

Testimony to North Dakota House Education Committee: HB 1532
February 2023

Mr. Chairman and Members of the Committee: Thank you for the opportunity to address this committee and share my story as a parent who has chosen private school for her children and as an educator in a private Catholic school. For the record, my name is Shannon Schmidt, special education strategist, in Minot, ND. Prior to working in special education, I was a stay-at-home mom for 10 years to our 6 children. My oldest, Caleb, (age 11) was diagnosed with Autism Spectrum Disorder at the age of two and a passion was ignited in me to not only give him the tools to lead a more fruitful life, but to provide love and support to all children.

FAPE is an acronym for free appropriate public education which includes multiple components: (1) it allows students to receive a special education service and related service with no cost to them. This also includes that schools cannot deny services to students because of the expense it will bring to them; (2) the education that the child is receiving must be appropriate, while this is a wide controversial topic in special education the school district is responsible for putting forth effort to provide this appropriate education; (3) the school district must involve the parents and be sure they are an essential part of their child's education. The North Dakota Department of Public Instruction defines FAPE through the *Andrew F. v. Douglas County School District* court documents that are linked to their special education department page. FAPE is further defined in their Parent Guide Handbook as:

special education and related services that:

- are provided to children and youth with disabilities at public expense, under public supervision and direction, and without charge to the parents;
- meet the standards of the state education agency, including the requirements of the IDEA;
- include an appropriate preschool, elementary, and secondary school education in North Dakota; and
- are provided according to requirements for the individualized education program.

Since parents have given children their life, they are bound by the most serious obligation to educate their offspring and therefore must be recognized as the primary and principal educators.¹ Parents are bound by God to this grave task and when parents follow this directive, a truly Christian family is formed creating a ricochet effect among God's people. Parents who have the primary and inalienable right and duty to educate their children must enjoy true liberty in their choice of schools.² Once their children enter school, this does not relieve the parents of their duty as educators to their children.

Andrew F. clarified the substantive standard for determining whether a child's IEP – the centerpiece of each child's entitlement to FAPE under the IDEA – is sufficient to confer

¹ Pope Paul VI, "The Authors of Education," in *Gravissimum Educationis*, (Vatican Council II, 1965), #3.

² Pope Paul VI, "The Duties and Rights of Parents," in *Gravissimum Educationis*, (Vatican Council II, 1965), #6.

educational benefit on a child with a disability. The Supreme Court decision is important because it informs our efforts to improve academic outcomes for children with disabilities. With the decision in *Andrew, F.*, the Court clarified that for all students, including those performing at grade level and those unable to perform at grade level, a school must offer an IEP that is “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” This standard is different from, and more demanding than, the “merely more than de minimis” test applied by the Tenth Circuit.

The implications of this case are huge. As a mother of a child with autism, I can relate to Andrew’s situation and the frustrations of his parents. However, our situation is different and has proven difficult to fight for. Our son, Caleb, attends a private Catholic school as per our wishes, but in doing so, our rights under FAPE are extremely limited. We chose a private school for the importance of our faith in our lives, but access to special education resources are very little and disappointing at best. It is certainly the schools’ intention in that they want to care and provide for all students, but unfortunately it's not always the reality. For most families with children of disabilities, Catholic school is not an option. A student can not spend the whole day in the resource room (nor should they) and the general education teacher is often not equipped for these students. Even if the teacher is eager and tries to do everything she can to see that student succeed, she does not have the resources to turn to for assistance in the classroom or in implementing accommodations that prove to be truly meaningful and effective. General education teachers are for the most part limited in their knowledge base concerning areas of disability unless they have personal experience or have extended their learning on their own time. Even those working in the resource room do not typically have a special education background; they do, however, have big hearts.

So, how can we better apply FAPE to a private school? Is there a way to include our private schools in the Act so that, as parents, we may truly be free to choose the education that we want our child to receive without the detrimental cost of inefficient special education services only because we chose not to attend a public school?

Andrew’s parents removed him from the public school system and placed him in a private school setting to receive the best possible outcomes for his needs. The Court recognized this and made changes to the standard in the law to provide better services to children covered under IDEA with an IEP. My son has an IEP and we removed him from public school because our faith is important to us and we wanted him (and our other children) in that environment of faith on a daily basis. By doing so, we lost access to much needed services as required to us under FAPE. Should we not still be afforded these services that are due to us? Would an in-house special education program at a private Catholic school ever be granted funding to serve their students covered under IDEA or will this always be a benefit limited to the public schools making it so that we are not, as parents, free to choose the education that we see as best for our children?

House bill 1532 is a start in the right direction to afford parents the right to freely choose the education that they see fit for their child. Thank you.