea.pdf.

[93] *Endrew F.*, 137 S. Ct. at 1000 (emphasis added).

[94] Note that the AA requirement is specific to students not fully integrated in the regular classroom. *Id.* at 1001.

[95] The DOE is responsible for the federal administration and enforcement of the IDEA. 20 U.S.C. § 1416(a) (2018).

[96] *See infra* notes 170–90 and accompanying text.

court opinions could be found on *Endrew F.*'s Citing References page as of March 22, 2020. Every case included therein was screened for certain desired characteristics. A decision was suitable for further review if the court applied *Endrew F.* to issue a ruling[97] on the substantive adequacy of a challenged IEP[98] between March 22, 2017 and March 22, 2020. This yielded a final sample size of 142 cases. All cases reviewed in this study are documented in Appendix C, organized by federal circuit and date of publication in chronological order. Results from the analysis described below are also included alongside each case in Appendix C.

Data Collection and Analysis. The research proceeded in three stages. The first phase of review collected basic case outcome data by asking two questions of each decision: (1) Did the federal court find that the student litigant was provided a FAPE under the challenged IEP? and (2) Was the lower decision upheld or overturned? Note that parents often challenged more than one of their child's previous IEPs. This led four courts to render conflicting FAPE decisions in a single case—by finding, for example, that FAPE was provided in Year 1 but not in Year 2, or by affirming a lower decision only in part.[99] To account for these varying data points, the sample comprises a total of 146 decisions across 142 cases.

A summary of the results from all 146 sampled decisions are provided below in Table 1. Importantly, the decisions were then divided into two distinct subsamples by determining whether the lower decision

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[97] Cases remanding substantive FAPE issues for further review in light of *Endrew F.* were excluded from this research. *See, e.g.*, N.P. *ex rel.* S.P. v. Maxwell, 711 F. App'x 713 (4th Cir. 2017); M.C. *ex rel.* M.N. v. Antelope Valley Union High Sch. Dist., 858 F.3d 1189 (9th Cir. 2017); Shaw v. District of Columbia, No. CV 17-00738 (DLF/RMM), 2019 WL 498731 (D.D.C. Feb. 8, 2019); McLean v. District of Columbia, 323 F. Supp. 3d 20 (D.D.C. 2018); Sauers v. Winston-Salem/Forsyth Cty. Bd. of Educ., No. 1:15-CV-427, 2018 WL 1621516 (M.D.N.C. Mar. 30, 2018); C.D. *ex rel.* M.D. v. Natick Pub. Sch. Dist., No. CV 15-13617-FDS, 2017 WL 2483551 (D. Mass. Mar. 28, 2017).

[98] Excluded were cases solely deciding issues of procedural FAPE and LRE, or which cited to *Endrew F.* only for background information about the IDEA or federal procedure, but did not apply the substantive FAPE standard.

[99] *See* S.C. *ex rel.* N.C. v. Chariho Reg'l Sch. Dist., 298 F. Supp. 3d 370 (D.R.I. 2018); Montgomery Cty. Intermediate Unit No. 23 v. C.M., No. CV 17-1523, 2017 WL 4548022 (E.D. Pa. Oct. 12, 2017); Avaras v. Clarkstown Cent. Sch. Dist., No. 15 Civ. 2042 (NSR), 2017 WL 3037402 (S.D.N.Y. July 17, 2017), *appeal dismissed sub nom.* Avaras *ex rel.* A.A. v. Clarkstown Cent. Sch. Dist., 752 F. App'x 60 (2d Cir. 2018); G.S. *ex rel.* L.S. v. Fairfield Bd. of Educ., No. 3:16-cv-1355 (JCH), 2017 WL 2918916 (D. Conn. July 7, 2017).

being appealed[100] was rendered pre-*Endrew F.* ("Subsample 1") or post-*Endrew F.* ("Subsample 2").[101] Demarcating the case law in this way approximated a cause-and-effect paradigm in Subsample 1, in that those cases entailed post-*Endrew F.* appeals from pre-*Endrew F.* IEP determinations. Subsample 1 thus allowed for valuable research into whether (for example) IEPs that were upheld under a pre-*Endrew F.* standard were then found unsatisfactory under the hypothetically more demanding *Endrew F.* standard. Table 2, below, presents the results from cases in Subsample 1. Cases in Subsample 2—in which the courts reviewed applications of post-*Endrew F.* FAPE standards[102]—lacked the same unique procedural history. Nonetheless, they still provide valuable insight into where the future of FAPE litigation is headed. The results from Subsample 2 are summarized in Table 3, below.

TABLE 1. OUTCOMES OF ALL FEDERAL COURT DECISIONS APPLYING THE *ENDREW F.* STANDARD THROUGH MARCH 22 2020

# Decisions Finding FAPE Was Provided (finding in favor of school districts)	115 of 146 decisions (78.8%)
# affirming lower decisions	110 of 146 decisions (75.3%)
# reversing lower decisions	5 of 146 decisions (3.4%)
# Decisions Finding FAPE Was Not Provided (finding in favor of students)	31 of 146 decisions (21.2%)
# affirming lower decisions	23 of 146 decisions (15.1%)
# reversing lower decisions	9 of 146 decisions (6.2%)

[100] The term "lower decision" is used as an umbrella term throughout this Note to account for the fact that both administrative decisions and district court opinions are subject to review in the federal courts. Recall that IHO and SRO decisions are appealed to federal district courts in the first instance. *See supra* notes 42–46 and accompanying text.

[101] Pre- versus post-*Endrew F.* status was generally determined by reviewing the relevant lower decision on Westlaw, when available, or via web search. Reviewing courts sometimes noted the lower decisions' issue dates, as well.

[102] Lower decisions in Subsample 2 presumably applied substantive FAPE standards believed to comport with *Endrew F.*

TABLE 2. OUTCOMES OF FEDERAL COURT DECISIONS REVIEWING IHO AND DISTRICT COURT OPINIONS ISSUED PRE-ENDREW F. (SUBSAMPLE 1)

# Decisions Finding FAPE Was Provided (finding in favor of school districts)	65 of 83 decisions (78.3%)
# affirming pre-*Endrew F.* decisions	62 of 83 decisions (74.7%)
# reversing pre-*Endrew F.* decisions	3 of 83 decisions (3.6%)
# Decisions Finding FAPE Was Not Provided (finding in favor of students)	18 of 83 decisions (21.7%)
# affirming pre-*Endrew F.* decisions	12 of 83 decisions (14.5%)
# reversing pre-*Endrew F.* decisions	6 of 83 decisions (7.2%)

TABLE 3. OUTCOMES OF FEDERAL COURT DECISIONS REVIEWING IHO AND DISTRICT COURT OPINIONS ISSUED POST-ENDREW F. (SUBSAMPLE 2)

# Decisions Finding FAPE Was Provided (finding in favor of school districts)	50 of 63 decisions (79.4%)
# affirming post-*Endrew F.* decisions	48 of 63 decisions (76.2%)
# reversing post-*Endrew F.* decisions	2 of 63 decisions (3.2%)
# Decisions Finding FAPE Was Not Provided (finding in favor of students)	13 of 63 decisions (20.6%)
# affirming post-*Endrew F.* decisions	10 of 63 decisions (15.9%)
# reversing post-*Endrew F.* decisions	3 of 63 decisions (4.8%)

A second stage of analysis observed the substantive FAPE standards actually implemented by the courts to reach their decisions in each case.[103] This phase focused on whether courts cited the *Endrew F.* requirements (or otherwise referenced in any way) that IEPs be (1) "reasonably calculated to enable a child to make progress appropriate

[103] Note that the 142 cases analyzed in this study—including those which ruled on the substantive adequacy of more than one IEP—each provided only one set of data for this component of the research. That is because if a court considered RC/CO/AA at all, it presumably did so for all IEPs in dispute. *Contra supra* note 100 and accompanying text.

in light of the child's circumstances" ("RC"),[104] (2) complete with "challenging objectives" ("CO"),[105] and (3) "appropriately ambitious" ("AA") in light of the student's unique abilities.[106] This data collection erred toward inclusion, positively accounting for decisions finding the existence of "challenging objectives" but doing so without explanation or without citing *Endrew F.* for that requirement.[107] A summary of these results is presented in Table 4, below.

TABLE 4. FEDERAL COURT APPROACHES TO KEY ASPECTS OF THE ENDREW F. ANALYTICAL FRAMEWORK

***Endrew F.* Requirements**	**# Citations Since March 22, 2017**
RC	134 of 142 cases (94.4%)
CO	25 of 142 cases (17.6%)
AA	43 of 142 cases (30.3%)
RC, CO, *and* AA	19 of 142 cases (13.4%)
RC and either CO *or* AA	28 of 142 cases (19.7%)
RC, but neither CO *nor* AA	87 of 142 cases (61.3%)
CO or AA, but *not* AA	2 of 142 cases (1.4%)
Neither RC, CO, *nor* AA	6 of 142 cases (4.2%)

Finally, each of the 142 cases was further qualitatively reviewed to ascertain how courts reconciled *Endrew F.* with their prior FAPE framework. The aim was to determine whether, and to what extent, the courts found that *Endrew F.* made a material difference in their decision-making. This process also shed light on material facts frequently highlighted by the courts when rendering their determinations under *Endrew F.* (e.g., what facts typically weighed in favor of a finding for either party, what satisfied the "challenging goals" mandate, etc.). Practical takeaways garnered from this stage of review are presented throughout Part III and in Appendices A and B.

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[104] Endrew F. *ex rel.* Joseph F. v. Douglas Cty. Sch. Dist. RE-1, 137 S. Ct. 988, 999 (2017).

[105] *Id.* at 992, 1000–01.

[106] *Id.* at 1000.

[107] *See, e.g.*, K.D. *ex rel.* Dunn v. Downingtown Area Sch. Dist., 904 F.3d 248, 255–56 (3d Cir. 2018).

III.
DISCUSSION

A. Courts Saw Endrew F. *as a Minor Clarification to* Rowley, *and Not as a Major Departure*[108]

In the sample of 146 decisions analyzed here, 132 decisions (90.4%) were affirmed on appeal. As described in Part II, the case law sampled in Subsample 1[109] is especially instructive for answering a central question: to what extent has *Endrew F.* changed the face of FAPE litigation? The results show that Subsample 1 courts upheld 74 of the 83 decisions (89.2%) that came before them—meaning that most pre-*Endrew F.* determinations satisfied the *Endrew F.* requirements. Curiously, this proved true even in the Fourth and Tenth Circuits, previously *de minimis* jurisdictions. There, courts affirmed 9 of 11 decisions (81.8%) made prior to *Endrew F.*[110] Similar results emerged in Subsample 2, where courts affirmed 58 of 63 lower decisions (92.1%).

On the other hand, very few decisions applying *Endrew F.* resulted in reversals. This was the outcome in 14 of 146 decisions (9.6%) overall, with 9 (6.2%) of those instances being in Subsample 1.[111] These emergent trends suggest that, beyond rejection of the *de minimis* standard itself, *Endrew F.* did not demand a major departure from *Rowley* precedent in most cases.

Courts framed the scope of *Endrew F.*'s impact on the FAPE standard in diverse ways. A number of courts portrayed *Endrew F.* as setting forth a "new" standard for the IDEA's substantive requirements.[112] In that vein, some cited *Endrew F.*'s predecessor, *Rowley*, only to establish background information about the IDEA,[113] if

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[108] *See supra* Tables 1–3.

[109] Recall that the case law was divided into two Subsamples for supplementary analysis. Subsample 1 comprised eighty-three appeals from decisions issued pre-*Endrew F.*, and Subsample 2 included the sixty-three appeals from those issued post-*Endrew F.* *See supra* notes 101–03 and accompanying text.

[110] *See infra* Appendix C.

[111] *See* further discussion of these outcomes *infra* Section III.B.

[112] Endrew F. *ex rel.* Joseph F. v. Douglas Cty. Sch. Dist. RE-1, 290 F. Supp. 3d 1175, 1177, 1181–82 (D. Colo. 2018) (previously a *de minimis* jurisdiction); J.R. v. Smith, No. DKC 16-1633, 2017 WL 3592453, at *4 (D. Md. Aug. 21, 2017) (same).

[113] *See, e.g.*, Mr. P. v. W. Hartford Bd. of Educ., 885 F.3d 735, 748 (2d Cir. 2018) (citing *Rowley*'s call to defer to the educational judgements of school officials); Dall. Indep. Sch. Dist. v. Woody, 865 F.3d 303, 318 n.4 (5th Cir. 2017) (citing *Rowley* for the proposition that courts are limited when fashioning remedies for FAPE violations);

they referenced *Rowley* at all.[114] A reading of *Endrew F.* as setting forth a "new" standard, with requirements over and above those in *Rowley*, contemplates an *Endrew F.* with potential to materially strengthen students' rights.

More representative of the research findings above, however, were those courts which opined that *Endrew F.* merely "endorses and narrows,"[115] "revise[s],"[116] or "clarifies"[117] the *Rowley* standard. For example, the Fourth Circuit wrote that *Rowley* "remains the leading IDEA case."[118] The Fifth Circuit similarly explained that "*Endrew F.* represents no major departure from *Rowley*."[119] Both Circuits essentially minimized any impact *Endrew F.* might have had on FAPE litigation, aside from its rebuff of the *de minimis* standard. Courts in the Fourth and Fifth Circuits ultimately affirmed 100% of the appeals before them, including those from IEP disputes decided under pre-*Endrew F.* standards of review.[120]

Courts following the "meaningful benefit" standard also made interesting observations about *Endrew F.*'s impact on the law. Meaningful benefit courts frequently asserted that their precedents are

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Wade v. District of Columbia, 322 F. Supp. 3d 123, 129 (D.D.C. 2018) (citing *Rowley* to establish that IEPs must be regularly updated and "tailored to the unique needs" of each student); T.M. *ex rel.* T.M. v. Quakertown Cmty. Sch. Dist., 251 F. Supp. 3d 792, 800 (E.D. Pa. 2017) (citing *Rowley*'s explanation that the IDEA does not require "the furnishing of every special service necessary to maximize each handicapped child's potential").

[114] *See, e.g.*, E.G. v. Great Valley Sch. Dist., No. 16-5456, 2017 WL 2260707, at *3 (E.D. Pa. May 23, 2017) (citing only to *Endrew F.* and Third Circuit precedent to explain the substantive FAPE standard).

[115] L.H. v. Hamilton Cty. Dep't of Educ., 900 F.3d 779, 791 (6th Cir. 2018) (explaining but not applying the substantive FAPE standard).

[116] Barney v. Akron Bd. of Educ., No. 5:16CV0112, 2017 WL 4226875, at *11 (N.D. Ohio Sept. 22, 2017), *aff'd*, 763 F. App'x 528 (6th Cir. 2019).

[117] *E.g.*, E.F. *ex rel.* Fulsang v. Newport Mesa Unified Sch. Dist., 726 F. App'x 535, 537 (9th Cir. 2018) ("*Endrew* [sic] did not change, but simply clarified *Rowley*." (citations omitted)); F.L. v. Bd. of Educ. of Great Neck Union Free Sch. Dist., 735 F. App'x 38, 40 (2d Cir. 2018); N.P. *ex rel.* S.P. v. Maxwell, 711 F. App'x 713, 718–19 (4th Cir. 2017); E.E. v. N.Y.C. Dep't of Educ., No. 17-CV-2411 (RA), 2018 WL 4636984, at *4 (S.D.N.Y. Sept. 26, 2018); Edmonds Sch. Dist. v. A.T., 299 F. Supp. 3d 1135, 1137 n.1 (W.D. Wash. 2017); Montgomery Cty. Intermediate Unit No. 23 v. C.M., No. CV 17-1523, 2017 WL 4548022, at *6 (E.D. Pa. Oct. 12, 2017); J.R. *ex rel.* J.R. v. N.Y.C. Dep't of Educ., No. 15-CV-364 (SLT) (RML), 2017 WL 3446783, at *17 (E.D.N.Y. Aug. 9, 2017), *aff'd sub nom.* J.R. v. N.Y.C. Dep't of Educ., 748 F. App'x 382 (2d Cir. 2018); K.M. *ex rel.* Markham v. Tehachapi Unified Sch. Dist., No. 1:15-cv-001835 LJO JLT, 2017 WL 1348807, at *17 (E.D. Cal. Apr. 5, 2017).

[118] M.L. *ex rel.* Leiman v. Smith, 867 F.3d 487, 494–96 (4th Cir. 2017).

[119] E.R. *ex rel.* E.R. v. Spring Branch Indep. Sch. Dist., 909 F.3d 754, 766 (5th Cir. 2018).

[120] *See infra* Appendix C.

substantively equivalent to the requirements of *Endrew F.*[121] One court reasoned that a "chasm" separated the *de minimis* and meaningful benefit standards;[122] per another, the *de minimis* standard "provided a far lower threshold for an IEP" than their own.[123] Many jurisdictions not previously following the *de minimis* standard thus saw *Endrew F.* as having limited practical implications for their jurisprudence.

