However, the court also held that, going forward, the Pennsylvania DOC could not keep death row inmates in solitary confinement after they had been granted resentencing hearings without "meaningful review" of the placement. The court reasoned that the potential for psychological harm was too great for inmates to be left in solitary confinement indefinitely while awaiting resentencing, citing recent decisions from the Second, Fourth, Fifth, and Sixth Circuit Courts of Appeals that arrived at similar conclusions. The court concluded that inmates whose death sentences have been vacated are entitled to the same procedural protections as other inmates subject to solitary confinement, including a statement of the reasons for the placement, a hearing regarding the placement, and periodic review of the placement based on risk.

Discussion

Williams is one of many recent decisions that restrict the use of solitary confinement in prisons based, in part, on research studies and professional guidelines about its potentially damaging psychological effects. The field is moving quickly, with the American Psychiatric Association (APA), National Commission on Correctional Health Care (NCCHC), American Public Health Association, and other organizations releasing guidelines or position statements on aspects of solitary confinement in the past five years. Each position statement seems to go further than the one before it. For example, in 2012, the APA recommended limiting the use of prolonged (longer than 30 days) solitary confinement for adult inmates with serious mental illness (American Psychiatric Association: Position statement on Segregation of Prisoners with Mental Illness, Washington, DC, December 2012). In 2016, the NCCHC recommended that no inmates (with or with mental illness) should be kept in solitary confinement for longer than 15 days, calling such conditions "cruel, inhumane, [and] degrading treatment" (Position Statement: Solitary Confinement (Isolation). *J Correction Health Care* 22: 257–63, 2016, p 260).

Some mental health professionals have argued that even these positions do not go far enough. In 2015, the *Journal* published an editorial calling on the APA to strengthen its advocacy around abolishing solitary confinement (Appelbaum K: American psychiatry should join the call to abolish solitary confinement. *J Am Acad Psychiatry Law* 43:406–15, 2015), particularly in light of the courts' tendency to rely upon the opinions of mental health professionals in this area. Others have stressed the need for more high-quality research on solitary confinement, as the literature is somewhat outdated and lacks rigorous methodology (Kapoor R, Trestman RL: Mental health effects of restrictive housing, in *Restrictive Housing in the U.S.: Issues, Challenges, and Future Directions.* Washington DC: National Institute of Justice, 2016, pp 199–232). Even with the limited data available, mental health professionals and courts seem to have formed a consensus that solitary confinement is deeply problematic, and correctional systems must find better ways to manage prisoners.

Williams restricts the use of solitary confinement for a relatively small group of prisoners, those whose death sentences have been vacated, so perhaps its impact on prison management will be fairly limited. However, the case raises an important question about the permissibility of solitary confinement for death row prisoners whose sentences have not been vacated and who are awaiting execution. If, as *Williams* concludes, long-term solitary confinement causes substantial psychological harm, then why is it not important to protect all death row inmates from these conditions, regardless of the status of their criminal appeals? The case does not address this question, but given the recent movement of courts in a progressive direction, one can anticipate such a challenge to solitary confinement on death row in the coming years.

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Is "Some" Enough in Special Education?

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Special-Needs Children Are Entitled to More Than *De Minimis* Education in Public Schools

In *Endrew F. v. Douglas County School District RE-1*, 137 S. Ct. 988 (2017), the U.S. Supreme

Court determined the level of educational benefit that school districts must confer on children with disabilities to provide them the free appropriate public education (FAPE) guaranteed by the Individuals with Disabilities Education Act (IDEA). In so doing, the Court resolved the conflict between the "meaningful educational benefit" standard adopted by some courts and the "merely more than *de minimis*" standard set forth by others.

Facts of the Case

The IDEA provides federal education funds to state governments, provided that states make a FAPE available to all children with disabilities. The central mechanism by which the IDEA ensures a FAPE for each child is the development and implementation of an individualized education program (IEP), which is "a detailed written document which describes the student's educational goals for an academic year and establishes a plan to achieve those goals" (20 U.S.C.S. § 1414(d)(1)(A) (2005)). The IEP "must be 'reasonably calculated' to enable the child to receive educational benefits" (*Bd. of Educ. v. Rowley*, 458 U. S. 176, 207 (1982)).

Endrew was diagnosed with autism at the age of two and was enrolled in special education classes in the local public school until the fourth grade when Endrew's parents identified that his progress had stalled and that his IEP was failing to help him progress toward his goals. Subsequently, his parents enrolled Endrew in a private school specializing in autism where he was documented to make social, behavioral, and academic progress. In accordance with the IDEA, Endrew's parents asserted the public school had not provided Endrew a FAPE and sought tuition reimbursement.

