Understanding Bullying is the First Step Toward Preventing It

First in a three-part series

Editor’s note: Although any child can experience bullying, children with disabilities—such as physical, developmental, intellectual, emotional, and sensory disabilities—are at an increased risk of being targeted. In this series of three articles, the Federation will look at what bullying is and what can be done to prevent it. Look for future articles in upcoming editions of Newsline.

Thanks to stopbullying.gov for much of the information in this article

It is far too common. A child is embarrassed online. Maybe other kids call her names, whisper about her when she walks by, leave her out of group activities. Maybe it gets physical, or things are stolen from her. Any, or all of these things, can happen over and over again.

The Federation often received calls from parents concerned that their child is a victim of bullying. In fact, over 70 percent of young people say that they have seen bullying in their school. Kids who bully use their power—such as physical strength, access to embarrassing information, or popularity—to control or harm others.

Continued on page 4

In This Issue:

p. 1 Understanding Bullying is the First Step Toward Preventing It (English, Spanish, Portuguese)

p. 3 School-Based Medicaid: Expansion Update

p. 8 Issues in Special Education that Candidates Should Address

p. 11 Memories From Donor Appreciation Evening.
Dear Federation family,

In the last edition of Newsline I wrote about my personal experience with my daughter’s Individualized Education Program (IEP).

I think it is important to note that I am not alone at the Federation in navigating the systems that serve children with special needs. Nearly every staff and board member experienced a loved one being affected by intellectual, emotional, physical and/or social challenges and has benefited from assistance in their academic, social and emotional, vocational or behavioral development.

At the Federation, we not only “talk the talk and walk the walk”– we live it. That’s one reason the staff’s empathy and compassion toward families and caregivers are so exceptional. And, it is also reflected in the dedicated service we provide to professionals, partner agencies and communities.

I often have opportunities to hear staff members when they are on the phone with a parent. I can sense that, on the other end of the call, is a loving caregiver who needs information, may be overwhelmed and possibly at their wit’s end. I am always impressed and proud of the patience and knowledge that Federation staff provide. And, if they offer to follow-up, they do.

This commitment shows in the quality of our workshops, too. Recently, we held our first-ever series for Latino parents in western Massachusetts. The turnout thrilled us – over 40 families came back week after week for eight sessions. Their participation reflected the Federation’s commitment to provide a high-quality service - in part, again, because staff knows what these families are going through.

In business, it is said that companies who know their customers are more likely to thrive. That is true at the Federation. We were created by parents of special-needs children, we hire staff who have personal experience in that area, and we provide empathetic and expert support to parents and the professionals to whom we are true partners.

With gratitude,

Pam Nourse

Pam Nourse
School-Based Medicaid: Expansion Update

By Pat Nemia, Project Director of Mass. Family Voices

For the last several years, the Massachusetts School-Based Medicaid Program (SBMP) has allowed Local Education Agencies (LEAs) to bill MassHealth for medically necessary services provided at school to children on MassHealth that are also on an Individualized Education Program (IEP).

Examples of medically necessary or direct services are speech-language therapy, occupational therapy, and physical therapy. The reimbursement for these services results in federal dollars coming to the cities and towns in which these children live.

Beginning July 1, 2019, the program expanded to also include reimbursement for services to school children on MassHealth that have an Individualized Family Service Plan (IFSP) for infants and toddlers in Early Intervention, an Individual Health Care Plan (IHCP), a Section 504 plan, or services that are deemed medically necessary.

In addition, the reimbursable service types expanded to include dental hygienist, nutritionist/registered dietitian, respiratory therapist, and school psychologist licensed by Department of Elementary and Secondary Education.

The MassHealth Bulletin will provide the specifics of services and provider types involved in the expansion at this link: https://www.mass.gov/files/documents/2018/05/23/sbm_31_1.pdf

Parental consent is still required for school districts to bill MassHealth for services provided to their child at school. The consent will now be a one-time consent signed by parents rather than an annual consent form. Parents always have the right to revoke consent in writing to the LEAs.

For information about the consent process, review this link from the Department of Elementary and Secondary Education (DESE) http://www.doe.mass.edu/sped/advisories/13_1.html.

