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HENRY A. BEYER*

I. INTRODUCTION

For asmuch as the good education of children is of singular behoof to any Common-wealth. . . . It is therefore ordered that the Select men of everie town . . . shall have a vigilant eye over their brethren & and neighbours, to see, first that none of them shall suffer so much barbarism in any of their families as not to indeavour to teach by themselves or others, their children & apprentices so much learning as may enable them perfectly to read the englishtongue, & knowledge of the Capital lawes: upon penaltie of twentie shillings for each neglect therin.¹

Thus did the early settlers of the Massachusetts Bay Colony express their concern with establishing a uniform code of education. Such stress on the importance of education has been a continuing hallmark of American society. Thomas Jefferson was a strong advocate of government’s responsibility to foster education as the basis of an informed citizenry, an essential of democratic government:

Every government degenerates when trusted to the rulers of the people alone. The people themselves therefore are its only safe depositories. And to render even them safe, their minds must be improved to a certain degree . . . . An amendment of our [Virginia] constitution must here come in aid of the public education.²

Noah Webster observed that

[t]he general education of youth is an article in which the American states are superior to all nations. . . . The institution of schools, particularly in the New-England states, where the poorest children are instructed in reading, writing, and arithmetic at the

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public expen[s]e, is a noble regulation, calculated to dignify the human species.³

Despite such early and continuing pronouncements, many American citizens have historically been omitted from the mainstream of the educational movement. The Supreme Court’s 1954 decision in Brown v. Board of Education⁴ constituted a major legal initiative to right one aspect of this wrong. There, the Court recognized that “[i]n 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.”⁵ The Court went on to hold that “[s]uch an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.”⁶

Although, in Brown, the Court was addressing specifically the right of black children not to be segregated from white children in the educational process, the Court’s words could have been applied without difficulty to millions of children with mental or physical handicaps. The great majority of public school districts were segregating such children from their nonhandicapped peers, were providing them with grossly inappropriate educations from which they could draw little if any benefit, or were excluding them entirely from public educational systems.⁷ These practices continued for decades after the Brown decision. In 1972, for example, there were approximately “22,000 retarded, emotionally disturbed, blind, deaf, and speech or learning disabled children” in Washington, D.C., and “perhaps as many as 18,000 of these children [were] not being furnished with programs of specialized education.”⁸ The D.C. Board of Education conceded that an estimated “12,340 handicapped children were not to be served in the 1971-72 school year.”⁹ The situation in most states was not unlike that in the District of Columbia.¹⁰ Pennsylvania’s 1965 “Mental Retardation Plan,” for instance, estimated

³ N. Webster, SKETCHES OF AMERICAN POLICY 28 (H. Warfel ed. 1937).
⁵ Id. at 493.
⁶ Id.
⁹ Id. at 869.
¹⁰ In 1975, the United States Congress found that of the roughly eight million children with handicaps in the United States, approximately one-million were excluded entirely from the public school system and more than half were receiving an inappropriate education. 20 U.S.C. § 1400(b)(1), (3), (4) (Supp. V 1981).
that 70,000 to 80,000 children with mental retardation between the ages of five and twenty-one "were denied access to any public education services in schools, home or day care or other community facilities, or state residential institutions." 11

Thus, as the 1970's commenced, the need and the moral right were apparent. This article will discuss how that need has been addressed and specific legal rights created through legislation and litigation, particularly in the federal Education for All Handicapped Children Act (EAHCA). 12 It will then examine the Supreme Court's interpretation of that Act in Board of Education v. Rowley, 13 and will finally consider the effect of the Rowley decision on the future educational rights of children with handicaps.

II. BACKGROUND

A. The PARC and Mills Decisions

In 1971 and 1972, two class actions based on equal protection and due process grounds marked the beginning of change in this area. These suits—Pennsylvania Association for Retarded Children (PARC) v. Pennsylvania 14 and Mills v. Board of Education 15—established by consent agreement and court orders the following legal principles and rights: (1) All children are capable of benefiting from education and training; 16 (2) all children are entitled to free public education and training appropriate to their learning capacities; 17 and (3) all children are entitled to as normal an educational placement as possible. That is, placement in a regular public school class is preferable to placement in a special public school class; placement in a special class in the public school is preferable to placement in a special school or program. 18

In Mills, a federal district court rejected the District of Columbia's argument that the District lacked the funding to educate all of its children with handicaps.

If sufficient funds are not available to finance all of the services

16. Id. at 872; see 334 F. Supp. at 1259.
and programs that are needed and desirable in the system then the available funds must be expended equitably in such a manner that no child is entirely excluded from a publicly supported education consistent with his needs and ability to benefit therefrom. The inadequacies of the District of Columbia Public School System whether occasioned by insufficient funding or administrative inefficiency, certainly cannot be permitted to bear more heavily on the 'exceptional' or handicapped children than on the normal child.19

B. United States Supreme Court Decisions

In 1973, some advocates for citizens with handicaps expressed concern that statements made by the Court in San Antonio Independent School District v. Rodriguez,20 to the effect that public education is not a fundamental constitutional right,21 might seriously undercut the principles established in PARC and Mills. Subsequent cases have shown, however, that the holding of Rodriguez could be limited to the issue of methods of public school financing and that it had little effect on the educational rights of children with handicaps.22

Of greater relevance was the high Court's 1974 decision in Lau v. Nichols.23 There, the Court considered the situation of 1800 public school children in San Francisco who were of Chinese ancestry. The children did not understand English and were not provided with supplemental instruction or services to rectify this language deficiency. The Court recognized that the children were "certain to find their classroom experiences wholly incomprehensible. . . ."24 The Court acknowledged that the children were being "effectively foreclosed from any meaningful education"25 and ruled that the school system's practices amounted to illegal discrimination.26 The plight of these children was remarkably similar to the situation of many children with handicaps in schools devoid of special education or related services.

21. Id. at 35.
24. Id. at 566.
25. Id.
26. Id. The school system's practices were found to be in violation of the Civil Rights Act of 1964. Id. at 566-69.
C. **State Legislation**

In addition to court actions relevant to the educational rights of children with handicaps, the early 1970's witnessed state legislative action in this area. Prior to 1971, many state statutes contained provisions excluding from the educational system children with certain physical or mental conditions. In 1970, only fourteen states had statutes mandating appropriate education to children with handicaps. By 1974, however, this number had grown to forty-six. Some of these state laws, such as Massachusetts' "Chapter 766" constituted sweeping revisions of previous special education legislation and served as models for the federal EAHCA.

