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Handicapped Law—Education for All Handicapped Children Act Does Not Require States to Provide Best Possible Option

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HANDICAPPED LAW—EDUCATION FOR ALL HANDICAPPED CHILDREN ACT DOES NOT REQUIRE STATES TO PROVIDE BEST POSSIBLE OPTION. *Springdale School District No. 50 v. Grace*, 693 F.2d 41 (8th Cir. 1982), *cert. denied*, 103 S. Ct. 2086 (1983).

The appellant, Springdale School District, determined that the most appropriate education for Sherry Grace, a deaf student,[1] included a certified teacher of the deaf and placement at the Arkansas School for the Deaf in Little Rock.[2] Sherry's parents agreed with the recommendation for a certified teacher, but challenged the decision for placement at the Deaf School.[3] Although school district officials emphasized that Sherry's below level general knowledge and academic skills necessitated placement at the Arkansas School for the Deaf, the Graces desired that Sherry be educated in the Springdale School District where she could live at home[4] and sought review of the decision.[5] A hearing officer found that Sherry's educational needs could be met within the Springdale School District and the Arkansas Department of Education agreed.[6] The school district appealed to federal district court seeking review of the hearing officer's decision.[7]

The district court held that the Springdale School district could provide an appropriate education for Sherry.[8] The Eighth Circuit Court of Appeals affirmed.[9] The United States Supreme Court[10] vacated and remanded the Eighth Circuit's decision to be decided in light of *Board of Education v. Rowley*.[11] Upon remand, the Eighth Circuit found its earlier decision to be consistent with *Rowley* and

1. Sherry Grace has a 95 per cent hearing loss which renders her profoundly deaf. The loss was discovered at two years of age before she developed speech. Springdale School Dist. No. 50 v. Grace, 494 F. Supp. 266, 267 (W.D. Ark. 1980).

2. Springdale School Dist. No. 50 v. Grace, 693 F.2d 41, 42 (8th Cir. 1982), *cert. denied*, 103 S. Ct. 2086 (1983).

3. *Id.*

4. Sherry's education at the Arkansas School for the Deaf would require residential placement because of the 200 miles between Springdale and Little Rock.

5. *Id.*

6. *Id.*

7. *Id.*

8. 494 F. Supp. at 273.

9. Springdale School Dist. No. 50 v. Grace, 656 F.2d 300 (8th Cir. 1981).

10. Springdale School Dist. No. 50 v. Grace, 102 S. Ct. 3504 (1982).

11. 102 S. Ct. 3034 (1982). For discussion, *see infra* notes 77-100 and accompanying text.

affirmed.[12] The Eighth Circuit found that a state was not required to provide a student with the best possible education[13] under the Education for All Handicapped Children Act's[14] definition of a "free appropriate education."[15] Although placement at the Deaf School might provide Sherry with the best education, Sherry's education in the Springdale School District not only met the "appropriate education" requirements under the Act, but also served the Act's mainstreaming purposes by allowing her to be educated with non-handicapped persons.[16] *Springdale School District No. 50 v. Grace*, 693 F.2d 41 (8th Cir. 1982), *cert. denied*, 103 S. Ct. 2086 (1983).

Historically, education of the handicapped was largely ignored.[17] Handicapped children were excluded from schools when deemed unable to profit from education[18] and were barred by courts[19] and state statutes[20] from public education. Courts preferred to leave education to the discretion of state and local agencies.[21] The high costs and specialized materials[22] required to educate handicapped children provided little incentive to states with limited resources.[23] Although the Supreme Court recognized in *Brown v. Board of Education*[24] that "it is doubtful that an child may reason-

12. 693 F.2d at 41.

13. *Id.* at 43.

14. Pub. L. No. 94-142, 89 Stat. 773 (1975)(codified at 20 U.S.C. §§ 1401-1461 (1976)).

15. For discussion, *see infra* note 59 and accompanying text.

16. 693 F.2d at 43.

