

# **Sharpen Your Tools : the *Endrew F.* Supreme Ct. Case 2017**

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**University of Denver's 10th Annual GT Conference**











**newborns drink 100.32  
gallons of milk per day,  
weigh 1 ton at birth & 2  
tons @ 5 mo.**



**Gray**



**Blue**







# ***Andrew F. v. Douglas County School District RE-1***





**Dr. Ann Turnbull, & Rud Turnbull, Esq. of  
the University of Kansas note :**



***“ this important Supreme Ct. decision is a narrative  
about a student’s ethical claim to dignity....”***



**Who benefits from sharpening their  
Education Law and Special Education Law  
knowledge ?**

**A.**

**B.**

**C.**

**D.**

**E.**

**F.**



# **Overview of This Session**

- 1. FAPE, IDEA, ESSA & the 14th Amendment**
- 2. The *Rowley* case 1982, the *Endrew* case 2017**
- 3. *Endrew F.* = “Demonstrate Student Progress”**
- 4. IEP Students, 2e Students, GT Learners, All Kids**
- 5. Educators = “Cogent Rational” for IEPs**
- 6. Student Case Studies**
- 7. Collegial sharing about *Endrew F.* implications**



**Quality Ed for “All Kids” is  
Promised by : ESSA  
& by the 14th Amendment  
(Equal Protection Clause)**

**Elementary & Secondary Education Act of  
1965 (ESEA) has been re-authorized 8  
times; the prior re-auth was NCLB  
& the current authorization is :**

**Every Student Succeeds Act - ESSA - 2015**



# **Quality Ed for “Kids with Disabilities” is promised by : IDEA**

**Three primary requirements of the IDEA include:**

- A. Free Appropriate Public Education - FAPE**
- B. Individual Education Programs - IEPs**
- C. Stakeholders collaborate to create IEPs**

**It is unfortunate that the 1982 Rowley  
precedent evolved as a platform  
for “de minimis” education quality**



# Summary of IDEA

IDEA guarantees access to a free appropriate public education (FAPE) in the least restrictive environment (LRE) to every child with a disability

- Services for school-aged children, including preschoolers (Part B of IDEA)