D. **Federal Legislation and Lower Court Interpretations**

Congress first demonstrated its concern with education of children with handicaps in 1966 when it amended the Elementary and Secondary Education Act of 1965. The amendment established a grant program "for the purpose of assisting the States in the initiation, expansion, and improvement of programs and projects . . . for the education of handicapped children . . ." That program was replaced in 1970 by the Education for the Handicapped Act. Both the 1966 and 1970 acts were "aimed primarily at stimulating the States to develop educational resources and to train personnel for educating the handicapped." Neither contained specific guidelines

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28. Id.
29. Id.
31. See J.P. WILSON, supra note 30, at 166.
for state use of the federal grants.

In 1974, spurred by the PARA and Mills decisions, Congress greatly increased federal funding for the education of children with handicaps and, for the first time, required states receiving these funds to adopt "a goal of providing full educational opportunities to all handicapped children. . . ." The 1974 statute was recognized as an interim measure, adopted "in order to give the Congress an additional year in which to study what, if any, additional Federal assistance [was] required to enable the States to meet the needs of handicapped children." In the following year, Congress enacted and the President signed Public Law 94-142, the Education for All Handicapped Children Act, a comprehensive statute that has revolutionized such education throughout the nation.

The EAHCA (the Act) requires that each state receiving federal funds under the Act provide to each school-age child a "free appropriate public education." The Act adopted the major principles laid down in PARA and Mills as essential elements of such an education. The Act mandates that an individual education program (IEP) be developed to meet the unique educational needs of each child with a handicap, that the child's parents or guardian be a...
forded the opportunity to assist in shaping the IEP and appeal portions with which they disagree,47 and that children with handicaps be "mainstreamed," that is, that they be educated with nonhandicapped children "to the maximum extent appropriate."48

In cases brought under the EAHCA, perhaps the most difficult task confronting judges and administrative hearing officers has been interpretation and application of the requirement that the education of each child with a handicap be "appropriate."49 According to the Act,

[the term "free appropriate public education" means special education and related services which (A) have been provided at public expense, under public supervision and direction, and without charge, (B) meet the standards of the State educational agency, (C) include an appropriate preschool, elementary, or secondary school education in the State involved, and (D) are provided in conformity with the individualized education program required under . . . this title.50

In further explication, the Act defines two components of a free, appropriate public education—special education and related services:

The term "special education" means specially designed instruction, at no cost to parents or guardians, to meet the unique needs of a handicapped child, including classroom instruction, instruc-

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47. *Id.* § 1415(b) (1976).
48. *Id.* § 1412(5)(B) (1976). Participating states are to establish procedures to assure that "special classes, separate schooling, or other removal of handicapped children from the regular educational environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." *Id.*
tion in physical education, home instruction, and instruction in hospitals and institutions. The term "related services" means transportation, and such developmental, corrective, and other supportive services (including speech pathology and audiology, psychological services, physical and occupational therapy, recreation, and medical and counseling services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a handicapped child to benefit from special education.

Although courts had little difficulty in deciding cases involving significant failures of educational systems to comply with the procedural requirements of the EAHCA, the issue was less clear in many other situations. One line of decisions struck down state laws, policies, and practices limiting free public education to a fixed number of days per year. Some children with handicaps, particularly those with severe or profound mental retardation or severe emotional disturbances, suffer a significant loss of functional skills and emotional development if school is interrupted for a summer vacation. For some of these children, the time required to recoup lost capabilities when school resumes is significantly greater than that required by other, nonhandicapped children. A number of judges and various administrative tribunals concluded that the inflexible application of rules limiting schooling to a fixed number of days prevents or limits educators' individual consideration of the unique needs of each child. Children who experience significant regression and slow recoupment were thus being deprived of an "appropriate" education and the educators were in violation of the EAHCA.

51. Id. § 1401(16) (1976).
52. Id. § 1401(17) (1976).
53. See, e.g., Jose P. v. Ambach, 669 F.2d 865 (2d Cir. 1982) (failure of state educational agencies to assure that local educational agencies took actions reasonably necessary to accomplish timely evaluation and placement in appropriate programs of all children with handicapping conditions); Mattie T. v. Holladay, No. DC-75-31-S (N.D. Miss. Jan. 26, 1979) (consent decree) (class action challenging denial of educational services segregation in separate programs, denial of due process safeguards and the state's failure to locate and identify all children with handicaps); Lora v. Board of Educ., 456 F. Supp. 1211 (E.D.N.Y. 1978), aff'd in part, 623 F.2d 248 (2d Cir. 1980) (class action challenging deficiencies in IEP and due process procedures).
54. Typically, the school term was fixed at 180 days per year. See infra note 57 and accompanying text.
56. Id. at 595.
57. See, e.g., Georgia Ass'n of Retarded Citizens v. McDaniel, 511 F. Supp. 1263
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In a broad array of decisions, courts have held that the Act's "appropriate" education requirement mandates a sufficiently high teacher-pupil ratio for some students, private school placement for a few, and maximum contact with nonhandicapped students for others. The judiciary, however, also recognized the limits of the EAHCA. A number of courts have held that a child's right to an "appropriate" education does not constitute a right to the best possible education. In Springdale School District No. 50 v. Grace, for example, the Court of Appeals for the Eighth Circuit held that a deaf student could receive an appropriate education (which included instruction by a certified teacher of deaf persons) within her local school district, even though the student could learn more quickly in a residential school for the deaf located in another city:

The fact that [the child] may not, like many nonhandicapped chil-
dren, reach her full potential is not due to any error in the district court's interpretation of the Act or in its finding that the [local school] could appropriately educate [her], but instead may well result from forces outside the school environment. 63

Interpreting the "related services" requirement also occupied considerable judicial time. A number of courts recognized the right of students with handicaps to school-supplied or paid alternative transportation to their educational programs, when the transportation provided to nonhandicapped students was unsuitable because of the particular handicaps, schedules, or geographic locations involved. 64 Other cases held psychotherapy to be a "related service" that school districts must provide to certain children with severe emotional disturbances to enable them to benefit from special education. 65

