THE CURRENT STATUS OF THE LAW CONCERNING AN APPROPRIATE EDUCATION FOR STUDENTS WITH DISABILITIES

by

TRACIE DYE DOE

Under the Direction of John Dayton

ABSTRACT

The purpose of this study was to analyze the current status of the judicial interpretations of an appropriate education for students with disabilities and to communicate the implications of this interpretation to school administrators responsible for providing an appropriate education for students with disabilities. This study reviewed relevant Constitutional law, statutory law, regulatory law, and case law to provide a composite perspective on the current status of the law concerning an appropriate education for students with disabilities. This study found that all eligible children with disabilities are entitled to a free and appropriate education with necessary related services, and that no child with a disability may be denied an appropriate education based on the severity of the disability. This study also found that an Individualized Education Program must guide the provision of instruction and services for a student with a disability. The provision of services and development of the IEP must be done within the procedural protections and with the opportunity of parental involvement. A student with a disability must receive educational benefit in order for the education to be appropriate. This study concluded that all students with disabilities must be provided with an appropriate education in accordance with the IEP and parents must be given the opportunity to participate in the development of the IEP. Related services must be provided if necessary for the child to attend school and receive an appropriate education. The IEP must be followed specifically and data collected to determine the progress of the student with a disability towards the specific goals and objectives of the IEP. Procedural protections must be adhered to in every step of the process of providing special education services to a student with a disability.

INDEX WORDS: Appropriate education, Individuals with Disabilities Education Act, Special education, Students with disabilities, Rowley

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TRACIE DYE DOE

B.S.Ed., The University of Georgia, 1988

M.Ed., The College of Charleston, 1992

Ed.S., Georgia College and State University, 2000

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TRACIE DYE DOE

Approved:

Major Professor: Dr. John Dayton

Committee: Dr. C. Thomas Holmes
Dr. Catherine Sielke

Electronic Version Approved:

Maureen Grasso
Dean of the Graduate School
The University of Georgia
May 2003

DEDICATION

This work is dedicated to my father, Johnny Dye, a member of the University of Georgia class of 1961, and a loyal Georgia Bulldog.

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CHAPTER ONE

INTRODUCTION

Problem Statement

Judicial rulings in *Pennsylvania Association for Retarded Citizens (PARC) v. Pennsylvania* (1971) and *Mills v. Board of Education* (1972) first recognized the rights of children with disabilities to a public school education. The Education for All Handicapped Children Act (EAHCA) or Public Law 94-142 (1975), later renamed the Individuals with Disabilities Education Act (IDEA) (1990), furthered the rights of students with disabilities by guaranteeing a free and appropriate public education (FAPE). Since the enactment of P.L. 94-142, school districts, parents, advocates, hearing officers, and courts have struggled to define the standard for delivery of a free and appropriate public education to students with disabilities (Eckrem & McArthur, 2001). One of the most frequently litigated issues in the area of special education is the appropriateness of a student's education, and who is responsible for providing that education (Gorn, 1999).

Section 1401(a)(18) of the Individuals with Disabilities Education Act (1997) defines a FAPE by stating:

> The term 'free and appropriate public education' means special education and related services that (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.

This vague definition leaves many educators asking the questions: what are we expected to teach students served in special education, what are students with disabilities expected to learn, and what does the law require? (Eckrem & McArthur, 2001)

Special education personnel, parents, and school administrators are faced with deciding the appropriateness of each IEP and what related services to offer the estimated 10% of school aged children who have disabilities (Blake, 1982). Judicial decisions since the enactment of P.L. 94-142 (1975) have increased concern about the rights of students with disabilites and the provisions of specific accommodations and services. Educators are faced with the threat of litigation when there is disagreement with parents about the IEP and related services to be provided to students with disabilities. Legal fees and rulings issued by courts in a single case can cost school districts extremely large sums of money (Zirkel, 1990). Understandably, the litigation trend of recent years is of great concern to public school educators and to school districts. The IDEA (1990) guarantees each student with a disability an appropriate public education, yet does not clearly define the term appropriate, nor does the IDEA provide sufficient guidance for compliance by educators. Courts vary on rulings identifying what are and are not sufficient offerings and accommodations for students with disabilities. Many school administrators struggle with the question of what services must be offered to students with disabilities, and what constitutes an appropriate education for a student with a disability.

The IDEA (1990) was originally divided into nine subchapters. The IDEA Amendments of 1997, restructured it into four subchapters. Part A, subchapters one and two provide the general provisions of the law. Part B outlines the grant program that

requires states receiving federal assistance to ensure a free and appropriate education for students with disabilitie.

The IDEA (1990) commands that all states provide a free and appropriate education for students with disabilities. According to IDEA, the education provided must meet state standards and follow the student's IEP. The IEP guides the provision of services for a student with a disability. The primary objective of the IDEA is to ensure that students with disabilities receive a free and appropriate education. School administrators and special educators have the responsibility along with parents to design and IEP that outlines the services and objectives for the student.

The purpose of this study is to: 1) to determine what constitutes an appropriate education for a student with a disability under the current law; and 2) to determine what educators must do to ensure they provide an appropriate education for students with disabilities. Chapter Three of this study will provide additional information for local school administrators concerning what constitutes an appropriate special education for students with disabilities.

Research Questions

This study investigated the following research questions:

1.) According to relevant judicial interpretations, what constitutes an appropriate education for students with disabilities under current law?

2.) Consistent with these judicial opinions, what must educators do to ensure they provide an appropriate education for all students with disabilities?

Procedures

Research of this topic included an extensive search for federal statutes, regulations, historical and current case law, relevant legislation, legal commentary, and other related articles. Relevant documents were analyzed to construct an historical perspective on the legal status of an appropriate education, a composite perspective on the current legal status of this issue, and to identify relevant implications for educators. Sources for this research included law and education journals, court opinions and transcripts, and legal commentary. Relevant law and education journals were accessed through the use of "Lexis-Nexis," "Findlaw," "Thomas," and "ERIC" databases. Historical documents and court rulings were found through a search of the University of Georgia library, and other libraries within the university system.

Chapter Two is a review of the relevant literature concerning an appropriate education for students with disabilities, and is arranged in chronological order to provide the reader with a perspective on the historical development of the law. Included in this chapter are discussions of federal mandates such as the Individuals with Disabilities Education Act (1990), the IDEA Amendments (1997), court rulings, and legal commentary. In Chapter Three the most recent and relevent court decisions were analyzed to determine the current status of the law pertaining to an appropriate education for individuals with disabilities. Chapter Four concludes with findings, conclusions, and recommendations for public school administrators.

Limitations of the Study

This study is intended to provide accurate information concerning special education law as it pertains to the offering of a free and appropriate public school education to students with disabilities. This research was limited to published documents involving special education law and FAPE within the mandates of the IDEA (1997). This study is in no way intended to provide legal assistance or advice.

Definitions

For the purposes of this study, the following definitions apply:

1.) Adjudication – to settle either finally or temporarily on the merits of the issues raised.

2.) Certiorari – the right of superior court to call up the records of an inferior court to use in decision making.

3.) EAHCA – Education for All Handicapped Children Act of 1975; also known as P.L. 94-142. This act gave the right to public education to all handicapped children.

4.) FAPE – Free and appropriate public education; 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 appropriate preschool, elementary, or secondary school education in the State involved, and (d) are provided in conformity with the individualized education program.

5.) Individual Education Program (IEP) – Program of education which must contain (a) a written statement of the student's present levels, (b) a statement

of annual goals, (c) a list of short term objectives, (d) a statement of objective criteria for evaluation, (e) a statement of the extent to which a child will participate in regular education programs, (f) a description of related services required to implement the plan, and (g) the projected date for beginning the plan and the anticipated duration of services.

6.) Related services – Services such as transportation, speech therapy, occupational therapy, adaptive physical education, medical services, or counseling services that may be required to assist a handicapped child to benefit from special education.

CHAPTER TWO

REVIEW OF THE LITERATURE

Education for Students with Disabilities Before 1970

Chief Justice Earl Warren, in delivering the unanimous decision of the Supreme Court of the United States in *Brown v. Board of Education* (1954), stated:

> In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms. (p. 493)

This landmark case dispelled the notion that education could be offered to any group under the premise of separate but equal that had earlier been established in *Plessy v. Ferguson* (1896). This decision was important for students with disabilities, because the concept of equal opportunity was applicable to them, as well as to minority students.

Throughout history, as with other minority groups, individuals with disabilities have been denied an education suitable to their needs and commensurate with the majority of the student population. Institutional confinement was a generally accepted manner of dealing with individuals who were deemed incapable of living independently in society. This confinement was experienced by many individuals with disabilities, including those who were deaf, mute, blind, physically handicapped, mentally handicapped, and sufferers of epilepsy (Duetch, 1949).

Historically, educational opportunities for the group then labeled as handicapped have been sparse and, where in existence, inadequate or inappropriate. During the 1800s

and early 1900s asylums and institutions were the main sources of education for the mentally handicapped and few skills were taught there except the skills necessary for life inside the walls of the institution (Ballard, 1982). In 1966, Blatt and Kaplan published *Christmas in Purgatory: Photographic Essay on Mental Retardation.* This collection of photographs portrayed the squalid and inhumane conditions that existed in institutions for those with disabilities. This work was an important force in the deinstitutionalization movement (Blake, 1981).

Thomas Hopkins Gallaudet established the first special education program in the United States. His school, American Asylum for the Education and Instruction of the Deaf opened in 1817. The school is now the American School for the Deaf (Blake, 1981). Pennsylvania appropriated funds for the Elwyn Institute for children with mental retardation in 1852 (Ballard, 1982). There were no special classes provided for students with mental disabilities in public schools until the early 1900s. In fact, many states barred the attendance of students with disabilities in public schools before the late 1960s (Palmaffy, 2000). Two court cases in which students with disabilities sought admission to public schools illustrate the exclusion of these students.

In 1919 in *State ex. rel Beattie v. Board of Education,* the Wisconsin Supreme Court refused to admit a student with cerebral palsy to a public school. The court judged the condition to be "repulsive" to the other children and disturbing to the teachers. In the case of *Board of Education of Cleveland Heights v. State ex rel. Goldman* (1943) a child with an IQ below 50 was excluded from a school in Ohio. Again, the court of appeals ruled that such exclusion was acceptable for children deemed idiot or imbecile. In 1958 the Supreme Court of Illinois, in *Department of Public Welfare v. Haas,* ruled that the

state's compulsory attendance legislation did not require the state to provide a free education for the "feeble minded" or to children who were "mentally deficient" As late as 1969, a North Carolina statute remained on the books allowing the state to label a child "uneducable" and made it a crime for parents to challenge the decision (Weber, 1990).

Though these cases now seem to be extreme, they accurately reflected the attitude of the time in which they arose. Students with disabilities were ignored and excluded by public schools until, pressured by parents and advocates for the disabled, state governments passed legislation intended to protect individuals with disabilities and to provide them with education. The provisions initially made by states included institutions, asylums, and homes for the deaf, blind, and mentally retarded (Palmaffy, 2000).

Between the late 1950s and early 1970s the federal government became involved in securing the right to a public education for students with disabilities. In 1958 Congress passed Grants for Teaching in the Education of Handicapped Children (P.L. 85-926) which awarded grants to institutions of higher learning to assist them in providing training for teachers related to the teaching of the mentally retarded. One million dollars was allocated for ten fiscal years to accomplish this training. In 1961 the legislation expanded to include funds for the education of teachers for the deaf and hard of hearing as well (P. L. 89-10).

The Elementary and Secondary Education Act passed by Congress in 1965 attempted to compensate for the neglect of students with disabilities by allocating federal money to the states and giving states control over the education programs for students with disabilities. This law created the Bureau of Education for the Handicapped to

administer all federal programs designed for children with disabilities. During the next four years, Congress amended the act three times to provide for testing, experimental preschool programs for children with disabilities and the Gifted and Talented Education Assistance Act (P.L. 89-10). In 1970 this legislation was replaced by the Education of the Handicapped Act, which added more money to the programs and expanded available services (P.L. 91-230).

Court Cases and Legislation of the 1970s

Two court cases giving children with disabilities the right to a public education moved Congress into further action. In 1971, in the case of *Pennsylvania Association for Retarded Citizens (PARC) v. Pennsylvania*, the parents of students with mental retardation filed a class action suit challenging a Pennsylvania law that excluded the students from public schools. The suit claimed the state had violated the 14th amendment's guarantees of equal protection and due process by excluding the students without legitimate cause. The plaintiffs established four critical points in the case: (1) all children with mental retardation are capable of benefiting from a program of education and training, (2) education cannot be defined as only the provision of academic experiences for children, thereby legitimizing experiences such as learning to feed and clothe themselves as an outcome for public school programming, (3) having undertaken to provide all children in the Commonwealth of Pennsylvania with free public training, the state could not deny students with mental retardation access to free public education (4) the earlier students with mental retardation were provided education, the greater the amount of learning that could be predicted. This fourth stipulation reinforced the need for

preschoolers with mental retardation to have access to preschool programs that were available to children without disabilities (Yell, Rogers, & Rogers, 1998).

The court consented that these children could receive benefit from an educational program based on the individual needs of each student. In addition, the court supplied guidelines to assist schools in determining the circumstances that contributed to a beneficial public education. The ruling in *PARC* (1971) outlined the state's duty to educate students classified as mentally retarded from age 6 through age 21 and set the groundwork for procedural due process. In a consent decree agreed upon by both parties in the suit, the court in *PARC* (1971) stated:

> It 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, within the context of a presumption that, among the alternative programs of education and training available, placement in a regular public school class and placement in a special public school class is preferable to placement in any other type of program of education and training. (p. 66)

The following year, parents of students with disabilities in Washington D.C. challenged the exclusion of their children from public education. *Mills v. Board of Education* (1972) involved a broader range of students than did PARC (1971), including those with behavioral problems, emotional disturbance, and hyperactivity. Seven students brought about this suit after being excluded from the District of Columbia's public school system without due process of the law. The case was filed on behalf of all students with disabilities who had been excluded from public school (Yell, et al. 1998). The District used insufficient funding as a defense to the exclusion of students with disabilities. The court in *Mills* stated: "The inadequacies of the District of Columbia Public School System, whether occasioned by insufficient funding or administrative insufficiency,

certainly cannot be permitted to bear more heavily on the exceptional or handicapped child than on the normal child" (p. 876).

As a result of the case, the federal court in the District of Columbia extended the right to a public education to all groups of students with disabilities. The court ruled that no child with a disability could be excluded from a regular school assignment unless that child was provided with adequate alternative educational services suited to the child's needs. The court also ordered the District to provide due process safeguards. The court clearly outlined due process procedures for labeling, placement, and exclusion of students with disabilities. The procedural safeguards included the following: (a) the right to a hearing with representation with an impartial hearing officer, (b) the right to an appeal, (c) the right to have access to records, and (d) the requirement of written notice at all stages of the process. These safeguards became the framework for the due process component of the Education of All Handicapped Children Act of 1975 (Ballard, Rameriz, & Weintraub, 1982).

These two court cases established the requirement of providing children with disabilities with a public education and greatly influenced Congress to pass further legislation to protect individuals with disabilities. In 1973, Congress enacted the Rehabilitation Act (P.L. 93-112), which gave authorization to establish the Rehabilitation Services Administration in order to develop programs for vocational rehabilitation for those with disabilities. This law required the students with the most severe disabilities to be served first, with others to be served according to the severity of the disability. This legislation, designed to aid the disabled in postsecondary education, was the model for legislation to aid the disabled in elementary and secondary schools (P. L. 93-112).

In the two and one-half years that followed the *Mills* (1972) decision, 46 right-to-education cases were filed on behalf of children with disabilities in 28 states. The outcomes of these cases were consistent with the *PARC* (1971) and *Mills* rulings. Despite this judicial success, students with disabilities continued to be excluded from public schools. School districts continued to argue that there were insufficient funds, facilities, and teachers to provide a specialized education for students with disabilities. By the early 1970s the majority of states had passed laws requiring school districts to provide an education for students with disabilities. These laws varied substantially, resulting in uneven attempts to provide education to students with disabilities. The inequity of education for students with disabilities prompted the federal government to become further involved in the issue of students with disabilities receiving a public education (Yell, et al. 1998).