B. School Districts Dominate FAPE Litigation Under Endrew F.[124]

School districts prevailed in the majority of IEP disputes decided since *Endrew F.* Between March 22, 2017 and March 22, 2020, 115 of 146 decisions (78.8%) found that IEPs satisfied the law. One hundred

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[121] *E.g.*, C.D. *ex rel.* M.D. v. Natick Pub. Sch. Dist., 924 F.3d 621, 629 (1st Cir. 2019) ("Under both *Endrew F.* and our precedent, a court evaluating whether an IEP offers a FAPE must determine whether the IEP was reasonably calculated to confer a meaningful educational benefit in light of the child's circumstances."); *Spring Branch*, 909 F.3d at 766 (explaining that *Endrew F.* "provided direction" on the substantive FAPE requirement, but did not overrule the Fifth Circuit's meaningful benefit standard: "Our court's [precedent] and the Supreme Court's holding in *Endrew F.* do not conflict. . . . Both fit together"); Johnson v. Bos. Pub. Schs., 906 F.3d 182, 195 (1st Cir. 2018) ("In our view, the standard applied in this circuit comports with that dictated by *Endrew F.* . . . . [There is no] evident discrepancy between the standard applied in this circuit . . . and that announced by *Endrew F.*"); K.D. *ex rel.* Dunn v. Downingtown Area Sch. Dist., 904 F.3d 248, 251, 254 (3d Cir. 2018) ("Our precedents already accord with the Supreme Court's guidance in *Endrew F.*, so we continue to apply them. . . . *Endrew F.* did not overrule [our] precedent. . . . [W]e see no conflict between *Endrew F.* and our precedent."); L.H. v. Hamilton Cty. Dep't of Educ., 900 F.3d 779, 792 n.5 (6th Cir. 2018) (stating the *Endrew F.* standard is "functionally the same" as the Sixth Circuit's "meaningful educational benefit" requirement); Mr. P. v. W. Hartford Bd. of Educ., 885 F.3d 735, 757 (2d Cir. 2018) ("Prior decisions of this Court are consistent with the Supreme Court's decision in *Endrew F.*"); C.G. *ex rel.* Keith G. v. Waller Indep. Sch. Dist., 697 F. App'x 816, 819 (5th Cir. 2017) ("Although the district court did not articulate the standard set forth in *Endrew F.* verbatim, its analysis of [the student's IEP using the Fifth Circuit's FAPE standard was] fully consistent with that standard."); S.W. *ex rel.* S.W. v. Abington Sch. Dist., No. CV 17-2188, 2018 WL 6604339, at *8 (E.D. Pa. Dec. 17, 2018) (explaining that the *Endrew F.* standard "mirrors" the Third Circuit's "meaningful educational benefits" standard) (citations omitted); N.S. v. Burriville Sch. Comm., No. 17-0428-WES, 2018 WL 5920619, at *4–5 (D.R.I. Nov. 13, 2018) (explaining that the First Circuit's meaningful benefit standard satisfies *Endrew F.*'s requirements); Sean C. *ex rel.* Helen C. v. Oxford Area Sch. Dist., No. 16-5286, 2017 WL 3485880, at *9 n.13 (E.D. Pa. Aug. 14, 2017) (same), *aff'd sub nom.* S.C. *ex rel.* Helen C. v. Oxford Area Sch. Dist., 751 F. App'x 220 (3d Cir. 2018); E.D. *ex rel.* T.D. v. Colonial Sch. Dist., No. 09-4837, 2017 WL 1207919, at *12 (E.D. Pa. Mar. 31, 2017) (explaining that the meaningful benefit standard does not "differ substantively from the standards adopted by the Supreme Court in *Endrew F.*").

[122] *Burriville*, 2018 WL 5920619, at *4.

[123] *See, e.g.*, *Spring Branch*, 909 F.3d at 765.

[124] *See supra* Tables 1–3.

ten (75.3%) of those decisions affirmed lower court findings in favor of school districts. In the same time period, only 31 decisions (21.2% of the total) favored student litigants. These cases thus suggest—though not without limitation[125]—that school districts dominated the courtroom before *Endrew F.*, and continue to after *Endrew F.* For those expecting a sea change in FAPE litigation,[126] there are 115 canaries in the IDEA coal mine.

As described in Part II, the case law was further subsampled according to when the lower decisions on appeal were decided. Recall that cases in Subsample 1—which were reviewed first under pre-*Endrew F.* FAPE standards and appealed post-*Endrew F.*—roughly approximate a "before-and-after Endrew" paradigm.[127] Overall, school districts won 65 of the 83 decisions (78.3%) on appeal from pre-*Endrew F.* cases. More specifically, Subsample 1 courts affirmed findings that favored school districts in 62 of 83 decisions (74.7%). *Endrew F.* thus did not change the results of most failed, pre-*Endrew F.* IEP challenges.

Interestingly, Subsample 1 courts reversed three IHO decisions that initially found against school districts under pre-*Endrew F.* standards of review.[128] These reversals are noteworthy since *Endrew F.* purported to heighten the FAPE standard; in theory, then, one might not expect a plaintiff to win his case pre-*Endrew F.* only to lose post-*Endrew F.*

Conversely, students succeeded in 18 of the 83 decisions (21.7%) in Subsample 1. Courts affirmed FAPE violations found under pre-*Endrew F.* standards in 12 of those decisions, meaning 14.5% of disputed IEPs failed under both pre- and post-*Endrew F.* standards.[129]

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[125] *See* discussion *infra* Section IV.A.

[126] *See, e.g.*, sources cited *supra* note 24.

[127] *See supra* notes 101–03 and accompanying text.

[128] *In re* Butte Sch. Dist. No. 1, No. CV 14-60-BU-SEH, 2019 WL 343149 (D. Mont. Jan. 28, 2019); Montgomery Cty. Intermediate Unit No. 23 v. C.M., No. CV 17-1523, 2017 WL 4548022 (E.D. Pa. Oct. 12, 2017); Bd. of Educ. of Albuquerque Pub. Sch. v. Maez, No. 16-cv-1082 WJ/WPL, 2017 WL 3278945 (D.N.M. Aug. 1, 2017).

[129] Dall. Indep. Sch. Dist. v. Woody, 865 F.3d 303 (5th Cir. 2017); S.H. v. Rutherford Cty. Sch., 334 F. Supp. 3d 868 (M.D. Tenn. 2018); Pottsgrove Sch. Dist. v. D.H., No. 17-2658, 2018 WL 4368154 (E.D. Pa. Sept. 12, 2018); Edmonds Sch. Dist. v. A.T., 299 F. Supp. 3d 1135 (W.D. Wash. 2017); Bd. of Educ. of Wappingers Cent. Sch. Dist. v. M.N. *ex rel.* J.N., No. 16-CV-09448 (TPG), 2017 WL 4641219 (S.D.N.Y. Oct. 13, 2017); *Montgomery Cty.*, 2017 WL 4548022; Methacton Sch. Dist. v. D.W. *ex rel.* G.W., No. 16-2582, 2017 WL 4518765 (E.D. Pa. Oct. 6, 2017); Pocono Mountain Sch. Dist. v. J.W. *ex rel.* J.W., No. 3:16-CV-0381, 2017 WL 3971089 (M.D. Pa. Sept. 8, 2017); Avaras v. Clarkstown Cent. Sch. Dist., No. 15 Civ. 2042 (NSR), 2017 WL 3037402 (S.D.N.Y. July 17, 2017), *appeal dismissed sub nom.* Avaras *ex rel.* A.A. v. Clarkstown Cent. Sch. Dist., 752 F. App'x 60 (2d Cir. 2018); G.S. *ex rel.* L.S. v.

In only 6 of 83 decisions (7.2%) did courts apply *Endrew F.* to overturn pre-*Endrew F.* rulings in favor of school districts.[130] Some early commentators seemed to ponder an *Endrew F.* FAPE landscape that mirrored the results of these six cases: one where the Supreme Court's decision signified a noticeable boon to students with disabilities.[131] Three years on, however, the case law suggests a less robust reality.

Similar to Subsample 1, 50 of 63 decisions (79.4%) in Subsample 2 found in favor of school districts. Contrast the 13 decisions (20.6%) determining that FAPE was not provided.[132] Most courts in this subsample also affirmed their respective lower decisions (as was the case in 58 decisions, or 92.1% overall), with only 3 reversals in favor of student litigants (comprising 4.8% of all cases in Subsample 2).[133]

The 63 cases in Subsample 2 are a window into potential trends in substantive FAPE disputes that make it to the courtroom. Each case was subject to two consecutive FAPE determinations applying post-*Endrew F.* FAPE standards,[134] the standard procedure in all jurisdictions moving

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Fairfield Bd. of Educ., No. 3:16-cv-1355 (JCH), 2017 WL 2918916 (D. Conn. July 7, 2017); Paris Sch. Dist. v. A.H. *ex rel.* Harter, No. 2:15-CV-02197, 2017 WL 1234151 (W.D. Ark. Apr. 3, 2017).

[130] Smith v. District of Columbia, No. 16-1386 (RDM), 2018 WL 4680208 (D.D.C. Sept. 28, 2018); Middleton v. District of Columbia, 312 F. Supp. 3d 113 (D.D.C. 2018); S.C. *ex rel.* N.C. v. Chariho Reg'l Sch. Dist., 298 F. Supp. 3d 370 (D.R.I. 2018); Endrew F. *ex rel.* Joseph F. v. Douglas Cty. Sch. Dist. RE-1, 290 F. Supp. 3d 1175 (D. Colo. 2018); S.B. v. N.Y.C. Dep't of Educ., No. 15-CV-1869, 2017 WL 4326502 (E.D.N.Y. Sept. 28, 2017); *Avaras*, 2017 WL 3037402.

[131] *See* sources cited *supra* note 24.

[132] D. L. *ex rel.* Landon v. St. Louis City Sch. Dist., 950 F.3d 1057 (8th Cir. 2020) (affirming lower decision in part); Edmonds Sch. Dist. v. A.T., 780 F. App'x 491 (9th Cir. 2019) (affirming lower decision); Colonial Sch. Dist. v. E.G. *ex rel.* M.G., No. 19-1173, 2020 WL 529906 (E.D. Pa. Jan. 31, 2020) (affirming lower decision); Bd. of Educ. of Wappingers Cent. Sch. Dist. v. D.M., No. 19 CV 1730 (VB), 2020 WL 508845 (S.D.N.Y. Jan. 30, 2020) (affirming lower decision); Matthew B. v. Pleasant Valley Sch. Dist., No. 3:17-CV-2380, 2019 WL 5692538 (M.D. Pa. Nov. 1, 2019) (affirming lower decision); Albuquerque Pub. Sch. v. Sledge, No. 18-1041 KK/LF, 2019 WL 3755954 (D.N.M. Aug. 8, 2019) (affirming lower decision); Gaston v. District of Columbia, No. 18-1703 (RJL), 2019 WL 3557246 (D.D.C. Aug. 5, 2019) (reversing lower decision); Dep't of Educ. v. L.S. *ex rel.* C.S., No. 18-cv-00223 JAO-RT, 2019 WL 1421752 (D. Haw. Mar. 29, 2019) (affirming lower decision); Bd. of Educ. of Montgomery Cty. v. J.M., No. 8:18-cv-00840-PX, 2019 WL 1409687 (D. Md. Mar. 28, 2019) (affirming lower decision); J.A. v. Smith Cty. Sch. Dist., 364 F. Supp. 3d 803 (M.D. Tenn. 2019) (affirming lower decision); Wade v. District of Columbia, 322 F. Supp. 3d 123 (D.D.C. 2018) (reversing lower decision); D.L. v. St. Louis City Pub. Sch. Dist., 326 F. Supp. 3d 810 (E.D. Mo. 2018) (reversing lower decision).

[133] *See Gaston*, 2019 WL 3557246; *Wade*, 322 F. Supp. 3d 123; *St. Louis*, 326 F. Supp. 3d 810.

[134] This was distinct from Subsample 1, which comprised cases initially decided under pre-*Endrew F.* standards before being subject to *Endrew F.* on appeal.

forward. As such, litigants may wish to be sensitive to the fact that the school districts in these cases have enjoyed a success rate of about 80% overall, and courts affirmed lower decisions decided in the *Endrew F.* era more than 90% of the time. Though Subsample 2 comprised only 63 rulings—too few data points to draw strong inferences about the future of FAPE litigation—their outcomes suggest a difficult road ahead for those mounting IEP disputes, even post-*Endrew F.*

It should be noted that there are limitations to this research, as will be discussed further in Section IV.A. For example, the methods used here could not account for lawsuits that were resolved through out-of-court settlements; the sampled cases represent only a fraction of the total number of IEP disputes at play in time period studied. Despite this external limitation, what information is publicly available still paints an interesting picture of today's FAPE litigation.

C. 87% of Decisions Failed to Implement Endrew F.*'s Key FAPE Requirements*[135]

The final stage of this research focused on how, and whether, courts applied *Endrew F.*'s holding and two prongs of its analytic framework. More specifically, these were the requirements that IEPs be (1) "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances" ("RC"); (2) complete with "challenging objectives" ("CO"); and (3) "appropriately ambitious" ("AA") in light of the student's unique abilities. Notably, only a fraction of all courts (19 of 142, or 13.4%)[136] cited to all three of

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[135] *See supra* Table 4.

[136] R.F. *ex rel.* E.F. v. Cecil Cty. Pub. Schs., 919 F.3d 237 (4th Cir. 2019); E.R. *ex rel.* E.R. v. Spring Branch Indep. Sch. Dist., 909 F.3d 754 (5th Cir. 2018); F.L. v. Bd. of Educ. of Great Neck Union Free Sch. Dist., 735 F. App'x 38 (2d Cir. 2018); Z. B. v. District of Columbia, 888 F.3d 515 (D.C. Cir. 2018); Matthew B. v. Pleasant Valley Sch. Dist., No. 3:17-CV-2380, 2019 WL 5692538 (M.D. Pa. Nov. 1, 2019); Gallup McKinley Cty. Sch. Bd. of Educ. v. Garcia, No. 16-01336-JTM-LF, 2019 WL 7596273 (D.N.M. Sept. 24, 2019); Elizabeth B. *ex rel.* Donald B. v. El Paso Cty. Sch. Dist. 11, No. 16-cv-02036-RBJ-NYW, 2019 WL 3774119 (D. Colo. Aug. 12, 2019); R.F. *ex rel.* R.F. v. S. Lehigh Sch. Dist., No. 18-1756, 2019 WL 3714484 (E.D. Pa. Aug. 7, 2019); Mr. & Mrs. R. v. York Sch. Dep't, No. 2:18-cv-00047-LEW, 2019 WL 2245014 (D. Me. May 24, 2019); R.S. *ex rel.* Ruth B. v. Highland Park Indep. Sch. Dist., No. 3:16-CV-2916-S, 2019 WL 1099753 (N.D. Tex. Mar. 8, 2019); Smith v. District of Columbia, No. 16-1386 (RDM), 2018 WL 4680208 (D.D.C. Sept. 28, 2018); Middleton v. District of Columbia, 312 F. Supp. 3d 113, 139 (D.D.C. 2018); Rosaria M. v. Madison City Bd. of Educ., 325 F.R.D. 429 (N.D. Ala. 2018); Endrew F. *ex rel.* Joseph F. v. Douglas Cty. Sch. Dist. RE-1, 290 F. Supp. 3d 1175 (D. Colo. 2018); J.R. v. Smith, No. DKC 16-1633, 2017 WL 3592453 (D. Md. Aug. 21, 2017); C.M. v. Warren Indep.

these *Endrew F.* requirements. The remaining 123 (86.6%) implemented an incomplete substantive standard.[137] Only rarely did courts fail to cite *any* of the RC, CO, and AA requirements—but this did occur in 6 of the 142 cases (4.2%), five of which were decided in meaningful benefit jurisdictions.[138]

The RC requirement was articulated in most post-*Endrew F.* decisions: 134 of 142 cases (94.4%) through March 22, 2020. This was expected since the RC language embodies *Endrew F.*'s core holding. Interestingly, all but one of the decisions *not* citing to the RC prong were issued in meaningful benefit jurisdictions.[139] Meaningful benefit courts have generally equated the meaningful benefit and *Endrew F.* standards,[140] which may explain why some did not highlight the RC language. The outlier, *Montuori v. District of Columbia* (situated in a "some educational benefit" jurisdiction), appeared to render its FAPE determination under *Rowley* alone[141] while citing *Endrew F.* merely for background information about the IDEA.[142] Overall, however, courts reliably referenced *Endrew F.*'s key RC requirement.

Problems in *Endrew F.* implementation centered on its CO/AA analytical framework, which few courts applied. In this sample of 142

Sch. Dist., No. 9:16-CV-165, 2017 WL 4479613 (E.D. Tex. Apr. 18, 2017); N.G. *ex rel.* Green. v. Tehachapi Unified Sch. Dist., No. 1:15-cv-01740-LJO-JLT, 2017 WL 1354687 (E.D. Cal. Apr. 13, 2017); K.M. *ex rel.* Markham v. Tehachapi Unified Sch. Dist., No. 1:15-cv-001835 LJO JLT, 2017 WL 1348807 (E.D. Cal. Apr. 5, 2017); Davis v. District of Columbia, 244 F. Supp. 3d 27 (D.D.C. 2017).

[137] Note that Section IV.A, *infra*, provides discussion of a potential limitation to this finding.

[138] Colonial Sch. Dist. v. G.K. *ex rel.* A.K., 763 F. App'x 192 (3d Cir. 2019) (meaningful benefit); E.M. v. Poway Unified Sch. Dist., No. 19cv689 MJ MSB, 2020 WL 229991 (S.D. Cal. Jan. 15, 2020) (meaningful benefit); J.L.N. *ex rel.* Nunez v. Grossmont Union High Sch. Dist., No. 17-cv-2097-L-MDD, 2019 WL 4849172 (S.D. Cal. Sept. 30, 2019) (meaningful benefit); Doe v. Belchertown Pub. Schs., 347 F. Supp. 3d 90 (D. Mass. 2018) (meaningful benefit); Montuori v. District of Columbia, No. 17-2455 (CKK), 2018 WL 4623572 (D.D.C. Sept. 26, 2018) (some benefit); Pottsgrove Sch. Dist. v. D.H., No. 17-2658, 2018 WL 4368154 (E.D. Pa. Sept. 12, 2018) (meaningful benefit).

