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DISCRIMINATION IN EMPLOYMENT AND EDUCATION

BECAUSE OF DYSLEXIA

by

Dr. Sharlene A. McEvoy*

ABSTRACT

Despite advances in medical science in the area of brain studies, the identification of some causes of learning disabilities and instructions to sufferers on how to cope with them, the law has lagged behind and dyslexics remain victims of discrimination in employment and education. This paper analyzes cases in which dyslexics have sued to gain their rights, under the Rehabilitation Act of 1973 and the Education of All Handicapped Children Act of 1975 and The Americans With Disabilities Act.

INTRODUCTION

See spot nur
Spot likes to dlay
in the bark
with other gods
There are many animals in
the dark. There are dirbs
and squirrels and fish in
a bond.[1]

This is the world of the dyslexic, which, despite some popular misconceptions, is not an illness or a form of mental retardation. It is a complex learning disability that often runs in families. It does not only cause a person to see letters backward like

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"p" for "g" or "b" for "d." People with dyslexia do not process information well and it often becomes confused in the brain.[2] In addition to having difficulties with reading, a dyslexic may have irregular handwriting, math difficulties, organizational problems, and a poor sense of direction and time. Some dyslexics may have difficulty performing simple tasks, following instructions or conducting casual conversations.[3]

Dyslexia was recognized as long ago as 1887 as a form of word blindness but for decades it was thought to be caused by a disease, the effect of an injury, or upbringing.[4] While some researchers believe that dyslexia is a case of differently wired-circuits in the brain, a recent study published in the Proceedings of the National Academy of Science states that the cause of dyslexia might indeed be a failure of visual system circuits to keep proper timing caused by an autoimmune disease before or after birth. Abnormally processed sights and sounds might begin to shape the infant's brain and cause it to be wired differently from the start.[5]

Whatever the cause, studies have shown that dyslexia affects boys more than girls, that it may run in families, and that it affects 4-5 percent of the population or some 12 million Americans.[6]

Although dyslexia affects a significant number of Americans, the number of research dollars allocated to it is low, and many academics are unwilling to recognize dyslexia's role in this country's illiteracy problem.[7] If children were properly tested for dyslexia when young and offered appropriate education, the problem related to the disability could begin to be remedied.

Since this is not the case, the educational system must deal with students who suffer from this problem and later employers must deal with testing them for jobs. When dyslexics have problems that cannot be resolved with employers and educators, the courts must get involved. This article discusses several cases in which dyslexics have been forced to bring actions to fight discrimination against them involving important laws the Education of All Handicapped Children Act, (EAHCA) which makes learning disabilities a legally recognized handicap and entitles afflicted students to a range of services in elementary and secondary school, and Section 504 of the Rehabilitation Act which covers certain employers and causes public and private colleges and universities to lose federal assistance if they discriminate against qualified learning disabled students as well as the Americans with Disabilities Act. Clearly dyslexics have rights under these laws. It is unfortunate that they have had to resort to the courts on so many occasions to enforce them with mixed success.

II EMPLOYMENT DISCRIMINATION AGAINST DYSLEXICS

There are three cases in the area of employment discrimination that underscore the difficulty that dyslexics have in obtaining jobs: Stutts v. Freeman,[8] Fitzgerald v. Green Valley Area

Education Agency,[9] and DiPompo v. West Point Military Academy.[10]

In Stutts v. Freeman, Stutts was hired in 1971 by the Tennessee Valley Authority as a temporary laborer at the TVA's Colbert Steam Plant in Colbert County, Alabama and then hired permanently in 1973.[11] In 1979, Stutts applied for an opening in the apprenticeship training program to become a heavy equipment operator but his application was denied because of a low score on the GATB, a test used by the TVA to predict the probability of success of applicants in the training program.

Stutts had been diagnosed as a dyslexic, which impaired his ability to read. In fact, the record showed that Stutts could not read beyond the elementary level and that this was the reason for his poor performance on the GATB.[12]

Stutts was subsequently evaluated by a doctor and given non-written tests. He was judged to be of above-average intelligence, coordination, and aptitude for a position of heavy equipment operator.[13]

Attempts to persuade the testing service to give Stutts an oral GATB were unsuccessful because the scoring on the test is based on standardized and uniform testing conditions which could not be accurately translated from an oral test. Thus Stutt's non-selection was based solely on his low score on the GATB.

