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**AN ANALYSIS OF THE LEGAL AND POLICY
ARGUMENTS FOR THE INCLUSION OF THE
GIFTED-HANDICAPPED IN GIFTED EDUCATION PROGRAMS**

By

Mary E. Scott

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ABSTRACT

AN ANALYSIS OF THE LEGAL AND POLICY ARGUMENTS FOR THE INCLUSION OF THE GIFTED-HANDICAPPED IN GIFTED EDUCATION PROGRAMS

By

Mary E. Scott

The educational potential of over 300,000 gifted-handicapped children in the United States is at risk. While the Education for All Handicapped Children Act, now called the Individuals with Disabilities Education Act, mandates a free and appropriate education for these children, the Supreme Court, in Board of Education of Hendrick Hudson Central School District v. Rowley, held that that law requires no more than one grade a year progress. Gifted-handicapped children, who could progress at a faster pace, have no guarantee that they will be helped to reach that potential.

This thesis will demonstrate that, where a school system provides a program for gifted students, the gifted-handicapped child should have access to the program. Strong policy grounds for such inclusion will be presented, ranging from the contribution these talented individuals can make to society to the need to treat the gifted-handicapped equitably with the non-handicapped gifted child. Perhaps more importantly, legal arguments will be developed, based in the Equal Protection Clause of the United States Constitution, section 504 of the Rehabilitation Act and the Americans with Disabilities Act, that lead to the conclusion that such students cannot simply be excluded. Furthermore, the same sources will be shown to provide a basis to argue that selection criteria must be adapted so as not to eliminate a qualified handicapped child and that adaptive provisions must be made to allow the child to

be successful in the program.

The thrust of this thesis is that school systems that have programs for the gifted must provide the gifted-handicapped the opportunity to participate. This conclusion has implications for the assessment methods used to identify gifted-handicapped students. It also requires accommodations within the gifted programs to allow the gifted-handicapped to succeed. Specific assessment issues will be addressed and the limits of requirements for accommodation will be discussed. The thesis will conclude with specific policy recommendations on implementing the reforms required.

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DEDICATION

This dissertation is dedicated to my husband Kevin W. Saunders and my daughter Molly Julia Saunders-Scott. They supported and encouraged me throughout the entire five year program and more. It is also dedicated to my mother Edith V. Scott, who encouraged me through two Ph.D. programs. She died on February 12, 1999.

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I

AN INTRODUCTION TO THE SHORTCOMINGS OF GIFTED-HANDICAPPED EDUCATION

The very idea of a gifted-handicapped child may seem to be a contradiction. After all, a gifted child is at the extreme positive end of the normal distribution of talents or abilities, while a handicapped child is seen as being at the extreme negative end of such a distribution. Nonetheless, why can't an individual be gifted in some regard and still be handicapped in another? Why can't a hearing impaired child be highly gifted in mathematics or in art? Why can't a mobility impaired child be a brilliant poet? Why can't a dyslexic child be musically talented?

History has certainly provided us with examples of such gifted-handicapped individuals. While precise diagnoses may not be available, it is known that both Albert Einstein and Thomas Edison were considered less than stellar students. Both were seen as lacking in intelligence, yet both were obviously highly gifted. Winston Churchill is said to have suffered from learning disabilities and to have been hyperactive, but he too was obviously gifted. A label like the hyphenated "gifted-handicapped" must be applied to these individuals and others like them. It is not the case that their gifts and talents simply balance, leaving them at the center of a normal distribution, or that one outweighs the other, leaving them above or below the mean on a single normally distributed scale. Their gifts and their handicaps are in different areas. They are far above the mean on one scale and below on a

separate scale. They are gifted-handicapped, and it has been estimated that there are over 300,000 such gifted-handicapped children whose educational potential is at risk (Piirto, 1994).

It might also be thought that the gifted-handicapped would have their needs met as a result of the dictates of federal law. Federal law does require that all handicapped students be provided a free and appropriate education in the least restrictive setting possible. It might seem then that a gifted-handicapped child would have his or her handicap addressed, while at the same time being afforded the opportunity to participate in a gifted program. However, there is no federal requirement that participation in a gifted program be an available option for the gifted-handicapped, just as the nonhandicapped gifted child is not guaranteed such a program.

The failure to mandate an education to match the gifts of a gifted-handicapped child is not an injustice specific to them. While it may be argued that the failure to address the needs of the gifted generally is unwise or even unjust, that is not an argument directed specifically at the gifted-handicapped. Where there is a general failure to provide gifted education, the handicapped are treated equally, in that regard, to the non handicapped. There are, however, at least two ways in which treatment may not really be equal.

If there is no gifted program in a school, gifted children will often still advance more quickly than the average child. At least some gifted children will simply absorb more of the material presented and will advance at a rate of more than one grade level per year. If the gifted-handicapped child were given special attention for his or her handicap, that child might also advance at more than a grade level per year pace, even without a special program aimed

at strengthening the child's gifts. The difficulty, however, is that the fact that a gifted-handicapped child advances at a pace of at least a grade level per year may mask the fact that the child even has a disability. Furthermore, it may serve as a basis for the denial of special education services.

The Supreme Court of the United States has held that the federal law mandating special education services does not require that a handicapped children be given educations that maximize their potential. All that is guaranteed is an education that provides the greatest likelihood that handicapped children can perform like average children. A child advancing at a grade a year pace has no legal right to demand additional services, even if the child is capable of much more.

The second way in which a gifted-handicapped child may be treated unequally would occur in a system that does provide a special program for gifted children. While the gifted-handicapped child has gifts that could benefit from such a program, the child is also handicapped and may need services to mitigate the effects of the handicap. A school system may be unwilling to provide both sorts of service to the same child. Perhaps more likely is the possibility that the method used to identify children for the gifted program will fail to identify the gifted-handicapped child. In either case, the gifted-handicapped child is not provided the same access to a gifted program as is provided to the nonhandicapped gifted child.

The thesis of this effort is that the gifted-handicapped have a right to participate in any gifted programs that a school system may choose to provide its nonhandicapped gifted population. There may be cases in which a child's handicap precludes participation in a

particular program, but that is a decision that must be made only after a careful study of the specific program and the specific gifts and disabilities.

A system cannot simply choose not to provide gifted-handicapped students with access, and it may not employ identification methods that screen out handicapped children who are capable of participation in the gifted program. While the Supreme Court has limited the availability of a legal argument under federal special education laws, there are other legal arguments available. There are also policy arguments that demonstrate that, aside from the legal arguments, it would be wise for society to ensure that the gifted-handicapped are provided with the opportunities that are, or ought to be, provided to gifted children generally.

Inclusion in gifted programs will require an adequate identification process. The ordinary indicators are inadequate for children who are gifted-handicapped. If the giftedness of those children is to surface, alternative, more comprehensive techniques must be employed. A decision in favor of allowing inclusion is not itself sufficient to assure inclusion of the gifted-handicapped. To insure the inclusion of the gifted-handicapped, these children must be identified. That will be the task of the school psychologist and other professionals, and the techniques presently most commonly used are not up to that task. The implications of the policy and legal arguments presented here will include the need for improved identification methods to insure that gifted-handicapped children are adequately assessed for inclusion in gifted programs.

Chapter II , Public Law 94-142 and the Amy Rowley Case, will analyze the state of public education of handicapped children prior to the passage of Public Law 94-142, known when passed as the Education for All Handicapped Children Act and now known as the

Individuals with Disabilities Education Act (IDEA). The legal issues in the pre-P.L. 94-142 era will be examined and the policy concerns leading to the passage of the act will be discussed, as will the requirements imposed by that law.

The discussion will then turn to a legal case that is important in the effort to help gifted-handicapped children. The case will highlight the difficulties faced by gifted-handicapped children. An examination of the opinions written by the various judges and justices ruling on the case will provide an opportunity to consider the differing attitudes as to what services P.L. 94-142 requires for students who are handicapped but still capable of advancing at a pace more rapid than the average nonhandicapped child. The arguments presented will be important to any effort to spell out the rights of the gifted-handicapped in other contexts.

The crucial case in this field is Board of Education v. Rowley (1982). The suit was brought on behalf of Amy Rowley, a gifted-handicapped child, against the Hendrick Hudson School District in New York. Amy Rowley, a deaf student with only residual hearing and lip reading skills, who was also identified as gifted, began attending a regular elementary school in 1977. Amy attended this school in kindergarten and accommodations were made for her. School personnel took sign language training, and a teletype machine was installed because her parents were also deaf. Amy was also provided with a hearing aid/amplifier to be used by the teacher and other students.

In first grade her Individual Education Program or IEP (1978-79 school year) stated that Amy should continue to use the amplification hearing device and that she should receive instruction from a tutor for the deaf for one hour each week and speech therapy three hours

each week. Amy could understand less than half of what was said without an interpreter. Her parents insisted that a qualified sign-language interpreter also be provided in all academic classes in lieu of the other IEP proposed services so that she might reach her potential as a gifted child. Their request was denied and after a hearing, the examiner also determined that the interpreter was not necessary.

The Amy Rowley case worked its way to the Supreme Court of the United States. The Court examined two main questions: 1). What is meant by P.L. 94-142's free and appropriate education?, and 2). What is the role of the state and federal courts in such a determination? The Supreme Court ruled that the first question should be looked at as a basic floor of opportunity, with specially designed instruction and provision of supportive services to allow the child to benefit from this special education. The Court held that the school had done this with the IEP. With regard to the second question, the Court held that the lower courts had overstepped their bounds in an area in which they held no expertise. The Court stated that this decision must be left to the state and the local schools, and not the courts, to decide. While students must receive support services to permit them to benefit from that instruction, if the child is in regular education, all that is required is that the child should be helped to receive passing grades and advance from grade to grade.

The chapter will conclude with an analysis of the reaction to, and debate over, the issue decided in the Rowley case. The post-litigation life of Amy Rowley will also be briefly discussed.

Chapter III, An Examination of the Giftedness Concept within the School Age Handicapped Population, will examine issues related to gifted-handicapped children who have

faced problems similar to those experienced by Amy Rowley, as well as children with other combinations of giftedness and handicaps, such as those with learning disabilities or physical impairments. Amy Rowley is certainly not alone in not having had her needs met as a gifted and handicapped child. There is no question that many gifted students with exceptionalities do exist. Eight percent of the school age population are enrolled in special education (Heward, 1996), with exceptionalities including physical handicaps, moderate to severe mental retardation, emotional problems, and vision losses and/or hearing losses. Many of these children are also gifted.

The chapter will examine definitions of giftedness, because a realization that talent is multifaceted is required in order to understand the possibility that a child may have a gift in one area and be handicapped in another. The contributions of specific gifted-handicapped individuals will then be presented to demonstrate the clear existence of such individuals. Since it is obvious that there are gifted-handicapped children, the discussion will turn to the subject of the failure to identify these individuals other than in hindsight. Lastly, an attempt will be made to estimate the number of gifted-handicapped within the population served under P.L. 94-142. Each variety of handicap recognized under the statute will be examined for the likelihood that a student so classified could also be gifted, and the results will be summed to arrive at an overall estimated figure.

Chapter IV, Policy Considerations in the Education of the Gifted-Handicapped, will examine the past and present policies involved in dealing with the gifted and handicapped. An underlying problem for gifted and handicapped educational services has been, and continues to be, that in the United States the overriding philosophy is one of equity for

everyone and a belief that all should receive equal treatment. In this country the educational system gears up (or down) to have everyone be able to be equal, average, or alike and to give equal time and treatment to all citizens. If any student receives more than this equal time or treatment, the equity philosophy is believed not to be working. Although this concern for equity motivated the movement to obtain special education services for those with disabilities, that has not insulated special education from complaints over the extra time and money such students require (McDaniel, 1993). Where extra time and money are devoted to providing for handicapped children who are also gifted and more capable of succeeding on their own, the complaints may well become louder.

On the other hand, where gifted programs exist, they should be open to all those capable of benefitting from the program and needing the enrichment to make their educational experiences challenging and meaningful. It has been noted that gifted students come from many different socioeconomic, ethnic, and racial backgrounds, as seen in their numbers among the finalists in the National Merit Scholarship testing and other academic honors programs (Schwartz, 1994). Nine percent of the students who took the American College Testing examinations (ACT) in 1992 and scored at or above the ninety-fifth percentile identified themselves as minorities. Considering that in the 1990 U.S. census, over twenty-four percent of the total population in the United States were minority, this figure indicates that although minorities are represented, they are under represented in this area (Famighetti, 1996). All too often, other students with similar backgrounds and abilities may not have been provided the language development and/or experiences necessary that make them identifiable as gifted.

The same lack of representation is present for handicapped children. A major problem with these students is that they do not fit the image society has of the gifted. Another problem is that the usual standardized tests used to identify the gifted, may not be appropriate for the gifted-handicapped (Schwartz, 1994). Just as real equity requires that minorities be given appropriate opportunity to succeed, the handicapped must also have those opportunities. Furthermore, society as a whole stands to benefit from contributions of the gifted-handicapped, just as it does from contributions of minority gifted students and the gifted in general.

The chapter will proceed by examining the policy arguments offered in favor of special education generally, and it will be argued that those same policy arguments favor assuring participation of the gifted-handicapped in gifted education programs. Policy arguments offered against the dedication of significant resources to special education will then be examined, and it will be argued that the arguments lose a great deal of whatever force they have, when applied to the gifted-handicapped. The same approach will be employed in examining policy arguments regarding gifted education. The arguments for such programs also speak in favor of providing gifted education to gifted-handicapped children. The arguments against such programs have less force with regard to the gifted-handicapped and certainly would not justify excluding the gifted-handicapped.

Chapter V, Law and the Gifted-Handicapped: Getting Beyond Rowley, will examine legal arguments, including changes in the law, since the United States Supreme Court decided that P.L. 94-142 did not require additional services for Amy Rowley. Those changes provide a basis for arguing that, where gifted programs exist, accommodations must be made for

gifted children who are handicapped. Rowley concludes only that Public Law 94-142 does not require additional services for handicapped children who are advancing at a minimum of a grade a year. There are other legal arguments that may be advanced to require services in such cases or to include such children in gifted programs.

The Equal Protection Clause of the United States Constitution may be argued to require equity in the services given the handicapped. That was, in fact, the legal approach that proved successful in demands for the inclusion of handicapped children in public education in the era prior to P.L. 94-142. It may also have a role to play in requiring the inclusion of gifted-handicapped children in gifted education programs. There are issues to be discussed as to whether there is a fundamental, constitutional right to education, whether the handicapped are a class requiring special legal protections and the legal effect of using tests that are less likely to identify as gifted handicapped children who are, in fact, gifted. Nonetheless, even with these difficulties, the Equal Protection Clause may guarantee an opportunity to participate.

An alternative approach, that will also be analyzed to better determine just what it would provide, is Section 504 of the Rehabilitation Act. That statute prohibits discrimination against the handicapped in any program receiving federal funds. It may be argued that Section 504 requires more service for the gifted-handicapped, but there are issues involving the qualifications of handicapped children who wish to participate, what constitutes discrimination and what accommodations must be made when the gifted-handicapped are included in a gifted program.

The Americans with Disabilities Act also requires accommodations for the

handicapped in both employment and in access to public services and places of public accommodation. Accommodations to allow the handicapped to benefit from programs may be argued to include those necessary to allow gifted-handicapped children to benefit from any existing gifted programs. Again, there are issues to be examined, in particular when a person is to be considered handicapped for purposes of the statute.

Lastly, Rowley will be reexamined in the context of participation by gifted-handicapped children in existing gifted programs. The situation does differ from that in which a child requests additional special education services to advance at a greater than average rate, when nonhandicapped students are not provided a program to enrich their educations. Instead of requesting an opportunity not provided the nonhandicapped, the gifted handicapped child is simply requesting the same sort of opportunity available to the gifted nonhandicapped child.

Chapter VI, Implications of the Arguments for the Inclusion of Gifted-Handicapped Children in Gifted Programs, will examine the changes that will be required in the identification procedures for selecting participants in gifted programs. Gifted-handicapped children fail to fit the norm in at least two ways. They are above average in some regards and below average in others. In at least some instances the assessment technique employed to identify giftedness will focus on an area in which the gifted-handicapped child is below average and fail to identify the child's strengths. It would seem obvious that, in order to make judgements about different groups of individuals, we must understand the different influences on their performance (Armour-Thomas, 1992). In order to assess students who are different, schools must become aware of such neglected or misunderstood input when it

comes to gifted-handicapped students.

Armour-Thomas (1992) says there are certain factors which must be stressed if the assessment of this group is to be accurate. "First, our assessment procedures must be sufficiently flexible, diagnostic, and dynamic to provide not merely the presence or absence of cognitive competencies assessed at a particular point in time, but must include information about the developing child's changing ecological conditions that may have enabled or impeded the manifestation of the competencies appraised. Second, intellectual assessment practices should ascertain an individual's potential for the acquisition of the competencies of interest and to predict what interventions would most likely lead to the development and nurturance of such competencies over time". (p.561)

The inadequacies of the commonly used instruments will be presented and ideas for adapting those instruments will be discussed. The characteristics of successful handicapped individuals will also be briefly discussed, and existing instruments to measure those characteristics, such as persistence, problem solving abilities, attention, concentration and memory, will be identified.

It will also be suggested that the shortcomings of the commonly used instruments might be overcome by the inclusion of ecological assessment techniques. Ecological psychology began to develop in the 1940s when Roger Barker (1968) emphasized the need to examine naturally occurring behavior in natural settings. The term ecological comes from the Greek word meaning house. In more general use, "ecological" has come to refer to the environment. Psychologists who work from an ecological framework stress the interdependence of behavior and environment. L.S. Vygotsky (1962) believed child

development to be a dynamic process of adaptation and readaptation to the social environment. Urie Bronfenbrenner (1979) embellished and expanded on some of both Barker's and Vygotsky's ideas.

Ecological assessment may help overcome the shortcomings of other varieties of assessment. According to John Feldhusen (1992), a major theoretical change occurring in the field of gifted education is that we now are recognizing that giftedness is not a unitary trait to be diagnosed at one point in time with a particular test or scale. Gifted learners are diverse and their development is determined by many factors, ranging from genetic forces to environmental events at home, school, and community.

The field of gifted education is now reemerging as a field of talent development. This development of talent goes on in many places and under a variety of circumstances. Many diverse situations and individuals must be involved in this process. No one test at one point in time can possibly determine this development. An ecological approach can greatly expand our understanding (Hewett, 1987, Johnson, Johnson, & DeMatta, 1991, Swartz & Martin, 1997). The policy considerations for, and legal requirements of, inclusion and the inadequacies of common identification procedures will be argued to demand the development of ecological assessment techniques.

Lastly, consideration will be given to accommodation issues once a gifted-handicapped child is identified for inclusion in a gifted education program. While Rowley may not have required additional services when a handicapped child in a regular education program was advancing at a greater than average pace, the same may not hold true where a gifted program is concerned. If the gifted-handicapped child is to be accommodated, as at

least required by the Americans with Disabilities Act and Section 504 of the Rehabilitation Act, the child cannot simply be identified and then be left to fail. Meaningful access requires an opportunity to succeed and that opportunity may require that the child receive the sort of services that the nongifted handicapped child receives when mainstreamed into a regular education program.

The main purpose of this dissertation is to make clear that gifted-handicapped children must be included in any gifted education programs a school system may institute. This population is often ignored in selecting students for such programs. There are strong policy reasons why the gifted-handicapped should be included. There are also legal grounds for asserting a requirement that these students be included. Inclusion will not result from a simple decision not to exclude. An affirmative effort is required to identify the gifted-handicapped going beyond reliance on the most common assessment procedures. Furthermore, once admitted, the gifted-handicapped child must be given an opportunity to succeed. Accommodations addressing the needs of the gifted-handicapped must be made, so long as they do not change the essential nature of the program.

II

PUBLIC LAW 94-142 AND THE AMY ROWLEY CASE

Much of the story of present day handicapped education is told in Public Law 94-142 (1975), originally called the Education for All Handicapped Children Act, but now known as the Individuals with Disabilities Education Act or IDEA. That statute mandated that all school systems receiving federal funds accept and educate, in an appropriate manner, all handicapped children. But, to a large degree the story of the education of handicapped children, who are also gifted, is told through the legal battle fought for the young girl named Amy Rowley. As a deaf and also gifted child, Amy Rowley did not receive an education which was appropriate to meet the needs of both her handicap and her giftedness. Amy's story demonstrates that there has been a gap in the completeness and appropriateness of services that the educational system, and society as a whole, is willing to provide to children who are gifted and also handicapped.

The story of the Amy Rowley case is complicated. It is related to the promises of P.L. 94-142 and to society's reaction to handicaps and giftedness. It starts in a local school and reaches the Supreme Court of the United States. The continuing story of children like her is affected by additional legislation. The analysis of all this input can help to provide a perspective on where the gifted handicapped have come from and where they may be headed in the future. It can also help us know what must occur if they are to reach their potential.

Special Education Before Public Law 94-142

P.L. 94-142 certainly was a major step forward for individuals with handicaps. In the early history of education and society generally, the handicapped were often misunderstood, mistreated and abused (Gearheart, Mullen, & Gearheart, 1993). They generally found themselves outcasts from society. Superstition, the fear of the unknown, often ruled how people with handicaps were viewed in these earlier times. The major concern of the handicapped in such circumstances was mere survival, and education would have been the least of their worries. Indeed, for much of history, people who had disabilities were not given any education at all.

The early history of the treatment and education of individuals with handicaps, prior to the nineteenth century, consisted primarily of avoidance and extermination. While the nineteenth century had been the era of institutionalization of the mentally retarded and deaf, the twentieth century became the era of schooling. Within the twentieth century, the 1950s and 1960s were a time of national support and legislation, while the 1970s provided an era of normalization, due to the mandates in P.L. 94-142 (Gearheart, Mullen, & Gearheart, 1993).

The development of educational philosophies regarding handicapped children occurred in several phases. The first phase did not occur until the late nineteenth century. During this time, the approach was to remove handicapped children to separate classes or buildings, in order to relieve teachers and other children of the stress of being with those having such handicaps (Rothstein, 1995). Up until the latter part of the twentieth century, much of the “education” of children with handicaps was received in institutions which isolated them from

the rest of society. In the 1950s and 1960s, when some education of the handicapped moved back into the public schools, a handicapped child might be found receiving education in a broom closet or in the basement next to the boiler. Available programming was diluted and provided training only for minimal sorts of jobs. It was not believed that children who were handicapped had any worth or capacity above that level. Until the enactment of P.L. 94-142 in 1975, the treatment and education of individuals who had handicaps were clearly less than desirable.

It was a general belief in society that handicapped children would not be able to lead meaningful lives. As a result of this belief, society denied services and education to handicapped children. For much of history, even parents of handicapped children were led to believe that their children had no hope. As knowledge of the handicapped improved, parents started to recognize that their children were being denied services which are guaranteed under the Constitution and began a program of litigation to secure those rights (Sen. Report No. 94-168, 1975).

With such a history of exclusion and resistance toward assisting and educating handicapped students, the necessity of enacting laws that would mandate that such assistance and education be provided became clear. P.L. 94-142 brought together various earlier enactments from the 1950s and 1960s and put into statutory form what some courts had already determined were rights of the handicapped.

Prior to 1966 the Federal Government had done little to assist in the education of handicapped children. In 1966, the Congress added Title VI to the Elementary and Secondary Education Act, P.L. 89-750. The Bureau of Education for the Handicapped was

established by this law and was to provide the leadership necessary for the field (Senate Report No. 94-168, 1975). In 1970, amendments to P.L. 89-750 were enacted in the Elementary, Secondary, and Other Educational Amendments of 1969, P.L. 91-230. These amendments provided grants for states to initiate, expand and improve their programs for the handicapped. These efforts brought an increased awareness of the educational needs of handicapped children.

Landmark court decisions also pointed to an increased need for Federal fiscal assistance. Thirty-six court cases in the various states led to the recognition of the rights of handicapped children to an appropriate education. Various states were beginning to make an effort to comply, but the states did not have the financial wherewithall. P.L. 94-142 followed as an effort to incorporate the major principles of the right to education cases and to assist in providing federal funds to the states to be used for the education of handicapped children.

The promise of P.L. 94-142 to the handicapped of a "free and appropriate education" in the least restrictive setting possible was a novel concept. For so long, the handicapped had been restricted to no education or to a segregated education that was not appropriate for their needs. In 1975 the Bureau for the Education of the Handicapped estimated that more than eight million children, birth to twenty-one years old, with handicapping conditions required special education and related services, but only 3.9 million of these children were receiving an appropriate education. No education at all was being provided to 1.75 million of that eight million handicapped children, and 2.5 million handicapped children were receiving an inappropriate education (Senate Report No. 94-168, 1975, p. 8).

Some varieties of handicapped children were more likely to receive special education services than others. The differences among different populations seemed to depend on the obviousness of the exceptionality. For example, among the mentally retarded, eighty-three percent were receiving special education services in 1974-75, as were eighty-one percent of speech impaired, seventy-two percent of orthopedically and other health impaired, seventy-one percent of the deaf, fifty-nine percent of the visually impaired and thirty-three percent of the deaf-blind or other multi-handicapped children were provided services. On the other hand, only twelve percent of learning disabled children, eighteen percent of emotionally disturbed, and eighteen percent of the hard of hearing were provided services (Senate Report No. 94-168 1975, p.8). The more visible and the more profound exceptionalities received more attention.

There were also differences in the services provided different age groups. While a total of fifty percent of all handicapped children were receiving services, much less was done prior to entering school. In the six to nineteen age group, fifty-five percent received services, but among those under six years of age seventy-eight percent of the population was unserved (Senate Report No. 94-168 1975, p. 8).

The lot of handicapped children was also dependent on the states in which they resided. Some states provided services to all exceptional children, while others excluded certain populations. For example, California provided no service to the emotionally disturbed or learning disabled, while addressing other exceptionalities (Senate Report No. 94-168, 1975, p.20). Kentucky and Louisiana both met the needs of the retarded more fully than they met the needs of those with other exceptionalities, while Alabama and Georgia excluded the

profoundly retarded from their state educational mandates (Senate Report No. 94-168, 1975 p. 20-21).

Some of the differences from state to state may be explained by litigation. For example, in 1972, parents of retarded children brought an action against the State of Pennsylvania demanding an education for their children. In Pennsylvania Association for Retarded Children v. Pennsylvania, the federal district court for the Eastern District of Pennsylvania held that the state, having decided to provide an education for the children of the state, could not constitutionally deprive mentally retarded children of their own educational opportunities. Since such court decisions apply only in the local jurisdiction of the court involved, the court's mandate applied only in Pennsylvania. Similarly, with the exception of federal law, statutes apply only in the states passing them. The needs of the retarded, and the needs of those with other exceptionalities, were therefore addressed by different statutory or case law mandates, depending on the state or federal court district involved.

Pennsylvania Association for Retarded Children v. Pennsylvania was not the first litigation over the educational rights of handicapped children, but it was one of the earlier successful assertions of rights. One of the earliest legal decisions involving the education of handicapped children was the Massachusetts Supreme Court case Watson v. City of Cambridge (1893). In that case, no legal violation was found, when a mentally retarded child was denied a public education because the school had found him to be troublesome and because the school system felt he could not benefit from an education. In State ex rel Beattie v. Board of Education (1919) the Wisconsin Supreme Court approved the decision to exclude

a child who had cerebral palsy because his condition and actions disturbed the teacher and other students. The placement of exceptional children into education was a difficult problem, especially after these early legal cases set a precedent for the acceptance of the practice of exclusion of children with handicaps from public schools and a denial of equal educational opportunities.

Judicial toleration of unequal educational treatment ended for disadvantaged black school children in 1954. The Fourteenth Amendment of the United States Constitution first began to play a role in handicapped education after that decision in Brown v. Board of Education (1954), which addressed school segregation or exclusion on the basis of color. Although the Supreme Court did not hold that education was a fundamental right guaranteed by the constitution, the Court held that public education is a right which must be made available to all on equal terms and that separate education was not equal education. This right and the Court's reasoning was then applied more broadly to include discrimination against the handicapped as a class of persons. Parents began to demand public education for their handicapped children based on the Equal Protection Clause, which they argued granted equal opportunity for all children.

Bias in the placement of non-white disadvantaged children into special education was contested in two cases, Diana v. State Board of Education (1970) and Larry P. v. Riles (1971). Both of these cases involved claims of bias against children who were not from the white, middle class culture. There was an over placement of culturally different children in special education, and parents demanded the education provided their children be appropriate to the children's real needs.

As mentioned above, the exclusion of some handicapped children from public education was challenged in 1972. In 1972, the Pennsylvania Association for Retarded Children v. Pennsylvania case was directed at the policies and practices in the schools of Pennsylvania which led to denial of free and appropriate education for mentally retarded children. This was a class-action suit for fourteen children who were receiving an education inappropriate for their needs. As a result of the students' victory in the court, the state of Pennsylvania was ordered to provide an education that was appropriate to the learning capacities of all mentally retarded children. This decision helped to dispel the notion that mentally retarded children were uneducable and could be denied public education. This anticipated the inclusion of providing a "free and appropriate education" for handicapped children in P.L. 94-142.