17. For historical analysis, *see generally* Colley, *The Education for All Handicapped Children Act (EHA) A Statutory and Legal Analysis*, 10 J.L. & EDUC. 137 (1981); Krass, *The Right to Public Education for Handicapped Children: A Primer for the New Advocate*, 1976 U. ILL. L.F. 1016; Miller, *The Handicapped Child's Civil Right as it Relates to the "Least Restrictive Environment" and Appropriate Mainstreaming*, 54 IND. L.J. 1 (1978); Comment, *The Handicapped Child Has a Right to an Appropriate Education*, 55 NEB. L. REV. 637 (1976).

18. *E.g.*, Cuyahoga County Assoc. for Retarded Children and Adults v. Essex, 411 F. Supp. 46 (N.D. Ohio 1976)(upholding a state statute allowing exclusion of handicapped children from public schools when determined unable to profit).

19. *See* Beattie v. Board of Educ., 169 Wis. 231, 172 N.W. 153 (1919); *and* Watson v. City of Cambridge, 157 Mass. 561, 32 N.E. 864 (1893)(excluding handicapped children from schools). All States and the District of Columbia provide a system of public education. Krass, *supra* note 17, at 1027 n.59, 1028 n.69.

20. *E.g.*, ARK. STAT. ANN. § 80-1504 (1947). This statute exempted most handicapped children with the exception of the deaf and blind.

21. Brown v. Board of Educ., 347 U.S. 483, 493 (1954).

22. On the average, a handicapped child is twice as expensive to educate as a non-handicapped child. S. REP. No. 168, 94th Cong., 1st Sess. 15, *reprinted in* 1975 U.S. CODE CONG. & AD. NEWS 1425, 1439.

23. Prior to passage of the Act, decisions in more than 36 cases recognized the right of the handicapped to an education, but States lacked financial resources to comply. *Id.* at 7, *reprinted in* 1975 U.S. CODE CONG. & AD. NEWS at 1431.

24. 347 U.S. at 483.

ably be expected to succeed in life if he is denied the opportunity of an education,"[25] handicapped children were continually denied access to a public education.[26]

In 1966, Congress addressed education for the handicapped by establishing grant programs to assist states in initiating, expanding, and improving programs for the handicapped.[27] The programs were replaced in 1970, by the Education for Handicapped Act[28] which provided for additional grant programs. Vague guidelines for the use of funds lessened the Act's impact,[29] however, and public education for the handicapped continued to develop at a slow pace.

In the early 1970's, two federal cases, *Pennsylvania Association for Retarded Children (PARC) v. Pennsylvania*[30] and *Mills v. Board of Education*,[31] recognized a constitutional right for education of the handicapped and provided the impetus for enactment of the Education for All Handicapped Children Act of 1975.[32] *PARC* involved a suit brought on behalf of mentally retarded children excluded by state statutes from Pennsylvania schools.[33] The statutes, which denied education to uneducable and untrainable retarded children, were challenged as violative of the due process[34] and equal protection[35] clauses of the fourteenth amendment in that children were not afforded notice of a hearing before program changes or exclusions were made[36] and categories employed to classify students as mentally retarded lacked a rational basis.[37] The case was resolved through a consent decree which required the state to provide an ed-

25. *Id.* at 493.

26. Krass, *supra* note 17, at 1026-42.

27. Pub. L. No. 89-750, § 161, 80 Stat. 1191, 1204 (1966).

28. Pub. L. No. 91-230, 84 Stat. 175 (1970).

29. *See* S. REP. No. 168, 94th Cong., 1st Sess. 5, *reprinted in* 1975 U.S. CODE CONG. & AD. NEWS 1425, 1429.

30. 334 F. Supp. 1257 (E.D. Pa. 1971), *modified*, 343 F. Supp. 279 (E.D. Pa. 1972).

31. 348 F. Supp. 866 (D.D.C. 1972).

32. 20 U.S.C. §§ 1401-1461 (1976).

33. 343 F. Supp. at 281-82.

34. U.S. CONST. amend XIV, § 1, provides in pertinent part: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law . . . ."

