



Indicators of Progress in the Wake of *Endrew F.*

Tessie Bailey: All right. So let's get started. Welcome to the PROGRESS Center's webinar on indicators of progress in the wake of Endrew F. My name is Tessie Bailey, and I am the Director of the PROGRESS Center. I am very pleased to be here with 2 of our center advisors and national experts, Dr. Perry Zirkel and Dr. Mitch Yell.

If you're not familiar with the PROGRESS Center, we launched in 2019 as the go to place for information and resources and technical assistance to support local educators in developing and implementing high quality educational programming. And the idea was to support local educators through 3 strands of work. And so you can see those boxes there, through our knowledge development activities which is led by Stacy Hirt. We host an annual Thought Leader Summit on critical issues, we have conducted educator and family and student focus groups to understand what's happening in the field. And we're working on our national Beating the Odds analysis.

And like other national centers, we do provide direct technical assistance under the direction of Steven Prater. That includes training and coaching for local education agencies, charter schools and nonpublic entities. And finally, to ensure our work is universally accessible and available to all educators, we have our work that's led by Amy Peterson that includes our free national learning event that will be held in late July. Webinars like this one, and our website, www.promotingprogress.org. We also have a free learning management system, which I'll share a little bit about in a couple of minutes.

So we have within our free learning management system, that's done in partnership with the National Center on Intensive Intervention, several modules that may be of interest to folks on this call. They're part of our Special Education Law series. They were developed in collaboration with Dr. Zirkel and include other modules within our scope, what is the IEP and some of our instructional modules, including how to design and deliver specially designed instruction. So please check those out.

And just to give you a bit about why we're here today, the idea of the PROGRESS Center actually stems from the 2017 Supreme Court decision, Endrew F. And you know the decision, as you can see on the screen, was really to meet the substantive obligation under IDEA, a school must offer an IEP that is reasonably calculated to enable a child to make progress appropriate in a lot of the child circumstances, and so similar to previous decisions. You know this idea of progress, what are indicators of progress, was not defined beyond the in light of the child circumstances.

So we've been grappling with the center, and you know, since Endrew F. is, what is this idea of progress? What are appropriate indicators of progress? And our national experts today will explore this topic in terms of what we're seeing from the case law post-Endrew F., as well as the professional literature.

I've already introduced myself, and I will come back at the end to facilitate some of the questions. Please remember you can put your questions in at any time, and if we have time, we will address those if we don't get to your question, or you have a question that's a little off topic, please find us at our website.

I'd like to introduce Dr. Zirkel. First, he is a PROGRESS Center advisor and university professor emeritus of education law at Lehigh University, where he was formerly the Dean of the College of Education, and he is bringing his 35 plus years of experience as an impartial specialist in education law with a subspecialty in special education law.

I'd also like to introduce Dr. Mitchell, who also has been a PROGRESS Center advisor, and he is the Fred and Francis Lester Palmetto Chair of teacher education and professor in programs and special education at the University of South Carolina. Dr. Yell is a nationally recognized expert in special education law and the IEP, and many of you know him from his textbook entitled *The Law and Special Education*, and it's now in its fifth edition.

So before I pass it over to our presenters, we'd love you to just use the chat box and let us know a little bit about your experience with Endrew F. Are you not familiar at all? You could just put a 0 in the chat box. Are you very familiar? And so as we share some of what we're seeing. I'm gonna open it up a little bit. I see lots of threes and fours. Hopefully, a lot of you have heard it. It's been a little bit of time. I think what we're not so clear about, and what we're hoping to hear more about is some of the impact of Endrew F.

So I'm gonna pass this over to Dr. Zirkel and keep your chats and questions coming.

Perry Zirkel: Thanks, Tessie. As you see on this slide, the organization and thesis of this particular session is to distinguish between legal requirements that I'm sort of personifying here as established by the courts starting with the Supreme Court in *Endrew F.*, and professional best practices as determined by special ed experts as my colleague Mitch Yell is personifying.