Congress found that there were approximately 8 million children with disabilities in the United States during the mid 1970s. Of these, 1 million were totally excluded from public school systems, and more than half of the others were receiving an inappropriate education. The education received by many students with disabilities consisted of little more than being contained within a school building (Blake, 1981). After a review of statistics, the Congressional Record stated (1975):

> The long range implications of these statistics were 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 educational 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. (121 Congressional Record S19492 June 18, 1975)

The intention of Congress in the preparation and enactment of legislation was that children with disabilities would be able to achieve a reasonable degree of self-sufficiency. One of the two principle authors of the Education for All Handicapped Children Act (1975), Senator Harrison Williams, said:

> 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 estimate that 1.75 million handicapped children do not receive any educational service, and 2.5 million handicapped children are not receiving an appropriate education. We must recognize our responsibility to provide education for all children with disabilities which meets their unique needs. The denial of the right to education and to equal opportunity within this nation for handicapped children whether it be outright exclusion from school, the failure to provide an education which meets the needs of a single handicapped child, or refusal to recognize the handicapped child's right to grow is a travesty of justice and a denial of equal protection under the law. (121 Congressional Record S19492 June 18, 1975)

The Education of All Handicapped Children Act (EAHCA) also referred to as P.L. 94-142, or the Act, was passed by Congress on November 29, 1975. This act made a commitment to children with disabilities to ensure funding, procedural safeguards, and access to an education appropriate to each child's needs and abilities. The law took effect in October of 1977 for children ranging in age from 3 to 21. The Act extended the judicial opinions in *PARC* (1971) and *Mills* (1972) from access to public education to the guarantee of a free and appropriate education. *PARC* focused on the rights of mentally retarded children, while *Mills* opened the door for students with a variety of disabilities. After the *Mills* decision, P.L. 94-142 defined the term handicapped to include:

> Children who have a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, disorder which may manifest itself in imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. Such disorders may include such conditions as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. (P.L. 94-142, 1975)

Congress provided a comprehensive piece of legislation with the passing of the EAHCA (1975). This legislation used funding as an incentive to states to comply with its main provisions. The Act required states to:

> Provide all handicapped children with a free and appropriate education and to develop a plan which details the policies and procedures which guarantee the effectiveness of that right. State plans must: 1) ensure that local educational agencies in the state locate, identify, and evaluate children in need of special education services, 2) establish individual educational programs for such children, and 3) provide the requisite procedural safeguards for enforcing rights under the Act. (EAHCA, 1975)

The EAHCA further defined special education as specifically designed instruction at no cost to parents or guardians, to meet the unique needs of a child with a disability, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions.

Congress intended for the Individual Education Program (IEP) to be the tool to ensure that each child received an appropriate education. According to the EAHCA (1975) the parent or guardian of the student must be provided with the opportunity to attend the IEP meeting and to provide information and sign the plan as a denotation of agreement with its contents. The IEP must have the following components: (1) a written statement of the student's present levels of functioning, (2) a statement of annual goals, (3) a list of short-term objectives, (4) a statement of objective criteria for evaluation, (5) a statement of the extent to which a child will participate in regular education programs, (6) a description of related services required to implement the plan, and (7) the projected date for beginning the plan and the anticipated duration of services.

The EAHCA (1975) defined a free and appropriate education as:

> Special education and related services which (a) are 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. (EAHCA, 1975)

Although the Act (1975) provided definitions, those definitions were ambiguous. Such ambiguity led to complications. The word appropriate used in the EAHCA led to many court cases. Disagreement concerning the physical placement, the amount of time in special and regular classes, the related services, and the determination of which parties pay for special services precipitated litigation between parents and school administrators.

The EAHCA (1975) mandated that all children with disabilities be provided a free and appropriate public education in the least restrictive environment. Each child with a disability must have an IEP that details the range of services to be provided and where a student's education is to take place. The law expressed a preference for placement of children with disabilities in the least restrictive environment. The law also mandated that districts establish procedures for ensuring that parents are involved in the development of each IEP and that they have opportunities to challenge a district's decision about the range of services it will provide (Palmaffy, 2000). The EAHCA outlined the option to take a grievance to state or federal court in the form of civil action. While all administrative options must be exhausted before entering court, the act clearly defined the right of parents to take the issue to court when necessary.

While the Act (1975) established specific steps for the procedural due process for the assurance of a free and appropriate public education, it did not address the specific substantive standards necessary to provide an education appropriate for each child with a disability in public school. Nor did the Act provide examples of a free and appropriate education. The vehicle for assurance of an appropriate education was the Individual

Education Program (IEP) and the guidelines associated with parental rights. As a result, the courts at a variety of levels have differed in determining what constitutes a free and appropriate public education.

Rowley v. Board of Education

Seven years after the EAHCA (1975) was enacted, a case of first impression went before the U.S. Supreme Court. The case began as *Rowley v. Board of Education* (1980), and was filed on behalf of Amy Rowley, a deaf student enrolled in the Hendrick Hudson School District in New York. Amy's parents, both deaf, worked cooperatively with the school officials prior to Amy's entrance into kindergarten. The school initially provided Amy with a FM wireless hearing aid for use during the school day and installed a special telephone to allow communication with Amy's parents. Several teachers and school administrators took courses in sign language in an effort to ensure maximum communication with the Rowley family.

For experimental purposes, the school provided a sign language interpreter for Amy for a two-week trial period. The effort was made to determine whether this interpreter would aid Amy in the kindergarten class. After the two-week period, school officials determined that Amy did not need the interpreter in order to be successful in the kindergarten class. The Rowleys disagreed with the opinion of the school officials. The Rowleys claimed that by denying the services of a sign language interpreter, the school had excluded Amy from an appropriate public education as guaranteed to her by the EAHCA (1975). The Rowleys insisted upon the need for a sign language interpreter for Amy, however, the school refused to provide one (Rowley, 1982).

In the fall of Amy's first grade year the district requested a recommendation from the Committee on the Handicapped (COH) concerning the appropriateness of Amy's IEP. This committee was made up of a psychologist, an educator, a physician, and one of Amy's parents. The COH met and reviewed evidence presented by the Rowleys, visited Amy's classroom, and heard testimony from teachers and other school personnel familiar with Amy's academic and social progress. The COH recommended that Amy be provided with continued use of the FM wireless hearing aid, services of a tutor for the deaf for one hour each day, and services of a speech therapist three hours per week. The COH concluded that Amy did not need the services of a sign language interpreter at that time (Rowley, 1982).

In December of 1978 Amy's parents met with school officials to discuss her IEP. The Rowleys concurred with the program in all aspects except one. They continued to insist their daughter needed the services of a sign language interpreter for her academic classes. The COH stood by its earlier recommendation that interpretive services not be provided. The Rowleys demanded and received a hearing before an independent hearing officer concerning their disagreement with the IEP proposed by the school. The examiner rendered a decision against the Rowleys, and they appealed to the Commissioner of Education. The Commissioner upheld the decision of the independent examiner. The Rowleys then brought civil action against the school district (Rowley, 1982).

Rowley v. Board of Education of the Hendrick Hudson Central School District (1980) initially went to the United States District Court for the Southern District of New York in January of 1980. The Rowleys sought to force the school district to provide Amy with a sign language interpreter. Technically, the court had jurisdiction only to rule on the

1978-79 IEP, since administrative remedies had not been exhausted in regard to the 1979-80 IEP. However, since the appropriateness of the services was a continual concern, Judge Broderick indicated his findings would relate to the current IEP as well as the IEP for the past school year.

The school district presented information to show that Amy was making progress and advancing grade levels with ease. Amy was also performing above the median for her class. The principal of Furnace Woods Elementary School indicated that only academic failure would indicate the need for an interpreter. The school district also voiced the concern that an interpreter would interrupt the classroom and detract from the education of the other students in the class (Rowley, 1982).

The plaintiffs presented the fact that prior to entering the Hendrick Hudson School District Amy received instruction using the Total Communication method which included mouthing words, amplification, signing, touching, and visual cues. Results of a variety of speech discrimination tests showed that Amy could identify 59% of the words spoken to her using hearing aids and lip reading. However, with the use of Total Communication she was able to identify 100% of the words spoken to her. The plaintiffs also established that an interpreter could be integrated into the classroom in a way which would not disrupt the class (Rowley, 1982).

The fact that Amy could understand 100% of the words presented to her with an interpreter was key to the Rowleys' argument. In response, Judge Broderick of the U.S. District Court for the Southern District of New York ruled in favor of the Rowleys and ordered the school district to provide a sign language interpreter for Amy. According to the district court a free appropriate education required that the potential of a child with a

disability be measured and compared to his or her performance, and that the resulting differential be compared to the shortfall experienced by non-disabled children. Judge Broderick said that while Amy was making progress she was not making the progress she would if she had no disability (Rowley, 1982).

Hendrick Hudson School District and the Commissioner of Education for the state of New York appealed the decision of Judge Broderick to the U.S. Court of Appeals for Second Circuit. In *Rowley v. Hendrick Hudson School District* (1980) Judge Timbers, and Senior District Judge Bonsal, of the court of appeals, affirmed the decision of Broderick. Circuit Judge Mansfield wrote the dissenting opinion. The school district was again ordered to provide an interpreter for Amy Rowley.

The school district again appealed the decision and the disagreement ultimately made it to the U.S. Supreme Court in 1982. This case was the first in which the Court was called upon to interpret the EAHCA (1975). The Court rendered a 6 to 3 decision in *Hendrick Hudson School District Board of Education v. Rowley* (1982) that directly impacted the definition of a free and appropriate public education. Certiorari was granted to review the lower courts' interpretation of the Act. In this review the Court considered two questions: (1) what is meant by the Act's requirement of a free appropriate education, and (2) what is the role of state and federal courts in exercising the review granted by 20 U.S.C. § 1415? The Supreme Court overturned the lower courts, thus ruling that the school district had provided Amy with an education that was appropriate under the EAHCA (1975).

Justices Rehnquist, Burger, Powell, Stevens, Blackmun, and O'Connor agreed that the education currently provided to Amy Rowley constituted a free and appropriate

education. The Court said the Act's requirement of a free and appropriate public education was satisfied when the State provided personalized instruction with sufficient support services to permit the child with a disability to benefit educationally from the education. According to the EAHCA (1975) if the child is educated in the regular classroom, as Amy Rowley was, the IEP should be reasonably calculated to enable the student to maintain passing grades and advance from grade to grade. The Court found that in the case of Amy Rowley, these requirements had been met (Rowley, 1982).

Judge Rehnquist wrote and delivered the opinion of the court in *Hendrick Hudson School District v. Rowley* (1982). Rehnquist disagreed with the district court's opinion saying that the Act (1975) did not clearly define free appropriate public education. Rehnquist said that in fact the Act expressly defines FAPE as an education that consists of educational instruction designed to meet the unique needs of a child with a disability supported by related services that are necessary to permit the child to benefit from the instruction. As a checklist for adequacy under the Act, the definition also requires this instruction be provided at public expense under the supervision of the State's educational standards. Rehnquist wrote that if personalized instruction is being provided with sufficient related services to permit the student to benefit from the instruction, then the student is receiving a free appropriate public education.

Rehnquist also wrote that, while noticeably absent from the EAHCA (1975) was any substantive standard for providing FAPE, there also existed no requirement such as the one imposed by the lower courts, in which the school system was required to maximize the potential of all children with disabilities commensurate with that of non-disabled children. In the opinion for *Rowley* (1982) Rehnquist stated:

> No one can doubt that this would have been easier if Congress had seen fit to provide a more comprehensive statutory definition of the phrase free appropriate education. But, Congress did not do so, and our problem is to construe what Congress has written. After all, Congress expresses its purpose by words. It is for us to ascertain, neither to add nor subtract, and neither to delete nor to distort. We would be less than faithful to our obligation to construe what Congress has written if in this case we were to disregard the statutory language and legislative history of the Act by concluding that Congress had imposed upon the States a burden of unspecified proportions and weight, to be revealed only through case-by-case adjudication in the courts. (p. 190)

In his written opinion, Rehnquist added that by passing the EAHCA (1975), Congress sought to make public education accessible to children with disabilities, but did not impose any greater educational standard than would be necessary to make that access meaningful. In fact, Congress expressly said that the process of providing access and related services to children with disabilities is not guaranteed to produce any particular outcome. Congress, in explaining the need for the Act equated an appropriate education with receipt of specialized educational services. Senate and House reports disclose Congress' perception of the type of education required by the Act. An appropriate education is provided when personalized educational services are given to the student with a disability (Rowley, 1982).

In further clarifying the definition of appropriate, Judge Rehnquist stated in his opinion in *Rowley* (1982):

> In seeking to read more into the Act than its language or legislative history will permit, the United States focuses on the word appropriate arguing that the statutory definitions do not adequately explain what it means. Whatever Congress meant by appropriate education, it is clear that it did not mean a potential maximizing education. The use of appropriate in the language of the Act, although by no means definitive, suggests that Congress used the word as much to describe the settings in which handicapped children should be educated as to prescribe the substantive content or supportive services of their education. The Court does not think that Congress intended to achieve strict equality of opportunity or services (p. 196).

In explaining the need for federal legislation prior to the enactment of EAHCA (1975), the Congressional Record (121 S4, 1975) noted that a basic floor of opportunity for children with disabilities would bring into compliance all school districts with the constitutional right of equal protection. Rehnquist noted that 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.

Rehnquist wrote (Rowley, 1982) that the district court and the court of appeals erred when they held that the Act required New York to maximize the potential of each child with a disability commensurate with the opportunity provided non-disabled children. Though that may be a desirable goal, Congress did not impose such a standard upon States which receive funding under the Act. Rather, Congress intended for States to identify, evaluate, and provide access to a free public education for all children with disabilities.

Implicit to the intent of Congress is the requirement that the education to which access is provided be sufficient for the students to confer some educational benefit. The statutory definition expressly requires the provision of specially designed instruction along with supportive services that are required for a child to benefit from special education. The Court concluded that the basic floor of opportunity provided by the EAHCA (1975) consists of access to specialized instruction and related services which are designed to provide the individual child with educational benefit (Rowley, 1982).

Judge Rehnquist continued by saying that the determination of when a child with a disability was receiving an appropriate education according to the EAHCA's (1975) requirement was a difficult task. The Act requires States to educate a wide spectrum of

children with disabilities. It is clear the benefits obtainable by children at one end of that spectrum will be vastly different from children at the opposite end, with infinite variances in between. The Court did not attempt to establish any singular test for determining the adequacy of educational benefits conferred upon all children by the Act. Because the case presented to the Court was based on a child with a disability who was receiving substantial specialized instruction and related services, and who was performing above average in a regular classroom in a public school, the Court confined the analysis to that situation (Rowley, 1982).

The Act (1975) indicates a preference that children with disabilities be educated in the regular education classroom when possible. *Rowley* (1982) was a case in which the child was being educated in the regular classroom with specialized services. The school system monitored the educational progress of the child with regular assessments, exams, and grades. This child was progressing from grade to grade without difficulty in a regular classroom. This grading and advancement constituted an important factor in determining educational benefit. Children who graduate from public schools are considered to be educated, at least to the grade level which they complete. Access to this education was precisely what Congress sought to provide. In the written opinion in *Rowley* (1982), Rehnquist said:

> We do not hold that every child who is advancing grade to grade is receiving a free appropriate education. In this case however, we find Amy's progress, when considered with the special services and professional consideration accorded by Furnace Woods school administrators, to be dispositive. (p. 202)

Rehnquist wrote that when the language and legislative history of the Act are considered together, the requirements Congress imposed are clear. In so far as a state is required to provide a child with a disability with a free appropriate public education, the

Court held that the State satisfies the requirement by providing personalized instruction with sufficient support services to permit the child to benefit educationally. Instruction and services must be provided at public expense, must meet the State standards, must approximate the grade levels used in the State's regular education program, and must follow the IEP (Rowley, 1982).

Rehnquist also discussed the option given to parents to take an issue of disagreement with the IEP to court once all administrative options were exhausted. The Act (1975) says the court will base its decision on a preponderance of evidence. He said however, that this did not allow a court to substitute their own notion of sound educational policy and ideas of best practices for those of school authorities. The court is obligated to ensure procedural requirements and not to impose substantive standards of review that cannot be derived from the Act (Rowley, 1982).

Rehnquist criticized the lower courts, saying the decision was rendered on their idea of the best method of educating a deaf student, not requirements set forth by the EAHCA (1975). The preponderance of evidence presented was concerning the method of instruction for a deaf student. Evidence of failure to comply with EAHCA and provide an appropriate education was not presented. Once a court determines that the requirements of the Act have been met, it is up to the State to resolve questions of methodology (Rowley, 1982).

