



10-1981

Board of Education of the Hendrick Hudson Central School District, Westchester County v. Rowley

Lewis F. Powell Jr.

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Desam - join 3?

meb 10/14/81

any
helpful
memo

There is the decision by CA2 (2-1)
that under Education for Handicapped
Children, the N.Y. Public School
must provide a "sign language"

To: Mr. Justice Powell *interpreter for a partially
deaf 8 year old named Amy.*
From: Mary *CA2 commenced opinion: "The case
is about Amy" - & emotional appeal
is strong. CA2 majority purported*

In Re No. 80-1002, Board of Education of the Hendrick Hudson Central

School District v. Amy Rowley

*to write narrowly but - as Judge Mansfield
descent makes clear the majority*

The SG is of little help. He agrees with resps that cert
misconstrued the Act.
should be denied and he gives three reasons: (1) the case is fact-
SG says deny - but case will be
bound and only involves the proper educational opportunities for one
precedential.

specific handicapped child; (2) the decision below appears to be
correct because the Act does not define "appropriate education" and
the legislative history indicates that a handicapped child should
receive, not just an adequate education, but one that will enable
the child to achieve his maximum potential; and (3) compliance with
a state plan is not itself enough to guarantee compliance with
federal standards.

As the discussion below indicates, the decision below
appears to be wrong. The SG argues against taking the case on the
ground that it will have limited precedential value. Despite the
CA2's attempts to limit the precedential scope of its decision, I
think future courts will have trouble seeing the case as irrelevant

to cases before them (I will explain this in more detail below). Another reason for not taking the case would be that there is as yet no split. In the context of a decision such as this one, however, there may be little need to wait for more wrongly-decided cases. I would therefore recommend a grant.

1. FACTS: In the decision below, the CA2 upheld a DC decision ordering a school to provide a sign-language interpreter for a deaf child. In his excellent dissent, Judge Mansfield demonstrates that the school made extraordinary efforts to do what would be best for the child and only decided against an interpreter after repeated observations of her classroom behavior when she had an interpreter: these observations (made by several experts in several different classroom situations) revealed that she resisted interpretation, watched the speaker rather than the interpreter, and asked the speaker to repeat anything she could not understand. A specialist in teaching children with hearing impairments, who was Amy's language tutor, testified on the basis of working closely with Amy daily that a sign language interpreter would not make a significant difference in Amy's education but would, on the contrary, deter her interactions with her teacher and other children in the classroom. This evidence was corroborated by a hearing therapist who worked with Amy three times a week for a half-hour each session. In light of this evidence, the school district concluded that, at least for the time being, she did not need a constant interpreter in addition to the many supplemental services she was receiving.

2. ANALYSIS: The Education for the Handicapped Act, 20 U.S.C. §§ 1401-1461 provides that cooperating states are to have a plan approved (by the Sec'y of HEW) providing free appropriate public education to handicapped children. The plan must also provide procedures for challenges to the education provided a handicapped child, and the final administrative decisions can be challenged de novo in DC.

The DC held that a sign-language interpreter had to be provided. He stated that the Act did not define "appropriate education" and concluded that the term meant services necessary "to bring her educational opportunity up to the level of the educational opportunity being offered to her non-handicapped peers." This, the DC decided, meant a sign-language interpreter during all academic courses.

Actually, the act does define "free appropriate public education": special education and related servies at public expense, under public supervision and direction, including an appropriate preschool, elementary, or secondary school education in the State and in conformity with the individualized education program required by the federal law. This definition suggests that whether a child has been deprived of his rights under an approved plan will turn on whether he has recieved the free public education he was entitled to under the relevant approved state plan (providing the other requirements are met, such as the "individualized-program" requirement).

Under the approved New York plan, all children with hearing losses such as Amy's are not automatically entitled to a sign-language interpreter.

*N.Y.s
approved
plan*

The CA2 (Timbers and Bonsal, per curiam) affirmed over Judge Mansfield's powerful dissent. The decision, which begins with the sentence "This case is about Amy," is somewhat light on reasoning. The court agreed that Amy needed an interpreter and affirmed the legal standard adopted by the DC: the Act requires that level of services needed to bring her educational opportunity up to the level offered non-handicapped children. The CA2 did not provide any basis for the legal conclusion (other than incorporation by reference of the rationale below) and stated that the evidence did not show that the factual findings were clearly erroneous. In the last paragraph, it states that the holding is narrow and rests on the concerns involved in a particular child, her atypical family (her parents were deaf), etc., concluding with: "In short, our decision is limited to the unique facts of this case and is not intended as authority beyond this case."

I do not see how a purely legal holding as to the proper standard (compliance with an approved state plan versus services necessary to provide an educational opportunity equivalent to that available to other children) can be distinguished in future cases on the ground that Amy and her family are unique. Nor do I see how petr can avoid giving an interpreter to every child with a hearing loss regardless of the child's needs, the marginal utility of the service, and the great cost. Given the overwhelming evidence that

ask

the an interpreter was actually undersirable in this case, few cases will be distinguishable on the basis of these facts.

In dissent, Judge Mansfield gives other reasons for regarding the decisions below as wrong. For example, he explains that evaluating a child's learning potential is an almost impossible, and certainly controversial, task--whereas the legislative history indicates that Congress intended to give children the education they need to become independent, productive members of society. Amy is performing above average in her class and appears to be on her way to being an independent person, capable of functioning without a constant interpreter.

Another problem with the majority opinion is noted by the pool memo: under it, states cannot establish a plan, get it approved, and thereby know what expenses they will incur if they receive federal funds under this voluntary cooperative program.

No.80-1002

BD. EDUCATION, WESTCHESTER CTY.

vs.

ROWLEY

BD. EDUCATION, WESTCHESTER CTY.

vs.

ROWLEY

*Discrimination by reversal
justified indicated
view this case is wrongly decided*

Views
of
SG

Views of SG received.
New Note ~~on back~~ attached.
Mary

[illegible]

Deny
Unless
W H R
Number
this should
be held
for Pearhurst
in view of SG

PRELIMINARY MEMORANDUM

February 20, 1981 Conference
List 5, Sheet 3

No. 80-1002

BOARD OF EDUCATION, ET AL.*

v.

ROWLEY

Cert to CA 2
(Timbers, Bonsal, D.J.;
Mansfield dissenting)
(Per Curiam)

Federal/Civil

Timely

1. SUMMARY: Petrs contend that the CA and DC erred in
requiring them to provide a partially deaf student with a sign
language interpreter under the Education for All Handicapped
Children Act of 1975, 20 U.S.C. §1401 et seq. (1978).

2. FACTS: Amy Rowley is an eight year old partially deaf
child. Despite her handicap, she performs above the median

*no
problem]

Because this case probably is limited to its
facts, cert could be denied. I believe, however, that
the Conference is holding Battle v Pa., which
(over)

standard of her class. She has some residual hearing, particularly in lower frequencies, and can read lips. She also uses an FM wireless hearing aid, which amplifies particular sounds but blocks out background noise. The school district provided Amy with a sign interpreter on a test basis, but the interpreter reported that Amy resisted interpretation, functioning like the nonhandicapped children and looking to the teacher rather than the interpreter. The Education for All Handicapped Children Act of 1975, 20 U.S.C. §1414(a)(5) provides that "the local educational agency ... will establish ... an individualized education program for each handicapped child at the beginning of each school year" Amy's parents objected to the individualized program prepared by the school district for Amy because it made no provision for a sign language interpreter. The school district's decision was upheld by the Commissioner of Education of New York, and the Rowleys commenced an action in the Southern District of New York to compel the assignment of an interpreter. Prior to making the state commissioner a defendant, the parties stipulated that the DC should review Amy's program not only for the current year but the next year as well. The Rowleys contended that without assignment of an interpreter Amy was deprived of the "free appropriate public education" which the Act required state and local educational agencies receiving funds under it to provide each handicapped child. Section 1412(1) of the Act provides: "In order to qualify for assistance under this subchapter in any fiscal year, a State shall demonstrate to the Commissioner that the following conditions are met: (1) The State

has in effect a policy that assures all handicapped children the right to a free appropriate public education."

3. DECISIONS BELOW: The DC (Broderick) ruled that a "free appropriate public education" required "that each handicapped child be given an opportunity to achieve his full potential commensurate with the opportunity provided to other children". He concluded that without a sign interpreter Amy missed much of what went on in the classroom, and concluded that the services of an interpreter were needed "to bring her educational opportunity up to the level of the educational opportunity being offered to her non-handicapped peers." The CA concluded in a brief opinion that the DC's decision was based "on the preponderance of the evidence", §1415(e)(2). The majority went out of its way to emphasize the narrow scope of its holding. It stated "our decision is limited to the unique facts of this case and is not intended as authority beyond this case."

Judge Mansfield dissented. He criticized the ~~the~~ DC's view that the Act did not define "free appropriate public education." 20 U.S.C. §1412(18) defines "free appropriate public education" as "special education and related services which (A) have been provided at public expense, under public supervision and direction, and without charge, (B) meet the standards of the state educational agency, (C) include an appropriate preschool elementary or secondary school education in the state involved, and (D) are provided in conformity with the individualized education program required under §1414(a)(5) of this title." A "special education" is defined in §1401(16) as specially designed

- 4 -

instruction to meet the "unique needs of a handicapped child," and "related services" is defined in §1401(17) as "transportation, and such developmental corrective, and other supportive services (including speech pathology and audiology, psychological services, physical and occupational therapy, recreation, and medical and counselling services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a handicapped child to benefit from special education". According to the dissent, the primary characteristics of the definition are thus meeting the standards of an approved state plan and tailoring education to the specific needs of the individual. Here New York has adopted a state plan which has been approved by the U.S. Education Commissioner, a plan which permits development of unique educational plans for handicapped children like Amy. The plan does not require sign interpreters. Reviewing the facts, Judge Mansfield concluded that the evidence clearly demonstrated that Amy's unique needs did not require the use of a sign language interpreter. The DC simply concluded that every deaf child fairs better in class with an interpreter, and moved from this conclusion to Amy's case.

4. CONTENTIONS: The state education authorities begin by adopting Judge Mansfield's argument that the DC erred in substituting its own definition of free appropriate public education for the definitions provided in the Act. They contend that the Act was intended to enable the handicapped to become functioning members of society, insofar as their handicapping

conditions allow. Its purpose was not, as the DC ruled, to compel school districts to provide the handicapped with the opportunity to achieve maximum or a full potential, however desirable that goal may be. Petrs also stress that the CA should have ordered dismissal of the complaint because the school district was in conformity with the state plan approved by the federal Commissioner. Under the Act appropriate education is defined by reference to approved state plans, and New York's plan did not require assignment of interpreters. Petrs also contend that the DC based its decision on the perceived needs of a class of handicapped persons, rather than the unique needs of an individual as required by the Act. See 20 U.S.C. §1401(16). Petrs then review the testimony developed below that Amy functions perfectly well in class without a sign interpreter, that the existence of an interpreter would actually impede Amy's development, and injure her prospects for later life when such an interpreter would not always be available. Petrs also contend that the CA and DC erred in hearing the case since it concerned not only the plan for the current school year, developed by the school district, but also Amy's plan for the coming school year, not yet addressed by state authorities. Finally, petrs emphasized that the CA's effort to limit the precedential value of its decision should not bar review by ceriorari. The definition of free appropriate public education advanced by the DC has already been cited by several other courts in cases arising under the Act. See, e.g., Battle v. Commonwealth of Pennsylvania, 629 F.2d 269 (CA 3 1980).

Resps stress that there is no conflict in the circuits and that the case, as the CA itself stressed, is highly fact specific. They argue that the definition in the Act relied upon by Judge Mansfield and petrs is not a functional definition, and that it provides no guidance to judges in their consideration of controversies involving the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education. The DC therefore did not err in adopting the definition that it did. Resps also reject the exhaustion argument raised by petrs, since any approach other than the DC's would not have permitted resolution of the issue prior to the school year concerned.

5. DISCUSSION: I find the dissent's argument concerning the definition of a free appropriate public education persuasive. The Act defines the term by reference to an approved state plan, and here New York's approved state plan did not require a sign interpreter. By submitting a plan and gaining its approval, New York officials were in a position to know what obligations they were incurring in exchange for acceptance of federal funds. Those obligations did not include the amorphous definition of an appropriate education adopted by the DC and upheld by the CA. As resps point out, however, there is no conflict in the circuits, and the CA bent over backwards to make its affirmance fact specific.