As a matter of fact, through this Zoom presentation, you see these little windows where you see my sort of picture and Mitch's picture. If it were done ideally, he would be in the higher position I would be in the lower position, because, overall, what you'll find as you look through this is, if you clearly differentiate, although both of us sort of, we're bifocals, that is, we have some educational expertise and some legal expertise. If you separate it out by these personifications, the law is the lower level. It's just the basic, whatever is required at a minimal legal level, whereas most of you are and should remain at the much higher level that Mitch personifies of professional practice. That is evidence based and collaborative with parents.

And so we're gonna look at an issue that is of great concern both at the legal and at the professional levels that *Endrew F.* did not provide as much information as we would like. And that is, how do you sort of operationalize what is progress? What do the courts use, and what does our literature recommend to indicate or measure the progress of a child, whether it's *Endrew* or any other child with a disability.? So let's move into it.

Now, to sort of understand this lower level that I'm sort of representing here, Endrew F. provides the substantive standard for FAPE, but chronologically, to understand it better, the landmark case was in 1982, Board of Education versus Rowley. Amy Rowley being, as you'll see, there's some a distinction that we should make here. But Amy was number one a child who was hearing impaired and number 2, she was integrated or included, for almost all of the classes, and her classes were at the kindergarten first grade, in those 2 grades when this case rose. And the Supreme Court ended up elaborating or not just elaborating, but just defining a substantive standard, how good does an IEP have to be, and you see the words in quotes "reasonably calculated to enable the child to receive educational benefit."

Then some 35 years later, the Supreme Court readdressed this same question as to what then, is the substantive standard? But Endrew, unlike Amy Rowley, number one, was not integrated or fully included at all. He was segregated in a special education class from the school, and ultimately the parents unilaterally placed him in a special education center or school. A second difference is that whereas Amy was performing on standardized tests, etc., at a relatively high level, Endrew was not performing at this same level, because his potential and circumstances appear to be different.

Now, Rowley, if we go back again to that Rowley case, if we try to look for again indicators, operational measures of progress. We find, as you see, quoted here from the Rowley decision, that if the child is being educated in the regular classrooms which Amy was, the IEP Should be reasonably calculated. Now remember this language reasonably calculated, but instead of educational benefit, which was the general standard for a child like Amy. When we get to operationalize the indicators, the court spelled out again at just a minimum level, passing marks and advancing from grade to grade. So we've got the notion of grades as passing marks and promotion, if you will, from moving from grade to grade, and the court indicated, as is generally appropriate in special ed that although these were general indicators, they were not absolute indicators, and it may be that a particular child with passing grades, and who was promoted would not meet the Amy Rowley or the Rowley standard.

But that along with that, when there's doubt about it, there would be judicial deference to local and state school authorities. The court didn't define what local and state school authorities are, but it was fairly obvious to most folks, especially when we looked at the subsequent cases that the local school authorities are many of you folks who work in schools as administrators, supervisors, teachers, and related service specialists and state school authorities, in addition to the obvious reference to state education agency employees would be hearing officers. And you'll see that that becomes an important factor in the outcomes of cases.

Now we move in terms of those initial indicators from Rowley, and we move to the Rowley progeny. By Rowley progeny, what we're referring to are the lower court decisions. Between 1982, the Rowley case and in 2017, the Endrew F. Case, and there were hundreds actually more than you know, there were thousands of lower court cases that applied the Rowley of language, not only for substance, the substantive side, but also procedural compliance. And if you look through these various rulings, you find that number one. The courts had agreed in these lower court cases that number one, the reasonable calculation did not in any way guarantee that a job would make progress, and two, the so called snapshot approach snapshot at the time, I suppose, being this something that some of you are

not familiar with a polaroid camera. Today, we would think of your iPhone and taking a picture. But the point is using that metaphor.

The court, instead of being an armchair quarterback, since given their slow progress themselves in deciding these cases, they could be 2 years later, from the actual facts of the case in the IEP meeting, they should put themselves back just like hearing officers must put themselves back, to the time of the IEP meeting and say, what did the IEP members of the team know? And what should they have known about the particular child? Even though we 2 years later have further evidence that would not be controlling in this case.