Stutts argued that he was the victim of discrimination under the Rehabilitation Act of 1973.[14] The policy of the law is to promote and expand employment opportunities in the public and private sectors for persons with handicaps. Even the TVA agreed that Stutts was handicapped and that the GATB could not accurately reflect Stutt's abilities.[15]

The Court found considerable evidence that Stutts was fully capable of performing the job of equipment operator and that there was a genuine issue as to whether he could complete the training program with the help of a reader or by other means.

The Court noted that Congress has clearly directed that employers make efforts to expand opportunities for handicapped persons,[16] but that TVA did not satisfy its obligation under the Rehabilitation Act by merely asking for the results of Stutt's oral tests and then accepting a rejection.[17]

The Court did not state that Stutts had to be given a position as a heavy equipment operator or that he had to be admitted to a training program, but it did hold that "when the TVA uses a test which cannot and does not accurately reflect the abilities of a handicapped person as a matter of law, they must do more to accommodate that individual than the TVA has done in regard to Stutts."[18]

Despite the TVA's protestation that it sought to give Stutts

a non-written GATB test and get the results of his oral examinations, the fact remained that the TVA was not successful and it made its employment decision based on the GATB. The Court said, "TVA's unsuccessful efforts do not amount to a reasonable accommodation of the handicapped as required by 45 C.F.R. 84.12 (1981)."[19]

The Appeals Court concluded that the district court's reliance on the GATB test results was in error saying, "when an employer like the 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."[20]

Although the landmark case in the area of handicapped discrimination is Southeastern Community College v. Davis,[21] the Court held that it did not apply to Stutts. In Southeastern, the Supreme Court held that a nursing school was not compelled by the Rehabilitation Act to admit an applicant with a serious hearing disability because evidence showed that the ability to hear speech was a necessary qualification for a nurse. The Court refused to order the school to hire a person to follow Davis around every day to interpret speech whenever necessary.[22] The Appeals Court said that the TVA had not shown that the ability to read was a necessary physical qualification for the job or that if Stutts needed accommodation it would be an unreasonable burden on TVA to provide it. The Court stated that the ultimate test is whether, with reasonable accommodation, an individual is able to perform the functions of the job without endangering the health or safety of the individual or others. The Court was convinced that Stutts could perform competently as a heavy equipment operator and that if he had trouble with the outside reading requirement, that obstacle could be overcome by obtaining a professional or family member to act as a reader.[23]

In DiPompo v. West Point Military Academy, DiPompo also suffered from dyslexia which, like Stutts, hampered his ability to read. When DiPompo was calm, he could read about as well as an advanced first grader, but when under stress, evidence showed that he was illiterate.[24]

DiPompo was a mason's helper at West Point and a volunteer firefighter in the Beacon, New York fire department. In September 1980 and June 1982, DiPompo applied to work as a fire fighter at West Point but on both occasions his applications were rejected. In January, 1984, DiPompo even sought a temporary summer fire fighter position but was denied.

After mediation efforts failed in June, 1984, DiPompo filed an Equal Employment Opportunity complaint alleging that West Point's decision not to hire him temporarily was illegal based on his handicap.[25]

While this claim was being investigated, DiPompo applied to

become a structural fire fighter, took a physical examination and was required to read from a fire fighters manual. Because West Point requires its firefighters to read at a twelfth grade level in order to be accepted, DiPompo was rejected and in January, 1985 filed a second EEO complaint against asserting that West Point illegally discriminated against him because of his handicap.

In April and July, 1986, the Army determined that DiPompo was a victim of discrimination and issued him two right to sue letters.[26]

DiPompo sued, claiming violation of the Rehabilitation Act of 1973, and sought relief for violation of section 503 of the New York Human Rights Law.[27] He also sought damages from individual defendants for the intentional infliction of emotional distress for aiding and abetting West Point to violate the latter.

