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PREVIEW; *Butte School District No. 1 v. C.S. and Stuart McCarvel.* Applying the *Endrew F.* Standard: 'Appropriately Ambitious in Light of the Child's Circumstances'

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The Ninth Circuit Court of Appeals is set to hear oral argument in *Butte School District No. 1 v. C.S. and Stuart McCarvel* on May 11, 2020. This argument will be heard remotely due to safety considerations related to the COVID-19 Pandemic. Appellants, C.S. and Stuart McCarvel, in his capacity as originator of the C.S. due process complaint, appeal the decision of the United States District Court for the District of Montana. This case originated in 2014 as a due process claim filed on behalf of C.S. alleging violations of the Individuals with Disabilities Education Act 20 U.S.C. § 1400 et seq. Appellee, Butte School District No. 1, seeks affirmation of the decision of the district court.

I. INTRODUCTION

This matter came before the district court as a challenge to an administrative decision concerning whether Butte School District No. 1 ("District") provided Petitioner, C.S., a free and appropriate public education ("FAPE") as required under the Individuals with Disabilities Education Act ("IDEA").[1]

The Individuals with Disabilities Education Act requires the school district to provide every student with a disability a free appropriate public education.[2] Every student with a disability, including students with severe disabilities and challenging behaviors, are entitled to a FAPE under the IDEA.[3]

II. FACTUAL AND PROCEDURAL BACKGROUND

In September 2009, C.S., now 26-years-old, enrolled in the District to attend public school as a student "identified and educated as a child with a disability under the IDEA."[4] C.S. experiences multiple, substantial disabilities, including autism spectrum disorder, post-traumatic stress disorder, and specific learning disabilities ("SLD").[5] Together, these

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[1] *In re Butte Sch. Dist. No. 1*, No. CV 14-60-BU-SEH, 2019 WL 343149, at *1 (D. Mont. Jan. 28, 2019), *appeal filed sub nom. Butte School Dist. No. 1, v. C.S., Et Al*, Sep. 3, 2019, No. 2:14-CV-00060-SEH.

[2] Appellant's Opening Brief at 1, *Butte Sch. Dist. No. 1 v. C.S. Et Al*, Sep. 3, 2019, No. 2:14-CV-00060-SEH.

[3] *Id.*

[4] *In re Butte Sch. Dist. No. 1*, 2019 WL 343149, at *1.

[5] Appellant's Opening Brief, *supra* note 2, at 1.

disabilities limit C.S.'s ability to learn, communicate, and regulate his behaviors.[6] Despite his average intelligence level, C.S.'s disabilities hinder his ability to achieve and progress academically.[7]

C.S. reached the age of majority on March 9, 2012, at which time all parental rights under the IDEA transferred to C.S. in accordance with 34 C.F.R. 300.520 and 34 C.F.R. 300.320(c).[8] At this time, C.S. began living with Petitioner Stuart McCarvel, C.S.'s direct service provider.[9] Up until this point, between 2009 and 2012, S.S., C.S.'s natural mother, had "participated as his parent in the development of his individualized education plan ("IEP")."[10] After C.S. reached the age of majority, S.S. "ceased to have any role or participation in his education."[11]

Beginning March 20, 2012, C.S. attended school sporadically and was disenrolled by the District twice in the remainder of the 2011–2012 school year.[12] At the beginning of the 2012–2013 academic year, C.S.'s IEP team convened to develop an new IEP for C.S.'s senior year of high school, but were unable to reach an agreement.[13]

On November 26, 2012, McCarvel filed a complaint with the Office of Public Instruction ("OPI") alleging violations of the IDEA.[14] OPI responded by directing the District to appoint a surrogate parent for the educational purposes of C.S., pursuant to the IDEA.[15] The District appointed Mary Jo Mahoney as surrogate parent to represent C.S.'s educational programming.[16]

Throughout the academic year, C.S. repeatedly voiced his desire to graduate from school at the end of the year, despite the District's offer of compensatory education and an extended school year for C.S.[17] Because

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[6] *Id.*

[7] *Id.*

[8] *In re Butte Sch. Dist. No. 1*, 2019 WL 343149 at *1 (*see* 34 C.F.R. § 300.520 Transfer of Parental Rights at Age of Majority; *and* 34 C.F.R. § 300.320(c) Definition of Transfer of Rights at Age of Majority).

