The Rowley Case: What Does It Really Mean?

INTRODUCTION

The case of Rowley v. Hendrick Hudson School District[i] was the U.S. Supreme Court's first interpretation of what was then called the Education for All Handicapped Children Act (now the Individuals with Disabilities Education Act, "IDEA"). This important decision is required reading for anyone working in special education. The case concerned a hearing impaired girl named Amy Rowley, who was a student at the Furnace Woods School in Hendrick Hudson Central School District, Peekskill, N.Y. Amy had minimal residual hearing and was an excellent lip reader. During the year before she began attending school, a meeting between her parents and the school administrator resulted in a decision to place her in a regular kindergarten class. Several administrators prepared for Amy's arrival by attending a course in sign language interpretation, and a teletype machine was installed in the principal's office to facilitate communication with her parents, who were also deaf. At the end of the trial placement it was determined that Amy should remain in the kindergarten class, but that she should be provided with an FM transmitter. Amy successfully completed her kindergarten year.

As required by the Act, an IEP was prepared for Amy during the fall of her first grade year. The IEP provided that Amy should be educated in a regular classroom, should continue to use the FM device, and should receive instruction from a tutor for the deaf for one hour each day and from a speech therapist for three hours each week. The Rowleys agreed with parts of the IEP, but insisted that Amy also be provided a qualified sign language interpreter in **all her academic classes** in lieu of the assistance proposed in other parts of the IEP. Such an interpreter had been placed in Amy's kindergarten class for a two-week experimental period, but it was reported that Amy had no need for this service. This conclusion was reached after consultation with the school district's "Committee on the Handicapped," which had received expert evidence from Amy's parents on the importance of an interpreter. The Committee also received information from Amy's teacher and other persons familiar with her academic and social progress, and visited a class for the deaf. When their request for an interpreter was denied, the Rowleys demanded and received an administrative hearing. After receiving evidence from both sides, the hearing officer agreed with the administrators' determination that an interpreter was not necessary because "Amy was achieving educationally, academically, and socially" without such assistance. The examiner's decision was affirmed on appeal by the New York Commissioner of Education. The Rowleys then brought an action in the United State District Court for the Southern District of New York, claiming that the administrators' denial of the sign language interpreter constituted a denial of the "free appropriate public education" guaranteed by the Act. (Excerpt from the court's own description at 458 US 176 at 183)

The holdings in the Rowley case have become the standard of analysis for **every subsequent special education case** arising in the Federal and State courts. Consequently, a working knowledge of the fundamental analysis developed by the Supreme Court justices is important

when evaluating **any special education matter**. In this paper, this analysis will be examined in detail. Any practioner or educator looking at a special education file should keep this analysis in mind at all times. Since all other courts do this as well, the questions asked by the Rowley court are instructive even today, well over twenty years later.

THE ROWLEY QUESTIONS:

These are best presented in the form originally developed by the Supreme Court:
Therefore, a court's inquiry in suits brought under §1415(e)(2) is twofold. ***First, has the State complied with the procedures set forth in the Act?*** *[FN27] And* ***second, is the individualized education program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits****? [FN28] If these requirements are met, the State has complied with the obligations imposed by Congress and the courts can require no more. (458 US 176, 204) (Emphasis added.)*

As the analysis goes, if the school district has not complied with the Federally mandated *procedures*, and if the violation resulted in some form of *significant harm* to the student, all educational decision making from the point of the violation forward is suspect. What this means is that judges will be more likely to step in and substitute their judgment for that of the educators, given a significant procedural violation. If, on the other hand, the school district has complied with all of the procedures in the Act, then the analysis requires asking the second "Rowley question."

The Supreme Court, however, first examines the priorities assigned by Congress to procedural requirements:

> *But although we find that this grant of authority is broader than claimed by petitioners, we think the fact that it is found in §1415, which is entitled "Procedural Safeguards," is not without significance****. When the elaborate and highly specific procedural safeguards embodied in §1415 are contrasted with the general and somewhat imprecise substantive admonitions contained in the Act, we think that the importance Congress attached to these procedural safeguards cannot be gainsaid****. It seems to us no exaggeration to say that Congress placed every bit as much emphasis upon compliance with procedures giving parents and guardians a large measure of participation at every stage of the administrative process, see, e.g. §§1415(a)(d), as it did upon the measurement of the resulting IEP against a substantive standard. We think that the congressional emphasis upon full participation of concerned parties throughout the development of the IEP, as well as the requirements that state and local plans be submitted to the Secretary for approval,* ***demonstrates the legislative conviction that adequate compliance with the procedures prescribed would in most cases assure much if not all of what Congress wished in the way of substantive content in an IEP****. (458 US 176, 204; emphasis added.)*