There is a response.

2/5/81
JBP

Roberts

Op in petn.

Voted on....., 19...

Argued, 19...

Assigned, 19...

No. 80-1002

Submitted, 19...

Announced, 19...

BD. ED. WESTCHESTER CO.

vs.

ROWLEY

Still
a
Grant

Same vote
as 10/16

[illegible]

MICHAEL A. CHATOFF
ATTORNEY AND COUNSELLOR AT LAW
270-31M GRAND CENTRAL PARKWAY
FLORAL PARK, NEW YORK 11005
(212) 428-4596

Mr. Stevas
Rec'd JAN 23

RECEIVED
SUPREME COURT, U.S.
MARSHAL'S OFFICE

1982 JAN 13 PM 12 56

January 11, 1982

Office of the Marshal
Supreme Court of the United States
United States Supreme Court Building
1 First Street, N.E.
Washington, D.C. 20543

Re: Board of Education, Hendrick Hudson Central School District v. Rowley,
Index No. 80-1002.

Dear Sir:

The above-entitled action is scheduled to be argued before the Court in February. I am the attorney of record for the respondents and I will be arguing before the Court. I am totally deaf. The purpose of this letter is to explain to you briefly the equipment I would like to use (see the enclosed memorandum prepared by the College Educational Resources Department of Gallaudet College) and to ask your permission for its use.

There are only three possible ways to provide a deaf individual with access to the spoken word: (1) use of a sign language interpreter; (2) use of a note-taker; or (3) use of a visual display. I am not nearly competent enough in sign language to make use of an interpreter. Even the best note-taker will miss 50 percent of what is said in the Court. The system I propose will provide me with "a continuous English display of all voice communication in the courtroom."

If this proposal is feasible, I will be in Washington on February 5 for a demonstration of the system. Following the demonstration, Mr. Torr (of Gallaudet College) and I could meet with you to discuss questions of set-up, security check, etc. If you prefer, a representative from your office could attend the demonstration and see the system in actual operation.

Thank you for your consideration.

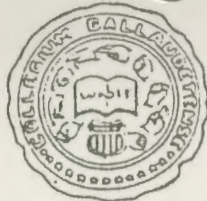
Sincerely yours,

Michael A. Chatoff

Michael A. Chatoff

Enclosure.

✓



COLLEGE EDUCATIONAL RESOURCES

GALLAUDET COLLEGE

KENDALL GREEN, WASHINGTON, D.C. 20002

RECEIVED

January 4, 1981

JAN 4 1982

Office of the Vice President
MSSD/KDES

To: Bob Davila

From: Don Torr

Subject: Michael Chatoff and Real-Time Translation at Supreme Court

Mr. Donald Nixon, President of Translation Systems, Inc. has assured me of his readiness to provide equipment and a certified court stenographer to support Mr. Chatoff in his appeal to the Supreme Court in February. On January 8, 1982 Donald Nixon, Kevin Casey, Tom Klagholz, Julian Snow, and I will meet to discuss the equipment configuration and operation of the system which would give Mr. Chatoff a continuous English display of all voice communication in the courtroom. As of this moment, the project appears completely feasible.

Mr. Nixon has suggested that it would perhaps be best if Mr. Chatoff were the one who asked the court for permission to use this technology to enable him to follow the proceedings of the court with full comprehension. The intention would be to place a Stenotype machine and a CRT display in the courtroom and place the computer in the hall or some convenient space near the courtroom. A cable would be run from the Stenotype machine to the computer. A second cable would run from the computer to the display terminal. There would be need for access to standard electrical power for the Stenotype machine, the display terminal, and the computer. It would be necessary to have some time to set up the system and test it. Would you please pass that suggestion to Mr. Chatoff and ask him to get back to us as soon as possible with a reply? I would be happy to communicate directly with Mr. Chatoff if you think that would speed things.

I have suggested to Don Nixon that we demonstrate the system for Mr. Chatoff using the equipment which would be installed in the court if permission is granted and he has agreed to that.

I certainly hope it is possible to provide this support to Mr. Chatoff. It would be an historic event for deaf individuals and would set a precedent for this type of service; it would undoubtedly provide the public with additional education about deafness; and it would probably accelerate the incorporation of this technology in the court system.

DVT:psb:1

cc: D. H. Nixon
E. C. Merrill, Jr.
K. B. Casey
T. J. Klagholz
J. B. Snow
J. C. Scott

Equal Opportunity Employer

No. 80-1002

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1980

RECEIVED

JAN 25 1982

OFFICE OF THE CLERK
SUPREME COURT, U.S.

THE BOARD OF EDUCATION OF THE HENDRICK HUDSON
CENTRAL SCHOOL DISTRICT, WESTCHESTER COUNTY, AND
THE COMMISSIONER OF EDUCATION OF THE STATE OF
NEW YORK, PETITIONERS

V.

AMY ROWLEY, ET AL.

ON PETITIONER FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR THE
SECOND CIRCUIT

EX PARTE MOTION TO PERMIT INTERPRETATION OF ORAL ARGUMENT

Counsel for respondents moves, ex parte, pursuant to Rule 42 of the Rules of the Supreme Court for permission to have the oral argument before this Court interpreted on the grounds that:

1. Counsel for the respondents, who has conducted this litigation from its inception, is deaf;
2. Counsel for the respondents has used various methods in the lower courts to provide him with access to oral communications, including note-takers (not very useful) and video displays;
3. Counsel for the respondents seeks permission to use a system, using private equipment and facilities, arranged under the supervision of Mr. Donald Torr, Department of College Educational Resources, Gallaudet College, and explained more fully in this excerpt from an interoffice memorandum prepared by Mr. Torr:

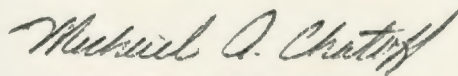
The intention would be to place a Stenotype machine and a CRT display in the courtroom and place the computer in the hall or some convenient space near the courtroom. A cable would be run from the Stenotype machine to the computer. A second cable would be run from the computer to the display terminal. There would be need for access to standard electrical power for the Stenotype machine, the display terminal, and the computer.

4. A stenographer would type the oral argument using stenographic shorthand. Everything typed by the stenographer would pass through a computer which would convert the stenographic shorthand to written English. The conversion would appear on the display terminal which would be in front of counsel for respondents. The system "would give Mr. Chatoff a continuous English display of all voice communications in the courtroom;"

5. No record of the argument will be made, written or otherwise. If necessary, counsel for respondents, as a member of the Bar of the Supreme Court of the United States, will submit to the Office of the Clerk a certification to that effect;

WHEREFORE, counsel for respondents requests permission for interpretation, as discussed above.

Respectfully submitted,



Michael A. Chatoff
Counsel for Respondents
270-31M Grand Central Parkway
Floral Park, New York 11005
(212) 428-4596 (TTY)
(516) 248-1900

Dated: Floral Park, New York
January 20, 1982

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C., 20543

File

January 25, 1982

MEMORANDUM TO THE CHIEF JUSTICE

From: Al Stevas *al*

Re: Argument in Board of Education, Hendrick Hudson
Central School District v. Rowley, No. 81-1002

In the above case the Court granted the petition for writ of certiorari on November 2, 1981, and the case will probably be scheduled for argument during the month of March. I am informed that counsel for the respondent is totally deaf. He indicates he is not competent enough in sign language to make use of an interpreter and will be requesting permission to use an official court stenographer whose Stenotype machine will be tied to a computer display terminal in the Courtroom (the computer equipment would be located outside the Courtroom). This would permit the court reporter to record questions and they would be instantly displayed on the terminal so that counsel could read the questions and then respond.

It appears from the attached correspondence that the attorney is endeavoring to set a precedent by utilizing this procedure in the Supreme Court, thereby making it easier for attorneys to convince other court systems to allow this technique.

Since I believe this is a matter that would require permission of the Chief Justice and/or the Court, I am calling it to your attention in advance of receiving a motion from counsel. Efforts to persuade him to have other counsel argue the case have not been fruitful.

We recently had a group of deaf students seated in the Courtroom during oral argument and an interpreter was allowed to relay the argument and questions via sign language.

Attachment

Sally: Suspended & Hand
Office of the Marshal
Supreme Court of the United States
Washington, D. C. 20543

*to me
on 3/22*

March 18, 1982

MEMORANDUM TO THE CONFERENCE

Subject: 80-1002 Michael Chatoff
Handicapped Arguing Attorney

Having previously been granted permission by the Court, Michael Chatoff, arguing for the respondent in this case on March 23rd will use a computer generated system in order to "hear" questions put to him by the Court as well as hear opposing counsel argument. Chatoff is deaf and advises that he is not competent enough in sign language to make use of an interpreter.

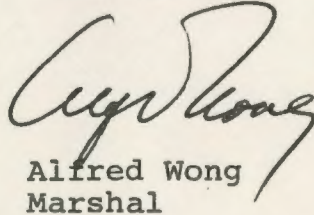
Through the assistance of officials at Gallaudet College, Chatoff will use a certified court reporter who will key the questions in the standard court reporter method into a stenorette machine. This machine is wired directly into a small computer which will translate the information into plain English and in turn transmit this to a terminal at the arguing attorney lectern. The time it takes from stenorette to computer to the terminal is about three seconds. Thus it should take only a few seconds after a question is asked for Chatoff to respond (giving him time to read the question).

Chatoff and the assisting group from Gallaudet set up the equipment in the Courtroom on February 26th. The translation during the test was extremely favorable. Joseph Karlovitz, the court reporter, had excellent stenographic skills, and he will also be present to assist Chatoff during argument.

When asked how he would know if a question was being asked while he was speaking, Chatoff said co-counsel would tug his coat and he would then look at the terminal and read the question.

From the test it appears that the use of the computer equipment will be much faster and more accurate than the use of sign language or hand written notes.

A back-up computer is promised and every effort for technical redundancy has been offered. It therefore appears that the argument should proceed as "normal" as possible. The Conference however, should be aware that Mr. Chatoff has a speech impediment which may require close attention for comprehension.

A handwritten signature in dark ink, appearing to read 'Alfred Wong', with a stylized, flowing script.

Alfred Wong
Marshal

(Amy - deaf child)

See Mary's excellent memo of 10/14
- she agrees with Mansfield's dissent.

Kunte (Petr School Bd) (Able lawyer)

Teacher took sign language course.

School bought a teletype machine for Amy.

Special class room - limited funds

Tried sign-language interpreter

School Committee on Handicapped, after careful consideration, made recommendations.

This program was successful. Amy
score well. Amy is now in 4th grade - doing
well
X X X

The Act prescribed no special programs: leaves to State.

The State's Plan did not include interpreter.

The S/Bd not only complied with Plan but provided extra services.
9th program worked.

Argue that Court may review "procedure" only but not the substantial provisions duly adopted by state authorities.

CA 2 standard is unworkable:

S/Bd decision was upheld by St/Board.

Chatoff (for Amy)

Must receive an education "equivalent"
to that provided children "not handicapped".

Responding to JPS, Chatoff said
CA 2's ap. would not require hearing
aid for every deaf child. Individualized
decision must be made.

3G

Act provides for right of action
by any child

"Full educational opportunity" required.

"Equal opportunity" required.

CA 2's standard is correct &
applies to every child.

File

80-1002 Bd of Ed v Rowley ("Amy's case")
3/24

Reverse. of Mansfield dissent.

CA 2 & DC's "standard":

Act requires recipients of aid, to provide ~~a~~ free "appropriate public education", & § 1414(e)(5) requires an "individualized program for each child".

CA 2 construed this to require a program that will bring every handicapped child's "educational opportunity" up to level of the opportunity "offered non-handicapped peers".

As of Mansfield said this is an "unpractical & erroneous standard."

N.Y. State's Plan and procedures - adopted under State Regs - were approved by Sec. of Education. (A 11). Plan does not provide for interpreters

The scope & range of an "appropriate education" is left primarily to the States (Mansfield) - as it must be.

Gov't can't function if Fed Cts may be called upon to decide for any ~~has~~ handicapped child whether he or she is being properly educated. Should interpret Act require an absurdity.

incomplete notes

The Chief Justice

Rev.

Courts have no business determining a child's capacity & whether the education provided is adequate.

We should read Act as leaving these decisions to State school authorities.

Range of handicaps is infinite.

The courts below ~~failed~~ failed to accord the state's decision ~~the~~ presumptive validity.

