

Now, at 73, Fernando is mostly retired from politics. But last fall, when he heard about the California ballot proposition that would cut back TBE, he stopped by one of the campaign offices to find out what it was all about. Impressed at the explanation, he took home some signs bearing the proposition's slogan, "English for the Children," in both English and Spanish. He stuck them in his front lawn.

That evening, the doorbell rang. "Excuse me, mister," a woman—a Salvadoran, by the sound of her Spanish—asked when Fernando answered. "I saw your sign. Do you teach English here? My children need to learn it."

"I'm sorry, the sign is about something else," Fernando replied. "But why do you need an English teacher? Don't your children go to school?"

"Of course they do," the woman replied sadly. "But at the school, they only teach Spanish."

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## Defining Disability Down

### *Why Johnny Can't Read, Write, or Sit Still*

Ruth Shalit

This selection first appeared in *The New Republic* on 25 August 1997. Ruth Shalit is a frequent contributor to *The New Republic* and other national publications.

In July of 1995, Jon Westling, the provost of Boston University, traveled to Australia to attend the Winter Conversazione on Culture and Society, a highbrow *tete-a-tete* for globetrotting pundits and savants. Westling, a protege of former B.U. President John Silber, is an avowed conservative; and the subtitle of his speech, "The Culture Wars Go to School," seemed to portend the usual helping of red meat for the faithful. But instead of decrying deconstruction, or puncturing the pretensions of tenured radicals, Westling took aim at an unexpected target—the learning-disabled. He told the story of a shy yet assertive undergrad, "Somnolent Samantha," who had approached him one day

after class and presented him with a letter from the Office of Disability Services. The letter explained that Samantha had a learning disability “in the area of auditory processing” and would require certain “accommodations,” including time-and-a-half on quizzes, double time on the midterm, examinations administered in a room separate from all other students, copies of Westling’s lecture notes, and a reserved seat at the front of the class. Samantha also notified Westling that she might doze off in class, and that he should fill her in on any material she missed while snoozing.

The somnolent undergrad, Westling contended, was not alone. A new, learning-disabled generation was coming of age in America, a generation “trained to the trellis of dependency on their special status and the accommodations that are made to it.” Citing a Department of Education estimate that up to 20 percent of Americans may be learning-disabled, Westling mused on the evolutionary ramifications of such a diagnosis. “There may be as many as 50 million Americans,” he observed. “What happened? Did America suffer some silent genetic catastrophe?”

Westling’s speech, it turns out, was a prelude to action. Shortly after returning from Melbourne, the aggrieved provost took a cleaver to B.U.’s bloated Office of Learning Disabilities Support Services, a half-million dollar fiefdom whose policies had, in the words of *The New York Times*, earned B.U. a “national reputation” as a haven of support for the learning-impaired. He stepped up standards for documentation, and he issued a blanket prohibition on waivers of the school’s math and foreign language requirements, contending that there was no medical proof that students with learning disabilities are unable to learn these subjects. Henceforth, he declared, all requests for learning-disabled accommodations would be routed through his office. Westling then made a final announcement. In 1996, he said, he would become president of the university.

The learning-disability establishment was dumbfounded. “Here was someone coming in with no knowledge, taking the national model and destroying it,” says Anne Schneider, the Park Avenue fund-raising doyenne who spearheaded the creation of B.U.’s program a decade ago, after her learning-disabled daughter Andrea nearly washed out of the university—due, Schneider says, to a lack of services. Schneider, whose personal fund-raising efforts have kept the office flush with cash, sees Westling’s assault on her brainchild as analogous to “taking a seeing-eye dog away from a blind person.” Janet Cahaley, mother of learning-

disabled sophomore Michael, agrees: “These kids are the most vulnerable people on campus. Before, they were treated with humanity and decency and kindness. Now, they’re hopeless and helpless.”