The right to an education was then extended to children with other handicaps. In Mills v. District of Columbia Board of Education (1972), it was held that students cannot be excluded from school on the basis of a handicap such as behavioral problems or mental retardation or placed in special education without a hearing. These cases helped to make it clear that public education could not be denied to handicapped children and that certain procedural rights existed.

Public Law 94-142, the Education for All Handicapped Children Act

The litigation filed prior to P.L. 94-142 made it apparent that handicapped children were not receiving an appropriate education. While legislation in some states and litigation in others led to the provision of an education for handicapped students within those states, the variation from state to state showed the need for national legislation. P.L. 94-142 was

passed to address this problem.

The Education for All Handicapped Children Act of 1975 mandated the inclusion of all handicapped children in public education. Specifically, P.L. 94-142 requires that all state and local educational agencies which receive funds under the Act provide a “free and appropriate education” for each handicapped child. The statute also defines its terms. A “free and appropriate education” is defined as

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 educational program required under section 1414(a)(5) of this title.

This free and appropriate education is to be given to all handicapped children in the least restrictive environment possible. The least restrictive environment requirement provides that insofar as possible the student be educated along with students without disabilities. All states had to comply with this requirement. If they failed to do so, federal funds were to be withheld from the state.

P.L. 94-142 also granted parents, who had long served as advocates for their handicapped children, due process rights. The individualized education program (IEP) was the fundamental procedure for meeting the “free and appropriate education” and “least restrictive environment” requirements. The requirement of an IEP is established by the Act’s provision that “the local educational agency or intermediate educational unit will establish, or revise, whichever is appropriate, an individualized educational program for each handicapped child at the beginning of each school year and will then review and, if

appropriate, revise its provisions periodically, but not less than annually.” Parents also were granted the right, under the act, to challenge the IEP at an impartial hearing. The hearing decision is, in turn, subject to judicial review in state or federal courts. For the handicapped this was a remarkable change in how they had been treated in the past. The battle over educational and procedural rights seemed to have been won, although the details still had to be spelled out.

One of those details was the effect of the statute on the education of students who were both gifted and handicapped. The Pennsylvania Association for Retarded Children and Mills decisions impacted on all handicapped children, of which the gifted-handicapped are a subgroup. P.L. 94-142 was a law for all handicapped children. The Equal Protection and Due Process Clauses would seem also to apply to the gifted, yet the reductionist view the Supreme Court was to give in the Board of Education v. Rowley (1982) decision would only reiterate the low priority the nation gave to providing services for needs for gifted children (Russo, Harris, & Ford, 1994).

The Amy Rowley Case: Legal History and Interpretations

The story of gifted-handicapped education, after and under P.L. 94-142, is tied up in the story of Amy Rowley. Amy Rowley was born in 1971, and she was a healthy and normal baby. However, when she was seventeen months old, she suffered a fever of 103 degrees. Shortly after that time, she was identified as being hearing impaired. By 1976 she was classified as deaf, however, it was also apparent that she was gifted. Despite whatever effect her hearing impairment might have had on an I.Q. score, Amy’s reported I.Q. was 122 (Smith, 1996, p.29). Ironically Amy Rowley’s parents, Nancy and Clifford, had also been

born with normal hearing, and each of them had also become deaf after a childhood illness. Her mother, Nancy, became a certified teacher of the deaf, and she knew what advances had been taking place in deaf education. Amy was taught to use sign language, which her parents believed offered her the best chance for language development and lifelong success. Amy's parents also wanted her to have as normal an educational experience as possible. They wanted her to attend school at the Furnace Woods Elementary School near their home in New York state.

Amy started school in 1977, two years after P.L. 94-142 had been enacted as national legislation. The act's educational requirements and mandated procedures would have appeared to apply to Amy, since she was a handicapped child. When Amy started school, she had only residual hearing and some lip reading skills. Her primary method of communication consisted of signing. She attended Furnace Woods Elementary School in kindergarten and some accommodations were made for her. The school's personnel took sign language training, and a teletype machine was installed, so the school could communicate with her family, as her parents were also deaf. She was also provided with a hearing aid/amplifier to be used by the classroom teacher and her fellow students. For two weeks, a sign language interpreter was provided, but the interpreter determined that sign language interpretation was not necessary.

Under the requirements of P.L. 94-142, an Individualized Education Program (IEP) was to be written for every child receiving special education services. In first grade, Amy's IEP for the 1978-79 school year stated that she should continue to use the amplification hearing device. She also was to have instruction from a tutor for the deaf for one hour each

week and speech therapy three hours each week. Her parents insisted that a qualified sign-language interpreter also be provided in all academic classes in lieu of the other IEP proposed services. The hearing aid provided by the school often did not work, and when it did work, it only helped in direct conversation with the teacher and only then if no other child asked a question. At best this device allowed Amy to hear less than half of all that went on in the classroom (Smith, 1996).

The Rowley's request for an interpreter was denied. Amy's first grade teacher did not like the presence of the sign language interpreter in the classroom (Smith, 1996, p. 35). The interpreter was considered to be a distraction, and the teacher did not like Amy looking at someone other than her, when she was teaching. The teacher also felt that there were other children in the class who needed special help and were not getting it. Amy was a better reader than many of those children.

Amy's parents requested a hearing to resolve the disagreement. After a hearing, the examiner also determined that the interpreter was not necessary because "Amy was achieving educationally, academically, and socially without assistance" (Board of Education v. Rowley, 1982, p. 185). The case was appealed to the New York Commissioner of Education, but the Commissioner affirmed the examiner's decision.

The case was then taken to the United States District Court for the Southern District of New York in 1980, claiming that the failure to provide an interpreter was a denial of the free and appropriate education for Amy that was guaranteed by P.L. 94-142. The court found Amy to be remarkably well adjusted and that she got along with her peers and her teachers. The court also noted that Amy was performing better than average in her class and

was advancing easily from grade to grade.

On the other hand, the court noted that she understood considerably less than she would have if she were not deaf. The court determined that, using hearing aids and lip reading, Amy understood fifty-nine percent of the words spoken to her but that with the addition of an interpreter she would understand one hundred percent of the words spoken to her.

While the court recognized that she was doing “fairly well” in school, the judge reached the obvious conclusion that she was not learning as much as she would had she not been handicapped. While the school system had argued that an interpreter would disrupt the classroom, the judge ruled that there would be no disruption and that Amy’s social interactions would not be negatively affected.

The court took note of federal regulations defining an appropriate education as one designed to meet the needs of handicapped children as adequately as the needs of nonhandicapped children are met. While recognizing that an appropriate education could be simply an adequate education, one that advances the child at a grade a year pace, the judge recognized that it could also mean one that allows the child to reach his or her full potential. He opted for an intermediate standard that would require that the handicapped child “be given an opportunity to achieve his full potential commensurate with the opportunity provided to other children” (Rowley v. Board of Education, 1980, p. 534).

This standard would be addressed by measuring the difference between the handicapped child’s potential and her actual achievement and comparing that difference to the difference between potential and achievement in the school system’s nonhandicapped

population. This would provide more than a merely adequate education and allow those who can progress more rapidly than a grade a year to do so, but it would not require school systems to provide a potential-maximizing education to the handicapped, when it could not do so for all its children. Having defined “appropriate education” the court determined that Amy was receiving an adequate education, but she was not receiving a free and appropriate education.

The case then went to the United States Court of Appeals for the Second Circuit, which affirmed the district court’s decision. The appellate court found the lower court’s findings of fact to be adequately supported. It also agreed with the reasoning of the district court judge. The court did seem concerned that its decision would be read too broadly as establishing standards that would apply to all handicapped children. It was careful to state that its decision was “limited to the unique facts of this case and is not intended as authority beyond this case” (Rowley v. Board of Education, 1980, p.948).

The concerns of the Second Circuit over a broad reading were born out. After the Court of Appeals decision, the Rowley case caught the attention of the media (Smith 1996 p. 126). The New York Times, in an editorial titled “Going Wrong with Handicapped Rights,” expressed concern that the costs of special education would increase dramatically (“Going Wrong,” 1980, p.16). The newspaper’s position was that the issue of allocating public funds was a political decision best left to elected officials. The newspaper argued that the courts should not order a school system to provide the services that the district and appellate courts had mandated.

Given the media expressions of concern, it is perhaps not surprising that the case was

granted certiorari by the Supreme Court in 1981. At the Supreme Court, there were two main questions explored in the Rowley case: 1.) What is meant by the Act's free and appropriate education?, and 2.) What is the role of the state and federal courts in such a determination? While the district court had found no congressional guidance and had found insight from other federal statutes, the Supreme Court limited the role of the courts to determining the intent of Congress and found that Congress did provide a definition of "appropriate education." The definition provided, however, had little content, and the Court admitted that the definition was "cryptic rather than comprehensive" (Board of Education v. Rowley, 1982, p. 188), but the Court said that that was not an adequate excuse for abandoning a search for legislative intent.

The search for congressional intent led the Court to a conclusion that an appropriate education is a basic floor of opportunity, with specially designed instruction and provision of supportive services to allow the child to benefit from this special education. The only substantive standards were those that are necessary to make access to education meaningful; the education must be adequate.

The Court repeated the emphasis found in the Act's legislative history. That emphasis was on access and procedures as more important than substance and outcome (Zirkel, 1983). The Court noted that the reports accompanying the passage of P.L. 94-142 had spent considerable time discussing two earlier lower court cases that had found constitutional guarantees for the handicapped to receive an education. Since those lower court opinions had stressed procedure, the Supreme Court concluded that procedure rather than substance was at the heart of Congress' concern. The Court also noted the figures on the provision of

services presented above and drawn from the Senate Report. The figures had noted the percentage of handicapped children who were “served” or “unserved” for various handicaps. The Court’s reading of the statistics was that children were considered “served.” if they were receiving any sort of special education services. The Report characterized those who were served as receiving an appropriate education, so in the Court’s view the report “unmistakably disclose[s] Congress’ perception of the type of education required by the Act: an ‘appropriate education’ is provided when personalized educational services are provided” (Board of Education v. Rowley, 1982, p. 197).

The Court, thus, rejected equal educational opportunity and self-sufficiency as demanding either too much or too little, depending on the individual case. In fact, the Court concluded that an equal opportunity standard would be unworkable, involving impossible measurements and comparisons. The schools system’s obligations would be met, if the system provides handicapped children “personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction” (Board of Education v. Rowley, 1982, p. 203).

The Court held that the school system had met its obligation in developing an IEP. And with regard to the second question, the Court held that the lower courts had overstepped their bounds in an area in which they hold no expertise. The Court believed such decisions must be left to the state and local schools where such expertise did exist and that the courts should not substitute their own judgments.

Justice Blackmun wrote an opinion concurring in the judgment. While agreeing that the school district was not required to provide an interpreter, he found more substance to the

requirements of P.L. 94-142 than the majority had found. He seemed to accept an “equal opportunity” approach, saying “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” (Board of Education v. Rowley, 1982, p. 211). Nonetheless, he agreed with the outcome, because he felt that the lower courts should have deferred to the expertise of the professional educators involved in the school system’s decisions regarding Amy’s progress and the effect of having an interpreter in the classroom.

Supreme Court Justices White, Brennan and Marshall dissented, believing that this decision did not go as far as the Congress intended the standard to go and that the Court had, in fact, imposed a different standard than that which Congress had intended. That Amy was provided with some specialized instruction and received some benefit and she passed from grade to grade was not what the Act intended by an appropriate education. The dissenters found legislative history indicating that the Act was intended to provide handicapped children with an education enabling the child to reach his or her maximum potential.

At least, the dissenters said, the history showed that the Act was intended to provide handicapped children opportunities for an education commensurate with that provided other children. The dissent characterized the majority’s position on the Act as requiring no more than that Amy be given a teacher with a loud voice, since she would benefit from that service. The basic floor of opportunity provided by the Act, in the dissent’s view, was “intended to eliminate the effects of the handicap, at least to the extent that the child would be given an equal opportunity to learn if that is reasonably possible” (Board of Education v. Rowley,

1982, p. 215).

The dissent also saw a more active role for the courts. It found the legislative history clear that the courts were to make independent judgments. This role was seen as not only with regard to procedure but also with regard to substance.

Legal Implications of the Rowley Case for the Gifted-Handicapped

Later analysis of this decision concluded that the Court's attempt to provide a functional definition of "free and appropriate public education" fell short of its goal (Robinson, 1983). The Court attempted to determine whether education is appropriate by measuring whether "some benefit" was received by the handicapped child. This has been seen as a hollow euphemism by some legal commentators (Robinson, 1983). There is concern that future courts may well misinterpret the Court's holding on what appropriate education may mean.

What is most interesting is that the decision in Rowley may be argued not to conform to its own underlying rationale.

The [Rowley] Court frequently cited [Pennsylvania Association for Retarded Children v. Pennsylvania] and Mills language suggesting that the education provided should be appropriate to the child's capacity. Nevertheless, the Court concluded that the standard implied by these cases was consistent with its interpretation of the EAHCA's requirement. In order for the intent of [Pennsylvania Association for Retarded Children v. Pennsylvania] and Mills to be satisfied by Rowley's "some benefit" standard, the Court's standard should encompass consideration of the child's capacity. The Court's discussion of the standard, however, does not confirm this implication (Robinson, 1983, p. 962).

While it is suggested that the Court may have been correct in determining that the law does not require the maximization of a child's potential, "its dismissal of the concepts of equal

educational opportunity and self-sufficiency as they apply to the analysis of appropriate education of handicapped children appears unmerited” (Robinson, p. 962).

Just before her entrance into sixth grade and middle school, Amy was given no option but to move somewhere where she could have a sign language interpreter. Even though she was gifted, Amy’s need for an interpreter became far greater. During her fifth grade year, her lawyers sought still another school based impartial hearing, arguing that the Supreme Court decision was based on four-year-old evidence and test scores. They argued that Amy needed the interpreter even more at that later point in her education. But the hearing officer’s decision was in favor of the school, with the officer stating that the school was doing a “fantastic job” for Amy.

The story of Amy Rowley continues, of course, beyond her case. After so many years of fighting for an appropriate education for Amy, her parents decided to move to Mountain Lakes, New Jersey, where they found there would be no problem obtaining sign language interpretation in her classroom. After more than seven years of legal efforts on behalf of their daughter, the family prepared to move. Just as they were moving in 1983, the family learned they would have to pay \$4,600 in legal fees incurred by the school system in fighting the Rowley’s Supreme Court effort. To assure recovery of these fees, the school district had a lien placed on the Rowley house in New York, while they were in the process of selling their house (Smith, 1996, p. 4).

The Court determined that Amy Rowley, a gifted and handicapped child, was doing adequately well compared to the norm and that, therefore, the school was meeting its obligations. The equity concern, that if a child does as well as the average person, he or she

is doing well, was obviously controlling in this decision. Part of the problem in adequately addressing the real needs of gifted children is that, because they do as well or even better than average, they are doing well in school, and yet much of their potential is not being tapped. This is similar to a general problem that when there is a movement for more appropriate education for the gifted, society sometimes sees a group that is performing above grade level and decides that what it sees as extra benefits are unnecessary.

While the Court did uphold the procedural requirements of P.L. 94-142 and the involvement of parents in that process, it also reduced the standards for determining whether a state has provided a free and appropriate education. This decision was, then, of mixed value for advocates of handicapped children. In the period following the decision, amending the law was not seen as likely to help strengthen and clarify the definition, as fiscal restraints were seen as likely to make the law a less critical force. Instead it was noted that courts could go on to use this “some benefit” test to reduce the duties of states (Robinson, 1983).

If courts limit the application of Rowley to the unique factual content therein, the intent of the law should not be affected. If, however, courts were to apply Rowley literally and draw the conclusion that any handicapped child in the regular classroom who is advancing from grade to grade and is passing is receiving a free and appropriate education, it was suggested that an amendment to the law would be merited (Robinson, 1983). While there have been other amendments to P.L. 94-142, an amendment addressing the issue in Rowley has not been adopted, and handicapped students progressing at an at least average pace still do not qualify for additional special education services that might allow them to progress at a faster pace.

It is interesting that the Court in the Rowley decision did not try to establish any one test for determining the adequacy of educational benefits for all children. The Court confined its analysis to one and only one situation. This narrowness has been demonstrated in two hearing officer cases in Massachusetts, after the Rowley decision, where circumstances were distinguishable from Rowley and where the officers felt that the Court left such room for others to climb beyond and above the confines of the Rowley decision (Zirkel, 1983). The Court “left open the possibility of later establishing a higher and broader-based standard, and the probability of adding a ramp to the second floor of opportunity” (Zirkel, 1983, p. 482). According to Zirkel,

in stating that “the intent of the act was more to open the door of public education . . .” on appropriate levels terms than to guarantee any particular level, the Court not only left open the meaning of “appropriate”, but also implicitly recognized that Congress intended a particular substantive level. This use of relative rather than exclusive language permeates the Court’s opinion” (Zirkel, 1983, p. 483).

The Court clearly was less willing to find enforceable substantive rights than it was to enforce procedural access rights. At the time when P.L. 94-142 was enacted, procedural access issues were of major importance. In 1974, the 94th Congress reported that an estimated 1.75 million handicapped children were excluded from educational any facilities (Zirkel, 1983, p. 466). In the years immediately preceding and following the enactment of P.L. 94-142, states and lower courts all focused on dealing with this massive procedural problem. Most of the more substantive issues such as the quality of education took longer to arrive in the courts. A “second generation” of court decisions shows the focus then went more toward examining substantive issues (Zirkel, 1983).

It may be that the Rowley case came too early in the process to have such an issue as the quality of Amy Rowley's education even to be perceived as critical or important by some courts. It is known that the Supreme Court decisions prior to this case were generally not in favor of rights of the handicapped (Zirkel, 1983), and the Court is reluctant to break with principles established by its own precedents.

The meaning of what an appropriate education might be is a substantive issue. As such, what it is varies greatly, viewed on a continuum, from minimal adequacy to maximization of potential. Prior to the pre-P.L. 94-142 Mills decision, adequacy was seen as close to the lower end of minimal adequacy. Since then a few lower courts have used the higher end maximum potential level as their standard. Still other courts have combined several standards in coming to decisions as to what an appropriate education requires (Zirkel, 1983).

According to Smith,

Based on the language of the [various opinions], Amy was getting either much less or much more out of her educational opportunity than Congress had required. And Congress either had required only that she become as free as possible from dependence or that she have an opportunity to learn as much as she could (Smith, 1996, p.9).

Smith wondered how two readings of legislative history by judges could be so far apart. The reactions of the lower courts to consider similar issues after Rowley also seem to reflect this wonderment.

It may be possible to argue that the Rowley Court simply failed to consider the substantive issues and that those issues are subject to judicial inquiry. If such an argument were to be successful, the gifted handicapped child would be entitled to an education that

would maximize his or her potential. That would, however, be an unlikely result. If the gifted-handicapped child is entitled to such an education, the gifted non-handicapped child would seem entitled to a similar education. But clearly gifted education does not enjoy the same federal mandates provided for handicapped education. Nonhandicapped children have no right to enjoy the benefits of a gifted program, and under that circumstance, courts are unlikely to find such a right for the gifted-handicapped.

Whatever one may think of the Rowley decision, it is, thus far, the final word on the application of P.L. 94-142 to those handicapped children who are capable of learning at a greater than a grade a year pace. The act does not provide for what is essentially a gifted education program for handicapped children. If those handicapped children who can benefit from such a program are to be guaranteed a gifted education program, that guarantee will have to be found elsewhere.

Fortunately for children like Amy Rowley, there are other legal guarantees that can be asserted to assure the participation of the gifted-handicapped in any gifted programs schools systems choose to provide for the rest of the school population. Those arguments will be presented after a discussion of the varieties and prevalence of gifted-handicapped combinations.

A Postscript on Amy Rowley the Person

It is also of interest to note that Amy Rowley continues to be successful in life. She was a Rotary exchange student in Australia and graduated from high school. She went on to Gallaudet College as an I. King Jordan Scholar, a scholarship named after the college's president, and in the mid-1990s she was reported to be taking pre-med courses at the

University of Wisconsin (Smith, 1996, pp. 220, 228, 309). Her giftedness has managed to overcome her disability to put her in a leading position in advocacy and education of the hearing impaired. She went on to be the coordinator of the Wisconsin Office for the Deaf and Hard of Hearing (Brinkman, 1996) and the President of the Wisconsin Association of the Deaf (Wisconsin Association of the Deaf Web Site, 1998).

Amy Rowley managed to overcome her handicap and be successful. Her giftedness outweighed her disability. Yet, one can only wonder, and the next chapter will address, how many other children, who could have reached similar levels, have been unable to achieve above the mean. Not all such children have parents who would, or could, put up the fight the Rowleys did and, having lost the legal battle, sell their home and move to another school district or state in order to provide the education necessary for their gifted-handicapped child to succeed.

III

AN EXAMINATION OF THE GIFTEDNESS CONCEPT WITHIN THE SCHOOL AGE HANDICAPPED POPULATION

The term “gifted-handicapped” may at first appear to be an oxymoron. These children are seen as being at two opposite ends of the educational spectrum at the same time, and some find the combination difficult to comprehend (Van Tassel-Baska, 1992). Furthermore, much of special education is based on dealing with weaknesses, due to the field’s use of a medical model that looks at exceptionality as though it were a disease to be cured. As a result, there is a tendency to focus only on handicaps, while ignoring any giftedness that may also be present. The gifted-handicapped are then often not believed to exist or to exist only as handicapped children.

Even though we can simply look around our world and observe that a significant number of eminent people have been or are handicapped, the gifted-handicapped still remain one of the most under identified and under served populations in our schools. In fact, in the view of many schools, they do not even exist. Linda Silverman in her 1989 article, “Invisible Gifts, Invisible Handicaps,” wrote: “It appears to be a well-kept secret that a child can be both gifted and handicapped” (p.37).

Some understanding of this problem may be gained through an exploration of some of the historical background, thinking, and issues that have led to the inability of many to “see” the existence of gifted-handicapped students. Armed with this understanding, school

psychologists can then help other professionals and members of society to recognize that gifted-handicapped students do in fact exist and then help work with others to provide services for them.

In reality, the education of gifted-handicapped students is just beginning to emerge as a field of research. The major goals of this developing field involve determining how to identify such students and how better to prepare them for adult life by increasing interdisciplinary cooperation to benefit them (Hallahan & Kaufman, 1994). VanTassel-Baska (1991) stated that "We know that these learners exist, many times hidden inside their specific disabling condition, and we know because of their discrepant pattern, they are difficult to find and identify. Moreover, we also know that these learners require more extensive services in order to develop their potential" (pp. 261-262). It is critical that we keep moving forward in our quest to better understand and serve gifted-handicapped individuals.

Further factors cloud the concept of gifted-handicapped and make this identification difficult. Joyce Van Tassel-Baska noted that four central issues are common to all of the special populations of gifted learners, including the gifted-handicapped. These four difficulties are: 1.) each group is prone to underachievement, 2.) each group shows a need for highly personalized services, 3.) each struggles with intrapersonal issues, and 4.) each often represents multiple conditions which make solving their dilemmas more complex.

According to Van Tassel-Baska, "Our systems of education are ill prepared to identify and serve these populations of gifted learners well. We are organized to serve groups, not individuals. Education's general preoccupation with accountability has led schools to define student progress through norm-referenced reporting measures while ignoring important

variability within groups and individuals” (1992, p. 160). The gifted-handicapped individual particularly fails to fit group norm standards. These students are often unlike any group standard available for the gifted or the handicapping conditions. This causes further confusion in regard to gifted-handicapped.

Definitions of Handicap and Giftedness

Definitions determine classes; that is, how one defines a class determines the individuals who will be found to be contained in that class. The definition of handicapped or exceptional children is itself not clear. According to Heward (1996), exceptional children are defined, in general terms, as those having physical or learning abilities which differ from the norm, as either being above or below the norm, such that a special educational program is required. This definition includes children who are so superior in ability as to need special programming for their giftedness.

With regard to the sorts of exceptionalities that constitute disabilities within the scope of Public Law 94-142, various categories are specified. These consist of mental retardation, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments or specific learning disabilities (McLoughlin & Lewis, 1994).

There are certainly problems with the definitions of disability or handicap. Only those disabilities that are significant enough to require special education services are covered by the law. There may certainly be borderline cases and assessment issues involved in determining which children meet eligibility criteria. The gifted-handicapped child may raise some of these

same issues, but the identification of such a child's handicap does not raise problems that differ in kind from those of the handicapped who are not also gifted. There is, however, one exception to that claim. Some children may, because of their giftedness, compensate for or mask a handicap. That was to a degree the case with Amy Rowley. Her achievement demonstrated an ability to compensate, although her handicap was not one that would be masked by intelligence.

The more complex issue for the gifted-handicapped is the definition of giftedness. Until just a decade or so ago, giftedness was viewed as a unitary intellectual trait which could be measured by an I.Q. test. If only intelligence testing or achievement testing were to be used to identify and define the gifted, many gifted-handicapped would fail to be included. A visual impairment, learning disability or any of a variety of other handicaps can interfere with performance on such tests, unless special accommodations are made and other identification procedures employed.

Much confusion still surrounds the old terms and definitions for such words as "intelligence," "gifted," "talented," and "genius." Although some people still feel giftedness has only to do with a high I.Q. score, that genius runs in families, and that genius is close to madness (Piirto, 1994), these beliefs are being altered by new understandings of the gifted. Neuroscience and cognitive science have added to this understanding as to what exceptional talent might look like, and the old beliefs and definitions are no longer either accepted nor used in practice in the 1990s.

Under the Jacob A. Javits Gifted and Talented Students Education Act in 1988, gifted children were newly defined as "Children and youth who give evidence of high performance

in areas such as intellectual, creative, artistic, or leadership capacity, or in specific academic fields and who require services or activities not ordinarily provided by the school in order to fully develop such capabilities” (Javits Act, 1988, sec. 4103). This was a different rendering of what giftedness had meant in the past. It also opened the door for further exploration into what giftedness is and where it might be found. In the 1981 Marland Report, the percentages of the population of giftedness given in the 1972 Marland Report were deleted, and the determination as to how many of their students are gifted was left to local school agencies (Eby & Smutny, 1990).

In 1991, a further revised definition of gifted and talented children was proposed in the report, National Excellence: A Case for Developing America’s Talent. This new definition eliminated the word “gifted” and instead proposed that “outstanding and exceptional talent” be used. This new definition noted that talent occurs across all cultures. It is also not necessarily determined by a test score, but may be identified instead by observing students in rich and varied settings. The best way to find such children is to provide opportunities and observe performance (National Excellence, 1993, pp. 54-55). The recognitions behind this definition allow for the concept of gifted-handicapped children. There is no reason why there may not be outstanding and exceptional talent in handicapped individuals. Turning to labels specifically directed at the population under consideration here, the “at-risk talented student” is also a new term suggested for the gifted-handicapped (Piirto, 1994). A second new term in use is that of the “twice exceptional” child (Colangelo & Davis, 1997).

It is interesting that one new paradigm for the gifted has chosen not to use the term

“gifted” anymore. It is believed that the gifted concept focuses only on high I.Q., is based on I.Q. results, making the statement that it is “in there,” is ethnocentric and school oriented and smacks of elitism. Instead, the new preferred terminology focuses on talent and talent development (Feldhusen & Moon, 1995; Feldman, 1992; Piirto, 1994). The Piirto concept involves a pyramid of talent development which considers the complex range of abilities often found in “gifted” individuals, and it also considers the ecological impact of home, school, the community and the culture of the student (Piirto, 1994). This paradigm focuses on the many types of giftedness, rather than I.Q. alone. It also focuses on individual excellence as opposed to group elitism. It considers achievement as opposed to just being born gifted or not (Feldman, 1992).

Howard Gardner was among the first to argue that there are multiple facets to human intelligence (Gardner, 1983). He recognized seven semiautonomous domains of intelligence; linguistic, musical, mathematical-logical, visual-spacial, bodily kinesthetic, social-interpersonal, and intrapersonal. These seven competencies have separate independent existences in the neurosystem.

Gardner’s theory has implications for the definition, identification, and education of the gifted and talented. The theory supports a broad definition of giftedness that includes individuals who are socially, personally, and motorically gifted. If accepted, this definition would require that the assessment process, including the use of experiential and observational methods, be viewed anew (Kitano & Kirby, 1986, p.48).

Recognition that giftedness may occur in separate and at least semi-independent areas strengthens the argument that an individual may be gifted in one area and handicapped with regard to another.

