



## Fulfilling the Promise of IDEA

In the 40+ years since the Individuals with Disabilities Education Act (IDEA) became law, students with disabilities have been guaranteed meaningful access to a “free appropriate public education,” including early intervention services for infants and toddlers and special education services for children and youth through age 21.

IDEA has changed the landscape for students with disabilities by opening the door to public education, creating more inclusive classrooms and holding schools accountable for results. However, students with disabilities chronically lag their peers in achievement and postschool outcomes. Access alone clearly is insufficient.

This is an opportune time to reexamine the promise and reality of IDEA comprehensively for two reasons:

1. A U.S. Supreme Court decision in 2017 effectively raised the standard for special education, putting every state, school district and school on notice that the status quo is unacceptable.
2. IDEA is due for revision. Congress has reauthorized IDEA three times, most recently in 2004. More is known now about effective interventions for students with disabilities, and about the challenges of applying special education research and policy guidance in practice.

To prepare for this opportunity, the American Institutes for Research (AIR) in April 2018 convened a working meeting of special education experts and stakeholders, including teachers and parents; leadership, professional and service organizations; federal, state and local policymakers; and the research community.

**6.7  
million**

children served under IDEA

**14%**

of public school students  
with disabilities identified

## Highlights of the Meeting

### Advances in the Law Create Opportunities

**“A student offered an education program providing ‘merely more than *de minimis* progress’ from year to year can hardly be said to have been offered an education at all.”** — U.S. Supreme Court Chief Justice John G. Roberts, Jr., *Endrew F. v. Douglas County School District*

Two key U.S. Supreme Court rulings, 35 years apart, bookend long-standing requirements and new, potentially “game-changing” requirements for the provision of free appropriate public education (FAPE). At the meeting, Mitchell Yell, Fred and Francis Palmetto Chair in Teacher Education and Special Education, University of South Carolina, traced the history of legal doctrine pertaining to educating students with disabilities.

**Establishing a “Basic Floor of Opportunity.”** In a 1982 case, *Board of Education v. Rowley*, the Supreme Court ruled that public schools must provide a “basic floor of opportunity” for students with disabilities (Yell, 2018). The court stopped short of requiring schools to provide services that would maximize each child’s potential, however. In this case, the parents of a severely hearing-impaired child had appealed lower-court rulings that upheld the school district’s refusal to provide her with a qualified sign language interpreter. *Rowley* applied a two-part test to FAPE:

1. Has the state complied with the procedures set forth in the law?
2. Is the resulting individualized education program (IEP) reasonably calculated to enable the student to receive educational benefit?

The Supreme Court ruled that the district had complied with the procedures of the law and that the child also had received educational benefit because she was academically able and advancing from grade to grade. The court thus essentially sidestepped a broader ruling on the second part of the test that would have applied to all students with disabilities, Yell said.

“The procedural part is pretty easy,” Yell said. “The second part is pretty difficult,” since the “reasonable calculation” of educational benefit should be individualized for every student.

Subsequent U.S. district and appeals court decisions on FAPE resulted in a “race to the bottom,” Yell said. Inconsistent, typically low standards emerged across the country for defining educational benefit for students with disabilities.

**Raising the Bar on “Educational Benefit.”** Fast forward to today. In a “rare, extremely important” 2017 decision, *Endrew F. v. Douglas County School District*, the Supreme Court raised the bar for defining the level of educational benefit that school districts must provide under IDEA, Yell said. A lower court had ruled that the educational benefit for the autistic student in the case had to be “merely more than *de minimis*” — too trivial to matter.

In a judgment seen as “stunning” and “monumental” (McKenna, 2017), the Supreme Court unanimously overruled that decision, clearing the way for this student to receive a more ambitious IEP — and reimbursement for substantial education and litigation fees. Notably, the court addressed not just the student’s educational needs but also his needs for behavioral services, Yell said.

### Five Takeaways From the 2017 Supreme Court Decision

**“In all actuality, the race to the bottom is over. Like in all vampire movies, the Supreme Court drove a stake in the heart of *de minimis*.”** — Mitchell Yell, Fred and Francis Palmetto Chair in Teacher Education and Special Education, University of South Carolina

1. The *de minimis* or “trivial” educational benefit standard is history.
2. “Progress appropriate in light of the child’s circumstances” replaces “educational benefit” as the new standard for FAPE.
3. *Endrew* does not replace or overturn *Rowley*; rather, it clarifies the two-part test of FAPE:
  1. In the development of an IEP, has the school agency complied with the procedures set forth in IDEA?
  2. Is the resulting IEP reasonably calculated to enable the child to make progress appropriate in light of the child’s circumstances?
4. Like *Rowley*, *Endrew* does not set a standard for maximizing each child’s potential.
5. The *Endrew* decision provides guidance to special education administrators and teachers in developing IEPs that meet the FAPE standard.

