

Advocating for Twice-exceptional Children

By J. Mark Bade

The way twice-exceptional students (2e) receive their education and support services can be affected by all three branches of our government — judicial, executive (with its departments), and legislative. For example, the Individuals with Disabilities Education Act (IDEA 2004, the most recent version) is national legislation that can deeply affect how twice-exceptional children are educated and, consequently, whether they thrive and reach their potential. IDEA is realized by the language in the legislation itself; by how the executive branch administers the law; and by how courts interpret the law and adjudicate conflicts in its application. However, the decisions and actions from the three branches of government can also be influenced by those of us who advocate for twice-exceptional students.

The Courts and the Executive Branch

IDEA has been reshaped within the last year by a U.S. Supreme Court decision. When the Supreme Court ruled on the Andrew F case in March of 2017, the new standard for IDEA became that an Individualized Education Program (IEP) formulated under IDEA must have more than a minimal impact and must impart “progress appropriate in the light of the child’s circumstance,” including exposure to “challenging objectives.”

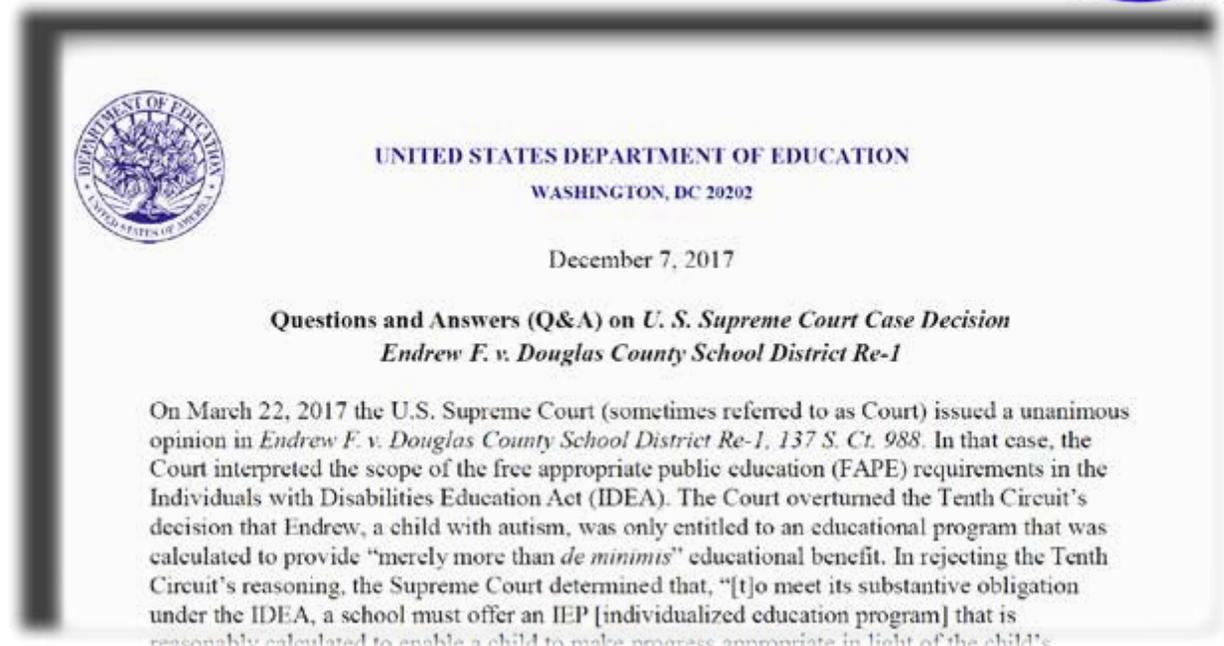
The case was brought by the parents of Andrew F, a boy on the autism spectrum who had not been making progress under his public school IEP. The parents moved their son to a private school and sought reim-

bursement from the public school district. The district’s position was that Andrew had made “some” academic progress, which was enough. Their position was supported in a due process hearing, a district court decision, and an appellate court decision. The Supreme Court, however, ruled that “some” was *not* enough.