"SIGNIFICANT" VIOLATIONS:

A recurrent problem is whether a procedural violation under Rowley is "significant." In 2002, a district was held (at 38 IDELR 85) to have violated "several" procedural requirements of the IDEA but even so, the student received all of his IEP services. The court therefore concluded that there was no resulting denial of a free appropriate public education under IDEA. The procedural violation, therefore, must *actually result in some harm* to the student before it becomes "significant."

ADVERSE EDUCATIONAL IMPACT:

Another recurrent problem is the issue of a student passing from grade to grade and still remaining eligible for services. Amy Rowley herself got good grades, and the court held that she was not entitled to a sign language interpreter as requested by her parents. **This did not mean that she was ineligible for other special education services**, as she was still hearing impaired and met the definitional requirements. In fact, the court itself in Rowley said:
We do not attempt today to establish any one test for determining the adequacy of educational benefits conferred upon all children covered by the Act. ***Because in this case we are presented with a handicapped child who is receiving substantial specialized instruction and related services, and who is performing above average in the regular classrooms of a public school system****, we confine our analysis to this situation. (458 US 176 at 202; emphasis added.)*

In the Cornwall case (17 EHLR 10239/1991) the court held that there was a significant impact on educational performance even though the child had not failed any courses. In Yankton (93 F. 3rd 1369, 8th Cir. 1996), a child with cerebral palsy was getting high grades but was still entitled to specially designed instruction and related services. In Schoenfield (8th Cir. 1998) the court held that academic performance at or above age level does not necessarily mean a child is not "disabled," or that the education satisfied the standard of appropriateness under Rowley.
It can be seen, then, that while Rowley holds that passage from grade to grade is one important indicator of whether an educational benefit has been conferred, it is not the sole criterion but should be "in the mix" of other considerations. **It is a fatal mistake for a school district to declare that a child is ineligible solely because he or she is receiving passing grades.**

EDUCATIONAL BENEFITS:

The court's own language serves to explain this prong of the Rowley test with the greatest skill:
Implicit in the congressional purpose of providing access to a "free appropriate public education" is the requirement that the education to which access is provided be sufficient to confer some educational benefit upon the handicapped child. It would do little good for Congress to spend millions of dollars in providing access to a public education only to have the handicapped child receive no benefit from education. The statutory definition of "free

appropriate public education," in addition to requiring the States to provide each child with "specially designed instruction," expressly requires the provision of "such…supportive services…as may be required to assist a handicapped child to benefit from special education." §1401(17). We therefore conclude that the "basic floor of opportunity" provided by the Act consists of access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child. [FN23] (458 US 176 at 200, emphasis added).

And this analysis is extended to the provision of a FAPE for eligible children:

> *When the language of the Act and its legislative history are considered together, the requirements imposed by Congress become tolerably clear. Insofar as a State is required to provide a handicapped child with a "free appropriate public education,"* ***we hold that it satisfies this requirement by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction. Such instruction and services must be provided at public expense, must meet the State's educational standards, must approximate the grade levels used in the State's regular education, and must comport with the child's IEP****. In addition, the IEP, and therefore the personalized instruction, should be formulated in accordance with the requirements of the Act and, if the child is being educated in the regular classrooms of the public education system, should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade. [FN26] (458 US 176 at 202, emphasis added.)*

The question of how to deal with students who are not capable of obtaining passing grades under any circumstances is not clearly answered by the Supreme Court in Rowley. However, the footnotes make reference to the required full continuum of alternative settings, and the need for some students to be placed in settings other than the mainstream. It is clear, especially in light of decisional case law subsequent to Rowley, that when a child is placed in a more restrictive setting, the decision must be driven by the unique need of the student and not by administrative convenience or other factors (see, e.g., Beth B. v. Mark VanClay and School District #65 (Federal Appellate Case Decided March 5, 2002) [2002 WL 341017, 36 IDELR 121 (7th Cir.).