[139] A.A. v. Northside Indep. Sch. Dist., 951 F.3d 678 (5th Cir. 2020) (meaningful benefit); S.C. *ex rel.* N.C. v. Chariho Reg'l Sch. Dist., 298 F. Supp. 3d 370 (D.R.I. 2018) (meaningful benefit); *see* cases cited *supra* note 138.

[140] *See supra* Section III.A.

[141] *Montuori*, 2018 WL 4623572, at *9 ("The Court concludes that, based on what was known at the time, A.M.'s IEP was 'reasonably calculated' to provide 'personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.'" (citing Bd. of Educ. v. Rowley, 458 U.S. 176, 203–04 (1982)).

[142] *Id.* (citing *Endrew F.* only for the proposition that "[d]eveloping an IEP is a fact-specific endeavor which requires school officials to make prospective judgments about a child's academic and behavioral progress").

cases, 25 courts (17.6% of the total) referred to CO and 43 (30.3%) referred to AA. These stark results prompted further inquiry into why so few courts took note of CO/AA.

1. Most Courts Lack a Clear Rationale for Overlooking CO/AA

Only two courts—both of which are at home in meaningful benefit jurisdictions—explicitly elaborated upon their rejection of the CO/AA requirements. The First Circuit Court of Appeals most recently did so in *C.D.* ex rel. *M.D. v. Natick Public School District*.[143] There, plaintiffs argued that the lower court applied the wrong legal standard when it failed to ask whether their child's IEP contained sufficiently challenging and appropriately ambitious objectives.[144] The First Circuit denied this argument on the grounds that *Endrew F.* "did not construe the FAPE standard as two independent tests."[145] Instead, the court explained, *Endrew F.* "defined a FAPE [as] 'an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances'" while ultimately overruling the *de minimis* standard.[146] It concluded that "*Endrew F.* used terms like . . . 'challenging,' and 'ambitious' to *define* 'progress appropriate in light of the child's circumstances,' not to announce a separate dimension of the FAPE requirement."[147] Despite acknowledging that CO/AA serve to "define" a FAPE, the *Natick* court proceeded under the meaningful benefit standard as usual, without applying the CO/AA prongs.[148]

The Eastern District of Pennsylvania followed similar logic in *New Hope-Solebury*—the only other decision to outright reject the CO/AA framework.[149] There, the plaintiff claimed that his adverse IHO determination must be reconsidered in light of *Endrew F.*'s call for "sufficiently challenging and ambitious learning goals."[150] The court rejected this formulation of the FAPE standard.[151] "[T]he hearing officer did not commit error in determining that the goals were appropriate without separately considering whether they should have

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[143] C.D. *ex rel.* M.D. v. Natick Pub. Sch. Dist., 924 F.3d 621 (1st Cir. 2019).

[144] *Id.* at 627–28 ("On the parents' reading, after *Endrew F.*, courts must ask not only whether an IEP offers meaningful educational progress, but also, separately, whether the IEP's objectives are ambitious and challenging.").

[145] *Id.* at 628.

[146] *Id.* (citations omitted).

[147] *Id.* at 629 (citations omitted) (emphasis added).

[148] *Id.*

[149] J.G. v. New Hope-Solebury Sch. Dist., 323 F. Supp. 3d 716 (E.D. Pa. Aug. 27, 2018).

[150] *Id.* at 724.

[151] *Id.*

been more ambitious."[152] Instead, the court found that its meaningful benefit precedent fully complies with the *Endrew F.* standard even without reference to CO/AA. "[T]he hearing officer applied the correct legal standard. . . . [when] he considered whether the IEPs were reasonably calculated to yield meaningful educational benefit and afford [the student] the opportunity for significant learning in light of his individual circumstances."[153] The court thus declined to recognize CO/AA as distinct substantive FAPE requirements under *Endrew F.*

More commonly, the CO/AA factors were omitted from discussion altogether.[154] Note, however, that many meaningful benefit courts reasoned that *Endrew F.* did not require them to change their approach to substantive FAPE.[155] *Natick* and *New Hope-Solebury* thus may have made explicit the ultimate conclusion that others quietly made: because meaningful benefit jurisdictions already employ a standard that comports with *Endrew F.* overall, they do not have to specifically consider whether IEPs satisfy *Endrew F.*'s CO/AA inquiry.

This does not address why courts in previously *de minimis* and "some educational benefit" jurisdictions also failed to apply the CO/AA framework. One possibility is that some courts *did* consider the CO/AA requirements in rendering their decisions, but chose not to include relevant language in their written opinions. Another is that judges categorized CO/AA as dicta not binding on the courts; this is a possibility since *Endrew F.*'s holding, ultimately, is the RC standard, whereas CO/AA provide analytic guidance under that standard.

Below, however, I propose a reading of *Endrew F.* that embraces the CO/AA requirements in all jurisdictions—in the spirit of the Court's pronouncement that "the IDEA demands more."[156]

2. CO/AA are Legally Operative Factors in the Substantive FAPE

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[152] *Id.* (citing *Endrew F.* and Third Circuit substantive FAPE precedent).

[153] *Id.*

[154] *See, e.g.*, Nathan M. *ex rel.* Amanda M. v. Harrison Sch. Dist. No. 2, No. 18-cv-00085-RPM, 2018 WL 6528127 (D. Colo. Dec. 12, 2018) (failing to discuss CO/AA in previously *de minimis* jurisdiction); Carr v. New Glarus Sch. Dist., No. 17-cv-413-wmc, 2018 WL 4953003 (W.D. Wis. Oct. 12, 2018) (same in previously "some educational benefit" jurisdiction); Colonial Sch. Dist. v. G.K. *ex rel.* A.K., No. 17-3377, 2018 WL 2010915 (E.D. Pa. Apr. 30, 2018) (same in meaningful benefit jurisdiction).

[155] *See* discussion *supra* Section III.A; *see also* K.D *ex rel.* Dunn v. Downingtown Area Sch. Dist., 904 F.3d 248, 254 (3d Cir. 2018) ("The Supreme Court rejected the Tenth Circuit's standard, not our[meaningful benefit standard]. . . . [W]e see no conflict between *Endrew F.* and our precedent.").

[156] Endrew F. *ex rel.* Joseph F. v. Douglas Cty. Sch. Dist. RE-1, 137 S. Ct. 988, 1001 (2017).

Inquiry

An accurate reading of *Endrew F.* recognizes the different roles played by its RC holding and CO/AA framework. As discussed in Sections II.B–.C, *Rowley* held that to satisfy the IDEA's substantive FAPE guarantee, IEPs must be "reasonably calculated to enable the child to *receive educational benefits.*"[157] *Endrew F.* revisited and provided clarity to the *Rowley* standard by holding that "a school must offer an IEP reasonably calculated to *enable* a child to *make progress appropriate in light of the child's circumstances*."[158]

Endrew F. also explains that parents are entitled to "cogent and responsive explanations[s]" as to how and why a challenged IEP satisfies that refined RC requirement.[159] To that end, the Court provided various "concrete guidance" for navigating IEP disputes in both *Rowley* and *Endrew F.*[160] One example of that guidance is the Court's instruction that IEPs need only be "reasonable," not ideal.[161] The Court has further held that the IDEA does not "guarantee any particular level of education" or "any particular [educational] outcome."[162] Moreover, *Rowley* famously taught that for students who are fully integrated in the regular classroom, grade-level advancement indicates receipt of a FAPE.[163] Decisions reviewed in the course of this study routinely observed these aspects of FAPE's analytic framework.

Endrew F. builds on this guidance by adding that "every child should have the chance to meet challenging objectives."[164] It also develops upon *Rowley*'s premise that the meaning of "progress" in the RC standard depends, in part, on the nature of the student's classroom placement.[165] Specifically, the Court explained that students who are *not* fully integrated in the regular classroom are also entitled to "appropriately ambitious" educational programs in light of their circumstances, though they need not aim for grade-level advancement.[166]

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[157] Bd. of Educ. v. Rowley, 458 U.S. 176, 207 (1982) (emphasis added).
[158] *Endrew F.*, 137 S. Ct. at 999 (emphasis added).
[159] *Id.* at 1002.
[160] *Id.* at 1000.
[161] *Id.* at 999 (citing *Rowley*, 458 U.S. at 206–07).
[162] *Id.* at 998 (citing *Rowley*, 458 U.S. at 192).
[163] *Rowley*, 458 U.S. at 202–03.
[164] *Endrew F.*, 137 S. Ct. at 1000.
[165] Turnbull et al., *supra* note 33, at 131–32.
[166] *Endrew F.*, 137 S. Ct. at 1000; *see also* Turnbull et al., *supra* note 33, at 131–32.

The upshot is that CO/AA are aspects of a larger analytic framework probing whether IEPs were calculated to enable an appropriate level of student progress.[167] The CO/AA factors are meant to help focus IEP teams' objectives when crafting learning plans, provide parents the tools to more effectively challenge flawed IEPs, and give decision-makers a more "concrete" framework for navigating these disputes. They are requirements that should be "recognized and followed" by all courts.[168] Without considering the CO/AA factors, the IEP inquiry is incomplete.

A number of authorities support the view that *Endrew F.*'s CO/AA language is legally significant—which underscores the import of their absence in the case law. This includes several legal experts[169] and, notably, the federal DOE. In December 2017, DOE issued a "Questions and Answers" resource addressing FAPE requirements under *Endrew F.* ("Q&A").[170] The Q&A interprets *Endrew F.*'s CO/AA framework as binding law, stating that "as a result of *Endrew F.*, each child's educational program must be appropriately ambitious in light of his or her circumstances, and every child should have the chance to meet

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[167] *Id.* at 999.

[168] E.R. *ex rel.* E.R. v. Spring Branch Indep. Sch. Dist., 909 F.3d 754, 765 (5th Cir. 2018) (embracing the CO/AA requirements despite already following the relatively strong "meaningful benefit" standard).

[169] *See, e.g.*, Terrye Conroy & Mitchell L. Yell, *Free Appropriate Public Education After* Endrew F. v. Douglas County School District *(2017)*, 35 TOURO L. REV. 101, 136 (2019) ("To ensure adherence to [*Endrew F.*'s] educational benefit standard . . . . students' annual IEP goals should be challenging, appropriately ambitious, and measurable."); Turnbull et al., *supra* note 33, at 128 (explaining that CO/AA are among the "nuances that *Endrew* [*F.*] adds to IDEA's 'appropriate education' requirement"); Zirkel, *After Six Months: A Game Changer*, *supra* note 14, at 586, 588 n.25 (categorizing CO/AA as part of "the analytical, or organizing, framework of *Endrew F.*"); Barbara A. Drayton, Deputy Gen. Counsel, S.C. Dep't of Educ., Legal Updates Presentation at the 2017 Fall Special Education Leadership Meeting (2017), https://ed.sc.gov/districts-schools/special-education-services/programs-and-initiatives-p-i/professional-learning/special-education-leadership-meetings/fall-special-education-leadership-2017/legal-updates-fall-special-education-leadership-2017/ (explaining that the *Endrew F.* decision requires CO/AA); Jim Gerl, Special Education Law Update: Judicial and Administrative Decisions 4 (Aug. 18, 2017) (unpublished materials accompanying a presentation for Missouri Administrative Commissioners), https://ahc.mo.gov/pdf/2017_IDEA_Administrative_Law_Judge_Training.pdf (same); Rud Turnbull & Ann Turnbull, Presentation at the University of North Carolina at Chapel Hill Inclusion Institute: Implications of the Supreme Court's Endrew F. Decision 31 (May 8, 2018), https://educationdocbox.com/Special_Education/125151096-Implications-of-the-supreme-court-s-endrew-f-decision.html.

[170] U.S. DEP'T OF EDUC., QUESTIONS AND ANSWERS (Q&A) ON U.S. SUPREME COURT CASE DECISION *ENDREW F. V. DOUGLAS COUNTY SCHOOL DISTRICT RE-1* (2017), https://sites.ed.gov/idea/files/qa-endrewcase-12-07-2017.pdf [hereinafter DOE Q&A].

challenging objectives."[171] In this document, DOE states that "[*some*]*thing IEP Teams should do differently* as a result of the *Endrew F.* decision" is that they "should be able to demonstrate that . . . they are . . . allowing for appropriate accommodations that are reasonably calculated to . . . enable the child to have the chance to meet challenging objectives."[172] For example, when a child is not progressing under the IEP at the level the IEP Team expected, the DOE instructs that "the IEP Team must meet to review and revise the IEP if necessary . . . to ensure the IEP's goals are individualized and ambitious."[173]

The Q&A further provides practical guidance on how IEP teams can satisfy the CO/AA mandates.[174] Note that the DOE makes no distinction among previously *de minimis*, "some educational benefit," and "meaningful benefit" jurisdictions. Rather, it set forth CO/AA should affirmatively change the way IEP teams craft student learning plans. The DOE further established its position on CO/AA when, in March 2018, it prioritized competitive grant funding for programs designed to provide CO/AA in line with *Endrew F.*[175] U.S. Secretary of Education Betsy DeVos also penned an article echoing the DOE's understanding of *Endrew F.* in 2017—stating that *Endrew F.* "gave legal weight" to the CO/AA factors.[176] DOE has thus embraced CO/AA as fundamental, legally operative aspects of *Endrew F.* in numerous public statements and policies.

To date, about a third of all courts—including several Courts of Appeals—also agree that *Endrew F.*'s CO/AA language has legal

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[171] *Id.* at 5.

[172] *Id.* at 9 (emphasis added).

[173] *Id.* at 7–8.

[174] *E.g.*, *id.* at 6–7 (providing answers to such questions as: "How can an IEP Team ensure that every child has the chance to meet challenging objectives?" and "How can IEP Teams determine if IEP annual goals are appropriately ambitious?").

[175] Secretary's Final Supplemental Priorities and Definitions for Discretionary Grant Programs, 83 Fed. Reg. 9096, 9112, 9130 (Mar. 2, 2018).

> The Department reasserts its long standing position that all students, including students with disabilities, must be held to high expectations and rigorous standards. . . . [E]very student should have the chance to meet *challenging objectives* . . . . [The Department's competitive grant priorities are] consistent with the standard expressed in *Endrew F.* . . . [the] unanimous Supreme Court decision *holding* "that a child's educational program must be *appropriately ambitious* in light of his circumstances."

Id. at 9112 (emphasis added).

[176] Betsy DeVos, *A Commentary by Betsy DeVos: 'Tolerating Low Expectations for Children with Disabilities Must End*,' EDUC. WK. (Dec. 8, 2017), https://www.edweek.org/ew/articles/2017/12/08/a-commentary-by-betsy-devos-special-education.html.

consequences.[177] For example, on remand from the Supreme Court, Endrew's trial judge explained: "While . . . educational program[s] *must* be appropriately ambitious in light of [a child's] circumstances, *the Supreme Court was clear* that *every* child . . . should have the chance to meet challenging objectives."[178] The Second Circuit read *Endrew F.* as "clarifying" the FAPE standard to include the CO/AA requirements.[179] Per the D.C. Circuit, the Supreme Court "stressed" IDEA's CO/AA requirements in *Endrew F.*[180] The Fourth Circuit, too, has acknowledged the CO/AA mandate.[181] Even the First Circuit in *Natick* agreed that CO/AA are meant to "define" *Endrew F.*'s RC holding, despite stopping short of saying that courts must inquire into those factors separately.[182]

The Fifth Circuit's approach to CO/AA in *Spring Branch*[183] is particularly instructive, because it appropriately harmonizes its preexisting "meaningful benefit" standard of review[184] with *Endrew F.*'s new guidance. There, the Fifth Circuit stated that *Endrew F.* did not "overrule" its meaningful benefit standard, explaining that both standards "fit together."[185] Crucially, however, the Fifth Circuit

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[177] *See supra* Table 4; *see also infra* Appendix C.

[178] Endrew F. *ex rel.* Joseph F. v. Douglas Cty. Sch. Dist. RE-1, 290 F. Supp. 3d 1175, 1184 (D. Colo. 2018) (emphasis added).

[179] *See* F.L. v. Bd. of Educ. of Great Neck Union Free Sch. Dist., 735 F. App'x 38, 40–41 (2d Cir. 2018).

> [T]he Supreme Court's recent clarification of the FAPE standard buttresses our view that the preeminent requirement of IDEA is that the District individually tailor a program that is sufficiently challenging for the unique needs of each child. IDEA 'requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. . . . [H]is educational program must be appropriately ambitious in light of his circumstances . . . . [And] every child should have the chance to meet challenging objectives."

Id. (citation omitted).

[180] Z. B. v. District of Columbia, 888 F.3d 515, 517, 528 (D.C. Cir. 2018) ("In requiring more than merely some 'educational benefits,' the Court in *Endrew F.* stressed that '*every child* should have the chance to meet challenging objectives,' and that a student's 'educational program *must* be appropriately ambitious in light of his circumstances.'" (emphasis added) (citations omitted)).

