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# Amy and Drew: Two Children Who Helped Determine What Free Appropriate Public Education Means

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## Abstract

Two Supreme Court cases have served to frame our legal rights and responsibilities regarding a Free Appropriate Public Education for students in our music classrooms and ensembles. This article serves as record of the two cases and their merits, according to the Supreme Court, as well as the actions recommended based on the court decisions.

## Keywords

disability, Endrew F., FAPE, IEP, Rowley, Supreme Court

## Amy's Story

Amy was doing well in her kindergarten and first-grade years of school, and her parents were very involved in her school progress. Amy had an Individualized Education Program (IEP) because she had a hearing impairment. Several aids and related services were available for her as part of the overall plan to provide her with a Free Appropriate Public Education (FAPE) in the Least Restrictive Environment as indicated by the Individuals With Disabilities Education Act (IDEA). The services provided through the IEP included teacher professional development in sign language, a teletype machine in the office for communication with parents (who also had hearing impairments), and an FM hearing aid. Amy also received individual instruction for an hour each day from a special tutor as well as 3 hours of speech therapy each week.

Amy was progressing well in school, making academic gains along with the classmates in her inclusion classroom, and was carefully monitored by her teacher and the IEP team. Her parents, however, were concerned because Amy was not able to comprehend some of what was said in the classroom and thought if she also had a sign language interpreter in the classroom with her, she would achieve even more as part of her academic education. They requested this and said the interpreter could be put in place of some of the other services in the IEP. The school system disagreed and said they considered their offerings to be complete for Amy. They had used an interpreter in Amy's classes for a trial period of 2 weeks and the interpreter considered the services unnecessary.

As the case moved through the courts, the fact that Amy was progressing academically and socially was a fairly common point. The parents continued to claim their child was being denied FAPE because she did not have a sign language interpreter. One thing that kept the case viable was that Amy's teacher had said Amy understands less of what is happening in class than she would if she did not have a hearing impairment. The case between aptitude (potential) and achievement in relation to FAPE continued through the higher courts. The Rowley family felt the purpose of IDEA is to give each child an equal educational opportunity. The Supreme Court, however, stated that it is not the purpose of IDEA to maximize the potential of each child. The purpose is to provide an education that is appropriate (FAPE).

One measure used by the courts is whether the student in an inclusion classroom is advancing from grade to grade. If a student is making progress along with his or her classmates, equal access has been made available. The Supreme Court, in this case, did not decide to create a test of FAPE for all students. They decided to just determine the merits of the Rowley case. This opened the possibility that another case challenging FAPE may arise in the future.

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## Drew's Story

Drew has autism spectrum disorder and was attending elementary school. The severity of his needs required that he be placed in a self-contained classroom, and he had an IEP that included behavioral and academic interventions to meet yearly goals. Each year, his team met to derive goals for the subsequent year. By the fourth-grade IEP meeting, Drew's parents had become dissatisfied with the progress their son was making. His goals each year were quite similar, and he was not making much advancement on his behavioral or academic goals. Drew was promoted to the next grade every year, yet his skill levels were roughly the same. His parents asked the school system to create a new plan for him.

The school system did not have a plan that differed from what Drew had experienced in the past. As a result, the parents removed Drew from the school and placed him in a special school for students with autism. Within a few months, Drew had made marked progress on behavioral and academic goals and was clearly advancing in his skill levels.

The parents returned to the school system with the data and plan from the school for students with autism. They asked the school system to create a new plan for Drew's fifth-grade year. The plan offered by the school system was very similar to what Drew had experienced in the past. As a result, the parents asked the school system to reimburse them for the cost of sending Drew to the school for students with autism as that school had demonstrated an ability to help Drew make significant progress. The school system denied the request to reimburse the parents for Drew's education at the school for Autism.

Drew's parents filed suit with the Department of Education, and the case began to work its way through the courts. Through this process, the Amy Rowley case was cited frequently, and some courts interpreted the Rowley decision to mean that as long as a student was making some minimal progress, FAPE had been provided. Their contention was that if the IEP is calculated to provide some educational benefit when considering the particular student and his special, unique circumstances, then the team was providing what was needed.

The question of appropriate versus ideal was raised, and again, the Rowley case was cited frequently as precedent that the IEP team had provided FAPE for Drew. The Supreme Court determined that as advancement from grade to grade is expected for students in inclusion settings, a reasonable amount of progress should be expected for student in self-contained settings—even when they will not progress through the grades in a typical manner. The court stated that students in self-contained settings are to be provided appropriately ambitious goals to meet their individual needs, and every child deserves an opportunity to meet challenging objectives.

## What 40 Years Have Taught Us

In 1975, Congress provided the first law (IDEA) that gives students with disabilities the opportunity for a meaningful education. Through this process, we can now protect students by providing a FAPE within the Least Restrictive Environment. Student IEPs are created to provide current statements of student achievement levels, goals for the next year, descriptions of the specialized instruction and services a student will receive, as well as an opportunity for the student and parents to be involved in the creation of the IEP. All these elements are designed to meet the unique needs of a student who has a disability.

We have amended this law several times during the past 40 years and, as a result, are more inclusive, diverse, and child-centered than we were in 1975. The cycle of legislation and litigation continues to refine our thoughts and practices when we consider the educational needs of students with disabilities. Our own social justice norms and ideals also continue to lead us to where we now stand in the education of all students.