Because of the substantial cost of residential placements, school districts have frequently resisted parents' requests that they be provided as a related service. Courts and administrative tribunals, however, have sometimes required such placements. 66 In Kruelle v. Biggs, 67 the federal district court in Delaware decided that, because of an eleven-year-old boy's combination of physical and mental handicaps, (cerebral palsy and profound mental retardation), "it would appear that full-time care is necessary in order to allow [him] to learn." 68 The Third Circuit Court of Appeals, 69 noting that the boy had the social skills of a six-month old child, could not communicate, walk, dress himself, or eat unaided, affirmed the lower court's ruling that the State Board of Education must provide a residential placement appropriate to the boy's unique needs. 70

In North v. District of Columbia Board of Education, 71 the board argued that one student's educational needs could be satisfied in a

63. 656 F.2d at 305.
68. 489 F. Supp. at 174.
70. Id. at 698-99.
day-care setting and that only his emotional needs required a residential placement; the board should therefore not be required to bear the cost of his placement. The federal district court for the District of Columbia, however, granted a preliminary injunction, finding that the boy's emotional and educational problems were so completely intertwined as to require the board to bear the cost under the EAHCA.

Some children with handicaps require certain health related services to enable them to attend school. A federal court in Texas found that air-conditioning of a regular public school classroom was an EAHCA related service that the school must provide for a seven-year-old boy who was unable to control his body temperature. The air-conditioning enabled the boy to leave the "Plexiglass box" in which he had attended classes and join the mainstream environment of the classroom. A more commonly required service, which has figured in a number of cases, is clean, intermittent catheterization. After some initial hesitation, several courts came to recognize this technique as one of the related services which schools must provide to some children under the EAHCA. Also, at least one federal court has found that the assistance needed by a four-year-old child with cystic fibrosis and tracheomalacia in order to insert and remove a tracheotomy tube also qualifies as a related service to be provided by the school under the Act.

III. ROWLEY

The "related services" question that has attracted the greatest

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72. Id. at 139.
73. Id. at 141-42.
75. Id. at 911-12.
76. See, e.g., Tatro v. Texas, 481 F. Supp. 1224, 1228-29 (N.D. Tex. 1979), vacated and remanded, 625 F.2d 557 (5th Cir. 1980); see also Notice of Interpretation, 46 Fed. Reg. 4912 (1981) (clean intermittent catheterization is a "related service" required by some children under EAHCA and section 504 of the Rehabilitation Act of 1973); Notice of Postponement of Interpretation, 46 Fed. Reg. 25,614 (1981) (effective date of the notice of postponement is postponed until further notice to "permit a comprehensive review of the related services requirements" of EAHCA and section 504 of the Rehabilitation Act of 1973. "[P]ending a final determination . . . the provision of clean intermittent catheterization as a related service will be treated as an allowable cost" under EAHCA).
attention, however, is whether the EAHCA entitles a child with a severe hearing impairment to the services of a school-provided sign language interpreter in the regular school classroom. In a 1979 case, In re M.W., an administrative hearing officer in the State of Georgia decided that such interpreter services were required for a boy with a serious hearing impairment under both the EAHCA and section 504 of the Rehabilitation Act of 1973. But the question remained generally undecided until June 28, 1982. On that date, the Supreme Court of the United States announced its opinion in the first case in which it had considered the EAHCA—Board of Education v. Rowley. In a split decision, the court ruled that the school district did not have to provide Amy Rowley, a deaf elementary school student, with a sign language interpreter in order to satisfy the free, appropriate public education requirement of the Act.

The decision has been viewed by some observers as striking a serious blow to the educational rights of children with handicaps. Although hardly a victory for such rights, neither does the opinion sound their death knell. It is a truism that hard cases make bad law. It is equally true, however, that easy cases make misleading law when their rulings are read too broadly and when they are applied by courts, commentators, or administrators to situations differing substantially from the simple case in which the rules were developed. Avoiding the danger inherent in misapplication of the Rowley decision necessitates careful consideration of precisely what the Court did and did not say about the EAHCA. Because the unique facts of this case weigh so heavily in its outcome, a full recitation of those details is required.

Amy Rowley, an eight-year-old child with a severe hearing impairment was enrolled in a regular classroom of the Furnace Woods School, in Peekskill, New York. Before beginning Amy's schooling and after a planning meeting with her parents, the school admin-

81. 102 S. Ct. 3034 (1982).
82. Id. at 3052.
83. See e.g., 1 American Coalition of Citizens with Disabilities, ACCD News Net (June 1982). "We find this decision shocking. It condones inferior and inadequate education for handicapped children." Id. at 10.
84. 102 S. Ct. at 3039-40.
administrators made certain preparations for her arrival. Several of the administrators attended a course in understanding sign-language and a teletype machine was installed in the principal's office to facilitate communications with Amy's parents, who are also deaf. Amy, who is an excellent lipreader and has minimal residual hearing, was placed in a regular kindergarten class. After a time, the school provided her with an FM wireless hearing aid through which she could hear words spoken by the teacher or fellow students into a transmitter during certain classroom activities. A sign-language interpreter was assigned to the kindergarten class for a two-week experimental period, but was removed after he reported that Amy did not need his services at that time. Amy successfully completed kindergarten.

In the fall of her first-grade year, an IEP was prepared for Amy as required by the EAHCA. It provided that she should be educated in a regular classroom, should continue to use the FM hearing aid, and should receive instruction from a tutor for deaf individuals for one hour each day and from a speech therapist for three hours each week. Amy's parents agreed with the IEP insofar as it went, but insisted that, in addition, she be provided with a qualified sign-language interpreter in all academic classes. The school administrators, after consulting the school district's Committee on the Handicapped, which had received testimony from Amy's parents, teachers, and others on the education of deaf individuals, concluded that Amy did not need an interpreter in her first-grade classroom.

The Rowleys, following the EAHCA appeals procedure, then took their demand for an interpreter to an independent examiner. After a hearing, the examiner agreed with the school administrators that Amy did not need an interpreter because she was "achieving educationally, academically, and socially" without such assistance. On appeal, the examiner's decision was affirmed by the New York Commissioner of Education. Following the Act's provision for judicial review, the Rowleys then brought an action in federal court.