And second, and notice, this big difference between most of you who are nuanced professional educators and legal folks like me is, the courts refer to objective evidence, and what they call objective evidence are generically test scores, which obviously include some very subjective aspects depending upon the test progress reports, which are obviously even more subjective, and most of all, teacher testimony. But the courts are saying the indicators of progress to us through a legal lens are those kinds of categories, and you'll see later in these slides how we use those categories to sort of sort through and determine the frequency and weight of the various indicator.

Moving on, Endrew took that snapshot approach and ended up in effect, endorsing that. Remember, that was from the lower courts, and saying reasonably calculated qualification reflects a recognition that it's a prospective judgment by school officials. So, although the hearing officer accord is looking in the review mirror, they put themselves in place of what the IEP team was doing as they looked forward to the implementation of the IEP.

Second, Endrew F. reaffirmed what Rowley had said, and that is that we are not doing what is ideal or optimal. We're only requiring reasonable. But again, remember the difference between me and Mitch, if you will. We are not advocating together that you should just aim for what's reasonable. We would much prefer that you aim for what is optimal, to do the best you can, because that is what your ethic is. But do not confuse or fuse that with what Endrew or Amy, not Amy, what Rowley had said.

And Endrew once again repeated this notion that Rowley had made clear that a child fully integrated in a regular classroom, for there should be reasonable calculation for that child to achieve passing marks and advance from grade to grade. But the court distinguished the Rowley situation from Endrew's particular situation, not necessarily using that standard. And here you see the opposite category. And if you think about it carefully, Amy Rowley was on sort of one end of the spectrum, Endrew, as that a different, polar side of the spectrum. And what the court did not clearly address at all is the many kids in between, in between a child who is relatively fully integrated and a child like Endrew, which the which the court, this is not Amy.

What the court was talking about is a student who's not fully integrated and not able to achieve on grade level, and one wonders about what the court is considering, not able to achieve on grade level, since many of us believe that all children are capable of achieving on grade level with appropriate instruction. But nevertheless, we're looking at what the Supreme Court said, and these 8 members there are 9 members on the court. But Gorsuch was not, he had not participated in oral arguments. So 8 justices actually determine this decision, and they all agreed that appropriately ambitious goals were

appropriate and challenging objectives. But in the court's view, ambitious or challenging objectives were for a child who would not achieve necessarily passing grades, but be as close as they could, and with regard to judicial deference.

The second bullet on this slide, a judicial expectation that school authorities, that well, first of all, that we would not only as courts or hearing officers defer, but there was an added nuance, and that is an expectation on in return for this deference, that school authorities, meaning at the district level, would provide to parents a cogent and responsive explanation that a hearing officer or court could ultimately judge as to whether it is cogent or responsive, and if not, then presumably not be entitled the deference. Moving on.

Mitch Yell: Okay, in the article, our framework for analyzing the difference between the optimal, as Perry put it, and the requirements of the law are, we looked at these categories of progress indicators, primarily we looked at 5 of them. Grades and promotion, standardized tests, other tests that were not covered in the standardized categories, which we'll discuss later, progress reports, and then other evidence of academic, functional and behavioral advancement. And what we sought to do really was compare the should of professional literature as exemplified by the National Center on Intensive Intervention and the PROGRESS Center on the research base of what is an effective progress indicator.

That's the should of professional literature. And we sought to compare that with the must of the judicial rulings which have applied Endrew F. So we did a comparison between the 2. But first off, what we'd like to talk about is kind of the overall attributes from the professional literature on progress indicators, and that is the should dimension that is based on the optimal. It's based on the professional literature in special education related fields like school psychology, and the first attribute of a progress indicator is, it should be used for formative purposes to guide instruction in relation to the IEP goals and to make decisions for changing IEPs so formatively.

Progress indicators should allow us to make repeated measurements of students' progress during the course of instruction, and then be sensitive enough to measure student progress on a short term basis and make changes if necessary. A second major attribute is, progress indicators should have strong psychometric properties. In other words, for a progress indicator to be maximally effective, it needs to be reliable and valid.

