

## New Hope for Twice Exceptional Students

It has been more than thirty years since the enactment of the original Individuals with Disabilities Act (first titled The Education for All Handicapped Children Act of 1975 or PL 94-142) and the Rehabilitation Act of 1973, a civil rights law, which included Section 504. Both have served to protect the rights of students with disabilities. As a longtime educator who had the benefit of teaching before and after special education law was enacted, and now as a special education consultant for the past 16 years, I can attest to the fact that federal legislation has globally improved the educational opportunities and outcomes for students with disabilities. These improvements assure that students with disabilities will become productive, independent members of society to the extent that they are capable. That has always been the goal of special education law in serving the needs of students and our society as a whole.

There is one group of students whom the federal laws have failed to protect over time in most states' interpretations, and that is the Gifted/Disabled group of students. Most commonly, these students are Gifted and Learning Disabled or Gifted and Attention Deficit/ Hyperactivity Disordered. Research has shown that about one-sixth of gifted students have some disability. These students are gifted intellectually but experience a deficit in learning or in the executive functions necessary for work production. Students of this profile are often some of the most inventive and original thinkers who, given the proper tools and inspiration, can be great forces for creativity and innovation. However, until their dual exceptionalities are identified, too often they are seen as lazy and lacking motivation. For the Gifted/Disabled students, we have in some cases strayed from the initial intent of the laws, likely as a silent backlash to the demands these laws made on the public schools. Over the years, services for the Gifted/LD or Gifted/ADHD students became harder and harder to obtain based on more stringent interpretations of the regulations. The case of *Board of Education of the Hendrick Hudson Central School District v. Rowley* 458 U. S. 176 (1982) lowered the bar in educational standards for students with special needs by declaring that services did not have to be the best or even appropriate for a student, they merely had to be reasonably calculated to provide some educational benefit for the child. This allowed little likelihood for addressing the needs of disabled students who were also gifted. Additionally, students who were identified as both gifted and disabled by the schools often found themselves in the position of having to forgo access to either their gifted programs or their special education supports since the schools did not combine these services. However, it appears that in the most recent IDEA 2004 regulations and in their interpretation, that trend could be taking a more positive direction..

Throughout its various reauthorizations, IDEA has defined a specific learning disability as a “disorder of one or more basic psychological processes involved in understanding or using language, written or spoken, which disorder may manifest itself in imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations.” Federal regulations have, in turn, articulated how the existence of a specific learning disability is determined. It is these regulations that have changed over time, and these changes have served to dictate the access of gifted students to special education services.

In the 1990 and earlier Federal regulations, a student was determined to evidence a learning disability if the student did **not** achieve commensurate with age **and** ability in one or more academic area (oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematics calculation or mathematics reasoning) given that the child was provided with appropriate learning experiences for the student's age and ability level. A child who evidenced a severe discrepancy between his ability and achievement, regardless of his age-level performance, met the criteria for eligibility. Over time, however, the interpretation of that regulation changed, based on more stringent use of the words **not** and **and**. In order to be identified as a student with a learning disability, a student had to demonstrate that he did not achieve commensurate with both age and ability levels, essentially eliminating eligibility where achievement was far below the student's ability but still within age expectations. Schools justified this by arguing that as long as a student was achieving commensurate with age level, a disability did not exist. This was, in my opinion, clear discrimination against the gifted. As I often explained to school administrators, a gifted student could be achieving three standard deviations below the student's ability and not receive special education support because the student's achievement was average for his age. Yet, a student of average ability could receive special education support with a one standard deviation discrepancy between ability and achievement. In these

cases, the student who experienced the greater impact and thus the most academic frustration received the least support.