85. 102 S. Ct. at 3039. The district court, considering the case in 1980, noted however, that the interpreter's "recommendation was strictly limited to the particular class for which he had rendered the service, and did not rule out the necessity of interpretation in other classes or in subsequent academic years." Rowley v. Board of Educ., 483 F. Supp. 528, 530 (S.D.N.Y.), aff'd, 632 F.2d 945 (2d Cir. 1980), rev'd, 102 S. Ct. 3034 (1982).
86. 102 S. Ct. at 3039.
87. Id.
88. Id.
89. Id. at 3040.
90. Id.
claiming that the school's refusal to provide interpreter services constituted a denial of the "free appropriate public education" guaranteed by the Act. 91

The district court agreed with the Rowleys. 92 In struggling to give meaning to the term "appropriate" education, the court rejected what it saw as two possible extreme interpretations: (1) "'Adequate' education—that is, an education substantial enough to facilitate a child's progress from one grade to another and to enable him or her to earn a high school diploma"; and (2) an education "which enables the handicapped child to achieve his or her full potential." 93 Instead, the district court settled on an intermediate standard which "would require that each handicapped child be given an opportunity to achieve his full potential commensurate with the opportunity provided to other children." 94

This standard requires something more than the "adequate" education described above. On the other hand, since even the best public schools lack the resources to enable every child to achieve his full potential, the standard would not require them to go so far. . . . [This standard] requires that the potential of the handicapped child be measured and compared to his or her performance, and that the resulting differential or "shortfall" be compared to the shortfall experienced by non-handicapped children. 95

Although the district court noted that Amy is a "bright, well-adjusted child . . . [who] performs better than the average child in her class and is advancing easily from grade to grade," 96 it found that the school administrators had "ignore[d] the importance of comparing her performance to that of nonhandicapped students of similar intellectual calibre and comparable energy and initiative." 97 In the court's opinion, Amy's "educational shortfall is greater than that of her peers." 98 Using the standard it had developed to measure "appropriateness" 99 and relying on expert testimony that "every deaf

91. Id.
93. Id. at 534.
94. Id.
95. Id.
96. Id.
97. Id.
98. Id. at 535.
99. See supra text accompanying note 94.
The district court concluded that Amy was entitled to an interpreter "to bring her educational opportunity up to the level of the educational opportunity being offered to her non-handicapped peers." It found that "Amy's education would be more 'appropriate' with than without an interpreter."102

On appeal, the Second Circuit Court of Appeals, in a two-to-one decision, affirmed the district court's judgment, including, apparently, its standard for "appropriateness" of an education. The appeals court, however, took pains to emphasize the narrowness of its holding. "The evidence upon which our decision rests is concerned with a particular child, her atypical family, her upbringing and training since birth, and her classroom experience. In short our decision is limited to the unique facts of this case and is not intended as authority beyond this case."105

The Supreme Court, after reviewing the legislative history of the EAHCA, rejected the lower courts' standard for determining when an educational program is "appropriate": "The District Court and the Court of Appeals . . . erred when they held that the Act requires New York to maximize the potential of each handicapped child commensurate with the opportunity provided nonhandicapped children."107 Justice Rehnquist, writing for the five-member majority, read the Act's intent as "more to open the door of public education to handicapped children on appropriate terms than to guarantee any particular level of education once inside."109 He concluded that Congress has sought "primarily to identify and evaluate handicapped children, and to provide them with access to a free

101. Id.
102. Id. at 536.
104. The court of appeals stated its agreement with the district court's conclusions of law. Id. at 947.
105. Id. at 948.
106. See supra text accompanying note 94.
107. 102 S. Ct. at 3048. Further, "[w]hatever Congress meant by an 'appropriate' education, it is clear that it did not mean a potential-maximizing education." Id., at 3046 n.21.
108. The majority was composed of Justice Rehnquist, Chief Justice Burger, and Justices Powell, Stevens, and O'Connor.
109. 102 S. Ct. at 3043.
Justice Rehnquist also noted that: "Congress did not impose upon the States any greater substantive educational standard than would be necessary to make such access meaningful." He stated that "if personalized instruction is being provided with sufficient supportive services to permit the child to benefit from the instruction, and the other items on the definitional checklist are satisfied, the child is receiving a 'free appropriate public education' as defined by the Act."

In the opinion of advocates for children with handicaps and of the Court's three dissenting members, the foregoing interpretations of Congressional intent are clearly erroneous. Justice White, writing for the dissent, argued that "[t]he legislative history ... directly supports the conclusion that the Act intends to give handicapped children an educational opportunity commensurate with that given other children." He concluded that the majority's standard for deciding that Amy was receiving an appropriate education—that she was receiving "some specialized instruction from which she obtained some benefit [which enabled her to pass] from grade to grade ... falls far short of what the Act intended."

It would be a serious mistake, however, to accept the excerpts quoted thus far as a fair summary of the Court's opinion. Among its more positive aspects, the opinion explicitly acknowledged that the EAHCA requires "personalized instruction," that is "educational instruction specially designed to meet the unique needs of the handicapped child." The decision also recognized the Act's mandate of related services; that the instruction of a child with a handicap must be "supported by such services as are necessary to permit the child to 'benefit' from the instruction." The Court further discerned that Congress intended that children with handicaps be provided with something extra in the way of educational services: "[F]urnishing handicapped children with only such services as are available to

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110. Id., at 3048.
112. Id. at 3042. By "definitional checklist," the Court was referring to requisite elements "A" through "D" in the EAHCA's definition of "free appropriate public education." 20 U.S.C. § 1401(18)(A)-(D) (1976). See supra text accompanying note 50.
114. Id. at 3055 (White, J., dissenting).
115. Id. (emphasis in original).
116. Id. at 3049.
117. Id. at 3041.
118. Id.
nonhandicapped children would in all probability fall short of the statutory requirement of 'free appropriate public education . . . .' "119

The Court's principal holding was that appropriate education consists of "personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction."120 But how great must the "benefit" be? This determination, the Court said, presents "a more difficult problem"121 and it explicitly refused to provide a general answer:

We do not attempt today to establish any one test for determining the adequacy of educational benefits conferred upon all children covered by the Act. Because in this case we are presented with a handicapped child who is receiving substantial specialized instruction and related services, and who is performing above average in the regular classrooms of a public school system, we confine our analysis to that situation.122

The Court's characterization of Amy Rowley's specialized instruction and related services as "substantial" was hardly an overstatement.123 The school had provided her, in Justice Blackmun's words, with "considerably more than 'a teacher with a loud voice.' "124 It had made commendable efforts to accommodate her needs. There is much force in Justice Blackmun's conclusion that Amy's educational 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."125