SELECTED CASE FOOTNOTES
(EMPHASIS IS ADDED)

Case Footnote	Details
(73 L.Ed.2d 710)	25. **We do not hold today that every handicapped child who is advancing from grade to grade in a regular public school system is automatically receiving a "free appropriate public education."** In this case, however, we find Amy's academic progress, when considered with the special services and professional consideration accorded by the Furnace Woods School administrators, to be dispositive.
But see footnote 23! (73 L.Ed.2d 712)	28. **When the handicapped child is being educated in the regular classrooms of a public school system, the achievement of passing marks and advancement from grade to grade will be one important factor** in determining educational benefit. See Part III, *supra*.
This note is from the Dissent: Justices White, Brennan, and Marshall	1. The Court's opinion relies heavily on the statement, which occurs throughout the legislative history, that, at the time of enactment, one million of the roughly eight million handicapped children in the United States were excluded entirely from the public school system and more than half were receiving an inappropriate education. See, e.g., ante, at 189, 195, 196-197, 73 L Ed 2d, at 701, 705, 706. But this statement was often likened to statements urging equal educational opportunity. See, e.g., 121 Cong Rec 19502 (1975) (remarks of Sen. Cranston); id., at 23702 (remarks of Rep. Brademas). **That is, Congress wanted not only to bring handicapped children into the schoolhouse, but also to benefit them once they had entered**.
(Footnote 23) THIS NOTE devotes substantial space and time to the concept of **self-sufficiency** and this should be pointed out to any hearing officer,	**"With proper education services, many would be able to become productive citizens, contributing to society instead of being forced to remain burdens. Others, through such services, would increase their independence, thus reducing their**

Case Footnote	Details
administrator, or attorney who insists that the opinion stands for the rigid proposition that "any" satisfactory grade record will do. Moreover, the presence of 'relaxed' grading standards (i.e., giving passing grades just for trying) does not assist the pupil in the permanent and long-range development of self-sufficiency skills.	**dependence on society."** S. Rep, at 9. See also HR Rep, at 11. Similarly, one of the principal Senate sponsors of the Act stated that "providing appropriate educational services now means that many of these individuals will be able to become a contributing part of our society, and **they will not have to depend on subsistence payments from public funds**." 121 Cong Rec 19492 (1975) (remarks of Sen. Williams). See also id., at 25541 (remarks of Rep. Harkin); id., at 37024-37025 (remarks of Rep. Brademas); id., at 37027 (remarks of Rep. Gude); id., at 37410 (remarks of Sen. Randolph); id., at 37416 (remarks of Sen. Williams). The desire to provide handicapped children with an **attainable degree of personal independence** obviously anticipated that state educational programs would confer educational benefits upon such children. But at the same time, the goal of achieving some degrees of self-sufficiency in most cases is a good deal more modest than the potential maximizing goal adopted by the lower courts. Despite its frequent mention, we cannot conclude, as did the dissent in the Court of Appeals that self-sufficiency was itself the substantive standard, which Congress imposed upon the States. Because many mildly handicapped children will achieve self-sufficiency without state assistance while personal independence for severely handicapped may be an unreachable goal, **"self-sufficiency" as a substantive standard is at once an inadequate protection and an overly demanding requirement. We thus view these references in the legislative history as evidence of Congress' intention that the services provided handicapped children be educationally beneficial, whatever the nature or severity of their handicap.**
(Footnote 21) The second recognition herein that some "mainstream" settings, while	The use of "appropriate" in the language of the Act, although by no means definitive, suggests that Congress used the word as much to describe the

