Subcommittee Topic Selection Form

Task Force for Children with Special Needs

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Task Force For Children with Special Needs Education subcommittee
TEA TCIP Access to the General Curriculum Committee
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Please describe the issue you are recommending for study:

Legislating a state standard of meaningful educational benefit for people with disabilities. In Texas, our hearing officers rely heavily on the standard of "some educational benefit" for IEPs for children with disabilities as defined by the Rowley Supreme Court decision from 1982, which interpreted the 1975 Education of the Handicapped Act. This sets a very low bar that is inconsistent with IDEA 1997 and 2004 in which Congress stated the purpose of IDEA is to provide education that leads to independent living, employment, and further education. Other states and other circuits are slowly setting a higher standard of meaningful educational benefit. It is time Texas takes the lead to define via legislation what our standard will be rather than allowing it to be defined by continued reliance on caselaw that has been superseded by IDEA legislation.

Here is the draft proposed standard being considered by the Governor's Committee on People with Disabilities: "Texas chooses to establish an education standard that goes beyond the 1982 Rowley Supreme Court decision in defining educational benefit for those with disabilities. Texas schools shall provide a meaningful, free appropriate public education (FAPE) for students with disabilities, utilizing research based methods and inclusive practices to the maximum extent possible. Meaningful FAPE is defined as significant educational benefit that develops the skills and knowledge necessary which will likely lead to independent living, post secondary education, and full employment for a person with a disability."

I would like to see this standard enacted by the Legislature.

Why do you recommend this issue be examined by the Task Force/subcommittees?

Only a legislative solution can define our educational standard. Otherwise, we will continue to educate our children with disabilities largely the same way with undesirable outcomes which are in line with current caselaw. Special education is failing under the Rowley standard. Reference the Texas Effectiveness study found at www.esc11.net Departments > Instructional Support and Accountability , Texas Effectiveness Study Program; also reference the study "A Propensity Score Matching Analysis of the Effects of Special Education Services" from the Journal of Special Education. This analysis indicates that the special education services being provided to U.S. schoolchildren during their elementary years may not be of sufficient strength to prevent a subsequent lack of basic skills proficiency. Specifically, it found that special education services had negative or statistically nonsignificant effects on young children's reading and mathematics skills. It

found that children receiving special education services in the spring of 2002 displayed significantly lower reading skills in the spring of 2004 than closely matched peers not receiving such services.

Within the Rowley decision, the Supreme Court left open the possibility that States and/or school districts could set a higher standard than the minimum floor defined within the case:

"In assuring that the requirements of the Act (EHA/ IDEA) 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.

Has this issue already been recognized or studied in Texas? If so, by whom and with what outcome?

We are just beginning to discuss this issue at the Texas Special Education Continuing Advisory Committee. However, we are limited in that the TEA adopts and publishes policy and guidelines based on legislation. This issue is being considered by the Governor's Committee on People with Disablities. It appears that the Legislative Task Force for Children with Special Needs is the appropriate venue to address setting a state standard.

Please list any other individuals, organizations, or research that may provide information on this issue:

The following are some resources discussing this issue:

http://www.harborhouselaw.com/articles/rowley.reexamine.johnson.htm

http://www.wrightslaw.com/law/art/kl.misd.rowley.htm

http://www.wrightslaw.com/law/caselaw/07/WA.jl.misd.htm

http://www.wrightslaw.com/law/caselaw/ussupct.rowley.htm

http://www.wrightslaw.com/law/caselaw/04/6th.deal.hamilton.tn.htm

Here is my summary from Deal v Hamiliton: Rowley is the only Supreme Court decision to have addressed the level of educational benefit that must be provided pursuant to an IEP. Rowley sets the standard as "some" educational benefit. For instance, if a child who cannot count to 10 at age 8 receives special ed and reaches the goal of counting to 10 by age 16, the standard may be met! This is hardly a way to create productive citizens. Nothing in Rowley precludes the setting of a higher standard than the provision of "some" or "any" educational benefit; indeed, the legislative history cited in Rowley provides strong support for a higher standard in a case such as this, where the difference in level of education provided can mean the difference between self-sufficiency and a life of dependence.