Well, maybe not so helpless. Westling’s putsch brought howls from disabled-rights advocates and from the media, which pounced upon the revelation that Somnolent Samantha was a fictitious composite—a “rhetorical trope,” as Westling somewhat sheepishly admitted. And on July 15, 1996, ten students filed a lawsuit against Westling, claiming his unkind words and arduous new requirements amounted to illegal discrimination under the 1990 Americans with Disabilities Act. In their complaint, the students alleged that Westling’s new standard for documentation—requiring applicants to submit an evaluation that is less than three years old and prepared by a physician or licensed psychologist—amounted to an “unduly burdensome prerequisite” that would screen out learning-disabled students from receiving their legally mandated accommodations. Also unlawful, the students contended, was Westling’s prohibition on waivers of academic requirements. Finally, in their most enterprising claim, the students accused Westling of creating a “hostile learning environment” for the disabled, inflicting needless “emotional distress” and crushing their hopes of collective advancement. A ruling by Judge Patti B. Saris of Boston Federal District Court is expected by the end of August.

Recent rulings by other judges suggest that the learning-disabled students may well prevail in court. But even then the questions begged by Somnolent Samantha will remain. Westling and B.U.’s new guard insist that they have no animus against those with “genuine” learning impairments; they simply want to weed out the impostors. Yet, in holding up a trendy diagnosis to the bright light of public scrutiny, B.U. officials have raised issues that go to the core of a debate that has grown as civil rights law has expanded to cover not merely the halt, the lame, and the blind, but the dysfunctional, the debilitated, and the drowsy.

Should “learning-disabled” even be a protected category under federal law? What, exactly, is a learning disability? Are the B.U. plaintiffs at the vanguard of a new generation of civil rights warriors, as their supporters contend? Or is their lawsuit the *reductio ad absurdum* of identity politics and tort madness—Harrison Bergeron meets Perry Mason in *The Case of the Litigious Lollygaggers*?

The recent announcement by the Equal Employment Opportunity Commission that the Americans with Disabilities Act covers not only

physically but mentally handicapped individuals has occasioned a flurry of hand-wringing editorials. Worried employers have painted a scary scenario of a law that will coddle murderous lunatics, endanger the welfare of unsuspecting customers, and transform America's factories and foundries into dystopias of dementia. In some ways, however, it is the entrenchment of learning disability—a comparatively undersung, and seemingly more benign, “hidden impairment”—that poses the more subversive challenge to basic notions of fair play, professionalism, and equal protection under the law.

No one would deny that an individual who is unfortunate enough to be afflicted with one of the classically defined mental disorders—schizophrenia, paranoia, manic depression, and so on—suffers from a clearly defined and clearly recognizable infirmity, one that is likely to impair significantly her educational achievements and career prospects. (Whether employers should be legally compelled to overlook these mental disabilities is another matter.) The diagnosis of a learning disability, in contrast, is a far more subjective matter. For many of the more recently discovered learning maladies—math disability, foreign-language disability, “dysrationalia”—there are no standard tests. To be sure, real and debilitating learning disabilities do exist. But there are no good scientific grounds to believe that some of the more exotic diagnoses have any basis in reality. Yet, thanks to the interlocking protections of three powerful federal disability laws, refusal to accommodate even the most dubious claims of learning impairment is now treated by the courts and by the federal government as the persecution of a protected minority class.

Modern disability law was inspired by the most humane of motives, to protect the disabled from prejudices that deprived them of equal opportunities in the workplace and in the classroom. From the outset, however, this grand aspiration was framed in the fuzziest of terms. The statutory framework for modern disability law was established in the Rehabilitation Act of 1973, which mandated assistance measures for the disabled in federal facilities. Here is how Section 504 of the act defined a learning disability: “a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written . . . [which] may manifest itself in imperfect ability to listen, think, speak, read, write, spell or do mathematical calculations.” This remarkably broad definition is echoed in all subsequent disability laws, notably the 1975 Individuals with Disabilities Education Act, which mandated an array of

services for disabled public school students, and the 1990 Americans with Disabilities Act, which extended the protections of the Rehabilitation Act into the private sector. All three laws are equally vague in their description of how people with disabilities must be treated. As the ADA puts it, in the case of any individual possessing a “disability” that results in “substantial impairment” of a “major life activity,” schools and employers cannot “discriminate” and must provide “reasonable accommodation.” The meaning of these legal appellations, as interpreted by the courts and the regulatory agencies, would turn out to be remarkably expansive.