[181] R.F. *ex rel.* E.F. v. Cecil Cty. Pub. Schs., 919 F.3d 237, 252 (4th Cir. 2019); M.L. *ex rel.* Leiman v. Smith, 867 F.3d 487, 496 (4th Cir. 2017).

[182] C.D. *ex rel.* M.D. v. Natick Pub. Sch. Dist., 924 F.3d 621, 629 (1st Cir. 2019); *see also* note 145 and accompanying text.

[183] E.R. *ex rel.* E.R. v. Spring Branch Indep. Sch. Dist., 909 F.3d 754, 766 (5th Cir. 2018).

[184] Cypress-Fairbanks Indep. Sch. Dist. v. Michael F. *ex rel.* Barry F., 118 F.3d 245, 253 (5th Cir. 1997).

[185] *Spring Branch*, 909 F.3d at 765–66.

acknowledged that *Endrew F.* did more than to simply reject the Tenth Circuit's *de minimis* standard in that it also provides "direction" and "more clarity for what constitutes an appropriate IEP."[186] Indeed, "*Endrew F.* dictates [that students'] 'educational program[s] must be appropriately ambitious in light of [their] circumstances;' and [that students] 'should have the chance to meet challenging objectives.'"[187] These are considerations not necessarily taken into account by the Fifth Circuit's guiding substantive FAPE precedent alone.[188] Accordingly, in *Spring Branch*, the Fifth Circuit analyzed the facts before it using its favored meaningful benefit standard "in conjunction with [the CO/AA requirements of] *Endrew F.*"[189]

Spring Branch and the other authorities discussed above provide support to this Note's caution regarding lower courts' pervasive failure to assess CO/AA requirements: namely, that something has gone fundamentally awry.

3. The "Meaningful Benefit" Standard Does Not Necessarily Encompass CO/AA

Spring Branch is a model path forward for meaningful benefit courts, in particular. There, the Fifth Circuit took a nuanced approach to substantive FAPE requirements post-*Endrew F.* by incorporating the CO/AA requirements into its traditional meaningful benefit analysis. The court recognized that although its precedents comport with *Endrew F.*'s general RC holding, it still must take into account the larger FAPE analytical framework as articulated by the Supreme Court. The Fifth

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[186] *Id.*

[187] *Id.* at 768.

[188] *Compare* Endrew F. *ex rel.* Joseph F. v. Douglas Cty. Sch. Dist. RE-1, 137 S. Ct. 988, 1000 (2017) ("[E]ducational program[s] must be *appropriately ambitious* in light of [the child's] circumstances . . . . [and] every child should have the chance to meet *challenging objectives*." (emphasis added)), *with* Cypress-Fairbanks Indep. Sch. Dist. v. Michael F. *ex rel.* Barry F., 118 F.3d 245, 253 (5th Cir. 1997). Per the Fifth Circuit,

> [T]here are four factors that can serve as indicators of whether an IEP is reasonably calculated to provide a meaningful educational benefit under the IDEA. These are: (1) the program is individualized on the basis of the student's assessment and performance; (2) the program is administered in the least restrictive environment; (3) the services are provided in a coordinated and collaborative manner by the key 'stakeholders'; and (4) positive academic and non-academic benefits are demonstrated.

Id. Section III.C.3, below, makes the case that meaningful benefit inquiries like those set forth in *Michael F.* do not adequately review IEPs for CO/AA.

[189] *Spring Branch*, 909 F.3d at 767 (analyzing the IEP at issue with reference to CO/AA and stating, "[s]he was receiving an appropriately ambitious education and advancing towards the IEP's goals").

Circuit explained to that end that prior standards of review may "co-exist" with the demands of *Endrew F.*[190] *Spring Branch* models the principle that the CO/AA requirements supplement, or provide more clarity to, *all* preexisting substantive FAPE standards, including the meaningful benefit standard. This follows logically, since the Supreme Court neither rejected nor endorsed the meaningful benefit standard. Instead, *Endrew F.* served to reaffirm *Rowley* and develop upon the larger FAPE framework that binds all courts.

One pertinent question is whether the meaningful benefit standard truly *does* incorporate the CO/AA requirements—such that courts following the former need not directly apply the latter, as was the *New Hope-Solebury* court's conclusion. Helpfully, the analysis in *N.S. v. Burriville School Committee* permits inquiry into this precise issue.[191] *Burriville* was decided by the District of Rhode Island, a meaningful benefit jurisdiction.[192] In deciding the IEP dispute, the court referenced *Endrew F.*'s RC holding but made no mention at all of the CO/AA requirements in its discussion.[193] It asserted that "a fair comparison of [the First Circuit's] 'meaningful educational benefit' standard and the standard announced in *Endrew F.* reveals that the two are substantively equivalent."[194]

In relevant part, *Burriville* first noted that the *Endrew F.* and meaningful benefit standards are equivalent in that they "advise courts to consider each child's potential for growth in assessing the adequacy of an IEP."[195] However this longstanding requirement of substantive FAPE[196] does not strike at the heart of the more particularized demands of the CO/AA factors. From a parent's point of view, there is a stark difference between a "cogent and responsive explanation"[197] regarding (1) how an IEP team considered a student's general "*potential for growth*," for example considering the severity of his disability, versus (2) how an IEP offers truly "*challenging objectives*" for a student who perennially struggles in math, and how it is "*appropriately ambitious*" for one who has a learning gap spanning several grade levels.

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[190] *Id.* at 766.
[191] N.S. v. Burriville Sch. Comm., No. 17-0428-WES, 2018 WL 5920619 (D.R.I. Nov. 13, 2018).
[192] *Id.* at *4.
[193] *Id.*
[194] *Id.*
[195] *Id.*
[196] Endrew F. *ex rel.* Joseph F. v. Douglas Cty. Sch. Dist. RE-1, 137 S. Ct. 988, 999 (2017) (citing 20 U.S.C. § 1414(d)(1)(A)(i)(I)–(IV), (3)(A)(i)–(iv) (2018)).
[197] *Id.* at 1002.

Demanding explanations of the latter sort places a specific burden on the school district to do more than simply explain how a student's "potential" (as subjective as that is) was accounted for when writing the IEP—which could make all the difference for the parties under certain circumstances.

Second, *Burriville* also explains that the *Endrew F.* and meaningful benefit standards are equivalent because both "require that an IEP must be tailored to the unique needs and disabilities of each individual student."[198] While accurate, this piece of the substantive FAPE framework does not invoke the CO/AA factors. Finally, *Burriville* notes how the *Endrew F.* and meaningful benefit standards "emphasize that an adequate IEP is not necessarily an ideal IEP, nor is it one that maximizes a student's potential."[199] Again, this frequently-cited proposition from *Rowley*[200] simply does not touch on the CO/AA requirements.

For these three reasons, the *Burriville* court maintained that "the law applied in the hearing officer's decision was consistent with the standard announced in *Endrew F.*"[201] But *Endrew F.* provides valuable guidance on how to ensure substantively adequate IEPs that the meaningful benefit standard clearly overlooks; it elides the Supreme Court's instructions that an appropriate IEP bears evidence of CO and AA. Ignoring that guidance may amount to a deficient IEP review. To be clear, this Note does not purport to dispute (nor advance) the proposition that the RC and meaningful benefit standards are substantive equals. It aims to argue instead that the CO/AA factors articulated in *Endrew F.* represent important parts of an analytic framework that is distinct from the RC standard itself—and ultimately, that meaningful benefit precedent may not encompass the CO/AA factors by default. Courts thus ought to carefully consider this issue before writing off CO/AA entirely.

4. Failing to Account for CO/AA Dilutes the Law and Impedes

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[198] *Burriville*, 2018 WL 5920619, at *4.

[199] *Id.*

[200] Bd. of Educ. v. Rowley, 458 U.S. 176, 198 (1982) ("[T]he requirement that a State provide specialized educational services to handicapped children generates no additional requirement that the services so provided be sufficient to maximize each child's potential 'commensurate with the opportunity provided other children.'").

[201] *Burriville*, 2018 WL 5920619, at *5.

Access to Justice

This practice of dismissing the CO/AA factors has two implications. The first, as discussed in Section III.C.2, is legal. The Supreme Court held that school districts must provide a "cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances."[202] IEPs that satisfy that standard are "appropriately ambitious" in light of the student's circumstances and provide "the chance to meet challenging objectives,"[203] and therefore school districts must be able to soundly defend their proposed learning plans on those grounds.[204] Short of that, they are not being held accountable to the full extent of Supreme Court precedent.

But the significance of *Endrew F.*'s CO/AA language goes beyond the legal standard alone. Fundamentally, it is also a matter of equal access to justice. The Supreme Court was careful to use the layperson terms "challenging" and "ambitious" in *Endrew F.*; contrast them with the inscrutable "free appropriate public education" and "educational benefit" terms of art that, alone, have confounded IEP teams and the courts since 1982.[205] Also distinguish them from the standard employed in *New Hope-Solebury*: "the correct legal standard [in a meaningful benefit jurisdiction] . . . consider[s] whether the IEPs were reasonably calculated to . . . afford . . . the *opportunity for significant learning* in light of [the student's] individual circumstances."[206] CO/AA provide comparatively more concrete guidance that all parties—school districts, parents, hearing officers, and the courts alike—may turn to in the FAPE inquiry.

This conceptual accessibility is significant for parents and guardians in particular. To most effectively advocate on a child's behalf, a parent must understand what lies at the heart of the IDEA's substantive guarantee. It is thus important to recognize that the average parent has less insight into the IDEA's nuances and fewer resources

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[202] *Endrew F.*, 137 S. Ct. at 1002.

[203] *Id.* at 1000.

[204] *Id.* at 1002.

[205] The Supreme Court itself recognizes that the FAPE standard is somewhat opaque. *Rowley*, 458 U.S. at 188 (explaining that the IDEA's FAPE definition "tends toward the cryptic rather than the comprehensive").

[206] J.G. v. New Hope-Solebury Sch. Dist., 323 F. Supp. 3d 716, 724 (E.D. Pa. Aug. 27, 2018) (emphasis added).

overall than their school district counterparties in IEP disputes.[207] Parents are, however, uniquely positioned to provide expertise on their children's unique circumstances—which is why the Supreme Court and the IDEA both emphasize parental involvement in the IEP process.[208]

Endrew F. facilitates parental participation on IEP teams by providing the additional entry points of CO/AA. For example, the average parent can capably discuss whether particular learning objectives are aptly challenging for his child, or pinpoint where an IEP could anticipate more ambitious student progress given certain additional supports.[209] It is an appreciably different endeavor for a parent to challenge a team of educators on whether a child had the "opportunity for significant learning" in general terms. The CO/AA language thus provides an occasion to make special education law more accessible to those afforded the protections of the IDEA.

Bear in mind that language is self-reinforcing in the work of building legal doctrine. Therefore, when courts fail to explicitly reason through the CO/AA factors—as was the case in 123 of the 142 cases sampled here[210]—it matters. Consider the following anecdote shared by a leading expert on special education:

> I do find that *courts defer to each other* across the country, *particularly* as it relates to decision-making with respect to students with disabilities and their education. I find that—and some judges have actually told me—that they don't feel comfortable making these decisions, and *they like to see something, somewhere, from another court, or even a hearing officer, on a particular issue that might help guide them*.[211]

Evidently, each and every decision weighing the sufficiency of an IEP presents an opportunity to meaningfully inform the future of special education litigation. That tenet may be especially applicable now, during our first years in the *Endrew F.* era, given how rarely the

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[207] *See* Hyman et al., *supra* note 45, at 111 ("[O]bstacles that families without resources face in the IDEA are compounded by the increasingly technical nature of the IDEA and the inability of these families to retain professionals to assist in navigating the intricacies of disability definitions, evaluation processes, the development of IEPs, the complex of procedural safeguards, among other provisions . . . ." (citation omitted)).

[208] 20 U.S.C. § 1415(b)(1), (f)(3)(E)(ii)(II) (2018); *Endrew F.*, 137 S. Ct. at 999; *Rowley*, 458 U.S. at 205–06; 34 C.F.R. §§ 300.321–.322 (2019).

[209] The IDEA guarantees IEPs calibrated "to enable [students] to *make progress*" considering their individual circumstances. *Endrew F.*, 137 S. Ct. at 999 (emphasis added).

[210] *See supra* Table 4 and Section III.C.

[211] Weatherly, *supra* note 25 (00:05:57) (emphasis added).

Supreme Court addresses substantive FAPE requirements.[212] Decision-makers thus should build upon precedents from the Fifth Circuit and other jurisdictions that properly identify CO/AA as key to the FAPE inquiry.[213] This is critical for faithful implementation of the Court's guidance in *Endrew F.*, and may shape the contours of students' access to justice under IDEA for decades to come.

IV.
RESEARCH LIMITATIONS AND FUTURE DIRECTIONS

A. Anticipated Critiques

One limitation to the findings presented here is the fact that they do not include settled disputes that never made it to the courtroom. It is possible that *Endrew F.* has had a more student-friendly impact than these data can possibly represent if many school districts—or student advocates, for that matter—opted to settle their cases in light of its holding. This is especially likely in previously *de minimis* jurisdictions that had their FAPE approach flipped on its head (thereby potentially halting some litigation immediately after *Endrew F.*). The matter of settled cases thus limits the external validity of the outcome trends identified here to a certain degree.[214] That said, however: *Endrew F.* was found not to represent a large departure from *Rowley* by most courts studied. Even in *de minimis* jurisdictions, courts upheld many pre-*Endrew F.* decisions favoring school districts. This trend may tend to counter the theory that there was an excess of untapped, settled cases in which *Endrew F.* won the day for plaintiffs, and that their exclusion spoils the results of this work.

Moreover, the above critique does not address the present findings pertaining to the CO/AA analytic guidance.[215] The CO/AA variables are independent from the confounding factor of settlement because *all* courts (previously *de minimis* and meaningful benefit jurisdictions alike) are meant to apply them.[216] Although settlements may have decreased the overall sample size, the fact remains that only 19 of the 142 publicly available decisions analyzed both of these factors.

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[212] Recall that the Supreme Court has addressed the substantive FAPE standard on only two occasions since the IDEA's enactment in 1975—namely, in *Rowley* and *Endrew F.* DOE Q&A, *supra* note 170, at 4 ("Prior to *Endrew F.*, courts relied on the landmark case [*Rowley*].").

[213] *See supra* notes 178–90 and accompanying text.

[214] *See supra* Tables 1–3 and Sections III.A–.B.

[215] *See supra* Table 4 and Section III.C.

[216] *See* discussion *supra* Sections III.C.2–.4.

A second critique pertains to this study's treatment of the "appropriately ambitious" aspect of *Endrew F.*'s analytic framework. *Endrew F.* states that children who are specifically *not* integrated in the regular education classroom are entitled to AA educational programs, "just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom."[217] However, the methodology implemented here did not differentiate, on a case-by-case basis, whether challenged IEPs were those of fully mainstreamed students or not. This means that data on the AA variable may be nonrepresentative for having sampled cases possibly brought on behalf of mainstreamed students (who are not necessarily the beneficiaries of the AA prong, but of the grade-to-grade advancement expectation from *Rowley*).[218] Unfortunately, courts were not always clear about which children were integrated and which were not.[219] Compounding that issue is the difficulty of independently operationalizing a student's "level of inclusion" based on a court's depiction of their educational program alone, because it is a variable that falls along a "continuum."[220] As such, the present research did not discern between and among varying levels of integration. The research limitations stemming from this methodological approach are limited to data on the AA prong, however.

Another critique may arise insofar as meaningful benefit jurisdictions account for more than one half of the sample cases.[221] Perhaps the data skew toward an anemic picture of *Endrew F.*'s impacts because those jurisdictions employed relatively high FAPE standards pre-*Endrew F.* In other words, it would make sense for those courts to

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[217] Endrew F. *ex rel.* Joseph F. v. Douglas Cty. Sch. Dist. RE-1, 137 S. Ct. 988, 1000 (2017).

[218] *Id.*

[219] *See, e.g.*, Barney v. Akron Bd. of Educ., 763 F. App'x 528 (6th Cir. 2019) (deciding the case without explicitly noting whether student was integrated in the regular classroom or not); J.A. v. Smith Cty. Sch. Dist., 364 F. Supp. 3d 803 (M.D. Tenn. 2019) (same); S.H. v. Rutherford Cty. Sch., 334 F. Supp. 3d 868 (M.D. Tenn. 2018) (same).

[220] Memorandum from Judith E. Heumann, Assistant Sec'y, U.S. Dep't of Educ., Office of Special Educ. and Rehab. Servs., & Thomas Hehir, Dir., U.S. Dep't of Educ., Office of Special Educ. Programs, to Chief State Sch. Officers 21 (Nov. 23, 1994), https://www.wrightslaw.com/law/osep/lre.osep.memo.1994.1123.pdf. As described in this memorandum,

> [S]chool districts must make available a range of placement options, known as a continuum of alternative placements, to meet the unique educational needs of students with disabilities. This . . . reinforces the importance of the individualized inquiry, not a 'one size fits all' approach, in determining what placement [and level of integration] is [proper] for each student with a disability.

Id.