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Source: Yell, 2018.

### The Challenges of Improving Outcomes for Students With Disabilities

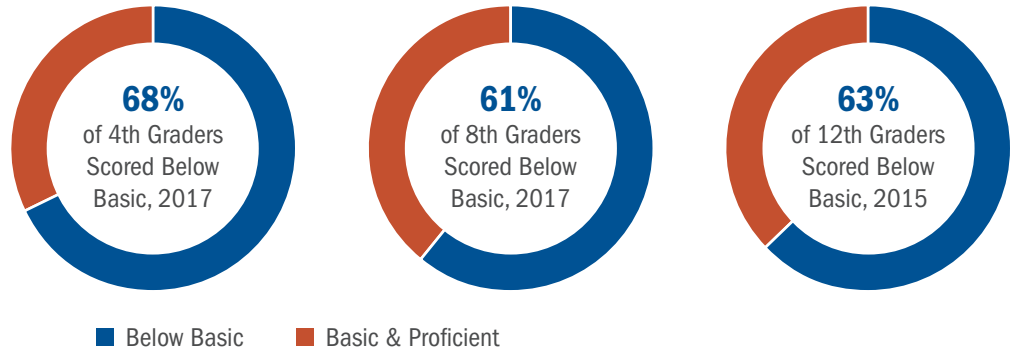
**“There is no positive trend across time in achievement data for students with disabilities.”** — Douglas Fuchs, Professor of Special Education and Nicholas Hobbs Endowed Chair, Vanderbilt University, and AIR Visiting Fellow

Approximately two-thirds of students with disabilities are taught in general education classrooms alongside their nondisabled peers for 80 percent or more of their school day. This is major progress, considering that before IDEA, millions of children with disabilities were excluded from public school altogether.

However, “the academic achievement of students with disabilities is abysmally low and unacceptably low,” said Douglas Fuchs, Professor of Special Education and Nicholas Hobbs Endowed Chair, Vanderbilt University, and AIR Visiting Fellow. He referred to children and youth with identified disabilities and those whose disabilities have not been identified — but should have been (Fuchs & Fuchs, 2018).

Data from the U.S. Department of Education’s Office of Special Education Programs indicate a positive trend over time in the inclusion of students with IEPs in general education classrooms, Fuchs said. At the same time, however, the overall performance of students with disabilities on the National Assessment of Educational Progress (NAEP) is low and has not improved over time.

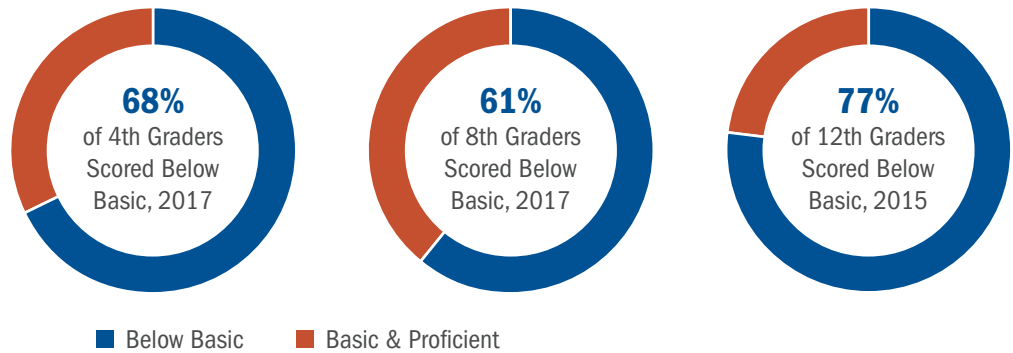
### NAEP Results for Students With Disabilities, Reading



Sources: NAEP Reading Report Card, 2017, Grades 4 and 8. Retrieved from [https://www.nationsreportcard.gov/reading\\_2017/#/?grade=8](https://www.nationsreportcard.gov/reading_2017/#/?grade=8);

NAEP Report Card, 2015, Grade 12. Retrieved from [https://www.nationsreportcard.gov/reading\\_math\\_g12\\_2015/#reading/acl#header](https://www.nationsreportcard.gov/reading_math_g12_2015/#reading/acl#header)

### NAEP Results for Students With Disabilities, Mathematics



Sources: NAEP Mathematics Report Card, 2017, Grades 4 and 8. Retrieved from [https://www.nationsreportcard.gov/math\\_2017/#?grade=4](https://www.nationsreportcard.gov/math_2017/#?grade=4);

The Nation’s Report Card: 2015 Mathematics & Reading at Grade 12. Retrieved from [https://www.nationsreportcard.gov/reading\\_math\\_g12\\_2015/#mathematics/acl#header](https://www.nationsreportcard.gov/reading_math_g12_2015/#mathematics/acl#header)

**Intervention and Individualization.** IDEA has created and shaped special education, and the Supreme Court’s *Endrew* ruling could provide an unprecedented new opportunity to improve student outcomes, Yell said. But there is a caveat: “Unfortunately, the law is far less effective at guiding and encouraging the use of effective practices.”