Rehnquist concluded his opinion in *Rowley* (1982) by stating:

> Applying these principles to the facts of this case, we concluded 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 requirements of the Act. On the contrary, the district court found that the evidence

> firmly established 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. In light of this finding, and of the fact that Amy was receiving personalized instruction and related services calculated by the Furnace Woods school administrators to meet her educational needs, the lower courts should not have concluded that the Act requires the provision of a sign language interpreter. Accordingly, the decision of the court of appeals is reversed, and the case is remanded for further proceedings consistent with this opinion. (p. 210)

This decision set the precedent that school districts must provide services that allow students to benefit educationally, but not necessarily to maximize the student's performance.

Justice White wrote the dissenting opinion in *Rowley* (1982), with which Justices Brennan and Marshall agreed. White wrote that in reaching the decision, the Court disregarded congressional intent for the standard of an appropriate education for judicial review. White agreed that the language of the Act (1975) does not contain substantive standards beyond that the education provided be appropriate. However, the limits must be found in the purpose of the statute or its legislative history. The Act itself announces it will provide a full educational opportunity to all children with disabilities. The Act also guarantees the children with disabilitiesare provided equal educational opportunity. White quoted Senator Stafford, one of the sponsors of the Act as saying, "We can all agree that education provided a child with a disability should be equivalent, at least, to the one those children who do not have a disability receive" (Rowley, 1982).

White said the majority opinion set a standard, saying the Congress did not impose upon the states a greater educational standard than would make access meaningful. The word meaningful is not more enlightening than appropriate, yet the Court attempted to clarify itself in the use of the word. Because Amy Rowley was provided with some specialized instruction and related services, obtained some benefit,

and was passed from grade to grade, she was receiving a meaningful and therefore appropriate education (Rowley, 1982).

In the dissenting opinion for *Rowley* (1982) Justice White stated:

> The Act details as specifically as possible the kind of specialized education each handicapped child must receive. It would apparently satisfy the Court's standard of access to specialized instruction and related services which are individually designed to provide educational benefit to the child, for a deaf child such as Amy to be given a teacher with a loud voice, for she would benefit from that service. The Act requires more. It defines special education to mean specifically designed instruction at no cost to the parents to meet the unique needs of the handicapped child. Providing Amy with a teacher with a loud voice would not meet her needs and would not satisfy the requirements of the Act. Amy comprehends less than half of what a normal child comprehends in the classroom. This is hardly an equal opportunity to learn. (p. 215)

White went on to say that the Court's discussion of the standard for judicial review was as flawed as its discussion of an appropriate education. According to the Supreme Court, a court can only ask whether the school has complied with the procedures set forth in the Act (1975) and whether the program is reasonably calculated to enable the child to receive educational benefits. Both the language and legislative history demonstrate that Congress intended the courts to conduct a far more thorough inquiry, according to White. The legislative history shows that judicial review is not limited to procedural matters and that the state educational agencies are given first, but not final, responsibility for the content of a child's education (Rowley, 1982).

Justice White said the lower courts did precisely what they were required to by the provision of the Act (1975). The standard of the lower courts reflected to White the true congressional intent. He agreed with the ruling issued by the lower courts that Amy should be provided with a sign language interpreter (Rowley, 1982).

In the process of deciding *Rowley* (1982) the court formed a two-prong test to determine whether schools offered students a free and appropriate education. First, had the school complied with the procedures set forth under the law? Second, was the IEP reasonably calculated to allow the student to benefit from his or her education? The process was outlined by the court as:

> According to the definitions contained in the Act, a 'free and appropriate education' consisted of educational instruction 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 was being provided with sufficient support services to permit the child to benefit from the instruction, and the other items on the definitional checklist were satisfied, the child was receiving a 'free and appropriate public education' as defined by the Act. (p. 207)

Subsequent cases brought about as a question of educational benefit were decided with a majority of the weight placed on the beneficial portion of the two-step test developed in the ruling of *Rowley*.

Speculation on the impact of the *Rowley* (1982) decision on special education began immediately after the decision was rendered. Advocates for increased services to special education students were outraged, while those assigned the responsibility for providing such services responded with relief. Both groups agreed that the decision of the Supreme Court in the Rowley case would have a definite impact on the services and accommodations provided to students with disabilities (Boyle & Weishaar, 2001).

The impact of the *Rowley* (1982) decision on litigation has been substantial with its emphasis on comparability as opposed to equivalency. According to the judicial decision in *Rowley* (1982), an appropriate education should provide the same basic

learning opportunities to disabled and non-disabled children, but cannot assure them the realization of reaching their maximum potential. The Court's emphasis on grade-to-grade promotion as a standard for determining appropriateness has little relevance to more student's with severe disabilities who are in essentially upgraded programs outside of mainstream situations. Beyond the unique facts of Amy Rowley's case, the Court affirmed a process definition of appropriate education (Turnbull, 1986).

Post *Rowley* Court Cases

In 1982, the Supreme Court denied certiorari in *Springdale School District v. Grace.* As in *Rowley* (1982), this case also involved a deaf student. Sherry Grace, however, had a much different early education than Amy Rowley. Sherry did not begin receiving instruction in deaf communication until she was four years old. This instruction began at Bates Elementary School in Fayetteville, Arkansas. Sherry had approximately a 95% hearing loss and responded only to visual instruction. Sherry spent two years at Bates and made little or no progress while there. At the age of six, Sherry moved with her family to Little Rock, Arkansas, and she began attending the Arkansas School for the Deaf. During the three years she attended the Arkansas School for the Deaf, she was instructed in the Total Communication method. During this time Sherry's ability to communicate increased from that of a two year old child to a student with a language level of a second grader. After three years in Little Rock, the Grace family moved to Springdale, Arkansas. Sherry was enrolled in Springdale School at that time (*Springdale School District v. Grace*, 1982).

Springdale School conducted tests of Sherry's ability and achievement level and fashioned an IEP stating that Sherry would be taught by a certified teacher for the deaf.

The IEP committee, with the exception of Sherry's parents, agreed that she would receive the best education from the Arkansas School for the Deaf. The Graces disagreed with the placement decision and began the process of appeals outlined in the Act (1975). The hearing officer determined that the school was incorrect in its placement decision and said that Sherry could remain at Springdale School. After the coordinator for the Arkansas State Department of Special Education confirmed the hearing officer's decision, the school system employed a certified teacher of the deaf for Sherry (Springdale, 1980).

Springdale School then began civil action in the United States District Court for the Western District of Arkansas. The district court found that the Arkansas School for the Deaf provided Sherry with the best public education. The court went further however, and said the Act did not require that the State provide the best education, but only that the State provide an appropriate public education for Sherry. Because the Springdale School could provide an appropriate education and because it met the guidelines for placement in the least restrictive environment, the court said Sherry should attend Springdale School (Springdale, 1980).

Springdale School then took the case to the Eighth Circuit Court of Appeals. This court reached the same decision as the lower court, but used a different rationale. The district court in *Springdale* (1980) originally decided the case on the basis of the commensurate opportunity standard used by Judge Broderick at the district court level in *Rowley* (1980). The court of appeals in *Springdale* (1982) affirmed the decision and the rationale used in the original *Rowley* case. The court was also influenced by the fact that Sherry could reside with her family and be in contact with both hearing and deaf

individuals in her community. Springdale School was once again the designated place for Sherry to receive instruction from a certified teacher for the deaf.

The school system appealed to the U. S. Supreme Court, which denied certiorari. The case was vacated and remanded to the Eighth Circuit Court of Appeals (Springdale, 1982). By the time *Springdale* appeared, the Supreme Court had heard and ruled in the *Rowley* (1982) case. The court of appeals confirmed that its original decision was sound even after the Supreme Court had set a new standard based on a beneficial rather than commensurate education. The court of appeals found that both the commensurate opportunity standard and the educational benefit standard fit the facts of the case well enough to reach an identical conclusion. The court saw no justification to alter its reasoning using either standard to arrive at the same result.

The second opinion from the Eighth Circuit Court of Appeals included the application of the Rowley test centering on the due process guidelines and the determination of whether the IEP was reasonably calculated to enable the child to receive educational benefits. The court indicated that because Springdale School could provide Sherry Grace with a free and appropriate education, they could not intervene and place Sherry elsewhere. They also noted that the cost to the district of providing services did not justify placement outside the local school district (Springdale, 1982).

Coupled with the provisions for a free and appropriate education, is the question of who bears the responsibility for paying for the education of students with disabilities. This issue has been brought before the courts repeatedly. The issue of fiscal responsibility was paramount in a case that reached the Supreme Court during the same month that *Springdale* (1982) was decided.

In the case of *Doe v. Anrig* (1982), the balance between the personal needs of the student and the cost to the state was the issue presented to the court. This case was filed on behalf of three students with disabilities and their parents. These students were attempting to maintain their placement in private schools while the local school system paid for the instruction and residence fees. The school systems contested continuing the private placement and said it could provide an appropriate education. The court found a basic difference between this case and the *Rowley* (1982) case. The *Doe* case dealt with the issue of whether the school could provide basic services necessary for a child with significant disabilities to receive an appropriate education (Doe, 1982).

When the case reached the district court *Rowley* (1982) could not yet be used as a standard. When the case reached the court of appeals, however, *Rowley* had been decided. The court initially ruled that the school district was not required to cover the expense of private school when parents chose to change placement (Doe, 1982).

The case was continued as *Burlington v. Department of Education of Massachusetts* (1985). Justice Rehnquist wrote the opinion for the Supreme Court, which said that parents could be reimbursed for the expenses of special education in private school, if the court determined that the placement was appropriate and the school system had not provided an appropriate educaiton. In *Burlington,* the student had been diagnosed as learning disabled. The school system wrote an IEP specifying a special education program at a local school. The local school was not fully equipped to deal with the child's learning disability and poorly implemented the IEP. The parents disagreed with the implementation of the IEP and requested another review by state special education administrators. Prior to the hearing, the parents moved the student to a private school for

students with disabilities. The Court agreed to decide two essential and long-argued questions: (1) did the parents, on moving the student to a private school prior to the hearings outlined in the Act (1975), forfeit entitlement to reimbursement for tuition and expenses related to the unilateral move, and (2) does the Act bar reimbursement to parents who determine that the IEP and placement decision are not appropriate for their child.

The Court found the time involved for the hearings related to disagreements between parents and school systems often created an untenable decision for the parents of student with a disability. The parents had to decide whether the child could endure the placement situation until a final decision was made, or if the child needed an immediate change. If parents made the decision that their child could not endure the placement until the final decision had been made, they had in the past, jeopardized the possibility of receiving monetary reimbursement from the system. The Court looked closely at the time involved and the impact that the loss of time could have on the education of the child, especially a student with a disability. Since the process of hearings can take several years before a decision is reached, the Court determined the parents conceivably would be forced to comply with an inappropriate IEP in order to avoid fees for an education. The Court in *Burlington* (1985) said:

> If parents chose the later course, it would be an empty victory to have a court tell them several years later that they were right, but that these expenditures could not in a proper case be reimbursed by the school officials. If that were the case, the child's right to a free appropriate public education, the parent's right to participate fully in developing a proper IEP, and all of the procedural safeguards would be less than complete. (p. 371)

Judge Rehnquist went further and granted the parents retroactive reimbursement for the education of their child. Because the Court found that the parents had been correct in

their placement decision and the school system had been incorrect, the parents were entitled to payment for the years during which they were in dispute with the system.

To answer the second question, the Court said the Act (1975) did not necessarily bar reimbursement to parents who rejected a proposed IEP and unilaterally changed schools by placing the student with a disability in a private school. The Court was careful to say that this ruling did not, and would not, automatically apply to all cases where parents disagreed with school authorities. If a public school was unable or unwilling to provide an appropriate education, then the court must confirm the parents' preference for a particular school as the one being the more appropriate in order for the parents to be entitled to reimbursement (Burlington, 1985).

The Court in *Burlington* (1985) did not place responsibility for decision making on the school administration as they had in *Rowley* (1982). The ruling in *Burlington* created a costlier education than would have been evidenced in the provision for an interpreter for Amy Rowley. It has been argued that the *Burlington* decision could result in encouraging parents to change the educational placement of students with disabilities and gamble that the court would agree with their decision.

In *Lang v. Braintree School Committee* (1982), the district court in Massachusetts compared the facts of *Lang* with those of *Rowley* (1982), and said that even though the school district was negligent in following procedures outlined in the Act, the placement was appropriate and beneficial. Margaret Lang was a first grader who had been diagnosed as mentally retarded and epileptic. She began attending school in the public school system in Boston, Massachusetts. While in the first grade, it was determined by school officials that she was in need of a specialized education and that the most appropriate

placement would be St. Colletta Day School, a private residential school for students with disabilities. Margaret attended St. Colletta Day School for eight years.

In 1977 the Langs moved to Braintree, Massachusetts. The local school system in Braintree assessed Margaret and planned an eight week educational program with the intention of replacing the temporary IEP with a more permanent education program. The system decided that the local school could provide Margaret with an appropriate education and refused to pay for the cost of St. Colletta Day School. The Langs disagreed with the school system's program and appealed to the state hearing officer. The officer said the eight week program was inappropriate and instructed the school system to develop a long range plan for Margaret that would match the program she received at St. Colleta Day School and that would be less restrictive than the current program (Lang, 1982).

The school system obeyed the hearing officer and prepared a new IEP for Margaret. However, the school did not include Margaret's parents in the revision of the IEP. The Langs appealed on the basis that the change in placement would be detrimental to Margaret and would be dangerous to her physical safety, as well as the fact that the IEP had not been prepared with their full participation as indicated in the Act (Lang, 1982).

The court recognized, and the school admitted, that procedures of the Act had not been properly followed in the preparation of the IEP. While developing the IEP, the administration decided the most appropriate placement for Margaret was at the local high school, which was in opposition to the wishes of her parents who wanted to maintain residential placement for Margaret. The system contended that even though the

procedural steps of the Act (1975) had not been followed, it had remedied the situation by involving the parents in the appeals process (Lang, 1982).

The court agreed with the school system, however, admonished the school administrators for not following the procedural guidelines of the Act (1975). The court said that despite the violation of the procedures the school system had provided a preponderance of evidence to show that the local school could provide an appropriate education for Margaret. In the written opinion, the court said, "There is every reason to believe that Margaret's placement in a public school setting, with the proper special education and support services, would be of greater benefit to her than remaining in a private school setting" (Lang, 1982).

The court compared the circumstances of *Lang* (1983) with R*owley* (1982) and stated that:

> Unlike the Rowleys, plaintiffs here maintain that the program offered by the public school will actually be harmful to Margaret, and in any event will not benefit her. In *Rowley,* it was not disputed that the school district's plan would benefit the child; the question was whether the district was required to provide an education that would allow her to achieve her potential to a degree commensurate with other normal children. (p. 19)

In *Lang* (1982) the court relied on the U.S. Supreme Court's concern about interfering with a local school district's decision. The court gave serious consideration to the Supreme Court's caution regarding intervening in decisions concerning the best educational method for students with disabilities, and therefore, supported the school administrators. After hearing the professional opinions of both local and outside administrators, the court determined that it must give primary credence to the local administrators. The court assigned Margaret to the local high school, which was the preferred placement of the school system.

In looking at the *Rowley* (1982) two-step test, the court said that the school system in *Lang* (1983) had met the requirements in the Act that related to procedural due process. The argument in this case was a disagreement between the school administrators and the parents concerning the most appropriate placement. The court cited *Rowley* and ruled that it too would have to follow the recommendations of the school officials.

In 1983 the court once again used the *Rowley* (1982) decision to determine the outcome of a case brought before them. In *Marvin H. v. Austin Independent School District* (1983) the parents of Bryan, a seventh grader, alleged that his placement was inappropriate. When Bryan began experiencing serious difficulties in school, his parents, on the school's recommendation took Bryan to the Travis County Mental Health Center for counseling. When this effort failed to be effective, the school officials referred Bryan to a center intended to help truant students. Bryan's parents refused this referral and took Bryan instead to a private psychiatrist, and then to a private psychiatric hospital. While in the hospital, Bryan received home instruction from the school system and upon release from the hospital he was sent to a private residential school for emotionally disturbed children. Bryan's parents requested reimbursement for the fees incurred at the residential school and the school system refused.

The refusal of the school system led Bryan's parents to appeal to the Central Admission Review and Dismissal Committee of the Austin Independent School District. The Committee determined that Bryan did not meet the eligibility requirements for the classification of emotionally disturbed and was not eligible for residential placement. The Committee recommended that Bryan gradually return to a regular high school setting with counseling services provided on a regular basis. Meanwhile, his parents initiated

legal action. The case went to the District Court for the Western District of Texas, which ruled in favor of the school system. Bryan's parents then appealed the summary judgment to the Fifth Circuit Court of Appeals (Marvin H., 1983).