Guilford viewed giftedness as even more complex. He extended a multifactor analysis developed by Thorndike (1925) and developed a three dimensional model. In that model the intellect is seen as composed of 120 unique abilities (Guilford, 1973). Guilford's model provided the basis for the development of the Structure of Intellect (SOI) learning abilities test, later developed by Mary Meeker (Meeker, 1977). "Some educators describe this as the most comprehensive tests of abilities for identifying gifted individuals" (Kitano & Kirby, 1986).

The most recent important recognition of, and a model for, the development of multiple intelligences is Piirto's pyramid (Piirto, 1994). She recognizes many types of giftedness, but her greater contribution is the presentation of a model for the development of talents. She asserts that there are three levels in a pyramid of talent development necessary for adults to reach their talent potential. The base level consists of personality aspects that may already be present or must be cultivated. These aspects constitute a long list consisting of judgment, perception, imagination, self-discipline, leadership, passion, drive, feeling, resilience, androgyny, aggressiveness, intuition, self-efficacy, self-esteem, naivete, thinking, creativity, compulsiveness, tolerance for ambiguity, persistence, and risk-taking, which she says are present in highly effective people (Piirto, 1994, p. 36).

The second level of the pyramid is set at the minimum level of intelligence necessary for adult manifestation of talent. While she defines that level in terms of I.Q., that level may be different for different manifestations of talent. Furthermore, the level required is not extremely high, and she suggests that higher scores may not really contribute much additional likelihood of the development of the talent.

While the discussion of minimal levels is in terms of I.Q., her arguments presented for multiple methods of identification indicate that an I.Q. test should not be the sole means of recognizing minimal levels necessary for talent manifestation. Given her recognition of giftedness in areas such as dance and other arts, that would seem to be a necessary concession.

The third level consists of specific talents in specific domains. She identifies examples such as music, theater, science, invention, writing, dance, visual arts, mechanical, mathematics, architecture, interpersonal, academic, athletic, and business. Reaching this third level requires that the lower levels be present, but there are a multitude of factors that lead to the recognition and development of giftedness. That is, while the personality attributes must be present and must meet minimal levels, the failure to nurture talents makes the adult attainment of potential far less likely. The factors that she sees as speaking to reaching the highest level are influenced both by heredity and environment, so genes count as do home influences, schools, community and culture, and gender. All in all, she suggests that there is a good bit of chance or luck involved.

Under all these new conceptions of giftedness, outstanding talents must be looked for in all areas of human endeavor, across all cultural groups, and across all economic levels (Piirto, 1994). This expanded view of giftedness makes it more likely that a handicapped child will be seen as also being gifted. Furthermore, an identification procedure that takes into account the multiple facets of giftedness will be more likely to identify a gifted-handicapped child. These talented children must be observed in a diverse range of disciplines, and the person doing the assessment must make use of many different measures. This must

be done at different ages, it must look at talents as they may develop in one child early on and later in another, it must identify talent in those whose talent is not as readily observable, and it must take into account the motivation or drive and passion which play a role in accomplishment (National Excellence, 1993, pp. 54-57).

Contributions of the Gifted-Handicapped

Even back in the late nineteenth century, people wrote of individuals who overcame disabilities and excelled in some areas. The concept of gifted-handicapped was also noted by Augusta Bronner in 1921, when she wrote a book on the Psychology of Special Abilities and Disabilities. Two years later, Leta Hollingsworth wrote a book titled Special Talents and Deficits. Since the 1920s, people such as Terman have found such combinations in their research (Terman & Oden, 1947).

In the 1960s, times were ripe for national concern for disadvantaged and minority children and the gifted that might be neglected in these groups. Some work in the area continued with gifted-handicapped in the 1960s, with Mary Meeker being most prominent in her analysis of differences in intellectual patterns (Maker, 1977; Piirto, 1994). In the 1970s the Marland report on the gifted found that fewer than four percent of all gifted children were receiving services and children with gifts and disabilities received almost no attention at all (Johnson, Karnes, & Carr, 1997). Another resurgence occurred in the late 1970s, with work by Joanne Whitmore and C. June Maker (Maker, 1977; Whitmore & Maker, 1985). The end of a century is known to be a time of stress and crisis for society. The fin de siecle, when an century is almost over and a new one just about to begin, is a time, each time it occurs, when change and stress are typically at a high point (Showalter, 1997). Presently, there is a new

effort to understand this population by researchers including a leader in the area, Joyce Van Tassel-Baska.

The strongest argument for the existence of gifted-handicapped individuals and of the good they can do for society is the identification of persons who, despite obvious handicaps, have made such significant contributions to science, culture or other areas that they must be regarded as gifted.

Helen Keller is an example of a gifted person with the most severe and multiple disabilities (Goertzel & Goertzel, 1962). She had meningitis at eighteen months, and the disease left her deaf and totally blind. At the age of five, she still had no way of communicating her thoughts and she was considered a wild and disturbed child. Her older brother wanted her to be put in an institution with other hopeless children. Early attempts by the family to teach her to communicate had failed, and her father and brother had lost hope. Her mother and grandmother saw some potential and wanted to send her to a special school in Boston, but that school sent Anne Sullivan, who was also handicapped by poor vision, to live with the Kellers and tutor Helen. She helped civilize Helen and help her realize what language and communication are.

When the breakthrough in language finally occurred, and she discovered how to formulate and communicate concepts, her cognitive growth was rapid, and she became capable of demonstrating her exceptional intellectual powers. The potential for exceptional learning and intellectual achievement was present in her mind from birth, but the severe handicaps impeded its development because basic understandings of her world were missing. The intense frustration she experienced as a young child, manifested in violent temper tantrums, was undoubtedly a function in part of that exceptional intellect trapped in a severely limited body that required living with acute sensory deprivation and isolation from others (Whitmore & Maker, 1985, pp. 17-18).

By the age of ten, Helen Keller dictated a letter in French. She went on to graduate *summa cum laude* from Radcliffe College. She learned not only English and French but could read in braille German, Latin and Greek. She studied Kant and Emerson and issues of political and moral philosophy. Despite her handicap, she rode horseback, swam and bicycled. After college, she became an author and lectured nationally and internationally.

Winston Churchill had a myriad of learning difficulties (Goertzel & Goertzel, 1962). He was considered to have had learning disabilities and hyperactivity. Churchill was known as the naughtiest boy at school and he was often allowed to just run off some of his energy outside. He had a passion for setting up mock battles and would often disregard personal safety. At eighteen he was injured in one battle he set up and he was unconscious for several days and bedridden for three months. He was often ill with colds and respiratory infections. Churchill had a speech problem, a lisp. He conquered his speech problem by practice and patience. He would always carefully plan what he said and avoid problem “s” sounds. He memorized his speeches and spoke from carefully planned notes. Churchill had difficulty learning to read but went on to write many volumes on his family and history. He refused to study mathematics, Greek, or Latin and was placed in the lowest form, equivalent to remedial classes today. Churchill had no intimate friends and was known to be “cheeky” to adults. His father was ashamed of his son’s seeming dullness.

Thomas Edison was a sickly child and he was not fond of school (Goertzel & Goertzel, 1962). The schools found him to be a problem, as he balked at doing many of the courses being taught. Thomas Edison was never able to get along in school. His mother finally removed him from public school and taught him at home. Edison felt his father

thought he was stupid. He felt he lived in another world from most people, and although others taunted him and treated him badly, he never felt the pain, as he had disconnected himself from such a reality. As a child, mental illness was a concern as he set fire to a barn and tried to hatch eggs by sitting on them. As an adult, Edison grew stronger and, when driven by the sheer joy of inventing, eventually slept only five or so hours each night. Thomas Edison went on to develop inventions that changed the course of history for all mankind. His invention of the light bulb resulted in major changes in how all people lived their lives. He also invented the phonograph and brought music to the world. He was also an entrepreneurial genius who organized his laboratories, having a whole crew of workers who worked with him to bring his invention ideas into a reality. If this giftedness had been crushed, the world could be a much less advanced place. If the schools had been his only source of encouragement and learning, and they only noted his difficulties, such genius might never have seen the light of day.

Albert Einstein was considered dull by his teachers and parents (Goertzel & Goertzel, 1962). Einstein's slow speech made his parents believe he was dull. He was shy, quiet, and withdrawn. His teachers reported that he was backward or mentally slow, unsociable, and constantly off in his own foolish ideas and dreams. Einstein hated, and often failed, examinations. At fifteen he had a nervous breakdown as a result of his disdain for schooling. When he attempted to attend a technical institute he failed the entrance exams and was forced to go back to secondary school to remedy his deficiencies.

Albert Einstein had difficulty learning languages and his speech was always slow and hesitant. He would chant to himself hymns he dedicated to a self created deity. Still, when

he was eleven, he was reading philosophy and also textbooks on science and mathematics. For recreation he played the music of great composers on his violin. When he was sixteen, his father told him to forget all the philosophical nonsense and study a sensible trade, such as electrical engineering. Other relatives gave money each month to subsidize Einstein, not out of faith but as a family charity.

Einstein went on to teach as an assistant at a technical school. He then tutored slow children at a boarding school but was fired for teaching the material in his own way. In spite of such a negative beginning, Einstein went on to discover mathematical answers no one else had ever before discovered up to and including the theory of relativity. His giftedness was hidden in a myriad of traits which caused others to believe he had no potential to succeed (Goertzel & Goertzel, 1962).

It is interesting to note that teachers and society value conformity and good compliant workers. The unconventional children who dream in nontraditional ways are not viewed to be gifted or to have the potential to be successes. Goertzel and Goertzel noted that "If a potential Edison or Einstein or Picasso or Churchill or Clemens had been in school in California in those days, he would surely not have been chosen to be screened for inclusion in the Stanford study of genius" (1962, p. 279). Children who are to become famous are often not "all around," competent, and conforming students. The usual teacher referral route may not be the route to take when dealing with the assessment of gifted-handicapped children.

Varieties of Gifted-Handicapped

The persons discussed above and the combinations of giftedness and handicap found

in them do not exhaust the examples or combinations. People can possess a variety of both talents and handicaps; there are many varieties of gifted-handicapped individuals. Many individuals have been learning disabled as well as gifted, as has been seen with Winston Churchill and Albert Einstein. They each experienced difficulty in school and yet were extremely gifted. A person may have physical impairments other than the blindness and deafness of Helen Keller and also be gifted. The violinist Itzhak Perlman, who is gifted musician and also physically impaired, provides another example. Gifted children show areas of strength which may include intellectual, academic, leadership, creative, or artistic. Children having any handicap, except mental retardation, may have exceptional talent in intellectual, academic, and leadership areas. In the areas of creativity and/or artistic giftedness, even mentally retarded individuals may be gifted in the visual arts and/or performing arts. An example of this is the Japanese man who has an estimated I.Q. of 40 as well as severe hearing and speech impairments. This man's talent for art has led to him being called "the Van Gogh of Japan."

Children may be gifted and also learning disabled. A learning disability means that a child has an average or better I.Q. with specific learning problems in areas such as reading or math. These gifted children with learning disabilities may not complete assignments, may have behavior problems, and may have a poor self concept. So even though they are also gifted, they may not appear to be gifted when outsiders observe them. The problems may blind adults to the gifts the children may have (Schwartz, 1994).

Certainly there must be present day individuals who, like Winston Churchill, Thomas Edison, and Albert Einstein, possess above average intelligence and a specific learning

problem. Many gifted children are noted for high activity level, but the gifted-learning disabled child may be hyperactive or have attention deficit problems and be unable to attend in a classroom due to the learning problem, so the talents they have may not be recognized. Nonetheless, they do exist.

The gifted-physically impaired might include children who have cerebral palsy, epilepsy, spinal cord injuries, and traumatic head injuries. Or they may be children with health problems such as diabetes, arthritis, or cancer. The gifted-physically impaired combination can be noted in many individuals such as violin virtuoso Itzhak Perlman, who has motor difficulties and relies on sturdy hand crutches and wears strong ankle braces, and the famous mathematician/cosmologist Stephen Hawking, who is confined to a wheelchair and unable to speak due to amyotrophic lateral sclerosis or Lou Gehrig's disease. Franklin Roosevelt was also confined to a wheelchair, while he was guiding the nation as President of the United States.

Many physical disabilities are highly visible, and when many people see a person with physical problems or someone in a wheel chair, they automatically assume the person is not as capable as average person. With speech often being affected in such disorders as cerebral palsy and Lou Gehrig's disease, the physically impaired person is all too often diagnosed on the spot as being incapable of normal activity.

A person may have sensory impairments in vision and hearing. The gifted-sensory impaired concept can be exemplified in such individuals as Ludwig van Beethoven, who had severe hearing impairments, Ray Charles, who is blind piano player, and Stevie Wonder, also blind and one of the great American musicians. For many years deaf children have been

believed, unreasonably, to be retarded intellectually and educationally (Whitmore & Maker, 1985). It is noted that gifted persons with sensory impairments must be told that such impairments do not limit their ability to learn and succeed. Those who work with these children must make certain that the lack of access to language via one route does not result in a “dead end” view about all learning possibilities. Ways to maximize abilities and minimize disabilities need to be found. Creative use of technologies and other resources can assure that this will occur.

Speech and communication are basic to human life, and those who are impaired in this area encounter considerable difficulty (Van Riper & Emerick, 1990). And the person with a speech impairment is often socially rejected, as people feel uncomfortable and experience difficulty understanding them. Some gifted-speech/language impaired individuals have emerged as gifted singers such as Mel Tillis and Jim Neighbor or “Gomer Pyle.”

The person who is gifted-mentally impaired can be seen in the savant syndrome in which a person with serious mental handicaps also has “spectacular islands of ability” (Colangelo & Davis, 1997). Such brilliance occurs in a few areas such as music, lightning fast mathematical calculation, art, mechanical ability, memory, and unusual sensory ability such as the sense of smell. Such savants usually have minimal abstract reasoning ability, problem solving skills, and reflection ability. These individuals appear to have immediate access to the underlying structural rules and regulations of their particular strength area. It almost seems intuitive. There may also be a lack of expressiveness, mere rote playing of a song for example (Treffert, 1989).

The gifted-emotionally impaired are often not even mentioned in the literature. There

is, however, an old belief that giftedness is closely related to madness or insanity. It is sometimes speculated that a larger percentage of people in prison are gifted than is the case for the population as a whole. This is seen as due to society's lack of attention to gifted children and an unwillingness to accept creative thinking in traditionally structured schools. The suggestion is that gifted children must find other often illegal routes for expressing their gifts.

An individual may even be gifted or talented and handicapped in the same general area. For example, professional baseball pitcher Jim Abbott is obviously physically gifted. He is, however, missing a portion of his non-pitching arm and thus also has a physical handicap. The singer Mel Tillis provides another example through his combination of speech impairment with high capability in vocal performance. All these gifted-handicapped people give much to our world.

The Invisibility of the Gifted-Handicapped

While people with obvious handicaps, such as blindness or deafness, or a physical impairment, can be readily identified as handicapped, their true abilities often are not identified during the school years. A physically handicapped child who cannot hold a pencil and a deaf child who cannot communicate with an examiner, present problems for identification. The talent and ability may be there but may be hidden or blocked from view.

Identifying the gifted-handicapped child is a difficult task. Many teachers and even the child's own parents may not see the child's gifts, when the gifts are masked by handicaps. Eisenberg and Epstein (1981) described their attempt to identify children for their gifted-handicapped program. They passed out forms for the nomination of children thought to be

gifted and handicapped. The forms were sent to New York City schools which service 60,000 handicapped children, and not one student was nominated for the program.

The dual definitions of a handicap, such as a learning disability, and giftedness impedes identification of gifted-handicapped students. Ironically these students are often overlooked for identification in either category because of the masking effect of one condition on the other. Learning disabilities, for example, may lead to depressed scores on standardized tests used for identification of gifted students. On the other hand, the learning disabled-gifted student may have the creativity and ability to compensate for weaknesses and perform up to grade level, again masking the need for services for the learning disabilities (Van Tassel-Baska, 1992).

Many gifted children who do not perform up to expectations are often called underachievers. Research indicates that children who are identified as underachievers should be tested for learning disabilities (Hansford, Whitmore, Kraynak, & Wingerback, 1987; Silverman, 1989) or emotional impairments.

Whitmore and Maker (1985) concludes that many obstacles exist in the identification of the gifted/handicapped. Some of these obstacles include: 1.) stereotypical expectations make gifted-handicapped children seem below normal, 2.) developmental delays in verbal areas may make high intellectual ability go unnoticed and undetected when tested using verbal tests, 3.) incomplete information results in overlooking strengths, 4.) there is no opportunity to evidence superior ability, due to the verbal nature of school tasks and ability testing used in special education (p. 14-21).

People often have stereotypic expectations for what a gifted student should look like,

they wear glasses, are always reading a book, are larger than normal in size, and so on. However, gifted students can also have physical disabilities, emotional problems, learning disabilities, and be blind or deaf. And the same goes for any handicapped student. They may also be gifted. These all too common stereotypic expectations present a major problem for the gifted-handicapped and greatly impede their being identified.

Another factor entering into the acceptance of the concept of gifted handicapped is important to consider. While school psychologists work with the population of students having disabilities on a daily basis, they are still not likely to have gifted-handicapped students referred to them. The school psychologist receives referrals from teachers, and the students they serve will be determined by the teachers. Teachers often do not recognize the possibility that a student needing services for a disability might also be gifted, for many of the same reasons society at large does not recognize the possibility. Also, school psychologists receive little training in regard to the gifted and may fail to recognize a gift in the process of assessment for a handicap. As a result, the gifted-handicapped student often goes unidentified and also unserved.

Gifted-handicapped students tend to receive little or no integration of services. What they may receive, if they are lucky, tends to be some service for their handicap and perhaps some separate service for their giftedness, provided by different people who do not integrate what they are doing for the student. Collaboration is called for in any work with the handicapped-gifted.

When gifted-handicapped children are not provided with needed services they may well not succeed. In Terman and Oden's study (1947) of 150 successful and 150

unsuccessful men all with I.Q.s over 140, they found that the unsuccessful men had not developed effective coping strategies, had less support from their families, and were less motivated to succeed. If these students had been provided with services to help them to develop coping strategies and to give them the needed support they were lacking, these individuals would have had a chance to be successful and to accomplish something for their and our world.

The Prevalence of the Gifted-Handicapped in the

Population Served by P.L. 94-142

The invisibility of the gifted-handicapped population is, as the examples discussed earlier show, not complete. The invisibility, however, makes it more likely that gifted-handicapped individuals will be recognized in hindsight; that is, once handicapped individuals have demonstrated superior abilities, they will be recognized not only as handicapped but as gifted-handicapped. Porter (1982) noted that 211 of 700 eminent people in two major historical surveys could be considered to be gifted-handicapped. Because not all gifted-handicapped children will reach the potential inherent in their giftedness, and are likely to fail to do so on a larger scale than the gifted-nonhandicapped, hindsight will not be a good measure.

Neither are the usual techniques used to identify gifted students in the school population likely to recognize all, or perhaps even many, of the gifted students within the handicapped population. Invisibility to teachers means less likelihood of teacher nomination. Group administered achievement or intelligence tests will be affected by a variety of handicaps. In fact a 1990 study found that up to seventy percent of the regular school age

gifted population is overlooked when group testing is used for identification (Humphrey, 1990). The problem can only be more difficult for the gifted-handicapped. The sort of identification methods to be presented below will be required, if we are better to identify the gifted-handicapped.

While there must be a significant number of gifted-handicapped individuals within the school age population, figures on their numbers are considered to be very sketchy (Johnson, Karnes, & Carr, 1997). The best way to calculate an estimate of how many gifted-handicapped children exist is to examine what is known about the separate categories of gifted and handicapped and then combine that information for a prevalence figure for the gifted-handicapped.

Whitmore and Maker considered it a conservative estimate that at least two percent of the handicapped student population is intellectually gifted (Whitmore & Maker, 1985). Schnur and Stefanich (1979) estimated, based on such a premise that two percent of the population is gifted, that there were 120,000 to 180,000 gifted-handicapped children in the schools. Davis and Rimm (1989) used a five percent cutoff to raise the figure to a "more realistic" 300,000 to 450,000.

The approach required for the best estimation of the gifted-handicapped population is to start with the number of handicapped individuals within the school age population. An estimate of the percentage of the handicapped population that is also gifted may then be used to calculate the number of gifted-handicapped. The controversial aspect of the calculation will be the percentage selected. In fact, the proper percentage should vary with the handicap under consideration. For example, the percentage of orthopedically impaired individuals who

are intellectually gifted should be greater than the percentage of gifted among those with traumatic brain injuries.

Starting with the National Association for Gifted Children's position that five percent of the population are generally considered gifted, that percentage assumption should be examined and adjusted for each segment of the handicapped population (National Association for Gifted Children Website, 1998). In many cases the percentage of the handicapped population that are also gifted may drop, but the percentage may instead rise.

Learning Disabilities and the Intelligence Factor

To be considered learning disabled an individual must have average or above average intelligence. Since the lower end of the distribution of intelligence is eliminated, the percentage of the remaining population that is gifted should exceed the five percent of the general population. Taking average to above average intelligence as consisting of those within one standard deviation of the mean or more than one standard deviation above the mean, those who would be considered below average in intelligence comprise almost sixteen percent of the population (Kaplan & Saccuzzo, 1997, p.49). In a group of one hundred students from the general population, the expectation would be that five would be intellectually gifted. If, however, the one hundred students are known to be of average or above average intelligence, that percentage would be higher. Rather than five out of one hundred students, the percentage should be based on five out of the eighty-four that are of average or above average intelligence, which is approximately six percent (more accurately 5.95%). For those with learning disabilities, a total 2,513,977 between six and twenty-one, as shown in the table below, a five percent figure would predict 125,698 intellectually gifted-

learning disabled individuals. The more accurate six percent estimate results in a figure of 150,839.

The percentages for the other populations of handicapped individuals are far more difficult to estimate, since most of the definitions for the handicaps do not include required intelligence ranges. The obvious exception is the mentally retarded, who are all well below average in intelligence. The appropriate percentage for the mentally retarded then would be zero. This is, of course, only true if the giftedness under consideration is intellectual. Mentally retarded individuals may have artistic or musical talent that would be relevant to selection for a program with such a focus.

Examples of Disabilities Associated with Giftedness

Beginning with speech and language impairments, there is no reason to believe that the percentage of gifted should vary from the general population. The Diagnostic and Statistic Manual-IV (1994) states that for expressive language disorder “nonlinguistic functioning (as measured by performance intelligence tests) and language comprehension skills are usually within normal limits” (p. 56). Furthermore, for speech disorders such as stuttering, the DSM-IV indicated a potential correlation to hearing impairment and other sensory and speech-motor deficits (p. 64) but did not include an association with sub-normal intelligence or a variation in the distribution of intelligence. While the mentally retarded may exhibit speech difficulties, those classified as having speech difficulties are those having difficulties in excess of the level usually associated with such retardation (p. 63).

Although children with behavior disorders frequently underachieve academically, it is less clear that there is a variation from the general population in the distribution of

intelligence. The DSM-IV states that a diagnosis of "Reactive Attachment Disorder of Infancy or Early Childhood" requires a disturbance not accounted for by developmental delay such as in mental retardation (p. 118). Furthermore, a diagnosis of "Oppositional Defiant Disorder" requires that the oppositional behavior be "markedly greater than is commonly observed among individuals of comparable age, gender and severity of mental retardation" (p. 93). While the retarded may be more likely to exhibit behavior disorders, the diagnosis of such a disorder requires that the behavior go beyond that normally associated with retardation. It would then seem that those diagnosed with severe emotional disorders should be normally distributed relative to intelligence. If that were not the case, the retarded would be over or under represented in contrast to the requirement that the behavior differ from that expected of the level of retardation. As Lewis and Doorlag (1995) conclude, "[t]he intelligence level of students with behavioral disorders does not vary significantly from that of the general school population" (p. 339). The five percent figure for the general population will therefore be used as an estimate for the intellectually gifted proportion of the population of severely emotionally disturbed.

Many of the remaining categories present some difficulty in estimating percentages. Fortunately, the categories already considered constituted over ninety percent of the handicapped population, so any errors in the remaining categories will have a minor effect on the overall conclusion.

With regard to multiple disabilities, the percent who are gifted will depend on the combination of handicaps involved. Where the combination consists of mental retardation coupled with another disorder, the percent of intellectually gifted will be zero, although again

there may be some other talent present. On the other hand, among those who are both learning disabled and orthopedically impaired, the percent who are gifted may be the same or higher than for the general population. To obtain an overall result that is conservative, the percent of those with multiple disabilities who are gifted will be taken as zero. It should be noted, however, that this assumption should not apply to any particular individual. If the individual's disabilities do not include retardation, the possibility of intellectual giftedness should not be dismissed.

The hearing impaired may not do as well on academic achievement tests as the hearing. However, "most children who are deaf have normal intellectual capacity, and it has been repeatedly demonstrated that their scores on nonverbal intelligence tests are approximately the same as those of the general population" (Heward 1996, p. 344). Heward (1996) concludes that deafness places no limitations on an individual's cognitive capacity (p. 344). The percent of the hearing impaired who are also gifted will therefore be assumed to be the same five percent as is found in the general population.

Orthopedic impairments involve the skeletal system, that is, the bones, joints, limbs and skeletal muscles (Heward 1996, p. 436). While those with orthopedic impairments may also suffer from other impairments, there would appear to be no reason why such a mechanical disability would have an effect on the cognitive capacities. The major subpopulation of the orthopedically impaired for which this conclusion would not hold consists of those with cerebral palsy. That will affect the distribution of intelligence among the orthopedically impaired, since forty-one percent of the children with cerebral palsy in a study by Nelson and Ellenberg (1986) scored below seventy on standardized I.Q. tests.

Assuming that giftedness is not found among those with cerebral palsy, unwarranted as a broad assumption but intended to lead to a conservative total figure, and based on the fact that in some programs more than one-half of the physically and health impaired students are so impaired as the result of cerebral palsy (Heward 1996, p. 455), a conservative estimate of two percent as the proportion of the orthopedically impaired population that is intellectually gifted will be employed.

The category of other health impairment is the most difficult to estimate, because of the variety of disabilities or health issues involved. For example, children with ADHD, heart ailments, diabetes, hemophilia, epilepsy, cystic fibrosis, asthma, AIDS, cancer or arthritis are likely to reflect the same distribution of intellectual giftedness as the general population. The achievement of such students is often behind that of other students, because of the missed school brought about by their conditions, but these conditions do not negatively affect intelligence. On the other hand, children who have been abused or whose mothers abused drugs are also in this classification, and their intelligence may be affected. While it would clearly be open to debate, an estimate of three percent gifted in this population seems conservative.

For visual impairments, the distribution of intelligence may well follow that of the general population. Whitmore and Maker (1985) contend that "It is generally agreed that, although some studies have documented lower scores on intelligence tests for the blind and visually impaired . . . , such scores probably reflect aspects of the testing procedure or a lack of educational opportunity" (p. 79). Whitmore and Maker do, however, recognize a difference of opinion ranging from positions that visual impairment does not affect intelligence

to conclusions that a lack of visual capacity may be linked to specific difficulties in areas such as linking ideas and objects. Heward (1996) says that one-third of visually impaired children have additional disabilities. While some of those children would be included in the deaf/blind or multiple disability classifications, Heward's figure might be used to arrive at a conservative estimate of the visually impaired who are also gifted. If the one-third who have additional disabilities are eliminated and the distribution of intelligence is assumed to be the same as the general population for the remaining two-thirds, taking as gifted five percent of the remaining two-thirds of the visually impaired will leave a gifted-visually impaired percent of three and one-third.

While the life of Helen Keller attests to the fact that deaf/blind individuals can also be intellectually gifted, the number of such children may be small. While whatever genetics contributes to intelligence may well be the same in this population as it is for the general population, the lack of sensory stimulation experienced by the deaf/blind make the development of any innate abilities difficult. Without negating the possibility of any specific deaf/blind individual also being gifted, for the purpose of a conservative estimate of the total intellectually gifted-handicapped population, the percent of the deaf/blind population who are also gifted will be taken to be zero.

Turning to traumatic brain injuries, Clark (1997) finds that most children with brain injuries continue to function in the average to below average range of intelligence and that declines of ten to thirty points in I.Q. scores have been found shortly after brain injury (Clark 1997). Again, to reach an overall conservative result, the percent of those with traumatic brain injuries who are intellectually gifted will be assumed to be zero.