On that front, Lynn Fuchs, Professor of Special Education and Dunn Family Endowed Chair, Vanderbilt University, and AIR Visiting Fellow, offered a glimmer of hope for moving research into practice. “There exist empirically validated intervention programs and

approaches to individualizing instruction that are available to the field to significantly boost the learning of students with identified disabilities,” she said.

As an example, Fuchs cited an initiative at the U.S. Department of Education’s National Center for Special Education Research: Improving Reading and Mathematics Outcomes for Students with Learning Disabilities (Fuchs & Fuchs, 2018). The center developed and empirically validated Super Solvers, a 13-week, 39-lesson mathematics intervention on fractions — a “gatekeeper to college access and employment success.”

Students with disabilities struggle with fractions and significantly lag their peers in performance, Fuchs said. With careful, explicit instruction on key topics and strategies offered in this intervention, students with disabilities, on average, completed fourth and fifth grades performing comparably with their nondisabled classmates on college and career readiness standards on fractions.

Still, some students with disabilities do not respond adequately, even with validated interventions, Fuchs said. Students’ response to interventions must be assessed and monitored closely to identify students who need more intensive services — including behavioral support. With individualized instruction and an iterative process of teaching, monitoring and ongoing adjustments, validated interventions can serve as core programs for more intensive support.

**66%** of students with disabilities graduated from high school in 2016, compared with an **84%** graduation rate for all students.

**Identification — and Access.** Many students with disabilities do not have access to validated instructional programs and individualized approaches, Fuchs and Fuchs said. This “absence of access” — even though access is a fundamental tenet of IDEA — may be because their schools do not offer such programs, or because their schools have not properly identified them with a disability.

Claims about the relationships between identifying students with disabilities, accessing special education services and providing interventions and individualized support — and how to respond to these issues — are matters of debate. “One rather obvious explanation, we believe, is connected to service delivery,” Douglas Fuchs said. “Most instruction provided to children and youth with disabilities, in and outside of the regular classroom, is insufficient. It has failed these most vulnerable students.”

**1 in 5** children in the United States have learning and attention issues.

But: “Only a small subset receives specialized instruction or accommodations ... while millions of children with learning and attention issues are **not formally identified.**”

Source: National Center for Learning Disabilities, Inc. (2017)

## Town Hall Summary

**“It is time for parents, teachers, administrators, advocates, and policymakers to engage in honest, candid discussions about service delivery that includes all necessary nuance.”** — Douglas Fuchs, Professor of Special Education and Nicholas Hobbs Endowed Chair, Vanderbilt University, and AIR Visiting Fellow

In a Town Hall session following the presentations, two key themes emerged:

1. In a nod to powerful grassroots advocacy efforts led by students, teachers and families, several meeting participants recommended supporting students with disabilities, parents and educators in advocating improvements to special education, including using the power of the courts to effect change. In the words of one participant, “The importance of advocacy cannot be overstated.”
2. Researchers and practitioners who concentrate on special education have considerable expertise — and they have helped improve outcomes in general education. Special education experts could leverage this knowledge and experience to gain a seat at the table for reimagining teaching, learning and supports for all students, including students with disabilities.

### Call to Action

Fulfilling the promise of IDEA calls for renewed engagement in the field. The Supreme Court ruling, research-based interventions, and the expertise of educators should inform policy and practice and, in time, the next generation of IDEA.

Legal scholars have described the Supreme Court's *Endrew* decision as a “game changer.” Writing for the court, Chief Justice Roberts asserted that the earlier *Rowley* ruling, which proclaimed that schools were obligated to ensure only minimal progress for students with disabilities, is too low, unduly pessimistic and unacceptable. The court’s message to schools (and advocates) across the country is clear: Standards and expectations for children and youth with disabilities must be revised upwards as circumstances dictate.

What the court did not do, and cannot do, is prescribe an education that would substantially strengthen the academic performance of students with disabilities. Special education advocates must assume a more active leadership role, from the schoolhouse to the statehouse, in the education of special needs students. In collaboration with parent advocates and students themselves, general and special educators have an opportunity to ensure that much more intensive treatments are delivered to students with serious learning and behavior problems who desperately need them.

AIR plans to continue this collaborative effort with stakeholders and, through its work, provide resources to advocates interested in improving outcomes for students with disabilities.

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