SPECIAL EDUCATION LEGAL ALERT

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As a service to CASE members, this monthly legal alert summarizes two recent articles, one that is an updated outcomes analysis of the aftermath of *Endrew F.* upon its first anniversary and the other that is a caselaw analysis of the obligations to students with disabilities in private schools. For automatic e-mailing of future legal alerts, sign up at **perryzirkel.com**; this website also provides free downloads of various related articles, including the two summarized in this legal alert.

Continuing the trend of the first six months after the Supreme Court's *Endrew F. v. Douglas County School District RE-1*, the lower court rulings for substantive FAPE for the remaining half of first year's anniversary show very limited outcomes change from the hearing officer's rulings under the *Rowley* standard in these same cases.

In 44 (90%) of the 49 cases that had substantive FAPE rulings before and after the Court's *Endrew F.* decision at the one-year mark, the rulings was the same. In 7 of these 44 cases, the original ruling was in favor of the parents, which makes the lack of change unsurprising. However, for the remaining 37 cases, the original ruling was in favor of the district, which suggests that the lack of change countered the assertion that the Court had dramatically raised the substantive standard for IEPs.	The full analysis is available as the third *Endrew F.* article under the "FAPE" subheading of the Publications part of my website. A related finding is that the lower courts thus far have also provided a rather superficial and scattered treatment of the Supreme Court's decision, including limited attention to the Court's differentiation between Amy's Rowley's inclusive setting and Endrew F's segregated setting. Perhaps the impact will be more evident in future cases and/or, where it is most important, in professional practice.
In 2 (4%) of the 49 cases, the lower court remanded the issue for reconsideration in light of the new, refined substantive standard, and the case had not resurfaced in the case law databases. One possibility is settlement, but if either or both of these cases reach a final adjudication, the odds do not favor a change in outcome.	The lack of a subsequent reported ruling for these cases reinforces the ponderous, time-consuming nature of litigation. However, other remanded cases, as illustrated by the latest ruling in *Endrew F.* (reported in the next category), are no longer in this open-question category.
Finally, in 3 (6%) of the 49 cases, the ruling changed from one side to the other from before to after. The most evident example is the district court's recent decision in *Endrew F.*, which was in the parents' favor. However, the district has appealed this ruling. Moreover, in another of these three cases, the shift oddly was from the parents' to the district's favor.	Although the district's court decision is the major example of an outcomes change, thus far it is an outlier, subject to further developments for this case and for other substantive FAPE cases. However, the various potential intervening variables include the prevailing perception among school practitioners, the pre-existing substantive standard under *Rowley*, and the individual features in each case, including the attorneys and adjudicators.

A recent analysis focuses on the legal obligations to students with disabilities, extending to students reasonably suspected of having a disability, in private schools. These students include not only what the IDEA refers to as "parentally-placed private school children with disabilities" (i.e., voluntary placements) but also the separate IDEA category of "children with disabilities where FAPE is at issue" (i.e., unilateral placements). As summarized below, these obligations extend to the district of residence under the IDEA and to the private school, in most cases, under Section 504 and/or the Americans with Disabilities Act (ADA). For a copy of this article, see my website's Publications list under the subheading "Other IDEA and/or Sec. 504 Issues"	
For both voluntarily and unilaterally placed children in private schools, the school district of location has the obligation under the IDEA to provide child find and equitable services.	This obligation is generally well known as a result of the 2004 amendments of the IDEA. Moreover, state laws in some jurisdictions extend the services obligation to related services and/or full FAPE.
However, as an independent aspect of the IDEA, a lengthening line of cases has ruled that the district of residence has an ongoing obligation for child find (i.e., evaluation) and FAPE (including annual proposed IEPs).	Within this lengthening line of cases, some courts apply this obligation regardless of parental initiative whereas other courts condition it upon the parents' communication that they are considering returning their child to the public school.
Moreover, regardless of district obligations, Section 504 obligates private schools that received federal financial assistance to provide "minor adjustments" to their students with disabilities. In contrast, school districts have no obligation to these students under Section 504 (although state laws in a few states add district obligations).	Section 504 applies to a wider group of students based on its broader eligibility standards for disability status. Although "minor adjustments" is less rigorous than FAPE, in those private schools to which the ADA applies, a different standard (see the next row) has a superseding effect.
Finally, the ADA obligates private schools regardless of federal financial assistance, except those private schools that are religiously controlled, to provide "reasonable modifications" for their students who meet the broader eligibility standards of the ADA, which are identical to the eligibility standards for the definition disability under Section 504.	Neither Section 504 nor the ADA impose obligations to students with disabilities in the limited segment of private schools that are both religiously controlled and without any federal financial assistance. For the remaining private schools, i.e., those that are religiously controlled and those that are not, the specific respective contours of "minor adjustments" and "reasonable modifications" are not clear.