DiPompo asserted two different theories of liability under Section 501 of the Rehabilitation Act[28]: disparate impact and surmountable barrier discrimination.[29]

Once a prime facie case of handicap discrimination had been established, the Army secretary had to show that persons who could read at a twelfth grade level could not efficiently perform the position of structural fire fighter, said the Court.

DiPompo also raised the issue of surmountable barriers, so the secretary was required to show that no accommodation could reasonably be made that would enable DiPompo to perform the duties of the job safely and efficiently,[30] because it would impose an undue hardship on the fire fighting program. The criteria for determining undue hardship included:

1. The overall size of the program, number of employees and facilities and size of the budget.
2. The composition and structure of the fire fighting unit.
3. The cost of accommodating DiPompo.[31]

The court found that the West Point fire department was a small force that worked out of three scattered fire stations, with small crews and that the fire fighters are often required to work without much supervision. Also, because there are not many fire fighters, each one had to be able to do every task, including those that required reading at the twelfth grade level. Thus, the Court found in favor of the Army.[32]

Despite DiPompo's attempt to bring his claim under the ambit of Section 504 of the Rehabilitation Act, the Court held that his suit was limited to Section 501 because the legislative history of the Act makes it clear that that section is the federal employee's exclusive remedy for employment discrimination based on handicap.[33]

Fitzgerald v. Green Valley Area Education Agency posed another challenge under the Rehabilitation Act, Section 504. Fitzgerald was a multiply-handicapped individual. While he suffered from dyslexia, he also had left side hemiplegia due to cerebral palsy and nocturnal epilepsy which he controlled by medication. Fitzgerald's dyslexia caused him to read between a third and sixth grade level.[34]

Despite this disability, Fitzgerald was able to earn a bachelor's degree in sociology and psychology and master's degree in education by using tape, records, and readers and also managed to work as a teacher's aide or substitute teacher for children whose reading skills were less than his. Upon completion of his masters in 1979, Fitzgerald responded to an advertisement placed by Green Valley, seeking a pre-school teacher of the handicapped and a special education instructor but did not mention his handicap.[35]

When the Director of Special Education for Green Valley, one Steen called Fitzgerald to arrange an interview, the latter told Steen of his disabilities and learned that pre-school handicapped teachers had to be able to drive a school bus. Fitzgerald said that he had a license to transport students in New York. When Steen called the Iowa Department of Public Transportation, he learned that Iowa law required a bus driver permit holder to have full and normal use of both hands, arms, feet and legs, and due to his hemiplegia, Fitzgerald could not qualify.[36]

Steen then called Fitzgerald to tell him it would not be worth his while to travel to Iowa. But Steen had expressed no reservations to Fitzgerald about his qualifications for the teaching portion of the job.

Fitzgerald felt a combination of inadequacy, anger, rejection and bitterness because he had worked hard to gain his degree and to overcome his handicap. Because he was married with a family, he also feared for his ability to provide for them and felt embarrassment and humiliation.[37]

Based on the evidence presented at trial, the District Court concluded that Fitzgerald was better qualified in terms of education and experience to teach pre-school handicapped children than the person who was hired. The court also found that were it not for his hemiplegia and bus driving problem, Fitzgerald would have gotten the job.[38]

The Court said that in order to come under the coverage of Section 504 of the Act, Fitzgerald had to prove to a preponderance of the evidence:

1. He was handicapped due to his nocturnal epilepsy, dyslexia and cerebral palsy with left side hemiplegia.
2. He was qualified due to education and experience.

3. He was excluded from the program solely because of his handicap.
4. The program received federal financial assistance.[39]

The court found it puzzling that, as a recipient for Education for All Handicapped Children Act (EAHCA) funds, Green Valley could not have been unaware of its duty "to take positive steps" to employ qualified handicapped persons in its programs.

