BOARD OF EDUCATION v. ROWLEY

SUPREME COURT OF THE UNITED STATES

458 U.S. 176; 102 S. Ct. 3034; 73 L. Ed. 2d 690 (1982)

JUSTICE REHNQUIST delivered the opinion of the Court.

…

This case arose in connection with the education of Amy Rowley, a deaf student at the Furnace Woods School in the Hendrick Hudson Central School District, Peekskill, N. Y. Amy has minimal residual hearing and is an excellent lipreader. During the year before she began attending Furnace Woods, a meeting between her parents and school administrators resulted in a decision to place her in a regular kindergarten class in order to determine what supplemental services would be necessary to her education. Several members of the school administration prepared for Amy's arrival by attending a course in sign-language interpretation, and a teletype machine was installed in the principal's office to facilitate communication with her parents who are also deaf. At the end of the trial period it was determined that Amy should remain in the kindergarten class, but that she should be provided with an FM hearing aid which would amplify words spoken into a wireless receiver by the teacher or fellow students during certain classroom activities. Amy successfully completed her kindergarten year.

As required by the Act, an IEP was prepared for Amy during the fall of her first-grade year. The IEP provided that Amy should be educated in a regular classroom at Furnace Woods, should continue to use the FM hearing aid, and should receive instruction from a tutor for the deaf for one hour each day and from a speech therapist for three hours each week. The Rowleys agreed with parts of the IEP but insisted that Amy also be provided a qualified sign-language interpreter in all her academic classes in lieu of the assistance proposed in other parts of the IEP. Such an interpreter had been placed in Amy's kindergarten class for a 2-week experimental period, but the interpreter had reported that Amy did not need his services at that time. The school administrators likewise concluded that Amy did not need such an interpreter in her first-grade classroom. They reached this conclusion after consulting the school district's Committee on the Handicapped, which had received expert evidence from Amy's parents on the importance of a sign-language interpreter, received testimony from Amy's teacher and other persons familiar with her academic and social progress, and visited a class for the deaf.

When their request for an interpreter was denied, the Rowleys demanded and received a hearing before an independent examiner. After receiving evidence from both sides, the examiner agreed with the administrators' determination that an interpreter was not necessary because "Amy was achieving educationally, academically, and socially" without such assistance. … The examiner's decision was affirmed on appeal by the New York Commissioner of Education on the basis of substantial evidence in the record…

The District Court found that Amy "is a remarkably well-adjusted child" who interacts and communicates well with her classmates and has "developed an extraordinary rapport" with her

teachers. 483 F.Supp. 528, 531 (1980). It also found that "she performs better than the average child in her class and is advancing easily from grade to grade," *id*., at 534, but "that she understands considerably less of what goes on in class than she could if she were not deaf" and thus "is not learning as much, or performing as well academically, as she would without her handicap," *id*., at 532. This disparity between Amy's achievement and her potential led the court to decide that she was not receiving a "free appropriate public education," which the court defined as "an opportunity to achieve [her] full potential commensurate with the opportunity provided to other children." *Id*., at 534. According to the District Court, such a standard "requires that the potential of the handicapped child be measured and compared to his or her performance, and that the resulting differential or 'shortfall' be compared to the shortfall experienced by nonhandicapped children."
…

A divided panel of the United States Court of Appeals for the Second Circuit affirmed. …

This is the first case in which this Court has been called upon to interpret any provision of the [Handicapped Children] Act. …the Act does expressly define "free appropriate public education":

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

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

Noticeably absent from the language of the statute is any substantive standard prescribing the level of education to be accorded handicapped children. Certainly the language of the statute contains no requirement like the one imposed by the lower courts -- that States maximize the potential of handicapped children "commensurate with the opportunity provided to other children." …

…By passing the Act, Congress sought primarily to make public education available to handicapped children. But in seeking to provide such access to public education, Congress did not impose upon the States any greater substantive educational standard than would be necessary to make such access meaningful. Indeed, Congress expressly "[recognized] that in many

instances the process of providing special education and related services to handicapped children is not guaranteed to produce any particular outcome." … Thus, the intent of the Act was more to open the door of public education to handicapped children on appropriate terms than to guarantee any particular level of education once inside.
…

That the Act imposes no clear obligation upon recipient States beyond the requirement that handicapped children receive some form of specialized education is perhaps best demonstrated by the fact that Congress, in explaining the need for the Act, equated an "appropriate education" to the receipt of some specialized educational services. The Senate Report states: "[The] most recent statistics provided by the Bureau of Education for the Handicapped estimate that of the more than 8 million children . . . with handicapping conditions requiring special education and related services, only 3.9 million such children are receiving an appropriate education." …