Third, the progress indicators should be time efficient and easy for teachers to administer the data that we gather from. Progress indicators are going to be most effective if we can integrate them into instruction. So the teachers are receiving frequent feedback about how their students are doing and, in fact, if progress indicators are unduly obtrusive to interfere with the teacher's already busy daily routines, they're like a lot likely to be used.

Fourth, progress indicators directly sample the behavior of interest which means the, and I'm talking here about direct measures of behavior, They are more precise. They're efficient and more authentic. So, for example, if we're interested in reading, we might be using a progress indicator of oral reading fluency, which is a direct measure of the various target meter we're looking at, and these direct measures have extensive support in the research, literature and

Fifth, progress indicators should provide meaningful data, in relation to this, to the student's need and the IEP's need statements and the present levels of academic achievement and functional performance. And the best practice indicates that these statements, our present level statements should serve as an effective baseline for the students IEP goals and framework, then for the IEP's specification of specially designed instruction, and with the progress indicators then serve as dynamic connectors.

Six, progress indicators should inform instruction in different ways. That is, we have a number of different progress indicators. We have general outcome measures designed to inform the teacher as to the extent a student is making progress in an area generally such as a reading proficiency or math proficiency. Other measures, such as mastery, monitoring indicators, do inform us about the teacher's instruction, and what areas of skill development may be a problem for a student. Now, in the next slide we turn to the judicial rulings.

Perry Zirkel: And this is how we formed the notion of what progress indicators the courts have derived from Endrew F. and have used to apply its substantive standard of reasonably calculated for appropriate progress.

Now, Endrew F. was decided or issued in March 2017 to find an ample but neat 5 year period. Then we identified all of the cases that cited Endrew F. between March 2017 and March 2022. So we're now looking back in our rearview mirror a bit, because obviously, March of 22 is already more than a year in our past. Nevertheless, it gave us 461 court decisions, lower court decisions for each one. The first thing we did was make sure that we had the highest, most recent ruling on Endrew F. because some of these cases were appealed from the lower court to the to what Federal Circuit Court of Appeals.

And then we went through and said, of the 461 cases by skimming through them, did they meet 2 criteria? A. Did it apply this substantive standard because many of these cases cited Endrew F. just because it's sort of a north star that would guide us in general. But it may have been a case that had to do with discipline or procedural faith or implementation FAPE. We wanted the substantive side of FAPE.

And number two, did it identify at least one progress indicator within the groups that Mitch had just identified, such as grades or promotion or standardized tests? And we found surprisingly to some of us that only 13% of all of those decisions met those two criteria. So we focused in on the 58 rulings having to do with substantive FAPE. Now, the court decision may have had several rulings, for example, one on procedural, but we only looked at the ruling about whether or not the IEP met the substantive standard from Endrew F. And in doing so the first sort of dark blue item, you see here is outcomes. These decisions were obviously strongly skewed in favor of school districts, the specific percentages being 88%. Where the ruling was in favor of the district, that is, their proposed IEP, and 12% in favor of parents, only 7 of the 58 cases.

The rulings did not rely on the more nuanced distinctions in the Endrew F. Decision. So some of the things that we looked at, such as the need for a cogent and responsive explanation from district, for there to be deference, the courts being general and being congested. So just didn't pick up on some of these nuance distinctions, and as I just listened to Mitch in terms of what are the optimal, what's the optimal criteria for progress indicators the courts should be learning from, they should be the ones

listening to his slide, etcetera, and explain it to him because they miss it altogether. Understandably, because again, they're not educators, and they're faced with a whole battery or menu of possible topics ranging from Oh, I don't know, of terrorists and all these other major issues that face our society together.

And finally, for those of you that are looking for from the law, these very specific, what must we do, what must we not do, as it relates to all things like a specialized area like assistive technology, the courts is in complete contrast with that are generally holistic. They look at the total package without getting into the specific elements, and they're relatively relaxed rather than particularistic and rigorous in their approach to progress indicators. Thus, that's one of the reasons that we should not rely on courts to sort of spell out what we quote "should" be doing. Moving to the next slide.