The Court also noted that Green Valley failed to consider alternatives that would have eliminated the bus driving requirement, and so failed to fulfill its "special obligation" to accommodate Fitzgerald's handicap.[40]

The Court found it particularly objectionable that Steen gave Fitzgerald the impression that coming to Iowa would have been futile and that Green Valley did not consider whether accommodation was possible. Thus, the Court concluded that Fitzgerald had met his burden of establishing all four elements of a 504 claim and proved violation of Iowa law.[41]

The Court found that Fitzgerald was entitled to damages for mental anguish ($1,000.00) and $5,150.00 in loss earnings, attorney fees, but not punitive damages. Noting that there is a split of authority as to whether damages are available under 504, this court concluded it was "the better view that the full panoply of remedies is available to Fitzgerald under 504."[42]

III. EDUCATIONAL DISCRIMINATION AGAINST DYSLEXICS

There are four cases that are representative of the problems that dyslexics have experienced in education. They are Wynne v. Tufts University School of Medicine,[43] Jaworski v. Rhode Island Board of Regents for Education [44] Riley v. Ambach, [45] and Koeppel v. Wachtler.[46]

In Wynne, a medical student was dismissed from the Tufts University School of Medicine after failing several courses during two attempts to complete his first year program. Wynne alleged that he failed the multiple choice examinations because of his dyslexia and argued that Tufts could have reasonably accommodated his handicap by offering him another form of examination.

The U.S. District Court granted summary judgment to Tufts because it found that Wynne was unable to show that he could meet the school's requirements.[47]

Wynne appealed, relying on Section 504 of the Rehabilitation Act, and the issue was whether the university could make a reasonable accommodation to Wynne's disability to give him meaningful access to Tuft's education.[48]

The Court admitted that on the surface, it appeared that a

medical student who failed half of his classes - some after multiple attempts - had demonstrated his inability to get a medical education. But Wynne attributed his failure to Tuft's "unwarranted" refusal to test him in courses by any means other than written multiple choice exams.[49]

He offered as proof of his ability his substantially higher scores in Practicum, a type of examination which required him to apply his knowledge to a problem, which he described as being "closer to the actual practice of medicine than a multiple choice examination."[50]

Tufts claimed that Wynne's problem with the multiple choice format was "an inability to process complex information, a necessary requirement for a medical degree at Tufts."[51] The school maintained that the decision to administer written multiple choice examinations was a matter that a court or jury should not be permitted to second guess.

The Court stated that it subscribed to the principle of academic decision making, but that Section 504 required it to examine academic decisions to determine if they "mask even unintended discrimination against the handicapped."[52] The court found Tufts offered no evidence to explain why multiple choice examinations as distinguished from all other types of examinations were better tests of a student's ability "to assimilate, interpret, and analyze complex material."[53]

The Court believed that essay examinations would accomplish the same objective, and moreover, Tufts did not respond to Wynne's claim that the Practicum Exam is a more appropriate method for him to evaluate a medical student's ability to synthesize complex data.[54]

The Court concluded that the record failed to show that a different testing method would fundamentally alter the program or that Wynne inevitably would fail if freed of the burden of taking multiple choice exams. The Court noted that Section 504 does not require a recipient of federal funds to disregard the disabilities of the handicapped, but it does require that decisions be based on actual abilities, not on assumptions that the handicapped are less capable than others.[55]

Koeppel v. Wachtler was a case that also dealt with an advanced student who had a problem with an examination - the New York State Bar Exam. Koeppel was a law student who also suffered from dyslexia. In July, 1984, Koeppel took the exam as required by N.Y.C.R.R. 22 CRR 520.6.[56]

To accommodate his disability, the New York State Board of Law Examiners allowed Koeppel an additional nine hours to take the exam and to mark his answers to the multiple choice questions on the question sheet than the computer scored answer sheet.[57]

Despite these adjustments, Koeppel failed the bar examination and sought a waiver of the requirement of passing a written bar exam. The Board responded that it had neither the power nor the discretion to modify the requirements of 22 N.Y.C.R.R. 520.6 to permit a restructured or oral examination.

