

## NOTE

### CHILDHOOD TRAUMA AND SPECIAL EDUCATION: WHY THE “IDEA” IS FAILING TODAY’S IMPACTED YOUTH

#### I. INTRODUCTION

Trauma can undermine a child’s ability to learn and grow in the classroom.<sup>1</sup> Evidence suggests if a child experiences some form of trauma—abuse, death, violence, or witnessing natural disasters—she may develop a different set of needs that should be addressed to be successful in school.<sup>2</sup> The goal behind the Individuals with Disabilities Education Act (“IDEA”)<sup>3</sup> is to provide all children, regardless of their disabilities, a “free appropriate public education” (“FAPE”).<sup>4</sup> The IDEA has thirteen disability categories under which a child ranging from three to twenty-one may qualify.<sup>5</sup> The definition of “Emotional Disturbance”—one of the thirteen categories in the IDEA—is too vague to properly address the imperative needs of children who have faced trauma.<sup>6</sup> Consequently, the IDEA does not adequately address the educational necessities of children with this particular set of difficulties, leaving schools and the education community without crucial guidance and unequipped to properly service this group of children.<sup>7</sup>

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1. SUSAN F. COLE ET AL., MASS. ADVOCATES FOR CHILDREN, HELPING TRAUMATIZED CHILDREN LEARN: SUPPORTIVE SCHOOL ENVIRONMENTS FOR CHILDREN TRAUMATIZED BY FAMILY VIOLENCE 1 (2009) (ebook).

2. *See id.*

3. Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400–1482 (2012).

4. §§ 1400(d)(1)(A), 1401(9).

5. NAT’L DISSEMINATION CTR. FOR CHILDREN WITH DISABILITIES, CATEGORIES OF DISABILITY UNDER IDEA 2 (2012), [http://www.parentcenterhub.org/wp-content/uploads/repo\\_items/gr3.pdf](http://www.parentcenterhub.org/wp-content/uploads/repo_items/gr3.pdf).

6. William Dikel & Daniel Stewart, *Emotional/Behavioral Disorders and Special Education: Recommendations for System Redesign of a Failed Category*, 34 HAMLINE L. REV. 589, 591, 595 (2011) (exploring the various negative implications of having Emotional Disturbance essentially based on behavior and not on a specific, recognized disability).

7. Moira O’Neill, Note, *Delinquent or Disabled? Harmonizing the IDEA Definition of “Emotional Disturbance” with the Educational Needs of Incarcerated Youth*, 57 HASTINGS L.J. 1189, 1208 (2006).

On December 3, 2004, President George W. Bush signed the IDEA into law, replacing the Education for All Handicapped Children Act of 1975 (“EAHCA”).<sup>8</sup> Then, in 2008, President Bush signed amendments to the IDEA.<sup>9</sup> In developing the Act, Congress intended the IDEA to create a public education system that would address the needs of children with disabilities.<sup>10</sup> The IDEA was crafted to ensure better outcomes for students with disabilities by addressing systemic shortcomings.<sup>11</sup> Congress emphasized that teachers and parents can more effectively educate children with disabilities by “having high expectations for such children and ensuring their access to the general education curriculum in the regular classroom, to the maximum extent possible, in order to . . . be prepared to lead productive and independent adult lives.”<sup>12</sup>

The Supreme Court has expounded that Congress intended for schools to keep students with disabilities in the general education classroom because doing so would help to ensure that these children lead valuable adult lives.<sup>13</sup> In particular, the Supreme Court has placed limits on the practice of unilaterally excluding students with special needs from the classroom, especially in response to disability-related behaviors.<sup>14</sup> Often, children who face trauma have various reactions that warrant a formal diagnosis.<sup>15</sup> Post-traumatic stress disorder (“PTSD”) is the diagnosis frequently given when “certain indications—losing interest in activities; having physical reactions, such as headaches and stomachaches; showing more sudden and extreme emotional reactions; having problems falling or staying asleep; and having issues concentrating—are present.”<sup>16</sup> Many children, however, do not present

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8. 20 U.S.C. § 1400.