Mitch Yell: So what we started, we wanted to compare the professional optimal recommendations and then look as the should, and then look at the judicial interpretations or the must. And first we looked at grades and promotion, and in terms of the professional literature on grades and promotion, grades should focus solely on student proficiency. They should adhere to clearly describe performance standards, be consistent from teacher to teacher, and communicate useful and concrete information to both students and their parents.

However, in the absence of specific grading policies, are based on their own professional views. Teachers often apply in formal and idiosyncratic adaptations that really do not fulfill these purposes. And thus they lead to validity problems. And we also have other issues like grade inflation, kind of the softer side and the of grading and the elementary grades, the positive orientation of special education. So grades are very questionable indicators of actual academic or behavioral progress in relation to how well a student is actually doing.

Now, the overlapping progress indicator promotion is similarly a problem, because there's really an inconsistent shifting between social promotion, retention, often without any research base at all, without careful application and advancement through grades or promotion, is often relatively automatic, at least not carefully considered, and for that reason either the use of grades or promotions are not suggested in the professional literature as progress indicators.

Perry Zirkel: Yet when you move to the bottom of this slide again, to the extent that we look at courts and see to where they would best fit, they were the most frequent progress indicator that was identified in the 58 relevant decisions. And that's no surprise, because Number one, remember that in Rowley, the court had said the only indicator that they expressed was grades, that is, passing marks and advancement from grade to grade, i.e., promotion. But in doing so, the courts accorded negligible consideration to the limitations of these measures that Mitch just talked about. They just missed this almost entirely.

And why? Well, one of the reasons a major reason is the filtering effects that are specific to the judiciary. The first filtering effect, for example, is that the courts, in interpreting the cryptic language in the IDEA, have concluded that even if a parent prevails, although they're entitled to attorney's fees in the discretion of the courts, they are not entitled to expert witness reimbursement, and thus, in general, then, parents are not able to educate the courts to the extent that Mitch is representing here.

Second, even if there were some expert testimony from the parent side, it's the hearing officer that would often listen to that and take it into consideration to the extent that the hearing officer had any expertise herself or himself. But as we move up from the hearing officer to the courts and successive levels of the courts, there is less and less emphasis on what are the specific facts and more just general deference to the hearing officer and or the school authorities, and another filtering effect, of course, is the settlement to process that takes care of about one end, that is, of every 19 filings for a due process hearing, only one goes to decision. So you have this vast array of settlements and abandonments and withdrawals of cases that filter out some of the more nuanced, factually specific and professionally appropriate indicators. Moving on.

Mitch Yell: The next progress standard indicators, what we looked at were standardized test scores. Now, it's important to understand, there's misunderstanding about this, but standardized tests refer to any tests that are administered, scored, and interpreted in a consistent or standard manner. So across different times and places. Now some standardized tests are referred to as norm referenced measures of achievement. There's really 2 groups of those kind of the individual or group administered tests focusing on student achievement in relation to national, state, or local peers, such as i-Ready, KeyMath, the Woodcock Johnson.

And there's those group administrators, administrative tests that focus on district and school accountability. Now there are number of problems with these tests that are pointed out in the professional literature, such as the overuse and the inappropriate use of percentile range, such as grade equivalent scores.

The general professional literature would say, norm referenced standardized tests are very questionable in terms of are they useful as progress indicators. Now, another type of standardized approach is the general outcome measurement, such as curriculum-based measurement when used for pretty frequent progress monitoring. Now they've been characterized widely in the professional literature as one of the most powerful evidence-based interventions that are currently available.

And the National Center on Intensive Intervention, for example, uses database instruction, which is a form of general outcome measurement, so very positive for general outcome measurement, not positive for norm reference, tests of achievement, proficiency.

Perry Zirkel: And once again, in clear contrast, at first, we find, as might be expected, that because of the general sort of popularity of standardized tests and the commercial interests behind them. When we just measured how frequent a particular category of progress indicator is, they're second to grades and promotion as far as their frequency. And yet, a critical assessment of their limitations was almost entirely absent, and the most common standardized achievement measures that the courts cited and relied on were not the general outcome, measurement, category or subcategory, but rather standardized tests that were either commercial or very frequently state proficiency tests which obviously are, are intended in terms of validity for the purpose of accountability of local districts and State education agencies, or all the local districts together rather than measuring the progress of an individual child. Yet the court relied heavily on whether the child scored proficient or didn't score proficient on that type of test.