There were some limits written into the disability laws. For instance, only “otherwise qualified” individuals are entitled to protection; accommodations are only mandated if they do not result in “undue hardship.” But recently a number of rulings by federal courts and government enforcement agencies have revealed how flimsy these limits are.

Although compliance with federal disability law is not supposed to come at the expense of education or job performance standards, the Department of Education’s Office of Civil Rights has delivered stinging rebukes to schools that refuse to exempt learning-disabled students from academic requirements. Last May, a student afflicted with dyscalculia—math disability—filed a complaint with the San Francisco Office for Civil Rights after her college declined to waive the math course required of all business majors in paralegal studies. Despite the college’s earnest attempts to accommodate her impairment—the student would receive extensive tutoring and extra time on tests—OCR issued a finding of discrimination anyway, writing on May 30 that “[a]bsolute rules against any particular form of academic adjustment or accommodation are disfavored by the law.” When the school asked if they could require learning-disabled students to at least try to pass a required course, OCR said no way, arguing that “it is discriminatory to require the student to consume his or her time and jeopardize his or her grade point average taking a particular mathematics course when the person qualified to administer and/or interpret the psychometric data has determined that the student, due to his or her disability, is highly unlikely to pass the course with any of the accommodations the institution can identify and/or deliver.” OCR added that this rule should apply even to borderline dyscalculics, that “substantial group of students for whom interpretation of psychometric measures provide no clear prediction of success in a particular mathematics course.”

This is the new frontier, the learning disability as an opportunistic tautology. The fact that one displays a marked lack of aptitude for a

particular intellectual discipline or profession establishes one's legal right to ensure at least a degree of success in that discipline or profession. That is not a fanciful conceit, but an adjudicated reality. Several judges have recently ventured the enterprising claim that any person who is not performing up to his or her abilities in a chosen endeavor suffers from a learning disability within the meaning of the ADA.

Consider the lawsuit filed in 1993 by an aspiring attorney named Marilyn J. Bartlett. Bartlett graduated in 1991 from Vermont Law School, where she received generous accommodations of her reading disability and disability in "phonological processing." Nonetheless, Bartlett did not do well, graduating with a GPA of 2.32 and a class standing of 143 out of 153 students. She then went to work as a professor of education at Dowling College, where, according to court documents, she "receives accommodations at work for her reading problems in the form of a full-time work-study student who assists her in reading and writing tasks."

When it came time to take the bar exam, Bartlett petitioned the New York Board of Law Examiners for special arrangements. She wanted unlimited time for the test, access to food and drink, a private room, and the use of an amanuensis to record her answers. Acting on the advice of its own expert, who reported that Bartlett's test data did not support a diagnosis of a reading disorder, the board refused Bartlett's demands. Three times, Bartlett attempted the exam without accommodation. After her third failure, she sued the board.

On July 3, 1997, Judge Sonia Sotomayor ruled in Bartlett's favor. Ordering the board to provide the accommodations Bartlett had requested, she also awarded Bartlett \$12,500 in compensatory damages. Judge Sotomayor did not challenge the board's contention that Bartlett was neither impaired nor disabled, at least not in the traditional sense. In an enterprising new twist, however, she declared that Bartlett's skills ought not to be compared to those of an "average person in the general population" but, rather, to an "average person with comparable training, skills and abilities"—i.e., to her fellow cohort of aspiring lawyers. An "essential question" in the case, said the judge, was whether the plaintiff would "have a substantial impairment in performing [the] job" of a practicing lawyer. The answer to this question was "yes," the judge found. And this answer—the fact that Bartlett would have a very hard time meeting the job requirements of a practicing lawyer—was, in the judge's opinion, precisely the reason why Bartlett had a protected

right to become a practicing lawyer. Thus, Judge Sotomayor ruled that Bartlett's "inability to be accommodated on the bar exam—and her accompanying impediment to becoming bar-admitted—exclude her from a 'class of jobs' under the ADA," and could not be permitted.