35. "[N]or deny to any person within [the State's] jurisdiction the equal protection of the laws." *Id.*

36. 343 F. Supp. at 293. One student learned of his exclusion from school when the bus no longer picked him up. *Id.*

37. *Id.* at 296-97. The court relied on expert testimony that stated "all mentally retarded persons are capable of benefitting from a program of education and training." *Id.* at 296. Classifications which barred retarded children from school because of severity were possibly not rational. *Id.* at 292, 297.

ucation for retarded children regardless of the severity.[38] The decree set standards for locating children who had not previously benefitted from a public education[39] and emphasized that regular classroom placements were preferrable to special classrooms and residential schools.[40] While the district court did not decide the constitutional issues presented in *PARC* it did consider the allegations and found that the mentally retarded children had presented a "colorable claim" under both the due process[41] and equal protection clauses.[42]

In *Mills*,[43] a class of handicapped children sought to enjoin the District of Columbia school district from excluding them from schools and to compel the district to provide education or alternative placements at public expense.[44] The court held that equal protection guaranteed handicapped children an education regardless of mental, physical or emotional disability.[45] A handicapped child could not be excluded from educational benefits and opportunities provided other students.[46] The court further decided that the denial of hearings and periodic reviews violated due process rights.[47]

In 1974, Congress, dissatisfied with the progress in meeting the needs of the handicapped,[48] enacted Education of the Handicapped Act.[49] This Act was an interim measure to allow further study for a more comprehensive Act.[50] In 1975, the Education for All Handi-

38. *Id.* at 285.
39. *Id.* at 285-86.
40. *Id.* at 307.
41. *Id.* at 295.
42. *Id.* at 297.
43. 348 F. Supp. 866 (D.D.C. 1972).
44. *Id.* at 868.
45. *Id.* at 878.
46. *Id.* To reach this decision, the court considered Bolling v. Sharpe, 347 U.S. 497 (1954) (disallowing arbitrary deprivation of education); Brown v. Board of Educ. 347 U.S. 483 (1954); *and* Hobson v. Hansen, 269 F. Supp. 401 (D.D.C. 1967)(finding equal opportunity a component of due process).
47. 348 F. Supp. at 878.
48. *See* H.R. REP. NO. 332, 94th Cong., 1st Sess. 3,4 (1975). For discussion and analysis, *see* Colley, *supra* note 17, at 139-43; Keim, *The Education for All Handicapped Children Act of 1975*, 10 U. MICH. J.L. REF. 110 (1976); Large, *Special Problems of the Deaf Under the Education for All Handicapped Children Act of 1975*, 58 WASH. U.L.Q. 213 (1980); Note, *Enforcing the right to an Appropriate Education: The Education for All Handicapped Children Act of 1975*, 92 HARV. L. REV. 1103 (1979) [hereinafter cited as Note, *Enforcing the Right*]; Note, *Springdale School District No. 50 v. Grace: "Appropriate Education" Under the Education for All Handicapped Children Act*, 15 CREIGHTON L. REV. 950 (1982) [hereinafter cited as Note, *Springdale School: "Appropriate Education"*].
49. Pub. L. No. 93-380, 88 Stat. 579, 583 (1974).
50. H.R. REP. NO. 332, 94th Cong., 1st Sess. 4 (1975).

capped Children Act[51] was enacted creating an enforceable federal right for handicapped children to receive a "free appropriate public education."[52] The Act made litigation of constitutional issues unnecessary by codifying statutory rights for education of the handicapped.[53] The Act and its implementing regulations[54] established priorities for locating and providing services for handicapped children[55] and set time limits for meeting the needs of the handicapped.[56]

To implement the Act, Congress instituted a method of federal funding to assist state and local agencies in educating the handicapped.[57] To qualify for federal financial assistance, a state has to "demonstrate . . . a policy that assures all handicapped children the right to a 'free appropriate public education.' "[58] A "free appropriate public education"[59] is accomplished through special education and related services tailored to a child's individual needs by an Individualized Education Plan (IEP).[60] "Special education" is defined

51. Pub. L. No. 94-142, 89 Stat. 773 (1975)(codified at 20 U.S.C. § 1401-1461 (1976)).

52. 20 U.S.C. § 1401(18) (1976). For definition of "free appropriate public education," *see infra* note 59 and accompanying text.

53. Note, *Enforcing the Right*, *supra* note 48, at 1105.

54. 34 C.F.R. §§ 300.1-.754 (1981).