9. See § 1400(c) (providing the findings of the IDEA).

10. See § 1400(c)–(d) (describing how and why the IDEA came about and what Congress’s purposes were).

11. Yael Cannon et al., *A Solution Hiding in Plain Sight: Special Education and Better Outcomes for Students with Social, Emotional, and Behavioral Challenges*, 41 *FORDHAM URB. L.J.* 403, 425 (2013).

12. § 1400(c)(5)(A) (discussing the research behind why the IDEA was created and how, ultimately, its purpose was to put forth an education system in which all people—regardless of a disability—can reach a successful future).

13. See *Honig v. Doe*, 484 U.S. 305, 324 (1988).

14. *Id.* at 323 (“Congress very much meant to strip schools of the *unilateral* authority they had traditionally employed to exclude disabled students . . .”).

15. See *Two Types of Trauma Diagnoses*, *CTR. EARLY CHILDHOOD MENTAL HEALTH CONSULTATION*, [http://www.ecmhc.org/tutorials/trauma/mod1\\_2.html](http://www.ecmhc.org/tutorials/trauma/mod1_2.html) (last visited Feb. 15, 2016) (describing the different diagnoses of trauma, complex trauma, or post-traumatic stress disorder).

16. *DSM-5 Criteria for PTSD*, U.S. DEP’T VETERAN AFF., [http://www.ptsd.va.gov/professional/PTSD-overview/dsm5\\_criteria\\_ptsd.asp](http://www.ptsd.va.gov/professional/PTSD-overview/dsm5_criteria_ptsd.asp) (last updated Oct. 7, 2015); *Post-Traumatic Stress Disorder*, *AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY*, <https://www.aacap.org/>

these exact symptoms, or their reactions may not rise to the level of a diagnosis.<sup>17</sup> To be qualified under a special education category, a particular mental health diagnosis is not required;<sup>18</sup> rather, there must be a finding of one of the thirteen specific learning disabling conditions in the IDEA.<sup>19</sup> Further, there has to be a negative impact on the student's educational performance that can be connected to the learning disability.<sup>20</sup> Additionally, the child must require the special education services to gain an educational benefit.<sup>21</sup>

Part II of this Note will provide background information and an overview of the relevant requirements and mandates of the IDEA.<sup>22</sup> Part II will also describe trauma, provide examples of traumatic experiences, and explain how trauma can impact a child both emotionally and academically.<sup>23</sup> Part III will focus on the Emotional Disturbance classification within the IDEA and why it is failing children who have faced trauma.<sup>24</sup> It will delve into the general problems with the definition of "emotional disturbance," as well as why it creates an issue for children who have faced trauma and are receiving special education services.<sup>25</sup> Part IV proposes that the IDEA should include a subcategory within the Emotional Disturbance classification to focus specifically on the needs of children who have experienced trauma.<sup>26</sup> This Note argues that children who have witnessed or been exposed to traumatic events have a different set of needs that are not addressed under the current regime.<sup>27</sup> In addition, this Note proposes that a new trauma subcategory would, through its implementation, provide these children with the services necessary to gain an educational benefit.<sup>28</sup>

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AACAP/Families\_and\_Youth/Facts\_for\_Families/FFF-Guide/Posttraumatic-Stress-Disorder-PTSD-070.aspx (last updated Oct. 2013).

17. See *Post Traumatic Stress Disorder*, NEB. DEP'T VETERANS' AFF., <http://www.ptsd.ne.gov/what-is-ptsd.html> (last visited Feb. 15, 2016).

18. Lauren O'Connell Mahler, *Does a Medical Diagnosis Qualify a Child for Special Education?*, MCANDREWS L. OFF., P.C., <http://mcandrewslaw.com/publications-and-presentations/articles/does-a-medical-diagnosis-qualify-a-child-for-special-education> (last visited Feb. 15, 2016) ("To qualify for special education services, a child who has been diagnosed with a medical disability must also be found eligible as a 'child with a disability,' as defined by the [IDEA]. To put it simply, medical disabilities do not always qualify as educational disabilities under the law.").

19. See *infra* Part II.B.

20. Mark C. Weber, *The Idea Eligibility Mess*, 57 BUFF. L. REV. 83, 103 (2009).

21. Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 203 (1982).