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] *Id.* at *2.

[13] *Id.*

[14] *Id*.

[15] *Id.* (relying on 34 C.F.R. § 300.520(b), which provides a "State must establish procedures for appointing the parent of a child with a disability, or if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of the child's eligibility under Part B of the Act if, under State law, a child who has reached the age of majority, but has not been determined to be incompetent, can be determined not to have the ability to provide informed consent with respect to the child's educational program").

[16] *Id.*

[17] *Id.*

C.S. was an adult and had not been found incompetent or appointed a guardian, his "decision to discontinue further school attendance was accepted [and he] graduated in June 2013."[18]

C.S. and McCarvel (petitioners/appellants) filed a due process complaint with OPI on October 3, 2013, alleging procedural and substantive violations of the IDEA by the District during the 2011-12 and 2012-13 academic years.[19] Petitioners sought relief in the form of "payment from the District for costs of compensatory education services."[20] An administrative hearing was held and the hearing officer concluded that the District "met the IDEA's FAPE requirement in the 2012–13 school year, but had failed to provide a FAPE during the 2011–12 school year."[21] The hearing officer ordered the District to provide C.S. with compensatory educational services at the expense of the District.[22]

Separate complaints were filed challenging portions of hearing officer's decision and parties requested review by the district court.[23] After reviewing the record and finding error with petitioners' expert witness testimony, the district court ordered an evidentiary hearing to be held, allowing the parties to submit additional testimony and evidence to supplement the administrative record "in the interest of conducting an independent and thorough review of the case before it."[24] An evidentiary hearing was conducted in October 2018 addressing issues related to whether the District failed to provide C.S. with a FAPE as required by the IDEA for the 2011–12 and 2012–13 academic years. [25]

The district court held a hearing on the merits of the parties' cross-complaints challenging the hearing officer's administrative decision.[26] The court reversed and vacated the hearing officer's decision, finding that the District provided C.S. with a FAPE for both academic years and that the District met its procedural and substantive duties under the IDEA.[27] The court dismissed all claims asserted by Petitioners and entered judgment for the District.[28] Petitioners appealed the court's decision to the Ninth Circuit Court of Appeals, which is set to hear oral argument on May 11, 2020.

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[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] *Id.*
[23] *Id.* at *3.
[24] *Id.*
[25] *Id.*
[26] *Id.* at *1.
[27] *Id.* at *17.
[28] *Id.*

III. SUMMARY OF ARGUMENTS

The core question presented to the Court is whether the District provided C.S. with a FAPE as required by the IDEA. The IDEA's primary goal is "to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living."[29] A student's IEP is to be uniquely tailored to the needs of the student—"the centerpiece of the IDEA's educational delivery system."[30] In order to meet their obligation to provide a student with a FAPE, school districts must comply with both procedural and substantive requirements of the IDEA. [31]

A. Appellants' Arguments

Appellants seek reversal of the district court's decision on a number of grounds regarding the District's alleged failure of providing C.S. a FAPE. Appellants allege the District: failed to evaluate C.S. in all areas of suspected disability, identify C.S.'s SLD, and address C.S.'s SLD in his IEPs; failed to conduct necessary behavioral assessments and design and implement adequate behavioral programming for C.S.; failed to conduct transition assessments required by the IEP and the IDEA's mandatory transition planning; and failed to allow Stewart McCarvel to exercise his statutory parental rights.[32] Additionally, appellants ask the Court to review whether the "cumulative effect of the district court's multiple erroneous evidentiary and procedural rulings caused prejudice to C.S. and warrant reversal."[33]

Appellants allege that the district court erred in "failing to recognize that the [District's] failure to properly assess C.S. necessarily deprived C.S. of FAPE."[34] Proper assessment and identification of a student's disability is necessary to understand the student's individual circumstances and tailor IEP goals and services to meet the student's needs.[35] Appellants assert that the District did not "properly assess or identify C.S.'s SLDs,"[36] necessary for the delivery of FAPE.[37]

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[29] *Id.* at *4 (*citing* 20 U.S.C. § 1400(d)(1)(A) (2018)).

[30] *Id.* (*citing* Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1, 137 S. Ct. 988, 994 (2017) (*quoting* Honig v. Doe, 484 U.S. 305, 311 (1988)).