Jud. review should be confined to procedural aspects.

Justice Brennan

Affirm

Key Q is Congress' intent as to role of fed courts. Three possible answers.

Congress provided access to courts for de novo hearing, & leg. ~~case~~ history makes clear ~~this~~ this was its intent.

CA2's decision is exactly right.

Justice White

Affirm

~~Given hardly ~~credible~~ is credible~~

The de novo court review was added in Conference. It was not in either House or Senate ~~if~~ & there were never any hearings.

We think CA2 may have followed the wrong standard. Comparably standard may be wrong - but can't identify ~~better~~ more appropriate one.

(See Bumpers Bill)

6800 hearing in U.S.
alone

Justice Marshall Aff'm

Agree with BRW. Silly but
this is what Congress intended.

Justice Blackmun

Rev. Tentative.

Agree State's obligation is more than
to provide a Plan.

What is ~~a~~ proper definition of
an "appropriate public education"?

On the DC & LA 2 standard,
no consideration is given to cost.

Amey had equal access to education

Justice Powell

Rev - if possible in light of de novo review.

Standard of DC & LA 2 is not in
the Act & we can formulate a different
one.

Act is extraordinary in allowing
de novo review as to every
child w/out regard to cost or
other considerations. Will be
difficult to write

Justice Rehnquist

Rev & Remand

An incredible Act. ~~the~~ De novo review is required.

But we are free to review the standard.

Term "appropriate education" must be read in relation to cost. It should be read in relation to ~~the~~ resources of ~~the~~ the school district.

(Bue has some idea as to standard - I should talk to him)

Justice Stevens

Rev

This is a "spending" statute. ~~Congress~~

Congress did not tell us what the standard should be. A court should give some deference to what the State has done.

CA 2 tried to "cop out" by trying to limit decision to facts.

The Act is a major break with the type of ^{some} legislation that requires deference to adm. decision.

Justice O'Connor

Rev & Remand

Act does provide for these suits.

Error below was ~~the~~ interpretation of "appropriate education".

Fiscal limitations must be considered.

If there is an individualized review by State authority, its substantive decision should not be reviewed by courts.

"Wide spectrum" of handicapped children - 24

127P

Standard: "free appropriate public education" means "some educational benefits" - 23 (but see p 24)

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

Decision limited to Amy's case - 24

From: Justice Rehnquist

Circulated: 5/11/82

Recirculated: _____

Holding: 25 - as to a child
being educated in class with
normal children, the IEP
(Individualized Educational Program)
must be reasonably
calculated
to enable the child to achieve passing marks
& advance
from grade
to grade - 26

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1002

BOARD OF EDUCATION OF THE HENDRICK HUD-
SON CENTRAL SCHOOL DISTRICT, WESTCHESTER
COUNTY, ET AL., PETITIONERS v. AMY ROWLEY,
BY HER PARENTS AND NATURAL GUARDIANS,
CLIFFORD AND NANCY ROWLEY, ETC.

Reviewed
5/16.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT

[May —, 1982]

JUSTICE REHNQUIST delivered the opinion of the Court.

This case presents a question of statutory interpretation. Petitioners contend that the Court of Appeals and the District Court misconstrued the requirements imposed by Congress upon States which receive federal funds under the Education for All Handicapped Children Act. We agree and reverse the judgment of the Court of Appeals.

I

The Education for All Handicapped Children Act of 1975 (Act), 20 U. S. C. § 1401 *et seq.*, provides federal money to assist state and local agencies in educating handicapped children, and conditions such funding upon a State's compliance with extensive goals and procedures. The Act represents an ambitious federal effort to promote the education of handicapped children, and was passed in response to Congress' perception that a majority of handicapped children in the United States "were either totally excluded from schools or [were] sitting idly in regular classrooms awaiting the time when they were old enough to 'drop out.'" H.R. Rep. No. 94-332, p. 2 (1975). The Act's evolution and major provi-

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sions shed light on the question of statutory interpretation which is at the heart of this case.

Congress first addressed the problem of educating the handicapped in 1966 when it amended the Elementary and Secondary Education Act of 1965 to establish a grant program "for the purpose of assisting the States in the initiation, expansion, and improvement of programs and projects . . . for the education of handicapped children." Pub. L. No. 89-750, § 161, 80 Stat. 1204 (1966). That program was repealed in 1970 by the Education for the Handicapped Act, Pub. L. No. 91-230, 84 Stat. 175, Part B of which established a grant program similar in purpose to the repealed legislation. Neither the 1966 nor the 1970 legislation contained specific guidelines for state use of the grant money; both were aimed primarily at stimulating the States to develop educational resources and to train personnel for educating the handicapped.¹

Dissatisfied with the progress being made under these earlier enactments, and spurred by two district court decisions holding that handicapped children should be given access to a public education,² Congress in 1974 greatly increased federal funding for education of the handicapped and for the first time required recipient States to adopt "a goal of providing full educational opportunities to all handicapped children." Pub. L. 93-380, 88 Stat. 579, 583 (1974) (the 1974 statute). The 1974 statute was recognized as an interim measure only, adopted "in order to give the Congress an additional year in

¹ See S. Rep. No. 94-168, p. 5 (1975); H.R. Rep. No. 94-332, pp. 2-3 (1975).

² Two cases, *Mills v. Board of Education of the District of Columbia*, 348 F. Supp. 866 (DC 1972), and *Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania*, 334 F. Supp. 1257 (1971), 343 F. Supp. 279 (ED Pa 1972), were later identified as the most prominent of the cases contributing to Congress' enactment of the Act and the statutes which preceded it. H.R. Rep. 94-332, *supra*, at 3-4. Both decisions are discussed in Part III of this opinion, *infra*.

which to study what if any additional Federal assistance [was] required to enable the States to meet the needs of handicapped children." H.R. Rep. No. 94-332, *supra*, p. 4. The ensuing year of study produced the Education for All Handicapped Children Act of 1975.

In order to qualify for federal financial assistance under the Act, a State must demonstrate that it "has in effect a policy that assures all handicapped children the right to a free appropriate public education." 20 U. S. C. § 1412(1). That policy must be reflected in a state plan submitted to and approved by the Commissioner of Education,³ § 1413, which describes in detail the goals, programs, and timetables under which the State intends to educate handicapped children within its borders. § 1412, 1413. States receiving money under the Act must provide education to the handicapped by priority, first "to handicapped children who are not receiving an education" and second to handicapped children . . . with the most severe handicaps who are receiving an inadequate education," § 1412(3), and "to the maximum extent appropriate" must educate handicapped children "with children who are not handicapped." § 1412(5).⁴ The Act broadly defines "handicapped children" to include "mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seri-

³ All functions of the Commissioner of Education, formerly an officer in the Department of Health, Education, and Welfare, were transferred to the Secretary of Education in 1979 when Congress passed the Department of Education Organization Act, 20 U. S. C. § 3401 *et seq.* See 20 U. S. C. § 3441(a)(1).

⁴ Despite this preference for "mainstreaming" handicapped children—educating them with nonhandicapped children—Congress recognized that regular classrooms simply would not be a suitable setting for the education of many handicapped children. The Act expressly acknowledges that "the nature or severity of the handicap [may be] such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." § 1412(5). The Act thus provides for the education of some handicapped children in separate classes or institutional settings. See *ibid.*; § 1413(a)(4).

ously emotionally disturbed, orthopedically impaired, [and] other health impaired children, [and] children with specific learning disabilities." § 1401(1).⁵

The "free appropriate public education" required by the Act is tailored to the unique needs of the handicapped child by means of an "individualized educational program" (IEP). § 1401(18). The IEP, which is prepared at a meeting between a qualified representative of the local educational agency, the child's teacher, the child's parents or guardian, and, where appropriate, the child, consists of a written document containing

"(A) a statement of the present levels of educational performance of the child, (B) a statement of annual goals, including short-term instructional objectives, (C) a statement of the specific educational services to be provided to such child, and the extent to which such child will be able to participate in regular educational programs, (D) the projected date for initiation and anticipated duration of such service, and (E) appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether instructional objectives are being achieved." § 1401(19).

*"Individualized
educational
program"
for each
child -
written
document*

Local or regional educational agencies must review, and where appropriate revise, each child's IEP at least annually. § 1404(a)(5). See also §§ 1413(a)(11), 1414(a)(5).

In addition to the state plan and the IEP already described, the Act imposes extensive procedural requirements upon States receiving federal funds under its provisions. Parents or guardians of handicapped children must be notified of any proposed change in "the identification, evaluation,

⁵ In addition to covering a wide variety of handicapping conditions, the Act requires special educational services for children "regardless of the severity of their handicap." §§ 1412(2)(C), 1414(a)(1)(A).

or educational placement of the child or the provision of a free appropriate public education to the child," and must be permitted to bring a complaint about "any matter relating to" such evaluation and education. § 1415(b)(1)(D) and (E).⁶ Complaints brought by parents or guardians must be resolved at "an impartial due process hearing," and appeal to the State educational agency must be provided if the initial hearing is held at the local or regional level. § 1415(b)(2) and (c).⁷ Thereafter, "[a]ny party aggrieved by the findings and decisions" of the state administrative hearing has "the right

⁶The requirements that parents be permitted to file complaints regarding their child's education, and be present when the child's IEP is formulated, represent only two examples of Congress' effort to maximize parental involvement in the education of each handicapped child. In addition, the Act requires that parents be permitted "to examine all relevant records with respect to the identification, evaluation, and educational placement of the child, and . . . to obtain an independent educational evaluation of the child." § 1415(b)(1)(A). See also §§ 1412(4), 1414(a)(4). State educational policies and the state plan submitted to the Commissioner of Education must be formulated in "consultation with individuals involved in or concerned with the education of handicapped children, including handicapped individuals and parents or guardians of handicapped children." § 1412(7). See also § 1412(2)(E). Local agencies, which receive funds under the Act by applying to the state agency, must submit applications which assure that they have developed procedures for "the participation and consultation of the parents or guardians[s] of [handicapped] children" in local educational programs, § 1414(a)(1)(C)(iii), and the application itself, along with "all pertinent documents related to such application," must be made "available to parents, guardians, and other members of the general public." § 1414(a)(4).

⁷"Any party" to a state or local administrative hearing must "be accorded (1) the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of handicapped children, (2) the right to present evidence and confront, cross examine, and compel the attendance of witnesses, (3) the right to a written or electronic verbatim record of such hearing, and (4) the right to written findings of fact and decisions." § 1415(d).

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party
may sue
in state
or fed ct.,
w/o
regard to
amount
in controversy*

to bring a civil action with respect to the complaint . . . in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy." § 1415(e)(2).

Thus, although the Act leaves to the States the primary responsibility for developing and executing educational programs for handicapped children, it imposes significant requirements to be followed in the discharge of that responsibility. Compliance is assured by provisions permitting the withholding of federal funds upon determination that a participating state or local agency has failed to satisfy the requirements of the Act, §§ 1414(b)(2)(A), 1416, and by the provision for judicial review. At present, all States except New Mexico receive federal funds under the portions of the Act at issue today. Brief for the United States as *Amicus Curiae* 2, n. 2.

II

This case arose in connection with the education of Amy Rowley, a deaf student at the Furnace Woods School in the Hendrick Hudson Central School District, Peekskill, New York. Amy has minimal residual hearing and is an excellent lipreader. During the year before she began attending Furnace Woods, a meeting between her parents and school administrators resulted in a decision to place her in a regular kindergarten class in order to determine what supplemental services would be necessary to her education. Several members of the school administration 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 are also deaf. At the end of the trial period it was determined that Amy should remain in the kindergarten class, but that she should be provided with an FM hearing aid which would amplify words spoken into a wireless receiver by the teacher or fellow students during certain classroom activities. 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 at Furnace Woods, should continue to use the FM hearing aid, 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 the IEP but insisted that Amy also be provided a qualified sign-language interpreter in all of her academic classes. Such an interpreter had been placed in Amy's kindergarten class for a two-week experimental period, but the interpreter had reported that Amy did not need his services at that time. The school administrators likewise concluded that Amy did not need such an interpreter in her first-grade classroom. They reached this conclusion after consulting the school district's Committee on the Handicapped, which had received expert evidence from Amy's parents on the importance of a sign-language interpreter, received testimony from Amy's teacher and other persons familiar with her academic and social progress, and visited a class for the deaf.