22. See *infra* Part II.

23. See *infra* Part II.

24. See *infra* Part III.

25. See *infra* Part III.B.

26. See *infra* Part IV.

27. See *infra* Part IV.

28. See *infra* Part IV.

## II. BACKGROUND: THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT

The IDEA was created to meet the special education needs of youths with disabilities.<sup>29</sup> This Part explores the background of the IDEA and the current processes in place to ensure that all children receive an educational benefit.<sup>30</sup> Also, this Part discusses the various mandates imposed by the IDEA.<sup>31</sup> These mandates include providing a child with a FAPE and an Individualized Education Plan (“IEP”), placing a child in the Least Restrictive Environment (“LRE”), and requiring a school to locate and determine which children are in need of services under the Child Find Mandate.<sup>32</sup> In addition, this Part explores what it means to be eligible for services under the IDEA and the challenge in making that determination.<sup>33</sup> Further, this Part discusses the impact of trauma and how it may affect a child’s ability to learn and grow in the classroom.<sup>34</sup>

### A. *History of the Individuals with Disabilities Education Act*

The IDEA was created in an attempt to resolve the shortcomings of the public education system in regard to children with disabilities.<sup>35</sup> Before the IDEA, the “number of children excluded from the public education system was massive.”<sup>36</sup> In the early 1970s, public schools excluded approximately one million children on the basis of disability.<sup>37</sup> Of the six million children with disabilities who actually attended school, virtually half of them did not receive appropriate special

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29. O’Neill, *supra* note 7, at 1206.

30. *See infra* Part II.A.

31. *See infra* Part II.B.

32. *See infra* Part II.B.

33. *See infra* Part II.B.

34. *See infra* Part II.C, E.

35. Cannon et al., *supra* note 11, at 425-26 (noting the reasons why the IDEA was created and what problems in the education system it was seeking to correct).

36. Ruth Colker, *The Disability Integration Presumption: Thirty Years Later*, 154 U. PA. L. REV. 789, 802-03 (2006). In the early twentieth century, the practice of disability segregation was common:

[S]tates typically divided children into the categories of educable or uneducable. Uneducable children were excluded from public school attendance. Beginning in the 1920s, a new category was introduced: the trainable but not educable. Children in the “trainable but uneducable” category were sometimes required to perform labor with little or no compensation, causing commentators to complain that they were the victims of slave labor. Children in the “uneducable” or “untrainable” category were not educated at all.

*Id.* (footnotes omitted).

37. *See id.*

education services.<sup>38</sup> To respond to the discrimination in public schools, Congress enacted the EAHCA,<sup>39</sup> which later evolved into the IDEA in 1991.<sup>40</sup> The IDEA was amended in 1997 and again in 2004.<sup>41</sup> In passing the IDEA, Congress wanted to encourage local control over education, while also “furthering the national interest in the education of disabled children.”<sup>42</sup> Congress recognized that historically, there were multiple reasons why the needs of children with disabilities were not being met.<sup>43</sup>

The Supreme Court has accepted the desire to keep children with disabilities in the classroom and has focused on avoiding exclusionary strategies.<sup>44</sup> In *Brown v. Board of Education*,<sup>45</sup> the Supreme Court articulated: “[I]t is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.”<sup>46</sup> While *Brown v. Board of Education* explored the racial disparities in the education system, *Pennsylvania Ass’n for Retarded Children v. Commonwealth of Pennsylvania*,<sup>47</sup> reached the resolution “that no child who is mentally retarded or thought to be mentally retarded could be assigned initially (or re-assigned) to either a regular or special educational status, or excluded from a public education without a prior recorded hearing before a special hearing officer.”<sup>48</sup> This case cemented the notion that a