55. Congressional findings as codified in the Act revealed "more than eight million handicapped children in the United States." 20 U.S.C. § 1400(b)(1) (Supp. 1983). "[T]he special needs of such children" were not being "fully met." *Id.* at § 1400(b)(2). Congress expressed that "it is in the national interest that the Federal Government assist State and local efforts to provide programs to meet the educational needs of handicapped children in order to assure equal protection of the law." *Id.* at § 1400(b)(9).

56. *Id.* § 1412(2)(B). "[A] free appropriate public education will be available for all handicapped children between the ages of three and eighteen within the State not later than September 1, 1978, and for all handicapped children between the ages of three and twenty-one by September 1, 1980." *Id.*

57. *Id.* § 1412.

58. 20 U.S.C. § 1412(1)(1976). Forty-nine states have elected to participate by receiving federal funds. Only New Mexico has declined to accept the funds. Levinson, *The Right to a Minimally Adequate Education for Learning Disabled Children*, 12 VAL. U.L. REV. 253, 277 n.135 (1978).

59. 20 U.S.C. § 1401(18) (1976). "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. . . ." *Id.*

60. *Id.* § 1401 (19). "The term 'individualized education program' means a written statement for each handicapped child developed in any meeting by a representative of the local educational agency or an intermediate educational unit who shall be qualified to provide or supervise the provision of, specially designed instruction to meet the unique needs of handicapped children, the teacher, the parents or guardian of such child, and, whenever appropriate, such child, which statement shall include (A) a statement of the present levels

as "specially designed instruction . . . to meet the unique needs of a handicapped child including classroom instruction and instruction in hospitals and institutions."[61] Along with special education services, schools are to provide related services such as transportation and other support services required for a handicapped child to benefit from special education.[62] Congress designated children entitled to free appropriate public education by defining "handicapped children" as those who are "mentally retarded, hard-of-hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, . . . other health impaired, or children with specific learning disabilities, who by reason of their handicap, require special education and related services."[63] The education must be provided first to handicapped children who are not receiving an education and second, to severely handicapped children receiving an inadequate education.[64] Further, "to the maximum extent appropriate, . . . the handicapped must be educated with students who are not handicapped."[65]

To additionally assure appropriate educations, Congress enacted procedural safeguards.[66] Parents or guardians must be provided with an opportunity to examine records related to identification, evaluation and placement[67] and to participate in program preparation.[68] Notice must be given concerning program changes.[69] Complaints may be brought relating to procedures and impartial due process hearings held.[70] Decisions may be reviewed by state educational agencies[71] and appealed to state and federal district courts.[72]

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

61. *Id.* § 1401(16).
62. *Id.* § 1401(17).
63. *Id.* § 1401(1).
64. *Id.* § 1412(3).
65. *Id.* § 1412(5).
66. *Id.* § 1415.
67. *Id.* § 1415(b)(A).
68. *Id.* § 1401(9).
69. *Id.* § 1415(b)(C).
70. *Id.* § 1415(b)(2).
71. *Id.* § 1415(c).
72. *Id.* § 1415(e).

Even though the Act emphasizes needs and programming for the handicapped, courts have had difficulty defining the Act's meaning of a free appropriate public education.[73] Definitions have encompassed objectives of self-sufficiency,[74] maximum potential,[75] and most appropriate alternatives.[76] Not until *Board of Education v. Rowley*,[77] however, did the Supreme Court consider the interpretation of a free appropriate public education in light of the Education for All Handicapped Children Act.

The facts of *Rowley* were analogous to *Springdale School District No. 50 v. Grace*.[78] The parents of Amy Rowley, a deaf student with excellent lip-reading skills, insisted that Amy be provided with a qualified sign-language interpreter.[79] Amy, who used a hearing aid in classes and received instruction from a tutor for the deaf and a speech therapist, was making above average grades in her classes and school administrators did not find the need for an interpreter.[80] An independent hearing officer determined that an interpreter was not necessary because "Amy was achieving educationally, academically and socially" without such assistance.[81] The New York Commissioner of Education agreed.[82] The Rowleys then brought suit in federal district court[83] claiming that a denial of an interpreter constituted denial of a free appropriate public education pursuant to the Act.[84]

The district court found that although Amy was making progress, there was a discrepancy between her achievement and poten-

73. *See*, Note, *Springdale School: "Appropriate Education"*, *supra* note 48, at 950, 957-62.

