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63 N.Y.L. SCH. L. REV. 21 (2018–2019)

ABOUT THE AUTHOR: Amy Rowley was the subject of *Bd. of Educ. v. Rowley*, 458 U.S. 176 (1982), the landmark decision that interpreted the Individuals with Disabilities and Education Act (IDEA) for the first time. Amy’s parents sued her school district when Amy was in elementary school for failing to provide her with a free appropriate public education (FAPE) as required by the IDEA. *Id.* at 185; *see also* Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400–82 (2017). This article is an edited version of the remarks she delivered at “A Symposium on Special Education Law: Past, Present, and Future,” hosted by New York Law School on March 23, 2018.

ADDRESS BY AMY JUNE ROWLEY

My parents are both deaf; neither was born deaf, nor was either born into a deaf family. My mother did not grow up signing. My father went to a school for the deaf. Their experiences were vastly different.

My mom was born hearing but became very ill as a child and began to lose her hearing; by age thirteen, she was profoundly deaf. She went to regular schools and tried to grasp information and lip-read as best she could. She did not have an interpreter. My mom graduated high school and learned that there was a deaf college called Gallaudet in Washington, D.C. When she got there, my mom learned to sign. It was the first time in her life that she had full access to communication.

After my father became deaf, also from an illness, he attended New York School for the Deaf, where he received his education through sign language. My parents met in college; they eventually married and had my brother. My brother was born hearing, and as he was growing up, my parents observed him communicate with both his hands and with his mouth. When I was born two years later, my parents communicated with me the same way they did with my brother, and they spoke to me instead of using sign language. However, they noticed that my communication style was not the same as my brother's. They wondered if I was deaf. Since my parents were born into hearing families, there was no reason for them to suspect that they would have deaf children. They took me for hearing tests and to see different doctors. When my parents realized that I was deaf, they decided to focus on my communication and make sure that I was not language delayed. They both signed with me all the time and I quickly flourished with complete access to sign language.

At the time, a new law had passed, the Education for All Handicapped Children Act,¹ and that law is now recognized under the IDEA.² When it was first passed, it gave opportunities for students with different learning challenges to enter regular classrooms. When my parents learned about this law, they thought it could benefit me. My mother worked as a teacher in classrooms with deaf children, and she saw how a lot of these children were language delayed. They had not had full access to language from birth, and she did not want that type of environment for me. So when the new law was announced, my mother contacted the Furnace Wood Elementary School in Peekskill, New York, where my brother had been attending, to enroll me. My parents let the school know that I would need an interpreter and offered to help them find one, but the school reassured them that they would do it.

When I was five years old, on the first day of school, since my mother had already talked to the school district and let them know all of my communication needs, she did not go with me because she wanted me to be treated like other students, so she dropped my brother and I off at the curb at the school entrance. When I met her after school, she asked about my interpreter and I informed her that I had not received one. She went back to the school to ask what had happened and was informed by the staff that the district wasn't going to allow me to have a sign-language interpreter. The district and my parents had different perspectives on why

1. Pub. L. No. 94-142, 89 Stat. 773 (1975).

2. Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400–82 (2017).

there was a need for an interpreter: The school wanted to show that I would be fine without one, but my mom believed that I would thrive as a student with an interpreter based on her personal experience, first without access to communication, then with access to communication. After mediation between my parents and the school, there was an agreement that I would have an interpreter for one month on a trial basis.

The first day that an interpreter was brought to my kindergarten classroom, there were many others in the room, including the principal, the school district psychologist, my speech therapist, the district lawyer, and several others. I didn't know who everyone was at that time, but they were all watching me, sitting along the wall on the benches where we hung our bags. I felt like a zoo animal and I could feel them all staring at me. It was very uncomfortable. Back then, I didn't really know what an interpreter was, what an interpreter looked like, or what their role was. I didn't have any understanding of what an interpreter was because at that time, interpreters were not very common. It wasn't something that I had experienced in my day-to-day life. The interpreter that was hired for the trial period was a male, and he was very tall, and I was a little five-year-old girl. He was wearing all black, which I later learned is appropriate professional attire for interpreters so they can show contrast between their skin color and the clothes that they're wearing. However, I had not seen anyone dressed in all black in my kindergarten classroom up until that point; I was very confused by this person, and he didn't create a warm and fuzzy connection for me. I felt scared of the interpreter in addition to all the people in the classroom who were staring at me.