IEP was prepared for Amy

When their request for an interpreter was denied, the Rowleys demanded and received a hearing before an independent examiner. After receiving evidence from both sides, the examiner agreed with the administrators' determination that an interpreter was not necessary because "Amy was achieving educationally, academically, and socially" without such assistance. App. to Pet. for Cert. F-22. The examiner's decision was affirmed on appeal by the New York Commissioner of Education on the basis of substantial evidence in the record. *Id.*, at E-4. Pursuant to the Act's provision for judicial review, the Rowleys then brought an action in the United States 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.

Examiner, after hearing, agreed interpreter was not necessary

The District Court found that Amy "is a remarkably well-

adjusted child" who interacts and communicates well with her classmates and has "developed an extraordinary rapport" with her teachers. 483 F. Supp. 528, 531. It also found that "she performs better than the average child in her class and is advancing easily from grade to grade," *id.*, at 534, but "that she understands considerably less of what goes on in class than she would if she were not deaf" and thus "is not learning as much, or performing as well academically, as she would without her handicap," *id.*, at 532. This disparity between Amy's achievement and her potential led the court to decide that she was not receiving a "free appropriate public education," which the court defined as "an opportunity to achieve [her] full potential commensurate with the opportunity provided to other children." *Id.*, at 534. According to the District Court, such a standard "requires that the potential of the handicapped child be measured and compared to his or her performance, and that the remaining differential or 'shortfall' be compared to the shortfall experienced by non-handicapped children." *Ibid.* The District Court's definition arose from its assumption that the responsibility for "giv[ing] content to the requirement of an 'appropriate education'" had "been left entirely to the federal courts and the hearing officers." *Id.*, at 533.⁸

D.C.'s standard

A divided panel of the United States Court of Appeals for the Second Circuit affirmed. The Court of Appeals "agree[d] with the [D]istrict [C]ourt's conclusions of law," and held that its "findings of fact [were] not clearly erroneous." 632 F. 2d 945, 947 (1980).

⁸ For reasons that are not revealed in the record, the District Court concluded that "[t]he Act itself does not define 'appropriate education.'" 483 F. Supp., at 533. In fact, the Act expressly defines the phrase. See § 1401(18). After overlooking the statutory definition, the District Court sought guidance not from regulations interpreting the Act, but from regulations promulgated under Section 504 of the Rehabilitation Act. See 483 F. Supp., at 533, citing 45 CFR § 84.33(b).

We granted certiorari to review the lower courts' interpretation of the Act. 454 U. S. — (1981). Such review requires us to consider two questions: What is meant by the Act's requirement of a "free appropriate public education"? And what is the role of state and federal courts in exercising the review granted by § 1415 of the Act? We consider these questions separately.⁹

III

A

This is the first case in which this Court has been called upon to interpret any provision of the Act. As noted previously, the District Court and the Court of Appeals concluded that "[t]he Act itself does not define 'appropriate education,'" 483 F. Supp., at 533, but leaves "to the courts and the hearing officers" the responsibility of "giv[ing] content to the requirement of an appropriate education." *Ibid.* See also 632 F. 2d, at 947. Petitioners contend that the definition of the phrase "free appropriate public education" used by the courts below overlooks the definition of that phrase actually found in the Act. Respondents agree that the Act defines "free appropriate public education," but contend that the statutory definition is not "functional" and thus "offers judges no guid-

⁹The IEP which respondents challenged in the District Court was created for the 1978-1979 school year. Petitioners contend that the District Court erred in reviewing that IEP after the school year had ended and before the school administrators were able to develop another IEP for subsequent years. We disagree. Judicial review invariably takes more than nine months to complete, not to mention the time consumed during the preceding state administrative hearings. The District Court thus correctly ruled that it retained jurisdiction to grant relief because the alleged deficiencies in the IEP were capable of repetition as to the parties before it yet evading review. *Rowley v. The Board of Education of the Hendrick Hudson Central School District*, 483 F. Supp. 536, 538 (1980). See *Murphy v. Hunt*, 455 U. S. —, — (1982); *Weinstein v. Bradford*, 423 U. S. 147, 149 (1975).

~~Act does~~

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ance in their consideration of controversies involving the 'identification, evaluation, or educational placement of the child or the provision of a free appropriate public education.'" Brief for Respondents 28. The United States, appearing as *amicus curiae* on behalf of respondents, states that "[a]lthough the Act includes definitions of 'free appropriate public education' and other related terms, the statutory definitions do not adequately explain what is meant by 'appropriate.'" Brief for United States as *Amicus Curiae* 13.

We are loath to conclude that Congress failed to offer any assistance in defining the meaning of the principal substantive phrase used in the Act. It is beyond dispute that, contrary to the conclusions of the courts below, the Act does expressly define "free appropriate public education":

"The term 'free appropriate public education' means *special education* and *related services* which (A) have been provided at public expense, under public supervision and direction, and without charge, (B) meet the standards of the State educational agency, (C) include an appropriate preschool, elementary, or secondary school education in the State involved, and (D) are provided in conformity with the individualized education program required under section 1414(a)(5) of this title." § 1401(18) (emphasis added).

*Act's
definition*

"Special education," as referred to in this definition, means "specially designed instruction, at no cost to parents or guardians, to meet the unique needs of a handicapped child, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions." § 1401(16). "Related services" are defined as "transportation, and such developmental, corrective, and other supportive services . . . as may be required to assist a handicapped child to benefit from special education." § 1401(17).¹⁰

¹⁰ Examples of "related services" identified in the Act are "speech pathol-

Like many statutory definitions, this one tends toward the cryptic rather than the comprehensive, but that is scarcely a reason for abandoning the quest for legislative intent. Whether or not the definition is a "functional" one, as respondents contend it is not, it is the principal tool which Congress has given us for parsing the critical phrase of the Act. We think more must be made of it than either respondents or the United States seems willing to admit.

According to the definitions contained in the Act, a "free appropriate public education" consists of educational instruction specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child "to benefit" from the instruction. Almost as a checklist for adequacy under the Act, the definition also requires that such instruction and services be provided at public expense and under public supervision, meet the State's educational standards, approximate the grade levels used in the State's regular education, and comport with the child's IEP. Thus, if personalized instruction is being provided with sufficient supportive services to permit the child to benefit from the instruction, and the other items on the definitional checklist are satisfied, the child is receiving a "free appropriate public education" as defined by the Act.

Other portions of the statute also shed light upon congressional intent. Congress found that of the roughly eight million handicapped children in the United States at the time of enactment, one million were "excluded entirely from the public school system" and more than half were receiving an inappropriate education. Note to § 1401. In addition, as mentioned in Part I, the Act requires States to extend educational services first to those children who are receiving no

ogy and audiology, psychological services, physical and occupational therapy, recreation, and medical and counseling services, except that such medical services shall be for diagnostic and evaluation purposes only." § 1401(17).

education and second to those children who are receiving an "inadequate education." § 1412(3). When these express statutory findings and priorities are read together with the Act's extensive procedural requirements and its definition of "free appropriate public education," the face of the statute evinces a congressional intent to bring previously excluded handicapped children into the public education systems of the States and to require the States to adopt *procedures* which would result in individualized consideration of and instruction for each child.

Noticeably absent[?] from the language of the statute is any substantive standard prescribing the level of education to be accorded handicapped children. Certainly the language of the statute contains no requirement like the one imposed by the lower courts—that States maximize the potential of handicapped children "commensurate with the opportunity provided to other children." 483 F. Supp., at 534. That standard was expounded by the District Court without reference to the statutory definitions or even to the legislative history of the Act. Although we find the statutory definition of "free appropriate public education" to be helpful in our interpretation of the Act, there remains the question of whether the legislative history indicates a congressional intent that such education meet some additional substantive standard. For an answer, we turn to that history.

B

(i)

As suggested in Part I, federal support for education of the handicapped is a fairly recent development. Before passage of the Act some States had passed laws to improve the educational services afforded handicapped children,¹¹ but many of these children were excluded completely from any form of

¹¹ See H.R. Rep. No. 94-332, *supra*, at 10; Note, The Education of All Handicapped Children Act of 1975, Mich. J. L. Ref. 110, 119 (1976).

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be free and
"appropriate"

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public education or were left to fend for themselves in classrooms designed for education of their nonhandicapped peers. The House Report begins by emphasizing this exclusion and misplacement, noting that millions of handicapped children "were either totally excluded from schools or [were] sitting idly in regular classrooms awaiting the time when they were old enough to 'drop out.'" H.R. Rep. No. 94-332, *supra*, at 2. See also S. Rep. No. 94-168, p. 8 (1975). One of the Act's two principal sponsors in the Senate urged its passage in similar terms:

"While much progress has been made in the last few years, we can take no solace in that progress until all handicapped children are, in fact, receiving an education. The most recent statistics provided by the Bureau of Education for the Handicapped estimate that . . . 1.75 million handicapped children do not receive any educational services, and 2.5 million handicapped children are not receiving an appropriate education." 121 Cong. Rec. 19486 (1975) (remarks of Sen. Williams).

This concern, stressed repeatedly throughout the legislative history,¹² confirms the impression conveyed by the language of the statute: By passing the Act, Congress sought primarily to make public education available to handicapped children. But in seeking to provide such access to public education, Congress did not impose upon the States any greater substantive educational standard than would be necessary to make such access meaningful. Indeed, Congress

¹² See, e. g., 121 Cong. Rec. 19494 (1975) (remarks of Sen. Javits) ("all too often, our handicapped citizens have been denied the opportunity to receive an adequate education"); 121 Cong. Rec. 19502 (1975) (remarks of Sen. Cranston) (millions of handicapped "children are largely excluded from educational opportunities that we give to our other children"); 121 Cong. Rec. 23708 (1975) (remarks of Rep. Mink) ("handicapped children . . . are denied access to public schools because of a lack of trained personnel").

expressly “recognize[d] that in many instances the process of providing special education and related services to handicapped children is not guaranteed to produce any particular outcome.” S. Rep. No. 94-168, *supra*, at 11. Thus, the intent of the Act was more to open the door of public education to handicapped children on appropriate terms than to guarantee any particular level of education once inside.

Both the House and the Senate reports attribute the impetus for the Act and its predecessors to two federal court judgments rendered in 1971 and 1972. As the Senate Report states, passage of the Act “followed a series of landmark court cases establishing in law the right to education for all handicapped children.” S. Rep. No. 94-168, *supra*, at 6.¹³ The first case, *Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania (PARC)*, 334 F. Supp. 1257 (1971), 343 F. Supp. 279 (ED Pa 1972), was a suit on behalf of retarded children challenging the constitutionality of a Pennsylvania statute which acted to exclude them from public education and training. The case ended in a consent decree which enjoined the State from “deny[ing] to any mentally retarded child access to a free public program of education and training.” 334 F. Supp., at 1258 (emphasis added).

PARC was followed by *Mills v. Board of Education of the District of Columbia*, 348 F. Supp. 866 (DC 1972), a case in which the plaintiff handicapped children had been excluded from the District of Columbia public schools. The court’s judgment, quoted at page 6 of the Senate Report on the Act, provided

“[t]hat no [handicapped] child eligible for a publicly supported education in the District of Columbia public

¹³ Similarly, the Senate Report states that it was an “[i]ncreased awareness of the educational needs of handicapped children and landmark court decisions establishing the right to education for handicapped children [that] pointed to the necessity of an expanded federal role.” S. Rep. No. 94-168, *supra*, at 5. See also H.R. Rep. No. 94-332, *supra*, at 2-3.

schools shall be *excluded* from a regular school assignment by a Rule, policy, or practice of the Board of Education of the District of Columbia or its agents unless such child is provided (a) *adequate* alternative educational services suited to the child's needs, which may include special education or tuition grants, and (b) a constitutionally adequate prior hearing and periodic review of the child's status, progress, and the *adequacy* of any educational alternative." 348 F. Supp., at 878 (emphasis added).

Mills and *PARC* both held that handicapped children must be given *access* to an adequate, publicly supported education. Neither case purports to require any particular substantive level of education.¹⁴ Rather, like the language of the Act, the cases set forth extensive procedures to be followed in formulating personalized educational programs for handicapped children. See 348 F. Supp., at 878-883; 334 F. Supp., at 1258-1267.¹⁵ The fact that both *PARC* and *Mills* are dis-

The two cases that prompted Congress to strengthen Act

¹⁴ The only substantive standard which can be implied from these cases comports with the 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 capacities," 334 F. Supp., at 1258, 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.