Koeppel's petition was also reviewed by an Associate Justice of the Court of Appeals who determined that it should be denied.[58]

Koeppel appealed the ruling claiming that he was denied equal protection of the law in violation of the Fourteenth Amendment to the U. S. Constitution, the New York Constitution Article I, Section II. He also argued that the failure of the Board to certify Koeppel's name to the Appellate Division's Second Department violated a right conferred upon him by Executive Law 296 (1) (a).[59] The Court found the first two claims to be barred by the Statute of Limitations but not the third. The case was remanded for further proceedings.[60]

In Weintraub v. Board of Bar Examiners[61], Richard P. Weintraub won an order from the Massachusetts Supreme Judicial Court that granted him twice the generally alloted time to take the July, 1992 Massachusetts Bar Examination. The court ruled that the American With Disabilities Act applies to the Board of Bar Examiners and that Weintraub was entitled to accommodations prescribed by the Act because of his dyslexia and attention-deficit disorder. Weintraub, a B student at Boston University Law School, graduated in 1991 and failed both the July, 1991 and February 1992 bar exams by small margins. On these occasions he was given 30 extra and 45 extra minutes per each three hour segments respectively. Weintraub and his attorney Ernie Katz argued that the Board of Bar Examiners' 45 minute per segment limit violated the ADA's provision that each person's individual needs should be addressed. The court's order allowed Weintraub to take the July 1992 exam over a four day period in a private room during the same week others took the exam. Although the order deals with one case in Massachusetts, it effectively delivers a signal to bar examiners around the country and to other agencies within the state that certify professions to take note about how they accommodate the disabled. Stephen Fedo, a Chicago lawyer, who advises the National Conference of Bar Examiners said that the ADA opens the door for a greater number of more specialized or individualized accommodations at examinations which could pose numerous problems for bar examiners in terms of cost and practicality.

Not only do students from professional schools have problems with regard to acceptance of the limits of their dyslexic condition but so also do younger students and their parents. There are two cases that explore the issues of the Rehabilitation Act and the Education of All Handicapped Children Act (EAHCA).[62]

In Riley v. Ambach, the facts involved an action brought by eighteen handicapped children and their parents to enjoin regulations made by the New York Commissioner of Education, Ambach, with regard to their education of learning disabled children. Ambach made a rule that required such children to exhibit a discrepancy of 50% or more between expected and actual achievement based on intellectual ability in order to qualify as a handicapped child" under the appropriate federal and state laws.[63]

The parents alleged that Ambach violated the Rehabilitation Act and the Education of All Handicapped Children Act of 1975, which established federal and state programs to secure "free appropriate public education for all handicapped children and expanded federal funding of state educational efforts for that purpose."[64]

The Court discussed at length the legislative history and said that children with specific learning disabilities and their parents have a right to expect that individually designed instruction to meet their children's specific needs is available.[65]

In order to participate, states have to meet eligibility requirements and must submit plans to meet the educational needs of the handicapped.[66]

The parents argued that the 50% discrepancy rule violated federal statutory requirements because it excluded from identification as handicapped those severely learning disabled children who did not meet the 50% cut-off.[67]

One student, John Riley had been classified as handicapped by Levittown School District Committee on the Handicapped (COH) because of his dyslexia. The Committee recommended that he be placed at Landmark, a residential school in Massachusetts that was on the Commissioner's approved list. But Landmark had been removed from the approved list so Riley's tuition would not be paid by the state. In the wake of the rule change, the COH recommended placement in the Levittown Memorial Junior High School with special education classes. Riley's parents viewed the placement as unsatisfactory and put their son at Landmark at their own expense.[68] Similar things happened to other students who joined the suit.

The parents argued that the 50% rule is inconsistent with federal standards which require that a child exhibit a severe discrepancy between expected and actual achievement because it is a more restrictive criterion and that implementation of the 50% rule caused the number of learning disabled children in New York schools to drop from 28,172 to 12,167 from 1977-1979. Expert witnesses testified as to the inappropriateness of the 50% standard to determine if a child is learning disabled.[69]

The Court concluded that the 50% standard interfered with the proper identification of learning disabled children since it operated to eliminate consideration of factors and the use of techniques which "do not, given the present state of the art, lend themselves to quantification."[70]