To drive home her point, Judge Sotomayor triumphantly cited Bartlett's performance during a courtroom demonstration of her reading skills. "Plaintiff read haltingly and laboriously, whispering and sounding out some words more than once under her breath before she spoke them aloud," the judge recalled. "She made one word identification error, reading the word 'indicted' as 'indicated.'"

It could, of course, be argued that the ability to read is an essential function of lawyering; that any law school graduate who cannot distinguish "indicated" from "indicted," who cannot perform cognitive tasks under time constraints, is incapable of performing the functions of a practicing lawyer and therefore, perhaps, should not be a practicing lawyer. But one would be arguing those things in the teeth of the law. Thanks to the Americans with Disabilities Act, the Individuals with Disabilities Education Act and Section 504 of the Rehabilitation Act of 1973, Bartlett and her fellows among the learning-disabled are now eligible for a lifelong buffet of perks, special breaks, and procedural protections, a web of entitlement that extends from cradle to grave.

Jon Westling is a crusty chain smoker with owlsh glasses and a stuffy, orotund manner, an easy figure to mock. But, as it turns out, his portrait of Somnolent Samantha was hardly a wild flight of fancy. Before beginning his formal audit of LDSS's practices, Westling asked its director, Loring Brinckerhoff, whether the office had ever turned down a single request for special dispensation on the grounds that the student hadn't presented enough evidence. When Brinckerhoff answered no, Westling asked to see folders and accommodation letters for the twenty-eight students who had most recently requested and received adjustments to their academic program. Of these twenty-eight, Westling pronounced no fewer than twenty-seven to be insufficiently documented. And, indeed, copies of the students' files, exhumed during the discovery phase of the lawsuit and now available as courthouse exhibits, seem to provide some support for this harsh assessment.

For starters, some of the diagnosticians themselves appeared somewhat impaired. One evaluator wrote that "taking notes and underlying [sic] while reading" would help a student "maintain her attention." Another student, a female, was erroneously referred to as "Joe" by the

evaluator who pronounced her to be learning-disabled. Even more troubling, though, was LDSS's seemingly reflexive acquiescence to students' wish lists. Michael Cahaley, one of the plaintiffs in the lawsuit, was, according to Westling's affidavit, described by his doctor as having "minimal" deficits: "this very intelligent youngster should do well in high school and college."

Nonetheless, Cahaley had requested—and was granted—double time on all of his examinations. In another case, the clinical psychologist who examined a student reported that his "skill deficits" were "not severe enough to be a learning disability"; but a learning specialist misread the report and recommended accommodation anyway, on the grounds that "the student was evaluated and found to have a learning disability."

Sometimes the evaluator's recommendations seemed just bizarre. In one case, a student's psychologist opined that a student who "appears to have subtle verbal processing difficulties" should not be "asked to recall very specific data or information." As Westling dryly observed in his affidavit, requests for "very specific data or information" constituted "an essential element of every course and academic program offered by Boston University."

At the trial, the student plaintiffs came off as something other than inspiring champions for disabled rights. Elizabeth Guckenberger, a third-year law student who was diagnosed as having "a visual and oral processing disability" while a freshman at Carleton College, admitted she had received every accommodation she had ever requested under the Westling regime, including extra time on exams, a reduced course load, and priority registration in the law school section of her choice. Benjamin Freedman, a senior with dysgraphia ("really, really bad handwriting," he says), also got everything he wanted, including double time on exams, the option to be tested orally, and the services of a professional note-taker.

Plaintiff Jordan Nodelman, who claimed he suffered from attention deficit disorder (ADD), also had received every accommodation he ever requested, including the right to take all tests in a distraction-free environment with extra time. At trial, he admitted that his attention deficit waxed and waned. When "something's very important to me," he explained at trial, he "forc[ed] [him]self to concentrate." Nodelman had a 3.6 GPA, had made the Dean's List, and had taken his tests untimed in every class except Zen Guitar.