"If sufficient funds are not available to finance all of the services and programs that are needed and desirable in the system then the available funds must be expended equitably in such a manner that no child is entirely excluded from a publicly supported education consistent with his needs and ability to benefit therefrom. 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.

¹⁵ Like the Act, *PARC* required the State to "identify, locate, [and] evaluate" handicapped children, 334 F. Supp., at 1267, to create for each child

cussed at length in the legislative reports¹⁶ suggests that the principles which they established are the principles which, to a significant extent, guided the drafters of the Act. Indeed, immediately after discussing these cases the Senate Report describes the 1974 statute as having "incorporated the major principles of the right to education cases." S. Rep. No. 94-168, *supra*, at 8. Those principles in turn became the basis of the Act, which itself was designed to effectuate the purposes of the 1974 statute. H.R. Rep. No. 94-332, *supra*, at 5.¹⁷

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an individual educational program, *id.*, at 1265, and to hold a hearing "on any change in educational assignment," *id.*, at 1266. *Mills* also required the preparation of an individual educational program for each child. In addition, *Mills* permitted the child's parents to inspect records relevant to the child's education, to obtain an independent educational evaluation of the child, to object to the IEP and receive a hearing before an independent hearing officer, to be represented by counsel at the hearing, and to have the right to confront and cross-examine adverse witnesses, all of which are also permitted by the Act. 348 F. Supp., at 879-881. Like the Act, *Mills* also required that the education of handicapped children be conducted pursuant to an overall plan prepared by the District of Columbia, and established a policy of educating handicapped children with nonhandicapped children whenever possible. *Ibid.*

¹⁶See S. Rep. No. 94-168, *supra*, at 6-7; H.R. Rep. No. 94-332, *supra*, at 3-4.

¹⁷The 1974 statute "incorporated the major principles of the right to education cases," by "add[ing] important new provisions to the Education of the Handicapped Act which require the States to: establish a goal of providing full educational opportunities to all handicapped children; provide procedures for insuring that handicapped children and their parents or guardians are guaranteed procedural safeguards in decisions regarding identification, evaluation, and educational placement of handicapped children; establish procedures to insure that, to the maximum extent appropriate, handicapped children . . . are educated with children who are not handicapped; . . . and establish procedures to insure that testing and evaluation materials and procedures utilized for the purposes of classification and placement of handicapped children will be selected and administered so as not to be racially or culturally discriminatory." S. Rep. No. 94-168,

That the Act imposes no clear obligation upon recipient States beyond the requirement that handicapped children receive some form of specialized education is perhaps best demonstrated by the fact that Congress, in explaining the need for the Act, equated an "appropriate education" to the receipt of some specialized educational services. The Senate Report states: "[T]he most recent statistics provided by the Bureau of Education for the Handicapped estimate that of the more than 8 million children . . . with handicapping conditions requiring special education and related services, only 3.9 million such children are receiving an appropriate education." S. Rep. No. 94-168, *supra*, at 8.¹⁸ This statement, which reveals Congress' view that 3.9 million handicapped children were "receiving an appropriate education" in 1975, is followed immediately in the Senate Report by a table showing that 3.9 million handicapped children were "served" in

supra, at 8.

The House Report explains that the Act simply incorporated these purposes of the 1974 statute: the Act was intended "primarily to amend . . . the Education of the Handicapped Act in order to provide permanent authorization and a comprehensive mechanism which will insure that those provisions enacted during the 93rd Congress [the 1974 statute] will result in maximum benefits for handicapped children and their families." H.R. Rep. No. 94-332, *supra*, at 5. Thus, the 1974 statute's purpose of providing handicapped children *access* to a public education became the purpose of the Act.

¹⁸ These statistics appear repeatedly throughout the legislative history of the Act, demonstrating a virtual consensus among legislators that 3.9 million handicapped children were receiving an appropriate education in 1975. See, e. g., 121 Cong. Rec. 19486 (1975) (remarks of Sen. Williams); 121 Cong. Rec. 19504 (1975) (remarks of Sen. Schweicker); 121 Cong. Rec. 23702 (1975) (remarks of Rep. Madden); 121 Cong. Rec. 23702 (1975) (remarks of Rep. Brademas); 121 Cong. Rec. 23709 (1975) (remarks of Rep. Minish); 121 Cong. Rec. 37024 (1975) (remarks of Rep. Brademas); 121 Cong. Rec. 37027 (1975) (remarks of Rep. Gude); 121 Cong. Rec. 37417 (1975) (remarks of Sen. Javits); 121 Cong. Rec. 37420 (1975) (remarks of Sen. Hathaway).

1975 and a slightly larger number were "unserved." A similar statement and table appear in the House Report. H.R. Rep. No. 94-332, *supra*, at 11-12.

It is evident from the legislative history that the characterization of handicapped children as "served" referred to children who were receiving some form of specialized educational services from the States, and that the characterization of children as "unserved" referred to those who were receiving no specialized educational services. For example, a letter sent to the United States Commissioner of Education by the House Committee on Education and Labor, signed by two key sponsors of the Act in the House, asked the Commissioner to identify the number of handicapped "children served" in each State. The letter asked for statistics on the number of children "being served" in various types of "special education program[s]" and the number of children who were not "receiving educational services." Hearings on S. 6 before the Subcommittee on the Handicapped of the Senate Committee on Labor and Public Welfare, 94th Cong., 1st Sess., 205-207 (1975). Similarly, Senator Randolph, one of the Act's principal sponsors in the Senate, noted that roughly one-half of the handicapped children in the United States "are receiving special educational services." *Id.*, at 1.¹⁹ By

¹⁹ Senator Randolph stated: "only 55 percent of the school-aged handicapped children and 22 percent of the pre-school-aged handicapped children are receiving special educational services." Hearings on S. 6 before the Subcommittee on the Handicapped of the Senate Committee on Labor and Public Welfare, 94th Cong., 1st Sess., 1 (1975). Although the figures differ slightly in various parts of the legislative history, the general thrust of congressional calculations was that roughly one-half of the handicapped children in the United States were not receiving specialized educational services, and thus were not "served." See, e. g., 121 Cong. Rec. 19494 (1975) (remarks of Sen Javits) ("only 50 percent of the Nation's handicapped children received proper education services"); 121 Cong. Rec. 19504 (1975) (remarks of Sen. Humphrey) ("[a]lmost 3 million handicapped children, while in school, receive none of the special services that they require in order to make education a meaningful experience"); 121 Cong. Rec.

characterizing the 3.9 million handicapped children who were “served” as children who were “receiving an appropriate education,” the Senate and House reports unmistakably disclose Congress’ perception of the type of education required by the Act: an “appropriate education” is provided when personalized educational services are provided.²⁰

23706 (1975) (remarks of Rep. Quie) (“only 55 percent [of handicapped children] were receiving a public education”); 121 Cong. Rec. 233709 (1975) (remarks of Rep. Biaggi) (“[o]ver 3 million [handicapped] children in this country are receiving either below par education or none at all”).

Statements similar to those appearing in the text, which equate “served” as it appears in the Senate Report to “receiving special educational services,” appear throughout the legislative history. See, e. g., 121 Cong. Rec. 19492 (1975) (remarks of Sen. Williams); 121 Cong. Rec. 19494 (1975) (remarks of Sen. Javits); 121 Cong. Rec. 19496 (1975) (remarks of Sen. Stone); 121 Cong. Rec. 19504-19505 (1975) (remarks of Sen. Humphrey); 121 Cong. Rec. 23703 (1975) (remarks of Rep. Brademas); Hearings on H.R. 7217 before the Subcommittee on Select Education of the Committee on Education and Labor of the House of Representatives, 94th Cong., 1st Sess., 91, 150, 153 (1975); Hearings on H.R. 4199 before the Select Subcommittee on Education of the Committee on Education and Labor of the House of Representatives, 93rd Cong., 1st Sess., 130, 139 (1973). See also 45 CFR § 121a.343(b) (1980).

²⁰ 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 the 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 capacities.” 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 educational 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.

The use of “appropriate” in the language of the Act, although by no means definitive, suggests that Congress used the word as much to de-

(ii)

Respondents contend that "the goal of the Act is to provide each handicapped child with an equal educational opportunity." Brief for Respondents 35. We think, however, that the requirement that a State provide specialized educational services to handicapped children generates no additional requirement that the services so provided be sufficient to maximize each child's potential "commensurate with the opportunity provided other children." Respondents and the United States correctly note that Congress sought "to provide assistance to the States in carrying out their responsibilities under . . . the Constitution of the United States to provide equal protection of the laws." S. Rep. No. 94-168, *supra*, at 13.²¹ But we do not think that such statements imply a congressional intent to achieve strict equality of opportunity or services.

The educational opportunities provided by our public school systems undoubtedly differ from student to student, depending upon a myriad of factors that might affect a particular student's ability to assimilate information presented in

scribe the 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 nonhandicapped 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). Thus, use of the word "appropriate" seems to reflect Congress' recognition that some settings are simply not suitable environments for the participation of some handicapped children. At the very least, these statutory uses of the word refute the contention that Congress used "appropriate" as a term of art which concisely expresses the standard found by the lower courts.

²¹ See also 121 Cong. Rec. 19492 (1975) (remarks of Sen. Williams); 121 Cong. Rec. 19504 (1975) (remarks of Sen. Humphrey).

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the classroom. The requirement that States provide "equal" educational opportunities would thus seem to present an entirely unworkable standard requiring impossible measurements and comparisons. Similarly, furnishing handicapped children with only such services as are available to nonhandicapped children would in all probability fall short of the statutory requirement of "free appropriate public education"; to require, on the other hand, the furnishing of every special service necessary to maximize each handicapped child's potential is, we think, further than Congress intended to go. Thus to speak in terms of "equal" services in one instance gives less than what is required by the Act and in another instance more. The theme of the Act is "free appropriate public education," a phrase which is too complex to be captured by the word "equal" whether one is speaking of opportunities or services.

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The legislative conception of the requirements of equal protection was undoubtedly informed by the two district court decisions referred to above. But cases such as *Mills* and *PARC* held simply that handicapped children may not be excluded entirely from public education. In *Mills*, the District Court said:

"If sufficient funds are not available to finance all of the services and programs that are needed and desirable in the system then the available funds must be expended equitably in such a manner that no child is entirely excluded from a publicly supported education consistent with his needs and ability to benefit therefrom." 348 F. Supp., at 876.

The *PARC* Court used similar language, saying "[i]t is the commonwealth's obligation to place each mentally retarded child in a free, public program of education and training appropriate to the child's capacity. . . ." 334 F. Supp., at 1260. The right of access to free public education enunciated by these cases is significantly different from any notion of abso-

lute equality of opportunity regardless of capacity. To the extent that Congress might have looked further than these cases which are mentioned in the legislative history, at the time of enactment of the Act this Court had held at least twice that the Equal Protection Clause of the Fourteenth Amendment does not require States to expend equal financial resources on the education of each child. *San Antonio School District v. Rodriguez*, 411 U. S. 1 (1975); *McInnis v. Shapiro*, 293 F. Supp. 327 (ND Ill. 1968), *aff'd sub nom*, *McInnis v. Ogilvie*, 394 U. S. 322 (1969).

In explaining the need for federal legislation, the House Report noted that "no congressional legislation has required a precise guarantee for handicapped children, i. e. a basic floor of opportunity that would bring into compliance all school districts with the constitutional right of equal protection with respect to handicapped children." H.R. Rep. No. 94-332, *supra*, at 14. Assuming that the Act was designed to fill the need identified in the House Report—that is, to provide a "basic floor of opportunity" consistent with equal protection—neither the Act nor its history persuasively demonstrate that Congress thought that equal protection required anything more than equal access. Therefore, Congress' desire to provide specialized educational services, even in furtherance of "equality," cannot be read as imposing any particular substantive educational standard upon the States.

Thus, the District Court and the Court of Appeals erred when they held that the Act requires New York to maximize the potential of each handicapped child commensurate with the opportunity provided nonhandicapped children. Desirable though that goal might be, it is not the standard that Congress imposed upon States which receive funding under the Act. Rather, Congress sought primarily to identify and evaluate handicapped children, and to provide them with access to a free public education.