The Fifth Circuit Court of Appeals heard the parents' appeal and affirmed the ruling of the district court. The court identified the issue before it as whether the parents of a student with a disability could receive compensation for private services when the system had in good faith tried to adhere to state and federal guidelines. The court said that Bryan's parents had chosen to disregard the advice of the school system and made a unilateral decision to move him to a private setting. In doing so, they lost any claim for reimbursement for tuition. The court found that the school system had not deliberately discriminated against the student, but had in fact, tried to assist the parents in appropriately placing Bryan (Marvin H., 1983).

The issue of appropriate education has involved more than the method of delivery of instruction or the school setting. The length of the school year and the amount of time necessary for an appropriate education has continued to be a matter of contention. Despite the decision in *Battle* (1981), courts continued to hear cases concerning the rule that students with disabilities were entitled to only 180 days of education per year. In *Battle,* the Supreme Court let stand a ruling by the U.S. Court of Appeals for the Third Circuit that a student with a disability was entitled to a unique education, and that this education might require more than the limit of 180 days afforded regular education students. The court clearly stated that the 180 day rule was in violation of the unique nature of education for a student with a disability. The U.S. Supreme Court denied certiorari in the case (Battle, 1981).

The Georgia Association of Retarded Citizens brought suit against the state and local board of education challenging the board policy of refusing to allow mentally retarded students to attend school in excess of 180 days. In 1978, the Savannah-Chatham County Board of Education denied year-round schooling for Russell Caine, a mentally retarded student. After being similarly denied by the Chatham County Hearing Review Board and the State Board of Education, the Caines filed legal action in November of 1978 as *Georgia Association of Retarded Citizens v. McDaniel.* The Caines applied for and were granted certification and then the Georgia Association of Retarded Citizens took the complaint to federal district court. The plaintiffs were granted an injunction against the challenged policy, but the court refused to require specific placement for any of the students.

The State Board of Education of Georgia appealed to the circuit court asking for reconsideration in light of the Supreme Court's decision in *Rowley* (1982). The court found the school system had not only failed to provide a beneficial education for the students, but had also failed to comply with procedural guidelines required of the EAHCA (1975) by refusing to consider the individuality of the cases. The court in *Georgia* (1983) said:

> Thus, despite the existence of evidence indicating need of a continuous program, the Board simply refused to consider whether education for more than nine months would be appropriate for Russell Caine. Rather, the Board relied upon the existence of a perceived State requirement to dispose of plaintiff Caine's challenge of his IEP. It is beyond peradventure then, that the Board adopted this view of 'State Law' as a local policy which allowed the Board to ignore totally the plain facts showing some need for extended education on the part of Russell Caine. Thus, we agree with the assessment of the district court that the State defendant's policy, although neutral on its face, has the effect of prohibiting the consideration of a child's needs beyond 180 days. (p. 27)

More important to this case than the state's obvious disregard of the due process

mandates of the Act, was the state's failure to develop an IEP for the plaintiffs that was reasonably calculated to enable these mentally retarded students to receive educational benefit. The court said that this lack of consideration for the unique and individual nature of the mentally retarded student was a total disregard of the fundamental principles of the EAHCA (1975). The State Board of Education appealed to the U.S. Supreme Court and certiorari was denied (McDaniel, 1985).

The court in the *Georgia Association of Retarded Citizens* (1983) case cited *Crawford v. Pittman* (1983) in which the Fifth Circuit Court of Appeals also cited *Battle* (1981) on the issue of the 180 day rule for limitations on the length of the school year. *Crawford* dealt with the right of students with disabilities to attend summer school as an extension of the 180 day school year. The suit was filed on behalf of seven students with disabilitieswith a variety of mental deficiencies. The State of Mississippi had a categorical limitation on the number of school days for students and had instructed its schools not to write an IEP that required more than 180 days of instruction per year. In agreeing with other courts on this same issue, the court in *Crawford* (1983) said:

> We conclude that Mississippi's policy of refusing to consider or provide special education programs of duration of longer than 180 days is inconsistent with its obligations under the Act. Rigid rules like the 180 day limitation violate not only the Act's procedural command that each child receive individual consideration but also its substantive requirements that each child receive some benefit and that lack of funds not bear more heavily on handicapped than nonhandicapped children. (p. 21)

In comparing *Crawford* (1983) with *Rowley* (1982), the courts said in both cases the students were entitled to a beneficial education. Although Amy Rowley did not receive the interpreter her parents felt she needed in order to receive a beneficial education, she made substantial educational progress. The students in the Mississippi case were in need

of more basic educational services. They needed constant instruction without the recess for summer that they had been forced to accept. Due to the nature of their deficiencies, their instruction was not beneficial unless they were given the opportunity to attend school on a year-round basis.

One point of similarity among *Georgia Association of Retarded Citizens* (1983), *Battle* (1981), and *Crawford* (1983) was the plea by the state board of education of a lack of funds available to provide year-round schooling for students with disabilities. In all three of the cases, the courts ruled that inadequacy of funds did not relieve a state of its obligation to assure the students with disabilities equal access to specialized education. All of the courts looked to the ruling in *Mills* (1972) to determine the solution for insufficient funds. The *Mills* ruling 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 the needs and ability to benefit there from. The inadequacies of the 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. (p. 26)

In comparing *Georgia Association of Retarded Citizens* (1983), *Crawford* (1983), and *Battle* (1981) with *Rowley* (1982), these respective courts found that not only was *Battle* left in tact by *Rowley*, but so also was *Mills.*

In 1984, the United States Court of Appeals for the Second Circuit heard the case of *Karl v. Board of Education.* Lisa Karl was a student classified as educable mentally retarded. In 1978 Lisa transferred to the Geneseo Central School District from a private religious school. The school district assigned her to a resource classroom for her academic instruction. The following year the school district recommended that in

addition to her academic instruction in the resource classroom, Lisa receive vocational education, including a commercial housekeeping class. After complaints from Lisa's parents about the instruction, Lisa was provided with a one-on-one tutor for the vocational classes she was assigned to.

In March of 1982, the school district and Lisa's parents decided to mainstream Lisa for her vocational courses. Mr. and Mrs. Karl insisted, however, that the student teacher ratio not exceed six-to-one. The school district did not provide additional staff to keep the student teacher ratio at six-to-one. The Karls filed a complaint with the district court. Judge Telesca of the district court ruled in favor of the Karls and ordered the school system to provide additional staff in order to keep the student teacher ratio at six-to-one (Karl, 1984).

The Board of Education appealed the district court's decision to the United States Court of Appeals for the Second Circuit. Using the *Rowley* (1984) standard, the court determined that procedural guidelines had been followed and the IEP written for Lisa Karl was reasonably calculated to provide her educational benefit. Following the ruling in *Rowley,* the court determined that the school district was not required to provide the best education for Lisa Karl, only one that provided benefit. Based on the standard set in *Rowley* the court of appeals reversed the ruling of the district court and ruled in favor of the school system (Karl, 1984).

In 1984 the U. S. Supreme Court heard the case of *Irving Independent School District v. Tatro*. Amber Tatro was eight years old when the case reached the Supreme Court. She was born with myelomeningocele, a birth defect commonly known as spina bifida. As a result of this condition, she suffered from speech and orthopedic

impediments, as well as a neurogenic bladder. In order to prevent injury to her health, Amber had to be catheterized several times a day using the Clean Intermittent Catheterization (CIC) method approved by her doctors.

When Amber was three and one-half years old, her mother asked the Irving Independent School District to provide a program of special education for her daughter. The school system agreed and began the due process by writing an IEP for Amber with the intent of placing her in the district's Early Childhood Development Class. The school system agreed that Amber was to be provided with physical and occupational therapy. The school system refused to provide personnel for the CIC process and maintained that it had no obligation to administer the process (Tatro, 1984).

When the school system refused to provide the personnel to administer CIC for Amber, the Tatros began the appeals process as outlined in the EAHCA (1975). The hearing officer ruled that the school system was obligated to provide the CIC procedures for Amber. The Texas Commissioner of Education agreed with the hearing officer. The school system appealed to the Texas Board of Education and the decision of the hearing officer was reversed. The State Board declared that the system was not responsible for the CIC. The Tatros then took the school system to federal court. Amber's family contended that the school system, in denying the services of CIC, had failed to provide her with a free appropriate public education. The U.S. District Court for the Northern District of Texas, denied the Tatros' petition and the school system was excused from the responsibility of providing CIC. The court reasoned that the CIC was not essential for Amber's education (Tatro, 1984).

The Tatros appealed to the U.S. Court of Appeals for the Fifth Circuit. The circuit court ruled in favor of the Tatros, stating that CIC came under the auspices of the related services section of the Act. The court reasoned that in order for Amber to benefit from special education, she had to have CIC several times during the course of the day.

The court said that not all life support services are considered related services under the act, but in this instance, CIC was specifically necessary to sustain Amber's life. The circuit court ordered the school system to provide the CIC services for Amber. The Irving Independent School District appealed to the Supreme Court. The U.S. Supreme Court granted certiorari and heard the case in April of 1984 (Irving, 1984).

In *Irving* (1984), Chief Justice Burger delivered the opinion for the Court. The Court was unanimous in determining that CIC was a related service under the regulations of the Act. The Court looked to the *Rowley* (1982) decision for the congressional intent of the Act. The Court said that Congress sought to make public education meaningful and that a service which allowed a child to remain at school during the day was an important aspect of providing a meaningful education. The Court agreed with the circuit court that CIC was necessary for Amber Tatro to attend school. The question of benefit was answered when the court said, "Without having CIC services available during the day, Amber cannot attend school and thereby benefit from special education" (p. 891).

The Court noted three conditions that had to be met in order to qualify for a service such as CIC: (1) a child must have a disability, and to qualify for special education, (2) the service must be necessary for a child to benefit from special education, and, (3) the service must be one that can be performed by a school nurse or other qualified person other than a physician. The Court found that Amber met all three

requirements for eligibility for CIC to be considered a related service under the Act. All parties recognized that Amber was indeed a student with a disability according to the definitions of the Act (1975). The Court ruled that Amber qualified on the second requirement, because without CIC Amber would not be able to attend school, thus would be unable to benefit from special education. In considering the third requirement, the Court relied on the testimony of physicians and medical personnel who said the procedure for CIC could be learned and performed by non-medical personnel (Irving, 1984).

In a final note, the Court added, "The respondents are not asking petitioners to provide equipment that Amber needs for CIC. They seek only the services of a qualified person at the school" (p. 895). Because Amber met all three requirements outlined by the Court and because she was not asking for materials, the Court awarded the student with a disability access to a specialized education with the related services she needed in order to receive a free appropriate public education (Irving, 1984).

In comparing the facts of the *Irving* (1984) case with *Rowley* (1982), similarities and differences were found. Both Amy and Amber needed specialized services in order to benefit from the special education program designed by the school. In requesting the services under the related services section of the Act, the Tatros won; the Rowleys lost their bid for an interpreter using the free appropriate public education section of the Act. As the Court correctly concluded, the Tatros had not asked for materials or equipment for Amber. Neither had the Rowley family asked for equipment. They both requested personnel trained to provide the services necessary for the child to receive a beneficial education. Amber's need for services, were such that would enabled her to attend school

and thus benefit. Amy's services were to help her reach her maximum potential; yet not receiving the service would not deny her access to an education. The key difference between the cases was that the Tatros argued using the related services section of the Act rather than the free appropriate public education clause.

Doe v. Lawson appeared before the United States District Court for the District of Massachusetts in 1984. Steven Doe, an 11 year old child with a severe disability was placed at a private center for brain injured children for seven years at the school district's expense. In 1981, the school system recommended that he be placed at the CHARMMS, a seven town special education collaborative center. Steven's parents rejected the placement and argued that he would not receive educational benefit at CHARMMS.

It was determined that the private center for brain injured children could provide Steven with a better placement that CHARMMS. However, based on the *Rowley* (1982) standard, the court ruled that Steven could be placed at CHARMMS, because the school district was not required to provide him with the best education, only with a beneficial education (Doe, 1984).

Rowley (1982) continued to impact court decisions in *Rettig v. Kent City School District* (1986). In *Rettig*, extracurricular activity for students with disabilities was the issue of dispute. Representatives of the student requested that the school system provide extracurricular activities for students with disabilities. Using the *Rowley* checklist of adequacy, plaintiffs for the student with a disability attempted to expand the services of the school system beyond academic areas. The group asked that the school system provide equal educational opportunity to students with disabilities in line with that offered to students without disabilities.

In 1979, in the initial *Rettig* case, the U.S. District Court for the Northern District of Ohio agreed with the Rettig family on a portion of their request dealing with extracurricular services. The district court directed the school system to provide one hour per week of extracurricular activities for an autistic and mentally retarded student. The Kent City School District appealed and the decision was reversed. The U.S. Appeals Court for the Sixth Circuit said the school system was not obligated under the Act (1975) to provide extracurricular activities for Thomas Rettig. The appeals court used the reasoning of the state hearing officer in concluding that Thomas would not benefit from extracurricular activities. The state hearing officer had found that due to sporadic and recurring behavior, including regurgitation, lack of interest, self-stimulating activities, and bladder accidents, Thomas would be unable to significantly benefit from the extracurricular programs (Rettig, 1986).

The Kent City School District originally had a regulation that required one hour per week of extracurricular activities for all students. Due to the district court order, the school system also had to provide similar activities for students with disabilities. For these students the regulation meant one hour of counseling, athletics, health services, recreational activities, clubs, or employment by a public agency. Due to monetary restraints, local school administrators sought relief from the state asking to be allowed to abolish the program for students with disabilities (Rettig, 1986).

The U.S. Court of Appeals for the Sixth Circuit ruled for the school system stating that the EAHCA (1975) did not require that students with disabilities be provided each and every special service available to non-disabled students. Rather, the court said that the applicable test was whether the IEPs for each student with a disability furnished an

appropriate and beneficial education. Basing its decision on the premise that extracurricular activities did not provide an educational benefit, the court ruled that the system was not obligated to provide an opportunity for participation in extracurricular services equal to those of the non-disabled peers, if those services did not enhance the academic progress of the student with a disability (Rettig,1986). Rettig appealed to the U.S. Supreme Court and certiorari was denied (Rettig, 2000).

In comparing the facts in *Rettig* (1986) and *Rowley* (1982), the services not only fall into two different categories, but also reflect the application of a ruling based on academic progress with a ruling based on services not necessarily related to academic achievement. In *Rowley,* the family was asking for aid within the classroom in order to assure their daughter of an appropriate academic education. The plaintiffs in *Rettig* (1986) were requesting that the school system provide assistance in skills intended to aid the mentally retarded in living successfully away from school. The court decided that the school's mission was to prepare the student for academic growth rather than giving assistance in living skills needed in the outside world.

The court in *Rettig* (1986) appeared to agree with Justice Blackmun's concurring opinion in *Rowley* (1982). Blackmun said the court had reached the correct decision, but the majority had used the incorrect avenue to arrive at the conclusion. In his concurring opinion in *Rowley* (1982) he stated:

> The clarity of the legislative intent convinces me that the relevant question here is not, as the Court says, whether Amy Rowley's individualized education program was reasonably calculated to enable her to receive educational benefits measured in part by whether she achieves passing marks and advances from grade to grade. Rather the question is whether Amy's program, viewed as a whole, offered her an opportunity to understand and participate in the classroom that was substantially equal to that given her nonhandicapped classmates. This is a standard predicated on equal educational opportunity and equal access to the educational process,

> rather than upon Amy's achievement of any particular educational outcome. (p.211)

The judge in *Rettig* (1986) declared that the program as a whole must be considered, rather than the particulars offered to the student. Because no significant educational benefit was determined to be derived from extracurricular activities, those offered to the students with disabilities did not have to be equitable with those offered to non-disabled students. The court said that the students with disabilities did not have the right to equal opportunity for participation in extracurricular activities if their IEPs were developed to ensure educational advancement.

In 1984, the case of *Hall v. The Vance County Board of Education* was initially brought before the United States District Court for the Eastern District of North Carolina. James Hall was, at the time of the case, a bright sixteen year old boy with above average intelligence. In the fall of 1974 James entered kindergarten in the Vance County school system. He progressed through kindergarten and first grade and was promoted to second grade for the 1976-77 school year. During that year, the Halls became increasingly aware of James' reading problems and requested that he be evaluated by the school psychologist. Dr. A.B. Laspins conducted the evaluation in May of 1977. The evaluation revealed that James had a high I.Q., but that his reading level was more than one year behind his grade level. Dr. Laspina recommended further evaluation by the school's learning disabilities teacher, reading remediation instruction, and part time placement in a class for students with learning disabilities. He also recommended that James' parents hire a private tutor. The Vance County School Board and the school took none of the steps recommended by Dr. Laspina. Instead, the school endorsed the recommendation that the Halls employ a private tutor, at their own expense. The Halls did hire a tutor for

James from July 1977 to April 1979. James repeated the second grade during the 1977-78 school year.