It is evident from the legislative history that the characterization of handicapped children as "served" referred to children who were receiving some form of specialized educational services from the States, and that the characterization of children as "unserved" referred to those who were receiving no specialized educational services. For example, a letter sent to the United States Commissioner of Education by the House Committee on Education and Labor, signed by two key sponsors of the Act in the House, asked the Commissioner to identify the number of handicapped "children served" in each State. The letter asked for statistics on the number of children "being served" in various types of "special education [programs]" and the number of children who were not "receiving educational services." …

Respondents contend that "the goal of the Act is to provide each handicapped child with an equal educational opportunity." Brief for Respondents 35. We think, however, that the requirement that a State provide specialized educational services to handicapped children generates no additional requirement that the services so provided be sufficient to maximize each child's potential "commensurate with the opportunity provided other children." …

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

The District Court and the Court of Appeals thus erred when they held that the Act requires New York to maximize the potential of each handicapped child commensurate with the opportunity

provided nonhandicapped children. Desirable though that goal might be, it is not the standard that Congress imposed upon States which receive funding under the Act. Rather, Congress sought primarily to identify and evaluate handicapped children, and to provide them with access to a free public education.

Implicit in the congressional purpose of providing access to a "free appropriate public education" is the requirement that the education to which access is provided be sufficient to confer some educational benefit upon the handicapped child. …

The determination of when handicapped children are receiving sufficient educational benefits to satisfy the requirements of the Act presents a more difficult problem. The Act requires participating States to educate a wide spectrum of handicapped children, from the marginally hearing-impaired to the profoundly retarded and palsied. It is clear that the benefits obtainable by children at one end of the spectrum will differ dramatically from those obtainable by children at the other end, with infinite variations in between. One child may have little difficulty competing successfully in an academic setting with nonhandicapped children while another child may encounter great difficulty in acquiring even the most basic of self-maintenance skills. We do not attempt today to establish any one test for determining the adequacy of educational benefits conferred upon all children covered by the Act. 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.

The Act requires participating States to educate handicapped children with nonhandicapped children whenever possible. When that "mainstreaming" preference of the Act has been met and a child is being educated in the regular classrooms of a public school system, the system itself monitors the educational progress of the child. Regular examinations are administered, grades are awarded, and yearly advancement to higher grade levels is permitted for those children who attain an adequate knowledge of the course material. The grading and advancement system thus constitutes an important factor in determining educational benefit. Children who graduate from our public school systems are considered by our society to have been "educated" at least to the grade level they have completed, and access to an "education" for handicapped children is precisely what Congress sought to provide in the Act.

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

… When the elaborate and highly specific procedural safeguards embodied in § 1415 are contrasted with the general and somewhat imprecise substantive admonitions contained in the Act, we think that the importance Congress attached to these procedural safeguards cannot be gainsaid. It seems to us no exaggeration to say that Congress placed every bit as much emphasis upon compliance with procedures giving parents and guardians a large measure of participation at every stage of the administrative process, see, *e. g*., §§ 1415(a)-(d), as it did upon the measurement of the resulting IEP against a substantive standard. We think that the congressional emphasis upon full participation of concerned parties throughout the development of the IEP, as well as the requirements that state and local plans be submitted to the Secretary for approval, demonstrates the legislative conviction that adequate compliance with the procedures prescribed would in most cases assure much if not all of what Congress wished in the way of substantive content in an IEP.

Thus the provision that a reviewing court base its decision on the "preponderance of the evidence" is by no means an invitation to the courts to substitute their own notions of sound educational policy for those of the school authorities which they review. …

… [A] court's inquiry in suits … is twofold. First, has the State complied with the procedures set forth in the Act? And second, is the individualized educational program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits? If these requirements are met, the State has complied with the obligations imposed by Congress and the courts can require no more.

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

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

JUSTICE WHITE, with whom JUSTICE BRENNAN and JUSTICE MARSHALL join, dissenting.

In order to reach its result in this case, the majority opinion contradicts itself, the language of the statute, and the legislative history. Both the majority's standard for a "free appropriate education" and its standard for judicial review disregard congressional intent.