Table 1

The Incidence of Giftedness for Varying Disabilities

Handicap	Number	Percentage Used	Gifted
Specific Learning Disability	2,513,977	6	150,839
Speech or Language Impairment	1,023,665	5	51,183
Mentally Retarded	570,855	0	0
Severely Emotionally Disturbed	428,168	5	21,408
Multiple Disabilities	89,646	0	0
Hearing Impaired	65,565	5	3,278
Orthopedically Impaired	60,604	2	1,212
Other Health Impairments	106,509	3	3,095
Visual Impairments	24,877	3.3	821
Deaf/Blind	1,331	0	0
Traumatic Brain Injury	7,188	0	0
Total	4,915,168		231,836

(Population figures from the Office of Special Education Programs 18th Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act, 1966)

Table I summarizes the estimates of the number of intellectually gifted individuals that should be found in the various handicapped populations served under P.L. 94-142. The population figures used are for the 1994-95 school year as contained in the 18th Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act, the most recent data available for the number of youth ages six to twenty-one served under Part B of the Individuals with Disabilities Education Act (Office of Special Education Programs 1996).

The total for the estimated age three to twenty-one year old population of intellectually gifted within those served under IDEA is then 231,836. This constitutes just over 4.7% of that handicapped population. The figure is not far removed from the five percent expected in the general population, and it certainly indicates that there is a significant population of gifted-handicapped. Furthermore, the figures presented are based solely on intellectual giftedness. If other gifts or talents such as music or art are included, the percentage of handicapped who are gifted under other definitions will vary for those areas, but the number can only grow.

Additional growth may also be established by the fact that the number served under IDEA has been growing at a rate greater than three percent per year (Office of Special Education Programs 1996). Since the figures used were for the 1994-95 school year, the number of intellectually gifted within the IDEA population has probably increased by twelve percent. While the proportion of gifted students within the population has probably remained steady, the total number of gifted-handicapped will also have grown.

Summary and Conclusion

The question of whether the gifted-handicapped student exists appears to be complicated by the attitudes and beliefs of society. It is apparent that they do exist but that they are often not recognized. When they are recognized, there is often little in the way of services provided for them. There is all too little funding for gifted education, and many gifted handicapped or at-risk talented students know how to compensate for learning problems, and they then also will not receive services from special education. Creative ways to service this population must be devised, finding resources from the entire community, state, and nation, and then integrating the delivery system. If gifted education is to find a way to survive and not merely be a whim of the social and political climate, people in the area of the gifted must reach out to work jointly with other education areas and also form partnerships with others outside of education systems, such as business and community leaders (Coleman & Gallagher, 1995).

Many states are changing their definitions of giftedness to include children with disabilities and some are actively searching for such individuals. Yet, it will be important that more impetus and support be provided, if this change in educating the gifted-handicapped is to be maintained. It is also important that the federal government take a leadership role in working with gifted-handicapped children. Increased services should be a top priority. It is clear that some initiative by the federal government is what is needed to influence states and local school systems to take more responsibility with the gifted-handicapped (Johnson, Karnes, & Carr, 1997).

Thirty-three states have mandates for gifted education with some level of funding (Coleman & Gallagher, 1992). Society has also been willing to provide extra services for

those with disabilities, albeit prodded by a public law mandating such assistance, although even this “willingness” is now being questioned, as the per student costs for such special education is being noted to be twice as expensive as that paid for students in regular education. What is needed is a recognition that society needs to bring together the willingness to provide services with the disabled and whatever concerns it may have for the gifted. Where gifted education is mandated, the gifted-handicapped should be seen as a part of that mandate. Where gifted education programs are not mandated, the gifted-handicapped may not have any special right to have their gifts addressed, but any movement to provide for the gifted in those states needs to take into account the need to include the gifted-handicapped in any programs that are proposed.

IV

POLICY CONSIDERATIONS IN THE EDUCATION

OF THE GIFTED-HANDICAPPED

Money for programs for the handicapped and for the gifted and talented appears to be the “mortar” that allows such programs to survive (Gearheart, Mullen, & Gearheart, 1993). There has been consistent federal and state funding for handicapped students since 1965. On the other hand, there has usually been a cycle of funding for the gifted, which seems often to have been linked to or dependent on national security (Gallagher, 1984).

Since the Gifted and Talented Children’s Act of 1978, P.L. 95-561, the federal government has nearly “abolished its role in supporting or even encouraging the appropriate education of its most able students” (Gearheart, Mullen, & Gearheart, 1993). Dealing with gifted and talented students has fallen to the states and local school districts. Because local school districts do not have a federal mandate to educate gifted and talented children, it is easy for them, in a financial pinch, to reduce funds for such programs.

Beliefs about the gifted fuel the policies that cause districts to cut or even do away with funding for the gifted. These cuts have led to the formation of parent and advocacy groups for the gifted. Knowledge of the arguments which are used in making the policies that directly influence such funding is of critical importance for similar advocacy groups to have any chance of success in obtaining the education needed by the gifted-handicapped.

Arguments for supporting gifted-handicapped students are necessarily going to

incorporate some of the same arguments used for the support of the handicapped, as well as incorporating some arguments used for the support of the gifted. This chapter will look at policy arguments for and against the support of gifted and handicapped students, while the legal and federal requirements and arguments for special education with exceptional children were examined in Chapter II. Some of the arguments used either to support or to cut funding run the gamut from those which espouse the call for individuality to be developed in each student to calling for equity and excellence for all students. Still others argue that programs for the gifted are elitist or are too exclusive in who they will serve and that they are contrary to the “American way” of democracy – the democratic ideal that everyone is created equal. Familiarity with these arguments can help the advocate for programs for the gifted and gifted-handicapped deal with society’s underlying reactions to gifted or gifted-handicapped children in their midst.

The field of gifted-handicapped education was seen to be emerging in 1985, as the result of the intersection of two special fields which focused on the needs of the gifted and of the handicapped (Whitmore & Maker, 1985). This field also grew out of a moral concern that all children should have the right to an appropriate education that will help them to develop their potential and contribute to society. However, even to this day, gifted-handicapped children are still not given appropriate educations in most schools. Examining the many different policies that have been involved in looking at gifted or at handicapped education may help in ascertaining what allows or causes this inappropriate education to occur.

While many laws now clearly mandate that handicapped children must be served,

gifted-handicapped children may well still be omitted from any such special services, especially if they are functioning at grade level. For even with a handicap, children who are gifted may well learn to struggle and compensate to some extent for the handicap, even though they will be unlikely to do as well, without support, as they have potential to do with support.

Presently the gifted potential of handicapped children is not considered in the need for services, if the children can attain average grades. This was seen in the Amy Rowley case. In fact, comorbidity, or a double diagnosis, such as gifted and handicapped, is not even allowed under laws such as P.L. 94-142, which regulate education for handicapped children. Clearly we are under serving a segment of the population that has a high potential for personal development and also for contribution to society. The few gifted-handicapped, such as Thomas Edison, Helen Keller, and Ray Charles, who “make it” in spite of the odds against them, are truly exceptions. Most gifted-handicapped children will never be known for their gifts and talents, for they will be held back by their disabilities, unless something is done to enable them to reach their fullest potential.

Given the combination of giftedness and handicap, there are four varieties of policy argument that must be considered in looking at gifted-handicapped education. There are arguments for and against special education for handicapped children. While the law has developed to the point that law rather than policy currently controls in this area, policy arguments are still relevant to the gifted-handicapped, in light of the Rowley case’s denial of legal protection for that population. There are also policy arguments for and against gifted education.

Each of these four varieties will be considered with regard to the gifted-handicapped. Generally, it will be shown that the arguments for special education and for gifted education apply with similar force to the education of the gifted-handicapped. On the other hand, arguments against special education or against gifted education may apply with less force in considering the gifted-handicapped.

Arguments for Special Education

Much of the current analysis and/or arguments for special education are related to federal and state requirements or laws already in effect. This section will look at arguments that were used to establish the need for special education laws such as P.L. 94-142 and then will examine the application of these arguments to the gifted-handicapped.

One of the major arguments presented for providing special education for handicapped children is that not to provide such education is to fail to provide a minority population with the services provided the majority and is thus to discriminate against them as a group (Hallahan & Kaufman, 1994). In the past, children with disabilities often received differential treatment, meaning they were excluded from certain educational programs or were given special services only in segregated settings (Heward, 1996). During the 1960s, seen as the birth of an awakening civil rights movement for certain groups of American citizens who had been discriminated against, the same issues also were examined as they applied to the disabled.

Clearly, if people are concerned about discrimination against a minority class, this should not be a concern just about handicapped children who are average and below average students, but would also carry over into concern about the above average, as well. P.L. 94-

142 was first enacted because handicapped children were being denied an appropriate education and their unique needs were not being met. They were being discriminated against because of their handicaps. It would only be logical that any gifted-handicapped students, who are being discriminated against or excluded from a gifted and talented program because of a handicap, would also be included in this argument in favor of providing services for a minority population of people.

This argument for providing special education services to the handicapped has also stressed bringing the handicapped into the mainstream of education or what is now known as inclusion (Heward, 1996). Inclusion entails providing services for children having handicaps in regular education classrooms via consultants or other persons who work in the regular classroom with the handicapped children being mainstreamed. This inclusion of all students into the mainstream is considered, by some but not all, to be a necessary step to equality for the handicapped population. They believe that as long as children with exceptionalities are segregated from the mainstream they will never have a chance to be equal to those who are part of the mainstream.

Using this same argument, it would also seem to follow that the gifted-handicapped should also be kept/brought into the mainstream and provided services there, if equality is sought for *all* handicapped students. While this argument might be limited to demanding inclusion in regular education, the gifted-handicapped child must be included in gifted programs as well, if he or she is to be treated equally with nonhandicapped children of equal potential. To fail to do so would be to limit the handicapped to programs aimed at the average and below average.

Some argue that inclusion is psychologically necessary if children are to reach their potential. They argue that there is a negative psychological impact on children if being different results in removal or exclusion from everyone else. The United States Supreme Court asserted in Brown v. Board of Education (1954) that separate education is inherently unequal education and that black children receiving a segregated education were psychologically damaged by their exclusion from education with the white population. This concern mirrors the conclusion that “how students, nonhandicapped and handicapped, perform in school is influenced in both subtle and obvious ways by their concept of self” (Hamachek 1990, p.87). Being excluded from the majority population injures the self-esteem of black children, affects their performance in school and thereby results in an unequal education.

Similarly, handicapped children receiving a separate education would then seem to be additionally injured by being educated in a segregated manner and should, instead, be mainstreamed. This applies with equal force to the inclusion of gifted-handicapped children in gifted programs. If they are excluded, based on their handicaps, their self-esteem may also suffer, and the likelihood that they will reach their potential will be reduced not only by their handicaps but also by the school’s reactions to their handicaps.

Even though all children know they are different in some ways, from their race to having home problems, if schools practice what is seen by children as the removal of those who are different, they may well come to see normality as safety and difference as a lack of safety and be unable to relax and feel free to reach their fullest potential (Sapon-Shevin, 1994). This is clearly a problem with many gifted children. For example, many gifted

adolescent girls opt not to be gifted and fear being excluded from normal dating and fun if they are viewed as gifted and “different” from their peers. They often choose to be socially accepted instead of being gifted and different. Gifted-handicapped children have two often more obvious differences and may suffer from exclusion on several counts.

Despite this reaction by some, being singled out for their giftedness differs from being singled out over a handicap. While both point to differences, which some children may resist, identifying a positive difference will not harm the self-esteem of the child in the way a negative label can. The gifted-handicapped child is conceptually separated from the average on two dimensions, one that would be seen as positive and one that might be considered by the child as negative. Actually to separate the child only on the negative dimension, without also recognizing the child’s giftedness, will likely be just as injurious to self-esteem.

Arguments Against Special Education

Special education, as it is presently run, with as full as possible inclusion of all handicapped children into regular education, also has many opponents. Some experts argue that inclusion, and especially full inclusion of all handicapped students, in regular education does not allow enough options to meet all the individual needs of all exceptional students. One argument against the present approach to special education is that some feel that a continuum of services is necessary to meet the variety of needs found in almost every exceptional child. For example, more services than just remaining in a regular classroom will be required for severely and multiply impaired students. The inclusion approach may not allow for enough individual treatment or individualized programs, such as individual therapy, which may well be necessary for some handicapped children to reach their highest potential.

These same arguments would apply to the appropriateness of inclusive education for gifted or gifted-handicapped children. Multiply impaired children, who are also gifted, may well not be as appropriately placed in a regular classroom, if they are to reach their fullest potential. These gifted-handicapped children may need to receive therapy and counseling and individual teaching in order to demonstrate their giftedness (Hallahan & Kaufman, 1994). Nonetheless, if they are capable of participating, they may still benefit from inclusion in at least some aspects of a gifted program. This would address the increased potential inherent in their giftedness, but the possible need for individualized services to address their handicaps should not be forgotten.

Another argument against the present special educational inclusion approach is that regular educators are often not willing to deal with all children and indeed are not expert enough to be expected to deal with all children effectively (Hallahan & Kaufman, 1994). Most regular education teachers receive one course on exceptional children as part of their college training program. No matter how good one course may be, it can never be enough to enable a teacher to deal as effectively with children as special education majors who spend their entire program specializing in such skills.

To this same degree, gifted-handicapped children may well have needs too complex to be served effectively by a regular education teacher or a gifted education teacher in a regular or gifted classroom, without more specialized assistance from specially trained professionals. Just as the proper response with regard to the nongifted handicapped child is the provision of consultant services for the regular education teacher, consultant service may also be necessary for the gifted education teacher to help the gifted-handicapped child reach

his or her potential. The difficulty may, in fact, be of less concern for gifted education. The gifted educator is accustomed to dealing with at least one variety of exceptionality. The inclusion of an additional exceptionality may be of less concern than it is for a teacher less accustomed to responding to differing needs.

Another argument against special education is that society is committing an inordinate amount of money to a group who will never be able to give much back in kind to society. Some consider this to be a waste of resources. It can be very expensive to provide for the needs of severely or multiply impaired handicapped children. These children may require care throughout their lifetimes, and they may well not “pay back” to society what has been given to them.

This argument does not apply with as much force to the gifted-handicapped. If services are provided to gifted-handicapped children, they do have incredible potential to offer in kind contributions to the society which will have spent resources on them. In fact, it is currently the resource of gifted-handicapped children that is being wasted.

Yet another argument against special education is that when students are identified as exceptional or different from the average child, they are set apart and this may stigmatize them (Sapron-Shevin, 1994). This is an argument against labeling children according to identified handicaps and would require providing services without requiring the very label which is now a federal requirement for children in order to receive special education services. Many teachers and parents cannot handle one label, let alone two, as it is just too confusing and often inaccurate to try to pigeon hole children. In fact, the present educational laws, such as P.L. 94-142, prohibit comorbidity, or the use of two labels on any one child. So the

gifted-handicapped child will present difficulties to this manner of thinking. Part of this thinking is based on a belief that all children are equal and the same, and there are no differences.

Nonetheless, the law does require a label, when a child is handicapped. While the law may not recognize two labels for purposes of funding, the school may also recognize other characteristics of the child. Just as a child may be learning disabled and an athlete, a child may be dyslexic and mathematically talented. This is not comorbidity; there is a single identified handicap and an additional recognition of a talent. The concern over negative labels may, given the legal requirements, be unavoidable. But, to attach a required negative label, without being willing also to attach an applicable positive label, assuming that “gifted” is a positive label, is to stress the stigmatizing effect of labeling.

Another argument against special education for handicapped is a concern over not being able to identify the categories of disability with great reliability. There is no foolproof way to consistently assess and identify disabilities. This difficulty may not be worsened by also recognizing a gift or talent independent of the disability. As will be discussed in Chapter VI, the existence of a handicap may make identification of a gift or talent more difficult. It is also the case that a child’s giftedness may have allowed the child, at least partially, to compensate for a handicap, thereby making identification of the handicap more difficult. Nonetheless, proper identification procedures will often be able to identify a gift or talent, even in handicapped children. Where the child’s giftedness is recognized, and the child is underachieving, that may in fact contribute to the ability to recognize a disability such as a learning disability.

Still another concern over special education is that the incidence of identification as handicapped among children from certain social and ethnic groups is greater than that among children from the majority culture (Hallahan & Kaufman, 1994). A purely empirical approach would include identified children in special education programs based solely on their test results, without regard for the increased incidence of minorities. Ethical and political considerations, on the other hand, may require an examination of the effect of such identification procedures on the status of minority groups. This effect is, in fact, mitigated by mainstreaming, where the identified child is not excluded from the general school population.

For the pure advocates of equality, statistical studies do not provide an answer. They may see all handicapped people as a minority group that has been discriminated against and needs to be integrated fully into society. That is all that is needed to put handicapped people back where they belong. Where special education programs have led to the increased exclusion of ethnic or social minorities, there is a doubled need to integrate or mainstream. Such advocates of the ethical argument do not care to know or explore if, in fact, the inclusion or integration is effective. They believe that integration is the only way to rectify past wrongs. Ethical grounds for inclusion are all that are needed to move ahead in that direction. Even if it were to be proven that inclusion were ineffective, that would not matter. Others feel it is unprofessional not to research effectiveness. Some feel people who argue for inclusion on an ethical basis have traded their credentials as scientific researchers in favor of becoming lobbyists and advocates (Hallahan & Kaufman, 1994).

Applying this approach to the gifted-handicapped, exclusion from gifted programs

raises the same concerns. Handicapped children, who are excluded, may again be seen as the victims of discrimination. If students turn out to be disproportionately excluded from gifted programs because of the perceived effects of the existence of a handicap, there is the same second concern. Just as inclusion in the regular education classroom is seen by the advocate of the ethical approach to be the solution to the isolation of a minority population, inclusion of the gifted-handicapped in gifted programs would be similarly justified.

While the argument might be offered that instead the conclusion should be that such students should be in the regular classroom rather than the gifted classroom, that can only be the conclusion if one is prepared to argue against gifted education entirely. A policy argument for such a position might be offered, and will be considered below, but if a school has a gifted program, treating the handicapped equally, and treating ethnic and social minorities that are disproportionately identified as handicapped equally, requires that their gifts be addressed in a manner consistent with the way in which those of the nonhandicapped are treated.

Arguments for Gifted Education

A major rationale for educating the gifted is that there will likely be a return from the investment made by society and the schools. Whatever monies a school puts into such a program will allow society to reap benefits, when the children become adults. As noted in the table in Chapter III, many handicapped children will also be gifted and will have the same potential to provide a positive return on society's investment. The potential return argument is as valid for the gifted-handicapped population as it is for the gifted. These children will have the potential for contribution to their society as adults, unlike many strictly handicapped

children.

Perhaps more an explanation of the cycles of funding for gifted education, rather than an argument for such funding, is the fact that the cry for excellence has often been sounded when society faces a crisis. It is most commonly then that the gifted are granted funding for better education. When a society finds itself in dire straits, it looks to some people in its population to help find a way out.

Society has a long historical pattern of conflict between a desire for equity and a desire for excellence in response to social, political, and educational issues of the time (Gallagher, 1984). While the focus is often on equality, this conflict is stirred up whenever there is some social crisis or outside threat. The focus then turns to excellence, and programs for gifted education are looked to for possible solutions to the problems. However, usually as soon as the outside crisis is over and domestic tranquility resumes, the thrust once again becomes one of equity, and the gifted are forgotten.

This pattern can be seen during crises such as world wars and other world and national emergencies. During World War I, I.Q. tests were first designed, and gifted education really began to develop. Then came the Depression and World War II, and leaders in the field of gifted education recognized the need to cultivate the talents of gifted individuals in order help guide the world more effectively (Coleman & Gallagher, 1995). As noted, once the crises ended so too does attention to the gifted. For example, during World War II, tests were used to identify individuals with special talents and abilities and special attention was given to individuals with extremely high I.Q.s. As soon as the war ended, programs for gifted children declined, and by 1948, less than one percent of larger schools offered programming

for the gifted (Gallagher & Weiss, 1979). When the 1950s saw the Russians launch Sputnik, the country again recognized a crisis in gifted education. As soon as the nation was satisfied that it had “caught up,” equality again became the focus.

A strong argument for gifted education may be found in the fact that, with the rate of change the world faces today and with the complexity of knowledge necessary to address any new crisis, society cannot wait for the emergence of a problem, before beginning to educate the children who will eventually provide a solution. A pool of well educated gifted and creative individuals must be regularly in place to address any crises, as they arise. There is no reason to rule out the gifted-handicapped as being among those individuals who need to be available to address society’s future problems. Indeed, individuals such as Albert Einstein, Stephen Hawking and Winston Churchill show that the solution may well reside in those who are not only gifted but also handicapped. A society that wastes such valuable resources puts itself at risk.

An additional argument for gifted education is one that argues for a different view of giftedness. Some argue that what schools generally tend to focus on developing is intelligence and not intellect (Howley, Howley & Pendarvis, 1995). Schools focus on the use of intelligence tests as a means for assessing intellectual giftedness. These are not very reliable or valid measures of intellectual potential, and the focus on these measures overlooks the true substance of intellect. Intelligence is concerned with practical performances and quantifiable measurement, while intellect concerns thoughtful understandings and is a quality rather than a quantity. Intellect requires intensive nurturing in contrast to intelligence, which Howley, Howley and Pendarvis say is innate and exists on its own. The possibility of

education for the development of intellect is often obfuscated by the great debate about intelligence. Gifted education tends to do a better job than regular education of focusing on the development of intellect.

Howley, Howley and Pendarvis (1995) argue that two of the most frequently used arguments for gifted education, that schools must meet the needs of intellectually able students and that gifted children are the nation's greatest resource, both serve anti-intellect functions. The natural resource argument comes from the "human capital theory," which holds that what people know and do partially accounts for how a nation does productively and how well it can compete. This helps to explain why emphasis on gifted education comes only in a time of national need. People, under this approach, exist to serve the national security or means of production. This approach treats people only as producers and consumers, and schools are usually designed along that line of thinking (Howley, Howley & Pendarvis, 1995). This line of viewing and exploiting students as natural resources has questionable ethical assumptions (Howley, Howley, & Pendarvis, 1995). They argue that we have become concerned about mass education and learning for employment and profit in our society to the neglect of intellect.

Even neuropsychology and the fascination with the brain is argued to take the emphasis off intellect and instead to see the brain as the singularly important object of study. Intelligence is still seen as an inborn trait, and intellect can be and is ignored. It is argued that we must focus on the development of intellect and respect for student thinking. Contemplation and understanding must be taught and encouraged, and meaningful expression must also be developed and encouraged. Finally the intellectual potential in all students must

be respected and developed. In schools, all three of these aspects are often lacking (Howley, Howley, & Pendarvis, 1995). Instead, international competitiveness causes schools to try to become proficient in and master problem solving intended to save the world and not to develop intellect.

As it stands now, according to Howley, Howley and Pendarvis, schools are in charge of silencing voices and obscuring visions, so that the governing spirit of American education can prevail and students can become robots in the economic system they are being turned out to be workers and resources for. They see individuals as being recruited and exploited by the ruling class in order to advance its own interests. Only by helping the gifted to contemplate the inequality, injustice, and abuse in society can we hope to find answers to the problems of our world.

Individuals like Howley, Howley and Pendarvis would likely find the failure to include gifted-handicapped students in gifted programs to be another manifestation of this exploitation. Students who are seen as less likely to fit neatly into the needs of industry are excluded. They do, however, have intellects, and if intellect is to be developed, rather than intelligence exploited, the needs of the gifted-handicapped must be addressed.

Arguments Against Gifted Education

Sapon-Shevin in her book, Playing Favorites: Gifted Education and the Disruption of Community (1994), asks whether it makes sense to label some children “gifted” and others “not gifted.” She questions whether we can be so sure that such a labeling process is perfectly accurate. She also questions whether there are effects of such labeling on parents and teachers, as well as the children. And she wonders if the programs designed for the gifted

are only appropriate for them, or whether other children could also benefit from such programs. These questions lead to more questions about what removing the gifted children might do to the regular classroom and what would such programs mean to the educational system in general and to society. She particularly wondered what lessons were being taught, if we remove the gifted and serve them out of sight of other students and often keep the existence of these programs under wraps.

Sapron-Shevin sees giftedness as being a social construct and not a natural fact. Giftedness is whatever the group dealing with the issue makes it to be. Schools like to sort and label children, but does it make objective sense to call any children gifted? Is the present sorting process effective in really identifying who is gifted and who is not? Does labeling children as different separate them from most people and make common sense thinking no longer applicable to them?

If, as Sapron-Shevin asserts, giftedness is a social construct used to sort children according to social expectations, and even the number of gifted individuals is determined by the outcomes desired by the group identifying the gifted, then how can it be known what giftedness really is? If a school wants to have a gifted program and has a limited budget, they may identify only the top one percent or, if they have more money, they may identify the top five percent. The society determines what giftedness will be; there is no real universal definition.

Other disability labels, such as mental retardation and learning disabilities have been analyzed as social constructs in studies such as Handicapping the Handicapped (Mehan, Hertweck, & Meihls, 1986). It is obvious that the labels serve the purposes of the federal

government, schools, teachers, and parents and, as a result, their meanings are unreliable and fuzzy. Without school rules, policies, and legal and educational practices designed to provide services to such populations there would be no category or label as it presently exists. There would obviously be differences in and among children, but the specific characteristics of any label, be it “gifted” or “mentally retarded,” only exist within a system that for whatever reason wishes to measure, select, and sort students in that manner. It serves the group’s chosen purposes.

In the book, Inventing the Feeble Mind (1994), James Trent states that “mental retardation is a construction whose changing meaning is shaped both by individuals who initiate and administer policies, programs, and practices, and by the social context to which those individuals are responding” (p.2). As a result of this, Trent further notes that different individuals have viewed mental retardation “in diverse ways: as a disorder of the senses, a moral flaw, a medical disease, a mental deficiency, a menace to the social fabric, and finally as mental retardation” (p.2). A rather discouraging analysis of our effort to improve the concept of mental retardation comes from Trent, as he notes that “from the time we started to view mental retardation as ‘thing’- to be the object of scientific study, intervention, needing professional influence, funding, and social control, the true history of the political choices have been hidden” (p.6). Trent says this is more telling than all the “fabrications of mental retardation” we have come up with over time.

Trent hoped his book would help us to learn about mental retardation and to bring that knowledge to an understanding of ourselves.

The lessons we can learn from it teach us about who we are now,

about our own mythologies, and about the meaning of the gaze we cast on *miserable people* and on their apparent need for help, our know-how, and our time. There are indeed aspects of the lives of mentally retarded people (and mentally accelerated people, too) that require help from other individuals, but by looking at the mentally retarded person, the other, so obsessively, we fail to look at ourselves and examine the “screens of ideology” which shape and direct our gaze (p.6).

We must create a solidarity of all people willing to face the details of the pain and humiliation of people seemingly unfamiliar to us. Throughout history we have run from the differences among us and we have used every possible screen across time from demons, superstition, to infatuation with science and technology. But it may be that we still regard individuals who are different with the same confusion and fear felt by the first primitive people. Our concepts of handicaps such as mental retardation has not changed, only the words chosen to represent the concept have changed. Even now we wrangle with whether to call children “gifted,” “talented,” “mentally accelerated,” or one of many other possible labels. The “gifted-handicapped” label is also noted to be perhaps out of vogue or politically incorrect. For in Michigan, in 1998, voters passed an amendment which determined that people should no longer be called “handicapped” and instead should be called “disabled.” Like the concept of mental retardation, the concept of gifted-handicapped has evolved over time. But where has it gone and where is it going?

Difficulties emerge when we try to identify gifted children who are not so readily apparent in their giftedness. A child who learns to read at age three is obviously gifted, and a child who is a musical prodigy is also obvious in his or her giftedness. Yet many children exist who have enormous undeveloped talent, including many gifted-handicapped children. Teachers, parents, school districts, and even experts in giftedness have disparate ideas about

what giftedness may be. So identification procedures vary widely. This feeds into the argument that identification is inadequate to justify the separation and additional education given to those identified as gifted. Yet, attempts to include the gifted-handicapped will require that the problems of identification be addressed in a way that may lessen the general concern over inadequacies of identification. Experience tailoring identification measures to the specific exceptionalities of the handicapped may lead to a more individualized approach that will improve identification in the general population as well.

Another argument against gifted education is that there is a misuse of or abuse of tests, with an overuse of I.Q. and achievement tests to identify the gifted for special programs. This results in the under inclusion of minority students and also probably the gifted-handicapped. Part of this argument also states that adding additional tests to the ones already being used for identification only measure the very same traits of the I.Q. and achievement tests under a different guise.

Testing again is an issue in the argument that children cannot be identified with great reliability across social and racial lines. This, however, ought not to be accepted as an argument against gifted education but rather as a demand for identification procedures that are adequate to identify the gifted among minority populations. So too, it is an argument for improved identification of the gifted-handicapped.

The loudest argument against providing education for the gifted is that it is elitist to provide education to this cream of the crop, who will do well no matter what type of education they are provided. This argument goes along the line that certain people are just going to do well, and they will do well even if they are given no help. As the cream just

naturally rise to the top, so too will these gifted children. As a result, we do not need to provide anything more to them; they will make it on their own. So why not give the extra money or help to children who really need it to stay afloat?