To make matters worse, the interpreter followed me around the classroom; I felt like he was chasing me, which was awkward. I remember very clearly that when I left school that day, I told my mom what a bad day I had. It wasn't so much that I didn't like having the interpreter. It was more that I didn't like the whole experience of having everybody staring at me and this tall person dressed in all black following me around. The school, having seen that dynamic, decided that the interpreter was not beneficial to me. They informed my parents that they were removing the interpreter after one week. But my parents felt like they needed to allow the interpreter to stay for at least the promised month to give me time to become used to having one around. After mediation was unsuccessful, my parents decided to sue the school district.

The court case started when I was in second grade. I didn't have an interpreter for kindergarten, first, or second grade. Throughout these years, my mom spent time teaching me after school. She had grown up in classrooms where she didn't really understand the information presented, so she wanted to see to it that I understood everything that was happening in my class. To ensure this, my mother contacted my teacher using a TTY, which is a telecommunication device that allowed for the school and my parents to call each other. My mom communicated with the school frequently and she made sure I was learning everything at home that I was missing at school. After school, I couldn't play and have fun with other kids. Instead, I had to be at home, with my mom teaching me everything that I had missed in class. Back then,

there were no formal “home school” curricula available. She developed what she could and used my homework to supplement what I needed to learn after school.

My parents won their case at the lower court.³ But the school district decided to appeal the case, which meant the school district still did not provide me with an interpreter. The case was heard at the court of appeals and my parents won, again.⁴ This time, the judge ordered a stay⁵ and forced the school to provide me with an interpreter. Finally, in the third grade, I had an interpreter, and this was the first time I had the experience to really interact with my classmates during class, at recess, and at all the different activities taking place at school. I was finally a part of everything, and the interpreter that I had was great. She really helped me to communicate with my teachers and everyone around me. It was such a rich experience, and I enjoyed school so much. The interpreter was a Child of a Deaf Adult, which is called a CODA.⁶ This interpreter knew American Sign Language well because she grew up around deaf people. She did a great job facilitating my communication with other children in the classroom. That year felt like a great success. As an added bonus, after school, my mom did not have to teach me or catch me up on anything that I might have missed during school since I had access to everything through my interpreter.

However, the school appealed the case again. I was in the fourth grade when the U.S. Supreme Court agreed to hear the case.

The school district did not allow me to keep my interpreter, arguing that I wasn't very bright, and that what I needed was a deaf-education teacher. This is a teacher who listens to what is going on in the class and functions somewhat like an interpreter, but in a more rudimentary fashion. For me, this meant that if there was anything that I didn't understand or that I was missing in class, the deaf-education teacher would pull me out into a separate room a few hours later, explain to me what I had missed, and catch me up on the information that was happening in the classroom. I remember that, pretty often, this teacher would look at the board, look at the actual classroom teacher, listen, and then summarize what was happening, but she did not let me know what all my classmates were saying, or tell me exactly what the teacher was saying. Instead, she would say to me, “Oh, I'll fill you in after class.” I was frustrated. I felt that this specially-appointed teacher was causing me to miss a lot of what was happening in the classroom, which was why I had to be pulled aside to have a one-on-one. I felt that that situation set me up to fail. As I moved closer toward the end of my fourth-grade year, the U.S. Supreme Court made their decision that I did not need an interpreter. They felt that, based on my ability to pass the classes that I had previously, that I was doing okay. I was passing my classes, and they considered that a success. That was a terrible outcome for me and my parents,

3. See *Rowley v. Bd. of Educ.*, 483 F. Supp. 528 (S.D.N.Y. 1980), *aff'd*, 632 F.2d 945 (2d Cir. 1980), *rev'd*, 458 U.S. 176 (1982).

4. See *Rowley v. Bd. of Educ.*, 632 F.2d 945 (2d Cir. 1980), *rev'd*, 458 U.S. 176 (1982).

5. See *id.* at 948.

6. See generally CHILDREN OF DEAF ADULTS, <https://www.coda-international.org/about> (last visited Jan. 16, 2019).

who worked so hard. I have never really understood how that decision made sense for anyone, how it benefited anyone, or how my parents could have fought so hard to have received that result as the final decision.

