

No. 12345

IN THE

7TH CIRCUIT OF FEDERAL CIRCUIT COURT

SCHOOL DISTRICT U46)	Appeal from the District Court
)	of the Northern Illinois
Plaintiff-Appellee)	Judicial District,
)	Kane County, Illinois
v.)	No. 00-MR-0601
)	
D. Mitchell by and through his parent)	Honorable
And next friend, J. Mitchell)	Marvin Aspen,
)	Judge Presiding
Defendant-Appellant)	

BRIEF AND ARGUMENT FOR DEFENDANT-APPELLANT

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NATURE OF THE CASE

A hearing officer ruled the School District was required to purchase the Oracle 2000, an electronic vocal simulator, for Duane's use. The Oracle 2000 would help Duane tolerate his disabilities and allow him to learn. The School District appealed this decision to federal district court where the judge ruled IQ evidence presented at the Level 1 hearing was irrelevant and, therefore, inadmissible. That is the issue being appealed to this circuit court by Duane Mitchell.

ISSUES PRESENTED FOR REVIEW

1. Whether the trial court judge erred in disallowing presentation of Duane's I.Q. as evidence at the trial.
2. Whether the Oracle 2000 is required in order for Duane to receive a free and appropriate public education (FAPE) as required by the Individual with Disabilities and Education Act (IDEA).
3. Whether the School District is required to purchase the Oracle 2000 for Duane's use.

JURISDICTION

As this is an appeal of the final decision of a District Court of the United States, the appeal of this matter lies directly to this Honorable Court pursuant to 28 U.S.C. §1291 (1982).

STATUTES INVOLVED

Fed. R. Evid. 402 (1999).

20 U.S.C.A. §1414 (1997).

20 U.S.C.A. §1401 (1997).

20 U.S.C.A. §1400 (1997).

20 U.S.C.A. §1412 (1997).

STATEMENT OF FACTS

Pre-Hearing Events

Duane Mitchell is a first grade student in School District U46 who has severe Cerebral Palsy. He is wheelchair bound and has no verbal speech. Due to his lack of muscular strength and inability to hold his body upright, he must be restrained in his wheelchair and braces are installed at his head in order to prevent injury to his head and neck. Despite Duane's physical appearance and disabilities, he responds to the world around him with bright eyes and noisy utterances. However, he quickly becomes frustrated because he is unable to make what is inside of his head come out of his body.

To date, Duane has been communicating through a wooden language board; a device that uses letters, punctuation marks, and a pointer held in the hand to spell out words. A person who reads must watch Duane while using the board in order for the communication to be effective. Because the device is difficult to work with, Duane tires easily and because of his age and the problems he has with his current device, he has limited vocabulary, so his academic and social development are well behind grade level.

Duane's father requested an Individualized Education Plan (IEP) Meeting where he asked for several changes to Duane's educational program, including the addition of the Oracle 2000. The Oracle 2000 is an electronic vocal simulator with other programmable features that would be able to increase Duane's vocabulary. When Duane attended a demonstrative clinic for the device, his first words were "I have something to say" and when given grade-appropriate work using the device, he completed the work 60% faster and with 85% accuracy. After witnessing this, Duane's father went to the School District

and made them aware of the technology. The School District dismissed the idea and refused to provide the Oracle 2000 for Duane.

Later, Kathleen Earl, an expert in aberrant child development, and Dr. Nover, a board certified child psychologist, tested Duane's I.Q. with and without the Oracle 2000. With the current board, Duane scored only a 42 indicating severe mental retardation. With the Oracle 2000, Duane scored 110 on the I.Q. test indicating normal intelligence. The experts concluded with the Oracle 2000, Duane could function in a normal classroom.

Due Process Hearing Events

When the Mitchells requested the School purchase the Oracle 2000 for Duane's use, the school refused. At the Level One Due Process Hearing, the school argued Duane was receiving a "free and appropriate public education" (FAPE) under the Individuals with Disabilities and Education Act (IDEA) with his current Individual Education Program (IEP) and, thus, his current communication board. The Mitchells presented the above-mentioned data regarding Duane's I.Q. and testing and prevailed at the hearing. The Level One Hearing Officer ruled the School was in violation of IDEA by failing to provide the Oracle 2000. The violation arose out of denying Duane the opportunity for a meaningful education with his current board and IEP.