(iii)

Implicit in the congressional purpose of providing access to

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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 that education. The statutory definition of "free appropriate public education," in addition to requiring that States 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 services from which a handicapped child can obtain "some educational benefit."²²

²² 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. 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 dependence on society." S. Rep. No. 94-168, *supra*, at 9. See also H.R. Rep. No. 94-332, *supra*, 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 121 Cong. Rec. 25541 (1975) (remarks of Rep. Harkin); 121 Cong. Rec. 37024-37025 (1975) (remarks of Rep. Brademas); 121 Cong. Rec. 37027 (1975) (remarks of Rep. Gude); 121 Cong. Rec. 37410 (1975) (remarks of Sen. Randolph); 121 Cong. Rec. 37416 (1975) (remarks of Sen. Williams).

The determination of when handicapped children are receiving sufficient educational benefits to satisfy the requirements of the Act presents a more difficult problem. The Act requires participating States to educate a wide spectrum of handicapped children, from the marginally hearing-impaired to the profoundly retarded and palsied. It is clear that the benefits obtainable by children at one end of the spectrum will differ dramatically from those obtainable by children at the other end, with infinite variations in between. One child may have little difficulty competing successfully in an academic setting with nonhandicapped children while another child may encounter great difficulty in acquiring even the most basic of self-maintenance skills. 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. Rather, because in this case we are presented with a child capable of being educated in the regular classrooms of a public school system, we confine our analysis to that situation.

The Act requires participating States to educate handicapped children with nonhandicapped children whenever pos-

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 degree 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 the 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.

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sible.²³ When that "mainstreaming" preference of the Act has been met and a child is being educated in the regular classrooms of a public school system, the system itself monitors the educational progress of the child. Regular examinations are administered, grades are awarded, and yearly advancement to higher grade levels is permitted for those children who attain an adequate knowledge of the course material. The grading and advancement system thus serves as a determinant of educational benefit. Children who graduate from our public school systems are considered by our society to have been "educated" at least to the grade level they have completed, and access to an "education" for handicapped children is precisely what Congress sought to provide in the Act. Thus, handicapped children who have been placed by the State in regular classrooms of the public education system, and who are achieving passing marks and advancing from grade to grade, are receiving the substantive educational benefits anticipated by the Act.

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C

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.

Holding

²³ Section 1412(5) of the Act requires that participating States establish "procedures to assure that, to the maximum extent appropriate, handicapped children, including children in public or private institutions or other care facilities, are educated with children who are not handicapped, and that special classes, separate schooling, or other removal of handicapped children from the regular educational environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily."

tion. 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.²⁴

IV

A

As mentioned in Part I, the Act permits "[a]ny party ag-

²⁴ In defending the decisions of the District Court and the Court of Appeals, respondents and the United States rely upon isolated statements in the legislative history concerning the achievement of maximum potential, see H.R. Rep. No. 94-332, *supra*, at 13, as support for their contention that Congress intended to impose greater substantive requirements than we have found. These statements, however, are too thin a reed on which to base an interpretation of the Act which disregards both its language and the balance of its legislative history. "Passing references and isolated phrases are not controlling when analyzing a legislative history." *Department of State v. The Washington Post Co.*, — U. S. — (1982).

Moreover, even were we to agree that these statements evince a congressional intent to maximize each child's potential, we could not hold that Congress had successfully imposed that burden upon the States.

"[L]egislation enacted pursuant to the spending power is much in the nature of a contract: in return for federal funds, the States agree to comply with federally imposed conditions. The legitimacy of Congress' power to legislate under the spending power thus rests on whether the State voluntarily and knowingly accepts the terms of the 'contract.' . . . Accordingly, if Congress intends to impose a condition on the grant of federal moneys, it must do so unambiguously." *Pennhurst State School v. Halderman*, 451 U. S. 1, 17 (1981).

As already demonstrated, the Act and its history impose no requirements on the States like those imposed by the District Court and the Court of Appeals. *A fortiori* Congress has not done so unambiguously, as required in the valid exercise of its spending power.

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problem.

grieved by the findings and decision" of the state administrative hearings "to bring a civil action" in "any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy." § 1415(e)(2). The complaint, and therefore the civil action, may concern "any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." § 1415(b)(1)(E). In reviewing the complaint, the Act provides that a court "shall receive the record of the [state] administrative proceeding, 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." § 1415(e)(2).

The parties disagree sharply over the meaning of these provisions, petitioners contending that courts are given only limited authority to review for state compliance with the Act's procedural requirements and no power to review the substance of the state program, and respondents contending that the Act requires courts to exercise *de novo* review over state educational decisions and policies. We find petitioners' contention unpersuasive, for Congress expressly rejected provisions that would have so severely restricted the role of reviewing courts. In substituting the current language of the statute for language that would have made state administrative findings conclusive if supported by substantial evidence, the Conference Committee explained that courts were to make "independent decision[s] based on a preponderance of the evidence." S. Conf. Rep. No. 94-455, *supra*, at 50. See also 121 Cong. Rec. 37416 (1975) (remarks of Sen Williams).

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 of the Act, 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 Commissioner for approval, demonstrate 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.

Thus the provision that a reviewing court base its decision on the “preponderance of the evidence” is by no means an invitation to the courts to substitute their own notions of sound educational policy for those of the school authorities which they review. The very importance which Congress has attached to compliance with certain procedures in the preparation of an IEP would be frustrated if a court were permitted simply to set state decisions at naught. The fact that § 1415(e) requires that the reviewing court “receive the records of the [state] administrative proceedings” carries with it the implied requirement that due weight shall be given to these proceedings. And we find nothing in the Act to suggest that merely because Congress was rather sketchy in establishing substantive requirements, as opposed to procedural requirements for the preparation of an IEP, it intended that reviewing courts should have a free hand to impose substantive standards of review which cannot be derived from the Act itself. In short, the statutory authori-

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zation to grant "such relief as the court determines is appropriate" cannot be read without reference to the obligations, largely procedural in nature, which are imposed upon recipient States by Congress.

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?²⁵ And second, is the individualized educational program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits?²⁶ If these requirements are met, the State has complied with the obligations imposed by Congress and the courts can require no more.

*Scope of
a court's
inquiry*

B

In assuring that the requirements of the Act have been met, courts must be careful to avoid imposing their view of preferable educational methods upon the States.²⁷ The primary responsibility for formulating the education to be accorded a handicapped child, and for choosing the educational method most suitable to the child's needs, was left by the Act to state and local educational agencies in cooperation with the

yes

²⁵ This inquiry will require a court not only to satisfy itself that the State has adopted the state plan, policies, and assurances required by the Act, but also to determine that the State has created an IEP for the child in question which conforms with the requirements of § 1401(19).

²⁶ This second part of the inquiry will be satisfied in cases such as this one by a showing that the child is receiving passing marks and is advancing from grade to grade. See Part III, *supra*.

*passing
grades*

²⁷ In this case, for example, both the state hearing officer and the District Court were presented with evidence as to the best method for educating the deaf, a question long debated among scholars. See Large, Special Problems of the Deaf Under the Education for All Handicapped Children Act of 1975, 58 Washington U. L. Q. 213, 229 (1980). The District Court accepted the testimony of respondents' experts that there was "a trend supported by studies showing the greater degree of success of students brought up in deaf households using [the method of communication used by the Rowleys]." 483 F. Supp., at 535.

parents or guardian of the child. The Act expressly charges States with the responsibility of "acquiring and disseminating to teachers and administrators of programs for handicapped children significant information derived from educational research, demonstration, and similar projects, and [of] adopting, where appropriate, promising educational practices and materials." § 1413(a)(3). In the face of such a clear statutory directive, it seems highly unlikely that Congress intended courts to overturn a State's choice of appropriate educational theories in a proceeding conducted pursuant to § 1415(e)(2).²⁸

We previously have cautioned that courts lack the "specialized knowledge and experience" necessary to resolve "persistent and difficult questions of educational policy." *San Antonio School District v. Rodriguez*, 411 U. S. 1, 42 (1973). We think that Congress shared that view when it passed the Act. As already demonstrated, Congress' intention was not that the Act displace the primacy of States in the field of education, but that States receive funds to assist them in extending their educational systems to the handicapped. Therefore, once a court determines that the requirements of the Act have been met, questions of methodology are for resolution by the States.

V

Entrusting a child's education to state and local agencies does not leave the child without protection. Congress sought to protect individual children by providing for parental involvement in the development of State plans and poli-

²⁸ It is clear that Congress was aware of the States' traditional role in the formulation and execution of educational policy. "Historically, the States have had the primary responsibility for the education of children at the elementary and secondary level." 121 Cong. Rec. 19498 (1975) (remarks of Sen. Dole). See also *Epperson v. Arkansas*, 393 U. S. 97, 104 (1968) ("[b]y and large, public education in our Nation is committed to the control of state and local authorities").

cies, *supra*, at — and n. 6, and in the formulation of the child's individual educational program. As the Senate Report states:

"The Committee recognizes that in many instances the process of providing special education and related services to handicapped children is not guaranteed to produce any particular outcome. By changing the language [of the provision relating to individualized educational programs] to emphasize the process of parent and child involvement and to provide a written record of reasonable expectations, the Committee intends to clarify that such individualized planning conferences are a way to provide parent involvement and protection to assure that appropriate services are provided to a handicapped child." S. Rep. No. 94-168, *supra*, at 11-12. See also S. Conf. Rep. No. 94-445, p. 30 (1975); 45 CFR § 121a.345 (1980).

As this very case demonstrates, parents and guardians will not lack ardor in seeking to ensure that handicapped children receive all of the benefits to which they are entitled by the Act.²⁹

²⁹ In addition to providing for extensive parental involvement in the formulation of state and local policies, as well as the preparation of individual educational programs, the Act ensures that States will receive the advice of experts in the field of educating handicapped children. As a condition for receiving federal funds under the Act, States must create "an advisory panel, appointed by the Governor or any other official authorized under State law to make such appointments, composed of individuals involved in or concerned with the education of handicapped children, including handicapped individuals, teachers, parents or guardians of handicapped children, State and local education officials, and administrators of programs for handicapped children, which (A) advises the State educational agency of unmet needs within the State in the education of handicapped children, [and] (B) comments publicly on any rules or regulations proposed for issuance by the State regarding the education of handicapped children." § 1413(a)(12).

VI

Applying these principles to the facts of this case, we conclude that the Court of Appeals erred in affirming the decision of the District Court. Neither the District Court nor the Court of Appeals found that petitioners had failed to comply with the procedures of the Act, and the findings of neither court would support a conclusion that Amy's educational program failed to comply with the substantive requirements of the Act. On the contrary, the District Court found that the "evidence firmly establishes that Amy is receiving an 'adequate' education, since she performs better than the average child in her class and is advancing easily from grade to grade." 483 F. Supp., at 534. In light of this finding, the lower courts should not have concluded that the Act requires services beyond those provided by the Furnace Woods school administrators. Accordingly, the decision of the Court of Appeals is reversed and the case is remanded for further proceedings consistent with this opinion.³⁰

So ordered.

³⁰ Because the District Court declined to reach respondents' contention that petitioners had failed to comply with the Act's procedural requirements in developing Amy's IEP, 483 F. Supp., at 533, n. 8, the case must be remanded for further proceedings consistent with this opinion.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

May 12, 1982

No. 80-1002 Board of Education of the Hentrick
Hudson Central School District,
Westchester County v. Rowley

Dear Bill,

Please join me in your opinion.

Sincerely,

Sandra

Justice Rehnquist

Copies to the Conference

May 17, 1982

To: John Wiley

From: LFP, Jr.

Subject: 80-1002 Rowley

Here is a rough draft of a proposed concurring opinion.

If you think it worth writing, I would welcome any substantive changes you wish to suggest. I prefer not to make it a full or elaborate discourse.

And, as always, I welcome editing and count on you for cite checking.

LFP, Jr.

LFP/vde

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LFP/vde

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

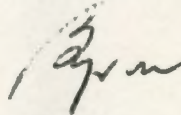
✓
May 18, 1982

Re: 80-1002 - Board of Education of the
Hendrick Hudson School District v. Howley

Dear Bill,

I voted the other way, at least tentatively, and will attempt a dissent in this case, which I find quite difficult.

Sincerely yours,



Justice Rehnquist

Copies to the Conference

cpm

jsw 05/18/82

Memorandum to Justice Powell

Re: Rowley

I am sympathetic with your general reaction that Justice Rehnquist reaches the correct result in this case, but by means of a standard that may not be appropriate for other cases. Your concurring draft, however, does raise two questions in my mind.