James entered third grade in the fall of 1978. His teacher recognized that he had learning difficulties and recommended further evaluation. An evaluation committee met and identified James as learning disabled. They also drafted an IEP to cover the second half of the 1977-78 school year and all of the following year. The IEP called for James to be placed in a regular classroom ninety-five percent of the time and in a learning disabilities resource room the remaining five percent of the time. He attended the resource room twice a week for thirty minute sessions. This amount of time was increased to four sessions per week for his fourth grade year (Hall, 1984).

In January of 1979, the IEP committee met and approved the IEP and the placement, and Mrs. Hall signed consent for placement at that time. The parties disputed what notice the school gave the Halls of their substantive and procedural rights during the period from December 1978 to January 1979. The school did fail to give such notice at any other time (Hall, 1984).

Despite the implementation of the IEP, James continued to struggle academically. He received poor grades and scored well below grade level on standardized tests. The school continued to promote James and at the age of eleven, as James prepared to enter the fifth grade he was functionally illiterate. He was unable to distinguish between the words boys and girls on restroom doors, or go to the store and make small purchases for his mother. The IEP for James' fifth grade year was unchanged from the previous year. The Halls decided to enroll James in Vance Academy, a private school. The academy was

unprepared to teach students with learning disabilities, and James was unable to keep up. He left the school within two months of enrolling (Hall, 1984).

On the recommendation of Vance Academy, the Halls sought a private evaluation of James. In September of 1980 the Halls had James evaluated by Sharon Fox White, who diagnosed him as dyslexic. She stated that in her nine years of experience with learning disabled students, she had seen very few students with as severe a case of dyslexia as James had. A second private evaluation by Dr. John A. Gorman confirmed the diagnosis of dyslexia. Dr. Gorman also noted that James' repeated school failure had resulted in emotional harm and recommended residential placement. Dr. Gorman recommended several residential schools, including Oakland School in Boyds Tavern, Virginia. The Halls chose Oakland School because it was the closest residential school that accepted learning disabled students. Because the Oakland School had no immediate opening, the Halls kept James at home and employed a private tutor until June of 1981 (Hall, 1984).

The Halls learned from someone at the Oakland School that they might be able to receive public funding for James' placement there. The Halls contacted a lawyer and requested that the Vance County School Board cover the cost of James' residential placement at the Oakland School. The School Board refused to initiate any proceedings until the Halls re-enrolled James in the Vance County Public School System. The county agreed to evaluate James to determine precondition in December of 1981 in order to make a decision on his placement. Based on the evaluation, the school system recommended that James be placed in a Vance County Public School in a self-contained class for learning disabled students. The Halls opposed this proposal and the case was

heard before a local hearing officer. The hearing officer found the IEP to be inappropriate, but the placement to be appropriate. He also stated that the Vance County School District had not previously provided James with a free and appropriate public education as required by the Act (Hall, 1984).

Following the decision by the hearing officer, the Halls filed action in the U.S. District Court for the Eastern District of North Carolina. Following closely to the guidelines established in *Rowley* (1982), the district court ruled that Vance County Board of Education had failed to provide James with a FAPE as required by federal and North Carolina law at any time prior to January 1982. The court also ruled the school district was required to reimburse the Halls for the expense of educating James at Oakland School. The district court also ruled that the Vance County Board of Education would not be able to provide a FAPE to James during the 1983-84 school year and must pay the cost for his placement at Oakland School during that year as well (Hall, 1984).

The Vance County Board of Education appealed to the United States Court of Appeals for the Fourth Circuit. Again, by adhering to the standard set in *Rowley* (1982), the court of appeals found the school district had not provided James with a FAPE and in addition had not followed procedural guidelines set forth in the Act (1975). The court of appeals affirmed the judgment of the district court and ordered the school district to incur the cost for James' education at Oakland School (Hall, 1984).

In an Illinois case, *Max M. v. Illinois State Board of Education* (1986), the question of the degree of benefit of education arose. The parents of Max M. sued the Illinois State Board of Education in the U.S. District Court for the District of Northern Illinois for reimbursement for private psychiatric care for which they had paid while their

child was in a public school special education program. The school system had recommended placement in a residential setting for both educational and counseling services. The parents went further than the recommendation of the school and began private psychiatric counseling in addition to the services at the school. Basing their case on the findings in *Burlington* (1985), the parents asked the court to grant them retroactive payment for the years they, and not the school system, had paid for the services. The court looked at *Rowley* (1982) for the standard to judge the education the student received and at *Burlington* to determine whether the parents were entitled to reimbursement and which of the programs met the criteria for a beneficial education.

In the *Rowley* (1982) two-step test, the Court ruled that the system must first comply with the procedural due process guidelines of the Act (1975). If the guidelines had been met, the courts must look to the education offered by the school system and determine whether it had been beneficial to the student with a disability. After the court decided that the Act did not assign the responsibility to the schools for the payment of psychiatric counseling, it turned to the issue of the degree of benefit in a special education program.

Looking closely at the *Rowley* (1982) two-step test, the court said that the school system in *Max M.* (1986) had complied with the procedural due process guidelines in the Act (1975). The school administrators also had attempted in good faith to provide an education that would benefit the student. Tuition and other related educational services had been given the student while in the residential setting and all this had been provided by the school system. The fact that the program designed and preferred by the parents proved to be more beneficial for the student, did not alter the court's decision that the

school system had complied with the requirement set in *Rowley*. The court said that the school system had provided Max with a beneficial education and was not required to maximize his potential. The school system was only obligated to provide a program that would allow the student to benefit educationally.

Rowley (1982) and *Max M.* (1986) are similar in that both courts found that the school system was only required to provide an education which was of some benefit to the child with a disability. In both cases the school programs had assisted the students in academic achievement. Neither of the courts reached the conclusion that the system had to go beyond the limitation of a beneficial education or attempt to maximize the potential of the student.

The United States Court of Appeals for the Third Circuit heard *Diamond v. Board of Education* in 1986. Andrew Diamond, a child with mental and physical disabilities, was placed in the Midland School, a private school for children with disabilities, at the public school district's expense for a number of years. In 1980 the Midland School informed the Diamond's they could no longer meet Andrew's needs. Despite this, the school district continued the placement arguing they had no other option for Andrew.

The Diamond's placed Andrew at the Rhode Island Behavior Research Center at their expense. This placement created a financial hardship for the family and after five months, they were forced to bring Andrew home. A hearing officer ordered the school district to continue Andrew Diamond's residential placement at the Rhode Island Behavior Research Center and cover all expenses. The school district then filed a complaint in the U.S. District Court for the District of New Jersey. The court ruled that the school district must provide an education that was beneficial based on Andrew's

specific needs and that trivial benefit was not sufficient. The court ordered the school system to cover the cost for Andrew to be placed in a residential setting at the May Institute (Diamond, 1986).

The school district appealed the decision to the U.S. Court of Appeals for the Third Circuit. The appeals court affirmed the decision of the district court. Andrew was placed at the May Institute and the district was required to cover all costs of the placement (Diamond, 1986).

Polk v. Central Susquehanna Intermediate Unit (1988) was filed on behalf of Christopher Polk, a severely developmentally disabled child. At seven months of age, Christopher contracted encephalopathy, a disease of the brain similar to cerebral palsy. At fourteen years of age, he had the functional and mental capacity of a toddler. Until 1980, Christopher was provided with direct physical therapy from a licensed physical therapist. His 1980-81 IEP called for him to receive his therapy via the consultative model. In this model, a licensed physical therapist instructed Christopher's special education teacher how to integrate physical therapy into his instruction. The Polks did not object to the use of the consultative model, but argued that he also needed to receive direct physical therapy to meet his specific and individual needs.

After exhausting all administrative remedies, the Polks brought suit in the U.S. District Court of the Middle District of Pennsylvania. Relying on the *Rowely* (1982) decision, the district court held that provisions of the Act had been met because Christopher had received some benefit from his education. The Polks then appealed the decision of the district court to the U.S. Court of Appeals for the Third Circuit (Polk, 1988).

In *Polk v. Central Susquehanna Intermediate Unit* (1988) the Polks presented the court with two arguments in the appeal. First, they claimed that the school had violated the Act's procedural requirements because Christopher's program was not truly individualized. Second, the Polks asserted that Christopher's educational program was not adequate to meet his individual needs.

The court ruled that physical therapy was essential for Christopher because, in order to learn basic skills, he must learn to use his muscles properly. The court also said that for severely disabled students like Christopher, physical therapy could be the core of the special education program. For Christopher's education, physical therapy was a major portion of his special education which was designed to teach him basic skills such as toileting and feeding himself (Polk, 1988).

The Polks presented evidence that the school never considered providing Christopher with direct physical therapy due to their implemented policy of only providing consultative therapy. Furthermore, the Polks asserted that certain goals for Christopher were only attainable through direct physical therapy. After examining other cases such as *Rowley* (1982), *Tatro* (1984), and *Battle* (1981), the court ruled in favor of Christopher Polk and reversed the decision of the district court. The court said that the *Rowley* (1982) standard of receiving some benefit was not applicable to a severely student with a disability such as Christopher. The court clearly said that the EAHCA (1975) calls for more than trivial educational benefit. According to the court, significant learning and meaningful benefit must be provided to the student (Polk, 1988).

The case of *Kerkham v. McKenzie* (1988) was filed with U.S. District Court for the District of Columbia on behalf of Alexander Kerkham a severely retarded young man

with the approximate mental capacity of a two year old. In 1982, Alexander's parents placed him, at their own expense, in the Willow Street Day School and arranged for him to live at the Keystone City Residence, both located in Scranton, Pennsylvania. When the Kerkhams moved to Washington, D.C. in 1984, they sought special education placement for Alexander in the District of Columbia Public Schools.

The school system formulated an IEP for Alexander that proposed placement at Mamie D. Lee School, a public special education facility located in the District of Columbia. The Kerkhams objected and said the Mamie D. Lee placement was inappropriate, and they requested placement at Willow Street and Keystone. The matter went to a hearing review officer, who found the Mamie D. Lee placement inadequate, but did not require the school system to provide residential placement. The school system agreed to provide additional hours and services for Alexander. In light of these additions, the hearing officer ruled that the Mamie D. Lee placement was appropriate for Alexander. Throughout the hearings, Alexander remained at the Scranton facilities at the expense of his parents (Kerkam, 1988).

The Kerkams filed legal action and went before the U.S. District Court for the District of Columbia. The District Court found in favor of the Kerkams and ruled that residential placement must be provided for Alexander. The school system appealed to the U.S. Court of Appeals for the District of Columbia Circuit. Using *Rowley* (1982) as a guide, the court said that the Kerkams never offered evidence that the Mamie D. Lee placement would not provide benefit to Alexander. The Court of Appeals reversed the decision of the lower court and ruled in favor of the school system. Their ruling was

based on evidence that the Mamie D. Lee School placement could provide some educational benefit to Alexander (Kerkam, 1988).

In *Spielberg v. Henrico County Public Schools* (1988) the parents of Jonathan Spielberg, a severely retarded nineteen year old, filed a complaint initially to the U.S. District Court for the Eastern District of Virginia. The Spielbergs disagreed with the placement of Jonathan at the local high school. Jonathan had been placed at Melmark, a private residential facility for children with disabilities.

In 1985 the school system initiated a reevaluation only nine months after regular evaluation had been completed for Jonathan. The school system announced their placement decision to be at Randolph Special Education Center, a Henrico County public school facility. This placement decision was announced prior to the preparation of a new IEP for Jonathan. This was a direct violation of the EAHCA (1975), which requires the IEP to be written and agreed upon prior to making a placement decision.

The district court ruled for the Spielbergs and ordered the school district to continue to cover the cost of Jonathan's placement at Melmark. The Henrico County School District appealed the decision to the U.S. Court of Appeals for the Fourth Circuit. The court of appeals affirmed the decision of the district court (Spielberg, 1988).

In 1989, in *Timothy W. v. Rochester, New Hampshire, School District* was brought before the United States District Court for the District of New Hampshire. Timothy W. was a child with multiple disabilities. He suffered from cerebral palsy, complex developmental disabilities, spastic quadriplegia, seizure disorder, and cortical blindness. Timothy's mother attempted to get services for him, and while he did receive services from the Rochester Child Development Center for a time period, he did not

receive any educational program from the Rochester School District when he became school age.

In a meeting on March 7, 1980 the school district decided that Timothy was not educationally disabled since his disability was so severe that he could not benefit from an education, and therefore was not entitled to an education. During 1981 and 1982, the school district offered no educational services to Timothy. In May of 1982, the New Hampshire Department of Education reviewed the Rochester School District's special education program and made a finding of non-compliance, stating the school district was not allowed to use capability of benefit as a criterion for eligibility. No action was taken until one year later when the school district again met to discuss Timothy's case. Even after hearing the recommendations of the Rochester Child Development director and doctors, the school district refused to provide Timothy with any educational program (Timothy W., 1989).

In response to a letter from Timothy's attorney, the school board placement committee met again in January of 1984. After hearing the information from experts involved with Timothy, the placement committee recommended that Timothy be placed at the Rochester Child Development Center so that he could be provided with special education services. The Rochester school board refused to authorize the services to be provided to Timothy and requested further evaluation (Timothy W., 1989).

On April 24, 1984, Timothy filed a complaint with the New Hampshire Department of Education requesting that he be placed in an educational program immediately. In October of 1984, the Department of Education ordered the school district to place him in an educational program within five days. The school district again refused

to make any educational placement and filed an appeal of the order. Again in November of 1984, the Rochester School Board met and determined that Timothy was not eligible for special education services (Timothy W., 1989).

On November 17, 1984 Timothy filed a complaint with the United States District Court for the District of New Hampshire alleging that his rights under the Education for All Handicapped Children Act (1975) had been violated. The complaint sought preliminary and permanent injunctions directing the school district to provide Timothy with special education services. The district court denied Timothy's motion for a preliminary injunction (Timothy W., 1989).

In December of 1984, the State Commissioner of Education ordered a diagnostic prescriptive program for Timothy. The program included three hours per week of tutoring, and that an evaluation be made concerning his capacity to benefit from a special education program. Timothy's attorney made arrangements for Timothy to attend a private program for children with disabilities and be evaluated there. This evaluation indicated that Timothy could benefit from a specialized program of instruction (Timothy W., 1989).

In 1986, Timothy again requested a special education program and the school district again refused. In January of 1987, the school district again arranged a diagnostic placement for Timothy at the Rochester Child Development Center. After this temporary placement, the district court ruled in May of 1987 that the school district could not use Timothy's capacity to benefit as a standard for determining his eligibility to receive a public education. The court ordered the Rochester School District to provide an

educational program for Timothy. The school district appealed the decision to the United States Court of Appeals for the First Circuit (Timothy W., 1989).

The Court of Appeals, as in *Polk* (1988), stated that the standard of *Rowley* (1982) was not sufficient for a student with a profound disability. In relying on the wording of the zero reject principle of the EAHCA (1975), the court determined that Timothy was entitled to a free and appropriate public education. The decision of the district court was reversed and the school district ordered to provide Timothy with an educational program immediately.

The case of *Tice v. Botetourt County School Board* was brought before the U.S. Court of Appeals for the Fourth Circuit in 1990. At the time the case was brought to court, Matthew Tice was an 11 year old boy of above average intelligence who suffered from learning and emotional problems. The Tices made a formal request to the school district for a referral for special education for Matthew. The referral was received on March 19, 1986.

State regulations require a meeting to consider the referral take place within ten working days of the receipt of the referral. On April 22, 1986, which was 22 working days after the referral was received, a meeting took place. The committee agreed to assess Matthew for special education. The evaluation process is required to be complete within 65 days from the date of the initial referral. The Botetourt County Eligibility Committee met on October 13, 1986 to consider the results of Matthew's evaluation. This meeting occurred over 200 days after the initial referral (Tice, 1990).

At the October 13 meeting the committee decided that Matthew did not have a disability, but did recommend that he receive counseling services at his parents' expense.

The Tices requested testing by outside professionals and the school committee agreed to this request (Tice, 1990).