Whatever minimal force this argument may have when addressing the general population, it loses force when applied to the gifted-handicapped. In fact, providing services to the gifted-handicapped, who really can use the help, makes the education of gifted children generally less elitist. Even though it is argued that gifted students can make it on their own and that society need not provide them with any more than they already get, gifted-handicapped children may well not make it on their own.

Issues Specifically for the Gifted-Handicapped

When it comes to identifying and serving gifted children, there is a problem. The underlying problem has been, and continues to be, that in the United States the overriding philosophy is one of equity for everyone and that all should receive equal treatment. In this country the educational system gears up (or down) to have everyone be able to be equal, average, or alike and to give equal time and treatment to all citizens. If any student receives more than this equal time or treatment, the equity philosophy is not working. This concern for equity is presently being voiced about students having disabilities, and the extra time and money they have received and continue to receive is being questioned. The same is true of special programs for the gifted.

History has noted the pendulum swing in education going from equity on one side to excellence on the other side. From Thomas Jefferson's time onward the two concepts have been in conflict. While equity was "in" in the early part of the twentieth century, 1957 saw

the beginning of the Sputnik era and a move toward excellence. Equity was again the call in the 1960s and 1970s. The call for excellence began again in the 1980s. The concern for quality and not equality once again became the focus (Mc Daniel, 1993). While handicapped students have been provided for by PL. 94-142, the Education for All Handicapped Children Act, since 1975, the interest in providing for the gifted has seen ups and downs with some resurgence of interest since the 1980s. But the issue remains as to whether schools can handle trying to be both equal *and* excellent (Gallagher, 1993).

Gifted-handicapped students push the limit of this philosophy beyond where society seems to be able to look and beyond what it can accept. These children are not only handicapped; they are also gifted. One has to question whether such a possibility can even exist in the minds of Americans. For this is an example of an individual who is above average in ability and also has a disability that needs extra services. This person presents a dilemma because he or she falls far out of the equity model, being in need of services for both giftedness on the excellence side of the continuum and also for the handicap on the equity side of the continuum. This is, conceptually, a double whammy to a society that wants every person to be equal and to receive equal treatment. Yet, the gifted-handicapped child presents a situation in which we can address both of society's concerns by helping to provide equal treatment for the handicapped in any case in which the schools have determined to address excellence in the nonhandicapped population.

Because of this double dilemma that impacts on both the equity and excellence issue, society has failed to recognize this melding of equity and excellence and has not even really accepted that these individuals exist. While these individuals need to be treated differently

from just being disabled and/or just being gifted, they are not receiving services that adequately meet their needs. It appears society can only deal with one concept. There can be either equity *or* excellence at any one time. A person cannot be handicapped and in need of extra services and also gifted and in need of more services on that count. It is this type of paradox or contradiction in regard to the gifted-handicapped that Maker noted as a major problem in acceptance of idea of the gifted-handicapped (Maker, 1977).

For a society concerned with equity, giftedness is a less easily accepted difference with which to deal. Students who are gifted often can do average work easily, and society is often less willing to give extra services for students most of whom already do better than the average child. Our democratic society, as with many other societies, democratic and non-democratic, has long had difficulties dealing with excellence and still maintaining equity. A great deal of tension exists between the equity and excellence ideas. Thomas Jefferson and Horace Mann really helped cement the concept of promoting democratic values in the public schools, while also increasing social harmony in our society (McDaniel, 1993). So what happens when you have an individual with the combination of a disability with giftedness? This really throws people into confusion. How does one deal with this individual and still promote democratic views and social harmony?

Another interacting factor that enters into the inability to understand or accept the gifted-handicapped individual focuses on the fact that everyone, even the gifted student, is not equally as strong in all areas. Someone may be very strong in math and yet have little athletic ability. In response to the underlying equity concept held by society, this child will typically be worked with to try to even out or equalize this weakness, and the focus will be on

addressing the weakness (equity) and not the strength (as this would be a focus on excellence). Special education has also been based on a failure model that addresses areas the child has failed to achieve in. So the student's weaknesses become the focus of services and intervention instead of the student's strengths and abilities (Van Tassel-Baska, 1992). This focus may well help to explain why the choice to focus on the handicap and not the giftedness often prevails in our society.

Interestingly, VanTassel-Baska also notes that the gifted-handicapped student presents problems even within the concept of giftedness: "[T]hey portray real disabilities in functioning. Their profile is atypical in respect to strengths, when compared to our classic conceptions of giftedness, and it forces us to entertain a conception of subnormal functioning in the gifted, a condition not readily acceptable in the conceptual framework of understanding giftedness" (1992, p.171). The possibility that the gifted-handicapped student may exist, makes the continuum of giftedness much more broad, diverse and complex. This makes the concept less simple, less black or white, and more gray. And this makes the equity and excellence issues all the more complex and unclear.

A major issue for gifted-handicapped is how to combine working with handicapped and working with the gifted. How can the balance be found that works with the gifts without neglecting compensating for the handicaps? It must be determined in each and every case whether it is more important to work with the gift or with the handicap. Too often it is only the handicap that is addressed. While the focus of this analysis has been the inclusion of the gifted-handicapped in gifted programs, it must be recognized that the children at issue are also handicapped. While their gifts should be developed, they will also need to have their

handicaps addressed. The balance to be struck will vary from child to child and must be carefully drawn.

It must also be recognized that the inclusion of gifted-handicapped in gifted programs will also depend on how the individual's handicap relates to the specific content of the gifted program. What we are identifying for depends on the programs that exist. If a system has a math program, then they need to identify and accelerate based on mathematical ability and look at how the specific disability interferes with any potential mathematical talent.

A particular problem for the gifted-handicapped has to do with the preference of bureaucrats for using formulas or patterns to make decisions. This supposedly increases efficiency and reduces costs. Yet gifted-handicapped children do not fit most patterns for giftedness and are therefore overlooked (Schwartz, 1994).

Joyce Van Tassel-Baska (1989) has suggested that the gifted be identified in a more flexible manner in order to account for the disadvantaged-gifted. She suggests:

Another alternative is to state that every building in a school district will select the upper 3%, 5%, or 10% of its most talented students and then assume that the "levels of giftedness" from building to building will vary. Thus, a building that draws upon a group of economically deprived youngsters may identify a group of relatively "less gifted" (as indicated by standard test scores) youngsters than would a building that draws upon a more affluent population (p 57).

While building by building comparisons may not even out the inclusion of the handicapped in gifted education, the analysis of the prevalence of giftedness in the handicapped population presented in Chapter III could be used to the same end. The percentage used generally could be used for the learning disabled population as well, so that if five percent of the school is to be included, the top five percent of the learning disabled would also be included. While such

an approach would not work for the mentally retarded for identification for an academic program, it may still be relevant for identification for an arts enrichment program.

Summary and Conclusion

Gifted-handicapped children's need for an education which enables them to develop to their fullest potential is well established. Without such an education these children will likely not be successful in overcoming their disabilities and having their gifts surface and shine. The rare exceptions of such people as Helen Keller and Albert Edison are not the rule for this population. Whatever issues may exist against special provisions for the gifted or the handicapped, be it equity, excellence, individuality, would not and should exclude gifted-handicapped children from gifted programs.

It has been argued that the system of education in practice in the United States today does not allow for the development of intellect (Howley, Howley, & Pendarvis, 1995). It merely tries to provide everyone with a standard and functional education. So, if uncommon talent is noted, it is ignored, for the present system is positioned to discount the value of developing talent, because the intent is to provide custodial care and functional skills. The final blow for the gifted is that when gifted children appear to do well in this system and go on to find successful careers, people believe that education today has succeeded in developing talent in gifted children.

Due to the custodial nature of education, disabled children are too often considered educated if they are merely seated in a classroom and especially a regular classroom. All children lose in this system, because this education system is not flexible and able to attend to the needs of individuals. The system is rigid and unfortunately this system is all most

people can imagine. As a result, it is difficult to change it. Yet this education system does not do much more than keep children in custody, while providing rigid services to “enhance” basic skills in rigidly defined tracks or groups, all at as low cost as possible. While this may be a valuable service to parents, who work and need the help, it does not offer true education at the same time it provides custody (Howley, Howley, & Pendarvis, 1994), and all children suffer.

LAW AND THE GIFTED-HANDICAPPED: GETTING
BEYOND ROWLEY

In 1975, the United States Congress passed Public Law 94-142, the Education for All Handicapped Children Act. That act, now known as the Individuals with Disabilities Education Act (IDEA), is a landmark in education legislation and has changed how special education is handled in the country. The IDEA mandates that all children with disabilities between the ages of three and twenty-one receive a free and appropriate education. States must locate and identify all children with disabilities and, regardless of the type of disability or severity of the disability, must provide those children with a free and appropriate education. Furthermore, the schools must use nonbiased and multifactorial methods of assessment to determine the child's disability and what types of special education are needed. The school must then develop and implement an individualized education program (IEP) to meet the child's unique needs. Placement of students with disabilities must be in the least restrictive environment possible. Parents are also assured due process and involvement in the process.

This law has seen amendments since 1975 which have attempted to deal with changing times and circumstances. The Education of the Handicapped Amendments of 1986 extended special education to infants, toddlers, and preschoolers. The Education of the Handicapped Act Amendments of 1990, which provided the name IDEA, made several additions to P.L.

94-142 to include autism and traumatic brain injury among the conditions warranting special education, to require the provision of transition services, and the addition of rehabilitation counseling and social work services being added to related services.

Related legislation has also been implemented; including P.L. 95-561, the Gifted and Talented Children's Act of 1978; Section 504 of the Rehabilitation Act of 1973; P.L. 101-336, the American with Disabilities Act (ADA); and P.L. 103-227, Goals 2000: Educate America Act. The ADA extends civil rights protection to individuals with disabilities in private sector employment, all public services, public accommodation, public transportation, and telecommunication.

While the decision of the United States Supreme Court in Board of Education of Hendrick Hudson Central School District v. Rowley (1982) removed any force P.L. 94-142 might have given to the drive to provide an enriched education to those handicapped children who might also be gifted, there are other legal arguments to that end to be found in the later statutes and in the United States Constitution. In particular, the Equal Protection Clause of the United States Constitution has been used in the past to obtain educational services for the handicapped. Section 504 of the Rehabilitation Act and the Americans with Disabilities Act are also possible sources of a legal right on the part of the handicapped to participate in gifted education programs. The three potential sources mentioned, the Equal Protection Clause, Section 504, and the ADA will be addressed in that order.

The Equal Protection Clause

The Equal Protection Clause is found in the Fourteenth Amendment of the United States Constitution. It states that no one may be denied equal protection of the law by any

state or local government. The precise wording of the relevant part of the amendment is “nor shall any state deny to any person within its jurisdiction equal protection of the laws” (United States Constitution, amendment XIV). The Equal Protection Clause has been characterized as a “guarantee that similar people will be dealt with in a similar manner” (Nowak & Rotunda, 1995, p. 597).

Of course, many laws classify people according to particular characteristics, and it is not always easy to decide if this is a violation of equal protection. There are some clear cases. For example, only people with certain levels of medical training are allowed to offer medical advice, and it would be odd if that were to be a violation of the Constitution. On the other hand, a law that denies African-Americans the right to use a public park would be a clear violation.

Levels of Scrutiny under Equal Protection

What constitutes a violation of equal protection is not always so clear, and certain levels of analysis are used to help determine such an issue. There are three standards of review that are used in equal protection analysis. The highest level of scrutiny is used when a classification is based on race or ethnicity or is based on alienage and treats resident aliens less favorably than citizens. These are known as suspect classes or classifications. When a statute negatively affects a racial, ethnic or alien group, there is a concern that the statute may be an attempt to discriminate. When a statute affects such a suspect class, it is looked at with strict scrutiny.

When strict scrutiny is called for, the government must show it is pursuing a compelling or overriding governmental interest and that the classification is necessary to

promote that end. This strict scrutiny test is very difficult for a government to meet and the only time it has ever been met when there was a negative impact on a racial minority was during World War II, when Japanese-Americans were excluded from the West Coast of the United States.

The next level of scrutiny is for quasi-suspect classes and is an intermediate level of scrutiny. This is not as difficult for governments to meet and involves showing a classification has a substantial relationship to an important government interest. This level of scrutiny has been used to test classifications based on gender or illegitimacy (Nowak & Rotunda, 1995, p. 603).

When a classification does not involve either a suspect class or a quasi-suspect class, the statute must only meet the rational basis test. This test asks whether the classification bears a rational relationship to a permissible government purpose. The person contesting the statute must show that there is no such rationally related interest, making this an extremely easy test for the government to pass. If anyone can identify a permissible objective that a rational legislator could have believed would be furthered by the statute, the statute is constitutional.

There is one additional way in which levels of scrutiny are determined in equal protection cases. These cases do not involve suspect or quasi-suspect classes but instead involve fundamental rights. If people are treated differently with regard to the exercise of a fundamental right, the different treatment must be justified under strict scrutiny. This is true even if the group less favored is not suspect or quasi-suspect.

A History of the Equal Protection Clause in Special Education

The Equal Protection Clause has had a history of involvement with special education. In Pennsylvania Association for Retarded Children v. Pennsylvania (1972) an association and the parents of some retarded children challenged statutes that excluded retarded children from public education. While they made several claims, one of them was an equal protection argument. They questioned “whether the state, having undertaken to provide public education to some children (perhaps all children) may deny it to plaintiffs entirely” (p. 297). While the court only briefly considered the argument, it said there was serious doubt that there was even a rationale basis for excluding the retarded.

Several months later, the federal district court in the District of Columbia also considered exclusion. The plaintiffs in Mills v. Board of Education of the District of Columbia (1972) had been excluded from the public schools because they were considered to be either behavioral problems, mentally retarded, emotionally disturbed, or hyperactive. The court considered the equal protection claim, as it applies to the federal government through the Fifth Amendment Due Process Clause. The court was guided by the United States Supreme Court’s decision in Brown v. Board of Education (1954). That court had said:

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principle instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made

available to all on equal terms (p.493).

The Mills court also cited a case that found the failure to provide poor public school children the same opportunities available to more wealthy school children to be a violation of the Fifth Amendment's Due Process Clause's inclusion of equal protection. In conclusion, the court held that the complete denial of education must be an even greater violation.

Education as a Fundamental Right

While these cases would seem to indicate that the handicapped need to be given the same opportunities as the nonhandicapped, the application is not as straightforward as it might appear. The major problem is that the cases were decided prior to the United States Supreme Court decision in San Antonio Independent School District v. Rodriguez (1973). While the Mills court seemed to take the language of Brown as indicating that education is a fundamental right requiring equal treatment, it is only in the San Antonio case that the Supreme Court directly considers that issue.

San Antonio Independent School District v. Rodriguez was a challenge to the constitutionality of the way Texas financed public education. There was a substantial interdistrict disparity in per-pupil expenditures. The suit contrasted two districts. The least affluent district in the San Antonio area had an assessed property value of only \$5,960 per student, while the most affluent had an assessed property value of more than \$49,000 per student. The poorer district, taxing at the highest level permitted, raised only \$26 per student, while the more property rich district, even though taxing at a lower level, raised \$333 per student. While the state also provided funds for the schools, state funding did nothing to level resources, and the more affluent district still operated with a total of \$310 more per student

than the poorer district.

The federal district court applied strict scrutiny and found the plan violated the Equal Protection Clause, but the United States Supreme Court reversed. The Court looked for a reason to apply strict scrutiny by determining whether the disparity disadvantaged a suspect class or infringed on a fundamental right. The suspect class suggested was the poor. While the Court recognized that some of its earlier cases had protected the poor against discrimination, it saw those cases as limited to cases where there was a complete deprivation of a benefit. The Court also questioned whether the poorest districts, based on assessed value, contained the poorest residents.

The Court also decided that, despite the language in Brown v. Board of Education, education is not a fundamental right. It is not explicitly protected by the Constitution, and the only way the plaintiffs had been able to assert that it was a fundamental right was to tie it to the right to vote and to the freedoms of speech and press by claiming that the Constitution guaranteed the right to cast an intelligent vote and to offer intelligent or persuasive speech. The Court was unwilling to guarantee effectiveness or an informed basis in either area and held that no fundamental right was infringed, at least where the benefits of an education were not being totally denied.

Because the Court could find no reason to use strict scrutiny, it applied the rational basis test. The Court felt that the use of local property taxation was a legitimate means for dividing monies for education and that it furthered a state interest in local control of education.

San Antonio Independent School District v. Rodriguez does not contradict the two

earlier equal protection cases involving the retarded and other exceptional students. In those cases there was a complete denial of benefits, while in the San Antonio case some adequate level of education was being provided. Additionally, while the poor were not seen as a suspect class, there remained the possibility that the retarded or other exceptional children might be seen as a suspect class. The issue of the status of the retarded came to the Supreme Court over a decade later.

Equal Protection and the Mentally Retarded

City of Cleburne v. Cleburne Living Center (1985) was a case that challenged less than equal treatment of the mentally retarded. The city of Cleburne had a zoning ordinance that prohibited the building of a group home for the mentally retarded in one of the residential neighborhoods there. A hospital or a home for the elderly and various other types of structures could have been built on the site. But, the ordinance specifically prohibited homes for the insane, retarded, or drug addicts and alcoholics. The lower court had chosen to use heightened scrutiny and viewed the mentally retarded as a quasi-suspect class. The Supreme Court did invalidate the ordinance, but found that the lower court had erred in its use of heightened scrutiny.

The Court looked at the factors which determine whether a group is a suspect class. The Court saw no reason to suspect legislative prejudice against the retarded. It noted statutes that banned discrimination against the mentally retarded. It also noted that the retarded were, in fact, different, and that those differences might have to be taken into consideration by the government. The Court was concerned that the mentally retarded were given heightened scrutiny, it might hinder their receiving other special assistance. The Court

was also concerned that if heightened scrutiny were given to the mentally retarded, it might also have to be used with other kinds of disabilities.

Since it could not find any reason for heightened scrutiny, the Court had to apply the rational basis test. In applying the test the Court could find no legitimate government purpose for the ordinance ban. The City council had expressed concern that the land was on a 500 year flood plain. But the Court said that could not explain the differing treatment the retarded were receiving compared to the elderly and other groups. The council also was concerned about the number of inhabitants in the home and legal responsibility for the actions the inhabitants might take. The Court saw no reason to treat the mentally retarded any differently than fraternity members, who could have lived as a group on the site.

The council's real concern seemed to be with the negative attitudes of the property owners near the facility, fears of the elderly in the neighborhood, and concern that students at a nearby junior high school would harass the retarded individuals. In the Court's view this amounted to "irrational prejudice against the mentally retarded." Statutes based on irrational prejudice cannot meet even a rational basis test.

Given the cases so far, it seems clear that, if districts adopted a policy that flatly excluded all children with exceptionalities from gifted programs that would be unconstitutional discrimination. The early cases that found exclusion of the retarded or those with other exceptionalities from public education to be a violation of equal protection would apply to a complete exclusion of other exceptional children, even those who could handle the enriched material, from an available gifted program. While the San Antonio case may have weakened the fundamental right status of receiving an education to that of an adequate

education, where there is a gifted program in a district, the San Antonio case should not justify exclusion of exceptional children who can handle the material. A complete exclusion of such capable handicapped children could only be explained by prejudice or stereotypical thinking about the handicapped that the Cleburne case found inadequate to meet even rational basis review.

The Role of Intent

The real problem with applying this area of law to gifted-handicapped children is that they are most likely not left out of gifted program as the result of an official, even informal, exclusionary policy. Instead, it is simply more likely that they may fail to test well on the instruments used to identify students to participate in gifted programs. Even if they have the capability to succeed and are truly gifted, their handicaps may keep them out, because the handicaps fail to allow the gifts to show.

The issue of a test having a negative impact on a population that might in fact be qualified was raised in Washington v. Davis (1976). That case involved the use of a communication assessment test, measuring verbal skills, vocabulary, and reading comprehension, to screen police force applicants. The suit was filed by black applicants for those law enforcement positions who claimed the assessment discriminated against them. The evidence presented to the district court concluded that a higher percentage of blacks than whites failed the test and the test had not even been validated to show it could measure job related success.

When the case reached the United States Supreme Court, the Court considered the claim that the test was an “intentional” act of discrimination. The Court held that a law may

not be declared invalid under the Equal Protection Clause simply because it affects a greater proportion of one race than another. There is no reason why that conclusion would not also apply to the effects of a screening test on the gifted-handicapped. The Court also found, however, that an invidious discriminatory purpose may be inferred from the totality of relevant facts. Disproportionate impact is not irrelevant to such an inference, although it is not sufficient as the sole measure of invidious discrimination that is forbidden by the Constitution.

The Court found that the test, while it did fail to qualify more members of one race, did not deny members of that race equal protection. The test was one used nationally by the Civil Service, so it was not likely that it had been adopted by a police force trying to screen out black applicants. The Court also noted the department's effort at minority recruiting as evidence that it was not intentionally discriminating. That more blacks failed to score well on the test did not demonstrate that the black plaintiffs were being denied equal protection. The Court also noted that, while the test was not correlated to job performance, it was correlated to success in the training program. The test was found to be a valid one and to serve a rational purpose of the government, the only level it must have been shown to meet, since heightened scrutiny was not required in this case where intentional discrimination was found lacking.

Washington v. Davis might seem to insulate the use of identification tests from equal protection challenges, but that may not be the case. In adopting the communication test as a criterion for admission to the training program, the District of Columbia police might or might not have realized that it would disproportionately eliminate black applicants. The use

of an I.Q. test to identify gifted students would almost certainly be recognized as likely to fail to identify a higher proportion of gifted learning disabled students as being gifted than to miss nonhandicapped gifted students.

Even if that were not the case, the police department's use of the test at issue did not eliminate black applicants because they were black. The result was simply a difference in the average communication abilities of the black and white applicants. That is not quite the same for the gifted-handicapped. They are eliminated because they are handicapped, even if the specific handicap would not have negatively affected their abilities to participate in the program. That is, the test really serves as a measure of their handicap, whether that handicap should disqualify them for a gifted program or not. The police use of a test did not measure race but merely resulted in a difference in communication necessary for the program that was correlated to race.

Lastly, there was at least a correlation between the police applicant performance on the test and success in the training program. Where a disability masks a child's giftedness, that would seem to say by definition that there is a lack of correlation between the instrument and the child's ability to succeed. The black applicants who were eliminated were those who could not adequately communicate. The gifted-handicapped child who is eliminated is not necessarily the child who cannot perform in a gifted program but only one who cannot perform on a particular instrument.

The Washington v. Davis Court said that a discriminatory purpose may be inferred from the totality of the circumstances. Knowledge that even gifted students may be eliminated by an identification procedure that will not allow a gift to shine through a handicap

and then using such an instrument as the sole means of identification for inclusion in a gifted program might be a sufficient circumstantial factor to lead a court to include that the discriminatory impact on the gifted-handicapped is intentional.

Courts, such as that in Larry P. v. Riles (1971), have barred the use of I.Q. tests as the sole basis for identifying students for programs for the mentally retarded, because of their disproportionate impact on blacks. Such use was, given that disproportionate impact, a violation of equal protection. The IDEA also requires, to assure nondiscriminatory testing, that no single test score can be the basis for placement. These decisions and policies protect blacks from discrimination by placing them in classes for the mentally retarded, when they might not be retarded.

A parallel argument that one instrument should not be allowed to eliminate handicapped children from gifted programs for which they might be qualified would seem reasonable. School districts would be well advised to employ a variety of instruments, when a handicapped child is involved, and based on the particular handicap at issue, to select instruments that are less likely to eliminate a child who could be successful in a gifted program.

Section 504 of the Rehabilitation Act

As part of the Vocational Rehabilitation Act Amendments of 1973, P.L. 93-112:

Section 504, the Bill of Rights for the Handicapped states:

No otherwise qualified handicapped individual in the United States, as defined in section 706(7) of this title, shall, solely by reason of his handicap be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance

Later, the Rehabilitation Act Amendments of 1992, P.L. 102-569, substituted the word “disabled” for “handicapped”. There might be some question whether a school system that receives funds in some part of its program is subject to the Rehabilitation Act in all parts of its programs. However, the law as now in the United States Code defines a “program or activity” to include “all of the operations of . . . a local education agency [,] system of vocational education, or other school system . . .” (29 USC 794 (b))

Before getting into more issues related to the Rehabilitation Act, it is important to examine the interaction of 504 and the IDEA, the issue being whether the existence of the IDEA means that one cannot bring a suit under the Rehabilitation Act over a dispute involving special education. In an earlier era, some courts had said that where there was an identical claim under the Education for All Handicapped Children Act (EAHCA), the predecessor to the IDEA, that could also fit under the Rehabilitation Act, one cannot proceed under the Rehabilitation Act. They said that Congress had intended for the suit to go under the other act instead. In fact, the Supreme Court in Smith v Robinson (1984), said that when the EAHCA is available to protect the right of a handicapped child to a free appropriate education, then neither Section 504 nor the Equal Protection Clause may be used in its place. The Court believed Congress had intended the EAHCA to be the sole remedy for such disputes.

There are two way around this result. Courts that have analyzed Smith v. Robinson have found exceptions. For example, S-1 v Turlington (1986) limited the effect of Smith v. Robinson to cases in which the EAHCA is available and where Section 504 does not grant any rights beyond those available under EAHCA. Since, under Rowley, the right to an

education that would challenge the gifted was found not to be available under IDEA, Smith may not apply.

More importantly, in the 1986 amendments to IDEA (P.L. 99-457), Congress added to the law a provision that “Nothing in this chapter shall be construed to restrict or limit the rights, procedures, and remedies under the Constitution, title V of the Rehabilitation Act of 1973, or other Federal statutes protecting the rights of children and youth with disabilities....” The House of Representatives Committee Report accompanying these amendments stated, “since 1978 it has been Congress’ intent to permit parents or guardians to pursue the rights of handicapped children through EHA, section 504, and section 1983 . . . Congressional intent was ignored by the U.S. Supreme Court when . . . it handed down its decision in Smith v. Robinson” (H.R. Rep. No. 99-296, 1985).

While some courts such as that in Sellers v. School Board of the city of Manassas (1998) have refused to read the amendments to allow a civil rights suit for the failure to provide IDEA’s required free and appropriate education for handicapped children, the reasoning of that case does not apply here. In that case, the IDEA was the only statute violated and the court decided that it’s violation should be challenged under that statute rather than another statute broadly guaranteeing civil rights. Section 504, since it provides its own substantive rights, should not face the same concerns, and a section 504 suit should be allowed, even when an IDEA suit might have been brought instead.

Defining “Disability” in the Rehabilitation Act

Another issue that is critical to understand is what conditions come under the label “disability” for purposes of the statute. “Disability” seems to be very broadly interpreted.

There are section 504 cases holding that the statute's protection includes the retarded, the blind, the hearing impaired, those with spina bifida, those suffering from severe allergies, alcoholics, the learning disabled, the mentally ill and those who are HIV positive. The Code of Federal Regulations section implementing section 504 for education settings defines "handicapped person" as "any person who (I)has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment." (Title 34, section 104.3(j) (1), 1998).

"Physical or mental impairment" is further defined as

(A) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive, genito-urinary; hemic and lymphatic; skin; endocrine; or (B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. (Title 34, section 104.3 (j) (2) (I))

Furthermore, "major life activities" is defined as "functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working" (Title 34, section 104.3 (j) (2) (ii)). This would seem to be broad enough to encompass almost everything that would be run into in most special education classrooms or settings.

"Otherwise Qualified" Individuals

The two most difficult issues for the application of section 504 are the questions of whether a disabled individual is "otherwise qualified" and what actions constitute discrimination. The Supreme Court has examined the "otherwise qualified" issue in a case titled Southeastern Community College v. Davis (1979). Davis was hearing impaired to the

degree that even with a hearing aid she could not understand speech except through lipreading. She had applied to be admitted to a degree program to become a registered nurse. The college rejected her because it believed she could not participate safely in the clinical training program. She clearly had been rejected due to her disability, but the question here was whether she was “otherwise qualified”. The Court of Appeals had held that under Section 504 the college could not consider her impairment in its action on her application to the program and if admitted the college would have to modify its program to accommodate her disability. The Supreme Court reversed this decision.

The Court determined that this disability would impact on her performance. It noted that in many situations all doctors and nurses must wear surgical masks. In such situations would not be able to read lips. When she could not read lips, her inability to respond quickly in an emergency would also cause dangerous situations in both her training program and in practice. The Court said:

Section 504 by its terms does not compel educational institutions to disregard the disabilities of handicapped individuals or to make substantial modifications in their programs to allow disabled persons to participate. Instead, it requires only that an “otherwise qualified handicapped individual” not be excluded from participation in a federally funded program “solely by reason of his handicap,” indicating only that mere possession of a handicap is not a permissible ground for assuming an inability to function in a particular context. . . . An otherwise qualified person is one who is able to meet all of a program’s requirements in spite of his handicap (p. 405-406).