[221] *See infra* Appendix C.

mostly affirm hearing officers' decisions since a heightened FAPE standard was already applied prior to the *Endrew F.* decision. Thus it will be important to monitor how the doctrine develops as *Endrew F.* is more broadly employed in other jurisdictions. The same reasoning might also explain why CO/AA language has been so under-utilized in judicial opinions, considering that fact that those overrepresented jurisdictions do not generally find that *Endrew F.* requires any change to their FAPE approaches at all (note especially the Third Circuit). But again, CO/AA omissions are unwarranted in *any* jurisdiction since all courts—and not only those that operated under the *de minimis* standard—must follow those directives.[222]

This argument might be countered, in turn, by the notion that courts are not required to regurgitate legal precedent verbatim.[223] A court may have considered *Endrew F.*'s CO/AA requirements or substantive equivalents even while not expressly setting them forth in its reasoning. While true, adopting a mechanical approach for determining whether the courts used "challenging" and "appropriately ambitious" language, specifically, was necessary to accomplish the present research goals. Furthermore, and as discussed in Section III.C.4, best practice would be for all courts to explicitly articulate and reason through the CO/AA factors. This would help to establish to litigants and decision-makers alike that the CO/AA requirements are core to the FAPE inquiry.

B. Supplemental Research

Gathering data on pre-*Endrew F.* decisional trends would help contextualize post-*Endrew F.* jurisprudence. For example, how do the rates of pro-school district versus pro-student outcomes compare, as between pre- versus post-*Endrew F.* case law? This information would shed further light on the impact of *Endrew F.* in the courtroom. Another fruitful avenue of research would be to apply the basic research framework used here to IHO decisions. It would be interesting to determine, inter alia, how often IHOs analyzed the CO/AA language while their reviewing courts did not. As of March 22, 2020, forty-one

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[222] *See* discussion *supra* Sections III.C.2–.4.

[223] *See, e.g.*, C.G. *ex rel.* Keith G. v. Waller Indep. Sch. Dist., 697 F. App'x 816, 819 (5th Cir. 2017) (upholding a lower decision where, "[a]lthough the district court did not articulate the standard set forth in *Endrew F.* verbatim, its analysis of [the student's IEP using the Fifth Circuit's FAPE standard was] fully consistent with that standard.").

administrative decisions citing *Endrew F.* were available through Westlaw.[224]

Another research path might entail reviewing trial and appellate court pleadings to determine how litigants themselves approached the CO/AA requirement. For instance, how many appellants have leveraged this language? How many courts then incorporated those arguments into their decision, or declined to do so, and with what result? Answers to these questions would provide important insight about the courts' treatment of *Endrew F.* It would be noteworthy, for example, if a high percentage of litigants plead the CO/AA factors compared to the small number of courts incorporating them into their decision-making.

C. Judicial Recommendations

The Supreme Court's rulings in *Rowley* and *Endrew F.* bear on the daily lives of every student served under the IDEA; they are the keys to effectuating the IDEA's ideal of nondiscriminatory access to education for students with disabilities. That is why the findings presented here—which paint a limited view of *Endrew F.*'s impact on the substantive FAPE inquiry as-usual—warrant further attention from the judiciary.

Lower courts should take care to recognize the CO/AA factors in their written decisions and articulate their reasoning when deciding on those factors. As discussed above, *not* doing so both undermines their adherence to Supreme Court precedent and impedes litigants' access to justice.[225] Furthermore, the Supreme Court should revisit its holding in *Endrew F.*, as it could go further to protect differently-abled students. To its credit, *Endrew F.* did critically intervene on behalf of students in previously *de minimis* jurisdictions. Yet the FAPE standard remains vague. Namely, the decision's operative language—hinging on words like "reasonable"—allows for further wandering litigation over IDEA obligations. Already we see that lower courts generally fail to apply the CO/AA requirements, perhaps unclear that they are indeed requirements at all. The Court should resolve these ambiguities and affirm that the IDEA truly does demand more than what the current special education system provides. It is possible to do so without overstepping into school officials' authority, by maintaining a flexible standard that nonetheless clearly entails concrete, reviewable directives. For example, the Supreme Court could embrace the meaningful benefit

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[224] Found in the "Citing References: Administrative Decisions & Guidance" section associated with Endrew F. *ex rel.* Joseph F. v. Douglas Cty. Sch. Dist. RE-1, 137 S. Ct. 988 (2017).

[225] *See* discussion *supra* Section III.C.4.

standard (or one that is more rigorous) and affirm the CO/AA requirements.

D. Litigation Strategies

Litigants should understand that the Supreme Court has repeatedly declined to either draw a bright line, potential-maximizing rule for substantive FAPE, or hold that students are entitled to an "ideal" IEP.[226] When implemented with fidelity, however, the Endrew F. framework further elucidates the student rights originally set forth in Rowley.[227]

Fundamentally, school districts must be able to demonstrate how the student's IEP is "reasonably calculated to enable [them] to make progress appropriate in light of [their] circumstances."[228] But to fully leverage *Endrew F.*, litigants must put not only its RC holding but also its CO and AA factors in sharp focus. As such, a student's advocate should draw attention to how the child is deprived of "challenging objectives" under the IEP.[229] They should determine areas where the student is not being challenged by his IEP, and brainstorm, in turn, specific ways in which the IEP goals could be more challenging in light of his demonstrated performance. Further, an advocate should emphasize how their disputed IEP is *not* "appropriately ambitious" in light of the child's unique abilities.[230] This requires articulating why the IEP is *not* ambitious enough and how it can be suitably amended.

The Supreme Court has made clear that the absence of the foregoing requirements results in an IEP that contemplates merely *de minimis* progress, in violation of the IDEA.[231] School districts must be able to offer "cogent" reasoning as to exactly how the IEP provides CO/AA, and advocates must hold them firmly accountable to that task.[232] Note, too, the Court's instruction that the *Endrew F.* framework is "markedly more demanding" than the *de minimis* standard,[233] indicating that the substantive floor was raised by an indeterminate, but

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[226] *Endrew F.*, 137 S. Ct. at 999.

[227] Note that Appendices A and B provide detailed practice tips on the RC and CO/AA prongs, respectively, drawing on the case law analyzed in this study.

[228] *Endrew F.*, 137 S. Ct. at 1002.

[229] *Id.* at 1000.

[230] *Id.*

[231] *Id.* at 999, 1000 (explaining that schools "must" offer IEPs reasonably calculated to enable students to make appropriate progress, in light of their unique circumstances; that those IEPs "must" be appropriately ambitious; and that "every child" is entitled to challenging objectives).

[232] *Id.* at 1002 ("A reviewing court may fairly expect [school] authorities to be able to offer a cogent and responsive explanation for their decisions [in crafting an IEP].").

[233] *Id.* at 1000.

significant, amount. Advocates in all jurisdictions would be right to seize on this language when advocating for a more robust FAPE standard—because the IDEA demands more.[234]

[234] *Id.* at 1001.

APPENDIX A

TABLE 1. LEGAL TENETS COMMONLY REFERENCED BY COURTS DECIDING SUBSTANTIVE FAPE DISPUTES

A.	***School and state officials' educational judgments receive broad deference.***
1	Endrew F. *ex rel.* Joseph F. v. Douglas Cty. Sch. Dist. RE-1, 137 S. Ct. 988, 1001 (2017) ("The adequacy of a given IEP turns on the unique circumstances of the child for whom it was created. This absence of a bright-line rule, however, should not be mistaken for an invitation to the courts to substitute their own notions of sound educational policy for those of the school authorities which they review." (citations and internal quotation marks omitted)).
2	J.P. *ex rel.* J.P. v. City of N.Y. Dep't of Educ., 717 F. App'x 30, 31–32 (2d Cir. 2017) (explaining that "substantial deference" is owed to SROs on the question of whether an IEP is reasonable).
3	C.G. *ex rel.* Keith G. v. Waller Indep. Sch. Dist., 697 F. App'x 816, 820 (5th Cir. 2017) (explaining that while the district "could have taken different, and arguably better, approaches to [the student's] IEP, but the role of the court is not to 'second guess' the decision of the school district or to substitute its plan for the education of the student").
4	AR *ex rel.* MR v. Katonah Lewisboro Union Free Sch. Dist., No. 18-CV-9938 (KMK), 2019 WL 6251196, at *12 (S.D.N.Y. Nov. 21, 2019) ("Where, as here, an SRO has evaluated the evidence presented by both sides and made a reasoned judgment, this Court may not second-guess that decision. Moreover, [h]ere, deference is particularly apt where the IHO and SRO decisions are in agreement and are based on the same record as that before [this Court]." (citations and internal quotation marks omitted)).
B.	***IEPs need not reflect parents' or guardians' ideal wishes.***
1	Endrew F. *ex rel.* Joseph F. v. Douglas Cty. Sch. Dist. RE-1, 137 S. Ct. 988, 999 (2017) ("Any review of an IEP must appreciate that the question is whether the IEP is *reasonable*, not whether the court regards it as ideal.").
2	F.L. v. Bd. of Educ. of Great Neck Union Free Sch. Dist., 735 F. App'x 38, 41 (2d Cir. 2018) (finding a FAPE even where the student performed poorly on standardized tests and his IEPs repeated goals, since "the weight of the evidence demonstrated that [the student] was progressing, even if not at a pace that his father would have preferred").

3	M.E. v. N.Y.C. Dep't of Educ., No. 15-CV-5306 (VSB), 2018 WL 582601, at *3 (S.D.N.Y. Jan. 26, 2018) ("[IEPs] need not provide[ ] everything that might be thought desirable by loving parents." (citations omitted)).
C.	***IEPs need not maximize student potential, nor provide substantially similar opportunities to progress as those provided to non-disabled students.***
1	Endrew F. *ex rel.* Joseph F. v. Douglas Cty. Sch. Dist. RE-1, 137 S. Ct. 988, 1001 (2017) (affirming *Rowley*'s assertion that "[t]he requirement that States provide 'equal' educational opportunities would . . . seem to present an entirely unworkable standard requiring impossible measurements and comparisons" (citations omitted)).
2	E.R. v. Spring Branch Indep. Sch. Dist., No. 4:16-CV-0058, 2017 WL 3017282, at *21 (S.D. Tex. June 15, 2017) (finding that the IEP offered meaningful educational benefit where the student "was, in fact, learning . . . even if it was far below the [rate] of her non-disabled peers"), *adopted by* 2017 WL 3016952 (S.D. Tex. July 14, 2017), *aff'd sub nom.* E.R. *ex rel.* E.R. v. Spring Branch Indep. Sch. Dist., 909 F.3d 754 (5th Cir. 2018).
3	K.M. *ex rel.* Markham v. Tehachapi Unified Sch. Dist., No. 1:15-cv-001835 (LJO JLT), 2017 WL 1348807, at *17 (E.D. Cal. Apr. 5, 2017) ("The IEP annual goals must meet a student's needs, but the IDEA does not require that they have a one-to-one correspondence with specific needs.").
D.	***Assess the substantive adequacy of an IEP from the vantage of the time it was initially developed, rather than with the benefit of hindsight.***
1	Z. B. v. District of Columbia, 888 F.3d 515, 523 (D.C. Cir. 2018) ("[A]n IEP must be tailored to the student's reasonably known needs at the time it is offered.").
2	Sean C. *ex rel.* Helen C. v. Oxford Area Sch. Dist., No. 16-5286, 2017 WL 3485880, at *9 (E.D. Pa. Aug. 14, 2017) ("[*Endrew F.* held that] a district court should refrain from retrospectively substituting a program it deems preferable."), *aff'd sub nom.* S.C. *ex rel.* Helen C. v. Oxford Area Sch. Dist., 751 F. App'x 220 (3d Cir. 2018).
3	Unknown v. Gilbert Unified Sch. Dist., No. CV-16-02614-PHX-JJT, 2017 WL 3225189, at *8 (D. Ariz. July 31, 2017) (refusing to consider evidence offered to show "that Student's IEP was too difficult for him to make any progress . . . because it [sought] to do so by showing his progress in hindsight").
E.	***Lack of student progress does not necessarily render the IEP inadequate.***

1	J.B. *ex rel.* Belt v. District of Columbia, 325 F. Supp. 3d 1, 9 (D.D.C. 2018) ("[*Endrew F.*] did not hold that any time a child makes limited, or even zero, progress, that a school system has necessarily failed to provide a FAPE and violated the IDEA.").
2	J.G. v. New Hope-Solebury Sch. Dist., 323 F. Supp. 3d 716, 724–25 (E.D. Pa. 2018) ("[The fact that the student] did not always progress in every area, and did not meet every learning goal, this does not render his IEPs inappropriate or inadequate.")
3	C.S. v. Yorktown Cent. Sch. Dist., No. 16-CV-9950 (KMK), 2018 WL 1627262, at *21 (S.D.N.Y. Mar. 30, 2018) ("[W]hether [the student] achieved the goals set forth in the . . . IEP is not the controlling issue; rather, it is her *progress* toward achieving them.").
F.	***IEPs should articulate student needs with particularity.***
1	S.C. *ex rel.* N.C. v. Chariho Reg'l Sch. Dist., 298 F. Supp. 3d 370, 388–90 (D.R.I. 2018) (finding an IEP "could not provide [the student] a FAPE" where it had "few specifics;" for example, it identified "coping skills" and "problem solving skills" as needs, but did not "specifically state" what specific coping and problem solving skills the student needed; furthermore, the IEP lacked "objective criterion with which to measure her success").
2	Paris Sch. Dist. v. A.H. *ex rel.* Harter, No. 2:15-CV-02197, 2017 WL 1234151, at *8 (W.D. Ark. Apr. 3, 2017) (finding behavior plans inadequate where they were "conclusory" and "failed to address [the student's] misbehaviors" since they "lumped all of [her] behaviors into the category of 'noncompliant behavior,' completely ignoring the nuances of behaviors that manifest with autism").

TABLE 2. PRO-SCHOOL DISTRICT FACTS COMMONLY REFERENCED IN SUBSTANTIVE FAPE DECISIONS

A.	***Descriptions of the extent and severity of the student's disabilities.***
1	E.R. *ex rel.* E.R. v. Spring Branch Indep. Sch. Dist., 909 F.3d 754, 768 (5th Cir. 2018) (examining the reasonableness of an IEP in light of the student's ADHD, "low IQ," and medical regimen).
2	K.D. *ex rel.* Dunn v. Downingtown Area Sch. Dist., 904 F.3d 248, 254–55 (3d Cir. 2018) ("[The student] had ADHD, vision problems, and poor motor skills. She was quite challenged in perceptual reasoning and processing speed. Her reading, writing, and math skills were well below average. And she suffered from dyslexia and mathematics disorder. Given her impairments and circumstances, the District Court did not clearly err in finding that . . . fragmented progress could reasonably be expected." (citations and internal quotation marks omitted)).
3	C.M. v. Warren Indep. Sch. Dist., No. 9:16-CV-165, 2017 WL 4479613, at *13 (E.D. Tex. Apr. 18, 2017) (same, where although the student fell behind academically, the progress he *did* make was appropriate in light of his severe behavioral and social challenges)
B.	***The school is responsive to the student's changing needs (evidenced by ongoing evaluations and assessments) and parental concerns.***
1	K.D. *ex rel.* Dunn v. Downingtown Area Sch. Dist., 904 F.3d 248, 256 (3d Cir. 2018) (holding that the school district provided a FAPE where it "was willing and able to review and revise [the student's] IEPs throughout her education," as evidenced by the fact that "[a]fter [the student's] parents notified [the district] of [the results of an independent] evaluation[,] . . . [the district] responded within a week. It scheduled a meeting, sought more assessments, and offered a one-on-one aide. And it developed a fourth IEP, which incorporated many of [the independent evaluator's] recommendations, including adopting a new reading program").
2	F.L. v. Bd. of Educ. of Great Neck Union Free Sch. Dist., 735 F. App'x 38, 40 (2d Cir. 2018) (affirming SRO decision in favor of school district, which favorably noted that the IEP was modified "in response to changes in [the student's] evaluations or requests from the parents").
3	C.G. *ex rel.* Keith G. v. Waller Indep. Sch. Dist., 697 F. App'x 816, 820 (5th Cir. 2017) (favorably noting that the school district "adjusted its strategies [for addressing the student's needs] multiple times, including altering [her] school day in response to her parents' many concerns").

4	M.L. v. Smith, No. PX 16-3236, 2018 WL 3756722, at *9 (D. Md. Aug. 7, 2018) ("[T]his [is distinct] from *Endrew F.* because [the school] continually adapted M.L.'s IEPs to account for new testing and performance measures, as well as the Parents' concerns about M.L.'s academic and emotional needs.").
5	MB v. City Sch. Dist. of New Rochelle, No. 17-cv-1273 (KBF), 2018 WL 1609266, at *15 (S.D.N.Y. Mar. 29, 2018) (endorsing an IEP that recycled some annual goals because "the School District was actively and estimably engaged in continuously evaluating and analyzing RAB's special education needs and designing goals and objectives calculated to enable RAB to make appropriate progress").
6	Parker C. *ex rel.* Todd C. v. W. Chester Area Sch. Dist., No. 16-4836, 2017 WL 2888573, at *9 (E.D. Pa. July 6, 2017) (approving of the school district's "continually reevaluat[ing] and updating [IEP goals] based upon an individualized assessment of what was 'realistic' for [the student]").
C.	***There is proof of progress made under the challenged IEP.***
1	S.C. *ex rel.* Helen C. v. Oxford Area Sch. Dist., 751 F. App'x 220, 223 (3d Cir. 2018) (finding that the student received a FAPE where he "kept pace with his grade level, went from failing several of his classes to passing all of them, and increased his GPA," all "despite missing dozens if not hundreds of classes each year").
2	J.B. *ex rel.* Belt v. District of Columbia, 325 F. Supp. 3d 1, 8 (D.D.C. 2018) (endorsing four IEPs that were "substantial[ly] similar[ ]" because the student's "goals were modified once she had made documented progress in certain areas"; "[her] particular circumstances . . . made for slower progress; that slower progress, in turn, meant the IEPs did not much change").
3	D.B. *ex rel.* M.B. v. Fairview Sch. Dist., No. 15-cv-00085, 2017 WL 4923514, at *7 (W.D. Pa. Oct. 31, 2017) (upholding lower finding of FAPE in light of behavioral and emotional development under the challenged IEP).
4	F.L. v. Bd. of Educ. of Great Neck U.F.S.D., 274 F. Supp. 3d 94, 120 (E.D.N.Y. Aug. 15, 2017) (finding that the student received a FAPE, where although the second IEP was "substantially similar" to the first, the first IEP produced student growth), *aff'd sub nom.* F.L. v. Bd. of Educ. of Great Neck Union Free Sch. Dist., 735 F. App'x 38 (2d Cir. 2018).
5	A.G. v. Bd. of Educ. of Arlington Cent. Sch. Dist., No. 16 CV 1530 (VB), 2017 WL 1200906, at *9 (S.D.N.Y. Mar. 29, 2017) (finding that the student received a FAPE, where the student achieved only three of his eleven year-end goals).