Perhaps the least compelling plaintiff was sophomore Scott Greeley, who testified that he suffers from an "audio-visual learning processing



deficit.” At B.U., Greeley had been provided with a note-taker, time-and-a-half on tests, and an open-ended right to have any test question “clarified” by the instructor. But the perks didn’t help much—as Greeley explained at trial, after the accommodations were provided his GPA improved to a less-than-stellar 1.9. Over the course of the trial, B.U. attorneys established that this shoddy showing was perhaps not wholly attributable to societal persecution of the disabled. Queried about his spotty attendance record in a science course for which he received a “D” grade, Greeley explained that “part of my disability is that I need a structured schedule.” “Would you say you missed over half the classes?” persisted the judge. “Probably around that, yes,” replied the undergrad.

It would be comforting to think that B.U.’s “disabled” plaintiffs represent an exception to the norm, but this does not seem to be the case. Over the years, proposed reforms to disability law have been effectively vanquished by televised testimony from sobbing children in wheelchairs. Increasingly, however, individuals with grave physical handicaps comprise only a small portion of the people who claim special privilege under the federal disability laws. As Manhattan Institute fellow Walter Olson points out in *The Excuse Factory*, complaints by the traditionally disabled—the deaf, blind and paraplegic—have accounted for only a tiny share of ADA lawsuits. According to 1996 EEOC figures, only 8 percent of employment complaints have come from wheelchair users and a mere 6 percent from the deaf or blind, bringing the total for these traditional disabilities to a skimpy 14 percent.

The diagnosis of learning disability, by contrast, is experiencing something of a boom. In the space of only a few years, the number of children diagnosed with attention deficit disorder, reading disability, and math disability, has swollen by hundreds of thousands. Of the 5.3 million handicapped children currently on Individual Education Programs (specially tailored, often costly regimens of technology, therapy, and one-on-one tutoring that public schools are mandated to provide to every child with a disability), the U.S. Department of Education estimates that just over half (51 percent) are learning-disabled. According to the authors of the book *Promoting Postsecondary Education for Students with Learning Disabilities*, up to 300,000 students currently enrolled in college have proclaimed that they are learning-disabled and need special accommodations.

The National Collegiate Athletic Association, meanwhile, is under intense legal pressure from the Justice Department to relax the initial

eligibility standards that require student athletes to get a cumulative score of 700 on their SATs and to maintain at least a 2.0 grade point average in core courses. These standards are meant to offer a slight safeguard against the tendency of universities to enroll and graduate young men and women whose ability to pass a ball exceeds their ability to pass their courses. Not so fast, said Justice Department lawyer Christopher J. Kuczynski. In a March 1996 letter to the NCAA, Kuczynski warned that the association's academic standards may "have the affect [sic] of excluding students with disabilities from participation in college athletics." NCAA spokesman Kevin Lennon says the association is in the process of revising its policy "to accommodate students with learning disabilities."

The most common estimate cited by advocacy groups and frequently repeated in government documents is that between 15 and 20 percent of the general population have learning disabilities. Any hypochondriac can test himself: In a recent booklet, the American Council on Education supplies a checklist of symptoms for adults who suspect they may be learning-disabled. Some of us will be disturbed to recognize in the checklist possible symptoms of our own: According to the council, telltale signs of adult learning-disablement include "a short attention span," impulsivity, "difficulty telling or understanding jokes," "difficulty following a schedule, being on time, or meeting deadlines," and "trouble reading maps."

As the ranks of the learning-disabled swell, so too do the number of boutique diagnoses. Trouble with numbers could signal dyscalculia, a crippling ailment that prevents one from learning math. Lousy grammar may stem from the aforementioned dysgraphia, a disorder of written expression. Dozing in class is evidence of latent ADD, perhaps even ADHD (attention deficit/hyperactivity disorder). Many tykes also exhibit the telltale symptoms of ODD—oppositional defiant disorder. According to the American Psychiatric Association, the defining feature of ODD is "a recurrent pattern of negativistic, defiant, disobedient, and hostile behavior . . . characterized by the frequent occurrence of at least four of the following behaviors: losing temper, arguing with adults, actively defying or refusing to comply with the requests or rules of adults, deliberately doing things that will annoy other people, blaming others for his or her own mistakes or misbehavior." Rates of up to 16 percent have been reported.