[31] *Id.*

[32] Appellant's Opening Brief, *supra* note 2, at 3–4.

[33] *Id.* at 4.

[34] *Id.* at 16–17.

[35] *Id.* (*citing* Timothy O. v. Paso Robles Unified Sch. Dist., 822 F.3d 1105, 1126–27 (9th Cir. 2016)).

[36] *Id.* at 16.

[37] *Id.* at 17.

Additionally, appellants argue that the court erred in failing to recognize that the District designed fundamentally flawed behavior programs for C.S. that inevitably deprived C.S. of FAPE.[38]

The district court held that the District's failure to evaluate and identify C.S.'s SLDs "did not impede the provision of FAPE or deprive C.S. of educational benefit."[39] Appellants disagree. The IDEA requires schools to assess students in "all areas related to the suspected disability, using tools tailored to assess specific areas of educational need and technically sound instruments that assess the relative contribution of cognitive behavioral factors."[40] Appellants assert that the Ninth Circuit has held "repeatedly and emphatically, [that] the provision of FAPE is 'impossible' when the IEP team fails to obtain 'statutorily mandated' evaluative information about the child's disability and educational needs."[41] Appellants point to *Timothy O. v. Paso Robles Unified School District*, where the Ninth Circuit held that the failure to conduct an evaluation in compliance with the IDEA is a "fundamental procedural violation that '*necessarily*' denies FAPE[,] …deprives the student of educational opportunities and substantially hinders his parents' participation in the process."[42]

Appellants argue that the court erred in failing to recognize the Districts failure in designing and delivering appropriate post-secondary goals and transition services to meet C.S.'s individual needs, in compliance with IDEA.[43] The IDEA's core purpose is to prepare students for "further education, employment, and independent living."[44] Appellants contend that the District failed to conduct age appropriate transition assessments, develop appropriate measurable post-secondary goals, and provide individualized transition services.[45] Appellants assert that the District's failure to adhere to statutorily mandated requirements of transition planning "is a substantial procedural violation that deprived C.S. of educational opportunity, including the opportunity to progress in the very post-secondary outcomes Congress stressed in the 2004 amendments [to the IDEA]."[46]

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[38] *Id.*

[39] *Id.* at 23.

[40] *Id.* (internal quotations omitted) (*citing* 34 C.F.R. §§ 300.304(b)(3), (c)(2) and 300.304(c)(4)).

[41] *Id.* at 24 (*citing* Timothy O. v. Paso Robles Unified Sch. Dist., 822 F.3d 1105, 1126 (9th Cir. 2019); Amanda J. ex rel. Annette J. v. Clark Cty. Sch. Dist., 267 F.3d 877, 894 (9th Cir. 2001)).

[42] *Id.* (*citing* Timothy O., 822 F.3d at 1126 (emphasis original).

[43] *Id.* at 17 (*citing* 20 U.S.C. § 1414(d)(1)(A)(i)(VII)(aa–bb)).

[44] 20 U.S.C. § 1400(d)(1)(A).

[45] Appellant's Opening Brief, *supra* note 2, at 41–46.

[46] *Id.* at 46.

Appellants argue that the district court erred in two separate ways regarding McCarvel's right to full parental participation. First, appellants argue that the court erred by failing to recognize that "excluding McCarvel from C.S.'s IEP development process denied FAPE."[47] Because there were concerns about C.S.'s ability to make informed decisions about his educational programming, appellants assert that the District was required to appoint McCarvel, not Mahoney, as C.S.'s educational decision-maker.[48] As C.S.'s foster parent, McCarvel should have been entitled to "full parental participation in developing [C.S.'s] educational programming and assessing its effectiveness."[49] Instead, however, Mary Jo Mahoney was appointed as surrogate parent for C.S., "even though Mahoney had no relationship with C.S. and had never met him."[50] Contrarily, McCarvel was actively involved in C.S.'s education.[51] Secondly, appellants assert that the issue of McCarvel's authority has already been adjudicated by the Montana Supreme Court and Montana Second Judicial District Court, but that the Federal District Court violated 28 U.S.C. § 1738 when it "did not afford those determinations full faith and credit."[52] The Montana Supreme Court "determined McCarvel was C.S.'s lawful parent for purposes of the IDEA and that [the District] had been required to seek his appointment, not Mahoney's."[53] Mahoney's appointment was vacated and McCarvel was appointed as C.S.'s educational representative, retroactive to February 22, 2013.[54] Appellants argue that this error resulted in a "substantial procedural violation that significantly impeded McCarvel's opportunity to participate in the IEP process, and thus, deprived C.S. of FAPE."[55]