TABLE 3. PRO-STUDENT FACTS COMMONLY REFERENCED IN SUBSTANTIVE FAPE DECISIONS

A.	***The IEP demonstrably failed to adequately address the student's challenges.***
1	Endrew F. *ex rel.* Joseph F. v. Douglas Cty. Sch. Dist. RE-1, 137 S. Ct. 988, 996 (2017) (finding that the student "fail[ed] to make meaningful progress toward his aims" as evidenced by the fact that his IEPs "carried over the same basic goals and objectives from one year to the next").
2	Pottsgrove Sch. Dist. v. D.H., No. 17-2658, 2018 WL 4368154, at *14 (E.D. Pa. Sept. 12, 2018) ("[The student's] persistent toileting issues confirm that whatever 'plan' the district had in place [to prevent toileting accidents] was inadequate.").
3	D.L. v. St. Louis City Pub. Sch. Dist., 326 F. Supp. 3d 810, 824 (E.D. Mo. July 2, 2018) (holding that where a student required sensory intervention, and yet the school lacked a sensory room, the IEP was not reasonably calculated to provide a FAPE).
4	Endrew F. *ex rel.* Joseph F. v. Douglas Cty. Sch. Dist. RE-1, 290 F. Supp. 3d 1175, 1184 (D. Colo. 2018) (determining that the IEP failed because, inter alia, the school district did not "develop a formal plan or properly address [the student's] behaviors" that interfered with his educational progress).
5	Edmonds Sch. Dist. v. A.T., 299 F. Supp. 3d 1135, 1144 (W.D. Wash. 2017) (holding that the IEP did not provide a FAPE since it did not offer proper behavioral supports, like an in-class aide, to adequately cater to the student's disabilities), *aff'd*, 780 F. App'x 491 (9th Cir. 2019).
6	Pocono Mountain Sch. Dist. v. J.W. *ex rel.* J.W., No. 3:16-CV-0381, 2017 WL 3971089, at *7–8 (M.D. Pa. Sept. 8, 2017) (holding school withheld FAPE where its proposed IEPs did not address the "serious behavioral issues [the school district knew] were impeding [the student's] education" and where the district failed to identify the student's specific learning disability in a timely manner).
B.	***The district implemented "reactive" or "crisis-oriented" practices instead of proactive measures.***
1	S.H. v. Rutherford Cty. Sch., 334 F. Supp. 3d 868, 875 (M.D. Tenn. 2018) (explaining that the school district's "*ad hoc*, reactive approach" to behavioral intervention did not meet the student's needs since it ultimately decreased his time spent learning in the classroom).

2	Pottsgrove Sch. Dist. v. D.H., No. 17-2658, 2018 WL 4368154, at *15 (E.D. Pa. Sept. 12, 2018) (finding a deprivation of FAPE where "the school district reactively went from crisis to crisis instead of proactively supporting [the student]," and "whatever preventative tools the district employed were overwhelmed by the plethora of reactive and crisis-oriented strategies in the IEP").
C.	***The school district lacked sufficient data to tailor the IEP to the student's needs.***
1	Methacton Sch. Dist. v. D.W. *ex rel.* G.W., No. 16-2582, 2017 WL 4518765, at *7 (E.D. Pa. Oct. 6, 2017) (upholding finding in student's favor where the school district failed to obtain any data on the student's baseline level of performance, rendering the goals provided for in the IEP per se insufficient).
2	Avaras v. Clarkstown Cent. Sch. Dist., No. 15 Civ. 2042 (NSR), 2017 WL 3037402, *21 (S.D.N.Y. July 17, 2017) ("An IEP based on stale information, without the benefit of *any* recent educational progress metrics or evaluations, cannot be reasonably calculated to ensure appropriate progress."), *appeal dismissed sub nom.* Avaras *ex rel.* A.A. v. Clarkstown Cent. Sch. Dist., 752 F. App'x 60 (2d Cir. 2018).
D.	***The IEP did not identify the student's needs, or the nature of educational supports to be provided, with sufficient particularity.***
1	Pottsgrove Sch. Dist. v. D.H., No. 17-2658, 2018 WL 4368154, at *14 (E.D. Pa. Sept. 12, 2018) (finding an IEP inadequate where it set forth a general learning goal with "no mention of how [that] goal would be reached").
2	Paris Sch. Dist. v. A.H. *ex rel.* Harter, No. 2:15-CV-02197, 2017 WL 1234151, at *26 (W.D. Ark. Apr. 3, 2017) (rejecting behavior plans as overbroad where they "lumped all of [the student's] behaviors into the category of 'noncompliant behavior,' completely ignoring the nuances of behaviors that manifest with autism," and therefore "did not inform [his] teachers how to handle [his] behaviors").

APPENDIX B

TABLE 1. BASIC TENETS FOR IMPLEMENTING *ENDREW F.*'S CO/AA REQUIREMENTS

A.	**Endrew F.*'s CO/AA requirements might represent a less radical break from the status quo in some cases on appeal, such as where a* de minimis *approach was not previously applied.**
1	J.R. v. Smith, No. DKC 16-1633, 2017 WL 3592453, at *4 (D. Md. Aug. 21, 2017) ("[E]ven though the ALJ made her decision prior to the Supreme Court's articulation of the *Endrew F.* standard, she went beyond the [Fourth Circuit's] 'more than *de minimus*' [sic] standard . . . [and instead] evaluated what progress was appropriate in light of the child's circumstances, just as *Endrew F.* requires.").
B.	***The CO/AA inquiry takes into account whether an IEP was tailored to the student's individual needs, and whether it yielded positive academic and non-academic benefits.***
1	E.R. *ex rel.* E.R. v. Spring Branch Indep. Sch. Dist., 909 F.3d 754, 768–69 (5th Cir. 2018) (finding that the student received CO/AA even though her IEP did not set goals for "every single" applicable state learning standard, since that "would not have been individualized" to her needs, as "excessive goals could have put her in a position where success would have been exceedingly unlikely," and the student still showed progress in several core subject areas under the challenged IEP).
2	Geniviva *ex rel.* Geniviva v. Hampton Twp. Sch. Dist., No. 17-351, 2018 WL 2335878, at *8–9 (W.D. Pa. May 23, 2018) (approving an IEP that set forth measurable functional and social goals specifically designed for the student).
C.	***Parents challenging an IEP on CO/AA grounds should identify specific evidence of the learning plan's shortcomings, and make suggestions on how to address those gaps.***
1	T.K. *ex rel.* C.K. v. Mercer Island Sch. Dist., No. C19-556 MJP, 2020 WL 1271519, at *5 (W.D. Wash. Mar. 17, 2020) ("Parents' allegation that the IEP was not 'appropriately ambitious' enough is severely undercut . . . by[, inter alia,] their failure to articulate in what way it was insufficiently 'ambitious.'").
2	E.R. v. Spring Branch Indep. Sch. Dist., No. 4:16-CV-0058, 2017 WL 3017282, at *30 (S.D. Tex. June 15, 2017) ("As the party challenging the IEP, the onus is on Plaintiffs to show that it was not appropriately ambitious, because the presumption of the IDEA favors the proposal of the school district."), *adopted by* 2017 WL 3016952 (S.D. Tex. July 14, 2017), *aff'd sub nom.* E.R. *ex rel.* E.R. v. Spring Branch Indep. Sch. Dist., 909 F.3d 754 (5th Cir. 2018).

D.	***Swift mastery of initial or intermediate learning benchmarks on the way toward an ultimate learning goal does not necessarily render those goals deficient.***
1	Geniviva *ex rel.* Geniviva v. Hampton Twp. Sch. Dist., No. 17-351, 2018 WL 2335878, at *9 (W.D. Pa. May 23, 2018) ("It very well may be that [the student] will surpass the initial goals set forth in the [IEP], in which case those goals can be revised. . . . However, given [her] lack of transition skills to this point, this Court is unconvinced that the proposed IEP was inappropriate.").
2	Rosaria M. v. Madison City Bd. of Educ., 325 F.R.D. 429, 449 (N.D. Ala. 2018) ("[P]laintiffs argue that . . . [because the student] demonstrated mastery of her first two IEP reading benchmarks almost immediately. . . . [T]he IEP was either insufficiently challenging or otherwise not appropriately tailored to F.M.'s needs. Although . . . [the student] mastered her first reading benchmarks fairly quickly, imperfect calibration of an intermediate step does not make her annual goal deficient." (citations omitted).

TABLE 2. TAKEAWAYS FROM IMPLEMENTATIONS OF *ENDREW F.*'S CHALLENGING OBJECTIVES (CO) REQUIREMENT

A.	***An IEP entailing essentially the same goals every year may fail to provide COs.***
1	Endrew F. *ex rel.* Joseph F. v. Douglas Cty. Sch. Dist. RE-1, 290 F. Supp. 3d 1175, 1184 (D. Colo. 2018) (finding the IEP CO-deficient since "it consisted of only updates and minor or slight increases in the [student's] objectives, or carrying over the same goals from year to year, or abandonment if they could not be met" and "was clearly just a continuation of the District's educational plan that had previously only resulted in minimal academic and functional progress").
2	*But see* F.L. v. Bd. of Educ. of Great Neck Union Free Sch. Dist., 735 F. App'x 38, 40 (2d Cir. 2018) (finding repeated IEP goals reasonable where there was evidence of "steady progress").
B.	***COs include those goals befitting of the student's current level of ability.***
1	S.B. v. N.Y.C. Dep't of Educ., No. 15-CV-1869, 2017 WL 4326502, at *14–15 (E.D.N.Y. Sept. 28, 2017) (finding that an IEP lacking in "thoughtful analysis" of a student's documented "present levels of performance" led to deficient IEP goals).
C.	***COs cannot be crafted absent reference to adequate baseline performance data.***

1	Methacton Sch. Dist. v. D.W. *ex rel.* G.W., No. 16-2582, 2017 WL 4518765, at *7 (E.D. Pa. Oct. 6, 2017) (finding that the "failure to obtain any baseline data meant that the [IEP] goals themselves were insufficient to provide guidance to teachers regarding Student's specific instruction needs based on Student's disabilities, and the expected progress at the district high school").
D.	***IEP goals can be too challenging, or unrealistic, to be tailored to a student's individual needs.***
1	Middleton v. District of Columbia, 312 F. Supp. 3d 113, 140–41 (D.D.C. 2018) (finding that though the IDEA requires COs, the school district's "lofty" goals were actually "ill-suited for a student's needs and circumstances and unmoored from evidence regarding the student's past performance;" for example, "[the student] could not read, could barely write, and could perform only basic mathematics," yet "instead of learning to divide single digits or compute fractions, [he] was expected to work toward determin[ing] the difference between sales tax and discounts in order to solve word problems" (citations and internal quotation marks omitted)).

TABLE 3. TAKEAWAYS FROM IMPLEMENTATIONS OF *ENDREW F.*'S APPROPRIATELY AMBITIOUS (AA) REQUIREMENT

A.	***An IEP entailing essentially the same goals every year may not be AA.***
1	Endrew F. *ex rel.* Joseph F. v. Douglas Cty. Sch. Dist. RE-1, 290 F. Supp. 3d 1175, 1184 (D. Colo. 2018) (finding an IEP to be unambitious where it "was clearly just a continuation of the District's educational plan that had previously only resulted in minimal academic and functional progress").
2	*But see* F.L. v. Bd. of Educ. of Great Neck Union Free Sch. Dist., 735 F. App'x 38, 40 (2d Cir. 2018) (finding repeated IEP goals reasonable where there was evidence of "steady progress").
B.	***Depending on the severity of a student's disabilities, educational goals resulting in only slight or inconsistent progress can still satisfy the AA directive.***
1	Bd. of Educ. of Albuquerque Pub. Sch. v. Maez, No. 16-cv-1082 WJ/WPL, 2017 WL 3278945, at *13 (D.N.M. Aug. 1, 2017) (determining the student received a FAPE where "[a]s a whole, [the student] made progress that was meaningful in view of his combination of disabilities," namely autism and a severe global developmental delay).
C.	***Courts look favorably upon learning plans that are regularly updated in light of student progress.***

1	C.G. *ex rel.* Keith G. v. Waller Indep. Sch. Dist., 697 F. App'x 816, 820 (5th Cir. 2017) (ruling in favor of the school district, in part because "additional goals and benchmarks were added" to the student's IEP as she progressed in the curriculum).
2	Geniviva *ex rel.* Geniviva v. Hampton Twp. Sch. Dist., No. 17-351, 2018 WL 2335878, at *8 (W.D. Pa. May 23, 2018) (finding a FAPE and citing how the district increased the student's target scores on speech-language assessments in response to her improving performance).
3	MB v. City Sch. Dist. of New Rochelle, No. 17-cv-1273 (KBF), 2018 WL 1609266, at *15 (S.D.N.Y. Mar. 29, 2018) (endorsing IEPs despite their having "some carry-over" in goals from year to year, where "each of the disputed IEPs contained a number of new goals and objectives that appropriately reflected [the student's] progress and updated evaluative information"; "to the extent certain goals and objectives were repeated, the record does not suggest that such repetition was the result of laziness or incompetence . . . . On the contrary, . . . the School District was actively and estimably engaged in continuously evaluating and analyzing [the student's] special education needs and designing goals and objectives calculated to enable [her] to make appropriate progress.").
D.	***Recycling certain annual goals may be justified if the IEP is nonetheless calculated to enable continued student progress.***
1	MB v. City Sch. Dist. of New Rochelle, No. 17-cv-1273 (KBF), 2018 WL 1609266, at *15 (S.D.N.Y. Mar. 29, 2018) (accepting "some carry-over" in annual IEP goals and objectives where they "were not completely identical" from year to year since "each of the disputed IEPs contained a number of *new* goals and objectives that appropriately reflected RAB's progress and updated evaluative information").
2	K.D. *ex rel.* Dunn v. Downingtown Area Sch. Dist., No. 16-0165, 2017 WL 3838653, at *9 (E.D. Pa. Aug. 31, 2017), *aff'd*, 904 F.3d 248 (3d Cir. 2018) ("It is true that many of the annual goals in [the student's] first IEP remained unchanged in her second IEP. However . . . this is not *per se* evidence that the School District denied [her] a FAPE. [The student's] baseline levels in many areas increased, reflecting improvement. As demonstrated by the [IHO], the fact that the School District did not raise the goals merely shows it was continuing to target [the student's] reading ability with repetition in core areas.").

APPENDIX C:
POST-ENDREW F. SUBSTANTIVE FAPE DECISIONS
THROUGH MARCH 22, 2020[235]

#	Case Name	FAPE Determination	Review of Lower Decision	FAPE Standard
A. FIRST CIRCUIT Pre-*Endrew F.* substantive standard: Meaningful educational benefit. *See, e.g.*, D.B. *ex rel.* Elizabeth B. v. Esposito, 675 F.3d 26, 34 (1st Cir. 2012).				
1. Circuit Court Decisions				
1	Johnson v. Bos. Pub. Sch., 906 F.3d 182 (1st Cir. 2018)	Satisfied	Affirmed	**RC** CO AA
2†	C.D. *ex rel.* M.D. v. Natick Pub. Sch. Dist., 924 F.3d 621 (1st Cir. 2019)	Satisfied	Affirmed	**RC** CO AA
2. District Court Decisions				
1	S.C. *ex rel.* N.C. v. Chariho Reg'l Sch. Dist., 298 F. Supp. 3d 370 (D.R.I. 2018)	(1) Not satisfied (2) Satisfied	(1) Reversed (2) Affirmed	RC CO **AA**
2	N.S. v. Burriville Sch. Comm., No. 17-0428-WES, 2018 WL 5920619 (D.R.I. Nov. 13, 2018)	Satisfied	Affirmed	**RC** CO AA
3	Doe v. Belchertown Pub. Schs., 347 F. Supp. 3d 90 (D. Mass. 2018)	Satisfied	Affirmed	RC CO AA
4†	Mr. & Mrs. R. v. York Sch. Dep't, No. 2:18-cv-00047-LEW, 2019 WL 2245014 (D. Me. May 24, 2019)	Satisfied	Affirmed	**RC** **CO AA**

[235] Key:

† The case reviewed a lower decision (by either an IHO or a federal district court) issued after March 22, 2017, Endrew F.'s date of publication. All other cases analyzed here reviewed lower decisions applying pre-Endrew F. substantive FAPE standards. See discussion on the significance of this distinction supra Part II, Section III.B.