119. Id. at 3047.
120. Id. at 3049 (emphasis added).
121. Id. at 3048.
122. Id. at 3049. The Supreme Court's limiting of the precedential effect of its ruling echoed a similar cautionary notice by the court of appeals. See supra text accompanying note 105.
123. See 102 S. Ct. at 3039. The school had provided a tutor, speech therapist, hearing aid and (for a trial period) a sign language interpreter; had installed a teletype machine; and had consulted with a Committee on the Handicapped. See supra text accompanying note 85.
124. 102 S. Ct. at 3053 (Blackmun, J., concurring) (borrowing a phrase from the Court's dissenters).
125. Id. (emphasis in original). Justice White, in dissent, wrote that Amy, "without a sign language interpreter, comprehends less than half of what is said in the classroom—less than half of what normal children comprehend." Id. at 3055 (White, J., dissenting) (emphasis added). Justice White provides no citation on which to base his assertion, and the district court opinion raises questions concerning both the percentage (less than half) and its basis (what normal children comprehend):

[b]y making use of her hearing aids and her lipreading skills, which she would be doing under ideal classroom conditions, Amy can identify 59% of the words
The Supreme Court's conclusion regarding Amy Rowley's performance is unchallenged. She is performing above the average level in regular classrooms at a public school. But even here, the Court did not attempt to create a general standard from Amy's particular situation: "We do not hold today that every handicapped child who is advancing from grade to grade in a regular public school system is automatically receiving a 'free appropriate public education.'" How a child fares in the grading and advancement system of a regular public school classroom environment thus "constitutes an important factor in determining educational benefit," but such a factor is not dispositive of the issue.

In Rowley, the Supreme Court set out to define the term "appropriate" and to determine the amount of services required by that term. The Court ended up explaining the term "appropriate" with the terms "meaningful" and "benefit," but refused to define the amount of services required to satisfy this new standard. Thus, while the opinion provided little guidance in determining the level of services the Act requires, it did not eviscerate Congress' mandate. Rather, in a manner strikingly similar to the Act's core philosophy, the Supreme Court opted for an individualized approach in weighing the sufficiency of the benefits of Amy's and potentially other children's educational programs.

Whether the Court will continue to eschew generalizations in future EAHCA cases remains to be seen. But, at least for the present...

which are spoken to her. . . . I find that Amy is capable of discriminating considerably less than 100% of what is spoken in class—probably in the neighborhood of 59%.

Rowley v. Board of Educ., 483 F. Supp. 528, 532 (S.D.N.Y.), aff'd, 632 F.2d 945 (2d Cir. 1980), rev'd, 102 S. Ct. 3034 (1982). (emphasis added). Also, it should not be forgotten that Amy was provided with one hour of tutoring each day in addition to her classroom instruction. See supra text accompanying note 86.

126. 102 S. Ct. at 3049. "Amy's scores on the Metropolitan Achievement Test were about average for her class, and her scores on the Stanford Achievement Test which was administered to her in sign language, were well above average. Amy's school records establish that she is performing above the median for her class." Rowley v. Board of Educ., 483 F. Supp. 528, 532 (S.D.N.Y.) (footnote omitted), aff'd, 632 F.2d 945 (2d Cir. 1980), rev'd, 102 S. Ct. 3034 (1982).

127. 102 S. Ct. at 3049 n.25. It is not clear how the Court would react if a child were not making progress.

128. Id. at 3049. The Court later stated that "[w]hen the handicapped child is being educated in the regular classrooms of a public school system, the achievement of passing marks and advancement from grade to grade will be one important factor in determining educational benefit." Id. at 3051 n.28 (emphasis added).

129. As Justice White observed, "'meaningful' is no more enlightening than 'appropriate.'" Id. at 3055 (White, J., dissenting).
ent, no general standard has been established; it is left to those who
develop and initially review IEPs to determine, in the first instance,
the type and amount of specialized education and related services
that are required to give each unique child an appropriate, meaning-
ful education providing sufficient benefit. The Court placed heavy
emphasis on the fundamental role of those involved in that initial
determination: “The primary responsibility for formulating the edu-
cation to be accorded a handicapped child, and for choosing the edu-
cational method most suitable to the child’s needs, was left by the
Act to state and local educational agencies in cooperation with the
parents or guardians of the child.”130

Although courts are not to second-guess these education pro-
gram developers on questions of educational “policy,”131 “theo-
ries,”132 or “methodology,”133 a substantive as well as procedural
review role for the judiciary was strongly affirmed by the Supreme
Court: “Congress expressly rejected provisions that would have so
severely restricted the role of reviewing courts” to reviewing only for
state compliance with the Act’s procedural requirements.134 The
Court went on to state that “a court’s inquiry in suits brought under
[the Act] is twofold. First, has the state complied with the proce-
dures set forth in the Act? And second, is the individualized educa-
tion program developed through the Act’s procedures reasonably
calculated to enable the child to receive educational benefits?”135
Thus, parents may still turn to the courts for relief not only for cor-
rection of procedural deficiencies in development of their child’s
IEP, but also when they believe that the program, although the result
of a procedurally correct process, still does not provide the student
an “appropriate” education.

130. *Id.* at 3051.

131. *Id.* “[T]he provision that a reviewing court base its decision on the ‘prepon-
derance of the evidence’ is by no means an invitation to the courts to substitute their own
notions of sound educational policy for those of the school authorities which they re-
view.” *Id.* “[C]ourts lack the ‘specialized knowledge and experience’ necessary to re-
solve the ‘persistent and difficult questions of educational policy.’ *Id.* at 3052 (citing San
Antonio School Dist. v. Rodriguez, 411 U.S. 1, 42 (1973)).

132. 102 S. Ct. at 3052. “[I]t seems highly unlikely that Congress intended courts
to overturn a State’s choice of appropriate educational theories in a proceeding con-
ducted pursuant to § 1415(e)(2).” *Id.* at 3051 (footnote omitted).

133. “[O]nce a court determines that the requirements of the Act have been met,
questions of methodology are for resolution by the States.” *Id.* at 3052.

134. *Id.* at 3050.