The Trial

The School District appealed the Hearing Officer's ruling to the federal court for the Northern District of Illinois. At the bench trial, the Judge granted the School District's motion to keep the experts' findings from being presented as evidence of Duane's need for the Oracle 2000. The Judge ruled Duane's IQ was not at issue and, therefore, not relevant to the issue of whether or not the school district met its duty under IDEA. The judge stated IDEA was enacted "to secure the right of disabled children to attend school and receive exposure to a regular school environment." He stated "no child, disabled or otherwise, is entitled to maximize his or her educational potential at a School District's expense." As a result of this ruling, the Court found the School District was not required to provide the Oracle 2000 to Duane. The Mitchells appealed the final judgment and that ruling to this Court.

SUMMARY OF THE ARGUMENT

The court erred in prohibiting presentation of the IQ information as evidence because it is relevant. IQ scores show the extent to which a person is able to learn certain skills. In addition, other cases have considered IQ information relevant evidence.

The school district violated IDEA when it denied Duane the ability to meet the goals in his IEP. Duane has not met the goals of advancing in grades as enumerated in his IEP with his current communication board. The Oracle 2000 would allow Duane to simply benefit from education enough to allow him to achieve passing grades and advance in grade levels.

Duane's current board is not allowing him to benefit from education. He needs the Oracle 2000 not to allow him to maximize his potential but to merely allow him to benefit from education. The court erred in not allowing the IQ information presented as evidence and, therefore, erred when it ruled the school district is not required to purchase the Oracle 2000 for Duane.

ARGUMENT

I. The court erred in not allowing the IQ information to be presented as evidence because it is relevant.

All evidence that is relevant is admissible and all evidence that is not relevant is inadmissible. Fed. R. Evid. 402.¹ The trial court erred in not admitting the I.Q. evidence because I.Q. test results are relevant in determining whether or not a student is educable. *Larry P. by Lucille P. v. Riles*, 495 F. Supp. 926 (N.D.Cal. 1979); aff'd in part, reversed in part on other matters 793 F. 2d 969 (9th Cir. 1984). The question of Duane's educability is highly relevant because if Duane is educable but he is not being educated with his current communication board, he is not benefiting from his education nor is he receiving the FAPE to which he is entitled under the law. *See Hendrick Hudson Dist. Bd. Of Education v. Rowley*, 458 U.S. 176 (1982). The court in *Larry P.* ruled I.Q. tests measure how much experience a student has with particular information and knowledge. *Larry P.*, 495 F. Supp. at 952. Therefore, the fact Duane scored 110 on his I.Q. tests shows he is educable because he has learned. *Larry P.*, whose issue was whether I.Q. tests measured these skills accurately for black and white students, also stated I.Q. tests are valid for measuring "appropriate skills and potential" for white students. *Id.* at 960. This meets the IDEA requirement that standard tests given to a student are validated. 20 U.S.C.A. §1414(b)(3) (1997). IDEA also requires test administration by trained

¹ "Relevant Evidence" is defined as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Fed. R. Evid. 401.

individuals and provision of relevant information to help determine the educational needs of the student being tested. 20 U.S.C.A. §1414(b)(3) (1997). Experts in child development and child psychology gave the I.Q. tests. The I.Q. tests are relevant because they measure skills needed for success in school and the results also “predict how those taking the tests will succeed in the future in learning those skills.” *Larry P.*, 495 F. Supp. At 960. The score of 110 on Duane’s I.Q. tests indicates he would be able to learn if only given the proper tools to enable him to do so. The results of his I.Q. test are, therefore, relevant in showing Duane can learn. Because Duane can learn but he is not currently doing so, this shows he needs the Oracle 2000 in order to be an adequate student and to benefit from his education.