I

The majority first turns its attention to the meaning of a "free appropriate public education." The Act provides:

> 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 …

The majority reads this statutory language as establishing a congressional intent limited to bringing "previously excluded handicapped children into the public education systems of the States and [requiring] the States to adopt *procedures* which would result in individualized consideration of and instruction for each child." ... In its attempt to constrict the definition of "appropriate" and the thrust of the Act, the majority opinion states: "Noticeably absent from the language of the statute is any substantive standard prescribing the level of education to be accorded handicapped children. Certainly the language of the statute contains no requirement like the one imposed by the lower courts -- that States maximize the potential of handicapped children 'commensurate with the opportunity provided to other children.'" ...
...

The majority opinion announces a different substantive standard, that "Congress did not impose upon the States any greater substantive educational standard than would be necessary to make such access meaningful." ... While "meaningful" is no more enlightening than "appropriate," the Court purports to clarify itself. Because Amy was provided with *some* specialized instruction from which she obtained *some* benefit and because she passed from grade to grade, she was receiving a meaningful and therefore appropriate education. n2

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n2 As further support for its conclusion, the majority opinion turns to *Pennsylvania Assn. for Retarded Children* v. *Commonwealth*, 334 F.Supp. 1257 (ED Pa. 1971), 343 F.Supp. 279 (1972) *(PARC)*, and *Mills* v. *Board of Education of District of Columbia*, 348 F.Supp. 866 (DC 1972). That these decisions served as an impetus for the Act does not, however, establish them as the limits of the Act. In any case, the very language that the majority quotes from *Mills, ante*, at 193, 199, sets a standard not of *some* education, but of educational opportunity equal to that of nonhandicapped children.

Indeed, *Mills*, relying on decisions since called into question by this Court's opinion in *San Antonio Independent School Dist*. v. *Rodriguez*, 411 U.S. 1 (1973), states:

"In Hobson v. Hansen, [269 F.Supp. 401 (DC 1967),] Judge Wright found that denying poor public school children

educational opportunity equal to that available to more affluent public school children was violative of the Due Process Clause of the Fifth Amendment. A *fortiori*, the defendants' conduct here, denying plaintiffs and their class not just an equal publicly supported education but all publicly supported education while providing such education to other children, is violative of the Due Process Clause." 348 F.Supp., at 875.

Whatever the effect of *Rodriguez* on the validity of this reasoning, the statement exposes the majority's mischaracterization of the opinion and thus of the assumptions of the legislature that passed the Act.

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This falls far short of what the Act intended. The Act details as specifically as possible the kind of specialized education each handicapped child must receive. It would apparently satisfy the Court's standard of "access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child," ... for a deaf child such as Amy to be given a teacher with a loud voice, for she would benefit from that service. The Act requires more. It defines "special education" to mean "specifically designed instruction, at no cost to parents or guardians, to *meet the unique needs* of a handicapped child . . . ." § 1401(16) (emphasis added). Providing a teacher with a loud voice would not meet Amy's needs and would not satisfy the Act. The basic floor of opportunity is instead, as the courts below recognized, 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. Amy Rowley, without a sign-language interpreter, comprehends less than half of what is said in the classroom -- less than half of what normal children comprehend. This is hardly an equal opportunity to learn, even if Amy makes passing grades.

…

The Court's discussion of the standard for judicial review is as flawed as its discussion of a "free appropriate public education." According to the Court, a court can ask only whether the State has "complied with the procedures set forth in the Act" and whether the individualized education program is "reasonably calculated to enable the child to receive educational benefits… Both the language of the Act and the legislative history, however, demonstrate that Congress intended the courts to conduct a far more searching inquiry.

…

The legislative history shows that judicial review is not limited to procedural matters and that the state educational agencies are given first, but not final, responsibility for the content of a handicapped child's education. The Conference Committee directs courts to make an "independent decision." S. Conf. Rep. No. 94-455, p. 50 (1975). The deliberate change in the review provision is an unusually clear indication that Congress intended courts to undertake substantive review instead of relying on the conclusions of the state agency.

…

Thus, the Court's limitations on judicial review have no support in either the language of the Act or the legislative history. Congress did not envision that inquiry would end if a showing is made that the child is receiving passing marks and is advancing from grade to grade. Instead, it intended to permit a full and searching inquiry into any aspect of a handicapped child's education. The Court's standard, for example, would not permit a challenge to part of the IEP;

the legislative history demonstrates beyond doubt that Congress intended such challenges to be possible, even if the plan as developed is reasonably calculated to give the child some benefits.

…