More recent federal regulations for IDEA 2004, however, have taken a notable step in rethinking how learning disabilities are defined and determined, reflecting the most recent research in the field. The reauthorized law expands its purpose to include preparing students with disabilities for further education as well as employment and independent living, in essence raising the bar for educational support in readying students for college. The federal regulations add reading fluency as an area of underachievement in identifying a specific learning disability (SLD) thereby expanding the definition of SLD. The regulations also specifically note that states must not require use of a severe discrepancy model in identifying students with learning disabilities, and they may permit use of a process based on the child's response to intervention (RTI) or use of other research-based procedures for determining learning disabilities. In the supplemental commentary of the law, there is specific discussion as to whether students who are gifted would be affected by this change in criteria. While several commentators believe eliminating the discrepancy model would result in the inability to identify gifted students as learning disabled, one commentator states that a scatter of scores would be an appropriate model to use with gifted students. The commentary response notes that the regulations "clearly allow discrepancies in achievement domains, typical of children with SLD who are gifted, to be used to identify children with SLD." In determining the existence of a SLD, the federal regulations have changed the wording of the criteria from earlier versions. Now, a student may be determined to have a specific learning disability if the child does not achieve adequately for age or State-approved grade-level standards in an academic area. Use of the word *adequately* leaves some room for interpretation, suggesting a broader scope of consideration. Additionally, the regulations state that if the child does not make sufficient progress (likely through RTI) to meet age or grade-level standards or the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, grade-level standards or intellectual development, the child may be identified as learning disabled. These new standards in identifying learning disabilities may allow greater opportunity for gifted/disabled students to be found eligible for special education services. Now, students who evidence uneven information processing skills, relative to their own development, or uneven achievement can be labeled SLD. Students whose classroom performance and not just grades show a pattern of strengths and weaknesses, such as is often the case for Gifted/Disabled students whose work production suffers, can also be considered for eligibility. Additionally, now including reading fluency as a measure of achievement allows measurement of a skill that often is an invisible disability for gifted and other students. Dr. Sally Shawitz, noted researcher, author and Yale University professor, has defined reading fluency as the hallmark of dyslexia in bright students who can otherwise compensate for their deficits. As has always been the case historically, it will likely be through case law that the applicability of the new regulations in identifying gifted/disabled students will be delineated.

Historically, when gifted/disabled students have been found eligible for special education services, it was not uncommon for the need for LD services to preclude access to gifted or accelerated programming or vice versa. As recently as a month ago, one of my clients was informed in his high-school IEP that even though his current program in school included special education support in general education in all academic areas, that was not possible for next year. The school said it simply did not provide special education support in advanced science classes. If the student needed support in science, he would need to be placed in a lower-level science class. On December 26, 2007, the Assistant Secretary for the Office of Civil Rights issued a "Dear Colleague" policy letter specifically addressing the issue of access to accelerated programs for students with disabilities. That letter stated, "...if a qualified student with a disability requires related aids and services to participate in a regular education class or program, then a school cannot deny the student the needed related aids and services in an accelerated class or program." According to this letter, denial of these services is a denial of FAPE (Free and Appropriate Public Education) under both IDEA and Section 504. For gifted students with learning or attentional disabilities, this letter serves as a ray of hope that there is now a clear mandate to meet the needs of their dual exceptionality.

The issues surrounding the education of gifted/disabled students have not been merely academic in any sense of the word for me. Fifteen years ago, my oldest child was identified and provided services as a student with giftedness, a learning disability and AD/HD. I do not know how my son would have made it out of high school without his organizational support and accommodations. Seven years later, his younger brother, who

also had AD/HD, was denied special education services because his grades and test scores were average or above. When he entered Yale, their learning support center recognized his profile and offered him accommodations to address his needs. These accommodations allowed him to take on greater challenges academically than ever before. My son appreciated the fact that with extra time, he could manage his attention effectively in order to, for example, chart multiple variables in calculus. Both my sons have come to realize their potential, if not maximize it, as a result of appropriate accommodations and the recognition of their potential. They are all the better prepared to contribute to society as a whole.

When school systems tell children that achieving at grade level is all that is expected, no matter what their ability or disability, they are sending a message that enforces the attitude that doing just enough to get by is a life goal for them. *Rowley* may have helped school systems' bottom lines, but its toll on society as a whole is immeasurable. Schools that strive for appropriate (and no better) as their standard for their educational offerings in turn encourage mediocrity in their students. Mediocrity seldom fosters advancement, and our society has always depended upon its finest and most creative thinkers to make progress. No mind should be wasted, much less one-sixth of all the best minds. Education must take seriously its mandate to prepare this generation to take its place in society and to create a society where each person is able to contribute to the maximum of his ability. In the most recent interpretations of the laws protecting students with special needs, it appears that we may be inching every so slightly back in that direction as we did pre-*Rowley*.

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