The case was first heard by an administrative law judge who denied the complaint and denied reimbursement. Endrew's parents appealed and sought judicial review in the Federal District Court of Colorado. The district court's standard for the IDEA compliance was that the state must provide only "some educational benefit," and because Endrew had shown "at the least, minimal progress" (*Endrew F.*, p 997), affirmed the prior finding.

Endrew's parents then appealed to the Tenth Circuit, which affirmed the decision of the district court, ruling that the standard for the IDEA, as interpreted by *Rowley*, required states to provide "merely more than *de minimis*" educational benefit to students. Endrew's parents then appealed to the U.S. Supreme Court.

Ruling and Reasoning

In a unanimous decision, the Court vacated the judgment of the Tenth Circuit, holding that "to meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances" (*Endrew F.*, p 999). The Court further held that the proper standard under the IDEA "is markedly more demanding than the 'merely more than *de minimis'* test applied by the Tenth Circuit" (*Endrew F.*, p 1000). The Court contended that states should provide meaningful educational benefits to children with disabilities and not merely aim for more than *de minimis* progress.

In coming to its decision, the Court analyzed the context in which the IDEA was passed. Before the IDEA, children with disabilities were neither having their educational needs met, nor receiving adequate educational services to ensure full equality of opportunity. The purpose, therefore, was to ensure that children with disabilities received an adequate education and to promote equality. Thus, the Court rejected the notion that a statute designed to promote equal opportunity and effective educational efforts would simultaneously allow states to seek *de minimis* educational advancements for children with disabilities, finding that such a standard would make the IDEA's promises to students illusory and would frustrate Congressional intent.

The Court then reviewed *Rowley,* the case on which the Tenth Circuit based its decision. Amy Rowley was a deaf student whose school discontinued use of a sign language interpreter, even though it was listed in her IEP, after it was discovered she was a proficient lip reader. Ms. Rowley's parents filed suit contending that she was being deprived of an equal educational opportunity. It is notable that despite her handicap, Ms. Rowley was an above-average student, who scored better than her peers. Regardless, in this context, the Court held that public schools are not required by law to provide sign language interpreters to deaf students who are otherwise receiving an equal and adequate education. The Court thus established a standard that an IEP should be "reasonably calculated" to confer an educational benefit to the child, but also suggested that "appropriate progress" for most children would allow them to be fully

integrated into the classroom and to advance from grade to grade.

The Court noted important differences between *Rowley* and the present case. First, Ms. Rowley, despite her disability, was fully integrated into a mainstream classroom, whereas for Endrew (and many other special-needs children), this was not possible. Second, as Ms. Rowley was an above-average student, the standards for measuring her progress differed significantly from that of many special-needs children, including Endrew. Therefore, the Court was faced with a new question: What do FAPE and IEPs look like for individuals who cannot perform at grade average? The Court ruled that "when a child is fully integrated in the regular classroom, providing a FAPE that meets the unique needs of a child with a disability (20 U.S.C.S. § 1401 (2005)) typically means providing a level of instruction reasonably calculated to permit advancement through the general curriculum," but added a caveat that if smooth progress in the regular curriculum is not likely, a child's "IEP need not aim for grade-level advancement," but "must be appropriately ambitious in light of his circumstances" (*Endrew F.*, p 1000). The Court went one step further to state that an "appropriately ambitious" standard is "markedly more demanding than 'merely more than *de minimis*'" (*Endrew F.*, p 1000).

The Court further held that the inquiry into whether an IEP is reasonably calculated to allow a child to make progress is necessarily an intensive, fact-specific one and therefore neither the Court nor a statute could create a substantive standard. The Court went on to stipulate that, in conducting its fact-intensive inquiry, a reviewing court should give deference to the expertise of school authorities (*Endrew F.*, p 999), but still ensure that "an IEP is reasonably calculated to enable each child to make progress appropriate for that child's circumstances" (*Endrew F.*, p 1002).

Discussion

It is uncommon for a unanimous Supreme Court decision on special education to make national headlines, but that is exactly what happened in this case. The decision in *Endrew F.* could have far-reaching implications for the 6.5 million students with disabilities in the United States. The Court's decision increases the education expectations for children with disabilities and requires schools to consider each child's individual strengths and weaknesses when writing an IEP; in other words, schools can no longer provide a one-size-fits-all IEP.

In the age of personalized medicine, it may seem obvious to clinicians that each individual's needs should be examined independently, but until now, this was not a given in school systems. With this ruling, the Court has provided more opportunity for physicians to advocate for their patients' individual needs based on their individual strengths and vulnerabilities. It is foreseeable that psychiatrists, neurologists, and pediatricians will be called upon to help distinguish what these may be, especially in cases such as Endrew's, where there is dissent between the parents or guardians and the school. When disagreement persists, forensic psychiatrists may be called upon to weigh in on the degree of need and services required for a specific child. However, the higher expectations of *Endrew F.* combined with a continued lack of specific criteria for what is deemed "reasonable" could make such forensic evaluations challenging.