Case Footnote	Details
less restrictive, are simply not **appropriate** for the education of some handicapped children. Again in opposition to reflexive LRE and "full inclusion" arguments used by management attorneys.	settings in which handicapped children should be educated as to prescribe the substantive content or supportive services of their education. For example, § 1412(5) requires that handicapped children be educated in classrooms with non-handicapped children "to the maximum extent **appropriate**." Similarly, § 1401(19) provides that, "**whenever appropriate**," handicapped children should attend and participate in the meeting at which their IEP is drafted. In addition, the definition of "free appropriate public education" itself states that instruction given handicapped children should be at an "**appropriate** preschool, elementary, or secondary school" level. § 1401(18)(C). **The Act's use of the word "appropriate" thus seems to reflect Congress' recognition that some settings simply are not suitable environments for the participation of some handicapped children.**
73 L.Ed.2d 708 – **from the body of the opinion:** This Note is one of the most significant parts of the opinion, as it explains what the Court IS and IS NOT deciding. While "self-sufficiency" is not **the** exclusive factor, it is an important factor in determining if an educational benefit has been "conferred." (73 L.Ed.2d 709)	**We therefore conclude that the "basic floor of opportunity" provided by the Act consists of access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child.**[23] 23. This view is supported by the congressional intention, frequently expressed in the legislative history that **handicapped children be enabled to achieve a reasonable degree of self-sufficiency**. After referring to statistics showing that many handicapped children were excluded from public education, the Senate Report states: *"The long range implications of these statistics are that public agencies and taxpayers will spend billions of dollars over the lifetimes of these individuals to maintain such persons as dependents and in a minimally acceptable lifestyle."*
The language of "educational benefit." The root of this language	15. The only substantive standard, which can be implied from these cases, comports with the

Case Footnote	Details
is not just that the child must receive "any" benefit: the benefit must be "received" within the context of the child's unique needs, **not the needs of the agency**. The **origin** of the language is explained in this note – as a way of providing handicapped children with an **inviolable access** to educational services, which provision this court, reads very strictly (see Honig v. Doe, 484 U.S. 305, 308 (1988)). (73 L.Ed.2d 704)	standard implicit in the Act. PARC states that each child must receive "access to a free public program of education and training *appropriate to his learning capabilities*," 334 F. Supp, at 1258 (emphasis added), and that further state action is required when it appears that "the needs of the mentally retarded child are not being *adequately* served," id., at 1266 (emphasis added). Mills also speaks in terms of "adequate" educational services, 348 F Supp, at 878, and **sets a realistic standard of providing some educational services to each child when every need cannot be met**. *The inadequacies of the District of Columbia Public School System whether occasioned by insufficient funding or administrative inefficiency, certainly cannot be permitted to bear more heavily on the 'exceptional' or handicapped child than on the normal child." Id., at 876.*
While the EHA does not mandate 'maximization' of benefits under this decision, note that settled decisional case law provides that states which choose to grant greater rights than the Federal mandate requires **must do so uniformly** – and the state standard will in such cases prevail. (73 L.Ed.2d 706)	21. In seeking to read more into the Act than its language or legislative history will permit, the United States focuses upon the word "appropriate," arguing that "the statutory definitions do not adequately explain what [it means]." Brief for United States as Amicus Curiae 13. **Whatever Congress meant by an "appropriate" education, it is clear that it did not mean a potential maximizing education.** The term as used in reference to educating the handicapped appears to have originated in the PARC decision, where the District Court required that handicapped children be provided with "education and training appropriate to [their] learning capabilities." 334 F Supp, at 1258. The word appears again in the Mills decision, the District Court at one point referring to the need for "an appropriate education program," 348 F Supp, at 879, and at another point speaking of a "suitable publicly supported education," id., at 878. Both cases also refer to the need for an "adequate" education. See 334 F Supp, at 1266; 348 F Supp, at 878.

INDEPENDENCE AND SELF SUFFICIENCY:

At 20 U.S.C. 1400 (c)5(E)ii, it is indicated that 20 years of research under the old IDEA has demonstrated that training people through high quality intensive professional development ensures that these personnel have the skills to enable children to **be prepared to lead productive, independent, adult lives to the maximum extent possible.** This language in the "purposes" clause of Rowley appears to provide a potential argument that the Rowley standard of requiring districts to provide "adequate" services might have been elevated. In addition, at Section 1400(d), under purposes (1)A, one of the purposes of the IDEA is to **enable individuals to meet their unique needs and prepare them for employment and independent living**. This is reminiscent of the footnote discussion in the Rowley case. It is clear that one of the purposes of the Act is to prepare students for independence to the extent that their abilities permit.

CONCLUSION:

Special educators should take special notice of the Rowley case, as it is still good law and it acts as the blueprint for all cases to follow. The two Rowley questions emphasizing procedural compliance and the benefits of the IEP should be committed to memory. Finally, the focus of the decision on what is "appropriate" for special education students should be given special emphasis, especially in light of the social emphasis on so-called "inclusion" in recent years.

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