Lastly, appellants argue that the court committed a number of procedural errors that prejudiced C.S. which, "standing alone, merit reversal, [and therefore] taken cumulatively … compel reversal."[56] Appellants assert the following procedural errors by the court: 1) conducting a hearing akin to a trial de novo, contrary to the Ninth Circuit Court of Appeal's previous rulings; 2) wrongfully applying the *Daubert* standard to an administrative hearing; and 3) improperly refusing valid impeachment evidence and medical records under F. R. Evid. 607 and F. R. Evid. 803(4).[57] Appellants assert that IDEA "does not contemplate a

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[47] *Id.* at 17–18.
[48] *Id.* at 47.
[49] *Id.* (*citing* School Committee of Town of Burlington, Mass. v. Dept. of Educ. of Mass., 471 U.S. 359, 368 (1985)); *see* 20 U.S.C. § 1401(23)(A).
[50] *Id.*
[51] *Id.*
[52] *Id.* at 16–17.
[53] *Id.* at 48.
[54] *Id.*
[55] *Id.* at 50.
[56] *Id.* at 18.
[57] *Id.*

trial de novo in district court,"[58] and that "the source of the evidence generally will be the administrative hearing record, with some supplementation at trial."[59] Appellants argue that, over C.S.'s repeated objections, the court erroneously allowed the Districts witnesses to "adopt and reaffirm in all aspects their administrative testimony and testify in greater detail," effectively changing the character of the hearing from one of review to a *trial de novo*.[60]

Appellants argue that the alleged failures by the District has led to severe consequences for C.S., including delayed development of academic and functional skills necessary for growth and learning and lost opportunities to build upon skills he could have acquired had the District provided a FAPE.[61] Appellant's argue that ultimately, the result of these failures has put C.S. "further behind his peers and less prepared to function as a self-sufficient, responsible adult in the community." [62] As such, appellants assert that the IDEA's core purpose is not met, and seek reversal of the court's decision. [63]

B. Appellee's Argument

In response, appellees argue that appellants' contention of procedural and substantive violations of the IDEA are not well founded.[64] Appellees base their argument on a number of evidentiary assertions based on the record reviewed by the district court and ask the Ninth Circuit to affirm the decision.[65] Additionally, appellees argue that there are only three issues for review as opposed to the appellants' alleged five issues.

Appellees contend that the issues for review by the Court are: (1) whether the district court properly found that the District provided C.S. with a FAPE for both academic years; (2) whether the district court properly found that the District met its procedural and substantive duties under the IDEA; and (3) whether the district court's rulings on evidence offered by appellants constitute reversible error.[66]

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[58] *Id.* at 51 (*citing* Burlington v. Dept. of Educ., 763 F.2d 773, 790 (1st Cir. 1984)).

[59] *Id.* (*citing Burlington*, 763 F.2d at 791).

[60] *Id.*

[61] *Id.* at 2.

[62] *Id.*

[63] *Id.*

[64] Appellee's Answering Brief at 4–5, *Butte Sch. Dist. No. 1 v. C.S. Et Al*, Sep. 3, 2019, No. 2:14-CV-00060-SEH.

[65] *Id.* at 4.

[66] *Id.* at 3.

First, appellees argue that appellants' challenges to the court's decision are not supported by the evidence that was before the court.[67] Appellees assert that "the most pervasive problem with C.S.'s numerous assertions of error… is there is absolutely no documentary or reliable factual evidence in the record to substantiate the assertions of error."[68] In support of this, appellees argue that S.S. approved each component of C.S.'s IEP used by the District to educate C.S., and that S.S. did not testify at the administrative hearing or at the supplemental hearing.[69] Accordingly, appellees assert that S.S. "did not lend any testimonial support for any of the alleged IDEA deficiencies/violations … relied upon by C.S.'s legal team."[70] Appellees further contend that McCarvel's testimony at the administrative hearing and the supplemental hearing did not provide any support for appellants' alleged IDEA deficiencies.[71] Appellees argue that none of C.S.'s IEP team members testified that there were deficiencies in the IEPs, execution of the IEPs, evaluations, behavioral plans, goals, or transition plans implemented by the District.[72] Rather, appellees assert that all alleged IDEA deficiencies were "only raised by the testimony of the two expert witnesses C.S.'s legal team retained."[73] Appellees conclude that the court appropriately based its decision on "the documentary evidence and testimony of the fact witnesses… and not on the testimony of the retained experts."[74]