Bold Underline The decision invoked the reasonably calculated (RC), challenging objectives (CO), or appropriately ambitious (AA) language from the Supreme Court's decision in Endrew F.

#	Case Name	FAPE Determination	Review of Lower Decision	FAPE Standard
5†	Morrison v. Perry Sch. Dep't, No. 1:18-cv-00106-DBH, 2019 WL 3035283 (D. Me. July 11, 2019)	Satisfied	Affirmed	**RC** CO AA
6†	Walsh v. Silver Lake Reg'l Sch. Dist., 18-12576-PBS, 2020 WL 767392 (D. Mass. Jan. 21, 2020)	Satisfied	Affirmed	**RC** CO AA
B. SECOND CIRCUIT Pre-*Endrew F.* substantive standard: Meaningful educational benefit. *See, e.g.*, M.H. v. Monroe-Woodbury Cent. Sch. Dist., 296 F. App'x 126, 128 (2d Cir. 2008).				
1. Circuit Court Decisions				
1	D.B. v. Ithaca City Sch. Dist., 690 F. App'x 778 (2d Cir. 2017)	Satisfied	Affirmed	**RC** CO AA
2	N.B. v. N.Y.C. Dep't of Educ., 711 F. App'x 29 (2d Cir. 2017)	Satisfied	Affirmed	**RC** CO AA
3	J.P. *ex rel.* J.P. v. City of N.Y. Dep't of Educ., 717 F. App'x 30 (2d Cir. 2017)	Satisfied	Affirmed	**RC** CO AA
4	Mr. P. v. W. Hartford Bd. of Educ., 885 F.3d 735 (2d Cir. 2018)	Satisfied	Affirmed	**RC** CO AA
5†	F.L. v. Bd. of Educ. of Great Neck Union Free Sch. Dist., 735 F. App'x 38 (2d Cir. 2018)	Satisfied	Affirmed	**RC CO AA**
6†	J.R. v. N.Y.C. Dep't of Educ., 748 F. App'x 382 (2d Cir. 2018)	Satisfied	Affirmed	**RC** CO AA
2. District Court Decisions				
1	A.G. v. Bd. of Educ. of Arlington Cent. Sch. Dist., No. 16 CV 1530 (VB), 2017 WL 1200906 (S.D.N.Y. Mar. 29, 2017)	Satisfied	Affirmed	**RC** CO AA

#	Case Name	FAPE Determination	Review of Lower Decision	FAPE Standard
2	G.S. *ex rel.* L.S. v. Fairfield Bd. of Educ., No. 3:16-cv-1355 (JCH), 2017 WL 2918916 (D. Conn. July 7, 2017)	(1) Not satisfied (2) Satisfied	(1) Affirmed (2) Affirmed	**RC** CO AA
3	Avaras v. Clarkstown Cent. Sch. Dist., No. 15 Civ. 2042 (NSR), 2017 WL 3037402 (S.D.N.Y. July 17, 2017), *appeal dismissed sub nom.* Avaras *ex rel.* A.A. v. Clarkstown Cent. Sch. Dist., 752 F. App'x 60 (2d Cir. 2018)	(1) Not satisfied (2) Not satisfied	(1) Reversed (2) Affirmed	**RC** CO AA
4	J.R. *ex rel.* J.R. v. N.Y.C. Dep't of Educ., No. 15-CV-364 (SLT) (RML), 2017 WL 3446783 (E.D.N.Y. Aug. 9, 2017), *aff'd sub nom.* J.R. v. N.Y.C. Dep't of Educ., 748 F. App'x 382 (2d Cir. 2018)	Satisfied	Affirmed	**RC** CO **AA**
5	F.L. v. Bd. of Educ. of Great Neck U.F.S.D., 274 F. Supp. 3d 94 (E.D.N.Y. 2017), *aff'd sub nom.* F.L. v. Bd. of Educ. of Great Neck Union Free Sch. Dist., 735 F. App'x 38 (2d Cir. 2018)	Satisfied	Affirmed	**RC** CO AA
6	S.B. v. N.Y.C. Dep't of Educ., No. 15-CV-1869, 2017 WL 4326502 (E.D.N.Y. Sept. 28, 2017)	Not satisfied	Reversed	**RC** **CO** AA
7	Bd. of Educ. of Wappingers Cent. Sch. Dist. v. M.N. *ex rel.* J.N., No. 16-CV-09448 (TPG), 2017 WL 4641219 (S.D.N.Y. Oct. 13, 2017)	Not satisfied	Affirmed	**RC** CO AA

#	Case Name	FAPE Determination	Review of Lower Decision	FAPE Standard
8	M.E. v. N.Y.C. Dep't of Educ., No. 15-CV-5306 (VSB), 2018 WL 582601 (S.D.N.Y. Jan. 26, 2018)	Satisfied	Affirmed	**RC** CO AA
9	MB v. City Sch. Dist. of New Rochelle, No. 17-cv-1273 (KBF), 2018 WL 1609266 (S.D.N.Y. Mar. 29, 2018)	Satisfied	Affirmed	**RC** CO **AA**
10	C.S. v. Yorktown Cent. Sch. Dist., No. 16-CV-9950 (KMK), 2018 WL 1627262 (S.D.N.Y. Mar. 30, 2018)	Satisfied	Affirmed	**RC** CO **AA**
11	Y.N. v. Bd. of Educ. of Harrison Cent. Sch. Dist., No. 17-CV-4356 (KMK), 2018 WL 4609117 (S.D.N.Y. Sept. 25, 2018)	Satisfied	Affirmed	**RC** CO **AA**
12	E.E. v. N.Y.C. Dep't of Educ., No. 17-CV-2411 (RA), 2018 WL 4636984 (S.D.N.Y. Sept. 26, 2018)	Satisfied	Affirmed	**RC** CO AA
13†	Mr. G. *ex rel.* S.G. v. Canton Bd. of Educ., No. 3:17-cv-2161 (MPS), 2019 WL 1118094 (D. Conn. Mar. 11, 2019)	Satisfied	Affirmed	**RC** CO **AA**
14†	K.B. *ex rel.* S.B. v. Katonah Lewisboro Union Free Sch. Dist., No. 18-CV-9553 (CS), 2019 WL 5553292 (S.D.N.Y. Oct. 28, 2019)	Satisfied	Affirmed	**RC** CO AA
15†	AR *ex rel.* MR v. Katonah Lewisboro Union Free Sch. Dist., No. 18-CV-9938 (KMK), 2019 WL 6251196 (S.D.N.Y. Nov. 21, 2019)	Satisfied	Affirmed	**RC** CO **AA**

#	Case Name	FAPE Determination	Review of Lower Decision	FAPE Standard
16†	Bd. of Educ. of Wappingers Cent. Sch. Dist. v. D.M., No. 19 CV 1730 (VB), 2020 WL 508845 (S.D.N.Y. Jan. 30, 2020)	Not satisfied	Affirmed	**RC** CO AA
C. THIRD CIRCUIT Pre-*Endrew F.* substantive standard: Meaningful educational benefit. *See, e.g.*, T.R. v. Kingwood Twp. Bd. of Educ., 205 F.3d 572, 577 (3d Cir. 2000).				
1. Circuit Court Decisions				
1†	K.D. *ex rel.* Dunn v. Downingtown Area Sch. Dist., 904 F.3d 248 (3d Cir. 2018)	Satisfied	Affirmed	**RC** **CO** AA
2†	S.C. *ex rel.* Helen C. v. Oxford Area Sch. Dist., 751 F. App'x 220 (3d Cir. 2018)	Satisfied	Affirmed	**RC** CO AA
3†	Colonial Sch. Dist. v. G.K. *ex rel.* A.K., 763 F. App'x 192 (3d Cir. 2019)	Satisfied	Affirmed	RC CO AA
2. District Court Decisions				
1	Brandywine Heights Area Sch. Dist. v. B.M. *ex rel.* B.M., 248 F. Supp. 3d 618 (E.D. Pa. 2017)	Satisfied	Affirmed	**RC** CO **AA**
2	E.D. *ex rel.* T.D. v. Colonial Sch. Dist., No. 09-4837, 2017 WL 1207919 (E.D. Pa. Mar. 31, 2017)	Satisfied	Affirmed	**RC** CO AA
3	T.M. *ex rel.* T.M. v. Quakertown Cmty. Sch. Dist., 251 F. Supp. 3d 792 (E.D. Pa. 2017)	Satisfied	Affirmed	**RC** CO AA
4	E.G. v. Great Valley Sch. Dist., No. 16-5456, 2017 WL 2260707 (E.D. Pa. May 23, 2017)	Satisfied	Affirmed	**RC** CO AA

#	Case Name	FAPE Determination	Review of Lower Decision	FAPE Standard
5	Parker C. *ex rel.* Todd C. v. W. Chester Area Sch. Dist., No. 16-4836, 2017 WL 2888573 (E.D. Pa. July 6, 2017)	Satisfied	Affirmed	**RC** CO AA
6	Benjamin A. *ex rel.* Michael A. v. Unionville-Chadds Ford Sch. Dist., No. 16-2545, 2017 WL 3482089 (E.D. Pa. Aug. 14, 2017)	Satisfied	Affirmed	**RC** CO AA
7	Sean C. *ex rel.* Helen C. v. Oxford Area Sch. Dist., No. 16-5286, 2017 WL 3485880 (E.D. Pa. Aug. 14, 2017)	Satisfied	Affirmed	**RC** CO AA
8	K.D. *ex rel.* Dunn v. Downingtown Area Sch. Dist., No. 16-0165, 2017 WL 3838653 (E.D. Pa. Aug. 31, 2017)	Satisfied	Affirmed	**RC** CO **AA**
9	Pocono Mountain Sch. Dist. v. J.W. *ex rel.* J.W., No. 3:16-CV-0381, 2017 WL 3971089 (M.D. Pa. Sept. 8, 2017)	Not satisfied	Affirmed	**RC** CO AA
10	Methacton Sch. Dist. v. D.W. *ex rel.* G.W., No. 16-2582, 2017 WL 4518765 (E.D. Pa. Oct. 6, 2017)	Not satisfied	Affirmed	**RC** **CO** AA
11	Montgomery Cty. Intermediate Unit No. 23 v. C.M., No. CV 17-1523, 2017 WL 4548022 (E.D. Pa. Oct. 12, 2017)	(1) Not satisfied (2) Satisfied	(1) Affirmed (2) Reversed	**RC** CO AA
12	D.B. *ex rel.* M.B. v. Fairview Sch. Dist., No. 15-cv-00085, 2017 WL 4923514 (W.D. Pa. Oct. 31, 2017)	Satisfied	Affirmed	**RC** CO AA

#	Case Name	FAPE Determination	Review of Lower Decision	FAPE Standard
13†	Colonial Sch. Dist. v. G.K. *ex rel.* A.K., No. 17-3377, 2018 WL 2010915 (E.D. Pa. Apr. 30, 2018)	Satisfied	Reversed	**RC** CO AA
14	Geniviva *ex rel.* Geniviva v. Hampton Twp. Sch. Dist., No. 17-351, 2018 WL 2335878 (W.D. Pa. May 23, 2018)	Satisfied	Affirmed	**RC** **CO** AA
15†	Jennifer S. *ex rel.* Jack J. v. Coatesville Area Sch. Dist., No. 17-cv-3793, 2018 WL 3397552 (E.D. Pa. July 12, 2018)	Satisfied	Affirmed	**RC** CO **AA**
16	J.G. v. New Hope-Solebury Sch. Dist., 323 F. Supp. 3d 716 (E.D. Pa. 2018)	Satisfied	Affirmed	**RC** CO AA
17	Pottsgrove Sch. Dist. v. D.H., No. 17-2658, 2018 WL 4368154 (E.D. Pa. Sept. 12, 2018)	Not satisfied	Affirmed	RC CO AA
18	Rogers *ex rel.* Rogers v. Hempfield Sch. Dist., No. 17-1464, 2018 WL 4635779 (E.D. Pa. Sept. 27, 2018)	Satisfied	Affirmed	**RC** CO **AA**
19	S.W. *ex rel.* S.W. v. Abington Sch. Dist., No. 17-2188, 2018 WL 6604339 (E.D. Pa. Dec. 17, 2018)	Satisfied	Affirmed	**RC** CO AA
20†	D.S. *ex rel.* S.S. v. Parsippany Troy Hills Bd. of Educ., No. 17-9484 (KM) (MAH), 2018 WL 6617959 (D.N.J. Dec. 18, 2018)	Satisfied	Affirmed	**RC** CO AA

#	Case Name	FAPE Determination	Review of Lower Decision	FAPE Standard
21†	C.F. *ex rel.* W.F. v. Radnor Twp. Sch. Dist., No. 17-4765, 2019 WL 1227710 (E.D. Pa. Mar. 14, 2019)	Satisfied	Affirmed	**RC** CO AA
22†	E.P. v. N. Arlington Bd. of Educ., No. 17–08195, 2019 WL 1495692 (D.N.J. Apr. 1, 2019)	Satisfied	Affirmed	**RC** CO AA
23†	R.F. *ex rel.* R.F. v. S. Lehigh Sch. Dist., No. 18-1756, 2019 WL 3714484 (E.D. Pa. Aug. 7, 2019)	Satisfied	Affirmed	**RC** **CO** **AA**
24†	Price v. Commonwealth Charter Acad.-Cyber Sch., No. 17-5790, 2019 WL 4346014 (E.D. Pa. Sept. 12, 2019)	Satisfied	Affirmed	**RC** CO AA
25†	Perkiomen Valley Sch. Dist. v. S.D. *ex rel.* J.D., 405 F. Supp. 3d 620 (E.D. Pa. 2019)	Satisfied	Reversed	**RC** CO AA
26†	Matthew B. v. Pleasant Valley Sch. Dist., No. 3:17-CV-2380, 2019 WL 5692538 (M.D. Pa. Nov. 1, 2019)	Not satisfied	Affirmed	**RC** **CO** **AA**
27†	Colonial Sch. Dist. v. E.G. *ex rel.* M.G., No. 19-1173, 2020 WL 529906 (E.D. Pa. Jan. 31, 2020)	Not satisfied	Affirmed	**RC** CO AA
D. FOURTH CIRCUIT Pre-*Endrew F.* substantive standard: Some educational benefit (*de minimis*). *See, e.g.*, O.S. v. Fairfax Cty. Sch. Bd., 804 F.3d 354, 360 (4th Cir. 2015).				
1. Circuit Court Decisions				
1	M.L. *ex rel.* Leiman v. Smith, 867 F.3d 487 (4th Cir. 2017)	Satisfied	Affirmed	**RC** CO **AA**
2†	R.F. *ex rel.* E.F. v. Cecil Cty. Pub. Sch., 919 F.3d 237 (4th Cir. 2019)	Satisfied	Affirmed	**RC** **CO** **AA**

#	Case Name	FAPE Determination	Review of Lower Decision	FAPE Standard
2. District Court Decisions				
1	J.R. v. Smith, No. DKC 16-1633, 2017 WL 3592453 (D. Md. Aug. 21, 2017)	Satisfied	Affirmed	**RC CO AA**
2†	R.F. v. Cecil Cty. Pub. Schs., No. ADC-17-2203, 2018 WL 3079700 (D. Md. June 21, 2018)	Satisfied	Affirmed	**RC** CO AA
3†	E.S. v. Smith, No. PWG-17-3031, 2018 WL 3533548 (D. Md. July 23, 2018)	Satisfied	Affirmed	**RC** CO AA
4	M.L. v. Smith, No. PX 16-3236, 2018 WL 3756722 (D. Md. Aug. 7, 2018)	Satisfied	Affirmed	**RC** CO AA
5†	S.M. v. Arlotto, No. RDB-17-3294, 2018 WL 4384156 (D. Md. Sept. 14, 2018)	Satisfied	Affirmed	**RC** CO AA
6	A.H. v. Smith, 367 F. Supp. 3d 387 (D. Md. 2019)	Satisfied	Affirmed	**RC** CO AA
7†	Bd. of Educ. of Montgomery Cty. v. J.M., No. 8:18-cv-00840-PX, 2019 WL 1409687 (D. Md. Mar. 28, 2019)	Not satisfied	Affirmed	**RC** CO AA
8†	D.F. v. Smith, No. PJM 18-93, 2019 WL 1427800 (D. Md. Mar. 29, 2019)	Satisfied	Affirmed	**RC** CO AA
9†	R.S. v. Morgan Cty. Bd. of Educ., No. 3:18-CV-80, 2019 WL 2518136 (N.D. W. Va. June 18, 2019)	Satisfied	Affirmed	**RC** CO AA
10†	C.B. v. Smith, No. 8:18-cv-01780-PX, 2019 WL 2994671 (D. Md. July 9, 2019)	Satisfied	Affirmed	**RC** CO **AA**

