

Avoid Delays in Responding to Behavioral Concerns in Education

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A recent federal court decision serves as an important reminder to local education agencies (LEAs) about flexibility and the need to deviate from customary practice when students exhibit significant behavioral issues.

The U.S. District Court for the Eastern District of Pennsylvania did uphold a hearing officer's decision in [Brandywine Heights Area Sch. Dist. v. B.M.](#), a case [Barley Snyder](#) attorneys have been tracking, but ordered that compensatory education to be calculated from the student's first day of kindergarten, as opposed to the day the district implemented the student's individualized education program (IEP).

The case involves a student with autism who was transitioning from preschool early intervention to kindergarten. The district indicated it would conduct a reevaluation but followed its standard practice and waited until April to issue the consent form. The district did not conduct the reevaluation until after the student began kindergarten. For six months the student exhibited significant behavioral issues, at which point the district amended the student's IEP to incorporate a behavior support plan.

Parents filed for due process contending that the student was denied Free Appropriate Public Education. A hearing officer found that from mid-September to early February the district "did not properly plan for or control the student's physically disruptive behaviors, which impeded his learning to the point that he was deprived a meaningful educational benefit."

On appeal, the district court noted that although the hearing officer did not have the benefit of the U.S. Supreme Court's analysis in [Endrew F. v. Douglas County School District RE-1](#), the hearing officer nevertheless examined whether the student had made progress "that was meaningful in the view of the student's profound combination of cognitive abilities." Concluding that the IEP put into place in February was "reasonably calculated to enable the student to make progress appropriate in light of the circumstances," as required by *Endrew F.*, the district court agreed that the compensatory services were appropriate until February. However, the district court expanded the compensatory award to begin the day the child began kindergarten given that the district "waited an unreasonably long time to begin its reevaluation of the student prior to the student's enrollment."

The Supreme Court's decision in *Endrew F.* emphasizes that LEAs must "offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." The courts have made it clear that LEAs must focus on comprehensive evaluations and development of clear measures of progress toward goals. As the Brandywine Heights decision demonstrates, taking a "this is how we have always done things" approach can lead to undesirable outcomes.

If you have any additional questions regarding this topic, or if we can provide any assistance as you review your current practices, please do not hesitate to contact me or any of the attorneys in [Barley Snyder's Education Group](#).