<https://www.parentcenterhub.org/schoolage/>

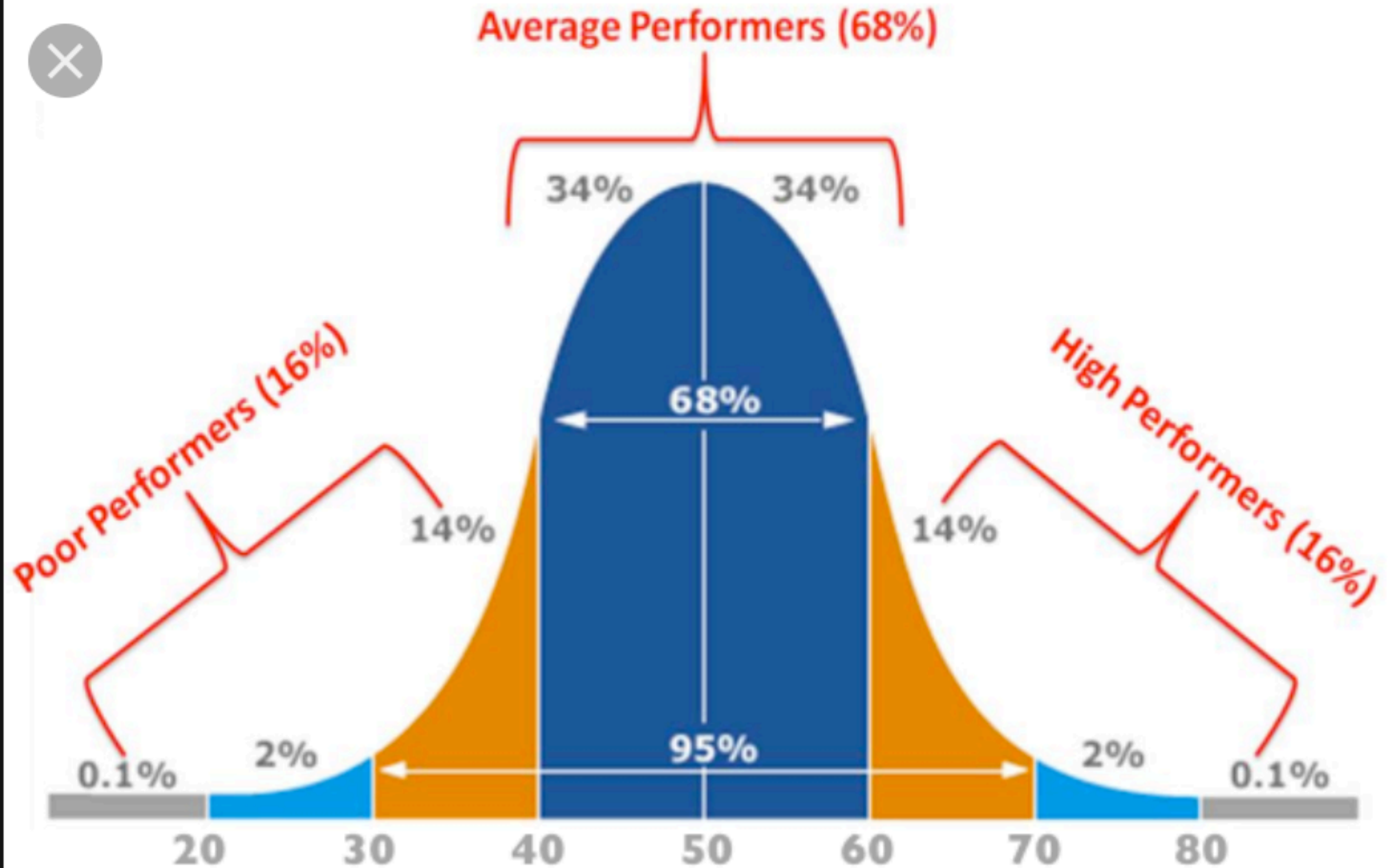
- Services for babies and toddlers to the third birthday (Part C of IDEA)

<https://www.parentcenterhub.org/babies/>



**“Exceptional Students” are on both ends of the Bell Curve**

**between 4 % & 32 % of all Learners**





# **Appropriate K-12 education is promised to Gifted Learners in Colorado via :**

- 1. their ALP ( Colo law )**
- 2. the Exceptional Children's Education Act ( Colo )**
- 3. ESSA - Every Student Succeeds Act ( Federal )**
- 4. the 14th Amendment's - Equal Protection Clause**



# **Appropriate K-12 education promised to Twice Exceptional children via :**

- 1. their ALP - Colo law**
- 2. their IEP - IDEA, federal law**
- 3. the Exceptional Children's Education Act - CO**
- 4. ESSA - Every Student Succeeds Act - Federal**
- 5. the 14th Amendment**



IN CONGRESS, 1776

Declaration of the thirteen united States of America

"WE HOLD THESE TRUTHS  
TO BE SELF-EVIDENT,  
THAT ALL MEN ARE  
CREATED EQUAL..."



# **FAPE**

**The Supreme Ct. wanted to clarify the “A” in  
FAPE**

**“*Rowley*” (1982) was the benchmark for 35 years ;  
stakeholders had been stumbling on vagaries of  
its’**

**“*de minimis*” feature**

- a. basic educational tools, OR :**
- b. the Cadillac of available tools ?**

**“*Endrew*” (2017) says schools must offer IEPs that  
are reasonably calculated to enable a child to  
make progress that is appropriate in light of their  
circumstances**



# **FAPE Supreme Court Legal Precedents**

## **The 1982 *Rowley* decision-**

**involved a kindergartner with extreme hearing loss;  
her parents asked that she be provided a qualified Sign  
Language interpreter in all of her academic classes in lieu  
of some of the other assistance proposed in her IEP ;  
( Parents lost at the Supreme Ct. level )**