#	Case Name	FAPE Determination	Review of Lower Decision	FAPE Standard
11	Coleman *ex rel.* N.C. v. Wake Cty. Bd. of Educ., No. 5:17-CV-295-FL, 2020 WL 534914 (E.D.N.C. Feb. 3, 2020)	Satisfied	Affirmed	**RC** CO AA
E. FIFTH CIRCUIT Pre-*Endrew F.* substantive standard: Meaningful educational benefit. *See, e.g.*, Cypress-Fairbanks Indep. Sch. Dist. v. Michael F. *ex rel.* Barry F., 118 F.3d 245, 248 (5th Cir. 1997).				
1. Circuit Court Decisions				
1	C.G. *ex rel.* Keith G. v. Waller Indep. Sch. Dist., 697 F. App'x 816 (5th Cir. 2017)	Satisfied	Affirmed	**RC** CO **AA**
2	Dall. Indep. Sch. Dist. v. Woody, 865 F.3d 303 (5th Cir. 2017)	Not satisfied	Affirmed	**RC** CO AA
3†	E.R. *ex rel.* E.R. v. Spring Branch Indep. Sch. Dist., 909 F.3d 754 (5th Cir. 2018)	Satisfied	Affirmed	**RC** **CO** **AA**
4†	Renee J. *ex rel.* C.J. v. Hous. Indep. Sch. Dist., 913 F.3d 523 (5th Cir. 2019)	Satisfied	Affirmed	**RC** CO AA
5†	R. S. *ex rel.* Ruth B. v. Highland Park Indep. Sch. Dist., 951 F.3d 319 (5th Cir. 2020)	Satisfied	Affirmed	**RC** CO **AA**
6†	A.A. v. Northside Indep. Sch. Dist., 951 F.3d 678 (5th Cir. 2020)	Satisfied	Affirmed	RC CO **AA**
2. District Court Decisions				
1	C.M. v. Warren Indep. Sch. Dist., No. 9:16-CV-165, 2017 WL 4479613 (E.D. Tex. Apr. 18, 2017)	Satisfied	Affirmed	**RC** **CO** **AA**

#	Case Name	FAPE Determination	Review of Lower Decision	FAPE Standard
2	E.R. v. Spring Branch Indep. Sch. Dist., No. 4:16-CV-0058, 2017 WL 3017282 (S.D. Tex. June 15, 2017)	Satisfied	Affirmed	**RC** CO **AA**
3	Renee J. v. Houston Indep. Sch. Dist., 333 F. Supp. 3d 674 (S.D. Tex. 2017), *aff'd sub nom.* Renee J. *ex rel.* C.J. v. Houston Indep. Sch. Dist., 913 F.3d 523 (5th Cir. 2019)	Satisfied	Affirmed	**RC** CO AA
4	R.S. *ex rel.* Ruth B. v. Highland Park Indep. Sch. Dist., No. 3:16-CV-2916-S, 2019 WL 1099753 (N.D. Tex. Mar. 8, 2019)	Satisfied	Affirmed	**RC** **CO** **AA**
5†	William V. v. Copperas Cove Indep. Sch. Dist., No. 6:17-CV-00201-ADA-JCM, 2019 WL 5394020 (W.D. Tex. Oct. 22, 2019)	Satisfied	Affirmed	**RC** CO AA
F. SIXTH CIRCUIT Pre-*Endrew F.* substantive standard: Meaningful educational benefit. *See, e.g.*, Deal v. Hamilton Cty. Bd. of Educ., 392 F.3d 840, 864 (6th Cir. 2004).				
1. Circuit Court Decision				
1†	Barney v. Akron Bd. of Educ., 763 F. App'x 528 (6th Cir. 2019)	Satisfied	Affirmed	**RC** CO AA
2. District Court Decisions				
1	Barney v. Akron Bd. of Educ., No. 5:16CV0112, 2017 WL 4226875 (N.D. Ohio Sept. 22, 2017)	Satisfied	Affirmed	**RC** CO AA
2	S.H. v. Rutherford Cty. Sch., 334 F. Supp. 3d 868 (M.D. Tenn. 2018)	Not satisfied	Affirmed	**RC** CO AA

#	Case Name	FAPE Determination	Review of Lower Decision	FAPE Standard
3†	J.A. v. Smith Cty. Sch. Dist., 364 F. Supp. 3d 803 (M.D. Tenn. 2019)	Not satisfied	Affirmed	**RC** CO AA
G. SEVENTH CIRCUIT Pre-*Endrew F.* substantive standard: Some educational benefit. *See, e.g.*, Alex R. *ex rel.* Beth R. v. Forrestville Valley Cmty. Unit Sch. Dist. No. 221, 375 F.3d 603, 613 (7th Cir. 2004).				
District Court Decision				
1†	Carr v. New Glarus Sch. Dist., No. 17-cv-413-wmc, 2018 WL 4953003 (W.D. Wis. Oct. 12, 2018)	Satisfied	Affirmed	**RC** CO AA
H. EIGHTH CIRCUIT Pre-*Endrew F.* substantive standard: Some educational benefit. *See, e.g.*, K.E. *ex rel.* K.E. v. Indep. Sch. Dist. No. 15, 647 F.3d 795, 810 (8th Cir. 2011).				
1. Circuit Court Decisions				
1	I.Z.M. v. Rosemount-Apple Valley-Eagan Pub. Sch., 863 F.3d 966 (8th Cir. 2017)	Satisfied	Affirmed	**RC** CO AA
2†	Albright *ex rel.* Doe v. Mountain Home Sch. Dist., 926 F.3d 942 (8th Cir. 2019)	Satisfied	Affirmed	**RC** CO AA
3†	D. L. *ex rel.* Landon v. St. Louis City Sch. Dist., No. 18-3497, 2020 WL 992495 (8th Cir. Mar. 2, 2020)	Not satisfied	Affirmed	**RC** CO AA
2. District Court Decisions				
1	Paris Sch. Dist. v. A.H. *ex rel.* Harter, No. 2:15-CV-02197, 2017 WL 1234151 (W.D. Ark. Apr. 3, 2017)	Not satisfied	Affirmed	**RC** CO **AA**
2	Albright v. Mountain Home Sch. Dist., No. 3:16-CV-3011, 2017 WL 2880853 (W.D. Ark. July 5, 2017)	Satisfied	Affirmed	**RC** CO AA

#	Case Name	FAPE Determination	Review of Lower Decision	FAPE Standard
3†	D.L. v. St. Louis City Pub. Sch. Dist., 326 F. Supp. 3d 810 (E.D. Mo. 2018)	Not satisfied	Reversed	**RC** CO AA
4†	Johnson *ex rel.* A.H. v. St. Louis Pub. Sch. Dist., No. 4:17 CV 2204 SNLJ, 2018 WL 4383277 (E.D. Mo. Sept. 14, 2018)	Satisfied	Affirmed	**RC** CO AA
5	Cook v. Little Rock Sch. Dist., No. 4:17CV00218 JLH, 2018 WL 4778044 (E.D. Ark. Oct. 3, 2018)	Satisfied	Affirmed	**RC** CO AA
6	Albright v. Mountain Home Sch. Dist., No. 3:17-CV-3075, 2018 WL 5794164 (W.D. Ark. Nov. 5, 2018)	Satisfied	Affirmed	**RC** CO AA
I. NINTH CIRCUIT Pre-*Endrew F.* substantive standard: Either some or meaningful educational benefit. *See, e.g.*, J.L. v. Mercer Island Sch. Dist., 592 F.3d 938, 951 n.10 (9th Cir. 2010).				
1. Circuit Court Decisions				
1	E.F. *ex rel.* Fulsang v. Newport Mesa Unified Sch. Dist., 726 F. App'x 535 (9th Cir. 2018)	Satisfied	Affirmed	**RC** CO AA
2	J.K. v. Missoula Cty. Pub. Schs., 713 F. App'x 666 (9th Cir. 2018)	Satisfied	Affirmed	**RC** CO AA
3	J.M. *ex rel.* Mandeville v. Matayoshi, 729 F. App'x 585 (9th Cir. 2018)	Satisfied	Affirmed	**RC** CO AA
4†	R. Z. C. *ex rel.* David C. v. N. Shore Sch. Dist., 755 F. App'x 658 (9th Cir. 2018)	Satisfied	Affirmed	**RC** CO AA
5†	R. M. *ex rel.* S.M. v. Gilbert Unified Sch. Dist., 768 F. App'x 720 (9th Cir. 2019)	Satisfied	Affirmed	**RC** CO AA

#	Case Name	FAPE Determination	Review of Lower Decision	FAPE Standard
6†	J.G. *ex rel.* Greenberg v. Dep't of Educ., 772 F. App'x 567 (9th Cir. 2019)	Satisfied	Affirmed	**RC** CO AA
7†	Edmonds Sch. Dist. v. A. T., 780 F. App'x 491 (9th Cir. 2019)	Not satisfied	Affirmed	**RC** CO AA
8†	Pangerl v. Peoria Unified Sch. Dist., 780 F. App'x 505 (9th Cir. 2019)	Satisfied	Affirmed	**RC** CO AA
2. District Court Decisions				
1	K.M. *ex rel.* Markham v. Tehachapi Unified Sch. Dist., No. 1:15-cv-001835 LJO JLT, 2017 WL 1348807 (E.D. Cal. Apr. 5, 2017)	Satisfied	Affirmed	**RC CO AA**
2	N.G. *ex rel.* Green v. Tehachapi Unified Sch. Dist., No. 1:15-cv-01740-LJO-JLT, 2017 WL 1354687 (E.D. Cal. Apr. 13, 2017)	Satisfied	Affirmed	**RC CO AA**
3	Unknown v. Gilbert Unified Sch. Dist., No. CV-16-02614-PHX-JJT, 2017 WL 3225189 (D. Ariz. July 31, 2017)	Satisfied	Affirmed	**RC CO** AA
4	Tamalpais Union High Sch. Dist. v. D.W., 271 F. Supp. 3d 1152 (N.D. Cal. 2017)	Satisfied	Affirmed	**RC** CO **AA**
5	R. Z. C. v. Northshore Sch. Dist., No. C16-1064 TSZ, 2017 WL 4868845 (W.D. Wash. Oct. 27, 2017)	Satisfied	Affirmed	**RC** CO AA
6	Edmonds Sch. Dist. v. A.T., 299 F. Supp. 3d 1135 (W.D. Wash. 2017)	Not satisfied	Affirmed	**RC** CO AA

#	Case Name	FAPE Determination	Review of Lower Decision	FAPE Standard
7	McKnight v. Lyon Cty. Sch. Dist., No. 3:15-cv-00614-MMD-CBC, 2018 WL 4600293 (D. Nev. Sept. 25, 2018)	Satisfied	Affirmed	**RC** CO AA
8†	A.C. v. Capistrano Unified Sch. Dist., No. 8:17-cv-01460-JLS-KES, 2018 WL 5619735 (C.D. Cal. Oct. 30, 2018)	Satisfied	Affirmed	**RC** **CO** AA
9	*In re* Butte Sch. Dist. No. 1, No. CV 14-60-BU-SEH, 2019 WL 343149 (D. Mont. Jan. 28, 2019)	Satisfied	Reversed	**RC** CO AA
10†	A.W. *ex rel.* Wright v. Tehachapi Unified Sch. Dist., No. 1:17-cv-00854-DAD-JLT, 2019 WL 1092574 (E.D. Cal. Mar. 8, 2019)	Satisfied	Affirmed	**RC** CO AA
11†	Dep't of Educ. v. L.S. *ex rel.* C.S., No. 18-cv-00223 JAO-RT, 2019 WL 1421752 (D. Haw. Mar. 29, 2019)	Not satisfied	Affirmed	**RC** CO AA
12†	L.C. *ex rel.* A.S. v. Issaquah Sch. Dist., No. C17-1365JLR, 2019 WL 2023567 (W.D. Wash. May 8, 2019)	Satisfied	Affirmed	**RC** CO **AA**
13†	J.L.N. *ex rel.* Nunez v. Grossmont Union High Sch. Dist., No. 17-cv-2097-L-MDD, 2019 WL 4849172 (S.D. Cal. Sept. 30, 2019)	Satisfied	Affirmed	RC CO AA
14†	E.M. v. Poway Unified Sch. Dist., No. 19cv689 MJ MSB, 2020 WL 229991 (S.D. Cal. Jan. 15, 2020)	Satisfied	Affirmed	RC CO AA

#	Case Name	FAPE Determination	Review of Lower Decision	FAPE Standard
15†	T.K. *ex rel.* C.K. v. Mercer Island Sch. Dist., No. C19-556 MJP, 2020 WL 1271519 (W.D. Wash. Mar. 17, 2020)	Satisfied	Affirmed	**RC** CO **AA**
	J. TENTH CIRCUIT Pre-*Endrew F.* substantive standard: Some educational benefit (*de minimis*). *See, e.g.*, Urban *ex rel.* Urban v. Jefferson Cty. Sch. Dist. R-1, 89 F.3d 720, 726–27 (10th Cir. 1996).			
	District Court Decisions			
1	Bd. of Educ. of Albuquerque Pub. Schs. v. Maez, No. 16-cv-1082 WJ/WPL, 2017 WL 3278945 (D.N.M. Aug. 1, 2017)	Satisfied	Reversed	**RC** CO **AA**
2	Endrew F. *ex rel.* Joseph F. v. Douglas Cty. Sch. Dist. RE-1, 290 F. Supp. 3d 1175 (D. Colo. 2018)	Not satisfied	Reversed	**RC** **CO** **AA**
3	Smith v. Cheyenne Mountain Sch. Dist. 12, No. 14-cv-03390-PAB-KHR, 2018 WL 1203172 (D. Colo. Mar. 6, 2018)	Satisfied	Affirmed	**RC** CO AA
4	Matthews v. Douglas Cty. Sch. Dist. RE 1, No. 16-CV-0717-MSK, 2018 WL 4790715 (D. Colo. Oct. 4, 2018)	Satisfied	Affirmed	**RC** CO **AA**
5†	Nathan M. *ex rel.* Amanda M. v. Harrison Sch. Dist. No. 2, No. 18-cv-00085-RPM, 2018 WL 6528127 (D. Colo. Dec. 12, 2018)	Satisfied	Affirmed	**RC** CO AA
6†	Albuquerque Pub. Sch. v. Sledge, No. 18-1041 KK/LF, 2019 WL 3755954 (D.N.M. Aug. 8, 2019)	Not satisfied	Affirmed	**RC** CO AA

#	Case Name	FAPE Determination	Review of Lower Decision	FAPE Standard
7	Elizabeth B. *ex rel.* Donald B. v. El Paso Cty. Sch. Dist. 11, No. 16-cv-02036-RBJ-NYW, 2019 WL 3774119 (D. Colo. Aug. 12, 2019)	Satisfied	Affirmed	**RC** **CO** **AA**
8	Gallup McKinley Cty. Sch. Bd. of Educ. v. Garcia, No. 16-01336-JTM-LF, 2019 WL 7596273 (D.N.M. Sept. 24, 2019)	Not satisfied	Affirmed	**RC** **CO** **AA**
9†	Preciado v. Bd. of Educ. of Clovis Mun. Sch., No. 19-cv-0184 (SMV/KRS), 2020 WL 1170635 (D.N.M. Mar. 11, 2020)	Not satisfied	Affirmed	**RC** CO **AA**
K. ELEVENTH CIRCUIT Pre-*Endrew F*. substantive standard: Some educational benefit. *See, e.g.*, Devine v. Indian River Cty. Sch. Bd., 249 F.3d 1289, 1292 (11th Cir. 2001).				
District Court Decisions				
1	S.M. v. Hendry Cty. Sch. Bd., No. 2:14-cv-237-FtM-38CM, 2017 WL 4417070 (M.D. Fla. Oct. 5, 2017)	Satisfied	Affirmed	**RC** CO AA
2	Rosaria M. v. Madison City Bd. of Educ., 325 F.R.D. 429 (N.D. Ala. 2018)	Satisfied	Affirmed	**RC** **CO** **AA**
L. D.C. CIRCUIT Pre-*Endrew F*. substantive standard: Some educational benefit. *See, e.g.*, Reid *ex rel.* Reid v. District of Columbia, 401 F.3d 516, 523 (D.C. Cir. 2005).				
1. Circuit Court Decision				
1	Z. B. v. District of Columbia, 888 F.3d 515 (D.C. Cir. 2018)	Satisfied	Affirmed	**RC** **CO** **AA**
2. District Court Decisions				

#	Case Name	FAPE Determination	Review of Lower Decision	FAPE Standard
1	Davis v. District of Columbia, 244 F. Supp. 3d 27 (D.D.C. 2017)	Satisfied	Affirmed	**RC CO AA**
2	Pavelko v. District of Columbia, 288 F. Supp. 3d 301 (D.D.C. 2018)	Satisfied	Affirmed	**RC** CO AA
3	Middleton v. District of Columbia, 312 F. Supp. 3d 113 (D.D.C. 2018)	Not satisfied	Reversed	**RC CO AA**
4†	Wade v. District of Columbia, 322 F. Supp. 3d 123 (D.D.C. 2018)	Not satisfied	Reversed	**RC** CO AA
5†	J.B. *ex rel.* Belt v. District of Columbia, 325 F. Supp. 3d 1 (D.D.C. 2018)	Satisfied	Affirmed	**RC** CO AA
6†	Montuori v. District of Columbia, No. 17-2455 (CKK), 2018 WL 4623572 (D.D.C. Sept. 26, 2018)	Satisfied	Affirmed	RC CO AA
7	Smith v. District of Columbia, No. 16-1386 (RDM), 2018 WL 4680208 (D.D.C. Sept. 28, 2018)	Not satisfied	Reversed	**RC CO AA**
8†	Gaston v. District of Columbia, No. 18-1703 (RJL), 2019 WL 3557246 (D.D.C. Aug. 5, 2019)	Not satisfied	Reversed	**RC** CO AA
9†	R.B. v. District of Columbia, No. 18-662 (RMC), 2019 WL 4750410 (D.D.C. Sept. 30, 2019)	Satisfied	Affirmed	**RC** CO AA