For questions or more information:
- Visit School-Based Medicaid Expansion website: https://www.mass.gov/masshealth-school-based-medicaid-program
- Call Mass Family Voices: 800-331-0688 x301
Understanding Bullying is the First Step Toward Preventing It

Continued from page one

Bullying can include teasing, name-calling, intimidation, humiliation, taunting, spreading rumors or lies, demands for money, online harassment, sexual harassment, physical assault, theft and destruction of property. The behavior is repeated, or has the potential to be repeated, over time.

Bullying can occur any time or place, including in a school building, on the playground, on the bus, in the child’s neighborhood or online. Depending on the environment, children with disabilities may be at higher risk for being bullied. While no one factor indicates that a child is more at risk of being bullied, generally, children who are bullied have one or more of the following risk factors:

• Are perceived as different from their peers, such as being overweight or underweight, wearing glasses or different clothing, or being new to a school.
• Are perceived as weak or unable to defend themselves.
• Are depressed, anxious, or have low self-esteem.
• Are less popular than others and have few friends.
• Do not get along well with others, seen as annoying or provoking, or antagonize others for attention.

The children more likely to bully others may be well-connected to their peers, have social power, are overly concerned about their popularity, and like to dominate or be in charge of others. On the other hand, they may also be more isolated from their peers and may be depressed or anxious, have low self-esteem, be less involved in school, be easily pressured by peers, or not identify with the emotions or feelings of others.

Any one of these risk factors – for bullying or being a target of bullying – does not necessarily mean that a child will be bullied.

There are many warning signs that may indicate that someone is affected by bullying—either being bullied or bullying others. Recognizing the warning signs is an important first step in taking action against bullying. Not all children who are bullied or are bullying others ask for help. It is important to talk with children who show signs of being bullied or bullying others. These warning signs can also point to other issues or problems, such as depression or substance abuse. Talking to the child can help identify the root of the problem.

Some signs that may point to a bullying problem are:

• Unexplainable injuries.
• Lost or destroyed clothing, books, electronics, or jewelry.
• Frequent headaches or stomach aches, feeling sick or faking illness.
• Changes in eating habits, like suddenly skipping meals or binge eating. Kids may come home from school hungry because they did not eat lunch.
• Difficulty sleeping or frequent nightmares.
• Declining grades, loss of interest in schoolwork, or not wanting to go to school.
• Sudden loss of friends or avoidance of social situations.
• Feelings of helplessness or decreased self-esteem.
• Self-destructive behaviors such as running away from home, harming themselves, or talking about suicide.

Look for changes in the child. However, be aware that not all children who are bullied exhibit warning signs.

If you are concerned about your child and bullying, don’t hesitate to reach out for help. The Federation call center is available, 617-236-7210, 800-331-0688 or fcsn.org/pti.

Part 2 What steps should the parent take if a child is being bullied at school?

Part 3 What steps should the school do to prevent bullying and create a safe school environment?
Comprender El Acoso Es El Primer Paso Para Prevenirlo

Primero en una serie de tres partes
Nota del editor: En esta serie de tres artículos, la Federación analizará qué es el acoso escolar y qué se puede hacer para prevenirlo. Busque futuros artículos en las próximas ediciones de Newsline.

Agradecemos a stopbullying.gov por mucha de la información de este artículo

Ocurre demasiado a menudo. Por ejemplo, una niña es avergonzada en línea. Tal vez otros compañeros la insulten con nombres ofensivos, hablen a sus espaldas al verla pasar o la excluyan de actividades grupales. A veces la agresión es física o le roban cosas. Cualquiera de estas cosas, o todas, pueden ocurrir en forma repetida.

La Federación recibe a menudo llamadas de padres preocupados porque sus hijos han sido víctimas de acoso o intimidación. De hecho, más del 70 por ciento de las personas jóvenes dicen que han presenciado acoso en la escuela. Los niños que cometen estos actos utilizan su poder, por ejemplo, fuerza física, acceso a información embarazosa, o popularidad, para controlar o hacerles daño a otros. El acoso puede incluir burlas, insultos, amenazas, humillación, provocaciones, difundir rumores o mentiras, exigir dinero, intimidación por Internet, acoso sexual, agresión física o robo o destrucción de pertenencias. Estos comportamientos se repiten o tienen el potencial de repetirse con el tiempo.