The Court was troubled because no evidence had been presented to show that the 50% rule is interpreted by local COHs in a flexible way. In fact, the school districts reached decisions "primarily if not exclusively on the basis of quantitative tests and grade scores which lend themselves to quantification."[71] Even the Assistant Commissioner admitted that testing procedures were very poor. The Court stated that Congress was concerned about the inadequacy of testing procedures used to evaluate students for special education programs, and noted "the usefulness and mechanistic ease of testing should not become so paramount in the educational process that its negative effects are overlooked."[72]

Thus, the Court concluded that the 50% rule and the elimination of residential schools by the Commissioner violated federal law. The Court ordered restoration of the residential schools to the approved list and reimbursement of the cost of the current year's placement costs.[73]

A similar struggle took place in Jaworski v. Rhode Island Board of Regents for Education, in which James Jaworski's parent sued under the EAHCA seeking an injunction requiring the Pawtucket School Committee to fund his placement in a private school and other procedural safeguards.[74]

The issue in the case was whether the Pawtucket School Committee should be required to reimburse James' parents for money they were required to spend because of the Committee's failure to provide him with a free appropriate education within the school system.[75]

James began his checkered educational career in the Pawtucket School System in 1967. During his early school years, he had considerable difficulty in reading, writing and arithmetic. But it was not until December, 1973 that an examination revealed that he suffered from dyslexia. Jame's parents decided in June, 1974 to place him in a private school, Eagle Hill. Mr. Jaworski approached the Pawtucket Director of Special Education, Leo Dolan, to seek funding for such a placement and was informed that there was a program for dyslexia with the school system.[76]

The Jaworskis filed a petition seeking reimbursement for costs in keeping James at Eagle Hill, but after an evaluation by a doctor, school psychologist and, on recommendation of Dolan, the School Committee notified the Jaworski's that the school system could provide an appropriate education. The Jaworskis then appealed to the Commissioner of Education who found that the school's program was appropriate, a decision affirmed by the Board of Regents for Education.[77]

The case became moot once James graduated but the Court had to consider if a retrospective award of compensatory damages was available under the EAHCA. The judge concluded that while there were cases on both sides of the issue, the term "relief" meant injunctive relief and not damages.[78]

The Jaworskis also claimed damages under Section 504 of the Rehabilitation Act of 1973 but the judge found that this issue was not raised in a timely fashion.

The Jaworskis also argued that the Pawtucket School Board denied them a hearing which would have allowed them to rebut the information the Committee relied upon in reaching its decision. The Court found that the denial of a hearing violated the regulations of the Board of Regents Governing the Special Education of Handicapped Children, which specifically provided an opportunity to appeal to the School Committee if the decision of the Superintendent was not acceptable to the parents. But the court found that the Jaworskis failed to show in any way that, if they had been given a second hearing a different decision would have been reached or they would have been spared an injury. The Court only awarded the Jaworskis nominal damages of $1.00.[79]

CONCLUSION

As the cases discussed in this article have shown, it is no easy task for dyslexics to achieve their rights in this society. In each of these cases, dyslexic employees, students and their parents faced a long struggle to achieve justice due to the presence of this learning disability.

There has been a greater awareness of learning disabilities in the last few years and activity in developing programs for the learning disabled at all levels of education. Colleges have even displayed more willingness to allow untimed admission tests in undergraduate and graduate programs and help in taking SATs and GREs. But only about 150 two and four year colleges offer comprehensive programs to provide intensive support to the learning disabled while they earn their degrees.[80]

In addition to the Rehabilitation Acts and the Education of All Handicapped Children Act, protection is afforded dyslexics was in 1992 by the Americans With Disabilities Act which affect employers with 25 or more employees. The ADA takes a different tack from the Americans With Disabilities Act which should provide even more opportunities for the learning disabled to gain employment opportunities.[81] The focus is on what handicapped people can do. Under the law, if a qualified applicant or employee with disabilities cannot perform essential work functions or fully participate in employment programs because of their impairment, he or she is entitled to have barriers removed through reasonable accommodation.