School District U46 is going to assert that even if Duane’s I.Q. of 110 is relevant to the issues of this case, it only shows he is already learning and receiving an adequate education. They are going to say the main issue in this case is one of methodology that depends on cost and the Mitchells are trying to maximize the potential of their son, Duane. Duane’s use of the Oracle 2000 in the classroom will not maximize his potential but it is needed in order for Duane to receive any education. The current communication board is trapping Duane in a life without potential. The Oracle 2000 is required in order to emancipate any educational potential for Duane. The price of the Oracle 2000 and of allowing Duane to benefit from his education is irrelevant because this is not a question of methodology. The issue in this case is not whether the method of the Oracle 2000 is better than the method of Duane’s current communication board; it is irrelevant. It is irrelevant because the issue is whether Duane is receiving an adequate education with his current board and he is not. His current communication board is not allowing Duane to be an

effective student and benefit from the education to which he is entitled. By asserting the issue in this case is one of methodology, the school district is essentially trying to deny Duane the education to which he is entitled. They are attempting to treat Duane as if he is ineligible to receive the free and appropriate education with related services the Individuals with Disabilities in Education Act requires.

In addition, the mere fact other similar cases have considered IQ information as valid and relevant shows such information should have been admitted into evidence. *See Heather S. by Kathy S. v. State of Wisconsin*, 937 F. Supp. 824 (E.D. Wis. 1996), aff'd on other matters, 125 F.3d 1045 (7th Cir. Wis. 1997); *D.F. v. Western School Corp.*, 921 F. Supp 559 (S.D. Ind. 1996); and *Garrick B. by Gary B. v. Curwensville Area School Dist.*, 669 F. Supp 705 (M.D. Pa. 1987).

II. The School District violated IDEA when it denied Duane the ability to meet the goals in his IEP.

The Individuals with Disabilities and Education Act (IDEA) requires an Individualized Education Program (IEP), a written statement for a disabled child that is developed and reviewed according to other sections of the Act. 20 U.S.C.A. §1401(11) (1997). The IEP is to contain an evaluation of the current state of the child's educational performance, goals related to the child's education, and an assessment of what special education, related services, and supplementary aids are to be provided to the child in order to allow him or her to attain the goals. 20 U.S.C.A. §1414(d)(1)(A)(i)(ii)(iii) (1997). This includes deciding whether the child requires any "assistive technology devices". 20

U.S.C.A. §1414(d)(3)(B)(v) (1997). The IEP is required by statute to be updated at least once every 3 years or if a parent or teacher requests a reevaluation. 20 U.S.C.A. 1414(c) (1997). Duane's educational goals, as outlined in his IEP, are to achieve passing grades and to develop relationships with other children and his teacher. As previously discussed, this has been virtually impossible to achieve with Duane's current communication board. Because of this and the predicted success of Duane's use of the Oracle 2000 as a student, as shown by the IQ tests, the Oracle 2000 is an assistive technology device required in order for Duane to reach his educational goals enumerated in his IEP.

For a School District to be complying with its obligations under IDEA, it must first follow the procedures of the act and then create an IEP enabling the child to benefit from education. *Hendrick Hudson Dist. Bd. Of Ed. V. Rowley*, 458 U.S. 176 (1982). Because Duane is not benefiting from education because he is not advancing in grades, as discussed earlier, the School District is in direct violation of the law. *See Rowley*, 458 U.S., at 209, 210. The School District may have followed the procedures in IDEA with the IEP meetings and administrative hearings but by not creating an adequate IEP, they have violated IDEA and the law. Because the school district has not provided Duane with an adequate IEP, they have essentially denied him any IEP, and are treating him as if he is ineligible to receive the services it is required to provide him as a student.

Therefore, the issue in this case cannot be one of methodology. However, even if it were a question of methodology the laws still dictates providing the Oracle 2000 to Duane.