El acoso puede ocurrir en cualquier momento o lugar, por ejemplo, en la escuela, el patio de recreo, el autobús escolar, el vecindario del niño o Internet. Según donde ocurra, los niños con discapacidades pueden correr un riesgo mayor. Aunque no hay un indicador único de que un niño tenga un riesgo más alto, las víctimas suelen tener uno o más de los siguientes factores de riesgo:

- Se las percibe como diferentes de los demás, por ejemplo, por tener sobrepeso o ser demasiado delgadas, por usar anteojos o ropa diferente, o por ser nuevas en la escuela;
- Se las percibe como débiles o incapaces de defenderse;
- Están deprimidas, ansiosas o tienen una autoestima baja;
- Son menos populares que otros y tienen pocos amigos;
- No se llevan bien con los demás, se las ve como molestas o provocadoras, o se oponen a otros para llamar la atención.

Los niños con más probabilidad de acosar a otros tal vez estén bien conectados con sus compañeros, tengan poder social, se preocupen excesivamente por su popularidad, y les guste dominar o controlar a los demás. También es posible que estén más aislados de sus compañeros y que se sientan deprimidos o ansiosos.

Continúa en la página siguiente.

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SESPs are volunteer special education decision makers for eligible students who are in state custody.

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Contact us today for more information or to get started!

The Recruitment, Training and Support Center (RTSC) for Special Education Surrogate Parents (SESPs)
A project of the Federation for Children with Special Needs
Comprender El Acoso Es El Primer Paso Para Prevenirlo

Continuación de la página anterior.

siosos, que tengan una autoestima baja, que participen menos en la vida escolar, que sean fáciles de presionar por sus amigos o que sean incapaces de identificarse con las emociones o los sentimientos de otros.

Cualquiera de estos factores de riesgo, de ser acosador o de ser víctima, no significa necesariamente que esto vaya a ocurrir.

Hay muchos signos de advertencia de que una persona podría ser afectada por el acoso, ya sea como perpetrador o como víctima. Reconocer estos signos de advertencia es un primer paso importante para tomar medidas de prevención. No todos los niños acosados o acosos piden ayuda.

Es importante hablar con los niños que muestren signos de ser víctimas o de acosar a otros. Estos signos también pueden indicar otros problemas, como depresión o abuso de sustancias. Hablar con el joven puede ayudar a identificar la causa de fondo del problema.

Algunos de los signos que pueden indicar un problema de acoso son los siguientes:

- Lesiones sin motivo aparente;
- Pérdida o destrucción de ropa, libros, dispositivos electrónicos o joyas;
- Dolores de cabeza o de estómago frecuentes, sentirse enfermo o fingir una enfermedad;
- Cambios en los hábitos de alimentación, por ejemplo, saltarse comidas o comer de manera descontrolada. El niño quizás regrese a la casa con hambre porque no almorzó;
- Dificultad para dormir o pesadillas frecuentes;
- Peores calificaciones, pérdida de interés en las tareas escolares o no querer ir a la escuela;
- Perder amistades de forma repentina o evitar situaciones sociales;
- Sentimientos de impotencia o empeoramiento de la autoestima;
- Comportamientos autodestructivos como escaparse de la casa, hacerse daño o hablar de suicidio.

Preste atención a los cambios en el niño, pero tenga en cuenta que no todos los niños que son víctimas de acoso presentan signos de advertencia.

Si le preocupa la posibilidad de que su hija o hijo cometa o sea víctima de acoso, no dude en buscar ayuda. El Centro de llamadas de la Federación está a su disposición: 617-236-7210, 800-331-0688. También puede visitar nuestro sitio web: fcsn.org/pti.