Mitch Yell: The next category were other tests, primarily mastery measures, or what might be also referred to as specific skill measures. They can either be standardized or they can be teacher made tests. Standardized mastery monitoring will often have manuals that report the psychometric data, teacher-made tests do not. They do not have known psychometric properties. And although such tests can be useful for teachers, the limited empirical research on mastery monitoring tests really warns against overreliance, or in conscious or incautious use of these as progress indicators.

Perry Zirkel: We looked at the 58 court rulings that were relevant to our examination. Here we found that they were infrequently used, and perhaps that sort of squares with the caveats that Mitch has talked about. But number one, the courts once again did not provide any critical examination as to why they were good or bad, and number 2, by the way, the courts showed much confusion as to what is the difference between a standardized test and a non-standardized test and a mastery monitoring test versus any other sort of test. So once again, rather disappointing for those of you that are looking for this sort of nuanced, useful guidance from the courts.

Mitch Yell: The next area had to do with progress reports, and essentially the framework for progress reports under the IDEA is the requirement in the most recent reauthorization that the IEP must include a description of when periodic reports on the child progress child is making toward their annual goals must be provided now more directly reflective of what the professional best practices. The literature recommends that progress reports should provide the progress indicator data specific to IEP goals that it should explain these data clearly for both service providers and parents, and use these data to predict whether the student will meet his or her goals. So a quick key qualifier for progress reports is really high frequency, and if they are included with the IEP, they must be used systematically, must be analyzed and reported to parents.

Perry Zirkel: We look at the court decisions again. And we're looking number one at 2, to what extent this category showed up. It showed up in almost it was almost tied for second place with standardized tests. It was slightly less than that, but fairly common, and that frequency may be attributable to the fact that, as Mitch, it said, it's specified in the act where the act doesn't specify standardized tests per se to measure progress. There is a requirement for progress reporting, but if you look at the language here in effect, I'll fault Congress because Congress, instead of making more rigorous the frequency and type of progress reports, if you compare the 204 amendments which are the most recent reauthorization. With the previous iteration, which was from 1997, it became even less rigorous, more relaxed in terms of how frequent, specifically and what were what were the required type of progress report.

Mitch Yell: Next slide. The last we really looked at in terms of professional indicators, what's really our progress indicators was an amalgam of a number of different indicators of academic functional, behavioral progress, like office, disciplinary referrals, use of applied behavior analysis, functional behavioral assessment data based decision making. And these procedures all really share the following data characteristics. Data is collected. Data is then displayed and interpreted. And we use that data. We analyze it and use it for instructional decision making. And the letter to the professional literature refers to database judgments is really integral for assessing student progress.

Perry Zirkel: When we look at the courts we find that only occasionally do courts address other indicators, whether it's behavioral records or work samples or attendance records or disciplinary records instead. And this would, you know, we have trouble finding this literature. But instead, the biggest indicator as far as not just frequency, but most heavily weighted. In other words, it may be that grades and promotion was the most frequent, but we talk about waiting, which ones that the courts rely on most when there's more than one indicator and the most influential indicator to the court's decision expressly was the testimony from teachers and other district personnel, and number one, we're talking about testimony. Obviously, that's the main source of evidence that courts are used to.

But notice that it what's also showing a skew here. It's the testimony of district folks, once again, we don't have much in the way of reliance and a heavy influence from the parents side of the case, one, because the parents themselves often are seen as sort of too heavily biased towards the child, and not having the same sophisticated professional ability and number two, that they are very few, as I said earlier, very few expert witnesses on the parents' side, and the other part of it was, remember that deference tends to provide more weight to the district expert than the parent expert, because number one, the district person has the license, the certification from the State to say they've got that expertise and number two, they see the child on a regular basis in this setting. That is the primary setting, the school setting, whereas the expert witness who might be a professor or physician or a private psychologist, would have seen the person on a very limited basis in their office, and often doesn't for various reasons, have frequent observations in the school setting and so. Moving on.