When I entered fifth grade, I had a teacher who had an Australian accent. It was really difficult for me to lip-read and understand the information he presented in class because of his accent. One example of an experience that I had in that particular classroom was related to a map assignment. I understood from the words “Map Assignment” written on the board that there was something due. I looked at my teacher and saw there was some discussion about the map assignment, and I tried to ask other students what was going on. I could see from his mouth that he was saying, “Next week, Monday, map.” I tried to ask him what kind of map, and I got the information that it was a world map. In my mind, I was wondering, “What do we need on the map?” I didn’t really know.

When I got out of school, I saw my dad and explained that the teacher said we were doing something about a world map, but that I didn’t really know what exactly we were supposed to do. My dad asked me when it was due, and I told him it was due on Monday. So we went to the store to buy a poster sheet to draw a map on. Dad helped me look in an atlas and find a good picture of the map of the world. All weekend, I worked really hard to draw out a picture of the world map with lots of colors. I knew that the teacher would have given the class a list of what parts of the map needed to be labeled, and I tried my best to label as much as possible, because I hadn’t received a list. I labeled the continents and some of the famous rivers in the world, and I did the best I could with barely any information. My dad told me that he was proud of me and that my work on the map was good. I felt good about my work and was eager to show my teacher.

Monday morning, I rolled up my poster paper and went to school. I looked around my classroom and noticed that none of my classmates had anything with them. I was the only one who had brought a map. The first thing the teacher said was, “Okay, maps.” I could see from his mouth, “maps, maps, maps,” then he started to hand out copies of maps to the entire class, and I realized that we were just starting a maps lesson. He looked at me and asked what I brought to school; I put the map aside and said, “Oh, nothing,” because I felt so embarrassed. When I got home, my dad asked me, “Hey, how did it go with your map, honey?” I explained to him what happened, and he gave me a hug. Those hugs I ended up needing from him more often than not, because I had more days ahead of me like that one.

Communication was such a challenge. The school had a copy of my audiogram,⁷ and the school focused on the fact that I can hear. They wanted me to learn to lip-read, which was such a struggle. I could see the mouth, and I could hear a little bit, but my brain could not understand what it was hearing; what a person can hear as compared to what a person can understand is not always equivalent. The school

7. An audiogram is a graph that provides a detailed description of one’s hearing ability. *The Audiogram*, AM. SPEECH-LANGUAGE-HEARING ASS’N, <https://www.asha.org/public/hearing/audiogram> (last visited Jan. 16, 2019). The audiogram shows the type, degree, and configuration of hearing loss. *Id.*

thought that if I had a hearing aid, or if I wore an FM system,⁸ that it would be like wearing eyeglasses for better vision. I would be able to put those things on and suddenly hear well, and understand exactly what I was hearing. But it wasn't so. The Australian teacher posed an additional challenge to me because of his accent. Sometimes he would write things down, which was helpful. I even sat close to his desk so that I could go to him often and ask him about things I didn't understand. One time, I could see that he was getting really angry. He was saying, "Look at me. Look at me. Look at my mouth." And I looked at his mouth and tried to guess what he was saying, but he looked like he was about to blow up at me. At that time, I often wore my hair in a ponytail, and he grabbed the back of my ponytail and yanked my head back and tried to force me to understand. I remember crying, "I don't understand what you're saying. I'm not trying to fool you. I don't understand!" I blame the U.S. Supreme Court for not granting me full access to communication in the classroom; I struggled with that for many years.

As an adult, I eventually moved to California where I met Lawrence Siegel, a lawyer who wrote a powerful book about my case, *The Human Right to Language*.⁹ The book focused on the First and Fourteenth Amendments to the U.S. Constitution. According to his analysis of my situation, the U.S. Supreme Court decided that my ability to have access to communication, my ability to interact with other people in the school system, and my ability to communicate with my teachers was not necessary. They decided that I was not worthy of the right to communication, in violation of the First Amendment. Lawrence Siegel also explained how the Court took away my Fourteenth Amendment rights to access language, go to school, and fully participate in society. I have wondered many times if the Court ever recognized that they took away my constitutional rights, and that my mom teaching me after school at home was the only reason that I was able to pass my classes.