A Commitment That Lasts a Lifetime

Whether your loved one with special needs is an adult or a child, we can help with:

- Special Needs Planning
- Transition Planning & Adult Services
- Guardianship & Alternatives
- Advocacy

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Art by Dominic Killany, an artist living with autism.
Entendendo o Bullying é o Primeiro Passo Para Evitá-Lo

Primeiro de uma série de três partes
Nota do editor: Nesta série de três artigos, a Federação analisará o que é o bullying e o que pode ser feito para evitá-lo. Procure artigos futuros nas próximas edições do Newsline.

Agradecemos a stopbullying.gov por grande parte das informações neste artigo

É bastante comum: uma criança se sente constrangida online. Ou talvez outras crianças a xinguem, ou cochichem sobre ela quando ela passa, ou a deixem de fora das atividades em grupo. Talvez esses abusos cheguem a ser físicos, ou seus pertences são roubados dela. Qualquer uma destas atividades, ou todas, podem acontecer repetidamente.

A Federação recebeu vários telefonemas de pais preocupados que os filhos sejam vítima de bullying. Na verdade, mais de 70% dos jovens dizem ter visto bullying na escola. Crianças que intimidam usam seu poder, como força física, acesso a informações embaraçosas ou popularidade, para controlar ou prejudicar os outros. O bullying pode incluir provocações, xingamentos, intimidação, humilhação, insultos, rumores ou mentiras, pedidos de dinheiro, assédio on-line, assédio sexual, agressão física, furto e destruição de propriedade. O comportamento é repetido, ou tem o potencial de ser repetido, ao longo do tempo.

O bullying pode ocorrer a qualquer momento ou local, inclusive em um prédio escolar, no playground, no ônibus, no bairro da criança ou online. Dependendo do ambiente, crianças com deficiência podem estar em maior risco de serem intimidadas. Embora nenhum fator indique que uma criança corra mais risco de ser intimidada, geralmente, as crianças que sofrem bullying têm um ou mais dos seguintes fatores de risco:

• São percebidas como sendo diferentes dos pares, como por exemplo, por estar acima ou abaixo do peso, por usar óculos ou roupas diferentes, ou por ser novo em uma escola.
• São percebidas como fracos ou incapazes de se defender.
• Estão deprimidas, ansiosas, ou têm baixa autoestima.
• São menos populares do que os outros e têm poucos amigos.
• Não se dão bem com os outros, são vistas como irritantes ou provocadores, ou antagonizam os outros para chamar a atenção.

As crianças mais propensas a intimidar os outros podem estar bem conectadas aos pares, podem ter poder social, estão excessivamente preocupadas com a popularidade e gostam de dominar ou estar no comando dos outros. Por outro lado, elas também podem estar mais isoladas dos pares e podem estar deprimidas ou ansiosas e ter baixa autoestima, estar menos envolvidas na escola, ser facilmente pressionadas pelos colegas ou não se identificar com as emoções ou sentimentos dos outros.

Qualquer um destes fatores de risco – ser causa ou alvo de bullying – não significa necessariamente que uma criança será intimidada.

Há muitos sinais de alerta que podem indicar que alguém é afetado pelo bullying, seja sendo intimidado ou intimidando os outros. Reconhecer os sinais de alerta é um primeiro passo importante para tomar medidas contra o bullying. Nem todas as crianças que são intimidadas ou estão intimidando outras pessoas pedem ajuda.

É importante conversar com crianças que demonstram sinais de bullying ou fazem bullying com os outros. Estes sinais de alerta também podem apontar por outros problemas ou questões, tais como depressão ou abuso de substâncias. Falar com a criança pode ajudar a identificar a raiz do problema.

Alguns sinais que podem apontar para um problema de bullying são:

• Ferimentos ou lesões inexplicáveis.
• Roupas, livros, eletrônicos ou joias perdidos ou destruídos.
• Dores de cabeça ou de estômago frequentes, sentir-se doente ou fingir estar doente.
• Mudanças nos hábitos alimentares, como pular refeições ou compulsão alimentar. As crianças podem voltar para casa da escola com fome, porque não almoçaram.
• Dificuldade para dormir ou pesadelos frequentes.
• Notas que estejam piorando, perda de interesse em trabalhos escolares, ou não querer ir para a escola.
• Perda súbita de amigos ou evitar situações sociais.
• Sentimentos de desamparo ou diminuição da autoestima.
• Comportamentos autodestrutivos, como fugir de casa, prejudicar-se ou falar sobre suicídio.