Davis contended that, if her hearing impairment made her participation in the program unsafe, the college would be required to change its program so she could function with her hearing impairment. While Davis found support in federal regulations requiring educational programs to make modifications to accommodate the handicapped and to provide aid such as sign

language interpreters, the Court said that the regulations could not be read to include the curricular changes necessary for her to participate in the nursing program. The Court said it would have been necessary to exempt her from all clinical courses and only have her take academic courses, and that felt would not give her what was necessary to become a qualified nurse.

It is important to note that the Court did not say that no accommodation need ever be made. The Court said:

We do not suggest that the line between a lawful refusal to extend affirmative action and illegal discrimination against handicapped persons always will be clear. It is possible to envision situations where an insistence on continuing past requirements and practices might arbitrarily deprive genuinely qualified handicapped persons of the opportunity to participate in a covered program. Technological advances can be expected to enhance opportunities to rehabilitate the handicapped or otherwise to qualify them for some useful employment. Such advances also may enable attainment of these goals without imposing undue financial and administrative burdens upon a State. Thus, situations may arise where a refusal to modify an existing program might become unreasonable and discriminatory (p 412-413).

Courts have considered this issue since the Davis case. In Murphy v. Franklin Pierce Law Center (1995), Murphy suffered from diplopia which affected her ability to read for long periods and required rest periods. After having been given several chances to bring her grade point average up to that required by the school, she was unable to do so and was dismissed. The court looked at the “otherwise qualified” issue but clearly took into account an accommodation requirement. The court said:

To be otherwise qualified for retention, Murphy must demonstrate that she was capable of satisfying the academic and technical requirements set by the Law Center with the help of reasonable accommodations. . . . Thus we look to see whether the Law Center either provided reasonable accommodation for Murphy’s diplopia or reached a rational conclusion that accommodating

Murphy would unduly interfere with its academic program (p. 3)

The court found some adjustments had been made. Murphy was allowed to take reduced credit load, and was provided extra time for her examinations. The court believed these accommodations satisfied the Law Center's obligation for reasonable accommodations. They agreed with the lower court that Murphy had been dismissed due to her lack of analytic skills, rather than because of her disability.

In another law school case, Anderson v. University of Wisconsin (1987) held that Anderson had been dismissed from law school not because of his alcoholism but because he could not maintain the minimally required grade point average. While alcoholism might have contributed to that failure, the law school was not required to make an exception in regard to its requirements.

On the other hand, in Pushkin v. Regents of the University of Colorado (1981), the court found a violation of Section 504 in the denial of admission to a psychiatric residency program of a physician, who was suffering from multiple sclerosis and was confined to a wheelchair. The court concluded that he had the ability to succeed in spite of his handicap and that the admissions committee had focused on his handicap in denying him admission. The committee had been concerned over the reactions of his patients to his handicap and the committee also assumed that Dr. Pushkin suffered from a great deal of anger as a result of his reaction to his condition.

Nathanson v. The Medical College of Pennsylvania (1991) refused to conclude as a matter of law that the request of an individual who had back and neck injuries that should be given a closer parking spot and a straight-backed chair, that did not need to be specially

designed were unreasonable accommodations and would cause undue burdens. Where an individual is otherwise qualified the Supreme Court has held Section 504 requires “meaningful access.” “To assure meaningful access, reasonable accommodations in the ... program or benefit [receiving federal financial assistance] may have to be made” (Alexander v. Choate, 1985, p. 301).

The questions for education in regard to the impact of this input on gifted-handicapped children must be considered. The impacts will not be clear and simple and must be considered individually in each case. For example, if children who are blind and also gifted request admission to an art program for talented children they might be “otherwise qualified,” if the program is three dimensional in nature and not “otherwise qualified,” if the program is a two-dimensional one. And while gifted and dyslexic children may well not be qualified for a special program in literature, they may be qualified for a special program in mathematics. Hearing impaired gifted children may not be qualified for a music class but be qualified for a special program in art.

As noted earlier, this issue will require individual consideration of each case and the program in question. There can be no across the board decisions about whether gifted-handicapped children will be “otherwise qualified” for gifted programs. By the same token, there can be no across the board decision that they will not be qualified for such programs. The decisions must be based on indepth analysis of all the complexities of the particular children in question as well as the possible gifted programs that are available.

Identifying Discrimination

Turning to the issue of what constitutes discrimination, the intent of the federally

funded agency appears to be important. The discriminatory actions prohibited are fairly clear.

The Code of Federal Regulations provides that a recipient of federal funds may not

(I) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others;

...

(vii) Otherwise limit a qualified handicapped person in the enjoyment, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service (Title 34, section 104.4 (b) (1)).

While the regulations require equally effective services, they make it clear that identical results or levels of achievement are not mandated. Instead, the recipient “must afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person’s needs” (Title 34, section 104.4 (b) (2)). In particular, recipients cannot or may not “utilize criteria or methods of administration (I) that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap, [or] (ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient’s program with respect to handicapped persons . . .” (Title 34, section 194.4 (b) (4)).

There are cases that seem to indicate that discrimination must be intentional before it violates Section 504. In Monahan v. Nebraska (1982) the court said that discrimination

under Section 504 requires more than an incorrect evaluation, or a faulty individualized education plan. “[E]ither bad faith or gross misjudgment should be shown before a s 504 violation can be made out, at least in the context of education of handicapped children” (p.1171). This is not simply an old case. A 1998 decision in Sellers v. School Board of the City of Mannassas reached the same conclusion.

On the other hand, the Nathanson v. the Medical College of Pennsylvania (1991) court concluded that a plaintiff need not show an intent to discriminate to win a suit under Section 504. That court drew support from the Supreme Courts decision in Alexander v. Choate (1985). The Supreme Court was seen as having held that Section 504 was aimed at unintentional conduct, because the Court had said that “[d]iscrimination against the handicapped was perceived by Congress to be most often the product, not of invidious animus, but rather of thoughtlessness and indifference--of benign neglect” (p. 295).

The Pushkin court also refused to require proof of intentional discrimination. The court said:

Discrimination on the basis of handicap usually results from more invidious causative elements and often occurs under the guise of extending a helping hand or a mistaken, restrictive belief as to the limitations of handicapped persons. A claim under s 504 would be analyzed more readily under a “disparate impact” theory where it is claimed that a facially neutral practice has a discriminatory impact on persons within a protected class (p. 1385).

As the court explained the procedure, the handicapped plaintiff would have to show that he was otherwise qualified and that his rejection was under circumstances from which it could be inferred that it was based solely on his handicap. The defendant would then have to provide evidence that the plaintiff was not an otherwise qualified person or that the rejection

was based on something other than his handicap. The plaintiff would then have to show that the defendant's reasons were based on misconceptions or factual conclusions without foundation and that any reasons offered other than the handicap in fact included consideration of the handicap.

The difference in these cases would appear to be that those requiring intentional discrimination were cases in which the recipient did not know of either the existence or the nature of the plaintiff's handicap. In those cases the courts were unwilling to find liability based simply on some negligence in diagnosis or selecting the best intervention. The court in Sanders v. Marquette Public Schools (1983) appeared to draw this distinction. While the court found no requirement of intentional discrimination, its conclusion appears to have been limited to situations where a plaintiff had shown herself to be handicapped and had requested services.

Discrimination and Assessment

Perhaps the most important case to the issue discussed here is Stutts v. Freeman (1983). Stutts was dyslexic and could read at only the most basic level. He worked as a laborer for the Tennessee Valley Authority (TVA). He applied to be admitted to a TVA training program to become a heavy equipment operator. The TVA used the General Aptitude Test Battery (GATB) to predict the likelihood of success in the program. Because of his low score on the written part of this test, Stutts was denied admission to this training program. He was evaluated by "doctors" using non-written tests and found to be above average in intelligence, coordination, and aptitude for a heavy equipment operator. The TVA was not able to obtain those non-written test results and could not get its own testing service

to give Stutts an oral GATB. The court said that the TVA had not met the requirements of the Rehabilitation Act by accepting this rejection of the alternate testing they had sought. "When an employer like TVA chooses a test that discriminates against handicapped persons as its sole hiring criterion, and makes no meaningful accommodation for a handicapped applicant, it violates the Rehabilitation Act of 1973"(p. 669).

It would appear that the TVA, in Stutts, had not intentionally discriminated. It used a neutral procedure of selecting participants for its training program based on the GATB. However, that instrument had a disparate impact on learning disabled individuals. The good faith of TVA is shown by the fact that it sought the results of alternate tests. That good faith or lack of discriminatory intent was, however, not sufficient to avoid liability under Section 504.

It would follow that this finding for training should also carry over for admission to programs. In fact, the Code of Federal Regulations requires that, with regard to preschool, elementary, and secondary education in evaluation and placement

Tests are selected and administered so as best to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the tests results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure) (Title 34, Section 104.35 (a) (3) 1988).

The same provisions apply to post secondary education admissions tests with the additional requirement that the post secondary institutions

May not make use of any test or criterion for admission that has a disproportionate, adverse affect on handicapped persons or any class of handicapped persons unless (I) the test or criterion, as used by the recipient,

has been validated as a predictor of success in the education program or activity in question and that (ii) alternate tests or criteria that have a less disproportionate, adverse affect are not shown by the Assistant Secretary to be available. (Section 104.42 (b) (2) 1998).

While these findings do not apply directly to the gifted-handicapped child in elementary or secondary education, they do apply Section 504 to the task of using of an appropriate assessment, when admitting handicapped children to programs.

Clearly a school system cannot have a policy that excludes gifted-handicapped children from gifted programs. But further, they also need to concern themselves that their screening procedures do also have a disparate impact on handicapped children, who may attempt to be admitted. A gifted-handicapped child who is otherwise qualified to participate may bring a Section 504 suit. While all courts have been willing to grant orders that the recipient change the practices that have a discriminatory impact, at least where the change is not unduly burdensome, some courts have also been willing to award plaintiffs monetary damages.

The Americans with Disabilities Act

The Americans With Disabilities Act (ADA) addresses three major areas. The first, not at issue here, addresses discrimination in employment. The other two parts address discrimination by public entities and by public accommodations.

With regard to public entities, the law provides “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity” (ADA, section 202, 1990). “Public entity” is broadly

defined to include any state or local government or any department or instrumentality of any such government. “Qualified” is also defined so as to exclude an individual who, even with reasonable accommodations, could not meet essential eligibility requirements. As it turns out, the most important definition, for purposes of this section, is the definition of “disability.” The statute defines “disability” as “a physical or mental impairment that substantially limits one or more of the major life activities . . .” (ADA, section 3, 1990) or having a record of or being regarded as having such an impairment.

The statute also provides “No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation” (ADA, section 302(a), 1990). This section addressing public accommodations contains several specific prohibitions against discrimination. Included are

(I) the imposition or application of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, or accommodations being offered;

(ii) a failure to make reasonable modifications in policies, practices, or procedures when such modifications are necessary to afford such goods, services, facilities, privileges, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, or accommodations;

(iii) a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of

auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, or accommodation being offered or would result in an undue burden . . . (ADA section 302 (b) (2) (A), 1990).

The statute is enforceable by court order, monetary awards to the disabled individual and fines.

While the Rehabilitation Act covers persons with disabilities in regard to agencies receiving public funding, the ADA is important because it impacts on persons with disabilities with regard to even agencies who do not receive public funding. What is to count as a public accommodation is not clear from the statute itself, but the Code of Federal Regulations specifically includes any “nursery, elementary, secondary, undergraduate, or postgraduate school or other place of education (CFR section 36.104, 1998). The ADA, as a result, applies to private as well as public schools but with one major exception. Excluded from compliance with the ADA are “entities controlled by religious organizations” (ADA section 307), so religious schools are not subject to this statute.

Defining “Disability” in the Americans With Disabilities Act

The most difficult issue with regard to the gifted-handicapped has been deciding whether such individuals are disabled for purposes of this statute. The Code of Federal Regulations adds to the statute’s definition of disability:

Disability means . . . a physical or mental impairment that substantially limits one or more of the major life activities . . .

(1) The phrase physical or mental impairment means--

(I) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs;

respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine;

(ii) Any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities; . . .

(2) The phrase major life activities means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. (CFR 36.104)

These definitions can raise a variety of issues, some of which are similar to issues raised under the Rehabilitation Act. As with the Rehabilitation Act, the disabled individual must be qualified to participate, with reasonable accommodation, in the program at issue. The issue of whether a modification would constitute a fundamental change to the program or service is also similar to issues raised under the Rehabilitation Act. The ADA also makes it clear that where participation of the individual would constitute a direct threat to health or safety, participation is not required, and that has led to factual disputes.

The issue that has received much more attention under the ADA is that of what constitutes a disability. This may make sense, since under the Rehabilitation Act discrimination on the basis of the disability is the basis for a violation. The ADA is not violated only by discrimination but also requires more in the way of accommodation, and requires it of entities that are not receiving the federal funds that could be seen as balancing the burdens of the Rehabilitation Act. Where someone has been discriminated against because of a disability, the issue of whether or not the person is disabled may be less likely to arise. Where someone is asking for a modification by a public accommodation, that public accommodation may well be inclined to contest whether or not the individual has the sort of

disability included within the ADA's provisions.

Learning Disabilities and the Americans with Disabilities Act

The existence or not of a disability that fits within the ADA has, for purposes of learning disabled or otherwise exceptional children, turned on the issue of whether or not their conditions substantially limit a major life activity. That issue arose in the case of Price v. the National Board of Medical Examiners (1997). Three Marshall University School of Medicine students sought to have extra time to take the United States Licensing Examination and also requested that the exam be given in a separate room. The plaintiffs claimed these accommodations should be granted as a result of mandates in the ADA. The students all claimed to have learning disabilities. Two of the students had been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) and two of them also claimed to have reading and written expression disorders. They claimed that these disabilities substantially limited them in one or more major life functions.

The district judge did not agree with the students' claim. He felt that the three individuals disabilities did not substantially limit a major life activity. He noted that all three individuals had performed and learned well in comparison to the average person in the general population. In fact, it was noted that some of the individual had been in gifted programs in school, or had been a National Honors Student, had high G.P.A.s, and/or had graduated with degrees, all without any accommodation for the alleged disability. All these accomplishments were seen by the Judge as showing that they learned better than the average person in the population.

The facts of this case may make it different from a case involving elementary or high

school students who are gifted-handicapped. Nonetheless, while there are differences, the judge in this case did use an example to explain the courts reasoning, and the example is troubling. The court said:

Take, for example, two hypothetical students. Student A has average intellectual capability and an impairment (dyslexia) that limits his ability to learn so that he can only learn as well as ten percent of the population. His ability to learn is substantially impaired because it is limited in comparison to most people. Therefore, Student A has a disability for purposes of the ADA. By contrast, Student B has superior intellectual capability, but her impairment (dyslexia) limits her ability so that she can learn as well as the average person. Her dyslexia qualifies as an impairment. However, Student B's impairment does not substantially limit the major life function of learning, because it does not restrict her ability to learn as compared to most people. Therefore, Student B is not a person with a disability for purposes of the ADA (p. 427).

The opinion also expressly criticized the views of experts in the case, who had argued that "a person who is not performing up to his or her abilities has a disability within the meaning of the ADA" (p. 427 n. 5). It is clear that, in the view of this court, a gifted-learning disabled student performing at an average level has no right to demand accommodation under the ADA.

Fortunately, not all courts have taken this position. The issue considered in Price was also at issue in Bartlett v. New York State Board of Law Examiners (1998), and the court there reached a different conclusion. In this case a law school graduate, Dr. Marilyn Bartlett, had a learning disorder in reading and requested reasonable accommodations in sitting for the New York State Bar Examination. The Board had determined that Dr. Bartlett was not disabled under the ADA requirement, as she had already accomplished more than most people.

The lower court rejected the Board's conclusion and went into great detail to find a

difference between this case and Price. The court noted that the test in Price occurred part way through the students' medical education and that court had considered whether or not there was a substantial impairment with the ability to learn. The bar exam, on the other hand, occurred after graduation from law school and was required before one could work as a lawyer. The lower court then saw the ADA issue of disability as addressing whether Dr. Bartlett was substantially impaired in the ability to work, rather than in the ability to learn as the Price court had considered. The court concluded that she was impaired in her ability to work, since she could not be admitted to the bar.

The United States Court of Appeals for the Second Circuit was willing directly to contradict the Price court's opinion. The court noted that the statute requires that the existence of a disability is to be assessed without considering mitigating measures such as accommodations or aids. The court said:

In this case, Dr. Bartlett suffers from a lack of automaticity and a phonological processing defect that significantly restricts her ability to identify timely and decode the written word, that is to read as compared to the manner and conditions under which the average person in the general population can read or learn. Her history of self-accommodations, while allowing her to achieve roughly average reading skills (on some measures) when compared to the general population, "do not take [her] outside of the protective provisions of the ADA . . ." (p. 329).

The court was unwilling to let the fact that Dr. Bartlett had been able to overcome a disability to negate the fact that she had a disability.

There is then a split among courts as to whether a learning disabled student who, because of giftedness, has been able to achieve at an average level merits the protection of the ADA. The New York court has the better argument here. For in the argument of the West

Virginia court any blind or deaf student who is gifted and had a reading problem would qualify under ADA because of the sensory deficit. However, any students who are learning disabled and gifted as well as having a reading problem would not qualify under ADA as they will likely do as well as most people in the population.

Rephrasing the hypothetical in Price shows the oddness of the conclusion there. Rather than hypothesizing two learning disabled students, consider four intellectually gifted students, one blind, one deaf, one with motor difficulties, and one dyslexic. All have been able to perform at at least an average level, and all ask for some form of accommodation under the ADA. The Price court's approach would allow all but the dyslexic individual a cause of action under the statute. The blind student's ability to see is substantially impaired. The deaf student's ability to hear is similarly impaired. The student with a motor difficulty has a substantial impairment in the ability to walk. Only the dyslexic lacks a substantial limitation, despite the fact that all are gifted and that each has a handicap that has made it difficult to reach the potential that gift would otherwise allow.

The Price court's analysis leads to another odd outcome. Under its approach, any learning disabled student who is in college would not qualify for ADA protection. Any such student has done better than the average person in the population. Just being admitted to college would seem to indicate that the student learns as well as, or better than, most people in the population. If the only claim of handicap was a learning disability, such students would not be considered substantially impaired in their abilities to learn and would have no basis to claim accommodation under the ADA. Yet, such students are routinely granted extra time on tests, readers or various other accommodations. This widespread practice indicates that

the Price court's position is questionable.

There is also another difficulty with the Price court's view. It places too great a value on how an ADA complaint is phrased. The learning disabled student is viewed as not substantially impaired, only if the impairment is said to affect the life activity of learning. Dyslexia can be seen, however, as a problem of visual perception. It might be argued that the student's ability to see has been affected. Since this visual problem has a great effect on visual perception, it could be seen as substantial.

Lastly, the list of major life activities that must be substantially limited reads as follows: "functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working" (CFR 36.104(2)). The use of "such as" plainly indicates that the list is not exhaustive. While missing items from the list may have to be similar to those in the list, reading does not seem too far off. An impairment that substantially limits the ability to read would appear to be a disability. While the dyslexic individual, who performs at an average or above average level, may, in the Price court's view, not be substantially limited in the ability to learn, that person is substantially limited in the ability to read. The fact that such a person is performing, overall, at an average to above average level no more negates the existence of a disability than would the fact that a blind child performs at the same level.

Other Special Education Categories

A similar argument might be made for a student with attention deficit disorder, with or without hyperactivity, who also has managed to compensate in some way and has achieved at an average or above average level. Symptoms of hyperactivity, according to the DSM-IV,

include difficulties in concentrating, listening, sustaining activity, organizing, and remembering (1994, p. 83-84). The student has an impairment that substantially limits several of his or her abilities to do such things as concentrate, listen, sustain activity, organize, and remember. Concentrating, listening, sustaining activity, organizing, and remembering may not be as similar to the activities listed in the regulations implementing the ADA, seeing, hearing, walking, learning, etc., as reading is, but they could still be argued to be major life activities. If that claim is accepted, even a court following the Price court's approach would have to agree that the ADD student has a disability for purposes of the ADA. A court following the approach of the court in Bartlett would also find a disability, since it would not allow the self-accommodation of the student to negate the existence of a disability in the major life activity of learning.

Clearly the ADA applies to students who are blind, hearing impaired, mentally retarded, or suffering from multiple sclerosis and ought to apply to students with learning disabilities, even though any of those students may be performing at an above average level. Gifted-handicapped students attending any non-religious school should, therefore, be eligible for the same sorts of protections that the Rehabilitation Act provides to students attending schools receiving federal funds.

Revisiting the Rowley Decision

In actuality, we might not want to give up too quickly on the Rowley decision's effect on P.L. 94-142. They are at least some parts of the Rowley decision which may be helpful in gifted-handicapped students' efforts to gain services. While P.L. 94-142 might help in demanding the identification of the gifted-handicapped, it is less clear that it would require

the provision of additional special education services once the child is identified.

The Supreme Court's interpretation of P.L. 94-142 make clear its view that the act was intended to insure access more than outcomes. As the Court said, "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" (p. 192). The Court also said "neither the Act nor its history persuasively demonstrates that Congress thought that equal protection required anything more than equal access" (p. 200). Justice Blackmun's concurrence had the same tone:

Rather, the question is whether Amy's program, viewed as 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 (p.211).

It seems reasonable to assume that the Court would not require that a gifted program be provided to handicapped students since it is not required to be provided to the nonhandicapped students. As a result, Amy could not be expected to be educated to her maximum potential, when other children in the school system had no right to be educated to their own maximum potential. It is not likely that every school system educates every student to the maximum of their potential. The Rowley Court quoted Mills as providing a realistic standard as to the services to be provided each child when finances preclude meeting the needs of every child.

If sufficient funds are not available to finance all of the services and programs that are needed and desirable in the system then the available funds must be expended equitably in such a manner that no child is entirely excluded from a publicly supported education consistent with his needs and ability to benefit

therefrom. The inadequacies of the District of Columbia Public School System whether occasioned by insufficient funding or administrative inefficiency, certainly cannot be permitted to bear more heavily on the “exceptional” or handicapped child than on the normal child (p. 193 n.15).

While Rowley does not guarantee optimal outcomes, it does seem to recognize a requirement of equal access. The Court specifically said, “We do not hold today that every handicapped child who is advancing from grade to grade in a regular public schools system is automatically receiving a ‘free appropriate public education’” (p. 203, n.25). Perhaps, then, Rowley should not be read to conclude that the exclusion of a gifted handicapped child making normal progress from a gifted program, while the child’s nonhandicapped classmates have access to that gifted program, is not a violation of P.L. 94-142. Furthermore, since Rowley concluded that “Congress sought primarily to identify and evaluate handicapped children, and to provide them with access to a free public education” (p. 200), failure to use instruments adequate to discover giftedness in a handicapped child could be seen as a violation.

In addition to rereading Rowley, there are state cases that may lead to the conclusion that P.L. 94-142 requires not only adequate identification procedures but special education services necessary to allow the gifted-handicapped child to succeed in a gifted class. In Michigan, as seen in Barwacz v. Michigan Department of Education (1987), an appropriate education was held to require the provision of special education programs and services that are designed to develop the maximum potential of each student. In this case, a deaf girl was placed by her parents in a special program at the Model Secondary School for the Deaf in Washington, D.C. While that school did not charge tuition or room and board, the parents

sought reimbursement for travel expenses to and from Washington necessitated by seasonal closings of the school. They claimed that the school district had not provided their daughter with a free and appropriate education, because the plan offered would not have “maximize[d] her potential.”

The claim of the Barwaczs might have seemed precluded by Rowley, but Michigan statutes required a program that would maximize the potential of any handicapped student. The court held that the requirements of state statutes setting out what was an appropriate education were incorporated in the requirements laid down by P.L. 94-142. Thus, in the state of Michigan, a school district is required by federal law to provide more educational opportunity than may be available in other states. Other courts have agreed, with the United States Court of Appeals for the First Circuit, in David D. v. Dartmouth School Committee (1985), noting

Congress explicitly defined a free and appropriate public education as an education which “meets the standards of the State educational agency” Where a state has chosen to provide by law greater benefits to handicapped children than the federal Act requires, we believe Congress explicitly mandated that the courts - both federal and state - determine whether those state standards have been met (p. 420).

The Michigan Department of Education tried to argue that, because the Michigan provision at issue was enacted prior to the Rowley decision, the Rowley decision should govern its interpretation. The federal district court decided that the maximization standard should still apply. They did say that the higher standard does not mean that the state had to seek the best possible school in the nation, but it did have to indicate a willingness to contract with schools or agencies in neighboring states. It may not be clear, from the Barwacz

decision, exactly what constitutes the maximization of potential, but a school system does appear to be required to go to some lengths to provide, if not the best of all possible educations, at least as good an education as is practically available.

From the Barwacz decision it might seem that, if Amy had lived in Michigan, her parents would have had a strong legal precedent for requesting her program help her to maximize her potential. This may or may not be the case. While the language of the decision would support that conclusion, the child in Barwacz was not said to be gifted. The maximization of her potential might still have been below a grade a year performance, while the maximization of Amy's potential would have exceeded a grade a year progress. A decision requiring maximization of potential at below grade level does not necessarily carry over to requiring that a gifted-handicapped child be helped to meet the maximization of his or her greater potential.

While the result is unclear, schools should examine parents' request for identification of giftedness in handicapped children and inclusion of children so identified in gifted programs. Failing to do so, the district could potentially have to reimburse the parents for appropriate education found elsewhere. The school has to do its best to provide an appropriate program, and if maximization of potential is required for the handicapped population generally, perhaps that same right for maximization of potential should apply to the gifted-handicapped at least to the point where it is equal to the opportunity enjoyed by the nonhandicapped gifted child.

Summary and Conclusions

While the Rowley decision ruled out claims by handicapped students, under P.L. 94-

142, to an education that maximized their potential to learn at an above average pace, there are various legal avenues still available to the gifted-handicapped. Where a school system provides a gifted education program to its nonhandicapped students, the gifted-handicapped must be allowed access.

The Equal Protection Clause, Section 504 of the Rehabilitation Act and the Americans with Disabilities Act all prohibit a policy of excluding the gifted-handicapped. At least the latter two provisions also require that the methods used to identify gifted students not be such that handicapped children are not able to demonstrate their gifts. The statutes also require certain accommodations for handicapped children, once they are identified for and admit to a gifted program. The identification and accommodation issues will be addressed in the following chapter.

VI

IMPLICATIONS OF THE ARGUMENTS FOR INCLUSION OF GIFTED-HANDICAPPED CHILDREN IN GIFTED PROGRAMS

Section 504 of the Rehabilitation Act and the Americans with Disabilities Act both bar discrimination against gifted-handicapped students with regard to their participation in gifted education programs. These proscriptions have at least two dimensions. First, they ban discrimination in admission to gifted programs. This discrimination banned may be direct refusal to admit handicapped children, despite their recognized gifts, or it may be the failure to use identification measures that are capable of identifying the gifted within the handicapped population. The second aspect of these statutes is a requirement of accommodation, once the gifted-handicapped student is admitted to the gifted program. The student must be afforded the opportunity to succeed, by accommodating the needs of the student, as long as the accommodations do not change the fundamental nature of the program.

This chapter will consider the shortcomings of the usual measures employed to identify potential participants in gifted education programs. Suggestions will also be made as to how to alter these techniques so as not to screen out qualified handicapped children. The characteristics of successful handicapped individuals that have allowed them to succeed will then be examined. Methods of determining the existence of these characteristics to identify handicapped students, who may be successful in a gifted program, will then be

presented. Ecological assessment will be presented as an additional method for identifying gifted-handicapped students. Lastly, the accommodations gifted-handicapped students may need, and are entitled to, to succeed in a gifted program will be discussed.

The Inadequacies of Standard Methods of Assessment

At present, gifted-handicapped children are often overlooked when schools select children to participate in programs for the gifted. Group administered achievement or intelligence tests results will be affected by a variety of handicaps and abilities. And gifted-handicapped children are not the only ones who are overlooked by standardized tests. In a 1990 study it was found that up to seventy percent of the regular school age gifted population are by-passed when group testing is used for identification (Humphrey, 1990). The problem of being overlooked is even more obvious and glaring when it comes to the gifted-handicapped.

While there could be an intentional omission of the gifted-handicapped from gifted programs, it is probably a more likely, and certainly more charitable, explanation that the omission is due to the inadequacies of the present methods of identification. The most commonly used methods for identification for gifted programs are I.Q. tests, achievement tests, and/or teacher identification. Although standardized tests are hailed by many as being vehicles for children to gain access to special programs (Sattler, 1992), this observation certainly does not hold true for gifted-handicapped children. These measures all have flaws when it comes to identifying gifted-handicapped children, just as they do for identifying children from other diverse groups.