Then one of the reasons for this discrepancy between where I am at my low level, and where Mitch is at his high, more nuanced level, that many of you are familiar with and should remain familiar with and be guided by, primarily, is that the institutional characteristics of the judiciary number one: they're congested. So you know, everyone in our society just seems to resort to litigation. And so both our State courts and our Federal courts are always well behind, and because they are so ponderous in terms of footnoting everything and making sure that it's legally defensible. It takes a long time, and number two, they're generalists.

They know a little bit about aviation safety. They know a little bit about communications through the Federal communications agency cases. They know a little bit about labor relations, criminal law, you know education, law, and all of the other aspects, whereas most of you know far more than a court would be expected to know.

And so part of the problem is just who the judges are and what their caseload is. Secondly, remember that the courts in this, almost like an RTI or MTSS pyramid. They're up at the sort of like tier 3, whereas parents, educators are tier one, and hearing officers might be tier 2, and third, that courts are not really focused on substantive, specialized, much less policy analysis. Their view, especially in these current conservative times, is, we judges do not make the law. We just simply apply the law, and in doing so, they're much more comfortable with the procedural aspects.

And so one of the things that constantly amazes me is when they go through the IEP and examine things like, Oh, let's say, a functional behavioral assessment or a behavior intervention plan, they characterize that as purely procedural, whereas most professionals would regard that as being largely a substantive issue, or more objectively, a hybrid combination of procedural and substantive.

But the courts missed the substantive side of it. And finally, as I mentioned earlier in terms of conservatism over time, our current course tend to be much less activist in favor of the individual child and elevating the profession, and rather deferring to the other branches of government to deal with such matters.

So the overall implications, number one we're suggesting or recommending, do not fuse together or confuse me and Mitch. We work together collaboratively, but we distinguish for the sake of clarity where we're placing our information, and the must is different than the should, and we are suggesting that folks should operate on the should level, because that's best for the child. It is best for society. It is best for collaborating with parents, but not attributing that to Endrew F., but just attributing that to prophylactically implementing Endrew F. At a professional focus on progress.

Now, what about the second bullet here? Some of you say I want to close the gap rather than leaving the gap open, which may be regarded as a good thing, because it gives more latitude and liberation for you to act at a professional level, and rather than the courts dictating to you. You're dictating to the court, but those of you say, No, no, I want to narrow the gap. The two effective ways that, of course, many of you may say, Oh, I'm too busy. But if you're really interested in this, put a priority at Number One on effective lobbying, that in our democratic political system.

Obviously, if teacher unions and administrative organization is organizations and groups like COSA, which are the attorneys on the school side and COPA, the attorneys and the advocates on the parent side, if they focus their resources on lobbying, to educate the regulators and the legislatures to raise the standard in the idea and in corollary State laws, then that will help close the gap, and second, is by serving as experts in due process, hearings on a on a sort of a gratuitous basis on a professional basis, donating our services and our time to more, to provide more balance, so that we can help educate the courts and come up with more prudent decisions which have a gap closing. But Mitch, in terms of the third. And then, thirdly.

Mitch Yell: Okay, yeah, I was going to say, in terms of the third bullet. As educators, our emphasis should be on developing, implementing, and disseminating evidence-based practices that yield professionally appropriate progress collaborating with parents, and certainly exceeding the must of the case law, and providing the optimal. What in terms of progress indicators, what does a profession say are the most effective ones. And that's where the National Center for Intensive Intervention, the PROGRESS Center come into play, because they're really about disseminating those evidence-based practices or the optimal.

Tessie Bailey: I want to thank you both, for, you know, bringing this to the forefront for the conversation. There's been a lot of great questions in the chat box. And this idea of progress, I mean, we are named the PROGRESS Center has been on our minds, you know, and trying to understand, how do we define it?

And as a mom of 2 kids with disabilities, I define progress a little bit differently for each of my kids, and I think you all as teachers, or if you're state folks or local educators probably are seeing this, what you see as progress is important, I think, really what is illustrated here is that, you know, we have to

understand all of these levels of progress and how they come into play and ensure that we're really promoting good indicators of progress at all levels of the system. So you'll see that we've talked about IEP goal progress.