A tongue-tied toddler could have dysphasia, otherwise known as a "difficulty using spoken language to communicate." Boorish behavior may be

a sign of dyssemia, defined as a “difficulty with signals [and] social cues.” (According to the Interagency Commission on Learning Disabilities, social skills are a domain in which a learning disability can occur.) An even more sinister malady is dysrationalia, defined in an October 1993 issue of *The Journal of Learning Disabilities* as “a level of rationality, as demonstrated in thinking and behavior, that is significantly below the level of the individual’s intellectual capacity.” A checklist of childhood precursors include “premature closure, belief perseverance . . . resistance to new ideas, dogmatism about beliefs, and lack of reflectiveness.”

These neo-disabilities are likely to strike the nonspecialist as an exercise in pathologizing childhood behavior, and the nonspecialist would be on to something. Increasingly, scholars and clinicians in the field of learning disability are speaking out against the dangers of promiscuous diagnosis of disablement. “In the space of twenty years, American psychiatry has gone from blaming Johnny’s mother to blaming Johnny’s brain,” says Dr. Lawrence Diller, an assistant clinical professor of behavioral pediatrics at the University of California at San Francisco. The problem, says Dr. Diller, is that in a variant of the Lake Wobegone effect, “Bs and Cs have become unacceptable to the middle classes. Average is a pejorative.” And yet, as he points out, “someone has got to be average.”

Some scholars have even begun to question the notion that there is such a thing as a learning disability. In a recently published book, *Off Track*, one of its authors, Robert Sternberg, a Yale professor of psychology and education, presents a powerful case for why the concept of learning disability ought to be abandoned. Drawing on the latest research into the physiology of the human brain, Sternberg argues that there is no evidence to support the view that children who are labeled as learning-disabled have an immutable neurological disability in learning. From a medical standpoint, he writes, there is no scientific proof that children labeled as learning-disabled actually have a discernible biological ailment “in terms of the underlying cognitive abilities related to reading.” Says Sternberg: “I’m not denying that there are dramatic disparities in the speed with which people learn. . . . But, most of the time, what you’re talking about here is a garden-variety poor reader. You’re talking about someone who happens to be not very good in math.”

To be sure, there is no question that children who are intellectually normal, and sometimes even unusually bright, can have genuine, serious difficulties in learning how to read or to do math; and that educators

should do everything in their power to put these students back on track developmentally. But as their clinics swarm with hordes of pushy parents and catatonic collegians, all hankering for a diagnosis of intractable infirmity, a growing number of diagnosticians are crying foul. “The way the diagnoses [of attention deficit disorder and learning disabilities] are being used right now, a backlash against the conditions is inevitable,” says Diller. “We’ve created a paradox where the more problems you have, the better off you may be. That’s a prescription for societal gridlock.”

It’s no puzzle, of course, why the learning-disability movement insists that learning disability is an immutable, brain-based disorder—a malady that is “fundamentally neurological in origin,” according to the National Center for Learning Disabilities. For it is this understanding of learning disability that justifies its inclusion as a protected category under the ADA. If learning disability is an innate neurological defect that “artificially” lowers test performance, then it follows that learning-disabled individuals should be able to take tests under special conditions that will neutralize the effects of this handicap. In *Help Yourself: Advice for College-Bound Students with Learning Disabilities*, author Erica-lee Lewis stresses that asking for an untimed administration of your SATs “does NOT give you an unfair advantage; it just reduces the unfair disadvantage by providing you with equal access and opportunity. You deserve that and the law protects you against anything short of that fairness!”

There’s just one tiny problem: The two major studies on the subject say that precisely the opposite is true. As Dr. Warren W. Willingham, a psychometrician with the Educational Testing Service, points out in his widely respected textbook *Testing Handicapped Students*, institutions have long relied on standardized tests because such tests, for all their faults, tend to be highly reliable in their estimation of how well a particular applicant will actually perform in college or on the job. The case of learning-disabled students, in contrast, “presents a very different picture,” writes Willingham. When students diagnosed with learning disabilities were allowed to take the SAT on an untimed or extended-time basis, the “college grades of learning-disabled students were substantially overpredicted,” suggesting that “providing longer amounts of time may raise scores beyond the level appropriate to compensate for the disability.” The other study—by Marjorie Ragosta, one of ETS’s own researchers—confirms Willingham’s pessimistic diagnosis.