74. *E.g.*, Armstrong v. Kline, 476 F. Supp. 583 (E.D. Pa. 1979), *remanded on other grounds sub nom.*, Battle v. Pennsylvania, 629 F.2d 269 (3d Cir. 1980), *on remand sub nom.*, Armstrong v. Kline, 513 F. Supp. 425 (E.D. Pa. 1980)(goal of appropriate education is for handicappd children to become self-sufficient); Campbell v. Talladega County Board of Educ., 518 F. Supp. 47 (N.D. Ala. 1981) (appropriate education must embody goal of self-sufficiency).

75. *E.g.*, Kruelle v. New Castle County School Dist., 642 F.2d 687 (3d Cir. 1981)(appropriate education must allow each child to reach maximum potential); Pinkerton v. Moye, 509 F. Supp. 107 (W.D. Va. 1981)(appropriate education requires maximization of a child's capabilities).

76. *E.g.*, DeWalt v. Burkholder, 3 E.H.L.R. 551:550 (E.D. Va. 1980).

77. 102 S. Ct. 3034 (1982).

78. 693 F.2d 41 (1982), *cert. denied*, 103 S. Ct. 2086 (1983).

79. 102 S. Ct. at 3039.

80. *Id.*

81. *Id.* at 3040.

82. *Id.*

83. Rowley v. Board of Educ., 483 F. Supp. 528 (S.D. N.Y. 1980), *aff'd per curiam*, 632 F.2d 945 (2d Cir. 1980), *rev'd and remanded*, 102 S. Ct. 3034 (1982).

84. 483 F. Supp. at 529.

tial.[85] After defining "free appropriate public education" to mean "an opportunity to achieve [her] full potential commensurate with the opportunity provided other children,"[86] the district court determined that Amy could not reach her potential without a sign-language interpreter.[87] The Second Circuit Court of Appeals affirmed.[88] The United States Supreme Court granted *certiorari*.[89]

In reviewing the lower courts' decisions, the Supreme Court first examined legislative history to determine the meaning of the Act's requirement of a free appropriate public education.[90] Contrary to the lower courts' findings, the Court concluded that a free appropriate public education "consists of educational instruction specifically designed to meet the unique needs of the handicapped child, supported by such services which are necessary to permit the child 'to benefit' from instruction."[91] An educational agency is not required to maximize each child's potential to be commensurate with the opportunities provided other children,[92] but rather to provide equal access to public schools through a "basic floor of opportunity."[93] The Court emphasized that a basic floor is established when a handicapped child is given access to specialized instruction and related services which are individually designed to provide educational benefits.[94]

The Court conceded that it is difficult to determine when a child is receiving educational benefits.[95] No single test may be used because of facts and circumstances unique to each case.[96] However, the Court provided a two-part inquiry for purposes of judicial review.[97] First, has the state complied with the procedures set forth in the Act;[98] second, is the Individualized Education Plan developed

85. *Id.* at 534.
86. *Id.*
87. *Id.*
88. Rowley v. Board of Educ., 632 F.2d 945, 947 (1980), *rev'd and remanded*, 102 S. Ct. 3034 (1982).
89. 102 S. Ct. at 3034.
90. *Id.* at 3041.
91. *Id.*
92. *Id.* at 3042.
93. *Id.* at 3047. The Court stated, "[N]either the Act nor its history persuasively demonstrate that Congress thought that equal protection required any more than equal access." *Id.*
94. *Id.* at 3048.
95. *Id.*
96. *Id.* at 3048-49.
97. *Id.* at 3051.
98. The Court stated that this inquiry will require determination that a state has adopted a state plan, policies and assurances required by the Act and also that the state has

through the Act's procedures reasonably calculated to enable the child to receive educational benefits?[99] If both are answered affirmatively, a state has complied with the Act and courts can require no more.[100]

The Court determined that a sign-language interpreter was not necessary in order for Amy to receive a free appropriate public education.[101] Amy's parents had been provided ample procedural reviews.[102] She was progressing easily from grade to grade with the personalized instruction she was already receiving.[103] Because the program was reasonably calculated to benefit her educationally, Amy's educational program was consistent with the Act's standards.[104]