Experts agree that dyslexia is an incurable malady. Dyslexics can learn and work but special steps must be taken to help them achieve these goals. It is unjust that a society allows discrimination against persons with immutable characteristics like race, sex, and handicap. Dyslexia is a neurological impairment. As two authors have put it, despite advance in many areas of neurology, psychology and linguistics, dyslexia remains an

enigma."[82]

NOTES

1. "The Bright Idea of Dyslexic Minds," University of California at Irvine Journal U.C.I. Journal Apr-May 1986 at 10. (hereinafter "The Bright Idea of Dyslexic Minds.)

2. Callahan, "Here Dyslexics Meet Success," The Boston Globe, June 2, 1991 at B-19.

3. "The Bright Idea of Dyslexic Minds," supra note 1 at 10.

4. Id. at 11.

5. Blakeslee, "Study Ties Dyslexia To Brain Flaws Affecting Vision and Other Senses, The New York Times, Sept. 15, 1991 at A-1, A-30.

6. Id. at A-1. The term "dyslexia" comes from the Greek dys (difficult) and lexikos (having to do with words). Erens "The Scrambled World of Dyslexia," Connecticut Magazine, Nov. 1987 at 103.

7. "Dyslexic Teacher Helps Others," The New Haven Register, Oct. 4, 1985 at A-35.

8. 694 F. 2d 666 (1983).

9. 589 F. Supp 1130 (S.D. Iowa 1984).

10. 708 F. Supp 540 (S.D. N.Y. 1989).

11. 694 F. 2d 666, 668.

12. Id.

13. According to testimony, the TVA tried to get the results of these non-verbal tests but was unable to do so. Id.

14. 29 U.S.C. 701 (8). The Rehabilitation Act of 1973 says in part:

    No otherwise handicapped individual in the United States shall solely, by reason of his handicap be excluded from participation in or be denied the benefits or be subjected to discrimination under any program or activity receiving federal financial assistance or under any program or activity conducted by any Executive Agency or U.S. Postal Service.

    A handicapped individual is defined as an individual who:

    1. Has a physical or mental disability which, for such individual constitutes or results in a substantial handicap to employment and it can reasonably be expected to benefit in terms of employability from vocational rehabilitation service.
    2. Any person who:
       (i) has a physical or mental impairment which substantially limits one or more of such person's major life activities.
       (ii) has a record of such impairment or
       (iii) is regarded as having such an impairment.

15. 694 F. 2d 666, 668.

16. Id.

17. Id. at 669.

18. Id.

19. Id. at 668.

20. Id. at 669.

21. 442 U.S. 397, 99 S. Ct 2361, 60 L. Ed 2d 980 (1979).

22. 694 F. 2d 666, 669 fn 3.

23. Id. at 669.

24. 708 F. Supp 540, 542.

25. Id.

26. Id.

27. N.Y. Exec. Law 296 (1) (a), McKinney, 1982.

28. Section 501 provides in part:

    "Each department, agency and instrumentality (including the U.S. Postal Service, Postal Rate Commission in the executive branch) shall...submit...an affirmative action program for the hiring, placement, and advancement of handicapped individuals in such department, agency or instrumentality."

29. 708 F. Supp 540, 547.

30. Id. at 550.

31. Id.

32. Id.

33. Id. at 545.

34. 589 F. Supp. 1130, 1132.

35. Id. at 1133.

36. Id. at 1134.

37. Id.

38. Id. at 1135.

39. Id. at 1135.

40. Id. at 1136.

41. Id. The Court found that Green Valley also violated the Iowa Code 601 A 6(1) (1979) which makes it illegal for any person to discriminate in employment against any applicant for employment or any employee because of disability of such applicant or employee unless based on the nature of the occupation. Thus, the employer has a duty to make reasonable accommodation to a handicapped qualified applicant and cannot deny employment opportunity to a qualified handicap person if the basis for denial is the need to make reasonable accommodation for the physical limitation of the employee or applicant. 240 Iowa Admin. Code 6.2 (6) (6) (c) says," An employer can avoid its duty to make reasonable accommodation only if it can show "that the accommodation would impose an undue hardship on the operation of its program."

42. Id.

43. 58 U.S.L.W. 2658-2659 5-15-90 (CA 89-1670) 4-30-90.