Both researchers raise a troubling question: whether, as Willingham puts it, “the nonstandard version of the SAT is seriously biased in favor

of [learning-disabled] students.” The concern is not just theoretical. There is reason to suspect that fast-track students, and their parents, have figured out that a little learning disability can be an advantageous thing—can make the difference, in a hypercompetitive setting, between getting into (and getting successfully out of) the right school. The privilege of taking the SAT on an untimed basis raises students’ scores by an average of 100 points, according to the College Board. In the last couple of years, testing agencies have been bombarded with requests from students who proclaim that they are learning-disabled and will therefore need additional time. According to Kevin Gonzales, a spokesman for the Educational Testing Service, 18,000 learning-disabled examinees received “special administration” for the SAT in 1991–92. By 1996–97, that number had more than doubled, to 40,000. Requests for accommodation on Advanced Placement exams, meanwhile, have quadrupled—in 1996, 2,244 learning-disabled eggheads took their A.P. tests untimed. To reap the benefits of this particularly useful perk, ETS requires only a letter of verification from a school special education director or a state-licensed psychologist or psychiatrist.

Certification and licensure exams—long, carefully standardized examinations that function as gatekeepers into the professions—are also under assault. In 1995, the National Board of Medical Examiners administered over 450 untimed Medical College Admissions Tests—a fivefold increase from 1990. Lawyers, too, are requesting special dispensation. This year, in New York alone, more than 400 aspiring attorneys have asked to take the bar exam untimed. “The requests have increased tremendously,” says Nancy Carpenter, who heads up the New York Board of Legal Examiners. “ADD is becoming much more common. We have a lot of dysgraphia. Some dyscalculia . . . Most applicants just say, ‘unspecified learning disability.’ They are all over the lot.”

ETS officials do not like to talk about the Willingham and Ragosta studies. Indeed, far from planning to toughen up its accommodations policy, the agency seems poised to eliminate its only check on spurious claims—the marking, or “flagging,” of a score to indicate that an applicant took the test under nonstandard conditions. For years, the learning disability industry has railed against the asterisk, arguing that it violates a student’s right to keep his or her disability a secret. Now ETS seems prepared to agree. “We are taking a good, hard look at the whole issue of flagging,” says ETS’s newly appointed director of disability services, Loring Brinckerhoff. “I’m not prepared to say it’s going to go

away overnight. . . . My gut feeling is that it may well be a Section 504 violation.” Yes, that’s the same Loring Brinckerhoff who recently resigned under pressure by Jon Westling from his B.U. sinecure. “Isn’t it ironic,” muses Brinckerhoff. “I’m told by Boston University that I’m unqualified to do my job. Yet here I am—at the biggest testing agency in the world—determining accommodations for hundreds of thousands of people with disabilities.”

Of course, a legally recognized disability means more than just extra time on tests—or even extra privileges in the classroom. Under the Individuals with Disabilities Education Act, a diagnosis of L.D. also qualifies a child for an Individual Education Program—a handcrafted educational program, replete with techno-goodies and other kinds of specialized attention. The law, which states that “all children with disabilities” ought to have available to them “a free and appropriate public education,” encourages parents to be bound not by what the school district can offer, but by what they think their child needs. It specifies that, in the event that the parents don’t care for their child’s IEP, the local school district must convene a “an impartial due process hearing”—a trial-like proceeding in which both parties have the right to be represented by a lawyer, the right to subpoena, confront, and cross-examine witnesses, and the right to present evidence. If a school district loses the due process hearing, it must pay the parents’ attorneys’ fees. The result, says Raymond Bryant, director of special education for Maryland’s Montgomery County public schools, has left school districts vulnerable to parental tactics bordering on extortion. “It used to be that kids didn’t try hard enough, or didn’t work hard enough,” says Bryant. “Now, it’s ADD or L.D. . . . They want their child to read half the material. They want him to do half the homework. They don’t want him to take the same tests. But guess what? They want him to get the same grades!”