It is also important not to overstate the Court's ruling. News coverage focused on the phrases "some educational benefit" versus "meaningful educational benefit," but it is important to note that the Court's decision did not fully address these arguments. Instead, the Court focused on progress, growth, and being "fully integrated," as it also did in the *Rowley* decision. By doing so, the Court avoided passing universal standards governing "appropriate progress," instead leaving room for individual differences. The Court also rejected the family's petition to establish a more stringent standard that would require public schools to give children with disabilities an opportunity to (among other things) achieve academic success and attain self-sufficiency, the so-called "substantially equal" standard. Thus, the Court's decision should not be over interpreted to mean special-education students are entitled to the maximum possible benefit. Instead, the Court ruled that children with disabilities are entitled to more than the *de minimis* to help them achieve appropriate progress, but that these will be individualized decisions. Regardless, this decision remains a dramatic step forward in addressing the individual educational needs of children with disabilities.

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Exclusion of Psychiatric Diagnosis and Substance Use in Consideration of Death Penalty Case Appeal

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Failure to Present Evidence of Mental Illness or Substance Use Did Not Represent Ineffective Counsel and Therefore Was Not Grounds for Granting Certificate of Appealability

In the case of *Rockwell v. Davis*, 853 F.3d 758 (5th Cir. 2017), Kwame Rockwell was convicted of murder and sentenced to death. After a federal writ of *habeas corpus* petition was denied by the U.S. District Court for the Northern District of Texas, Mr. Rockwell filed a Certificate of Appealability (COA). He filed the COA on the grounds that his counsel's failure to present evidence in support of his preexisting mental illness and his previous steroid use constituted ineffective counsel. In addition, he argued that sentencing him to the death penalty was unconstitutional under the precedent set forth in *Atkins v. Virginia*, 536 U.S. 304 (2002). The Court of Appeals for the Fifth Circuit denied his application for a COA.

Facts of the Case

Mr. Rockwell was arrested and charged with murder after he fatally shot a store clerk, Daniel Rojas, during the robbery of a Valero gas station in Fort Worth, TX, on March 23, 2010. During his incarceration, Mr. Rockwell began exhibiting symptoms potentially suggestive of a mental illness. He was diagnosed with schizophrenia while incarcerated and was treated with haloperidol, an antipsychotic medication. During the litigation process, he was evaluated by several mental health professionals, including several psychologists and psychiatrists. Information obtained from these mental health evaluations, as well as from family members, friends, and acquaintances, pointed to either an intentional exaggeration of symptoms by Mr. Rockwell or a lack of symptoms supportive of the diagnosis of schizophrenia. In addition, Mr. Rockwell had a history of illegal steroid use, and his attorney retained the services of a forensic toxicologist. It was the opinion of this toxicologist that evidence of his steroid use should not be presented in court, as he stated that Mr. Rockwell's actions were not consistent with those that are typically seen in individuals who use steroids. In addition, his attorney did not wish to introduce evidence that could result in Mr. Rockwell's character being negatively perceived by the jury. Consequently, his attorney focused solely on Mr. Rockwell's character as a defense strategy by including 52 witnesses who testified on Mr. Rockwell's behalf when his sentence was being determined.

In 2012, Mr. Rockwell was convicted of murder and sentenced to death. An automatic direct appeal was submitted to the Texas Court of Criminal Appeals claiming 21 points of error. The appeals court found no reversible error and affirmed the conviction and sentence. Mr. Rockwell filed a state and then a federal petition for a writ of *habeas corpus*, both of which were denied.

Because federal law does not allow for an absolute right to appeal, a COA must first be granted by a circuit justice or judge (*Buck v. Davis*, 137 S. Ct. 759(2017)). After his petition for writ of *habeas corpus* was denied by the federal courts, Mr. Rockwell filed a COA with the Fifth Circuit Court of Appeals. Among multiple claims, he argued that his trial counsel's failure to present evidence of his schizophrenia diagnosis and of his steroid use constituted ineffective assistance of trial counsel. In addition, he felt he was not eligible for the death penalty based on the precedent established in *Atkins.* Finally, he argued that Texas's death penalty statute unconstitutionally forbade juries from considering mitigating evidence.

Ruling and Reasoning

A COA is issued only if the circuit court judge determines that there has been "a substantial showing of the denial of a constitutional right" (28 U.S.C. §2253(c)(2) (2017)). At the time of a COA inquiry, the question is solely whether the petitioner shows that "jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are ade-