## **The 2017 *Endrew F.* decision-**

**involved an elementary age boy identified on the autism  
spectrum; & his parents dissatisfaction with a lack of tools  
& strategies offered; yet a short time later a private school  
was able to set him on a course to some key improvements ;  
( Parents won Tuition & Legal costs reimbursements )**



# About Amy Rowley's 1982 Case



*Hendrick Hudson Central Sch District v. Rowley*



# **Professor Amy Rowley, Calif State Univ**





# About Drew's 2017 Case



***Andrew F. v. Douglas County Schools***



# Drew

**I.D'd to be on the Autism Spectrum, suffered  
with behavior problems, and low  
achievement levels**





# **Drew's Parents**

Drew's parents understood that the law "entitled" Drew to be educated at Firefly Autism House even after the school district, an administrative law judge, the district court, and the Tenth Circuit had told them that it did not and even before the Supreme Court affirmed to them that it did.

In addition, his parents acted on that understanding of the law at a cost measured in "seven figures," knowing that they would probably never be reimbursed. Drew's parents did so because that was what their child "needed" them to do, and Drew's parents loved their child.

**Randy Lee ; What Can We Learn From Love ?**



**Drew is ~ 20 yrs old now**





**Two leaders from Drew's legal team :**  
**Jack Robinson, Esq.      Jeffrey Fisher, Esq**





**2017 Supreme Ct - in a unanimous decision :**

**“We can not accept the school district’s reading of *Rowley*”**

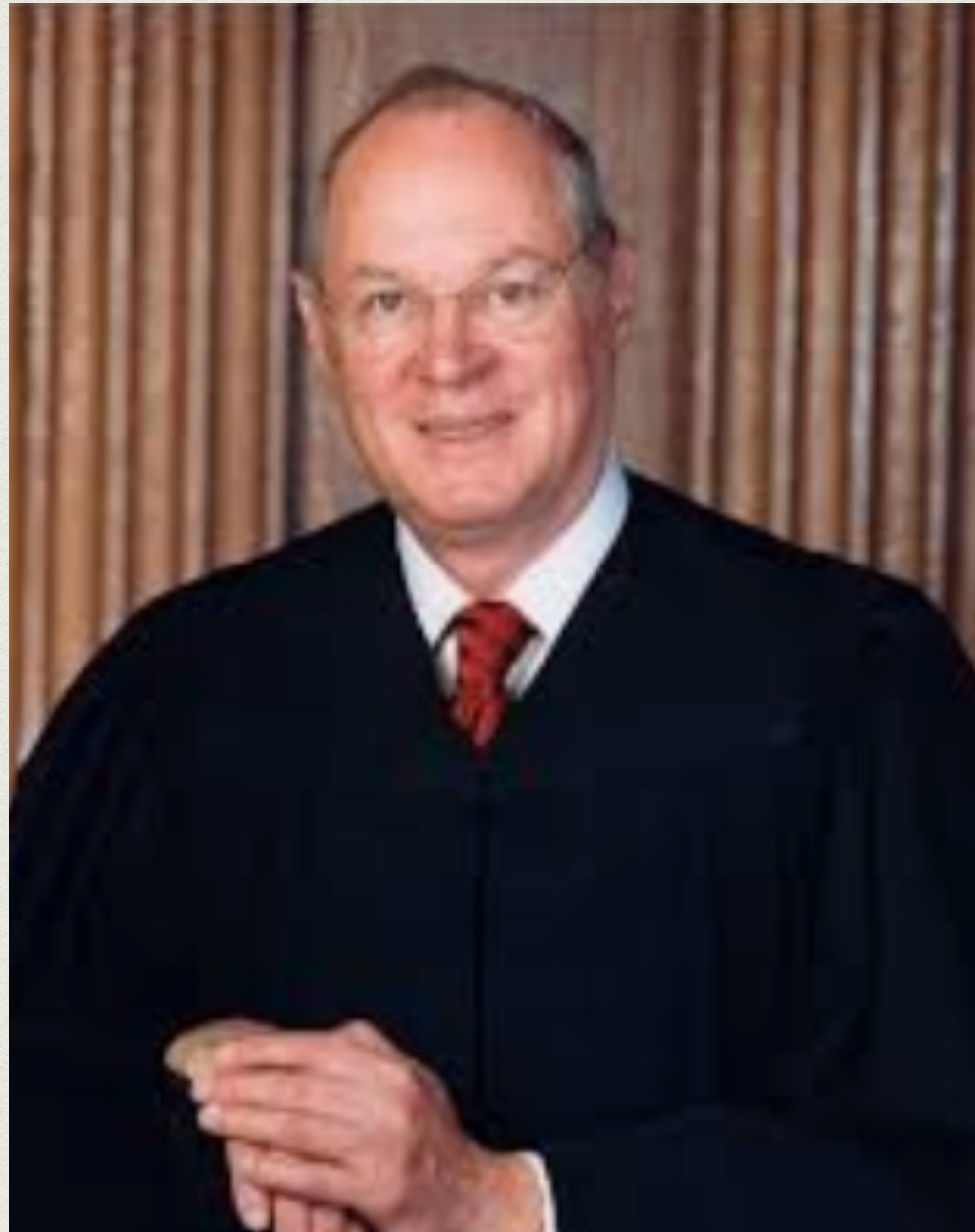




- **The 10th Circuit in 2016, like numerous other courts interpreted the *Endrew F.* case from the de minimis lens that had evolved from *Rowley***
- **in March of 2017, the Supreme Court remanded the case back to the 10th Circuit for them to reprocess consistent with the Supreme Ct.'s clarifications**
- **the Supreme Ct. established a uniform FAPE standard for all IEPs that strives for “progress appropriate in light of the child’s circumstances.”**



# **Justice Anthony Kennedy**





**Justice Anthony Kennedy :**

***“what else should have been done  
for this student ?”***



**Jeffrey Fisher :**

***1st & foremost, educators  
should have conducted a  
FBA to better understand  
his complex behaviors***