135. *Id.* at 3051. (footnotes omitted). Included in a court’s procedural inquiry will
be the determination “that the State has created an IEP for the child in question which
conforms with the requirements of [the Act].” *Id.* at 3051 n.27.
IV. APPLICATION OF Rowley

What will be the effect of Rowley on the education of other children with handicaps? Insufficient time has elapsed to answer that question definitively. A few resulting principles, however, are clear. Because the Court explicitly limited its ruling to Amy Rowley's particular case, the opinion clearly does not signify that every deaf child who requires a sign language interpreter will be denied that service. Moreover, EAHCA's core principles emerged from the decision intact; Rowley affirmed the rights of children with handicaps:

(1) to be educated by public schools without charge; 136
(2) to be provided with individualized, beneficial, "meaningful" services, designed through the IEP process; 137
(3) to be "mainstreamed" where possible; 138
(4) to receive an instructional program that approximates the grade levels used in the state's regular education program; 139
(5) to be provided with related and supportive services needed to derive benefit from their education; 140
(6) to have parents or guardians actively involved in the planning of their education; 141
(7) to challenge the adequacy of their education programs in due process hearings; 142 and
(8) to challenge in federal court both the substance of their IEP and the procedures afforded for its development and review. 143

Although Rowley's ultimate effect on the education of children with handicaps cannot yet be seen, it may be useful to examine how the opinion might have affected the pre-Rowley decisions discussed earlier in this article. 144 Clearly, Rowley would not have changed the outcome of cases such as Springdale, 145 in which courts held that the

136. Id. at 3049.
137. Id.
138. Id.
139. Id.
140. Id.
141. Id. at 3050.
142. Id. at 3039.
143. Id. at 3050-51. Because of Rowley's emphasis on the primary role of local and state educational agencies in developing and reviewing a child's IEP, see id. at 3039, advocates for children with handicaps would be well advised to contest inappropriate programs or inadequate provisions of services at the earliest possible point in the administrative process. See generally M. Budoff, supra note 30. B. Cutler, Unraveling the Special Education Maze: An Action Guide for Parents (1981).
144. See supra notes 53-78 and accompanying text.
right to an “appropriate” education does not constitute a right to the best possible education. These decisions might well be viewed as harbingers of the more restrictive language of the Rowley opinion. And Rowley would only have strengthened the holdings of those cases in which school systems were found to be in significant non-compliance with procedural provisions of the EAHCA. Furthermore, the lower court rulings requiring the provision of related services such as transportation, catheterization, and assistance with a tracheotomy tube, would be viewed as satisfying even the more stringent standards that some may derive from the Rowley opinion. These services were required merely “to open the door of public education” to the affected children; merely “to provide them with access.”

It is more difficult to speak confidently of Rowley’s impact on cases where “mainstreaming” of students, with the attendant provision of required related services, has been ordered by the courts. Viewed in one light, the Supreme Court might characterize this issue as one involving educational “theory” or “methodology,” falling within the purview of educators rather than courts. Yet in Rowley, the Court clearly recognized and noted the “mainstreaming preference” of the EAHCA. Thus, it seems most likely that it would

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146. 656 F.2d at 304. In one post-Rowley decision, Harrell v. Wilson County Schools, 293 S.E.2d 687 (N.C. Ct. App.), appeal denied, 295 S.E.2d 759 (N.C. 1982), petition for cert. filed, 51 U.S.L.W. 3512 (U.S. Jan. 3, 1983) (No. 82-1111), the court held that neither the EAHCA nor state law requires a local school agency to provide students with handicaps the most appropriate education. In dicta, however, the court interpreted the state special education statute by quoting Justice White’s dissent in Rowley: “We believe that our own General Assembly ‘intended to eliminate the effects of the handicap, at least to the extent that the child will be given an equal opportunity to learn if that is reasonably possible. . . .’ Under this standard a handicapped child should be given an opportunity to achieve his full potential commensurate with that given other children.” 102 S. Ct. at 3055 (quoting Board of Educ. v. Rowley, 102 S. Ct. at 3055 (White, J., dissenting)).

147. See supra note 53 and accompanying text.

148. “[W]e think that the importance Congress attached to these procedural safeguards cannot be gainsaid.” 102 S. Ct. at 3050.


150. Tatro v. Texas, 625 F.2d 557 (5th Cir. 1980).


152. 102 S. Ct. at 3036.

153. Id.


155. See 102 S. Ct. at 3036.

156. Id. at 3049 & n.24.
decide such cases under its general rule: Are the services required to
permit the child to benefit sufficiently from the instruction? 157 In
determining sufficiency of the benefit, the Court would probably give
considerable weight to the child's IEP and any administrative hear­
ing decisions addressing it, 158 provided that all due process proce­
dural requirements have been followed. 159

Children with handicaps will find considerable support in Rowl­
ey for a right to an extended school year, 160 provided that such is
called for in their IEP's. Consider the reasoning of the Third Circuit
in Battle v. Pennsylvania: 161

We believe the inflexibility of the defendants' policy of refusing
to provide more than 180 days of education to be incompatible
with the Act's emphasis on the individual. Rather than ascertaining
the reasonable educational needs of each child in light of reason­
able educational goals, and establishing a reasonable program
to attain those goals, the 180 day rule imposes with rigid certainty
a program restriction which may be wholly inappropriate to the
child's educational objectives. This the Act will not permit. 162

Such reasoning would appear to be wholly compatible with and am­
ply supported by Rowley. A federal district court in Eastern Mis­
souri reached this conclusion in March, 1983, when it held that
Missouri's policy of refusing to provide more than 180 days of edu­
cation for children with severe handicaps is incompatible with the
EAHCA. 163 The court found that, because the state policy pre­
cluded "individualized consideration of and instruction for each
child," the state was failing to provide these children with "the basic
floor of opportunity" embodied in the Act. 164

Other pre-Rowley decisions described above requiring the pro­
vision of psychological programming services, 165 residential 166 or