As a deaf adult and a mother, I see that the special education system in the United States is broken. My children are deaf and I want the best possible education for them. My husband and I agreed that we had to find a school where our children would be provided full access to language while in the classroom. It was important for us to find a school where they could grow and develop fully into the human beings they have the potential to be, that they have access to the full human right of language. We moved to California and put our children in a school for the deaf where they have thrived. We see that there are a lot of other children elsewhere who do not have access to full communication in school, and my heart aches for them.

There have been a variety of court decisions after *Rowley*, and how those courts have chosen to interpret my case is astounding to me. Often, relying on my case, they do not put the child's interests first. My parents had asked for me to have an interpreter so that I could have full access to language, which would allow me to

8. An FM system is a wireless assistive hearing device that enhances the use of hearing aids. *FM Systems*, HEARING LINK, <https://www.hearinglink.org/living/loops-equipment/fm-systems> (last visited Jan. 16, 2019).

9. LAWRENCE SIEGEL, *THE HUMAN RIGHT TO LANGUAGE: COMMUNICATION ACCESS FOR DEAF CHILDREN* (2008).

achieve my *full* potential as a human being and as a student in the classroom. But the *Rowley* Court did not feel that it was necessary for the school district to allow me to reach my full potential as a student. With *Andrew F.*,¹⁰ did the Supreme Court think about the idea of a student's full potential? I'm not sure. It seems that they may have come up short.

Many deaf students in the school system still do not have interpreters. Without interpreters, they're often unable to develop skills to read and write in the English language. Even with interpreters, I don't feel the ability to access "full potential" is possible in a mainstreamed environment—spoken language is so entrenched in our society that people forget it is necessary to accommodate every single instance of spoken language. Deaf children have American Sign Language, but it's not commonly understood or used. The best way for deaf children to fully reach their potential is to be in an inclusive, sign language-rich environment. That means that everyone who comes into contact with the deaf child should sign, so that everything is accessible. Is this something the current Supreme Court took into consideration in *Andrew F.*?

The Court's decision in *Rowley* was that the law required schools to provide an education that is "reasonably calculated to enable the child to receive educational benefits."¹¹ This standard was to be considered a "floor."¹² The term is apt, because I had long felt like I was nothing but a piece of dirt to be swept up. Over the years, there have been subsequent interpretations. Some circuits adopted what they deemed a "higher standard" because they allowed for a "meaningful" benefit—something "more than *de minimis*"¹³—and the Tenth Circuit claimed to be more stringent in following *Rowley* by allowing for *some* educational benefit, whether meaningful or not.¹⁴ To me, these are *de minimis*, and not *more than de minimis* standards.

Andrew F. has the potential to raise the bar for special education quite a bit, but it won't happen automatically. It's up to people to advocate for special education, to raise the bar and hold it strong and high for all deaf children, for children with all disabilities, so all of them can reach their potential. If we don't continue to fight for these students, who will?

10. *Andrew F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988 (2017). *Andrew F.* rejected the notion that *Rowley* required merely more than *de minimis* progress; rather, to comply with the IDEA, a school must provide a child with disabilities an individualized education plan that is appropriately ambitious in light of her circumstances. *Id.* at 1000–01.

11. *Rowley v. Bd. of Educ.*, 458 U.S. 176, 210 (1982).

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

13. *See, e.g., Polk v. Cent. Susquehanna Intermediate Unit 16*, 853 F.2d 171, 182–83 (3d Cir. 1988).

14. *See Andrew F. v. Douglas Cty. Sch. Dist. Re-1*, 798 F.3d 1329, 1339–41 (10th Cir. 2015), *vacated*, 137 S. Ct. 988 (2017). For a more in-depth examination of *Rowley*, *Andrew F.*, and the varying interpretations across the federal circuits, see Richard D. Marsico, *From Rowley to Andrew F.: The Evolution of a Free Appropriate Public Education for Children with Disabilities*, 63 N.Y.L. SCH. L. REV. 29 (2018–2019).