44. 530 F. Supp. 60 (1981).

45. 508 F. Supp. 1222 (1980).

46. 529 N.Y.S. 2d 359 (A.D.2 Dept. 1988).

47. 58 U.S.L.W. 2658.

48. Id.

49. Id.

50. Id.

51. Id.

52. Id.

53. Id. at 2659.

54. Id.

55. Id. at 2658. The Court cited Southeastern Community College v. Davis supra fn 21 which held that Section 504 does not require that educational institutions lower their standards or make substantial modifications to their program to accommodate handicapped persons but that reasonable accommodations may be necessary to fulfill the mandate of 504.

56. 529 N.Y.S. 2d 359, 360.

57. Id.

58. Id.

59. Id.

60. Id. But see "Learning Disabled Lawyer Wins Compromise on Bar Exam," Wall St. J Mar. 2, 1993 at B-5. Randi L. Rosenthal, an associate at the New York Law firm, Kaye, Scholes, Fierman, Hays and Handler sued in February, 1992 under the Americans with Disabilities Act asking a federal judge to halt the February New York Bar Exam arguing that she suffers from dyslexia and attention deficity disorder. She was denied special accommodations for the July, 1991 exam and failed. Faced with a possibility that the bar exam for 2300 candidates would have to be postponed, the New York State Board of Law Examiners agreed to allow her to take the February exam over four days instead of two and in a separate room. Nancy Opps, deputy executive secretary of the board said there is "no uniformity throughout the country - some states accommodate the learning disabled, some don't."

61. Kennedy, "U.S. Disability Law Put To The Test," The Boston Globe, Sept. 22, 1992 at 39-54.

62. 20 U.S.C. Section 1401 et. seg. 20 U.S.C. 1401(15) defines children with learning disabilities as follows:

> "... those children who have a disorder in which one or more of the basic psychological processes involved in understanding or in using language spoken or written, which disorder may manifest itself in impact on the ability to listen, think, speak, read, write, spell or do mathematical calculations such disorders include such conditions as peruptual handicaps, brain injury, minimal brain dysfunction, dyslexia and developmental aphasia."

Such term does not include children who have learning problems which are primarily the result of visual, hearing, or motor handicaps of mental retardation, of emotional disturbance, or of environmental, cultural or economic disadvantage 20 U.S.C. 1401 (15).

63. 508 F. Supp. 1222 (1980) at 1225.

64. Id. at 1226.

65. Id. Senate Labor and Public Welfare Committee S. Rep. No 94-168, 94 Cong. 1st. Sess., June 2, 1975 at 10. U.S. Code and Admin. News 1975, pp. 1425, 1430.

66. Id. at 1227.

67. Id. at 1228.

68. Id. at 1236.

69. Id. at 1240.

70. Id. at 1241.

71. Id. at 1242.

72. Id. at 1244. 45 CFR 121 a 302.

73. Id. at 1246.

74. 530 F. Supp. 60, (1981) at 61.

75. Id.

76. Id.

77. Id. at 62.

78. Id. at 63. The court found support for this position in the legislative history and in Anderson v. Thompson, 658 F 2d. 1205 (7th Cir. 1981) affg 495 F. Supp. 1256, 1257 (E.D. Wis. 1980).

79. Id. at 64-65.

80. Van Ness, "As Easy As 1-3-2," New York Times, Education Times, 47-48.

81. Owen, "A Law That Gives the Disabled A Fair Chance," Wall Street J. May 29, 1991, at A-10.

82. Shaywitz and Vaxman, "Dyslexia," New Eng. J. of Medicine, May 14, 1987 Vol. 316, No. 20, at 1269. Tragically the world of the learning disabled child is clouded by frustration and failure in school and often leads to crime. Statistics show that while 15% of the population have learning disabilities, 36% of juvenile delinquents involve such people. The American Bar Association recognized the link between learning disabilities and crime in 1983. In New York, studies show that 10-40% of inmates in states county jail system may have some learning or developmental disability. Johnson, "Help of Court Sought for Learning Disabled," New York Times, Nov. 16, 1986 at B-2.