The disabilities of gifted-handicapped children may obscure and/or suppress their

giftedness (Johnson, Karnes, & Carr, 1997). A selection process based on the administration of a single test or even a combination of instruments, if they are not the right instruments for the purpose, will most likely miss the gifts the gifted-handicapped child possesses. Therefore, the identification of giftedness in the handicapped must be a more thorough and ongoing process.

Intelligence and Achievement Tests

Simply giving an I.Q. test and/or an achievement test for assignment to special education programs, as was once done, is no longer sufficient for exceptional children. In a New York case, Hoffman v. the Board of Education (1978), a state court, in one of the first examinations of the use of assessment with exceptional children, concluded that instruments used in such assessment must be appropriate to the given child's exceptionalities. Children having speech or language problems must be assessed with tests such as performance tests, which will be more appropriate than verbal tests for them. Furthermore, the court also determined that children must be assessed with more than one assessment approach and that all available information must be reviewed before placement decisions are made. While these determinations were made in the context of an exceptional child who was not gifted, the arguments of the preceding chapter indicate that gifted-handicapped children must also be identified using methods that are capable of seeing through their handicaps and assessing their gifts. Just as the single measure may over identify the handicapped as retarded, a single instrument will under identify the handicapped as gifted.

There are other measures that might be far more effective at identifying giftedness in diverse populations, including handicapped children, and those methods must be utilized.

According to Ford (1996), there is no intelligence or achievement test that can identify gifted black students, and to optimize identification, there must be comprehensive, dynamic and culturally sensitive assessment. The comprehensive assessment must generate a profile which indicates the level and mode of functioning within the context of the student's background and experiences. The most promising of these assessment approaches are multidimensional and multimodal (Ford, 1996). This assessment can insure that the identification process is inclusive rather than exclusive.

Instruments that measure characteristics that have been identified as correlated to success among the handicapped population would be important indicators. An ecological approach, which considers many more factors than just standardized tests, would also likely be a more effective method for identifying this population of gifted children. For according to the ecological point of view, cognition is a life process; it is not a mechanism. It is a dynamic process and not a static hierarchical system as seen by an I.Q. test. Cognition is not knowledge of the world; it is the person's ability to deal with and keep in touch with surrounding environments (Reed, 1996).

Instead, gifted children are usually identified through the use of I.Q. and achievement tests as well as through teacher selection. Many times, an I.Q. score is the primary tool used to gain entrance to a gifted program, and this selection method proves to be problematic for gifted-handicapped children. Another commonly used criterion for the identification of the gifted is the use of standardized achievement tests, but these tests too may not be appropriate for the gifted-handicapped student (Schwartz, 1994). Suggested alternative methods of identification will be presented later. First, however, the problems inherent in the use of the

commonly used methods of identification will be elaborated on to help understand the need for the implementation of the alternative means for identification of such children to be proposed.

An important factor in the failure adequately to identify children who are gifted is that guidelines for the assessment for the gifted are still not common at a the state level. Although forty-two states have curriculum guides for the education of the gifted, only six have state-level guidelines for the identification of the gifted. It was noted that this is interesting because all fifty states do have guidelines for the identification of students with disabilities (Gearheart, Mullen, & Gearheart, 1993). So it becomes obvious that not just children who are both gifted and handicapped are being slighted when it comes to assessment, but the whole population of gifted children is being slighted, as well.

McLoughlin & Lewis (1994) noted that assessment has the potential danger of being biased in the selection, administration, and interpretation phases. Bias may occur at any point in the entire assessment process, from who is referred and how they are screened, to the selection of assessment tools and how data are collected, to how the examiner and student interact, on into program planning (p. 62).

Claims of bias in tests and testing have often been made by ethnic and cultural minorities. It is claimed that standardized tests are designed by and appropriate for an average white, middle-class population. It is argued that, despite a correlation between complete test results and success, many test items are unfair to cultural and ethnic minorities, who have had experiences that differ from the white, middle-class background assumed by the test designers (Sattler, 1992). Some of these same concerns may be expressed for the

gifted-handicapped population as well. Just as cultural isolation may have deprived a minority student of the experiences or knowledge relevant to a particular test item, the effects of a handicap may have put the gifted-handicapped child at a similar disadvantage.

It was noted that many factors will limit the performance of some students on standardized tests of intelligence and achievement. These factors that may limit the performance may be environmental, psychological, may be due to different cognitive styles or due to problems with the tests themselves (Ford, 1996). For some students, scores on the Stanford-Binet I.Q. test increase between ages two and seventeen, yet for some economically deprived students the scores tend to decrease. Due to fewer environmental opportunities, these students do not show the benefits often reaped by students who are not deprived. And due to many disadvantages, children who may be hungry or tired due to poorer home environments, may not have the same motivation to attend and do well on testing. And, black students were found to be more field dependent, social, relational, and global in their thinking and less logical, analytical or field independent in their thinking. Most tests favor field independent thinking (Ford, 1996). Therefore, due to these factors and the problems with the test instruments themselves, this group of students will not do as well. These factors will need to be part of the total assessment process for all children who might be gifted and also have some disadvantage.

Test bias is the presence of “systematic errors of measurement as opposed to chance or random, patternless errors” (Reynolds & Brown, 1984). The bias referred to, in regard to a group or members of a group, would find the average score systematically over or under estimates the true scores for members of that group and for the group overall. So on an I.Q.

test, for example, certain populations may score below their ability level on the test due to test bias. The bias may occur due to inappropriate content, inappropriate standardization samples, examiner or language bias, a belief that they are unable to learn, measurement of different constructs than those familiar to the group or groups in question, different predictive validity than found in the minority or different culture of the group in question (Utley, Haywood, & Masters, 1990).

A further complication is that handicaps may make giving the intelligence tests, often used to identify children for gifted programs, impossible. For example, if a child is deaf or blind or physically disabled, many of the items on these tests will not be able to be completed. If a child is to examine a picture and determine what is missing, a visually impaired child will be at a loss to complete such a task. If the item requires comprehending what to do in an orally stated situation, the hearing impaired child cannot perform the required task. If the task requires responding in writing to a maze, the child with a spacial visualization problem or a physical disability will have great difficulty. It should be obvious that many handicapped children simply cannot complete a variety of the many subtests often found to be part of I.Q. tests.

The WISC-III, the I.Q. test most often given by school psychologists, has subtests similar to the ones just described. It consists of subtests that measure identification of a missing part of a picture, recognition of vocabulary words, and the completion of mazes. The WISC-III manual (1991) details how the testing may be adapted for handicapped children. Such adaptations include recognizing that, when testing children having physical impairments, “it is important not to attribute low performance on a cognitive test to low intellectual ability

when in fact it may be attributable to motor and sensory disabilities” (WISC-III manual, 1991, p.37). The authors further state that, depending on the test used and the nature of the disability, children may be at a disadvantage, if the test is administered in the standard manner. Physically impaired children may have difficulty with the Performance subtests, which require manipulation of test materials, while hearing impaired children may be disadvantaged on the Verbal subtests.

Adapting Tests to the Handicapped Population

The authors of the manual do not offer prescriptions for testing handicapped children, but they do offer suggestions for assessing handicapped children. As examples, they suggest that perhaps just the Verbal subtests of the WISC-III might be given to a physically impaired child, who would be disadvantaged by the Performance subtests, and these scores could be used as estimates of the child’s cognitive ability (p. 38). They suggest the opposite approach be used with hearing impaired children, use of the Performance subtests to gain an estimate of the child’s cognitive ability.

Other suggestions for standardized test administration when given to handicapped children may include specified adaptations to the tests. As mentioned, when the WISC-III is given to children who are deaf, the performance scale is often used alone to measure intelligence, and the verbal scale is often used for children who are blind. Some research shows even more specified input can be looked at, as far as intellectual skills. For example, children who have been blind since birth tend to have high means on Digit Span and Information subtests on the WISC-III, while they have low means on Comprehension and Similarities (Tillman, 1973) . Further, those children blind from birth who score below 140

show deficits in figural items and also in relational items, while those with above 140 I.Q.s do not show deficits in figural and relational items and instead show patterns similar to other gifted students (Meeker, 1969). It would appear that interpretations of results for a child who is handicapped should be done with a thorough knowledge of what is known about test results and any handicap.

It is also important, however, to note that the test was not standardized with the modifications suggested, and the manual states that clinical judgement would be called for in interpreting any of these results. The modifications may invalidate the norms but may provide valuable qualitative as well as quantitative information on children with handicaps and their strengths and weaknesses. Other tests are noted to have been designed for use with such children, and it is suggested that they be used to supplement the WISC-III. Multiple sources of input are also suggested as always being called for, and these sources should include life history information on the children.

Generally, most intelligence tests may also fail to recognize gifted-handicapped children because they are normed on average children and do not necessarily reflect the abilities of the gifted-handicapped population. For example, the WISC-III is normed on a population consisting of 2,200 children aged six through sixteen 16 years, with 200 children from each age group, one hundred male and one hundred female. The sample was drawn from all geographic areas, from different races and ethnicities, and also from a variety of different levels of education among the parents of the norming group. Seven percent of the sample were children who were handicapped and five percent of the sample consisted of students in gifted and talented programs. All of the children in the sample spoke English.

There was, however, no standardization information on children who were gifted and also handicapped.

Information is provided in the validity section of the manual on studies done on different samples of exceptional children. These samples include the gifted, the mentally impaired, the learning disabled, and those with attention-deficit hyperactivity disorder, severe conduct disorders, epilepsy, speech/language disorders, and hearing impairments. Once again there was no input on the validity of the test with gifted-handicapped children.

The problems noted make the use of I.Q. tests for identification of gifted-handicapped children problematic. Achievement tests also present some of the same problems for gifted-handicapped children in that they are also normed on a more “normal” population of students. They do not account for how this doubly exceptional group of students might be expected to achieve on such tests. Furthermore, achievement tests are usually paper and pencil tests which many physically impaired and visually impaired, as well as learning disabled children with reading problems, will not be able to execute. Due to their handicaps, gifted-handicapped children also may not have been exposed to the usual material used in specific grade levels.

Teacher Nomination

There are no perfect tests for identifying the abilities of gifted-handicapped children. The other means usually used to identify giftedness is teacher nomination. Even the use of teacher identification, which is used a great deal for the identification of gifted students, has problems related to it, in regard to the gifted-handicapped. The teachers often identify as gifted the students who are most like themselves. Teachers also tend to like and, as a result,

to identify for enrichment programs students who are pleasant and easy to manage in the classroom, when in fact, the stubborn or egotistical student may be the most gifted (Davis & Rimm, 1989). Conforming students were also more likely to be selected as gifted than the highly active and energetic ones (Eisenberg & Epstein, 1981). Some teachers would find it difficult to relate to gifted-handicapped children and would, therefore, often not select them for gifted programs. Gifted-handicapped children also would be more likely to place a greater demand on teachers to meet their classroom needs, and teachers might view them as classroom problems. Even with the limitations inherent in nominations, it does appear that they should be part of the assessment process for gifted-handicapped children, if proper care is taken in their use.

Limited research does indicate that nominations, by teachers and parents, if done correctly, can identify some children who might be missed by testing (Shore, Cornell, Robinson, & Ward, 1991). The identification process needs to give attention to identifying “abilities that are hidden by underachievement, lack of motivation, and cultural handicaps” (Gold, 1965, p 138). That identification process must supplement the usual testing with a broader look and with the “sympathetic eyes of teachers who are alert to the faintest glimmer of potential” (Gold, 1965, p.138). Teachers do appear to be better identifiers of underachieving high ability children (Borland, 1978).

When teachers have not been provided with training, nominations of gifted children has been noted not to be very reliable or valid (Davis & Rimm, 1989). But teachers can be trained to look for identifiers of gifted-handicapped children which may not at first be obvious to others. Teachers and parents see these children for many hours and in many situations and

are more likely to take note of these hidden attributes of giftedness. For example, in addition to the usual characteristics and behaviors that can be found in giftedness in general, there can be behaviors that are masked by handicaps and also behaviors that appear to be specific to the gifted-handicapped.

The overriding cognitive trait of giftedness is often advanced language and thinking skills. In some children having handicaps, such as hearing impairments or language disabilities, this may not be seen. Early reading, often found in gifted children, will not be noted in children with learning disabilities related to reading or in children with visual impairments. Quickness and logical thinking skills, are part of another trait found in gifted children, may not be apparent in children with some kinds of learning disabilities. Yet another trait of giftedness can be early writing, math, music or art skills, and in some gifted children having handicaps in motor skills or learning disabilities influencing math, these traits will not always be apparent. Motivation and persistence are noted to be common traits of many gifted children, and this is often especially lacking in cultural minorities and gifted-handicapped children (Ford, 1996).

In addition, the more affective traits often seen in gifted children may be lacking in gifted-handicapped children. Gifted children were noted to suffer less depression, to have better self-concepts, more self-confidence and more independence than average children. Gifted-handicapped children are likely to feel rejected and to be frustrated and bored. As a result, many gifted-handicapped children may be extremely disruptive (Eisenberg & Epstein, 1981). Teachers need to be aware that such children will display traits that may not be seen as positive.

Eisenberg and Epstein (1981) found the Renzulli-Hartman rating scales (Renzulli, et al., 1976) to be an especially good way to help teachers learn what to look for in children that might signal that the child is gifted-handicapped. In their study they had found that when teachers were asked to identify gifted-handicapped children from the 60,000 handicapped children in the New York City Schools, not one student was nominated. But after being given the Renzulli-Hartman rating scales on Learning, Motivation, Creativity, Leadership, Art, Music, Drama, and Communications Skills, nominations started to pour in for gifted-handicapped children.

It was found that some especially good indicators of giftedness could be found from use of the from the Renzulli-Hartman rating scales. These indicators included: having a large storehouse of information about a variety of topics, unusual for the child's age, trying to discover why things are as they are, being a keen and alert observer, becoming especially involved in certain topics, and preferring to work independently.

It was also found that peer nominations were effective in identifying giftedness, as peers knew who were the bright and fast-learning among themselves. Self-nomination was also effective. An example was noted of a student who nominated himself and then had himself examined and taken out of special education (Davis & Rimm, 1989).

Other Techniques and Modifications

Returning to standardized testing, bias in testing children from diverse populations might be dealt with in different ways. Suggested options range from establishing separate norms to a complete moratorium on the use of standardized testing. Separate norms for the population might be one alternative (McLouglin & Lewis, 1994). This approach might serve

to free diverse groups from norms based on the majority population, but it would also serve to separate the group from the majority and might not be a beneficial route to take (Alley & Foster, 1978).

Other options include the use of modifications in the administration of the standardized tests. This method is used for children with learning disabilities who take standardized achievement tests. However, whenever standardized administration is altered the standardization is rendered useless and the process become essentially an informal test (McLouglin & Lewis, 1994).

Some suggest that it might be helpful to give the test twice, once under standardized conditions and then to repeat the test with the modified administration. Another possible aid would be to teach the children with exceptional and diverse backgrounds how to take tests, as they may also be more unfamiliar with test taking than average children. Still others suggest that perhaps standardized tests might be replaced by informal tests, but this may not take care of the bias concern, as informal tests may also suffer from bias (McLouglin & Lewis, 1994).

The most controversial idea is that there be a moratorium on the use of standardized tests. This did occur in past decades in the identification of students for special education, as seen in the ban on the use of I.Q. tests with African-American children for any special education purpose whatsoever as a result of the Larry P. v. Riles (1971) case in California. This ban was lifted at a later date for all students other than those suspected of being mentally retarded.

The bias often found in assessment of minority children extends to any children who

are socially different and includes handicapped children (Utley, Haywood, & Masters, 1990). It was noted that the instruments themselves may be valid for assessment of all students, but biased as to how they are utilized in the decisions and actions that are made with the test results. The tests may predict aspects of performance and achievement, but they will not predict how that child might best be taught. For that purpose, an instrument which measures how a child learns is required.

Assessment requires making an evaluation that has the end product of intervention that can facilitate students' development. Assessment must be prescriptive and provide information about what the students need to learn and help guide and improve instruction. Because of the multiple and diverse measures, the assessment can also provide information about accountability, guide policy decisions and provide information useful in program evaluation when diverse and unique populations are involved (Ford, 1996). So while intelligence and achievement tests may be valid for predicting some correlates of intelligence, they may not be valid for prescribing the best educational program.

Utley, Haywood, and Masters (1990) suggest Dynamic Assessment, which does assess how a child learns and helps educators know what to do to help a child learn more effectively. They believe that the use of intelligence to try to predict performance should not be used. Furthermore, they believe that prediction of academic performance should not even be a part of psychoeducational assessment. They also believe that classification should be abandoned in favor of recognition of huge individual differences from person to person. Another important suggestion they make is that the old approach of quick assessment to be completed in an hour must be abandoned by school psychologists in favor of a lengthier

assessment of cognitive processes and how children learn most effectively. In conjunction with this, teachers would have to adjust their teaching to work on cognitive process learning rather than focusing on the accumulation of information and skills (Utley, Haywood, & Masters, 1990).

If intelligence testing, the use of standardized achievement tests, and teacher identification are all inadequate for identification of the gifted-handicapped, the question which must be asked is what more effective possible methods might be used. As the following material will show, research on the gifted-handicapped has found that there are ways to identify this population more effectively. There are a wide variety of sources which may provide insights into the true potential of gifted-handicapped children. The totality of the examination of these sources has come to be known as an ecological assessment process. This ecological process scrutinizes areas and aspects of gifted-handicapped children's lives that standardized tests and teacher selection fail to be able to pick up and measure.

Identifying and Assessing the Characteristics of Successful Handicapped Individuals

The first step in developing a successful ecological approach to assessment has to include an examination of the characteristics of successful gifted-handicapped individuals. Only with that examination can it be known what characteristics should be looked for in assessing the likelihood for success of gifted-handicapped children. Studies have helped to identify characteristics seen in successful individuals who also have disabilities. Knowing these many characteristics can enable us to know how to help disabled gifted learners and how to help parents, teachers, and others may enable gifted handicapped learners to be

successful.

C. June Maker, a leader in the study of gifted handicapped, identified coping and learning strategies used by successful scientists with disabilities. These characteristics include extra effort, persistence, reduction of difficulty of the task, positive attitude, and conscious development of ability (1978, p. 64). Whitmore and Maker (1985) examined five case studies of students who were gifted and handicapped, and they concluded that environments in schools and homes where these children succeeded kept perceptions of limitations open-ended, conveyed positive and realistic expectation, encouraged increasing independence, helped develop self-understanding and coping strategies, provided daily opportunities to build on successes and enjoy success, pursued positive social experiences, and advocated for appropriate education.

A study on dyslexic individuals who went on to become successful also pointed to some factors in ecological systems which may be critical for success of handicapped and gifted students (Scott, Scherman, & Phillips, 1992). Such factors included having a supportive person (most often a parent) who helped them believe in themselves. They also noted that they were not given privileges because of their handicap, they had to do earn what they received. No one just gave to them in pity for the handicap. All of them reported that they felt anger when treated badly by others. They commented that adolescence was an especially difficult period for them. Interestingly, every person in the study was involved in extracurricular activities and they felt this helped to gain a perspective of themselves as successful outside of the academic areas, which were often not as positive of an experience for them. For this same reason, hobbies and interests outside of school were very important

to them. They also tended to focus on positive aspects of themselves. All of them liked challenges and had a strong internal drive. All these individuals felt frustration, both internal and external, but all learned ways to cope. They all felt they had learned to not give up. They reported feeling this attitude was learned from their family and homes and not from their school experiences.

Studies on identification of Hispanic gifted and talented students indicated that the characteristics that profile these students included the ability to find many solutions to problems, liking to try new things, being good at finding other uses for things, an interest in a variety of things, being observant, creative, and curious, liking to read, being motivated to learn, and asking questions (Marquez, Bermdez,& Rakow, 1992 p. 123). Although these characteristics match what we would “see” to be a creative and gifted individual, the characteristic that is missing is an I.Q. score (Schwartz, 1994).

An early environmental study by Werner (1989), although not a study of the gifted or handicapped per se, examined home, school, and personal variables to identify characteristics found in impoverished children who excelled or were resilient. She conducted a thirty year study of 698 children living in Kauai, Hawaii, attempting to determine what factors allowed seventy-two of the children to excel, even when their environmental conditions were not positive. Her results indicated that, as toddlers, these resilient children sought out novel experiences. Throughout their childhoods, they were interested in many and varied hobbies and activities. They developed an internal locus of control by adolescence. These children had emotional support from at least one individual within the family or community, and they also often had a favorite teacher who mentored them or served as a role model. The girls

were often assertive, achievement-oriented, and independent. All the children who excelled were involved in school-based extracurricular activities they viewed as important. As adults, seventy-five percent of these children went on to college.

Terman and Oden (1947) studied gifted individuals having I.Q.s above 140. They found that four personality factors were displayed by the high achievers in this group. The four traits included 1) persistence in the accomplishment of ends, 2) integration toward goals, 3) self-confidence, and 4) freedom from inferiority feelings. These traits appear to be necessary for success in gifted individuals and would also be important for gifted-handicapped children. Another researcher, Roe (1952), studied the personality traits of highly creative and productive adults. He found they were all highly autonomous and self-directed. This research reemphasized the importance of such autonomy and self-direction.

Boodoo, Bradley, Frontera, Pitts, and Wright (1989) examined characteristics that are present in gifted learning disabled students. They found conflicting characteristics exist which may prevent such a child from being identified and educated appropriately. They found such students have two general traits of having both extraordinary strengths and severe weaknesses, and this may well lead to a poor self concept and behavior problems (p.111). All these observations can enable us both to identify and to know how to help gifted learners with handicaps and also how to help parents, teachers, and others enable gifted handicapped learners to be successful.

In planning for ecological assessment and programs for the gifted handicapped child, it would appear coping strategies would be an important skill to focus upon. And the pygmalion effect, or what you expect is what you get, appears to hold true for these children.

Not putting limitations on them because of a disability appears to be critical. Positive social experiences both in and outside the classroom are also important considerations. Some person advocating for them and their potential also was important.

Once again, a supportive person appears to be a critical factor for gifted-handicapped children. It appears this person was not to be found in the school. They needed to both be challenged and believed in. Adolescence was especially difficult for the gifted-handicapped children, and they may need extra attention at that time, as they try to "find themselves". Hobbies and extracurricular activities appear to be a common and important characteristic of gifted-handicapped children, who go on to become successful. Developing an internal locus of control appears to be important, as well.

Many non-traditional gifted students may not have high I.Q.s, but instead may appear to be creative, curious, and be good problem solvers. These resilient children also seemed to be superior in creativity and problem solving. They all were involved in extracurricular activities. All had some person who supported them, and this might have been a teacher or a parent or someone in the community. They all developed an internal locus of control and felt they were in control of their lives. These individuals showed the characteristics of persistence, self-confidence, and they had freedom from inferiority feelings.

Some of the characteristics of successful gifted-handicapped individuals can serve as points to observe in the sort of ecological assessment to be discussed below. Other characteristics, however, may be assessed through the use of various instruments. Such assessment must consider the context -- the home, the school, and community -- the type of giftedness, the level of giftedness, and whether the giftedness is demonstrated or potential

(Ford, 1996). Such factors as environmental, psychological, and different cognitive styles must be assessed.

Many such nontraditional instruments already exist and may be useful in any ecological assessment. Besides the use of review of records, teacher and parent interviews, and observational data, scales and instruments to measure many of the important behaviors and traits that impact on children's learning. The Baldwin Identification Matrix and the Frasier Talent Assessment Profile are two instruments that help look at a broad perspective of learning from cognitive styles to personality factors (Ford, 1996). The Temperament Assessment Battery for Children (TABC) asks teachers and parents to assess a child's behavior as far as activity level, how adaptable the child is, how persistent the child is, how distractable the child is, intensity of emotional responses, and likelihood to withdraw from a situation (Gaddis & Hatfield, 1997).

Other effective ecologically oriented instruments useful for measuring the ecological impact of the teacher and the classroom include the Sutter-Eyberg Student Behavior Inventory (SESBI). This checklist explores the teacher's perspective of the child-school interaction by having the teacher identify behaviors that are especially problematic in their classroom (Gaddis & Hatfield, 1997). Ysseldyke and Christenson developed the Instructional Environment Scale (TIES) to help systematically analyze the factors in the instructional environment as possible interacting factors in the academic and behavioral problems seen in the child (Gaddis & Hatfield, 1997).

Ecological Assessment

The ecological approach to assessment of the gifted-handicapped involves ecological

psychology and assessment. Children have unique patterns of systems that they experience and that influence them in a myriad of ways. Each child has a unique grouping of such systems which may include school, home, friends, organizations, such as day care and churches, and even government at the local to federal level. All these systems have an impact on children and the problems they experience will reflect how these many systems connect and interact to influence the child. No one way of assessing problems will be able to get to the root of an individual child's problems. Just administering standardized tests and looking at the school, or even combining those tests with looking at the home, will often not be enough to identify the course or source of children's problems. Each child must be looked at to understand the systems that can have an influence on the child's problems. This perspective is in direct contrast to the views held by many psychologists, who believe that it their job to take "the system for granted and tr[y] to identify who will fit into it" (Cronbach, 1957, p. 679).

The Drawbacks of the Medical Model

Part of the problem and of the failure of school psychologists to identify properly in this area is due to the very drive toward classification, which has been considered one of the great advances of medical science. The Medical Model was carried into psychology by the adoption of the symptom/underlying cause point of view. Any behavior seen as abnormal was taken to be a symptom of some sort of underlying internal pathology (Carson & Butcher, 1992). Special education bought into this Medical Model, and specific categories and labels became the norm. A school psychologist's assessment of a child with a problem was treated as the necessary first step of providing a label for the child. The Medical Model was further

cemented into special education in that federal funding, such as PL. 94-142, is based on putting a label on a child.

Failure was also an important piece of the medical model. No children were given services, until they failed in the regular classroom and a label had to be affixed. In fact, no remediation could occur, until this disability or a failure was documented (Pianta, 1990). Some people call the Medical Model the “failure model,” because nothing is done to try to prevent problems. In the Medical Model the source of the problem is believed to be internal to the child, and remediations focus on fixing the child. Special education was fashioned after this model, believing that the child must be assessed, and if a label is attached, the child will be then be “fixed” by placement in special education.

This Medical Model has limited, and continues to limit, how complex problems are perceived and dealt with by special education and in school psychology. Gifted-handicapped children present problems for this model, as standardized tests are not sufficient for their identification. Too many of gifted-handicapped children are categorized as handicapped and only their failures are examined. The giftedness is never examined. If a gifted-handicapped child succeeds, even minimally, by compensating for the disabilities he or she would never even be recognized as either gifted or handicapped. The gifted-handicapped child does not fit the simplistic view of the medical model.

A More Complete View

Complex problems, such as the gifted handicapped, require a more complex process of assessment than the present model being used by our schools. Ecological psychology began to develop in the 1940s when Roger Barker emphasized the need to examine naturally

occurring behavior in natural settings. The term “ecological” comes from the Greek word meaning house. In more general use “ecological” has come to mean “environmental.” Psychologists who work from an ecological framework stress the interdependence of behavior and environment. L.S. Vygotsky believed child development to be a dynamic process of adaptation and readaptation to the social environment. Urie Bronfenbrenner embellished and expanded on some of both Barker’s and Vygotsky’s ideas.

All the child’s surroundings must be taken into account. For example, suppose it is found that a child has a lower I.Q. This is not going to look the same in any two cases. A child may have had early and intensive work at home, or a grandparent or friend may have spent a great deal of time introducing the child to new experiences. The parent or others may teach the child to believe that he or she can do anything and to keep trying until success is reached. A child may be of a genetic temperament that allows him or her actively to explore the world. It may be that a local group has a program to provide books and experiences to the child. Even the local library may play a role, if they have excellent literacy programs and the child receives such benefits. A child may also receive Head Start services, and benefit from food programs, or participation in a Big Brother or Big Sister program. How two different children with the same low I.Q. look and do can be greatly influenced by such systems. And no one problem source is ever at fault; all the different systems work and interact to create situations.

The different systems have been conceptualized by Urie Bronfenbrenner (1986) to be four nested and interactive systems he called the micro, meso, exo, and macro systems. Looking at the child and problems and the interplay of these systems allows for different

perspectives and avenues for assessment and intervention. The microsystem is the most immediate settings the child experiences directly. It would include the family, home and school. For children whose home and family have similar values and expectations as the school, it can be anticipated that the child will have a more positive experience.

The mesosystem is where the microsystems interact. The home and the school may be very different and may cause conflicts to arise. This will require that different interventions and collaboration between the school and home occur.

The exosystem is more indirect and yet can be significant in its interaction. The local school system and other organizations in the communities will be in this system. If the local system has excellent programs to work with families and also to give extra tutoring to children in need, this would impact positively on children.