The current version of the IDEA provides further support for such sentiments. Congress explicitly found that shortcomings of the previous act, the Education for all Handicapped Children Act of 1975, included low expectations for disabled children and "an insufficient focus on applying replicable research on proven methods of teaching and learning for children with disabilities." 20 U.S.C. § 1400(a)(4). Congress has declared that the school personnel who work with disabled children should receive high quality professional development in order to provide such personnel with the skills necessary to "ensure that [all disabled children] have the skills and knowledge necessary to enable them . . . to be prepared to lead productive, independent, adult lives, to the maximum extent possible." 20 U.S.C. § 1400(a)(5)(E). Indeed, one of the stated purposes of the IDEA is "to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living." 20 U.S.C. § 1400(d)(1)(A)

At the very least, the intent of Congress appears to have been to require a program providing a meaningful educational benefit towards the goal of self-sufficiency, especially where self-sufficiency is a realistic goal for a particular child. Indeed, states providing no more than some educational benefit could not possibly hope to attain the lofty goals proclaimed by Congress.

From KL v Mercer Island: IDEA's "Meaningful Benefit" Requirement

" . . .[W]e agree that the IDEA requires an IEP to confer a "meaningful educational benefit" gauged in relation to the potential of the child at issue. . . At the very least, the intent of Congress appears to have been to require a program providing a meaningful educational benefit toward the goal of self-sufficiency." Deal v. Hamilton County Bd. of Educ., 392 F.3d 840, 862, 864 (6th Cir. 2004).

A core issue in this proceeding is whether MISD and the ALJ applied the correct standard for the determination of whether K.L. was receiving a "meaningful educational benefit" from the programs developed for her and implemented by the District. A review of the statutes and cases indicates that they did not, and Parents are correct that the failure of the IEPs to focus on progressing K.L. toward self-sufficiency (i.e., independent living) and her desired goal of post-secondary education represents a failure to confer the benefit contemplated by the IDEA.

It is important to note that the law regarding "disability education" underwent a change about ten years ago. Prior to that time, the statutory scheme was the Education for Handicapped Children Act of 1975 (EHA), the purpose of which was solely to provide access to education for disabled students who had been marginalized in the public school system. Satisfied that the goal of "access" had been reached, in 1997 Congress enacted the IDEA with the express purpose of addressing implementation problems resulting from "low expectations, and an insufficient focus on applying replicable research on proven methods of teaching and learning for children with disabilities." 20 U.S.C. § 1400(c)(4). The statute clearly stated its commitment to "our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities." 20 U.S.C. § 1400(c)(1).

This represented a significant shift in focus from the disability education system in place prior to 1997. In defining the applicable standard, the District and the ALJ place much reliance on the Supreme Court case of Hendrick Hudson District Bd. of Education v. Rowley, 458 U.S. 176 (1982), a case which interprets the EHA. To the extent that the Supreme Court at that time was interpreting a statute which had no requirement (1) that programming for disabled students be designed to transition them to post-secondary education, independent living or economic self-sufficiency or (2) that schools review IEPs to determine whether annual goals were being attained, the Court must consider that opinion superseded by later legislation, and the District's and ALJ's reliance on it misplaced.

The IDEA is not simply about "access;" it is focused on "transition services,. . . an outcome-oriented process, which promotes movement from school to post-school activities. . . taking into account the student's preferences and interests." 20 U.S.C. § 1401(30); 34 CFR § 300.29. This is such a significant departure from the previous legislative scheme that any citation to pre-1997 case law on special education is suspect.

The federal regulations interpreting IDEA speak to increased focus on self-sufficiency:

". . . [O]ne of the key purposes of the IDEA Amendments of 1997 was to 'promote improved education results for children with disabilities through . . . educational experiences that prepare them for later education challenges and employment.' (H.Rep. No. 105-95, p. 82 (1997); S.Rep. No. 105-17, p. 4 (1997)).