Dr. Gray, a licensed child psychiatrist, examined Matthew on November 16, 1986. He determined Matthew to be suffering from mental and emotional problems, which were both a cause of and an effect of his difficulty at school. Dr. Gray recommended special education services for Matthew. The school committee received a copy of Dr. Gray's report on December 1, 1986 (Tice, 1990).

Three days later, on December 4, Matthew suffered from what Dr. Gray determined to be a nervous breakdown and had to be admitted to Roanoke Valley Psychiatric Center. While at Roanoke Valley, Matthew received special education services and individual counseling. He was released from Roanoke Valley on December 24, 1986 (Tice, 1990).

On December 17, 1986 the school committee met and determined that Matthew was eligible for special education services. However, they decided to await his release from Roanoke Valley before determining appropriate services for Matthew. On January 7, the school committee met and designed an IEP for Matthew. The IEP included provisions for special education services, but not for counseling services (Tice, 1990).

The Tices later filed charges against the school district for the lengthy delay in the completion of the evaluation process and IEP implementation. The court found that the school district had violated the procedural guidelines of EAHCA (1975) and that this delay had caused Matthew to be denied of an appropriate education (Tice, 1990).

In 1990, The U.S. Court of Appeals for the Sixth Circuit ruled in *Doe v. Defendent1* that the failure to include the student's current level of performance did not

result in the denial of an appropriate education. The school district, in preparing the IEP, failed to discuss the present level of academic functioning, as required by the EAHCA (1975). The IEP was implemented and the student did receive educational benefit from the services provided. The court ruled that the violation did not negatively impact the services the student received and did not deny him from receiving an appropriate education (Doe, 1990).

Also in 1990, the case of *Doe v. The Alabama State Department of Education* was brought to the U.S. Court of Appeals for the Eleventh Circuit. In this case the court ruled that the school's failure to notify parents of their rights under the EAHCA (1975) did not deny the child of an appropriate education. The court found that the school system had offered an education that could provide educational benefit to the student. Because the procedural violation did not result in an education from which the student could not benefit, the court ruled in favor of the school system.

The case of *Johnson v. Independent School District No. 4* came before the U.S. Court of Appeals for the Tenth Circuit in December of 1990. The case was filed on behalf of Natalie Johnson, an eight year old with severe disabilities. The school district rejected Natalie's parents' request for a summer educational program. Natalie's parents, social worker, pediatrician, neurologist, and psychologist gave testimony that she regressed during the summer months and needed a continual structured educational program. The school officials testified that Natalie had not regressed and did not need a summer educational program. The school could not, however, present evidence that Natalie had made improvements, nor evidence of her lack of regression. The U.S. District Court for the Northern District of Oklahoma initially ruled in favor of the school district.

However, the U.S. Court of Appeals for the Tenth Circuit reversed and remanded the lower court's decision and ruled in favor of Natalie. The school district was required to provide her with a structured summer educational program.

In the judicial ruling in *Johnson* (1990) the court gave some direction to school districts in making decisions about extended year services to special education students. According to the court, the school district must consider the degree of impairment of the student, the ability of parents to provide educational structure in the home, the availability of resources, whether the program is extraordinary as opposed to necessary, the student's skill level, and areas of the curriculum in which the student needs continuous attention. The court also stated that schools should "proceed by applying not only retrospective data, such as past regression and rate of recoupment, but also predictive data, based on the opinion of professionals in consultation with the child's parents" (p. 1028).

W.G. v. Board of Trustees of Target Range School District No. 23 was brought before the U.S. Court of Appeals for the Ninth Circuit in 1992. The case was filed by the parents of R.G. a minor child with a specific learning disability. After struggling with school work for a number of years, R.G. was evaluated and determined to be eligible for special education services due to a specific learning disability. The school personnel designed an IEP for R.G. without the involvement of his parents or a regular classroom teacher. The IEP was presented to R.G.'s parents in its completed form. The parents refused to sign the IEP and filed an official complaint with the Montana Office of Public Instruction. After exhausting all administrative remedies, R.G.'s parents took the matter to the U.S. District Court for the District of Montana. The district court ruled that the

school had violated the requirements of IDEA (1990) and had denied R.G. an appropriate education. The school district appealed the decision to The U.S. Court of Appeals for the Ninth Circuit. The court of appeals affirmed the decision of the lower court. The court found that the procedural violations had resulted in an educational program that was not beneficial to R.G. and thus had denied him an appropriate education (W.G., 1992).

In 1993 in the case of *Petersen v. Hastings Public Schools*, the court ruled that parents have no power under the IDEA to choose a particular methodology for the instruction of their child. The case was filed on behalf of Nicholas Peterson, Alex Petersen, and Kendra Petersen all profoundly hearing impaired children. The school district employed a modified SEE-II sign language program for all three students. The parents repeatedly requested the use of a strict SEE-II sign language program rather than the modified one used by the school.

The Petersen's filed a complaint that the school district had denied their children an appropriate education. A hearing officer determined that the educational program provided to the Petersen children was beneficial and that the school district did not have to provide a strict SEE-II sign language program. The Petersen's then took the matter to the U.S. District Court for the District of Nebraska. The court agreed with the hearing officer that the school had provided the children with an education that was beneficial to them. The court affirmed the decision of the hearing officer and did not require the school to change the method of instruction they were using (Petersen, 1993).

The case of *J.C. v. Central Regional School District* was brought to the U.S. Court of Appeals in 1995 on behalf of J.C. a 16 year old boy with a severe mental disability. J.C. had attended Ocean County Day Training Center (OCDTC) since 1987.

J.C.'s IEP included goals for self-help such as toileting and eating, as well as for communication, vocation, and community training. From 1988 to 1992 J.C. regressed in many of the self help skills targeted by his IEP. The school could not show evidence that the IEP goals were addressed on a routine basis. Several important areas of concern were not addressed on his IEP, such as the reduction of self stimulating behaviors and parent training.

In 1992, J.C.'s parents requested residential placement and compensatory education based on his regression and the inadequacies of the IEP. The school district refused to provide either request. J.C.'s parents then filed a formal complaint that J.C. had been denied an appropriate education and eventually took the school district before the U.S. District Court for the District of New Jersey. The district court ruled that the school was required to provide a residential placement for J.C. but not compensatory education (J.C., 1996).

J.C.'s parents then appealed to the U.S. Court of Appeals for the Third Circuit. The court of appeals ruled in favor of J.C. on both complaints. The court found that the IEP the school district had designed for J.C. did not provide a beneficial education for him. The school district was required to provide both a residential placement and compensatory education beyond 21 years of age for J.C. (J.C., 1996).

In 1996 *Wall v. Mattituck-Cutchogue School District* went before the U.S. District Court for the Eastern District of New York. This case focused on the method of instruction used for a student served in a self-contained special education class. Michael Wall was a student classified as learning disabled and served in a self contained special education classroom. Michael's parents requested that he receive instruction using the

Orton-Gillingham procedure. The school district would not agree to the sole use of this method of instruction for Michael.

The Walls filed a complaint and went before a hearing officer. They did not challenge the appropriateness of the IEP, only the method of reading instruction. The hearing officer found that Michael could receive benefit from the school's current educational program and that he was receiving an appropriate education. The Walls then took the matter to federal district court. The U.S. District Court for the Eastern District of New York agreed with the hearing officer that Michael had received an appropriate education from the current program of service (Wall, 1996).

In 1997, *Cedar Rapids Community School District v. Garret F.* was filed with the U.S. District Court for the Northern District of Iowa. Garret F. was 14 years old at the time of the case. When Garret was four years old he had been seriously injured in a motorcycle accident. The accident left him quadriplegic and ventilator dependent. Garret required a personal attendant with him at all times to care for his medical needs. His family provided this attendant, who was a Licensed Practical Nurse (LPN), from the time he entered kindergarten through the completion of fourth grade.

When Garret entered the fifth grade in the Cedar Rapids Community School District, his mother Charlene F. requested that the school district provide nursing services for him while he was at school. The school district refused stating that it was not obligated to provide one-on-one nursing services. Relying on the IDEA (1990), Charlene F. challenged the school district's refusal. After a hearing, the Administrative Law Judge concluded that the district had to reimburse Charlene for the nursing costs for the 1993-

94 school year and to provide nursing services in the future. The school district appealed to the U.S. District Court for the Northern District of Iowa (Cedar Rapids, 1997).

The district court ruled that nursing services were not in the scope of medical service exclusion of the IDEA (1997), and that the school district was required to provide the service for Garret. The school board appealed the district court's ruling. The U.S. Court of Appeals for the Eighth Circuit heard the case and affirmed the decision of the lower court (Cedar Rapids, 1997).

The school district appealed to the U.S. Supreme Court and writ of certiorari was granted. The Court heard *Cedar Rapids Community School District v. Garret F.* in March of 1999. As in Tatro (1984), the Court ruled that the service must be provided by the school district, because without the services of a nurse Garret would not be able to attend school, and as a result he would not benefit from special education. The Court also said that the medical exclusion portion of IDEA did not apply to the services of a nurse for Garret.

E.S. v. Independent School District (1998) was brought before the U.S. District Court for the District of Minnesota on behalf of E. S. by Jean Stein, parent and legal guardian. E.S. suffered from dyslexia and was receiving special education services in the Independent School District Number 196. E.S. began receiving special education services in 1992 as she entered the fourth grade. Three years later, as she prepared to enter seventh grade she had made minimal progress according to various assessment instruments. E.S.'s mother Jean Stein, met with E.S.'s special education teacher and they decided that E.S. would receive extended services through the summer of 1995. During that summer E.S. received instruction using the Ortho-Gillingham method. E.S. made progress during

the summer and her mother then requested that the use of Ortho-Gillingham be specified in the IEP. The school declined to mandate that only the Ortho-Gillingham method of instruction would be used , arguing that E.S. would benefit from receiving instruction in a number of methods, including, but not exclusively the Ortho-Gillingham method. A hearing review officer concluded that E.S. was receiving an appropriate education and found no IDEA violations by the school.

Ms. Stein then took the matter to the U.S. District Court for the District of Minnesota. The court agreed with the hearing review officer that E.S. was receiving an appropriate education in the Independent School District. E.S. appealed the court's decision to the U.S. Court of Appeals for the Eighth Circuit. Using the *Rowley* (1982) standard, the court of appeals affirmed the lower court's decision (E.S., 1998).

Ridgewood Board of Education v. M.E. (1999) was filed in the U.S. District Court for the District of New Jersey on behalf of M.E., a seventeen year old high school student. M.E. had experienced academic difficulty since he entered Orchard School. He entered Orchard School as a first grader. His teacher quickly noticed his weak skills and the school moved him to the first grade immediately. The next school year when he entered the second grade, his teacher commented that his academic skills were still extremely weak. On recommendation of the school, M.E.'s parents enrolled him in summer school after his second grade year. Despite the additional instruction, M.E. continued to struggle academically.

M.E.'s parents requested that he be transferred to another school in the Ridgewood School District for the third grade. M.E. was transferred to Ridge School to begin the third grade. His problems continued while at Ridge School and test scores

continued to show his achievement was well below his grade level. After his third grade year, M.E.'s parents and school officials decided he should receive Basic Skills Instruction twice per week and work with his teacher after school twice per week (Ridgewood, 1999).

M.E.'s parents had an independent evaluation done by Howard Glaser, a learning disabilities consultant. Glaser's evaluation indicated a discrepancy between M.E.'s ability and his academic performance. Glaser found that M.E. was learning disabled and recommended that his parents request an evaluation from Ridgewood School District. Ridgewood's Child Study Team did conduct an evaluation of M.E. and also found a discrepancy between his ability and his achievement. However, the Child Study Team refused to classify M.E. as learning disabled. The school system recommended that the amount of multi-sensory instruction M.E. received be increased and that his parents get private counseling for him (Ridgewood, 1999).

M.E.'s difficulty continued through the remainder of elementary school. In the fifth grade, M.E.'s parents and his teacher requested that Ridgewood re-evaluate him. The school system refused to do so. A year later, when he entered the sixth grade, Ridgewood did agree to re-evaluate M.E., and again found discrepancies between his ability and his achievement. His achievement was far behind that of his peers. The Child Study Team recommended that M.E.'s parents obtain counseling to help M.E. deal with his feeling of inadequacy and depression. The Child Study Team again refused to classify M.E. as learning disabled or to qualify him for special education services (Ridgewood, 1999).

After M.E.'s parents filed for an administrative hearing, Ridgewood contracted with Bergen Independent Child Study team to evaluate M.E. once again. The Ridgewood School System Director of Special Education, John Campion, ordered Bergen not to recommend whether M.E. should be classified as learning disabled or how he should be educated. M.E.'s parents strongly disagreed with these limitations and contacted the New Jersey Parent Information Center to intervene. The Parent Information Center determined that Bergen could make these recommendations in their final report to Ridgewood. Bergen's team staffing report did diagnose M.E. with a learning disability in reading and writing. Bergen recommended that he be classified as learning disabled and eligible for special education services (Ridgewood, 1999).

Ridgewood agreed to classify M.E. as learning disabled. The school recommended that M.E. continue with the same Basic Skills Instruction he had received for six years and fashioned an IEP for him. The IEP called for thirty minutes of individual instruction in the Ortho-Gillingham method for reading and writing, and supplemental instruction for English, science and social studies. M.E.'s parents disagreed with the IEP, but signed it regardless. The IEP proved to be ineffective and after one year M.E. had made minimal progress (Ridgewood, 1999).

At the end of the eighth grade, Ridgewood decided that M.E. should no longer be placed in regular classes. The new IEP provided for resource center instruction in all academic classes, two daily periods of supplementary instruction with a teacher trained in the Wilson reading program, and speech and language therapy once a week. M.E.'s parents disagreed with the IEP arguing that it provided too few services and that it would damage his already low self-esteem. M.E.'s parents requested a due process hearing

before the New Jersey Department of Education. M.E.'s parents contended that the current IEP was inadequate and requested that M.E. be placed in Landmark, a private school for students with learning disabilities at the school system's expense. The school district refused to pay the cost of Landmark and M.E.'s parents enrolled him in the Landmark summer program at their own expense. M.E. made consistent progress while at Landmark according to his instructors (Ridgewood, 1999).

While M.E. was attending Landmark, an Administrative Law Judge conducted seven days of hearings on the complaints of M.E.'s parents. After M.E. had returned to Ridgewood for the ninth grade, the Administrative Law Judge held that Ridgewood had not provided M.E. with a free and appropriate public education and ordered the district to pay for his tuition at Landmark. He did not order Ridgewood to pay for M.E.'s non-tuition costs. The Administrative Law Judge also ordered Ridgewood to reimburse M.E.'s parents for the cost of the Landmark summer program, but denied M.E.'s request for compensatory education. He found that Ridgewood's failure to classify him as learning disabled did not constitute bad faith or willful misconduct (Ridgewood, 1999).

In 1997, *Ridgewood Board of Educaiton v. M.E.* was filed in the U.S. District Court for the District of New Jersey, which had the act of appealing the Administrative Law Judge's decision. In July of 1998, the district court reversed the Administrative Law Judge's decision that Ridgewood had not provided M.E. with an appropriate public education. In finding that Ridgewood had provided M.E. with an appropriate education, the district court stated that the IDEA requires only that the IEP provide the student with more than trivial educational benefit, and that Ridgewood's IEP had done that. M.E. appealed this decision to the U.S. Court of Appeals for the Third Circuit.

The court of appeals used the *Rowley* (1982) case, as well as the *Polk* (1988) case to examine the facts of M.E.'s claim. While *Rowley* set the standard of educational benefit, *Polk* said significant learning and meaningful benefit must be provided. The court of appeals also considered M.E.'s intellectual potential and indicated that the district court had not done so. Using the student-by-student analysis approach the court of appeals vacated the judgment of the district court (Ridgewood, 1999).

Houston Independent School District v. Bobby R. (2000) was brought before the U.S. District Court for the Southern District of Texas after a Texas Education Agency hearing officer determined that Houston Independent School District had not provided Caius R. with a free and appropriate education according to the IDEA (1990). Caius attended school in the district for seven years before being removed to attend a private school for learning disabled students. Caius struggled, largely because of dyslexia, throughout the seven years he attended school in the district. He was first evaluated by the Houston Independent School District in 1992, and he did not qualify for special education services according to the evaluation results. During the summer of 1992, Caius's parents had an independent evaluation conducted at the University of Houston. The evaluation indicated Caius suffered from dyslexia and attention deficit disorder. Caius attended a private school for the 1992-93 academic year.