Appellees argue that the district court's Order is fully supported by the evidence.[75] Appellees contend that, in his order, "the presiding judge carefully analyzed the evidentiary record before the court… cited the reader of the Memorandum and Order to evidence relied upon by the court, and then articulated conclusions based entirely on the record established at the administrative hearing and on the supplemental record."[76] As such, appellees assert that the district court's Order should be affirmed.

Appellees argue that the district court's Order is entitled to deference from the Ninth Circuit. Appellees assert that "the Appellate Court is required to give due deference to the district court's findings of fact and conclusions of law," and that the Appellate Court is "not entitled to reweigh the evidence presented at trial in an attempt to assess what items should and should not have been accorded credibility."[77] Appellees

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[67] *Id.* at 5.
[68] *Id.*
[69] *Id.*
[70] *Id.*
[71] *Id.*
[72] *Id.* at 6.
[73] *Id.* (internal quotations omitted).
[74] *Id.*
[75] *Id.*
[76] *Id.* at 7.
[77] *Id.* (*citing* Mondaca-Vega v. Lynch, 808 F.3d 427 (9th Cir. 2015)).

contend that an Appellate Court can only reverse a district court's findings if, "after a review of the entire record, the Appellate Court is left with the definite and firm conviction that a mistake has been committed."[78] Appellees allege that all of the evidence establishes that the District designed and implemented an educational program "reasonably calculated to allow C.S. to make progress appropriate in light of C.S.'s circumstances, as required by *Endrew F. v. Douglas Cty. Sch. Dist.*, 137 S. Ct. 988 (2017)."[79]

In response to appellants argument regarding McCarvel's parental participation, appellees assert that McCarvel's non-appointment as C.S.'s surrogate parent did not deny C.S. FAPE.[80] Appellees base this argument on the contention that there is "no evidence in the record tending to establish that Mary Jo Mahoney adversely changed any of the School District's obligations to C.S."[81] Appellees also argue that the record "actually reflects that Mr. McCarvel and C.S. were in attendance at all IEP meetings held by the School District after Mary Jo Mahoney was appointed surrogate." [82] Appellees conclude that the evidence does not establish a violation of IDEA by Mary Jo Mahoney's appointment as surrogate parent.[83]

Appellees argue that appellants' objection to the court's supplementation of the record is unfounded.[84] Appellees assert that "the case law and the IDEA itself clearly authorize the supplementation of the record at the discretion of the district court."[85] Appellees cite to Ojai Unified Dist. v. Jackson, 4 F.3d 1467 (9th Cir. 1993), where the Court held that the IDEA provides that "the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate."[86] Appellees construe "additional" to mean supplemental, and under the standard adopted in *Ojai*, argue that the "determination… must be left to the discretion of the trial court which must be careful not to allow such evidence to change the character of the hearing from one of review to a trial *de novo*."[87] Appellees conclude that the additional testimony from their witnesses did not change the character of the district court proceeding

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[78] *Id.* (*citing Mondaca-Vega*, 808 F.3d 427).
[79] *Id.* at 8.
[80] *Id.*
[81] *Id.*
[82] *Id.* at 7–8.
[83] *Id.* at 9.
[84] *Id.* at 10.
[85] *Id.*
[86] *Id. (citing* Ojai Unified Dist. v. Jackson, 4 F.3d 1467, 1471–72 (9th Cir. 1993) (*citing* 20 U.S.C. § 1415(e)(2))).
[87] *Id.* (*citing Ojai*, 4 F.3d at 1472).

from one of review to a trial *de novo* and that each witness's testimony was properly admitted pursuant to Rule 701 of the Federal Rules of Evidence.[88]

IV. ANALYSIS

In light of the United States Supreme Court's ruling in *Endrew F.*,[89] this Court should find that the District denied C.S. a FAPE under the heightened standard. The Court should strongly consider the *Endrew F.* decision when reviewing this case.[90] IDEA's core purpose is that "all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living."[91] IDEA disputes most commonly arise between parents and education administrators over interpretation of the definitions and requirements of IDEA's provisions.