Procure mudanças na criança. No entanto, esteja ciente de que nem todas as crianças que são vítimas de bullying demonstram sinais de alerta.

Se você estiver preocupado com seu filho e bullying, não heste em entrar em contato para obter ajuda. O call center da Federação está disponível, pelo 1-617-236-7210, ou 1-800-331-0688 ou pelo site fcsn.org/pti.
The FIVE Fs: Funding, Attorneys’ Fees, Expert Fees, Full Potential, and Fair Burden

By Robert K. Crabtree, Esq. (Crabtree was a founding partner of Kotin, Crabtree & Strong, LLP, a general practice firm in Boston with a major concentration in special education and disability law. He now serves the firm as "of counsel").

As the political season moves into full gear in the presidential and many congressional elections, and as we celebrate the 45th anniversary of the enactment of Individuals with Disabilities Education Act (IDEA), this is a good time for the special education advocacy community to gather our thoughts and agree on a few issues that we would like candidates to understand and to address if elected.

Unlike many issues that currently divide our culture, the challenges of a child’s disabilities arise in families across the board without regard to political leanings and, in large part, without regard to differences in class, ethnicity, income, religion, or other such variables.

In that light, perhaps common cause can be found in a mission to improve the systems we have for addressing the needs of children who need an extra hand in their academic, social/emotional, vocational or behavioral development because of intellectual, emotional, physical and/or social challenges. Here are a few issues – the five “Fs” we think candidates should be prepared to address:

Increase federal FUNDING for special education.

IDEA has never been funded to the extent promised in the original legislation in 1972. The advocacy community was told that within a relatively short few years states would receive some 40 percent of the costs of providing special education and related services pursuant to IDEA (then called the Education for All Handicapped Children Act) from the federal till. As it now stands, only about 15 percent has ever been provided.

Bills have been filed to fully fund Congress’s avowed share of special education costs – e.g., H.R. 2902, the House IDEA Full Funding Act, filed in 2017 and S. 2542, the Senate IDEA Full Funding Act, filed in 2018 – but none has passed. The current prospects for more federal funding seem bleak, in the wake of the so-called “tax reform” legislation enacted at the end of 2017 – a step that has stripped the resources available for federal support of education and other human needs to the bone.

Attorneys’ FEES for prevailing parents: amend IDEA (as well as all other federal civil rights statutes) to overturn Buckhannon.

In the process leading to Congress’s enactment of civil rights legislation during the 1960s and 1970s, sponsors and advocates knew that without reliable access to legal assistance, it was unlikely that those with modest or no means could successfully enjoy the benefits of those statutes. Defendants in civil rights cases were, and are, typically well-heeled corporate and/or public entities who could and would dig deep to ensure that their practices and structures could continue without interference, regardless of the discriminatory effects on any protected category of individuals.

Accordingly, Congress included provisions in civil rights statutes giving plaintiffs the right to recover reasonable attorneys’ fees and related costs if they prevailed in their claims. With that right in place, attorneys who were asked to represent civil rights plaintiffs – even those without means to pay for their services – could evaluate a case knowing that if the plaintiff’s claims could be successfully litigated they could recover for what is often an enormous investment of time.

For some decades the courts helped to make this a solid and accessible right by interpreting “prevailing” to include any situation where the plaintiff’s legal circumstances were improved as a result of filing a civil rights claim, even if that improvement consisted of a settlement or another change in the defendant’s behavior without any further involvement of courts or hearing officers. This was called the “catalyst” theory, and its effects in the world of civil rights litigation were very real: both plaintiffs with modest means with which to pay an attorney and attorneys willing to risk their time for those who could not pay could pursue a claim in the realistic expectation that they would recover their fees even if the case were not fully tried, as long as they achieved a positive outcome.