In the aftermath of the U.S. Supreme Court decision, the U.S. Department of Education (DOE) issued guidance in the form of questions and answers. This Q & A covers family rights and local education agency obligation, clarifying the role of the IEP team, the types of goals to be put in place and monitored, and the rights of parents to request an IEP team meeting at any time. Readers may find the Q & A at <https://goo.gl/EXjfxM>.

The National Association for Gifted Children (NAGC) advocates for gifted children and, as part of its efforts for special gifted populations, for twice-exceptional children. In an open letter, NAGC thanked the DOE for upholding the Supreme Court’s standard of support under IDEA and also encouraged the DOE to “further clarify that IEP teams should enable twice-exceptional children to be involved in and make progress towards above grade-level challenging objectives when appropriate.” (Find that letter at <https://goo.gl/VRzkc7>.)

William Knudsen, NAGC’s director of government relations, contends that Andrew F creates a new and exciting opportunity for advocates to



Advocating for Twice-exceptional Children, continued

demand that public schools set higher expectations for 2e students. He notes that, for the first time, the Supreme Court has said “every child should have a chance to meet challenging objectives.”

Legislation

Many advocates for twice-exceptional children feel there’s still a lot to do to make legislation truly serve the twice-exceptional. Some of those viewpoints — specifically with regard to including twice-exceptionality within IDEA — are contained elsewhere in this issue, in the coverage of the NAGC Convention session “The Next IDEA,” for example.

Knudsen says, “IDEA 2004 limits high and challenging expectations for 2e students due to the current interpretation that alignment with a state’s academic grade-level content standards satisfies FAPE (the free and appropriate public education that is the right of children with disabilities under federal law). These academic grade-level standards often do not provide an appropriate level of expectation or challenge to maximize a student’s ability to reach his or her full potential.”

Knudsen explains the political landscape regarding IDEA reauthorization this way. Washington, DC, disability advocates are strongly opposed to a reauthorization during the current administration. It’s unlikely, he says, that any Democratic legislator would agree to a reauthorization without the support of those disability advocates. What’s more, the current administration has not signaled that it is interested in pursuing IDEA reauthorization.

Based on his experience in the capitol, Knudsen thinks that 2022 is the earliest year for the consideration of an IDEA reauthorization. This assumes, he says, that “all of the stars align and there’s interest on Capitol Hill for IDEA to be a year-two goal of a new administration.”

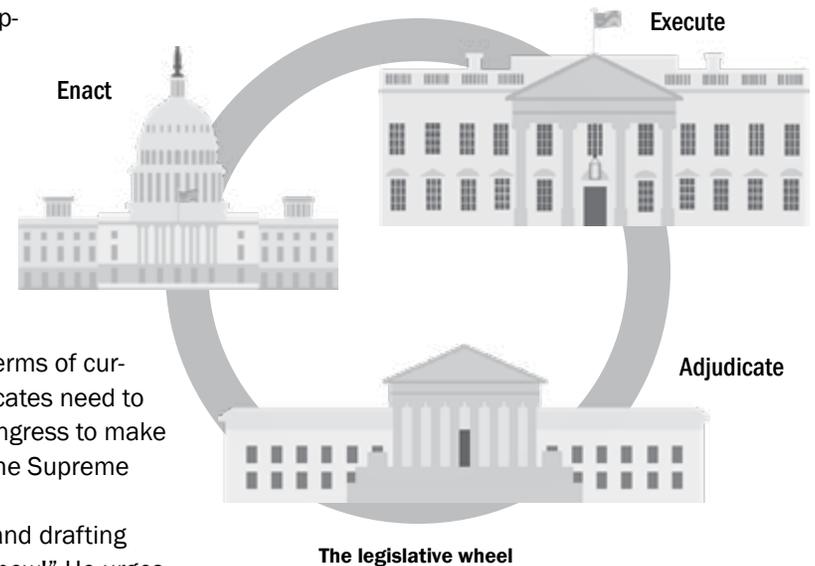
Advocacy at the Federal Level

Do we wait until 2022 to act? In terms of current law, Knudsen suggests that advocates need to continue to work with the DOE and Congress to make sure IDEA is interpreted to align with the Supreme Court’s new higher standard.