**Jeffrey Fisher, Esq. answering a  
question Justice Samuel Alito asked :**



**“I don’t even think the courts themselves  
believe in barely more than de minimis”**



**“Any review of an IEP must appreciate that the question is whether the IEP is *reasonable*, not whether one ‘regards’ it as ideal.”**

**“The IEP must aim to enable a child to make progress. After all, the essential function of an IEP is to set out a plan for pursuing academic and functional advancement.”**

**credit to COPAA,  
Counsel of Parent Attorneys & Advocates**

**Further Details :** <https://www.copaa.org/page/Endrew>



**The 2017 Court specifically rejected Endrew's parents' arguments that FAPE means:**

*“an education that aims to provide a child with a disability opportunities to achieve academic success, attain self-sufficiency, and contribute to society that are substantially equal to the opportunities afforded children without disabilities”*

**The 2017 Supreme Court acknowledged that the 1982 Rowley Supreme Ct denied such argument in that case, specifically concluding that FAPE does not mean “substantially equal” to services or results realized by non-disabled students**



**When a costly private school is demonstrating relative success with a student, and the parents ask their neighborhood public school to please collaborate, watch & learn from them - but the public school freezes like a deer staring into headlights... is THIS the kind of collaboration that Congress intended for IDEA...?**

**Granted : *some of our students provide us extreme challenges .... however ..... ;***

**They skipped the FBA...? really...?**



**Must we always perform FBA's ....?**

**No : FBA's are required : only when student behaviors impede their learning**

**Tip : Dis-engagement IS a (dysfunctional) behavior**

**Yes : You should perform a FBA even on the “non-disruptive” student who displays quiet dysfunctional behavior(s)**

**Are FBA's only for IEP students ? No:  
ESSA & the 14th Amendment “call for” Equal Protections**

**\*\* Fortunately FBA's are usually less complex for Gen Ed students**



## **Solutions...?**

- A. Our FBA's and MTSS processes need to be more  
“Student Centric”**
- B. Parents and Educators need to go “all out” when  
it comes to forging Strong Teams and  
True Partnerships that benefit Students  
( “genuine relationships” go a long way )**