1

First, is the standard used by the DC impossibly incorrect? On reflection, I wonder if it really is. "An opportunity to achieve full potential commensurate with the opportunity provided to other children" focuses first on a child's potential, not on an absolute level of performance. For a person like Nicholas Romeo, "full potential" has an extremely limited meaning. Sad to say, Romeo's "full potential" may mean only the ability to perform extremely simple tasks. For others with less severe handicaps, "full potential" increases -- although by definition it remains less than that possessed by individuals without handicaps. Consequently, a standard based on "potential" is tied to the individual's own characteristics and not any particular absolute level of performance. This is a very desirable attribute for a standard that must apply across a very wide range of abilities.

Moreover, the DC's "full potential" standard is qualified. It applies only to the extent "commensurate with the opportunity provided to other children." Plainly public schools often fail to

True

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educate normal children to 100% of their full potential. The "com-
mensurate" clause properly should ensure that handicapped children
get no greater claim to realization of their potential. This "com-
mensurate" standard -- correctly applied -- could provide the cru-
cial sensitivity to educational cost that the Act needs in order to
be administrable on a sensible basis.

In sum, I have serious doubts whether the DC's standard
really is misconceived. It seems to me to offer a promising ap-
proach to an otherwise intractable statute.

I do think that the application of this standard in the DC
and the CA2 is incorrect. As WHR sets forth at 6-7 of his draft,
the school district undertook substantial efforts to assist Amy's
education. But the courts below faulted the school because Amy was
not "'learning as much . . . as she would without her handicap.'"
Draft at 8 (quoting DC opinion). Well, of course not! It often
will take incredible resources in effect to remove a child's handi-
cap. Often (as with Romeo) it is just plain impossible. If this is
to be the test, the school board will always lose (or go broke).

Instead, I think a proper application of the "potential"
standard must recognize that the performance to be expected from any
child depends on the extent of his or her handicap. The more severe
the handicap, the lower (unfortunately) the child's potential -- and
the less the absolute benefit that the child can fairly be expected
to gain from education. In this case, I would hold that the school
district had done as much to help Amy to achieve her (limited) po-
tential as it had to help children with better hearing to achieve

Yes

their (higher) potential. Therefore I would hold that the school district properly had discharged its duties under the Act.

My second question concerns the extent of proper deference to school planning under the Act. Every instinct counsels against the involvement of federal judges in an area so much within the sphere of school board expertise as the proper curriculum for handicapped students. Yet it seems to me that the terms of the Act suggest that Congress mandated such involvement -- on a nondeferential basis. The Act does provide that the records of the school board's deliberations could be introduced before the district court. But it added that the court "shall hear additional evidence at the request of a party" The standard of review deliberately is specified as the more intrusive "preponderance" standard. And the federal courts are instructed to "grant such relief as the court determines is appropriate." I question how easily the plain language of this statute can be read to mandate a "high degree of deference" to state officials, no matter how desirable such deference might be as a matter of sound policy.

* * * * *

I have spoken with HAB's clerk on this case. HAB tentatively voted to reverse in this case, and apparently is planning to circulate comments or a concurrence in a few days. One option for you would be to await his comments to see if they cast any light on the resolution of this difficult case. I would be happy to try to develop any thoughts expressed here if you think they hold promise.

4.

Or you may decide I'm all wet. It won't be the first time I've been caught in a rain storm!

May 18, 1982

80-1002 Board of Education v. Amy Rowley

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Justice Powell concurring.

I join the Court's opinion, recognizing that - at least for me - it is virtually impossible to derive a satisfactory standard from the statutory definition of "free appropriate public education".

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The Court concludes that handicapped children must receive "some" or "sufficient" educational benefits to satisfy the requirements of the Act. See, ante, 23, 24, et seq. This level of generality affords little guidance.

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The basic difficulty , as the Court observes, is that participating states are required to educate each handicapped child ranging from the marginally hearing-impaired to the profoundly retarded. And each child's needs must be assessed individually. Therefore it simply is not possible to frame a standard except in the most

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general terms. Nevertheless, the District Court held, and a divided panel of the Court of Appeals agreed, that the term "free appropriate public education" requires a state to provide for each handicapped child "an opportunity to achieve [her] full potential commensurate with the opportunity provided to other children." 483 F. Supp. at 534. This standard is wholly unrealistic and could not have been intended by Congress. It is ~~simply impossible~~ *not feasible* to create such an educational opportunity for each handicapped child, regardless of the nature or degree of the handicap. And how can school authorities compare - in any objective way - the "full potential" for education of each handicapped child with that of "other children"?

The Court is wise, I think, to limit the application of its standard to the facts of this case. The important contribution of today's opinion is its identification of the scope of a reviewing court's inquiry in suits brought under Section 1415(e) (2) of the Act. Such a court first must determine whether the state has complied with the rather elaborate procedures, including parental involvement, required by the Act. Secondly, in light of

the facts before it, the Court must determine whether the "individualized educational program" (the IEP) developed for that child is "reasonably calculated to enable the child to receive educational benefits". Ante at 29. In a case like Amy's, this inquiry certainly is satisfied when the child is receiving passing marks and is advancing from grade to grade. ^{Supra} N 26, p. 29.

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When it is shown that the school authorities have developed an individualized educational program in accordance with the requirements of the Act, a reviewing court should accord a high degree of deference to the approved program.

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AMY2 GINA-POW

Judge Mansfield, in a full and documented dissent with which I largely agree, observed that this formulation is "unfeasible and imposes a standard that is impractical, if not impossible, to use as a means of evaluating the appropriateness of a handicapped child's education." Pet.

A-18.*

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* Judge Mansfield commented that the district court had "indulged in understatement" when it recognized the difficulties in applying its own standard:

"The difficulty with the standard, of course is that it depends on a number of different measurements which are difficult to make. It requires that the potential of the handicapped child be measured and compared to his or her performance, and that the resulting differential or 'shortfall' be compared to the shortfall experienced by nonhandicapped children."

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As the Court's opinion makes clear, Congress recognized the inherent difficulty of a precise definition or standard when it used the term "free appropriate public education", delegating broad authority in this respect to state educational authorities. It therefore becomes necessary, as the the Court does in this case, to consider the facts of each case in light of the Congressional purpose. The Act, ~~particularly~~ Section 1415e (2), authorizes judicial review and ^{here and to receive} additional evidence at the request of a party. Moreover, a reviewing court may grant such relief as it determines to be "appropriate". Although this is a broad grant of judicial review, the history and structure of the Act - as well as common sense - counsel that a high level of deference be accorded an individualized educational program developed by school authorities pursuant to the prescribed procedures. Congress could not have contemplated that federal judges should be free to substitute their views for those of duly constituted educational authorities where it is clear - as in this case - that the responsible education authorities have addressed Amy's needs with sympathy, care and diligence.

AMY2 GINA-POW

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"unfeasible and imposes a standard that is impractical, if
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June 1, 1982

80-1002 Board of Education v. Rowley

Justice Powell concurring.

The Court has set forth the relevant provisions of
the Education for All Handicapped Children Act. It
requires, to qualify for federal assistance, that a state
provide for all handicapped children a "free appropriate
public education." 20 U.S.C. §1412(1) This term is
defined only in §1401(18) of the Act as follows:

(18) The term "free appropriate public
education" means special education and related
services which (A) have been provided at public
expense, under public supervision and direction,
and without charge, (B) meet the standards of
the State educational agency, (C) include an
appropriate preschool, elementary, or secondary
school education in the State involved, and (D)
are provided in conformity with the
individualized education program required under
section 1414(a)(5) of this title.

Section 1414(n)(5) requires that at the beginning of each
school year, "an individualized educational program" be
established or revised for each handicapped child. The
other requirements of §1401(18) - purporting to include
the elements of the required "appropriate" education,
present no problem in this case. The two questions
presented are the meaning of a "free appropriate public

education", and the role of a court in exercising the 30
review granted by §1414 of the Act.

The courts below concluded it was necessary to give
some more specific guidance - than the provisions of the
Act itself - as to the meaning of "free appropriate public
education". The District Court, and a divided panel of 35
the Court of Appeals, concluded that a state is required
to provide for each handicapped child "an opportunity to
achieve [her] full potential commensurate with the
opportunity provided to other children." 483 F. Supp. at
534. Judge Mansfield, dissenting from the majority in the 40
Court of Appeals, observed that this definition is
"unfeasible and imposes a standard that is impractical, if
not impossible, to use as a means of evaluating the
appropriateness of a handicapped child's education".
Petition A-18. I agree with Judge Mansfield that the 45
formulation approved below is at least as vague and
uninformative as the language of the Act. This Court also
has undertaken, in its opinion today, to ascertain what
Congress meant by an "appropriate" education for each
handicapped child. It agrees that the definition or 50

standard articulated by the courts below is "unworkable
.... requiring impossible measurements and comparsions."

Ante at 21. The Court then states its own view:

"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". Ante at 23.

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The Court recognizes that determining "when" a child is receiving "sufficient educational benefits" presents a more difficult problem. It correctly emphasizes that a state is required "to educate a wide-spectrum of handicapped children, from the marginally hearing-impaired to the profoundly retarded and palsied. It is clear that the benefits obtainable by children at one end of the spectrum will differ dramatically from those obtainable by children at the other end, with infinite variations in between." Ante at 24. The Court then holds that the congressional requirement is satisfied when a state provides "personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction." Ante at 25. Again, the Court reiterates a standard of "some educational benefit".

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In my opinion Congress did not attempt to define "free appropriate public education" more precisely than it did simply because there is no satisfactory definition. In view of the almost infinite variety of the degree of handicaps and needs for assistance of handicapped children, no definition could afford genuinely helpful guidance to the educational authorities responsible for implementing the Act or to courts authorized to review the individualized programs established for particular children. It is impossible for this Act to operate in any sensible way except by reliance primarily on the judgment and expertise of the duly constituted educational authorities. These are the boards, committees and individuals responsible under state and local law for educating all children, and despite the extraordinary detail of this legislation one must assume that Congress did not undertake to substitute its judgment - or the judgment of a court - for the exercise of discretion by the school personnel who must deal with the problems and needs of tens of thousands of handicapped children on a day to day basis. This is not to say that the Act is

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standard less. It is explicitly clear that under the
definitionable section, §1414(a)(5), that the required
individualized educational program must include special
education and related services; these must meet the 100
standards of the state educational agency; and they must
include "appropriate preschool, elementary, or secondary
school education".

I note that the term "appropriate" appears in the
definitionable section as well as in the language that 105
section undertakes to define. Cf. §1412(1) and
1414(a)(5). I conclude, therefore, that we need not go
beyond the word "appropriate". It affords no less
guidance than "reasonable", a term familiar to
legislators, administrators, boards and agencies - as 110
well as courts. I think we create confusion by trying to
read more into "appropriate" than we do into "reasonable",
a term confronted almost daily by courts. No public
school system can operate under this Act unless
"appropriate" is viewed as a standard of reasonableness 115
under the circumstances pertaining to the particular child
at the time the individualized program is designed or

annually reviewed. The broad grant of judicial review is to assure, primarily, that the state and local educational authorities comply strictly with the prescribed procedures. Although judicial review is expressed broadly, including the right of a party to introduce "additional evidence", a reviewing court should give a high degree of deference to the determination of the educational authorities as to the appropriateness of the program established for the child. It is unthinkable that Congress intended for a judge - and both state and federal courts have jurisdiction - to be free to second guess the duly constituted authorities. A reviewing court is required to base its decision on "the preponderance of the evidence" in granting "such relief as ... as appropriate", in weighing the evidence there should be a strong presumption of the appropriateness of the action taken by the school authorities.

I join the Court's judgment but not its opinion.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 2, 1982

Re: No. 80-1002 - Bd. of Ed. of the Hendrick Hudson
Central School District v. Roxley

Dear Byron:

Please join me in your dissent.

Sincerely,

J.M.

T.M.

Justice White

cc: The Conference

lfp/ss 06/02/82

Rider A, p. 4 (Rowley)

ROWLEY4 SALLY-POW

I do not think "some educational benefit" affords any more specific guidance than "appropriate public education". Each is a general standard that necessarily leaves to the educational authorities, after they have otherwise complied with the Act, the determination of the individualized programs. I see no need, therefore, for any different or additional standard from the statutory language itself.