In prosperous, sun-dappled school districts around the country, exotic new learning disabilities are popping up, each requiring its own costly cure. In Orange County, where “executive function disorder” (difficulty initiating, organizing, and planning behavior) reigns, parents have begun demanding that schools foot the bill for horseback riding lessons. “This is now supposed to be the way to help kids with EFD,” says Peter Hartman, superintendent of the Saddleback Unified School District. “There’s some stable in the area that they all go to.” In Holliston, Massachusetts, parents of children with attention deficit/hyperactivity disorder hanker for a trendy new treatment called “edu-

cational kinesthesiology,” a sort of kiddie Pilates for angst-ridden tots. “Unfortunately, the treatment can only be done by a, quote, licensed educational kinesthesiologist,” sighs Margaret Reed, special-ed administrator for Holliston Public Schools. “And it seems there’s only one in the district. And she charges \$50 an hour.”

Sometimes, it seems, the problem is less inattentive children than overattentive parents, many of whom are unwilling to believe their progeny is less than perfect. Consider the case of Michael F., whose plight was thrashed out at length at a 1996 hearing after his parents expressed discontent with his Individual Education Program. Michael, then a ninth grader, was thriving at his high school—earning “A’s” in honors courses and demonstrating “overall cognitive functioning in the very superior range (99th percentile).” He had also written a book, played in the school band and, according to the hearing officer, “successfully completed bar mitzvah training.”

At the hearing, it emerged that Michael did all of this while fighting off the ravages of “attention deficit disorder, language-based specific learning disabilities, neuro-motor dysfunction, and tactile sensitivity.” These numerous handicaps had made Michael eligible for a generous dose of special-education services. Under the terms specified in his IEP, Michael received three and three-eighths hours a week of special tutoring; extra time on homework assignments and tests; “allowance of standing up, stretching and/or walking around in class”; “permission to chew gum or hard candy to help him concentrate and focus”; “seat assignments in close proximity to the teacher”; and “access to a tape recorder, transcripts of lectures, outlines and notes and/or a laptop computer if needed.” Now Mr. and Mrs. F. wanted even more. Michael’s low grade on his Honors Geometry midterm, they argued at the hearing, revealed evidence of a new, previously unsuspected disability “with the concepts of quadratic equations and the Pythagorean theorem.” They blamed the school for numerous “procedural violation[s],” including “failure to pursue a math reevaluation of Michael” after he received a 65 on his midterm. Now, they said, their son would experience “substantial regression” over the summer, unless his high school saw fit to furnish him with “extended summer programming in the form of math tutoring.”

This, the hearing officer would not do. True, she wrote, Michael’s poor showing on his geometry midterm might well be “related to his learning disability and/or ADD.” On the other hand, she boldly ventured, it could

also be that “math remains a subject where Michael will not receive As in an Honors track.”

Ensnared in his pleasantly stuffy office, an Anglophile’s fantasy of elephant ear plants and bas-relief cornucopias in carved wood, Jon Westling awaits the decision of Judge Patti B. Saris. He is resigned to the knowledge that, whatever is decided, the learning-disabled activists and their supporters will regard him as a villain. “This is a cause where the support and commitment verges almost on fanaticism,” he says, puffing on one Marlboro Light, then another. “And whenever you have less than ideal science coupled with something close to fanaticism, you can move beyond appropriate use into areas of abuse.”

The students say that, whatever the outcome, the litigation has salvaged their faltering self-esteem. Ben Freedman, a twenty-one-year-old senior who has maintained a 3.6 GPA despite a reading and writing disability and dysgraphia, likens his crusade to the civil rights movement of the 1960s. “I don’t want to compare myself to Dr. King, but there are great similarities,” he says.

Anne Schneider, too, says she’s achieved closure on the whole regrettable incident. To the true believers, it seems, there’s an explanation for everything; and it’s usually the same explanation. “I’ve been thinking about Jon Westling,” she tells me one evening. “For all his bragging about his Rhodes scholarship, he didn’t do the final paper. He’s not a finisher.” Schneider lets out a reflective sigh. “To tell the truth,” she says, “I’ve always thought: learning disability.”