The free and appropriate public education required by IDEA must address the unique needs of a disabled child through the Individualized Education Plan, which must be updated annually. *Hendrick Hudson Dist. Bd. Of Ed. V. Rowley*, 458 U.S. 176 (1982). In

order for a state (or school district) to comply with IDEA, it must follow the procedures in the Act and those procedures must produce an IEP that “enables the child to receive educational benefits”. *Rowley*, 458 U.S., at 206. Courts must avoid “imposing their view of preferable education methods upon the states” when deciding if the Act’s requirement have been met. *Id.* In questions of methodology the court will leave the decisions up to the states. *See Hendrick Hudson Dist. Bd. Of Ed. V. Rowley*, 458 U.S. 176 (1982). *See also Lachman v. Illinois State Board of Education*, 852 F.2d 290 (7th Cir. 1988) and *Mohawk Trail Regional School Dist. v. Shaun D. by and through Linda D.*, 35 F. Supp. 2d 34, 36 (D.Mass. 1999).

In Duane’s case, the Level Hearing One Officer, seeing the relevance of the IQ tests results, considered that information and ruled Duane was not currently benefiting from his education, and therefore not receiving an adequate FAPE. The Hearing Officer ruled the School District was in violation of IDEA and that the Oracle 2000 was required to be provided to Duane by the school district. Therefore even if this were a question of methodology, which the Hearing Officer found it was not, the State has ruled the Oracle 2000 must be provided to Duane.

III. Duane's current board is not allowing him to benefit from education.

One of the purposes of the Individuals with Disabilities and Education Act (IDEA) is to provide educators and parents with tools to improve the education of children with disabilities. This is to be accomplished by “coordinated technical assistance, dissemination, and support”, technology development and media services, among other things. 20 U.S.C.A. §1400(d)(3) (1997). Another purpose of IDEA is to prepare children with disabilities for employment and independent living by providing them with a free and appropriate public education (FAPE) through special education and related services that will meet their unique needs. 20 U.S.C.A. §1400(d)(1)(A) (1997). The education of children with disabilities can be made more effective by providing special education and related services² in a regular classroom whenever such an arrangement is appropriate. 20 U.S.C.A. §1400(c)(5)(A) (1997).

IDEA dictates a FAPE must be made available to all children between the ages of 3 and 21 who have a disability. 20 U.S.C.A. §1412(a)(1)(A) (1997). Such a FAPE and its included special education and services must be “provided at public expense, under public supervision and direction, and without charge”, “meet the standards of the State educational agency”, “include appropriate preschool, elementary, or secondary school education in the State involved”; and must be in conformance with the required Individualized Education Program (IEP) for each child. 20 U.S.C.A. §1401(8) (1997).

² The Act, among other things, defines related services as developmental, corrective, and other supportive services that are required to enable a child with a disability to benefit from special education, including identification and evaluation of a disability. Supportive services, among other things, include speech-language pathology services and audiology services. 20 U.S.C.A. §1401(22) (1997).

Duane is entitled to a FAPE with the accompanying special education and related services under IDEA. Currently, Duane is not receiving that to which he is entitled. Because he is not currently benefiting from education (he is performing below grade level), he is not receiving an adequate FAPE. *See Hendrick Hudson Dist. Bd. Of Education v. Rowley*, 458 U.S. 176, at 209,210 (1982). Because Duane needs the related service of the Oracle 2000 in order to receive the special education he is entitled to and which the School District is obligated to provide, the School District is in violation of IDEA by failing to provide Duane with a FAPE. Duane needs the Oracle 2000 to perform just at grade level and to benefit from his special education.

The statute also mentions “supplementary aids and services”³, which have the purpose of enabling children with disabilities to be educated with non-disabled children to “the maximum extent appropriate.” 20 U.S.C.A. §1401(29) (1997). The maximum extent appropriate is addressed in §1412(a)(5) of the Act which states disabled children must be educated in regular classrooms with non-disabled children when education of the children can be achieved satisfactorily with “supplementary aids and services”. 20 U.S.C.A. § 1412(a)(5)(A) (1997). The Oracle 2000 is a supplementary aid that will allow Duane to participate in the classroom with non-disabled children. In light of the fact Duane is performing below grade level with the current board, it is evident his current board is not allowing him to benefit from his education.

