

Rowley at 25: An Examination of its Precedential Impact

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In 1982, the United States Supreme Court rendered its first decision construing the Education for All Handicapped Children's Act (EAHCA) (Public Law 94-142) in *Board of Education of Hendrick Hudson v. Rowley* (458 U.S. 176, 102 S.Ct. 3034 (1982)). Twenty-five years later, although the law's name has changed to the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1400 et seq., 34 C.F.R. 300 et seq.), *Rowley* stands firm as the primary precedent whenever the educational rights of children with disabilities are considered. That *Rowley* guides the construction of the IDEA is not terribly surprising, however, this landmark decision also provides precedent for other basic legal principles in the practice of education law. Accordingly, this paper examines the precedential impact of *Rowley* both as related to special education and to school law in general.

Part I: *Rowley* Revisited

Rehnquist's Majority Opinion (joined by Chief Justice Burger and Justices Powell, Stevens, and O'Connor):

“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” (at 192).

“We therefore conclude that the “basic floor of opportunity” provided by the Act consists of access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child” (at 201).

“Therefore, a court's inquiry in suits brought under § 1415(e)(2) is twofold. First, has the State complied with the procedures set forth in the Act? 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” (at 206-207).

Blackmun's Concurrence:

“The question is whether Amy's program, *viewed as a whole*, offered her an opportunity to understand and participate in the classroom that was substantially equal to that given her nonhandicapped classmates. This is a standard predicated on equal educational opportunity and equal access to the educational process,

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

White’s Dissent (joined by Justices Brennan and Marshall):

“The legislative history thus directly supports the conclusion that the Act intends to give handicapped children an educational opportunity commensurate with that given other children” (at 214).

“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” (at 215).

Part II: Rowley’s impact on IDEA’s Construction

Definition of Appropriateness:

Board of Educ. of Murphysboro Community Unit School Dist. No. 186 v. Illinois State Board of Education, 41 F.3d 1162, 1166 (7th Cir. 1994): “To comply with the requirements of the IDEA, a school district must follow the procedures set forth in the Act and develop an IEP through those procedures that is reasonably calculated to enable the child to receive educational benefits. *Rowley*, 458 U.S. at 206-07, 102 S.Ct. at 3050-51. Once the school district has met these two requirements, the courts cannot require more...”

Application of the Test:

Rowley, at 202: “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.”

Van Duyn v. Baker School District 5J, ---F. 3d ---, 2007 WL 2493495 (9th Cir. 2007): “We have applied the *Rowley* framework in numerous cases. *See, e.g., M.L. v. Federal Way Sch. Dist.*, 394 F.3d 634, 644-46 (9th Cir.2005); *Amanda J.*, 267 F.3d at 890-95; *Wartenberg*, 59 F.3d at 891-97. However, we have not previously considered challenges to the implementation-as opposed to the content-of an IEP.”

Part III: Rowley’s impact on school law generally

Deference to School Authority in Educational Policy-making:

Hazelwood v. School District v. Kuhlmeier, 484 U.S. 260, 273, 108 S.Ct. 562 (1982): This standard is consistent with our oft-expressed view that the education

of the Nation's youth is primarily the responsibility of parents, teachers, and state and local school officials, and not of federal judges.

Peter v. Wedl, 155 F.3d 992 (8th Cir. 1998). “Moreover, and importantly, the majority ignores the Supreme Court's admonition that "courts are not to 'substitute their own notion of sound educational policy for those of the school authorities which they review.'”

Garnett By and Through Smith v. Renton School Dist. No. 403, 874 F.2d 608, 614 (9th Cir. 1989): Courts have always afforded school districts broad discretion in the management of school affairs, limited, of course, by any applicable constitutional or statutory principles.

Hubbard By and Through Hubbard v. Buffalo Independent School Dist., 20 F.Supp.2d 1012, 1015 (W.D.Tex.,1998): Policy decisions made by local school boards must be examined by courts with great deference and care.

Mootness:

Adams v. Bowater Inc., 313 F.3d 611, 614 (1st Cir. 2002): [W]e doubt that the Supreme Court meant woodenly to exclude all other factors, including equitable or other considerations, bearing on whether a case that began with a concrete controversy should be dismissed when the conduct ceases; its own case law suggests that other concerns can play a role.

Brody By and Through Sugzdinis v. Spang, 957 F.2d 1108, 1113 (3rd Cir. 1992): In the present case, the length of the school year during which a student is a graduating high school senior is clearly too short to complete litigation and appellate review of a case of this complexity.

McGuire v. Switzer, 734 F.Supp. 99, 109, n. 8 (S.D.N.Y.,1990): Even if plaintiff's claims were moot, this Court would nevertheless not dismiss them on such grounds since the claims are capable of repetition and likely to evade judicial review. When plaintiff commenced this action, it was nearly one and a half academic years before his graduation from law school. Since a person who seeks to challenge an OVR regulation must first proceed through OVR's layers of administrative review, it is possible that no person subject to the caps would ever be able to obtain federal court review before completing his or her last year of school.

Judicial Review of Administrative Decisions:

City of Chicago v. International College of Surgeons, 522 U.S. 156, 118 S.Ct. 523, 533 (1997): “[D]istrict courts routinely conduct deferential review pursuant to their original jurisdiction over federal questions, including on-the-record review of federal administrative action. Nothing in § 1367(a) suggests that district

courts are without supplemental jurisdiction over claims seeking precisely the same brand of review of local administrative determinations.

Part IV: *Rowley*'s Omissions

Relationship between Procedural and Substantive Aspects of the IDEA:

Irving Independent School Dist. v. Tatro, 468 U.S. 883 (1984): “Judicial review is equally appropriate in this case [as in *Rowley*], which presents the legal question of a school’s substantive obligation under ‘related services’ requirements [of EAHCA]” (at 890, n. 6)

Benefit:

Polk v. Central Susquehanna Intermediate Unit 16, 853 F.2d 171, 180 (3rd Cir. 1988): “We hold that the EHA calls for more than a trivial educational benefit. That holding rests on the Act and its legislative history as well as interpretation of *Rowley*.”

Responsibility for Benefit:

How do we ensure that achievement comes because of a school’s efforts and not in spite of them?