**Supreme Court to Rule on Level of Benefit that**

**Special Education must provide under the IDEA**

As parents and caregivers of children with special needs, we should all be aware that the U.S. Supreme Court agreed to grant review in a special education case. This case (Endrew F. v. Douglas County School District RE-1) will require the Court to decide how much educational benefit must be provided to students who receive services under the Individuals with Disabilities Education Act (“IDEA”).

Under the I.D.E.A., the school district is obliged to confer a “free appropriate public education” (“FAPE”) upon children with disabilities. In 1982, The Supreme Court held that the education that a child with a disability receives must confer “some educational benefit” and the benefit must provide each child with “access” to an education that is “meaningful.” (Board of Education of the Hendrick Hudson Central School District v. Rowley (“Rowley”)). The Court is now being called upon to clarify what it meant by “some educational benefit.”

*The Endrew F Case*

Endrew’s (“Drew”) parents, believing that the Individualized Education Program (“IEP”) that had been offered to their son would not produce meaningful educational progress, withdrew Drew from his public elementary school in Colorado, enrolling him in private school that specializes in educating children with autism. Drew’s parents then sought reimbursement for Drew’s tuition from the Douglas School District, arguing that their son had been denied a FAPE by his public school. Both the state administrative law judge and the district court judge rejected the parents’ claim on the ground that Drew had been able to obtain “some” educational benefit from his school. The Court of Appeals for the 10th Circuit affirmed, holding that “the educational benefit mandated by IDEA must merely be more than *de minimis*” and that the educational benefit that Drew received satisfied that standard.

Drew’s parents appealed to the Supreme Court, noting that courts across the country are not uniform in their interpretation of what is required by “some” educational benefit. While most courts of appeal (including the 7th Circuit, which is the court of appeal with jurisdiction over Illinois, Indiana and Wisconsin) concur with the position that schools must simply provide education that is more than *de minimis* (or merely more than trivial), two circuits (the third and sixth) apply a more rigorous standard, requiring that schools provide “significant learning and meaningful benefit” and that the “benefit” must be “gauged in relation to a child’s potential.” The Supreme Court granted the review to resolve this conflict between the circuits.

*The Import of Endrew F. for All Children with Disabilities*

The FAPE standard is critical to parents of children with disabilities as it provides the yardstick by which the IEP (and the school’s provision of educational benefit) will be measured. Any parent who wishes to dispute the adequacy of services and supports or the educational placement in their child’s IEP has the burden of showing that the school has not offered their child a FAPE. The “more than trivial” (or more than de minimis) benefit standard applied in the 7th Circuit is abysmally low. Let us hope that the Supreme Court agrees and requires schools to aim for and to provide educational benefits that are *meaningful* in light of the child’s potential and the IDEA’s stated purposes.