³ Supplementary aids and services are defined as “aids, services, and other supports that are provided in regular education classes or other education-related settings”. 29 U.S.C.A. §1401(29) (1997). Similar to a related service and supplementary aid or service, the Individuals with Disabilities and Education Act defines an “Assistive technology device” as an item, piece of equipment used to “increase, maintain, or improve functional capabilities of a child with a disability”. 20 U.S.C.A. § 1401(1) (1997).

The Individuals with Disabilities and Education Act requires children to be provided with “specially designed instruction” and those supportive services needed to ensure a disabled child will benefit from special education. *Hendrick Hudson Dist. Bd. Of Ed. V. Rowley*, 458 U.S. 176 (1982). In *Rowley*, a deaf student who had minimal residual hearing and could read lips was placed in a regular kindergarten class at school for a trial period. At the end of the trial period, it was decided the student should remain in the class but should be provided with an FM hearing aid that amplifies spoken words. The student’s parents wanted the student to be provided with a “qualified sign-language interpreter in all her academic classes” instead of using the hearing aid. *Rowley*, 458 U.S. at 284. The District Court’s decision, affirmed by the Circuit Court, was that denying the student the interpreter was a denial of the student’s FAPE, defining a FAPE as “an opportunity to achieve [her] full potential commensurate with the opportunity provided to other children”. *Rowley*, 458 U.S. at 185, 186. The Supreme Court reversed this opinion stating the student did not need the interpreter as she was receiving an adequate education shown by the fact she was performing better than the average children in the class and was advancing in grades. The hearing aid, therefore, by being adequate and providing the student with a FAPE, was meeting the goals and standards set forth in IDEA. *Rowley*, 458 U.S. at 209, 210. Unlike in *Rowley*, Duane’s current board is not providing him with an adequate education. Duane is not performing better than the average children in his class; he is performing below grade level. Because he is performing below grade level, it is unlikely Duane will be able to advance in grades. The old board is not providing Duane with an adequate education; he needs the Oracle 2000 for that.

Rowley also interprets the Individuals with Disabilities and Education Act to mean that in addition to a disabled child being provided with “specially designed instruction,” the child must be provided with other supportive services required in order to allow the child to benefit from that instruction. *Rowley*, 458 U.S., at 201. The reasoning for this was if a student is not benefiting from education, the school is not meeting the standards in nor addressing the purpose of IDEA of including disabled children in education. If a student is not benefiting, he or she is not being included. Therefore, schools must provide those services necessary to assure the students benefit and are included in education. *Rowley*, 458 U.S. 176. Duane needs the Oracle 2000 in order to benefit from education, receive passing grades, and learn as evidenced by his current performance and information obtained as a result of his IQ results. *See Larry P.* at 9960.

Duane is entitled to special education because of his physical disabilities and not because of mental disabilities, although both qualify individuals for protection under IDEA. *See* 20 U.S.C.A. §1401(3). The I.Q. test shows Duane is not mentally disabled at all. He is a little boy whose potential for learning and thoughts are of those of other normal little boys trapped in a body that does not work very well. The Oracle 2000 is not going to make Duane smarter; it is going to help him “deal with” his physical limitations in order learn the skills the I.Q. test shows he is capable of learning. *See Larry P. by Lucille P. v. Riles*, 495 F. Supp 926, at 960 (1979). It will help him to communicate with his teachers, a physical skill, allowing him to ask questions and receive feedback, activities that are essential to effective learning. If these activities were not essential to learning, there would not be teachers for any student. School would consist of showing videos explaining concepts or sitting and reading books; not the back and forth give and take that

all schools use to teach children currently. If this back and forth exchange was not needed in order to learn, overcrowding of schools would not be a problem. The crux of this country's concern over overcrowded schools is that students do not get the one-on-one attention and back and forth communication all children need in order to learn.

Duane's current communication board is not serving this purpose for him in the classroom at all. It is so difficult to use and it takes so long to spell words and sentences that by the time Duane could get his question presented, the teacher is moving on to other topics. As a result, Duane is left with his question and he can only rely on himself to hope what he thinks he understands is accurate. If the teacher does take the time to wait for Duane's question, valuable time needed to teach all of the children the required subjects is lost in waiting for each letter to be spelled into each word and each word to be formed into each sentence. This harms all of the children in the class, including Duane, because time constraints are preventing all necessary subjects, and topics within those subjects, to be taught. The Oracle 2000 would put Duane on equal footing with the other students, allowing him to ask questions and have them answered almost as quickly as non-disabled children.