This all changed, however, when the Supreme Court decided Buckhannon Board & Care Home, Inc. v. West Virginia Department of Health and Human Resources, 532 U.S. 598 (2001). There, Justice William Rehnquist wrote that the catalyst theory was incorrect. The Court established, in a

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holding that has now been extended to IDEA fee claims in all circuits where the issue has arisen, that a plaintiff cannot be deemed to have prevailed until and unless there is a "judicial imprimatur" – i.e., until a judge has ruled in the plaintiff’s favor.

In the world of special education due process, this reasoning immediately threw the parties out of balance. Once school districts realized that there would be no penalty for delay, as they would no longer be liable for the fees parents incurred in the meantime if a district made changes to resolve a case at the last minute, districts began to drag their heels. They found that if they delayed resolution long enough, many parents with limited means would drop their cases or try to proceed without legal assistance. Buckhannon, in other words, offered districts license to drive away parents with legitimate claims under IDEA by causing the costs of making good on their claims either to exhaust the parents’ resources (or an attorney’s willingness to proceed without hope of recompense) or vastly outweigh the hoped-for benefits.

The catalyst theory courts had it right. They correctly interpreted Congress’s intent in the “prevailing party” provisions of civil rights statutes to ensure that plaintiffs – and especially those plaintiffs who could not afford an attorney, often precisely because of their having suffered discrimination – could get the legal help they would need to realize their rights. The Rehnquist court had it wrong and in Buckhannon effectively took the keys to the courthouse away from civil rights complainants.

All presidential and congressional candidates should be asked to align themselves with the original civil rights architects and reinstate access to legal assistance for plaintiffs by working for legislation to reinstate the catalyst rule under all civil rights statutes.

FAIR allocation of the burden of proof: Amend IDEA to allocate the burden of proof in special education litigation to school districts.

The Supreme Court held in Schaffer v. Weast, 546 U.S. 49 (2005), that the party who files a proceeding under IDEA to seek a change in a student’s program must bear the burden of proving that the existing program fails to provide a Free Appropriate Public Education (FAPE). In the vast majority of special education disputes, this means that the burden falls on the parents. (Note that some state laws vary this rule.)

The allocation of burden of proof means that the party who carries that burden loses the case if an adjudicator does not find that party’s evidence more persuasive than the opposing party’s evidence. With an ambiguous standard like the one described in Endrew (see our argument for a “Full progress” standard below) and the deference that hearing officers typically pay to school districts’ actions in their unwillingness to substitute their judgment for that of professional educators, placing the burden on parents makes for a Sisyphean (a continual and often ineffective) challenge, while allowing school districts to introduce a minimum of evidence to defend their choices.

The author of the decision, Justice Sandra Day O’Connor, acknowledged the parents’ argument that school districts ought to carry the burden because they possess the bulk of any material evidence – educators’ and school experts’ testimony and documents generated in the course of the student’s program - that might contribute to a hearing officer’s decision. She dismissed that argument, however, stating that the apparent imbalance was offset by the parents’ right to obtain a second opinion by a publicly-funded Independent Educational Evaluation (IEE). Payment for such evaluations is typically set at the lowest possible rate, however, and the actual tasks covered by such evaluations are typically restricted (e.g., not including time observing a program or attending a team meeting). The availability of credible experts under these circumstances is far less than a fair due process system would entail. In order even to approach a level playing field, Congress needs to amend IDEA to require school districts to prove that a challenged Individualized Education Program (IEP) offers FAPE.

Expert FEES for prevailing parents: Amend IDEA to include expert fees as “related costs” when a special education plaintiff prevails.

Some time after Buckhannon and Schaffer, in Arlington Central School District Board of Education v. Murphy, 548 U.S. 291 (2006), the Supreme Court considered a claim by parents who had prevailed under Buckhannon’s criteria and then sought to recover, in addition to their legal fees, the expert fees they had incurred in the litigation. Shockingly, the Court ruled that expert fees were not reimbursable as “related costs” for a prevailing parent because Congress did not explicitly provide for those fees.