Caius returned to the Houston Independent School District for his third grade year and continued to have difficulty. He was referred for a special education evaluation in December of 1993. This evaluation revealed deficiencies in reading, oral language, and written language skills. The Admission, Review, and Dismissal Committee found Caius did qualify for special education services. An IEP was written that called for ten hours of

reading and language instruction per week in a resource classroom and one hour per week of speech therapy (Houston, 2000).

During the 1994-95 school year, the district had difficulty providing Caius with the speech therapy required by his IEP. To compensate for the loss of therapy the school district authorized extended-year services for him. During this time Caius's parents voiced objections regarding his IEP. They specifically complained about the fact that modifications such as highlighted texts, modified tests, and audio taped lectures had not been implemented (Houston, 2000).

Caius's parents met with school officials prior to the start of the 1995-96 school year to discuss instructional methods for Caius. Evaluations had determined that he learned best when information was presented in a multisensory fashion. His parents requested that he be allowed to transfer to a school that could provide an Alphabet Phonics (AP) program. An alternative placement could not be established, but the school did agree to provide an itinerant teacher to instruct Caius in AP until a permanent teacher skilled in AP could be found (Houston, 2000).

Caius began the AP program in the fall of 1995, and though his instructors changed, the program was implemented throughout the school year. His parents continued to complain about his IEP and about how he received instruction. The school committee met with Caius's parents in spring of 1996 to formulate his IEP for the following school year. The IEP called for Caius to attend Codwell Elementary School. The IEP consisted of seven modifications: instruction in AP, modified tests, highlighted texts, extended time for assignments, shortened assignments, calculator use, and taped

assignments. Because no teacher at Codwell Elementary was trained in AP, the school district again began a search for a qualified teacher (Houston, 2000).

In October of 1996, Caius's parents sought administrative review of the IEP. The hearing review officer found that the IEP goals were reasonably calculated to allow Caius to benefit from the education, but because the school district had failed to fully implement all aspects of the IEP, he found that the school system had deprived Caius of a free and appropriate public education. The Houston Independent School District appealed the hearing officer's decision to the U.S. District Court of Appeals for the Fifth Circuit as *Houston Independent School District v. Bobby R.* (2000). The court of appeals held that the hearing officer had erred in his ruling and that the school system had provided Caius with a free and appropriate public education. Their decision was based on the fact that Caius had consistently received instruction according to his IEP and he had made progress.

Caius and his parents appealed the decision to the U.S. Supreme Court, as *Bobby R. v. Houston Independent School District* (2000). The Supreme Court denied the petition for writ of certiorari.

The case of *Gill v. Columbia 93 School District* (2000) was filed on behalf of Matthew Gill, an autistic child in the state of Missouri. In the fall of 1995, Matthew began attending Parkdale Elementary School and was served in a self-contained classroom for disabled students. In addition to classroom instruction, Matthew received speech, occupational, and physical therapy.

The Gills began to investigate alternative methods of instruction for autistic children and decided that Matthew should be instructed in a system of one-on-one

training known as Lovaas method. In 1997 the Gills hired private Lovaas therapists to instruct Matthew at home. His private therapy increased to thirty-five hours per week and his school attendance was reduced to two and one half days per week. Matthew's verbal skills improved during the spring of 1997, yet his social skills declined (Gill, 2000).

The Gills asked the school district to modify Matthew's school program and to fund his private therapy. They asserted that the course of instruction the school provided was inadequate and insisted Matthew required forty hours per week of Lovaas therapy. The District Director of Special Education met with the Gills and with Matthew's teachers, therapists, and an expert on autism. The school district rejected the Gills request for funding for his private therapy, but agreed to make significant changes in his IEP immediately. The modifications included increased time in the self contained classroom and services in a reversed mainstream classroom in which non-disabled students are mixed in with disabled students. The Gills were not satisfied with the changes, but did agree to implement the proposed services on the days Matthew would attend school (Gill, 2000).

In December of 1997, the Gills made a formal complaint to the Missouri State Department of Education, alleging that the program offered by the school district was not appropriate for Matthew. The Department convened a hearing which took place over eight days. After receiving and evaluating all evidence, the administrative panel found that the IEP offered by the school district had been appropriate for Matthew. The Gills appealed to the U.S. District Court for the Western District of Missouri. They continued to assert the educational program offered by the school district was not appropriate for Matthew's needs (Gill, 2000).

The court said it lacked the expertise to determine the best method of instruction and referred to the standard set in *Rowley* (1982). Because Matthew could receive educational benefit from the program offered by the school district, the court ruled that the educational program was appropriate for him. The school was not required to fund private therapy for Matthew Gill and could continue to offer the program that was in place for him (Gill, 2000).

In summary, the U.S. Supreme Court in *Rowley* (1982) established a two-step test to determine whether a school system was providing a free appropriate education for students with disabilities. The Court first determined that the system had to demonstrate that the educational plan fashioned for the student with a disability was developed in conformance with the procedural due process guidelines mandated by the EAHCA (1975). Second, the Court said that the school district was required to show that the IEP would enable the student to benefit from education.

The first part of the test is very specific. In comparing the procedures in the Act (1975) to the actions of the school system, courts are able to make judgments with some precision and ease. In some cases, courts realized that the procedures had been followed, but the resulting educational plan was not beneficial. Depending on the viewpoint of the judge, the case could be decided in favor of the school system because it had adhered to the steps in the procedural portion of the Act. If however, the court put the majority of the weight on the make-up of the educational plan, the system could be in jeopardy based on a lack of educational benefit.

The second part of the test, determining whether the individualized educational plan is beneficial, is more difficult to decide. The U.S. Supreme Court said in *Rowley*

(1982) that lower courts should rely on the advice of educational officials. Thus, educators were given substantial authority to decide the type of education that was most appropriate and beneficial for the child with a disability. Unless the program designed was obviously inadequate, courts have been reticent about interfering with the decisions of the school administrators.

Reliance on the expertise of educators associated with special education was predicted by Jones (1982) in an article written shortly before the Supreme Court decision in *Rowley* (1982). The author speculated that because of the wording in the Court's decision, the final definition of a free and appropriate public education would, in future litigation, be decided by educators.

In the *Rowley* (1982) decision, the role of the parent was also defined by the Court. The Court acknowledged the tenacity of the Rowley family and said that parents of other children with disabilities would likely act in a similar manner. The Court put the responsibility of challenging the program squarely on the shoulders of the parents.

The Court did not limit the services and rights of students with disabilities. The Court spoke specifically to the service of an interpreter for Amy Rowley. The need or requirement for other services has been determined on a case by case basis by other courts using the Rowley two-step test. Lower courts have used the test and the specific facts of the situation to decide if the services requested were necessary to ensure an appropriate public education.

In establishing the two-step test, the Court said that if the procedural guidelines were followed, then consequently, the substantive rights of the student would be protected. Other courts also studied the procedural guidelines of the Act and compared

the actions of the school system with the guidelines in order to determine whether administrators complied with them. Compliance with the guidelines has not always limited or expanded the services for those with disabilities; rather, they have served to protect the rights of these special students.

The Supreme Court decision in *Rowley* (1982) provided a two-step test for determining the concept of a free appropriate public education for students with disabilities. Lower courts have applied that test and made decision based on the specifics of each case. Because each case was as unique as the needs of the student with a disability involved, the spectrum of decisions has proven to be as diverse as the situations presented to the courts. The *Rowley* (1982) decision continues to set the standard for lower courts to follow when faced with decisions concerning a free and appropriate public education for students with disabilities.

CHAPTER THREE

THE CURRENT STATUS OF THE LAW CONCERNING AN APPROPRIATE EDUCATION FOR STUDENTS WITH DISABILITIES

This chapter provides a summary and analysis of the current status of the law concerning the provision of an appropriate education for students with disabilities. Relevant constitutional law, statutory law, regulatory law, and case law is reviewed to provide a composite perspective on the current status of the legal requirements for providing an appropriate education.

Constitutional Law Concerning Education for Students with Disabilities

The 14th Amendment of the U.S. Constitution states that:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

This amendment has played an important role in the history of special education. As the constitutional basis for special education, this amendment commands that no state can deny equal protection of the law to any person within its jurisdiction. The equal protection clause requires states to treat all people in similar situations alike. The stipulation that no one can be deprived of life, liberty, or property without due process of the law has also been a key factor in special education cases (Yell, 1998).

Judicial rulings in *PARC* (1971) and in *Mills* (1972) first gave children with disabilities the right to a public education. The *PARC* ruling granted the right of education to mentally retarded children, and later the *Mills* ruling broadened the range of children with disabilities given such rights. In *PARC,* the court stated that:

> It 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, within the context of a presumption that among the alternative programs of education and training required by the statute to be available, placement in a regular public school class is preferable to a placement in a special public school class and placement in a special public school class is preferable to placement in any other type of program of education and training. (p. 84)

Similarly in *Mills* the court said:

> No child eligible for a publicly supported education in the District of Columbia public schools shall be excluded from a regular public 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, (b) a constitutionally adequate prior hearing and periodic review of the child's status, progress, and the adequacy of any educational alternative. (p. 16)

Both *PARC* and *Mills* were based on disabled children's 14th amendment rights to education. Since *PARC* and *Mills*, the critical need for the education of students with disabilities has been recognized by the courts and by congress.

U.S. Statutes Concerning an Appropriate Education for Students with Disabilities

On November 29, 1975, President Gerald Ford signed into law P.L. 94-142, the Education for All Handicapped Children Act. The EAHCA combined the promise of protection of the rights of children with disabilities along with financial incentives. P.L. 94-142 required states to provide a free and appropriate public education to all qualified students with disabilities between the age of 3 and 18 by September 1, 1978, and for all qualified students up to age 21 by September 1, 1980. The EAHCA guaranteed students

with disabilities the right to (a) nondiscriminatory testing, evaluation, and placement procedures; (b) education in the least restrictive environment; (c) procedural due process, including parent involvement; (d) a free education; and (e) an appropriate education.

In 1990 the EAHCA (1975) was amended and renamed the Individuals with Disabilities Education Act. The IDEA included the following major changes: (a) renaming of the law to the Individuals with Disabilities Education Act, as well as changing the term "handicapped student" to "child/student/individual with a disability"; (b) students with autism and traumatic brain injury were identified as a separate and distinct class entitled to the law's benefits; and (c) a required transition plan included on every student's IEP by age 16 (Yell, 1998).

The Individuals with Disabilities Education Act Amendments of 1997 were passed to reauthorize and to make improvements to the IDEA. Additions were made to IDEA in the following areas: (a) increased involvement of parents, access to general curriculum, and emphasis of student progress toward meaningful goals through changes in the IEP process; (b) encouraging parents and educators to resolve differences through mediation, and altering aspects of IDEA's procedural safeguards to allow for leeway in the discipline of students with disabilities; and (c) funding formulas (IDEA, 1997).

The purpose of the IDEA is to:

> Assure all children with disabilities have available to them a free appropriate education which emphasizes special education and related services designed to meet their unique needs, to assure that the rights of children with disabilities and their parents or guardians are protected, to assist states and localities to provide for the education of all children with disabilities, and to assess and assure the effectiveness of efforts to educate children with disabilities. (IDEA, 20 U.S.C. § 1400(c))

The IDEA (1990) states that:

> The term child with a disability means a child evaluated in accordance with §§300.530-300.536 as having mental retardation, a hearing impairment including deafness, a speech or language impairment, a visual impairment including blindness, serious emotional disturbance (hereafter referred to as emotional disturbance), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services. (IDEA,20 U.S.C. § 300.7 (a))

One significant provision of the IDEA (1997) is the right of every student with a disability to a free appropriate education. The IDEA defined an appropriate education as one that meets the state standards, includes preschool, elementary, and secondary school, and is provided according to the student's IEP.

The IDEA Regulations for an Appropriate Education for Special Education Students

The IDEA (1990) requires that all states have policies in place to assure all disabled students receive a free and appropriate public education. Under the FAPE regulations, there are procedural and substantive requirements. The procedural regulations ensure the right of parents to have meaningful participation in all decisions affecting their child's education. IDEA (1997) § 300.504 Procedural Safeguards Notice, states that:

> (A) General - A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents, at a minimum (1) upon initial evaluation, (2) upon each notification of an IEP meeting,(3) upon reevaluation of the child, and (4) upon receipt of request for due process under § 300.507.
> (B) Contents – The procedural safeguards notice must include a full explanation of all the procedural safeguards available under §§ 300.403, 300.500-300.529, and 300.560-300.577, and the State compliant procedures available under §§ 300.660-300.662 relating to (1) independent educational evaluation, (2) prior written notice, (3) parental consent, (4) access to educational records, (5) opportunity to present complaints to initiate due process hearings, (6) the child's placement during pendency of due process proceedings, (7) procedures for students who are subject to placement in an interim alternative educational setting, (8) requirements for unilateral placement by parents of children in private schools at public expense, (9) mediation, (10) due process hearings,

> (11) state level appeals, (12) civil actions, (13) attorney's fees, and (14) the state compliant procedures under §§ 300.660-300.662, including a description of how to file a compliant and the timelines under those procedures. (IDEA, 20, U.S.C. § 300.504)

The substantive regulations require that disabled students are provided with special education and related services that are specialized according to the needs of the individual student. Related services include any developmental, supportive or corrective services that a student needs to benefit from special education. Section 1401(a)(18) of the Individuals with Disabilities Education Act (1997) defines a FAPE by stating:

> The term 'free and appropriate public education' means special education and related services that (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.

Case Law Concerning an Appropriate Education for Students with Disabilities

The Supreme Court first considered the appropriateness of an education provided to a child with a disability in *Hendrick Hudson Board of Education v. Rowley* (1982). The Supreme Court ruled on the concept of appropriate education by providing an operational definition of an appropriate education as one that enables a student with a disability to receive a beneficial education through access to a specialized education. The court determined that the education need not be the best education nor maximize the student's potential to be considered beneficial. In *Rowley* (1982), the Court guided the review of subsequent decisions by providing a two prong test that relied on two questions: (1) has the school district complied with the procedural guidelines of the Act

(1975); and (2) is the IEP reasonably calculated to enable the student to receive educational benefits (Rowley, p. 206)? The *Rowley* (1982) test has guided courts in rulings involving an appropriate education for special education students.

In his opinion in *Rowley* (1982), Justice Renquist also defined the role of the courts in subsequent cases similar to *Rowley*. The courts' role in special education cases involving FAPE is to (a) determine if the procedural requirements are being met; (b) to examine the substantive requirements of FAPE; and (c) to determine if the special education is providing educational benefit (Rowley, 1982). In answering these questions Justice Renquist added that courts should not substitute their own judgments for the judgments of educators, since courts lack the expertise of educators (Rowley, 1982).

One prong of the *Rowley* (1982) test deals with the issue of procedural requirements outlined in the Act (1975). If a school district does not adhere to procedural guidelines and the failure results in harm to a student, the school may be denying the student of an appropriate education. A number of cases that came after the *Rowley* (1982) decision, ruled that based on procedural violations a student had been denied an appropriate education.

In *Tice v. Botetourt County School Board* (1990) and *W.G. v. Board of Trustees* (1992), if a school system does not include all individuals required by IDEA (1990) or adhere to timelines, they may be guilty of denying a student an appropriate education, if the failure results in harm to the student. The determining factor in cases questioning the violation of procedural guidelines is if harm was caused to the student or the amount of harm caused by the failure to follow the procedures of the IDEA (1990). Procedural

violations that have not caused harm to the student's educational benefit have not resulted in adverse court decisions for school districts.

The second principle of the *Rowley* (1982) test is the determination of whether the IEP was reasonably calculated to enable the student to receive educational benefit. This aspect of the *Rowley* (1982) standard has been more difficult for courts to determine. Rulings that came soon after *Rowley* indicated that some educational benefit, even minimal, was sufficient for courts to rule in favor of the school system.

In *Doe v. Lawson* (1984) and *Karl v. Board of Education* (1984) students were found to have made minimal progress from the special education provided. Courts in both cases ruled that even minimal benefit did constitute an appropriate special education being provided by the school district. However, more recent decisions have indicated that minimal benefit may not be enough to constitute an appropriate education. Judicial decisions in *Polk v. Central Susquehanna Intermediate Unit 16* (1988), *Board of Education v. Diamond* (1986), *Carter v. Florence County School District* (1991), and *J.C. v. Central Regional School District* (1996), ruled that minimal benefit was not sufficient to constitute an appropriate education. In each case the court examined the student's ability and potential to reach their decision. While the courts did not provide a specific definition to follow in determining if an education is appropriate, they did emphasize the importance of individualization and examination of cases on a case-by-case basis.