IV. Duane requires the Oracle 2000 in order to sufficiently benefit from his education.

Regardless of the ease of operating or providing a service, it is required if it necessary for the child to benefit from their special education. *Irving Independent School Dist. v. Tatro*, 468 U.S. 883 (1984). In *Tatro*, the Supreme Court ruled that clean

intermittent catheterization (CIC) must be provided to the student because it was necessary to allow the student to attend school and, therefore, benefit from special education. *Id.* In discussing the case, the court stated though CIC was easy to administer, the school would not be required to provide it if it was not necessary for the student to benefit from education. *Tatro*, 468 U.S., at 894. Therefore, the ease to which one can successfully operate the Oracle 2000 is irrelevant. Duane needs the Oracle 2000 in order to benefit from his education. Because Duane is performing below grade level and he did well with the I.Q. tests, which showed Duane's potential for learning skills, using the Oracle 2000, it is evident he requires the Oracle 2000 in order to benefit from his education. *See Larry P.*, at 960. A main purpose of requiring provision of a free and appropriate public education to disabled children is to ensure that access to education is enough to give the child some educational benefit. *Hendrick Hudson Dist. Bd. Of Ed. V. Rowley*, 458 U.S. 176 (1982). In *Rowley*, the Supreme Court found the student was receiving an appropriate FAPE with her FM hearing aid and she didn't need an interpreter. This was shown by the fact the student was performing above grade level with her current device. *Id.* In *Rowley*, the court also ruled that a "basic floor of opportunity"⁴ must be provided in order for a disabled child to receive a FAPE. *Rowley*, 458 U.S., at 201, 204. *See also Seattle School Dist. No. 1 v B.S.*, 82 F. 3d 1493 (9th Cir. 1996). The public must pay for such instruction and services. *Rowley*, 458 U.S., at 203.

Because Duane is not receiving access to education adequate enough to allow him to benefit and learn with his current communication board, he is not currently receiving a

⁴ The court defined "basic floor of opportunity" as access to instruction and personalized, related services that must allow the child to receive passing grades and advance in grades. *Rowley*, 458 U.S., at 201, 204. *See also Seattle School Dist. No. 1 v B.S.*, 82 F. 3d 1493 (9th Cir. 1996).

FAPE. In order for Duane to benefit from education, the current communication board must allow him to receive passing grades, which is not currently occurring. *See Rowley*, 458 U.S., at 209,210. As evidenced by Duane's performance on the I.Q. test with the Oracle 2000, the Oracle 2000 would allow Duane to receive passing grades and advance to the next grade level. *See Larry P.*, 495 F. Supp., at 960. When considering *Rowley*, it is necessary that Duane have access to education and services that would cause him to benefit from education. *Rowley*, 458 U.S. 176 (1982). The current communication board does not allow Duane adequate access to education. He is not performing at grade level so he is not benefiting from being in school; a requirement for achievement of adequate access. *Id.* Because the first thing Duane said when trying the Oracle 2000 was, "I have something to say," and because of his performance with the machine, it is clear Duane is bright enough to benefit from education if only he had use of a communication board that would allow him to communicate effectively with his teachers.

V. The purpose of acquiring the Oracle 2000 is not to maximize Duane's potential.

The purpose of IDEA was to make public education available to disabled children and not to guarantee any level of education once in school. *Rowley*, 458 U.S., at 192. *See also Lachman v. Illinois State Board of Education*, 852 F.2d 290 (7th Cir. 1988). In *Rowley*, the student was denied a sign-language interpreter to be provided by the school even though it may allow her to do better in school, because the current use of an FM hearing aid was found adequate. *Rowley*, 458 U.S., at 192. The school is not required to

provide Duane with services that would provide him with any particular level of education but only services enabling him to receive a public education. The issue of the Oracle 2000 versus Duane's current communication board is not one of methodology or whether one is simply better than the other. Even though the Oracle 2000 would allow Duane to receive a higher level of education than he is currently being provided, it is not a question of the School District being obligated to provide more than what is minimally required. As was discussed previously, Duane's current communication board is not allowing him to receive passing grades, a requirement of benefiting from education as mandated by *Rowley*. See *Rowley*, 458 U.S., at 209, 210.