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As anyone familiar with special education litigation knows, parents whose arguments are not supported by a well-informed and credible independent expert witness have little chance of convincing a hearing officer. Even when those parents are able to obtain an IEE of their child at the district’s expense pursuant to IDEA and/or state law, there are many other tasks that an expert must perform to support a case beyond merely completing testing and writing a report, few (if any) of which are covered by the IEE statutes and regulations. These tasks include program observations, attendance at team and other meetings, assisting with responses to discovery requests, reviewing documents produced by the district (such as peer IEPs), responding to subpoenas, and preparation for and testimony at hearing.

In short, experts are critical to success in special education due process, and to omit the costs of that essential element from a prevailing parent’s recovery is senseless. The exclusion of expert costs when a parent prevails cruelly undermines a parent’s ability to secure a child’s rights under IDEA.

FULL Progress toward Full Potential: amend IDEA to require that IEPs provide for students to make meaningful progress toward their highest potential.

In Endrew F. v. Douglas County School District RE-1, 137 S. Ct. 988 (2017), the Supreme Court rejected a standard for measurement of effective progress under an IEP (“merely more than de minimis”) that had been announced by the 10th Circuit Court of Appeals – a standard that effectively trivialized the requirements of IDEA. (The 10th Circuit decision had, ironically, been authored by Judge Neil Gorsuch, who joined the Supreme Court in the week that the Court announced its decision setting his court’s holding aside.)

But while Endrew was helpful to some extent in its refusal to adopt the minimal standard articulated by the 10th Circuit, it fell far short of truly embodying the aims of the original architects of special education law. In Endrew, the Supreme Court studiously avoided establishing a standard that would push districts to maximize a student’s chance to participate fully in the life of his or her community after exiting the public school program. The Court said that IDEA requires “an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.”

Of equal significance, the Court stated that, as a matter of federal law, the educational program for a student with disabilities must be “appropriately ambitious in light of his circumstances” and that every student should have “the chance to meet challenging objectives.”

While these formulations may help to avoid the abysmal result of the 10th Circuit’s conclusions, they invite school districts to paint a student’s “circumstances” in as bleak a light as possible in order to minimize the expectations for that student. The Court having gone as far as we can reasonably expect on this issue, it will require congressional action to amend IDEA and establish a higher standard to ensure that students with IEPs are given the chance to attain their full potential, in order for such students to become contributing and well-functioning members of their communities.

The Five Fs are inextricably linked, and first among equals is Funding!

Among IDEA’s central aims are to support the development of programs and services to ensure that children with disabilities can achieve full and satisfying lives as members of their adult communities and, in the service of that ultimate aim, to open a robust channel for parents to participate fully in the decision process that drives the design and implementation of special education services for their children. For those aims to succeed there must be sufficient funding to allow decisions to be made without undue regard for the costs of services and placements.

Less-than-adequate funding has led to districts defending inadequate programs, to courts and administrative adjudicators acting out of sympathy for stressed systems instead of pushing for excellence in programs for challenged children, and to legislators countenancing erosion of the original hopes and aims of the law.

In this political season, let’s not shrink from pointing out to all who seek to serve in legislative and executive offices the issues that must be addressed for IDEA and its state counterparts truly to enable children with disabilities to become full and valued members of their communities.

A concluding note: Most of the issues outlined here have arisen because many federal courts have, over the decades, interpreted ambiguous provisions in IDEA in ways that narrow the promises contained within the Act, rather than affirming its more expansive aims in favor of helping children with special needs to achieve to their potential. This is just one of many good examples of the importance of choosing humane and knowledgeable candidates in federal elections, as presidents and legislators play their critical roles in choosing judges at all levels of the federal judicial system.
Some 90 people gathered Oct. 17 at the home of Board President John Reichenbach and his wife Lynn to learn about the work of the Federation for Children with Special Needs. The evening was a wonderful success. Thanks to everyone who attended and, of course, our kind hosts.

A theme of the evening was the importance of family in assisting individuals with special needs. In addition to John and Executive Director Pam Nourse, guests heard from Igor Reyes and John’s son, Ned, who both talked about how their families and the Federation’s services have helped them accomplish their goals.

“It was my pleasure to thank, in person, so many Federation supporters and to meet new Federation friends,” said Nourse.
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