# Maslow's Hierarchy of Needs





# **Some great FBA templates & resources**

## **Building PBIS Systems in Schools, 2nd edition**

**Leanne Hawken, Deanne Crone, & Rob Horner**

**<https://www.guilford.com/crone-forms>**

## **Johnson County Indiana's FBA templates**

**<https://www.earlywood.org/Page/813>**



# **Student Cases**

**\* Michael**

**\* Evan**

**\* Ebony**

**\* Deigo**

**\* T.J.**



# **Landmark School, Beverly, MA - remediates Dyslexia**

**Uses both Phonics AND Whole Language**

1. Provide opportunities for our students to experience success
2. Use multi-sensory approaches to teach
3. Use micro-units and structured tasks for every student
4. Ensure automatization through practice and review
5. Provide models for our students to use as a guide
6. Include our students in the learning process



## **Prior to 2017, the Supreme Ct Refused to Review This Twice-Exceptional Student's Case**

Per Hovem's mother Signe says the Chief Judge of that court, Edith Jones, "declared it did not make sense to her that our son could comprehend at a post graduate level but nonetheless possessed primary school reading and writing abilities." Hovem doubts the judge understood the nature of learning disability.....

Her son Per is a gifted young man with great receptive skills in reading and listening. In 2007, however, Per's senior year of high school, it became apparent that his written expression skills were at a first-grade level. Yet Klein Collins High School sought to waive a graduation requirement dealing with writing and declare that he was eligible to graduate from high school.

**Many feel the public dismay over Per's case being denied Supreme Ct review likely helped give them incentive to review the *Endrew F.* case**



# **Firefly Autism House, Denver**

## **Drew's Private School Setting**

### Story 1

"Our son started at Firefly Autism House in May of 2010. At the time he began, he did not engage in social behavior and could not accept comfort when he was upset. As of September, 2010, he is now looking at his teachers when he is playing on the computer and is acting out his favorite games. He is able to accept hugs when he is upset, and the periods of his being upset have dramatically decreased. At home he is playing with his brother for the first time and engages in social routines with his parents."



# Firefly Autism House

## Story 2

"Our son started at Firefly Autism House - in December of 2009. Prior to starting at Firefly, he received home tutoring because his public school district could not meet his needs. When he started, he engaged in high rates of physical aggression and was not able to be in the same room as his peers. He is now in a classroom with multiple peers, eats lunch in the lunch room with friends and can engage in leisure activities with friends."

- \*\* ABA therapy - Applied Behavior Analysis - as a bridge to the deeper learning inherent in Cognitive Developmental tools**
- \*\* honor using FBA tools to I.D. students' needs on Maslow's Pyramid**
- \*\* also equip Students & Families with Cognitive Developmental tools**



# **Sample 504 Plan From the American Diabetes Assoc.**

<http://main.diabetes.org/dorg/PDFs/Advocacy/Discrimination/504-plan.pdf>

**For a student to qualify for Section 504 protection, the student must:**

- (1) have a mental or physical impairment**
- (2) which substantially limits**
- (3) one or more major life activities.**

**(1) All three criteria must be met before the student is eligible for Section 504 protection**

**Issues common for 504's include: ADHD, Emotional or Behavioral, unique Health Challenges to include high school pregnancy, milder Learning Challenges that might not otherwise qualify a Student for Services under IDEA criteria**



## **Collegial Sharing & Questions**

**public schools must offer IEPs reasonably  
calculated to enable a child to make progress  
appropriate in light of the child's circumstances**

**“every child should have the chance to meet  
challenging objectives”**

**If a child is not fully integrated, the focus shifts  
even more to the “unique circumstances of the child.”**





Terri is an enthusiastic member of NASP & the Education Law Association who spent her early career as a K-12 educator and school psychologist intern, and mid-career as a Project Manager & Entrepreneurial Co-Founder for real estate projects, and medical device sales.

She holds K-12 Principal & Special Education Director licenses as well as endorsements as a Specialist in Gifted Ed, Literacy, STEM and Special Ed.

Terri has been advocating for quality education for 26 years through her non-profit Satori Alliance for Strong Schools, enjoys following Invention & Patent trends, and is involved with the TQM and Agile communities in Denver & Boulder.

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