The macrosystem extends further out into the larger society and includes the federal government, national educational policy, and the state of the economy. If the federal government allocates money for programs to aid lower ability children with tutors and beneficial experiences, this will again impact positively on the child.

Shafel and Fine (1997), noted several assumptions that underlie the ecosystem perspective. These include:

- 1.) Behavior has value that is specific to the setting. What is acceptable in one setting may not be acceptable in another setting. This why a child may be seen as acceptable by a teacher one year and as not acceptable the next year by a different teacher. The values, beliefs and expectations will vary in any two settings.

- 2.) Deviancy refers to behavior that is discordant with those valued by the setting. It

is the behavior and not the person that is deviant, the problem does not stem from the person but instead from the interaction between the person and the environment.

3.) The “goodness of fit” of the person to the environment must be measured. A child who feels accepted by a teacher and receives help in times of difficulty will respond differently than a child who feels the teacher is unaccepting and unhelpful.

4.) People within the setting make the value judgement. In order for a behavior to be considered disturbing an adult must identify it as such. The people, and not the setting, observe the behavior and decide if it is “good” or “bad.”

5.) There is bidirectionality to the interactions within the setting. It is known that teachers influence the classroom environment and all the activities that impact on the child. Teachers’ beliefs about learning, about discipline, and about reinforcements will all affect how those teachers run their classrooms and what they choose to do in lessons and in response to problems that occur in the classroom. So, the same child may be perceived and treated very differently by from one teacher to another.

6.) Ecological systems rather than people need to be changed. Ecological interventions are aimed at altering the system to effectively meet the needs of all in that system.

7) Ecological interventions are heuristic and eclectic. There is no single means or even favored approach to a problem. There are a variety of approaches available, and whatever methods and ideas might prove to be useful should be tried in an ecological approach to changes.

8) Ecological interventions may result in outcomes that are unexpected or more

pervasive than the specific, narrow problem addressed. Ecological modifications are likely to cause other changes, some of which may not be expected.

The components of an ecological assessment are multifaceted and must try to deal with the many variables that make up the child's ecological system. Such aspects as the child, acculturation, family and school environments, temperament, overall capacity, and academic achievement are some of the variables that should be assessed (McLellan & Sanchez, 1997). How the child learns and other personal qualities must also be explored and included in the plan for teaching the child.

The Ecological Approach

In order to conduct an ecological assessment all these facets must be explored. The factors a teacher brings to the classroom, the factors a child brings to the classroom, the physical set up of the classroom, the teacher management style, the curriculum and instructional materials, auxiliary personnel, and family-school factors all need to be considered in the assessment (Shaftel, & Fine, 1997).

It would seem to be obvious that, in order to make judgements about different groups of individuals, we must understand the different influences on their performance (Armour-Thomas, 1992). In order to assess students who are different, schools must become aware of such neglected or misunderstood input when it comes to this under identified group of gifted students. Armour-Thomas says there are certain factors which must be stressed if the assessment of this group is to be accurate.

First, our assessment procedures must be sufficiently flexible, diagnostic, and dynamic to provide not merely the presence or absence of cognitive competencies assessed at a particular point in time, but must include

information about the developing child's changing ecological conditions that may have enabled or impeded the manifestation of the competencies appraised. Second, intellectual assessment practices should ascertain an individual's potential for the acquisition of the competencies of interest and to predict what interventions would most likely lead to the development and nurturance of such competencies over time. (p.561)

At the very least, and as a start, assessment must be designed to identify those handicapped children who are gifted.

Ecological assessment may help overcome the shortcomings of other varieties of assessment. According to John Feldhusen, a major theoretical change occurring in the field of gifted education is that we now are recognizing that giftedness is not a unitary trait to be diagnosed at one point in time with a particular test or scale (1992). Gifted learners are diverse and their development is determined by many factors from genetic forces to environmental events at home, school, and community. The field of gifted education is now reemerging as a field of talent development. This development of talent goes on in many places and under a variety of circumstances. Many diverse situations and individuals must be involved in this process. No one test at one point in time can possibly determine this development.

Assessment procedures, such as Project Search (Search for Exceptional Abilities among Children with Handicaps) and Retrieval and Acceleration of Promising Young Handicapped Talented (RAPYHT), have been successful in identifying gifted-handicapped children. These and other procedures have been developed out of the quest to better identify the gifted-handicapped. These procedures include such other techniques as the use of multiple measures, which include informal observation for identification. Most all of these

employ a more ecological framework and address many issues other than just intelligence and achievement scores on standardized tests. Most of these procedures make use of the ideas that have been developed out of the research on traits found in successful handicapped-gifted children.

Project Search (Maker, 1977) devised procedures for identifying handicapped gifted children and also explored how to program for their needs. The project concentrated on identifying underlying potential rather than demonstrated ability. The students were identified via teacher observations and other assessment procedures, including clinical observations and some standardized test instruments.

Merle Karnes model, RAPHYHT, demonstrates a workable model for identifying and programming for preschoolers with gifts and disabilities and has been replicated in over twenty states. (Johnson, Karnes, & Carr, 1997). This work has found that identification of gifted-handicapped children must consist of multiple measures which include informal observation. Teachers must expand their knowledge about how disabilities affect learning in gifted children. There must be use of technology, and adaptive strategies. Teachers must also work with self-esteem, as the low self concept that gifted-handicapped children often develop can obscure their abilities even more and make teacher identification almost impossible. The emphasis must focus on developing strengths and not the usual remediation of disabilities (Johnson, Karnes, & Carr, 1997). Parents and teachers were taught how to work positively with the children and the children were given more opportunities to work at higher levels and be more creative. The higher expectations and the greater opportunities appeared to be what was needed for these children to advance to higher levels of development. The gifted-

handicapped children in this program were rated by their teachers to be above their peers in listening skills, self-assurance, memory, writing, independence, attention span, and willingness to try new activities. The program has been expanded to work with children in Head Start programs. This program Bringing Out Head Start Talents (BOHST) had a positive impact on teachers and all children, not just the children with potential talent and giftedness.

Findings of research on gifted-handicapped children indicate that contrary to what is widely believed, it is possible to identify indicators of above average abilities and also talents in gifted-handicapped children (Johnson, Karnes & Carr, 1997). It was also found to be critical for teachers to have an instrument with which to observe the giftedness and talents in many natural settings. The research also found that, after gifted-handicapped children are identified and provided with programs which focus on their strengths and also develop higher level thinking skills and abilities, these children are able to be successful in regular classrooms. The findings also note that once these gifted-handicapped children have been identified, regular teachers have a more positive attitude toward them. Johnson, Karnes, & Carr (1997) suggest that one gifted-handicapped child should be compared to another gifted-handicapped child as to dimensions that are associated with giftedness. The authors suggest that, in order to avoid missing one gifted-handicapped children, it is advisable to go with the top ten to twenty percent of all handicapped children being potentially gifted.

Johnson, Karnes and Carr further note that classroom teachers need more knowledge about disabilities and their impact on learning and this should become part of preservice training for teachers. They also suggest that more counselors be trained to be sensitive to the gifted-handicapped population and better able to collaborate with the many different teachers

and personnel to help these children with self-concept development and career development. In their research they found that the best programs for gifted-handicapped children have a coordinator who advocates for the children and orchestrates an effectively run program that challenges the children.

Many ecological assessment approaches come out of work with minority students, such as Black students, Hispanic, and Native American students, who are also gifted. The concerns are the same that this population of students will not be identified using the traditional methods of mostly standardized I.Q. and achievement tests. A promising procedure that considers a plurality of perspectives is the Frasier Talent Assessment Profile (F-TAP). There is growing evidence that students who are assessed for gifted programs via multiple criteria perform equally well when compared to those who are assessed by traditional means (Baldwin, 1994, Frasier, 1993, O'Tuel, 1994). This F-TAP format records and interprets assessment information from multiple sources and then provides programs based on individual needs.

One instrument F-TAP designed and uses is the PFG (Panning for Gold) observation form. This observation form is four pages long and looks at the personality and learning styles, such as motivation, interests, communication, problem solving, memory, inquiry, reasoning, creativity/imagination and humor, of a student in various contexts. Based on such information an educational plan will be made and put to use. Besides the personality and learning style inventories, there is a page for demographic input. There is also a quantitative step in which interpretations are made of all the subjective and objective data that are gathered. Such data can then be used to arrive at output through which one can compare the

subjective and objective data. This model allows student performance to be evaluated via objective and subjective information gathered from various contexts (Colangelo & Davis, 1997).

In order to ensure acceptance of the gifted-handicapped child, it is suggested that inservices must be ongoing to train all personnel in best practices for these children. It will be imperative that programs have a continuity and that the transitions from level to level are well planned. And in order for all of this to occur, teacher training programs must train teachers to become skilled in working with gifted-handicapped children, and the federal government also needs to play a leadership role in this effort. The work with gifted-handicapped children must take place at the federal, state and local levels for best effect (Johnson, Karnes, & Carr, 1997).

Accommodations within Gifted Programs

As a last issue, it must be remembered that both Section 504 of the Rehabilitation Act and the Americans with Disabilities Act require accommodation of an individual's handicap. That right to accommodation is limited to changes that would not alter the fundamental nature of the program involved. Some guidance as to the appropriateness of particular accommodations may be gained from experience with practices under P.L. 94-142. The accommodations commonly implemented in special education to allow the mainstreaming of exceptional children do not fundamentally alter the educational process, and many of those accommodations would appear applicable to the inclusion of gifted-handicapped children in gifted education programs. There may, however, be situations in which an accommodation would destroy the nature of the gifted program, at least for the child receiving the

accommodation.

A study of the national trends and practices for programming for the gifted found that sixteen different types of gifted programming were offered (Cox, Daniel, & Boston, 1985). These included enrichment in the regular classroom, part-time special classes, full-time special classes, independent studies, itinerant teachers, mentorships, resource rooms, special schools, early entrance, continuous progress, nongraded schools, moderate acceleration, radical acceleration, College Board and Advanced Placement courses, fast-paced courses, and concurrent or dual enrollment. The most common program, existing in seventy-two percent of reporting districts, was the part-time special class or pullout option. Enrichment, which may mean an added area of learning being implemented in the regular classroom but unfortunately often means just a greater quantity of work for the children identified as gifted, followed at sixty-three percent. Third came independent study, at fifty-two percent, and fourth were resource rooms, at forty-four percent. Most gifted children will be found receiving their programs in a part-time pull out option, while others receive enrichment at some time and place, or complete independent study, or go to a resource room for special programming.

While Section 504 and the Americans with Disabilities Act both require accommodation of an individual's handicap, it must be remembered that the right to accommodation is limited to changes that would not alter the fundamental nature of the program involved. Different handicaps create different obstacles for gifted handicapped children and should be addressed in any gifted programs (Davis & Rimm, 1989). It is important to consider the different handicaps and how each might impact on the fundamental

nature of the program.

Specific Adaptations

Davis and Rimm (1989) noted that certain general priorities must be addressed in any gifted program that includes gifted-handicapped students. Because these student often have some kind of communication limitations, the programs must have effective ways of compensating for these limitations. For example, blind students may need to use tape recorders, can study with sighted friends, and can take exams orally. If a visually impaired student has some sight, there are machines to magnify the printed page. Deaf children will need a hearing aid and, perhaps, an interpreter. Orthopedically impaired students will require wheelchairs, and if they cannot write, they will need a tape recorder, and will also need to take exams orally. These adaptations should not alter the program for other gifted children in the program and should not cause the gifted-handicapped children to gain less in the classes they attend.

For many gifted-handicapped children their gifts may not be found until the aids they need to communicate are identified. Davis and Rimm note a program that designed devices for physically handicapped children that freed them and permitted them to express themselves artistically. As a result of these devices, talented artists were identified who otherwise would not have been found (Davis & Rimm, 1989).

Gifted-handicapped children are often rejected by others, do not receive high expectations from teachers and or parents, and may often feel different from others. These and other factors often lead gifted-handicapped children to have lower self-concepts. As a result, self-concept development must be a part of any program for helping the gifted-

handicapped. Ecological changes need to be enacted to help others see gifted-handicapped children as more capable and to expect more of them. Others in the schools will need to be helped to see the gifts which might not at first be obvious to them. A few changes in the social milieu can enable gifted-handicapped children to achieve more and believe in themselves. These changes can also serve to benefit the gifted and non-handicapped children in the program.

Due to the lack of understanding about gifted-handicapped children, it will also be important to do sensitivity training with other children and adults. Gifted-handicapped children may have problems being accepted and will have to receive coaching in how better to attempt to be accepted. These kinds of changes may enable gifted-handicapped children to become more socially accepted.

There are some classroom management ideas which can also help to have gifted-handicapped children fit in better. Cooperative learning teams would be one way to help integrate many different types of learners into a project, when they all have to work together to complete the project. Peer tutoring is also another way to aid the gifted-handicapped in the attempt to gain acceptance for them. By working with other students to tutor younger peers, all students will gain self-esteem, as they play the role of teacher, and better understanding will be gained as a result of their joint endeavor with one another in this process.

Due to their handicaps, many gifted-handicapped children become dependent on others for help. This situation causes them to have poor independent learning skills. Such skills are critical for effective learning and must be developed and encouraged. If they are

to become competent learners who will be able to deal with difficult work, they must learn to become self-initiated learners who can take on a task and carry it to fruition.

Any time there is limited sensory input, there may also be more difficulty with high-level abstract-thinking skills. Because of the limited sensory input, such students tend to evaluate the data on a more concrete level. It is suggested that this should not be viewed as a lack of ability but as an area needing more input. The creative problem solving instruction so common to gifted programs will be doubly important in the case of gifted-handicapped children (Davis & Rimm, 1989).

As noted above, if children who are deaf and who are also gifted are to be accommodated into a gifted program, it would require that interpreters be provided. Would this provision destroy the nature of the gifted program? The same materials and curriculum could be utilized for all students in the program, and it would appear that such an accommodation would not destroy the nature of the gifted program. If the program were in the form of a pull out or special class, the interpreter could easily fit into such a classroom set up. It would be no problem for enrichment work, and in a resource room the only possible problem might be that the rooms used are often small and one more person would make it difficult to conduct the class. But a schedule could be worked out to have one less student at the time an interpreter was to be present. Independent study options would present no difficulties at all.

What about the accommodation of large print books or taped books for children with hearing impairment visual impairments or some learning disabilities? Would this provision destroy the nature of the gifted program? Granted, early planning would be needed in order

to have these materials available for use in the program, but that should not be a problem once the planning is completed. This accommodation can easily be used in even a smaller classroom. With the use of headsets the noise element should be no concern.

As for children who are pulled out for learning disabilities, there should not be any inconsistencies here either. If a child has a learning disability in reading recognition, such as dyslexia, the child may go to a resource room for instruction in phonics or whole language. In the classroom, when there is material that must be read, this child may need some accommodations, such as a reader tutor/pal to model how to read the material, or this could be done via books on tape or a computer with speech. It is likely, however, that this child will have strengths in math or some area that may not rely on skill in reading recognition to succeed and that will be the area that is studied in a gifted program. Therefore the handicap would not really be as much of a factor.

Limitations

There may be situations in which a problem brought on by a child with a handicap could cause a program that tries to accommodate the child to alter the program so significantly that the program nature is changed and children in the program are not allowed to go as far as they otherwise would. Suppose, for example, a deaf child has shown a gift in musical composition. If the gifted program is in musical performance, this child may not fit and accommodation to include him or her would change the nature of program. This would not be required under the current laws. It might be possible to still try to include a deaf child in some aspects of musical composition but not as regular member. For example, it could do both the program and child some good by allowing the child to compose something for

the performance group.

Other options must be sought for a suitable program for any gifted-handicapped child. Perhaps this same deaf child might also have an aptitude for math, since musical composition is often linked to mathematical pattern recognition. Having this child in a gifted program for mathematics would not cause the same difficulties in accommodation. When a problem arises in one program, rather than eliminate the child from gifted programs an appropriate program should be sought.

The problem of having a child who is gifted-handicapped and unable to be accommodated in a gifted program is not too likely to occur. If a child is actually gifted in an area addressed by the gifted program, the handicap probably impacts on other areas, rather than the area the giftedness is found in, and inclusion would not be likely to require any fundamental change in the area of the program. So a deaf child who is gifted will not likely be able to become a member of the orchestra for gifted performers and require large modifications in the workings of the program that would hold back the other students from reaching their potential. An appropriate program to meet the specific strengths of the child will have to be explored.

Because Section 504 of the Rehabilitation Act and the Americans with Disabilities Act both bar discrimination against gifted-handicapped students with regard to their participation in gifted education programs, it is critical that schools and parents know the implications of these acts. Since they ban discrimination in admission to gifted programs, people must be aware that this discrimination banned may be direct refusal to admit handicapped children, despite their recognized gifts, or it may be the failure to use identification measures that are

capable of identifying the gifted within the handicapped population. And, the second aspect of these statutes is a requirement of accommodation, once the gifted-handicapped student is admitted to the gifted program. The student must be afforded the opportunity to succeed, by accommodating the needs of the student, as long as the fundamental nature of the program is unchanged.

There are shortcomings in all the usual measures used to identify potential participants in gifted education programs. With modifications some of these techniques can be used to screen handicapped children for gifted programs. Methods of determining the existence of these characteristics to identify handicapped students, who may be successful in a gifted program will be one important aspect of their assessment. Ecological assessment may provide the most effective method for identifying gifted-handicapped students. While gifted-handicapped students may need accommodations and they are entitled to enter into and succeed in gifted programs. All these factors must be considered in any policy making schools and educational agencies may undertake. It is becoming apparent that it will be necessary for policy makers to take notice of gifted-handicapped children and their legal right to gifted education.

Summary and Conclusion

Discrimination against gifted-handicapped students with regard to their participation in gifted education programs is legally prohibited. This discrimination applies to both their admission into gifted programs, whether by refusal to admit them or to a failure to use instruments capable of identifying the gifted within the handicapped population, and to the requirement of accommodation, once the gifted-handicapped student is admitted to the gifted program. The gifted-handicapped students must be afforded the opportunity to succeed, by

accommodating their needs, as long as the accommodations do not change the fundamental nature of the program.

Measures used to identify potential participants in gifted education programs must be carefully examined and altered so as not to screen out qualified handicapped children. Educational personnel must become familiar with characteristics useful in identifying handicapped students who may be successful in a gifted program. Ecological assessment will be one effective method for identifying gifted-handicapped students and not discriminating against them in placement in gifted programs.

VII

OVERVIEW AND POLICY IMPLICATIONS FOR GIFTED-HANDICAPPED EDUCATION

In the United States, it is estimated that there are over 300,000 gifted-handicapped children whose educational potential is at risk (Piirto, 1994). These are the children who could be the future Einsteins, Edisons, Helen Kellers or Churchills of the world. Many of these gifted-handicapped children struggle to get by in school, and many do not make it in school. Something needs to be done to help these children to develop their giftedness, yet most schools do not seek to identify or provide programs for their gifted-handicapped children.

Analysis of recent legislation and legal decisions sheds new light on the rights of the gifted-handicapped to an appropriate education that meets both their need for special education for their handicap and gifted education for their giftedness. Even the Amy Rowley case and the fact that comorbidity, or a double diagnosis, such as gifted and handicapped, is not even allowed under laws such as P.L. 94-142 can be viewed from a different perspective in light of more recent statutes and cases.

The Supreme Court of the United States, in the Amy Rowley case, has held that the federal law mandating special education services does not require that a handicapped children be given educations that maximize their potential. All that is guaranteed is an education that

provides the greatest likelihood that handicapped children can perform as well as average children. A child advancing at a grade a year pace has no legal right to demand additional services, even if the child is capable of much more.

Despite the weakening of P.L. 94-142, there are still policy arguments to the effect that it would be wise for society to insure that the gifted-handicapped are provided with the opportunities that are, or ought to be, provided to gifted children generally. In fact, the policy arguments in favor of gifted education generally apply with equal force to the gifted-handicapped. Policies favoring special education also speak to this population. Furthermore, arguments against gifted education or special education appear to be weakened when addressed to the gifted-handicapped.

Perhaps more importantly, while the decision of the United States Supreme Court in Board of Education of Hendrick Hudson Central School District v. Rowley (1982) did seem to remove any force P.L. 94-142 might have given to the drive to provide an enriched education to those handicapped children who might also be gifted, there are other legal arguments to that end to be found in later statutes and in the United States Constitution. In particular, the Equal Protection Clause of the United States Constitution has been used in the past to obtain educational services for the handicapped. Furthermore, Section 504 of the Rehabilitation Act and the Americans with Disabilities Act both bar discrimination against the handicapped and demand accommodation of disabilities. Both are, then, possible sources of a legal right on the part of the handicapped to participate in gifted education programs. Where gifted programs exist, gifted-handicapped children who are capable must be allowed to participate.

A legal requirement that gifted-handicapped children be included in gifted education programs is more than a requirement that they not be excluded as a matter of policy. School districts must also make an effort to identify these children. In particular, the use of assessment methods that may fail to recognize a child's giftedness, because of the masking effect of a handicap, must be avoided. The ordinary indicators are simply inadequate for children who are gifted-handicapped. If the giftedness of those children is to surface, alternative, more comprehensive techniques must be employed. It will be the task of the school psychologist to identify the gifted-handicapped, and the techniques presently most commonly used are not up to that task. The implications of the policy and legal arguments presented here will include the need for improved identification methods to insure that gifted-handicapped children are adequately assessed for inclusion in gifted programs. Assessment must be more dynamic to search out these hidden talents.

Once identified, the gifted-handicapped must be afforded the opportunity to succeed. The accommodations necessary for the typical special education student to succeed in a mainstream environment may also be necessary for the gifted-handicapped student to succeed in a gifted education program. A school system is not required to make adaptations that would change the essential nature of the program, but short of such changes, the gifted-handicapped student must be accommodated.

While the gifted-handicapped have a right to participate in any gifted programs that a school system may choose to provide its nonhandicapped gifted population, there may be cases in which a child's handicap precludes participation in a particular program, but that is a decision that must be made only after a careful study of the specific program and the specific

gifts and disabilities. A system cannot simply choose not to provide gifted-handicapped students with access, and it may not employ identification methods that screen out handicapped children who are capable of participation in the gifted program.

There are several particular recommendations that stem from the analysis of the policy and legal issues surrounding the education of the gifted-handicapped.

- Parents of handicapped children should not focus solely on their children's handicaps. Their children may also be gifted, and parents are in the best position to observe that giftedness. Parents who recognize a particular talent should bring it to the attention of the child's teachers.
- Schools should examine parents' requests for identification of giftedness in handicapped children and include children so identified in gifted programs. Failing to do so, the district could potentially have to pay damages or may have to reimburse the parents for appropriate education found elsewhere.
- Single identification instruments should not be allowed to eliminate handicapped children from gifted programs for which they might be qualified. School districts would be well advised to employ a variety of instruments, when a handicapped child is involved, and based on the particular handicap at issue, to select instruments that are less likely to eliminate a child who could be successful in a gifted program.
- The school has to do its best to provide an appropriate program, and if maximization of potential is required for the below average to average performing handicapped population, perhaps that same right of maximization of potential should apply to the gifted-handicapped, at least to the point where it is equal to the opportunity enjoyed

by the nonhandicapped gifted child.

- Schools should provide accommodations to allow gifted-handicapped children to succeed, once they are identified for a gifted program. Schools have experience in providing such accommodations in the mainstreaming of exceptional children, and the task for the gifted-handicapped will be similar.
- The educational research community should continue the development of instruments that can serve to identify the gifted within the handicapped school age population. These instruments will be necessary for the schools to meet their duties, and the universities should provide the development required. Ecological assessment appears to be an important aspect of this effort.
- The educational research community should conduct research on the most effective accommodations for gifted-handicapped children.
- Schools of education must recognize that future teachers with an interest in gifted education will face the same mainstreaming issues faced by regular education teachers. They need to be taught how to handle the handicapped child in their gifted programs.
- A collaborative effort must develop among parents, teachers, school psychologists, and medical and rehabilitation professionals. The needs of gifted-handicapped children are complex, and insight from a variety of perspectives will be necessary to address those needs.
- Parents and others interested in the gifted-handicapped should organize actively to advocate for all the suggestions presented. This group should also strive to eliminate

negative stereotypes and the restrictive practices that result from such inaccurate views. The gifted-handicapped themselves, particularly those who have success adults, can serve as most effective advocates and as role models.

The suggestions offered will help the gifted-handicapped obtain the education they deserve and to which they are legally entitled. While there may be some expense involved, the additional services proposed here are similar to those involved in providing for all handicapped children. Our gifted-handicapped students represent a rich talent pool, one capable of making significant contributions to society. The extent to which that happens depends largely on the success of the kinds of educational policies and practices we adopt to enhance the intellectual potential of the gifted-handicapped in our care.

APPENDICES

APPENDIX A
LIST OF CITED CASES

- Alexander v. Choate, 469 U.S. 287 (1985).**
- Anderson v. University of Wisconsin, 665 F.Supp. 1372 (W.D. Wisc. 1987).**
- Bartlett v. New York State Board of Law Examiners, 156 F. 3d 321 (2d Cir. 1998).**
- Barwacz v. Michigan Department of Education, 674 F.Supp. 1296 (W.D. Mich. 1987).**
- Board of Education of Hendrick Hudson Central School District v. Rowley, 458 U.S. 176 (1982).**
- Brown v. Board of Education of Topeka Kansas, 347 U.S. 483 (1954).**
- City of Cleburne v. Clerburne Living Center, 473 U.S. 432 (1985).**
- David D. v. Dartmouth School Committee, 775 F.2d 411 (1st Cir. 1985).**
- Diana v. State Board of Education, No. C-70-37 RFP (N.D. Cal. 1973).**
- Hoffman v. the Board of Education, 410 N.Y.S.2d 99 (App. Div. 2d Dept. 1978).**
- Larry P. v. Riles, 495 F.Supp. 926 (N.D. Cal. 1971).**
- Mills v. District of Columbia Board of Education, 348 F.Supp. 866 (D.D.C. 1972).**
- Monahan v. Nebraska, 687 F 2d 1164 (8th Cir. 1982).**
- Murphy v. Franklin Pierce Law Center (unreported opinion), 56 F.3d 59 (1st Cir. 1995). Available on WestLaw or Lexis..**
- Nathanson v. The Medical College of Pennsylvania, 926 F.2d 1368 (3d Cir. 1991).**
- Pennsylvania Association for Retarded Children v. Pennsylvania, 343 F.Supp. 279 (E.D. Pa.**

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Stutts v. Freeman, 694 F.2d 666 (11th Cir. 1983).

Washington v. Davis, 426 U.S. 229 (1976).

Watson v. City of Cambridge, 32 N.E. 864 (Mass. 1893).

APPENDIX B

LEGAL RESEARCH METHODS

Legal cases and statutes are most easily found using an electronic data base, such as WestLaw or Lexis. Such data bases allow text search, so that all cases, or all cases from a particular state or federal court, using the phrase “special education” or the word “gifted” within some number of words of the word “handicapped” can be retrieved and the terms asked for shown in context. Cases can also be retrieved by the name of one of the parties or by the case’s reporter, volume number and page. Law review articles can also be searched for words or phrases. The word or words searched may be the title or citation for a particular case, so that all the law review articles or later cases referring to the earlier case will be retrieved. The United States Code and state codes can also be searched for words or phrases to find statutes addressing particular areas.

There are also non-electronic methods for finding cases and statutes. A text book on the topic to be researched will provide the major cases and statutes in the area. For example, any text book on special education law will discuss the Amy Rowley case and Public Law 94-142. Each case will provide cites to the cases and statutes it relied on, so earlier important cases and the relevant statutes can be located. The cases found can also lead to later cases on the same issue. Shepard’s Citations lists, for each case, the later cases that discuss or rely on that case. The later cases can then be retrieved, either electronically or in the case report

volumes. They, too, will contain cites that may produce new material. Shepard's also indicates any later history of the case, so that a higher court reversal or affirmance of the original opinion will be found.

Relevant statutes may also lead to cases. Federal statutes can be found in the United States Code or the United States Code Annotated. United States Code Annotated has the advantage of providing references to any cases interpreting or applying each section of the statute. The cases listed are further subgrouped by the issue discussed. For example, for the Americans with Disabilities Act, a list of cases discussing the nature of handicaps covered is provided, as is a list of cases discussing what constitutes discrimination. The annotations also provide a list of law review articles relevant to the particular section of the code.

Thorough research requires checking and cross checking sources. One case, Case A, leads to earlier and later cases and to law review articles. The earlier cases may lead to cases raising the same issues discussed in Case A, but not cited in Case A. The later cases found by looking to the Shepard's Citations for Case A may provide their own set of earlier cases again on the same issue as Case A, but not cited in Case A. Similarly, law review articles discussing Case A may also discuss cases from other courts on the same issue and not cited in Case A. Where all these cross checked sources agree, the legal position is well established. Where they disagree, there is room for argument as to the better result.

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