In emphasizing that a considerable discretion necessarily must be left to the educational authorities, I do not suggest that the Act be viewed as providing no mandatory guidance. It is clear, particularly under §§1401(18) and 1414(a)(5), that the required

individualized educational program must include special education and related services; these must meet the standards of the state educational agency; these must be approved by the Department of Education (John: is this correct?); and the state standards must include "appropriate preschool, elementary, or secondary school education. It is to be noted that the term "appropriate" thus appear in both §§1401(18) and 1414(a)(5). I therefore conclude that we need not go beyond the word "appropriate" in attempting - by judicial decision to lay down a more specific standard. The key word "appropriate" affords no less guidance than "reasonable", a term familiar to legislators, administrators, boards and agencies - as well as courts. Indeed, I think we would create confusion by trying to read more into "appropriate"

than we do into "reasonable". No public school system could operate intelligently under this Act unless the requirement of an appropriate public education be viewed essentially as a standard of reasonableness in light of the purposes and other requirements of this legislation. In a school system of any size, there will be hundreds of handicapped children - each with his or her own capabilities and needs. In establishing, and revising annually, an individualized program for each child, a considerable measure of discretion is essential.

I turn now to the question of judicial review. Whether wisely or not, the Act confers a broad right of judicial review - available, in effect, to the parent or guardian of any handicapped child. The complaining party has a right to introduce "additional evidence", and a

court must base its decision on "the preponderance of the evidence", and may grant "such relief as . . . is appropriate". Note again the use of the term appropriate. I agree with the Court, however, that the expert judgment of the educational authorities as to program that is appropriate for a particular child must be given a high degree of deference by a court. In weighing the entire record, a presumption of appropriateness must be accorded the action of the school authorities. Congress could not have intended otherwise.

I join the Court's judgment, but no so much of its opinion as undertakes to formulate a standard different from that contained in the Act itself.

lfp/ss 06/02/82

Rider A, p. 1 (Rowley)

ROW1 SALLY-POW

For me, the relevant questions in this case are (i) whether we must undertake - as the courts below did - to formulate some more specific standard than the statutory term "appropriate public education", and (ii) the degree of deference that a reviewing court must accord the action of the school authorities in establishing a particular individualized education program.

June 3, 1982

80-1002 Board of Education v. Rowley

Justice Powell concurring.

The Education for All Handicapped Children Act requires a
participating state to provide for all handicapped
children a "free appropriate public education." 20 U.S.C.
§1412(1) This term is defined in §1401(18) of the Act as
follows:

(18) The term "free appropriate public
education" means special education and related
services which (A) have been provided at public
expense, under public supervision and direction,
and without charge, (B) meet the standards of
the State educational agency, (C) include an
appropriate preschool, elementary, or secondary
school education in the State involved, and (D)
are provided in conformity with the
individualized education program required under
section 1414(a) (5) of this title.

Section 1414(n) (5) requires that, at the beginning of each
school year, "an individualized educational program" be
established or revised for each handicapped child. The
other requirements of §1401(18) - purporting to include
the elements of an "appropriate" education, present no
problem in this case. For me, the relevant questions in
this case are (i) whether we must undertake - as the
courts below did - to formulate some more specific


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reviewing court must accord the action of the school
authorities in establishing a particular individualized
education program.  The courts below concluded it was
necessary to give more specific guidance - than the 35
provisions of the Act itself - as to the meaning of "free
appropriate public education". The District Court, and a
divided panel of the Court of Appeals, concluded that a
state is required to provide for each handicapped child
"an opportunity to achieve [her] full potential 40
commensurate with the opportunity provided to other
children." 483 F. Supp. at 534. Judge Mansfield,
dissenting, observed that this definition is "unfeasible
and imposes a standard that is impractical, if not
impossible, to use as a means of evaluating the 45
appropriateness of a handicapped child's education".
Petition A-18. I agree with Judge Mansfield that the
standard approved below would confuse, rather than afford
any more definitive guidance than the Act itself.

This Court also has undertaken, in its opinion today, 50

to state what Congress meant by an "appropriate" education for each handicapped child. It agrees that the definition or standard articulated by the courts below is "unworkable requiring impossible measurements and comparisons."

Ante at 21. The Court then states its own view:

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"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". Ante at 23. (Emphasis added)

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The Court correctly emphasizes that a state is required "to educate a wide-spectrum of handicapped children, from the marginally hearing-impaired to the "profoundly retarded and palsied". It is clear that the benefits obtainable by children at one end of the spectrum will differ dramatically from those obtainable by children at the other end, with "infinite variations in between."

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Ante at 24. The Court then holds that the Act's requirement is satisfied when a state provides "personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction." Ante at 25. Again, the Court reiterates a standard of "some educational benefit".

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I do not think "some educational benefit" affords any more - and probably less - specific guidance than "appropriate public education". Each is a general standard that necessarily leaves to the educational authorities, after they have complied otherwise with the Act, the determination of the individualized programs. I see no need for any different or additional standard from the statutory language itself.

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This leaves a considerable discretion to the educational authorities, but only in the area where discretion is necessary. The Act provides quite specific guidance in other respects. It is clear, particularly under §§1401(18) and 1414(a)(5), that the required individualized educational program must include special education and related services; these must meet the standards of the state educational agency; the state standards must include "appropriate preschool, elementary, or secondary school education"; and the state's overall plan must be approved by the Department of Education (John: is this correct?) It is to be noted that the term "appropriate" appear in both §§1401(18) and 1414(a)(5).

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I therefore conclude that we need not go beyond the word "appropriate" in attempting - by judicial decision - to lay down a more specific standard. The key word "appropriate" affords no less guidance than "reasonable", a term familiar to legislators, administrators, boards and agencies - as well as courts. Indeed, I think we would create confusion by trying to read more into "appropriate" than we do into "reasonable". No public school system could operate intelligently under this Act unless the requirement of an appropriate public education be viewed essentially as a standard of reasonableness in light of the purposes and other requirements of this legislation. In a school system of any size, there will be hundreds of handicapped children - each with his or her own capabilities and needs. In establishing, and revising annually, an individualized program for each child, a considerable measure of discretion is simply essential.

I turn now to the question of judicial review. Whether wisely or not, the Act confers a broad right of judicial review - available, in effect, to the parent or guardian of any handicapped child. The complaining party

has a right to introduce "additional evidence", and a
court must base its decision on "the preponderance of the 120
evidence", and may grant "such relief as . . . is
appropriate". Note again the use of the term appropriate.
I agree with this Court, however, that the expert judgment
of the educational authorities as to the program that is
appropriate for a particular child must be given a high 125
degree of deference by a court. In weighing the entire
record, a presumption of appropriateness must be accorded
the action of the school authorities. Congress could not
have intended otherwise.

I join Parts I, II and IVB of the Court's opinion, 130
and the judgment.

Sally-Brid in file

ROW4 GINA-POW

June 3, 1982

80-1002 Board of Education v. Rowley

Justice Powell concurring.

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The Education for All Handicapped Children Act requires a

participating state to provide for all handicapped

children a "free appropriate public education." 20 U.S.C.

§1412(1) This term is defined in §1401(18) of the Act as

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(18) The term "free appropriate public education" means special education and related services which (A) have been provided at public expense, under public supervision and direction, and without charge, (B) meet the standards of the State educational agency, (C) include an appropriate preschool, elementary, or secondary school education in the State involved, and (D) are provided in conformity with the individualized education program required under section 1414(a)(5) of this title.

Section 1414(n)(5) requires that, at the beginning of each school year, "an individualized educational program" be

established or revised for each handicapped child. The

other requirements of §1401(18) - proportioning to include

the elements of an "appropriate" education, present no

problem in this case. For me, the relevant questions in

this case are (i) whether we must undertake - as the

courts below did - to formulate some more specific

*Not circulated.
After I talked
to WHR, he
made helpful
changes. See*

drafts #2 & 3.

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standard than the statutory term "appropriate public education", and (ii) the degree of deference that a reviewing court must accord the action of the school authorities in establishing a particular individualized education program. *PP* The courts below concluded it was necessary to give more specific guidance - than the provisions of the Act itself - as to the meaning of "free appropriate public education". The District Court, and a divided panel of the Court of Appeals, concluded that a state is required to provide for each handicapped child "an opportunity to achieve [her] full potential commensurate with the opportunity provided to other children." 483 F. Supp. at 534. Judge Mansfield, dissenting, observed that this definition is "unfeasible and imposes a standard that is impractical, if not impossible, ~~to use~~ *Stet* as a means of ~~evaluating~~ *Stet* the appropriateness of a handicapped child's education".

*Stet
This is
a quote*

Petition A-18. I agree with Judge Mansfield that the standard approved below would confuse, rather than afford any more definitive guidance than the Act itself.

This Court also has undertaken, in its opinion today,

to state what Congress meant by an "appropriate" education for each handicapped child. It agrees that the definition or standard articulated by the courts below is "unworkable requiring impossible measurements and comparisons."

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The Court correctly emphasizes that a state is required "to educate a wide-spectrum of handicapped children, from the marginally hearing-impaired to the "profoundly retarded and palsied". It is clear that the benefits obtainable by children at one end of the spectrum will differ dramatically from those obtainable by children at the other end, with "infinite variations in between."

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This leaves a considerable discretion to the 85 educational authorities, but only in the area where discretion is necessary. The Act provides quite specific guidance in other respects. It is clear, particularly under §§1401(18) and 1414(a)(5), that the required individualized educational program must include special 90 education and related services; these must meet the standards of the state educational agency; the state standards must include "appropriate preschool, elementary, or secondary school education"; and the state's overall plan must be approved by the Department of Education 95 (John: is this correct?) It is to be noted that the term "appropriate" appear in both §§1401(18) and 1414(a)(5).

I therefore conclude that we need not go beyond the word "appropriate" in attempting - by judicial decision - to lay down a more specific standard. The key word "appropriate" affords no less guidance than "reasonable", a term familiar to legislators, administrators, boards and agencies - as well as courts. Indeed, I think we would create confusion by trying to read more into "appropriate" than we do into "reasonable". No public school system could operate intelligently under this Act unless the requirement of an appropriate public education be viewed essentially as a standard of reasonableness in light of the purposes and other requirements of this legislation. In a school system of any size, there will be hundreds of handicapped children - each with his or her own capabilities and needs. In establishing, and revising annually, an individualized program for each child, a considerable measure of discretion is simply essential.

I turn now to the question of judicial review. Whether wisely or not, the Act confers a broad right of judicial review - available, in effect, to the parent or guardian of any handicapped child. The complaining party

has a right to introduce "additional evidence", and a court must base its decision on "the preponderance of the evidence", and may grant "such relief as . . . is appropriate". Note again the use of the term appropriate.

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I agree with this Court, however, that the expert judgment of the educational authorities as to the program that is appropriate for a particular child must be given a high

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A court reserves little or no expert judgment as to the appropriateness of the action of the school authorities. Congress could not have intended otherwise.

judgment
as to

appropriate measure of procedure educating the

I join Parts I, II and IVB of the Court's opinion,

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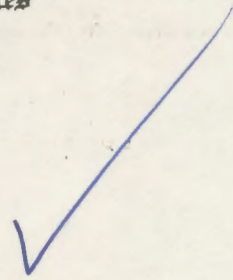
and the judgment.

handicapped

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 3, 1982



RE: No. 80-1002 Board of Education, etc. v. Roxley

Dear Byron:

Please join me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill", is written below the word "Sincerely,".

Justice White

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

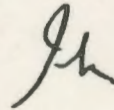
June 4, 1982

Re: 80-1002 - Board of Education v. Rowley

Dear Bill:

Please join me.

Respectfully,



Justice Rehnquist

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

June 7, 1982

Re: 80-1002 - Board of Education of the Hendrick
Hudson Central School District v. Rowley

Dear Bill:

I join.

Regards,

WRB

Justice Rehnquist

Copies to the Conference

lfp/ss 06/09/82

80-1002 Board of Education v. Rowley

Memo to file:

Although I would prefer to write this case along the lines of my draft opinion of June 3 (see draft in file), WHR - after he and I talked - has made helpful changes in his opinion. See drafts Nos. 2 and 3.

I am not sure Bill can obtain a Court without my vote. Therefore, in the interest of putting a Court together, I am joining his opinion.

L.F.P., Jr.

ss

June 9, 1982

80-1002 Board of Education v. Rowley

Dear Bill:

Please join me.

Sincerely,

Justice Rehnquist

lfp/ss

cc: The Conference

[illegible]