157. See supra text accompanying notes 118-20.
159. See supra note 131.
160. See 102 S. Ct. 3041-42; see also supra note 57.
161. 629 F.2d 269 (3d Cir. 1980), cert. denied sub nom., Scanlon v. Battle. 452 U.S.
162. Id. at 280.
164. Id. at 2554. The court also held that because Missouri receives federal funds
that it distributes to local school districts for the purpose of educating children with
handicaps during the summer months, without comparable services for children with
severe handicaps, the state was also in violation of section 504 of the Rehabilitation Act
165. See supra note 65.
166. See supra note 66.
private school placements, or higher teacher/student ratios would also appear to be subject to this "meaningful benefit" rule. As discussed above, however, the Court in Rowley provided no guidance for determining the adequacy of the benefit required other than emphasizing its individualized nature. Thus, decisions in cases of this nature will more than likely continue to reflect the individual perceptions of school administrators, hearing officers, and judges regarding "adequacy" of the benefit as well as the individual needs of the students involved. For example, in one post-Rowley opinion, the Court of Appeals for the First Circuit held that the district court had "ample authority under the Act" to order the placement of a severely retarded boy with "autistic-like" behavior in a residential program upon finding that he needed residential care with "round-the-clock training ... in order to make any educational progress." It is also quite likely that in making these decisions, the test suggested in Justice Blackmun's concurrence will figure largely, at either a conscious or subconscious level, whether the child's program, "viewed as a whole, offer[s] [the child] an opportunity to understand and participate in the classroom [on a basis] substantially equal to

167. See supra note 59. In Lang v. Braintree School Comm., 545 F. Supp. 1221 (D. Mass. 1982), one of the few relevant post-Rowley decisions reported, the federal district court in Massachusetts refused to order continued private schooling for an eighteen year old student with mental retardation, mental illness, and epilepsy. The court, however, recognizing that the student's IEP reflected the EAHCA's "legitimate educational philosophy" of mainstreaming, found that "there is every reason to believe, that [the student'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." Id. at 1228. In similar fashion, the North Carolina Court of Appeals recently affirmed a lower state court's decision that a hearing-impaired child need not be transferred from a public to a private school in order to satisfy the appropriate education requirements of both the EAHCA and the state special education statute. Harrell v. Wilson County Schools, 293 S.E.2d 687 (N.C. Ct. App.), appeal denied, 295 S.E.2d 759 (N.C. 1982), petition for cert. filed, 51 U.S.L.W. 3512 (U.S. Jan. 3, 1983) (No. 82-1111). The North Carolina court noted that the child's public school program had been developed in substantial compliance with federal and state rules for IEP's, that it is consistent with federal and state mainstreaming policies, and that it meets even the more rigorous state standard that "a handicapped child should be given an opportunity to achieve his full potential commensurate with that given other children." 293 S.E.2d at 690.


169. See supra text accompanying notes 121-22.

170. "It is clear that the benefits obtainable by children at one end of the spectrum will differ dramatically from those obtainable by children at the other end, with infinite variations in between." 102 S. Ct. at 3053.


172. Id., slip op. at 12 (citation omitted) (emphasis in original).
It is interesting to speculate on the effect that Rowley would have had on the M.W. case had Rowley been decided first. Contrary to Rowley, the M.W. ruling required provision of a sign language interpreter and other supplemental aids and services to facilitate the continued "mainstreaming" of a seriously hearing-impaired child who had maintained a "B" average in regular classrooms without such aids, but with the voluntary assistance of his family and certain teachers and students. The decision, however, was made by a school department hearing officer. If the school board had appealed the decision to federal courts, the issue becomes whether the judiciary would have substantially deferred to the state educational agency as called for in Rowley, or would have applied the Supreme Court's "benefit" test. A preliminary question, however, is as to whether the hearing officer's order would have been the same had it not preceded Rowley.

V. THE ROLE OF PARENTS AFTER ROWLEY

In Rowley, the Supreme Court of the United States placed considerable emphasis on the vital role Congress has assigned to parents and guardians in assuring the appropriateness of handicapped children's education under the EAHCA. At one point the Court stated that "Congress sought to protect individual children by providing for parental involvement in the development of State plans and policies . . . and in the formulation of the child's individual education program." Elsewhere, it observed that "Congress placed every bit as much emphasis upon compliance with procedures giving parents and guardians a large measure of participation at every stage of the administrative process . . . as it did upon the measurement of the resulting IEP against a substantive standard." Yet again the Court observed that "[t]he requirements that parents be permitted to file complaints regarding their child's education, and be present when the child's IEP is formulated, represent only two examples of Congress' effort to maximize parental involvement in the education of each handicapped child." Finally, the Court concluded that,

[the child's] nonhandicapped classmates."

173. 102 S. Ct. at 3053 (Blackmun, J., concurring).
175. "[C]ourts must be careful to avoid imposing their view of preferable educational methods upon the States." 102 S. Ct. at 3051 (citation omitted).
176. Id. at 3052 (citation omitted).
177. Id. at 3050.
178. Id. at 3038 n.6.
"[a]s this very case demonstrates, parents and guardians will not lack ardor in seeking to ensure that handicapped children receive all of the benefits to which they are entitled by the Act." 179

There is no question that the Court read accurately Congress' intent regarding the central role parents and guardians should play in the functioning of EAHCA. 180 It was therefore ironic and distressing that, less than six weeks after these expressions of agreement by the legislative and judicial branches supporting a key parental role, the executive branch of the federal government should attempt to weaken that role. On August 4, 1982, the United States Department of Education proposed to amend the regulations for the EAHCA 181 in order, the Department said, "[t]o reduce fiscal and administrative burdens on recipients . . . and . . . to address various problems that have arisen in the implementation of the program . . . ." 182 The effect, however, of a number of the proposed revisions would have been to reduce parents' involvement in the planning and review of their handicapped children's education programs. The proposal would, for example, have eliminated requirements for parental consent before a pre-placement evaluation is conducted or an initial placement is made. 183 The proposal would have also reduced requirements designed to ensure parental participation at IEP meetings, 184 and eliminated parents' right of access to all evidence before a due process hearing. 185

These were among a multitude of changes 186 that were viewed

179. Id. at 3052.
182. Id.
183. Id. at 33,841, discussing proposed deletion of requirements in 34 C.F.R. § 300.504(b) (1982).
186. Other changes included, but were not limited to the proposed deletion of a thirty-day timeline between a child's evaluation and the IEP meeting; elimination of parents' right to open due process hearings to the public; new authorization to charge parents for a portion of the services a child receives while placed in a residential program; deletion of requirements that schools provide children with handicaps a continuum of placements and services, and educate a child as close to home as possible; and the deletion of a requirement that evaluation instruments be administered or validated by "qualified" personnel. See Oversight on Education for All Handicapped Children Act: Hearings
by many parents and other advocates for children with handicaps as assailing some of EAHCA's most important safeguards for ensuring the provision of an appropriate education. At public hearings held in eight cities across the nation, parents, demonstrating some of the "ardor" of which Justice Rehnquist wrote, raised a "storm of protest." As a result, Secretary of Education, T.H. Bell, announced on September 29, 1982, that he was withdrawing the proposed changes for "those portions of the regulations that are the major sources of the concern and apprehension." Included in the six areas of withdrawn proposals was that dealing with "parental consent prior to evaluation or initial placement."