## Supreme Court Decision for Amy

In 1982 when the Supreme Court provided the decision on the Amy Rowley case, we were told it was not our duty to provide the maximum possible educational opportunity for our students (*Board of Education vs. Rowley, 1982*). To some, this was surprising, while to others, it was somewhat of a relief. Many educators wish to provide all they can for their students. However, the financial toll this can take on teachers and school systems may become overly burdensome without always delivering the educational benefits intended.

The other side of this case is that some schools may have inadvertently begun to consider a minimum of services and resultant progress to be appropriate for students who require a specialized education. For those students, it is possible a FAPE was not provided. Because the Supreme Court did not offer a test or specify in any way what FAPE was, we were left with a great deal of latitude on the topic.

## Supreme Court Decision for Drew

When the *Endrew F.* case was decided in 2017, we finally received a bookend to the Rowley decision (*Joseph F. et al. vs. Douglas County School District, 2017*). In this case, the Supreme Court said that while we are not required to provide services that result in a maximized educational experience for students, we are called to provide more than the minimum in the way of specialized services, aids, and in our expectations for student progress. The test set for us appears to be that all students

receive appropriately ambitious goals and be expected to meet objectives that are challenging for them.

The current case brings about a question. Does adequate equal appropriate, and does appropriate equal adequate? Through Drew's case, we learned that adequate is not always appropriate. While an adequate education may not be appropriate, an appropriate education may be adequate for many students. The question of appropriate within FAPE is where the two court cases became significant. Amy's parents were asking for services that exceeded what the court thought to be appropriate. Drew's parents were asking for services that rose to the level of appropriate for their son.

### **What These Decisions Mean for Music Educators**

As music educators, we are asked to educate many students, some of whom we only see once a week or less. Their needs are sometimes complex, and the special education process can seem cumbersome when added to an already busy teaching schedule. The Endrew F. Supreme Court decision, however, reinforced that each student is to receive a FAPE that provides an appropriately ambitious and challenging class experience for every child.

To provide an appropriately ambitious and challenging class experience for students who are in inclusion or self-contained settings, we need to consider the IEPs of each student with a disability. This is our right and our responsibility. It is necessary as we prepare to appropriately educate all students because we may not initially be aware of what appropriately ambitious goals are for each student. The IEPs can assist us in this process.

As we have learned from the Rowley and Endrew F. decisions, we do not need to provide aids and services designed so that students achieve their maximum potential. However, it is our responsibility to create challenging musical objectives that meet the specialized needs of students with disabilities. This is a challenge as we must derive music-specific objectives from the nonmusic-specific goals in each IEP.

### **Music Objectives Drawn From IEPs**

When creating music-specific objectives, knowledge of current reading and math achievement levels of the student is critical. Those grade levels can be compared with music literacy and repertoire expectations in the music curriculum used. If a student is on a first-grade level in reading, it may be helpful to expect that student to read rhythms and melodies similar to those first-grade students will read. If an IEP states a student needs an extra set of materials for home and school, I know I am to

provide an extra set of whatever materials students may take home from my classroom. When I read that a student is to be tested individually or in small groups, I create those opportunities within my classroom to be sure I am in compliance with the IEP. The most important takeaway from the Endrew F. decision is that we are expected to have student-specific and challenging objectives, as well as appropriately ambitious goals for each of our students. We are not to allow any student to merely be in the classroom or do a bare minimum of academic work. Each student needs to have goals specific to him or her.

### **Differentiated Objectives**

To provide this service to our students, we must differentiate our objectives, expectations, and procedures. Our materials may need to be leveled so that each student is appropriately challenged. Once we become accustomed to teaching to various levels in our music classes, winding forward and backward our content to deliver meaningful instruction to every student, the process becomes much more natural. Thus, the appropriate part of FAPE becomes clear to us and to our students.

### **Individualized Assessment Practices**

IEP teams will appreciate our individualized assessment practices that demonstrate an ability to provide appropriately ambitious instruction that meets the diverse set of needs our students have. Through documentation of differentiated objectives and the way we meet these objectives, we show our success in challenging each student where he or she is and at an appropriate academic level. This can be accomplished through checklists and rubrics that exhibit a growth mind-set. This growth mind-set reflects a philosophy that each student is on his or her own path to achieving goals, even when those goals may be months or years behind (or ahead) of his or her chronological peers. Checklists that reflect several years of skill levels can be used to demonstrate growth through time and an ability to meet the needs of any student by adjusting goals and expectations so they are appropriately ambitious for that specific student.

### **Conclusions**

We have learned a great deal from Amy and Drew. Their willingness to become hallmark Supreme Court decisions helps us become better teachers for our students. Because of them we know that while we are not able to provide the maximum possible in aids and services to our students, we can make sure their education is appropriate for their needs. We also know that we are called to create appropriately ambitious goals that challenge our students

where they are and lead them to where they can be. Thank you, Amy. Thank you, Drew.

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### **Author Biography**

**Alice M. Hammel** is a widely known music educator, author, and clinician whose experience in music is extraordinarily diverse. She is on the faculties of James Madison and Virginia Commonwealth Universities, and has many years of experience teaching both instrumental and choral music in public and private schools.