In some cases the courts have addressed the question of the school's choice of teaching methodologies in regard to an appropriate education. Courts in *Wall v. Mattituck-Cutchogue School District* (1996), *E.S. v. Independent School District* (1998),

and *Gill v. Columbia 93 School District* (2000) ruled that the appropriateness of an IEP was not based on the use of a specific method of instruction. Rather, it was based on a reasonable calculation for student progress. The student in each case had made progress under the school's designed IEP and thus, the school had provided an appropriate education for the student.

The IDEA (1990) does not explicitly address the provision of special education services beyond the regular school year of 180 days. Extended School Year (ESY) services are only required when the lack of such a program extension will result in denial of an appropriate education. Because the law and regulations are not specific on ESY, the courts have ruled that if ESY services are required to provide an appropriate education, it must be provided at the school district's expense (Johnson, 1990).

In *Johnson v. Independent School District No. 4* (1990) the U.S. Court of Appeals for the Tenth Circuit did provide some direction for schools in determining the use of ESY services. According to the decision of the court, ESY determinations may include factors such as the degree of disability, the ability of parents to provide educational structure in the home, the availability of resources, whether the program is extraordinary or necessary, the student's skill level, and areas of the curriculum in which the student might need continuous instruction.

Current Status of the Law

Consistent with the above reviewed laws governing special education, an appropriate education currently consists of:

1) Special education that is provided according to an IEP that is designed to provide a meaningful educational benefit to the student. (Rowley, 1982).

2) Related services that allow the student to have access to a program of special education (Tatro, 1984).

3) Procedural protections followed throughout the process of identification, developing the IEP, and implementing the IEP (W.G., 1992; Tice, 1990).

Concerning special education that is provided according to an IEP that is designed to provide a meaningful educational benefit to the student, a school district must provide a disabled student with a program of special education designed to provide educational benefit to the student (Rowley, 1982). In *Rowley* the Supreme Court said that the education to which the EAHCA (1975) provided access had to be "sufficient to confer some educational benefit upon the handicapped child" (p. 200). In *Rowley,* the Supreme Court ruled that students with disabilities do not have the right to the best education, nor to one that maximizes their potential. They are entitled to an education that is reasonably calculated to provide educational benefit. However, courts have also ruled that trivial benefit is not enough to constitute a meaningful educational benefit (Polk, 1988). When developing an IEP for a student, a school district must consider the unique needs of the individual student (20 U.S.C. § 1401 (a) (16)). The IEP must address the specific needs of the student and allow for educational benefit. In order for an education to be beneficial and appropriate, school districts must provide extended year school services if deemed

necessary (Johnson, 1990). Courts have left the choice of methodology used for instruction up to the school systems (Wall, 1996).

Concerning related services that allow students to have access to a program of special education, the court in *Tatro* (1984) ruled that a student must be given a related service that can be provided by personnel other than a medical doctor if the service allows the student to attend school, and thus to benefit from a program of special education. A school district must provide related services to students with disabilities when it is determined by the IEP committee that the service is necessary for a student to benefit from special education. Most commonly, related services include transportation, occupational and/or physical therapy, health services, speech, and assistive technology services (Yell, 1998). In order to receive related services: (a) the student must be eligible for special education services under IDEA (1990), (b) the service must be necessary for the student to benefit from special education, (c) the service must be performed by a nonphysician (Tatro, 1984).

Concerning procedural protections being followed throughout the process of identification, developing the IEP, and implementing the IEP, the guidelines of IDEA (1997) must be followed closely. According to IDEA (1990), the IEP is "a written statement for a child with a disability that is developed and implemented in accordance with the requirements of the law" (IDEA, 20 U.S.C. § 401 (a) (20)). The IDEA provides procedural and substantive requirements that schools must follow in developing IEPs. The court ruled in *W.G.* (1992), that a procedural violation of failing to include a regular classroom teacher in developing the IEP constituted the denial of an appropriate education to a student. Similarly, in *Spielberg*, (1988), the court ruled that the school's

determination to change a student's placement prior to the development of the IEP constituted a procedural violation that resulted in the student being denied an appropriate education.

Conclusion

This chapter provided a review and analysis of the current law concerning the provision of an appropriate education for students with disabilities. An appropriate special education consists of specialized education provided according to the IEP, related services that allow the student access to a program of special education, and procedural protections followed throughout the process of identification, IEP development, and placement. The U.S. Supreme Court, in *Rowley* (1982) ruled that an appropriate education does not require a school district to maximize the potential of the student. The court ruled that an appropriate education is a specialized educational program that is individualized to meet the needs of the student and to allow the student to receive educational benefit.

In *Rowley* (1982) the Court established a two part test for lower courts to use in determining a school's compliance with the provision of FAPE. The court must first determine if the school has complied with the procedural guidelines of the Act (1975). Second, the court must examine the IEP to determine if it is reasonably calculated to allow the student to receive educational benefit. If a school has complied with each of these two aspects of the *Rowley* (1982) standard, an appropriate education has been provided. Recent lower court rulings indicate that schools must offer a meaningful level of educational benefit to be in compliance of FAPE requirements.

The *Rowley* (1982) decision also instructed courts to defer to the expertise of educators when there is a question of methodology. As a result the decision of which methods of instruction to use is made by the school. However, courts have consistently ruled against schools when it is evident that the individual needs of the student are not considered in the IEP development.

CHAPTER FOUR

FINDINGS AND CONCLUSIONS

Findings

This chapter provides a summary of this study's findings and conclusions. This study found that:

1. Under the IDEA all eligible students with disabilities are entitled to special education and related services which (a) have been provided at public expense, under public supervision and direction, and without charge, (b) meet standards of the state educational agency, (c) include an appropriate preschool, elementary, or secondary school in the state involved, and (d) are provided in conformity with the IEP (20 U.S.C. § 1401 (18) (c)).
2. Under the zero reject principle of the IDEA no student may be denied a free and appropriate public education based on the severity of his/her handicap, nor his/her ability to benefit from a program of special education (34 C.F.R. § 300.220).
3. Under the FAPE provision of the IDEA a student with a disability must be provided with instruction designed to meet the unique needs of his/her disability (20 U.S.C. § 1401 (a) (16)), be provided with related services that are needed in order to benefit from special education (20 U.S.C. § 1401 (a) (17)). Special education and related services must be provided in

4. In conformity with the Individualized Education Program (20 U.S.C. § 1414 (a) (5)).
5. The IDEA provides procedural safeguards for parents and students. Included in the IDEA general safe guards are rights to receive notice a reasonable amount of time prior to the school's initiating or changing or refusing to initiate or change the student's identification. This notices applies to any IEP meeting which would be used to initiate changes in the student's educational program (34 C.F.R. § 300.504 (a)).
6. Under the provision of the IDEA, when a disagreement occurs between the parents and the school on matters concerning identification, evaluation, placement, or any matters pertaining to the free and appropriate education, parents or schools may request a due process hearing (34 C.F.R. § 300.504 (b) (3)).
7. In *Timothy W*. (1989) the court ruled that the student must be provided with a FAPE regardless of his/her ability to benefit from the educational plan due to the severity of a disability.
8. In *Tatro* (1984) the court ruled that related services must be provided for the student because the service enabled the student to attend school and receive an appropriate education.
9. According to the court in *Mills* (1972) insufficient funding is not an acceptable excuse for failing to provide an appropriate education for a student with a disability.

10. According to the court in *Rowley* (1982) a student with a disability must receive educational benefit from an appropriate education.
11. The court in *Tice* (1990) ruled that errors in procedural protections that result in harm to a student, deny that student of an appropriate education.
12. In *Polk* (1988) the court ruled that minimal benefit is not sufficient for a student with severe disabilities to receive an appropriate education.
13. The courts have left the decision of methodology concerning instructional methods to the school (Gill, 2000).
14. According to the court in *Johnson* (1990) extended school years services must be offered if necessary to provide an appropriate education for a student with a disability.

Conclusions

Based on these findings, this study concluded that:

1. All students with disabilities must be provided a free and appropriate public education. The FAPE provision of IDEA gives all children aged 3 – 21 the right to an appropriate education. Students may not be denied an appropriate education due to the severity of his or her handicap, nor ability to benefit from educational services (IDEA, 20 U.S.C. § 1401 (18) (c)). An appropriate education is considered one with which the student has the opportunity to benefit (Rowley, 1982).
2. Parents or guardians play an important role in the development of an IEP. When parents and educators agree on the needs of the student and the best way to meet those needs problems may be avoided.

3. Communicating and providing opportunities for parents to exercise their parental rights are a must to avoid problems. When parents are fully involved in the entire process of eligibility, placement, and the development of the IEP and advised of their rights, problems are less likely to occur.
4. Related services must be provided. If a child requires a service that can be provided by anyone other than a medical doctor, and that service is necessary for the child to attend school, the service must be provided.
5. The school must consider the specific needs of the student. An IEP must specifically address the individual needs of the student. IEPs that are generic in nature and not truly individualized could lead to problems and parent complaints.
6. The IEP must have specific goals and a data collection method to show progress. When a school is asked to show educational benefit has been provided to a student with a disability, there must be specific evaluation measures in place and documented in order for this to occur.
7. If guidelines are not followed and the child does not progress the school may be held accountable for the failure of the student to meet goals and objectives in the IEP. Procedural protections are in place to protect the student and his or her family. These guidelines must be adhered to strictly

Summary

The courts determined that students with disabilities must benefit from the special education services they are given in order to receive an appropriate education. Students

who make progress toward the goals and objectives in the IEP are considered to benefit from the educational services provided. Progress towards the specific goals and objectives must be documented in order to show the progress made by the student. If progress is not evident by the data collected, educators should consult with parents and make changes in the educational program of the student.

School administrators are responsible for ensuring that students with disabilities in their schools are provided with a free and appropriate education as guaranteed by the IDEA. Since the needs and requirements for each student serviced in special education will vary, it is a significant challenge for local school administrators to have sufficient knowledge of the overall operations of the special education department and the individualized needs of each student. But, by taking an active role in the special education department, IEP meeting and parent concerns, local school administrators can be knowledgeable of the students served in the special education department and potential concerns.

This study found that by being proactive in the special education process, including working with parents in the development of the IEP, monitoring of goals and objectives, and documenting the progress of special education students, administrators an avoid disagreements with parents of special education parents. In addition, by ensuring careful IEP planning, implementing, and monitoring administrators can facilitate a positive relationship between the school and parents of children with disabilities.

REFERENCES

Ballard, J., Rameriz, B., & Weintraub, F.J. (1982) *Special education in America: Its legal and governmental foundations*. Reston, VA: Council for Exceptional Children.

Battle v. Pennsylvania, 629 F. 2d 269 (4th Cir. 1980).

Blake, K. A. (1981) Educating exceptional pupils. Reading, Massachusetts: Addison-Wesley.

Blatt, B., & Kaplan, F. (1966). *Christmas in purgatory: A photographic essay on mental retardation*. Boston: Allyn & Bacon.

Board of Education v. Diamond, 808 F.2d 987 (3rd Cir. 1986).

Board of Education of Cleveland Heights v. State ex rel. Goldman 191 N.E. 914 (8th Cir. 1934).

Bobby R. v. Houston Independent School District, 531 U.S. 817 (2000).

Boyle, J.R., & Weishar, M. (2001). *Special education law with cases*. Boston: Allyn & Bacon.

Brown v. Board of Education, 347 U.S. 483 (1954).

Burlington School Committee v. Department of Education of Massachusetts, 471 U.S. 359 (1985).

Congressional Record 121 S 4. (1975).

Crawford v. Pittman, 708 F. 2d. 1028 (5th Cir. 1983).

Dayton, J., & Arnau, L.M. (1999). Special education law: A review and analysis. Arlington: Education Research Services.

Doe v. Alabama State Department of Education, 915 F.2d 651 (11th Cir. 1990).

Doe v. Anrig, 728 F. 2d 30 (2d Cir. 1982.)

Doe v. Deffendant1, 898 F.2d 1186 (6th Cir. 1990).

Doe v. Lawson, 579 F. Supp. 1314 (D. MA. 1984).

Duetch, A. (1949). *The mentally ill in America: A history of their care and treatment from colonial times*. New York: Allyn & Bacon.

E.S. v. Independent School District, Number 196, 135 F. 3d 566 (8th Cir. 1998).

Education for All Handicapped Children Act of 1975. Pub. L. No. 94-142 (1975).

Education of the Handicapped Act of 1970, Pub. L. No. 91-230 (1970).

Elementary and Secondary Act of 1965, Pub. L. No. 89-750 (1965).

Elementary and Secondary Act of 1966 (amended), Pub. L. No. 89-10 (1966).

Georgia Association of Retarded Citizens v. McDaniel, 716 F. 2d 1565 (11th Cir. 1983).

Gill v. Columbia 93 School District, 217 F. 3d 1027 (8th Cir. 2000).

Grants for Teaching the Education of Handicapped Children of 1958, Pub. L. No. 85-926 (1958).

Grants for Teachers of the Deaf of 1961, Pub. L. No. 87-276 (1961).

Hall v. Vance County Board of Education, 774 F.2d 629 (4th Cir. 1985).

Hendrick Hudson District Board of Education v. Rowley, 458 U.S. 176 (1982).

Houston Independent School District v. Bobby R. 200 F. 3d 341 (5th Cir. 2000).

Individuals with Disabilities Education Act of 1997 20 U.S.C. § 1401. (1997).

Irving Independent School District v. Tatro, 469 U.S. 809 (1984).

J.C. v. Central Regional School District, 81 F.3d 389 (3rd. Cir. 1995).

Johnson v. Independent School District No. 4, 921 F.2d 1022 (10th Cir. 1990).

Jones, N.L. Education rights of handicapped children. (1982) *Harvard Journal of Legislation*, 19, 287-325.

Karl v. Board of Education, 736 F.2d. 873 (2nd Cir. 1984).

Kerkham v. McKenzie, 862 F.2d. 884 (D.C. Cir. 1988).

Lang v. Braintree School, 545 F. Supp. 1221 (D. Ma. 1982).

Marvin H. v. Austin Independent School District., 714 F. 2d 1348 (5th Cir. 1983).

Max M. v. Illinois State Board of Education, 684 Supp. 514 (N.D. Il. 1988).

McDaniel v. Georgia Association of Retarded Citizens, 469 U.S. 1228 (1985).

Mills v. Board of Education, 346 F. Supp. 866 D.D.C. (1972).

Palmaffy, T. (2000). *The evolution of the federal role: Rethinking special education for a new century* (pp.1-21). Washington: Fordham Foundation.

Parks v. Pavkovic, 753 F.2d 1397 (7th Cir. 1984).

Pennsylvania Association for Retarded Children v. Pennsylvania, 343 F. Supp. 279 (E.D. PA 1972).

Petersen v. Hastings Public Schools, 831 F. Supp. 742 (D. NE. 1993).

Plessy v. Ferguson, 163 U.S. 537 (1896).

Polk v. Central Susquehanna Intermediate Unit, 853 F.2d 171 (3rd Cir. 1988).

Rettig v. Kent City School District, 788 F.2d 328 (6th Cir. 1986).

Rehabilitation Act of 1973, 29 U.S.C. § 501. (1973).

Ridgewood Board of Education v. M.E., 172 F.3d 238 (3rd Cir. 1998).

Rowley v. Board of Education, 632 F.2d 945 (2nd Cir. 1980)

Spielberg v. Henrico County Public Schools, 853 F. 2d. 256 (4th Cir. 1988).

Springdale School District v. Grace, 693 F.2d 41 (8th Cir. 1982).

State ex. rel Beattie v. Board of Education, 172 N.W. 153 (Wis. 1919)

Tatro v. Texas 741 F.2d 82 (5th Cir. 1984).

Tice v. Botetourt County School Board, 908 F.2d 1200 (4th Cir. 1990).

Timothy W. v. Rochester, New Hampshire, School District, 875 F. 2d 954 (1st Cir. 1989).

Turnbull, R. H. (1986). Appropriate education and Rowley. *Exceptional Children*, 52, (4), 349.

W.G. v. Board of Trustees, 960 F.2d. 1479 (9th Cir. 1992).

Wall v. Mattituck-Cutchogue School District, 945 F. Supp. 501 (D. NY. 1996).

Weber, M.C. (1990). Transformation of the education of the handicapped act: A study in the interpretation of radical statutes. *Davis Law Review*, 23, 350-356.

Yell, M.L. (1998). *The law and special education.* New Jersey: Prentice-Hall.

Yell, M. L., Rogers, D., & Rogers, E. L. (1998). The legal history of special education: What a long, strange trip it has been. *Remedial and Special Education, 19*, 219-228.