Even in terms of conceptualizing and drafting reauthorization, Knudsen says, “Do it now!” He urges advocates not to wait until 2022 to start reaching out to their three federal legislators or state contacts. It’s much easier to get legislative text in a bill before Congressional staff finish their first draft, he says “If legislators and staff know you’re a trusted resource with solutions, they are much more likely to reach out to you for advice on bill language and so forth.”

How does one become a “trusted resource”? Knudsen urges advocates, “Don’t just explain a problem to a staffer, provide a solution.” That solution includes providing clear legislative language and context that might consist of:

- Legislative text
- A one-page summary
- A list of voters in the state/district who support the recommended policy solution(s)



- Names of additional coalition partners.
- In addition, Knudsen emphasizes maintaining relationships with staff. They need to know, he says, that constituents genuinely care and are paying attention to these issues in the short and long term. To do that, Knudsen says, it’s always good to have coalition partners. There is strength in numbers.
- “The organic, organized grassroots development of constituent relationships, with both OSEP [the Office of Special Education Programs] and Hill staff, can be powerful,” Knudsen explains. He envisions “real people telling real stories from their communities’ points of view”— not 20 communiques with the same talking points, but 20 that reflect the diversity of a given community or state.



Advocating for Twice-exceptional Children, concluded

According to Knudsen, four committees, at the federal level, have the most influence on IDEA authorization and appropriations and could serve as primary targets for advocacy efforts. The four committees are:

- The House Committee on Education & the Workforce, <https://goo.gl/MbVHbL>
- The Senate Committee on Health, Education, Labor & Pensions, <https://goo.gl/K86UHK>
- The House Appropriations Subcommittee for Labor, Health and Human Services, Education, and Related Agencies, <https://goo.gl/Ez9Fp7>
- The Senate Appropriations Subcommittee for Labor, Health and Human Services, Education, and Related Agencies, <https://goo.gl/5fLGRW>.

With the DOE, it can take time for policy to change. For example, OSEP needs several internal Department of Education offices to approve a given regulation, says Knudsen. Because many of these non-special education offices are unfamiliar with the unique needs of 2e students and families, advocates are more likely to receive a favorable outcome if they develop relationships within these offices before there is a known issue or potential policy change from their political leadership.

Advocates also need to pay attention to what is happening in the government so that they can react to potential changes in a coordinated, organized, quick, and practically helpful way to reach policy objectives,

points out Knudsen. These changes could take the form of an administration's proposal to change IDEA regulations or revise its guidance on the Supreme Court's Endrew F case.

Contacts in Your State

Those in the 2e community who establish a dialog (or even one-way communication) with state special education personnel may help make sure that those personnel are up to date on federal legislation and guidance. One assessor of 2e students provides an example of how long it can take to get the word from the federal level of government down to the state level. The federal DOE sent the famous "Letter to Delisle" to state departments, part of which prohibited the use of performance "cut points" to establish eligibility for services. Nearly four years later, the assessor discovered that at least one school was still using those supposedly obsolete cut points. [For more information on the Letter to Delisle, see "Clarifications of Federal Law as It Applies to Twice-exceptional Students," in the November, 2016, issue of 2e Newsletter.]

A list of personnel in state Offices of Special Education Programs provides contact information that parents can use to communication about special education issues as they pertain to twice-exceptional children. Find the list at <https://goo.gl/gAqyJx>.

Conclusion

To strengthen protections for twice-exceptional students under current and future IDEA legislation and administration, the time to act is now. We urge members of the 2e community to reach out to legislators and administrators who can help, and to reach out using the tips and suggestions provided by NAGC's William Knudsen in this article and in the NAGC convention session "The Next IDEA." Also see the Advocacy area of the 2e Newsletter website for additional information, <https://goo.gl/hE99gE>. 

More Information

Readers interested in some of the specific issues relevant to the reauthorization of IDEA may find those in the document "LDA Public Policy Committee Platform for the Reauthorization of the Individuals with Disabilities Act." Although the document is dated 2012, the issues are likely to be still relevant. Find the document at <https://goo.gl/NJPszD>.

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