Several members of Congress and numerous advocates have expressed concern, however, that the Department may resubmit withdrawn sections at a later date "in milder form." A memorandum to Tom Anderson, Special Counsel to the Secretary of Education, from Joe Beard, Deputy General Counsel of the Department, although repudiated by Bell, lends support to these concerns. The memo suggests that it

might be a good idea to consider sending [the Department's final regulation] up [to Congress] in two or more packages, with the less controversial part in one package, and the more controversial

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187. Senator Edward Kennedy: "I think it is important to note that in many ways these regulations go against the grain of the recent Supreme Court decision in Rowley. The Supreme Court strongly affirmed that the ultimate goal of the act was to provide the handicapped student with an adequate educational opportunity. The schools must provide meaningful services to the students. And to do so, parental involvement is essential." \textit{Hearings, supra} note 184, at 27; see also \textit{id.} at 76-86 (statement of B.E. Hamilton); \textit{id.} at 87-98 (statement of H. Rutherford Turnbull III, Secretary, Association for Retarded Citizens of the United States); Senator Q.N. Burdick also stated that "in some cases, the rights of the handicapped children would be weakened if these proposals were to be implemented as currently written . . . . Any changes which reduce a parent's participation must be critically scrutinized and questioned." \textit{id.} at 163-65.

189. \textit{See} 102 S. Ct. at 3052.
191. \textit{Id.}
194. \textit{Id.}
parts in several packages . . . . In this manner, certain controversial parts will not kill off the less controversial parts, and, also, we may be able to divide the enemy . . . . By forcing separate votes, we may be able to pull it off. On the other hand, Congress may find this to be a trick, which it definitely is, and may react negatively . . . .

As this article goes to press, the Department has not yet issued either final revised regulations, or proposed regulations to replace those which were withdrawn. 196

VI. Conclusion

Although there are surprising discrepancies among various courts of the number of children with handicaps who are receiving special education and related services nationwide, 197 all data indi-

195. Note to Tom Anderson from Joe Beard, Office of the General Counsel, United States Department of Education (Mar. 30, 1982) (on file at the Center for Law and Health Sciences, Boston University School of Law).

196. It was reported that proposed regulations for section 504 of the Rehabilitation Act of 1973 may also be published for public comment in late 1983. Mental Health Law Project, Update I (Mar. 28, 1983). These proposals, which were issued by the United States Department of Justice, might also have significantly affected public education for children with handicaps. See supra notes 57, 80, 164. In a class action brought in New Mexico, which has elected not to accept federal funds under EAHCA, the Court of Appeals for the Tenth Circuit noted that when a state permits "great disparity among the various school districts in their treatment of handicapped students," it arguably violates section 504. New Mexico Ass'n for Retarded Citizens v. New Mexico, 678 F.2d 847, 855 (10th Cir. 1982). Plaintiffs and defendants have since signed an agreement that was submitted to the United States District Court for the District of New Mexico for approval. New Mexico Ass'n for Retarded Citizens v. New Mexico, No. 75-633-M (D.N.M.) (settlement agreement Aug. 31, 1982). On March 21, 1983, however, Vice President George Bush, in a letter to Robert J. Funk of the Disability Rights Education and Defense Fund, announced that the Department of Justice and the Presidential Task Force on Regulatory Relief "have decided not to issue a revised set of coordination guidelines [for section 504]." The Vice President noted, in the review process which arrived at this decision, "[e]specially important were the personal views and experiences of those most directly affected by these regulations. The comments of handicapped individuals, as well as their families, provided invaluable insight into the impact of the 504 guidelines." Letter from Vice President of the United States George Bush to Robert J. Funk (Mar. 21, 1983) (on file at the Center for Law and Health Sciences, Boston University School of Law).

197. The General Accounting Office (GAO) reports that an Office of Special Education (OSE) survey calculated that a total of "4,178,631 handicapped children, or 8.55 percent of the estimated 5-17 year old population, were reported as receiving special education and related services in the 1980-81 school year. OCR (Office for Civil Rights) data supplied by school districts indicate that 2,615,852 children received special education. Another survey, using information supplied by school principals, estimated that slightly over 3 million children ages 3-21 were receiving special education on December 1, 1978." Disparities Still Exist, supra note 27, at 20 (footnotes omitted). A GAO analy-
cate that, during the past decade, the United States has moved a considerable distance toward fulfilling the historic promise of a free public education for all.198 This progress has been spurred by state and federal litigation and legislation, but principally by federal Public Law 94-142, the Education for All Handicapped Children Act.199 In Board v. Education v. Rowley,200 the Supreme Court of the United States, although adopting a very limited view of Congress' goals in passing the Act, did uphold the Act's basic guarantees. Most importantly, the Court limited its holding concerning the adequacy of educational services to the particular case of Amy Rowley. The Court explicitly refused to set forth a general standard for measuring the sufficiency of services provided to other children. The Court also recognized that despite the fact that a child with handicaps is advancing from grade to grade in a regular public school classroom, one may not automatically conclude that the child is receiving an appropriate education.

Questions of program adequacy are thus left primarily to the IEP development and appeal process for individualized determinations. Advocates for children with handicaps would therefore be well advised to contest inappropriate or inadequate plans at the earliest possible point in the administrative process. As the Court recognized, parents and guardians can play a key role in this process. In light of recent attempts to reduce parental involvement, it is clear that, for the foreseeable future, continuing vigilance and advocacy will be required of parents and all others concerned with the welfare of children with handicaps to ensure that they are not deprived of their hard-won right to a free appropriate public education.

sis of differences between the OSE and OCR data indicates that they may be attributable, inter alia, to different data collection methods and timing of data collection, but concludes that further investigation is needed. Id. at 21-26.

198. "While the findings indicate that not all children have equal access to special education, the Congressional objective that those most in need of services would receive them with Public Law 94-142 has largely been accomplished. The priorities to first serve the unserved and second the most severely handicapped children within each category may have been realized and, therefore, may have become meaningless. . . ." Id. at 80.