In *Springdale*, the Eighth Circuit Court of Appeals applied the two-part inquiry of *Rowley*.[105] First, the court determined that the state had complied with the Act's procedures.[106] An Individualized Education Plan had been developed for Sherry stating her specific educational needs.[107] When her parents challenged the provision for placement at the Arkansas School for the Deaf, they received a hearing before an impartial hearing officer.[108] Springdale School District properly appealed the decision to the Coordinator of the State Department of Education[109] and later to the district court[110] and the Eighth Circuit Court of Appeals.[111]

Second, the court explored the major issue of whether the Individualized Education Plan was reasonably calculated to enable Sherry to receive educational benefits.[112] The school district argued that it was unreasonable for them to bear the cost of establishing a program for Sherry with one readily available at the School for the

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created an Individualized Education Plan for a child which conforms with the requirements of 20 U.S.C. § 1401(19). *Id.* at 3051, n.27.

99. The inquiry for this part includes determination that achievement has occurred. *Id.*, n.28.

100. *Id.*

101. *Id.* at 3052.

102. *Id.*

103. *Id.* at 3049, n.25.

104. *Id.* at 3052.

105. 693 F.2d at 42-43.

106. *Id.* at 43.

107. *Id.*

108. *Id.*

109. *Id.*

110. 494 F. Supp. at 266.

111. 656 F.2d at 300.

112. 693 F.2d at 43.

Deaf.[113] In rejecting their arguments, the court emphasized that the Springdale School District had disregarded the mainstreaming directives of the Supreme Court in *Rowley*.[114] Sherry's education in the Springdale School District would allow interaction with non-handicapped students, an opportunity not available at the School for the Deaf.[115]

Remaining consistent with the Supreme Court's decision in *Rowley*, the Eighth Circuit limited its review to the instructional program established by the state education department which provided that Sherry would receive a certified instructor for the deaf and other support services along with academic and communication instruction.[116] The court stated, "Although the School for the Deaf may offer the best educational opportunities for educating Sherry, the Supreme Court has made it clear that the Act does not require states to make available the *best* possible option."[117] The option made available to Sherry was appropriate. In spite of the expenses the Springdale School District would incur, the cost to the district did not justify judicial intervention.[118] The Individualized Education Plan established by the state department of education would allow Sherry to receive a "free appropriate public education."[119] Further, Sherry's placement in the Springdale School District would provide mainstreaming opportunities as directed by the Act.[120]

The Eighth Circuit's adherence to the *Rowley* standards exemplifies the impact of the Supreme Court's definition of a free appropriate public education under the Act.[121] Although a "most appropriate" standard was rejected by the Supreme Court, the Court did require that a handicapped child's program must confer

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113. *Id.*

114. *Id.* Under the Education for All Handicapped Children Act of 1975. 20 U.S.C. §§ 1401-1461, "mainstreaming" is the preference that "a child is being educated in the regular classrooms of a public school system. . . ." *Rowley*, 102 S.Ct. at 3049.

115. 693 F.2d at 43.

116. *Id.*

117. *Id.* Emphasis in the original.

118. *Id.* at 43-44.

119. *Id.* at 43.

120. *Id.* at 42-43.

121. *See* Tucker, *Board of Education of the Hendrick Hudson Central School District v. Rowley: Utter Chaos*, 12 J.L. & EDUC. 235 (1983); Note, *"Appropriate Education" for Handicapped Children in the Eighth Circuit: A Casenote on Springdale School District v. Grace*, 35 ARK. L. REV. 519 (1981); Note, *The Education for all Handicapped Children Act of 1975 Requires Beneficial, Not Equal Educational Opportunity: Board of Educ. v. Rowley, 102 S. Ct. 3034 (1982)*, 14 TEX. TECH. L. REV. 631, 647 (1983).

educational benefits in order to be appropriate.[122] Because determination of benefits must be made on an individual basis,[123] more discretion has been left to school districts and education agencies.[124] School districts may be free to balance a number of factors when developing programs from which students may receive educational benefits.