The United States Supreme Court raised the standard for schools to meet their substantive obligations under the IDEA.[92] The Supreme Court made clear that schools must develop IEPs that are appropriately ambitious in light of the child's circumstances.[93] The Supreme Court held that the "IDEA requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances, and programs that provide merely some progress were not adequate."[94] *Endrew F.* directs courts to consider the student's ability to make progress appropriate in light of the child's circumstances when evaluating whether a school district has denied a student FAPE.[95]

The Supreme Court held that, in determining what it means to meet the unique needs of a child with a disability, "the provisions governing the IEP development process are a natural source of guidance: it is through the IEP that the free appropriate public education required by the Act is tailored to the unique needs of a particular child."[96] In addressing the standard applied to a student's educational programming goals, the Supreme Court emphasized:

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[88] *Id.* at 11–14.
[89] Endrew F. v. Douglas Cty. Sch. Dist. RE-1, 137 S. Ct. 988 (2017).
[90] *See Id.*
[91] 20 U.S.C. § 1400(d)(1)(A).
[92] *Endrew F.*, 137 S. Ct. at 988.
[93] *Id.* at 1000.
[94] Brief of Amicus Curiae Council of Parent Attorneys and Advocates, Inc., at 5, *Butte Sch. Dist. No. 1 v. C.S. Et Al*, Sep. 3, 2019, No. 2:14-CV-00060-SEH (*citing* Endrew F. v. Douglas Cty. Sch. Dist. RE-1, 137 S. Ct. 988, 1000 (2017)).
[95] *Endrew F.*, 137 S. Ct. at 1001.
[96] *Id.* (internal quotations omitted).

> Of course, this describes a general standard, not a formula. But whatever else can be said about it, this standard is markedly more demanding than the 'merely more than *de minimus*' test applied by the Tenth Circuit… When all is said and done, a student offered an educational program providing 'merely more than *de minimis*' progress from year to year can hardly be said to have been offered an education at all. For children with disabilities, receiving instruction that aims so low would be tantamount to 'sitting idly… awaiting the time when they were old enough to drop out.' The IDEA demands more.[97]

The Supreme Court declined to elaborate on what "appropriate" progress looks like but emphasized that "the adequacy of a given IEP turns on the unique circumstances of the child for whom it was created."[98]

C.S.'s educational experience was exactly what the Supreme Court feared under the 'merely more than *de minimus'* standard—educational instruction aimed so low that it could be considered tantamount to "sitting idly… awaiting the time when [the student is] old enough to drop out."[99] At the outset, the District's failure to fully assess and accurately identify C.S.'s SLD resulted in a "fundamental defect in all of [the Districts] efforts to educate C.S."[100] Although the District identified that C.S. experienced constant, challenging behaviors which proved to "[substantially interfere] with his learning and the learning of others,"[101] the District failed to design an effective behavior intervention plan or conduct a proper functional behavioral assessment, per IDEA requirements.[102] In light of *Endrew F.,* the Court should find that the District failed to design an educational program for C.S. that was specifically tailored to his unique needs, thus violating IDEA's core mandates.

V. CONCLUSION

The IDEA's primary goal is "to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living."[103] Based on a number of violations by the District,

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[97] *Id.* (*citing* Board of Ed. of Hendrick Hudson Central Sch. Dist., Westchester Cty. v. Rowley, 458 U.S. 176, 102 S. Ct. 3034 (1982)) (internal quotations omitted).

[98] *Id.*

[99] *Id.* at 1000 (*citing* Rowley, 458 U.S. 176).

[100] Appellant's Opening Brief, *supra* note 2, at 1.

[101] *Id.* at 1–2.

[102] *Id.* at 2.

[103] *In re Butte Sch. Dist. No. 1*, No. CV 14-60-BU-SEH, 2019 WL 343149, at *4 (D. Mont. Jan. 28, 2019) (*citing* 20 U.S.C. § 1400(d)(1)(A) (20018)).

the Court should find that C.S. was not provided with a FAPE under the IDEA.