And I know that somebody in the chat box said about you know, the progress monitoring, and that is an indicator of progress. But we need to make sure that we are actively sharing that with families, we're helping families understand that that the student understands how that is a reasonable measure of progress or a relevant measure of progress.

The other things that mentioned, Perry talked about is this grade level progress? And we do have some questions about grades. And I know, Mitch, you mentioned it, and you, too, Perry, that you know, grades as an indicator of making progress in the general curriculum, may not really be in our best interest. But how do we make those changes moving forward? And, as you heard Perry say, is, we need to educate our legislators. We need to, you know, work collaboratively.

In order to make these collective changes, to raise the expectations and indicators of progress for our students, we also know that progress, you know, on IEP goals and in the grade levels are in a sense short term, that the whole point of the IEP process and special Ed is to make sure that students are able to be successful post school.

And so these indicators of progress need to be relevant to us as educators to make good decisions as a family member, as a state legislator is that we understand that thinking about these indicators are not just for short term compliance. You know, I'm gonna tell you how the kid is doing, but really are helping the student understand whether they're making appropriate progress. And if not allowing the school team and the IEP team to come together to determine how to refine the proposed program. So the student can make appropriate progress.

So we do have a couple of questions. Not too many that we'll have time for, but I think one of the ones that came up, and I think a lot of folks would be curious is, how do we help families? In the questions about families? But I also think educators and partners really understand the differences between what is best practice and really, what are the requirements? I guess? Because that seems to lead to a lot of the confusion and disputes that are occurring. I don't know, Mitch, if you want to start.

Mitch Yell: Well, I could. I could just say initially, I think there are so many the excellent resources available, such as the Progress Center National Center and intensive interventions daily disseminate these research best practices. The Iris Center also supported off special Ed programs as another really good resource. And then there's like the Council for, like special children that maintains teacher repositories of evidence-based practices. And it there's a lot of free information available. Similarly for parents, there are parent training and information centers in every State. There's understanding.org, which is a common collaboration of a number of advocacy centers that have free resources for parents, and I think those are very important to tab

Perry Zirkel: And adding to what Mitch's said, it seems to me that If folks just simply take the message that we've provided here and apply it in their own situations, whether it's on an IEP team, whether it's in an informal discussion with colleagues or with parents always, it seems to me, keep in mind and

catch each other at. As to when you hear people saying, Well, Endrew F. Require such and such, correct them in a in a respectful way, to say No, Endrew F. Doesn't say that, but we should not over rely on what the courts say. And actually, then you ultimately what you're saying here is correct, but not from a legal point of view, but rather from the professional point of view, and, in my view, we over rely on courts. We expect too much from the law, not recognizing the limits of the law, and don't give enough credit to ourselves by ourselves. I mean to parents and educators, because often we know better

how the school can operate for that child rather than a Justice Rehnquist, or well, one of our modern justices. And, by the way, for those of you that you know, like research, etc. Bill Lv. Has asked a question here that I think would make a very good follow up study by someone and that is, we've looked at. What's the difference between best practice and court interpretations of Endrew F. how about in the state complaint process that is often ignored, and yet is used more frequently and with more success by parents, and which not only has the obligation to do procedural issues, but to apply Endrew F. And it will be interesting to know to what extent there is this discrepancy, and how that compares to what the courts do.

Tessie Bailey: Well, I know we're at the end of our time, and I know this is a conversation that we will continue, that we are in our fifth year of funding. And so, please, if you're interested in continuing the conversation there you have some other questions connect with us on our website in the PowerPoint. You will see some resources from OSEP around the Endrew F. Decision. The ideas that work as well as the idea website, and just know that you know through the progress center our modules that we have some of the resources. We have tip sheets and stories from the classroom that we're trying to do. A lot of what was mentioned today is educate. How do we raise the expectations for progress.

You can also find the final published article for today's session. It is in your reference session, or in your reference section of your PowerPoint and feel free to contact us if you have some questions specifically for Mitch and Perry that were not able to be answered today.

Alright, thank you all very much.