Education agencies may have an advantage over the handicapped, their parents and their advocates.[125] Commentators have suggested that if a district complies with the *Rowley* criteria including procedural safeguards, their educational decisions will probably be affirmed by courts.[126] Recent caseholdings suggest that parents may have a greater burden of proof placed upon them when challenging programs through procedural channels.[127] The *Springdale* decision, however, may provide encouragement to parents who would otherwise be reluctant to question their child's placement at the school district level. The fact that the hearing officer and state education agency disagreed with the school district implies that educational agencies are capable of impartial reviews, lessening the need for judicial intervention.

States may be required to accept a larger role in determining appropriate education.[128] Litigation may shift from federal to state courts for interpretations of appropriate education under state statutes.[129] State statutes may set more stringent requirements for appropriate education standards that the Act requires.[130] *Harrell v. Wilson City Schools*[131] held that the Supreme Court's definition of a free appropriate public education did not control interpretation of a state statute intended to provide each handicapped child an opportunity to achieve his full potential commensurate with that given other children.[132] Although the wording of an Arkansas statute re-

122. 102 S. Ct. at 3046, 3049.

123. Stotland, *E.H.L.R. Analysis: The Aftermath of Rowley—Business as Usual*, CURRENT E.H.L.R. DEC. AC-159, AC-163 (July, 1982); DuBow, *E.H.L.R. Analysis: Application of Rowley by Courts and SEA's*, CURRENT E.H.L.R. DEC. SA-107, SA-113 (April, 1983).

124. 102 S. Ct. at 3051.

125. DuBow, *supra* note 124, at SA-108.

126. *Id.*

127. *See, e.g.*, Frank v. Grover, CURRENT E.H.L.R. DEC. 554:148 (Cir. Ct. Wis. 1982)(school's proposed educational program was supported against parent's wishes).

128. *See* Summary and Analysis, *E.H.L.R. Analysis: What Rowley Means*, Current E.H.L.R. DEC. SA-29, SA-37-SA-38 (Nov., 1982).

129. *Id.*

130. *Id.*

131. CURRENT E.H.L.R. DEC. 554:125 (Ct. App. N.C. 1982).

132. *Id.* at 554:127.

quiring that "the most appropriate services" be made available could suggest higher standards at the state level,[133] the Arkansas statute has not been applied by courts reviewing compliance with the Act's appropriate education provisions.[134]

The Sprindale School District expressed concern that the expense of educating Sherry in her home school district might be unreasonable,[135] but the Eighth Circuit, in determining that Sherry could receive an appropriate education in the Springdale District, held that the cost would not be unreasonable.[136] Courts have considered the reasonableness of expenses, however, in reviewing appropriate education cases. In *Espino v. Besteiro*,[137] the cost of air conditioning a classroom for a handicapped student was found to be a reasonable expense, but the district court deciding the case suggested that if the cost had been unreasonable, other alternatives could have been considered.[138]

Conflicting views have been expressed concerning the education of a deaf student with non-handicapped students.[139] Although Sherry Grace would be provided an opportunity to experience activities with non-handicapped students, communication difficulties might hamper complete integration. The inability to communicate with non-handicapped students may be more restrictive to a deaf child than segregated placement in a facility for deaf students.[140] Conversely, placement in regular school settings may allow a deaf student to become more proficient at communicating with hearing persons. Because in either situation a student could arguably benefit, either could be considered appropriate. Future litigation will establish not only further appropriate education standards, but also

133. "It shall be the responsibility of the school district and the State to provide the most appropriate services based on careful evaluation of the child's needs . . ." ARK. STAT. ANN. § 81-2123 (1980).

134. *See* Springdale School District No. 50 v. Grace, 494 F. Supp. 266, (W.D. Ark. 1980). *See also* Harwell, *The Education for All Handicapped Children's Act—An Overview of Problems in Implementation*, Family Law Section Newsletter, Oct., 1983, at 16, 18.

135. 693 F.2d at 43.

136. *Id.*

137. 520 F. Supp. 905 (S.D. Tex. 1981).

138. *Id.* at 911. *See also* Pinkerton v. Moye, 509 F. Supp. 107 (W.D. Va. 1981)(emphasizing the importance of balancing the needs of handicapped individuals against the realities of limited funding).

139. *See* Large, *supra* note 48, at 269-71; *and* Tucker, *supra* note 122, at 244.

140. Large, *supra* note 48, at 271.

the influences exerted by state and local education agencies and the judicial system on the standards.

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