Providing disabled students with only those services as are available to non-disabled students would not satisfy a FAPE according to IDEA. However, providing every service to disabled students necessary to maximize that student's potential "commensurate with the opportunity provided other children" is beyond the purpose of IDEA. *Hendrick Hudson Dist. Bd. Of Ed. V. Rowley*, 458 U.S. 198, 199 (1982). See also *Lachman v. Illinois State Board of Education*, 852 F.2d 290 (7th Cir. 1988). The School District is not providing Duane with any services that would allow Duane to be equal to his peers, let alone to provide services that would allow him to excel over his peers. His current communication board is not adequate enough to allow him to even benefit minimally from his education. It does not allow him to communicate what he is learning effectively, therefore preventing him from achieving in school and advancing in grades. Duane needs the Oracle 2000 in order to convey what he is learning in school, participate more fully with other children in and out of the classroom, and to achieve adequate accurate grades to allow him to advance. This is not above and beyond what the school is providing to

Duane's non-disabled peers, it is the minimum the school district is obligated to provide to all children in its district.

The development of social skills taught in American schools is at least almost as important, if not just as important, as the learning of math and English skills in this country. This is demonstrated by the fact common law mandates mainstreaming of disabled students with non-disabled students. *See Lachman v. Illinois State Board of Education*, 852 F.2d/ 290 (7th Cir. 1988). A child's IEP, which is formulated by state and local agencies with the cooperation of the child's parents, must result in the child being mainstreamed to the maximum appropriate extent. *Lachman v. Illinois State Board of Education*, 852 F.2d 290 (7th Cir. 1988). In *Lachman*, the disabled child's parents wanted their child to be educated in a neighborhood school which would require the assistance of a cued speech instructor in order for the student to be mainstreamed. The school district wanted to provide the student with a "total communication approach" by educating him for ½ the school day with other hearing-impaired children. *Lachman*, 852 F. 2d, at 291. The appellate court ruled the proposed IEP would allow the student to be mainstreamed sufficiently and would provide the student with a FAPE without the cued speech, even though the cued speech would also be effective. *Lachman*, 852 F. 2d, at 296, 297.

Duane must be mainstreamed with other students; he needs the Oracle 2000 in order for that to occur. Although the court found the student in *Lachman* did not need cued speech, the current proposal the school offered with the total communication approach and the ½ day outside the regular classroom was found to be adequate and sufficient in order to achieve mainstreaming of the student. Duane's current communication board inhibits him from being fully mainstreamed with non-disabled

children because of the time it takes to use it, the cumbersomeness of it, and the requirement of a reader present to interpret it, difficult for most 1st grade students. Duane may be with non-disabled children, physically, but since he cannot communicate effectively with them, it is like he is not there at all. The Oracle 2000 would enhance Duane's interactions with other kids because it will allow him to communicate quicker, easier, and without the inhibiting presence of an adult reader by his side. Therefore, the Oracle 2000 is required in order for Duane to be effectively mainstreamed with non-disabled students, in and out of the classroom.

VI. CONCLUSION

The Oracle 2000 is required in order for Duane to benefit from and, therefore, receive a public education. Due to his extreme lack of success and evidenced success with the Oracle 2000, the Oracle 2000 does qualify as an assistive technology or supplementary device as part of the related services required for Duane to be mainstreamed with non-disabled students, to benefit from education, and to meet the bottom floor necessary for Duane to receive an adequate FAPE. With his current communication board, Duane is not meeting these requirements nor, therefore, receiving an adequate FAPE. Providing the Oracle 2000 is necessary for Duane to communicate with his teachers and peers and become a student. The Oracle 2000 is required in order to free Duane's normal little-boy mind from the cumbersomeness of his broken body, which can never be free.