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38. *See id.*

39. Education for All Handicapped Children Act of 1975, Pub L. No. 94-142, 89 Stat. 773 (1975).

40. *See* Robert A. Garda, Jr., *Untangling Eligibility Requirements Under the Individuals with Disabilities Act*, 69 MO. L. REV. 441, 451-52 (2004) (describing congressional concern when passing the EAHCA and the apprehension that Congress may be trampling on local control of education); *see also* Dixie Snow Huefner, *Judicial Review of the Special Education Program Requirements Under the Education for All Handicapped Children Act: Where Have We Been and Where Should We Be Going?*, 14 HARV. J.L. & PUB. POL’Y 483, 484-85 (1991) (setting forth the history of educating people with disabilities prior to the enactment of the IDEA); LaDonna L. Boeckman, Note, *Bestowing the Key to Public Education: The Effects of Judicial Determinations of the Individuals with Disabilities Education Act on Disabled and Nondisabled Students*, 46 DRAKE L. REV. 855, 857-65 (1998) (providing an in-depth discussion of the development of the IDEA).

41. Nicole M. Oelrich, *A New “IDEA”: Ending Racial Disparity in the Identification of Students with Emotional Disturbance*, 57 S.D. L. REV. 9, 12-13 (2012) (addressing the historical background of the IDEA and how the IDEA currently takes its history into account).

42. Garda, *supra* note 40, at 452-53.

43. 20 U.S.C. § 1400(c)(2) (2012).

44. *See, e.g.*, *Honig v. Doe*, 484 U.S. 305, 322-23 (1988).

45. 347 U.S. 483 (1954).

46. *Id.* at 493.

47. 343 F. Supp. 279 (E.D. Pa. 1972).

48. *Id.* at 284-85.

child with a disability should have an equal education and be guaranteed certain legal safeguards.<sup>49</sup>

In addition to these courts holdings, Congress also wanted to acknowledge that a child with a disability should be receiving an equal education.<sup>50</sup> Congress emphasized the need to hold all children with disabilities to a higher standard in the general education setting in order to prepare them for the highest potential in their life trajectory.<sup>51</sup> To remedy the concerns Congress presented, there are mechanisms in place throughout the IDEA thwarting certain concerning outcomes that many children with disabilities may face.<sup>52</sup>

### *B. Mandates and Eligibility Under the Individuals with Disabilities Education Act*

The IDEA created a variety of mandates and eligibility standards to provide that all students, regardless of disability, receive an educational benefit.<sup>53</sup> This Note explores the various obligations imposed by the IDEA and ways to determine eligibility under the IDEA.<sup>54</sup> These methods are put in place to ensure that a child receives an appropriate education.<sup>55</sup>

#### 1. Eligibility Under the Individuals with Disabilities Education Act

For a child to be eligible to receive particular services under the IDEA, there must first be a finding that the child falls into one of the specific learning-disabling conditions enumerated within the Act.<sup>56</sup> There are thirteen disability classifications: autism, deaf-blindness, deafness, emotional disturbance, hearing impairment, intellectual disability, multiple disabilities, orthopedic impairment, other health impairment, specific learning disability, speech or language impairment, traumatic brain injury, and visual impairment.<sup>57</sup> Furthermore, there has

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49. Oelrich, *supra* note 41, at 13.

50. 20 U.S.C. § 1400(c) (2012).

51. § 1400(c)(5)(a).

52. Cannon et al., *supra* note 11, at 425 (discussing the mechanisms Congress developed to ensure that children with disabilities receive a fair opportunity in education, specifically to assist in addressing many of the issues children with disabilities face, including “social, emotional, and behavioral challenges at school”).

53. *See* Oelrich, *supra* note 41, at 13.

54. *See infra* Part II.B.1–5.

55. *See* Oelrich, *supra* note 41, at 13–18.

56. Dikel & Stewart, *supra* note 6, at 590; Weber, *supra* note 20, at 102 (approaching the ultimate issue of why it is difficult for a child to become eligible for special education services under the IDEA, and how that can be fixed in the future).

57. 34 C.F.R. § 300.8(c) (2007).

to be a negative impact on the student's educational performance due to that disability.<sup>58</sup> In *Alvin Independent School District v. A.D.*,<sup>59</sup> the Fifth Circuit found that the child was not eligible for special education, explaining that the child did not need special education services because of his disability.<sup>60</sup> In coming to its conclusion, the court discussed a child with attention-deficit hyperactivity disorder.<sup>61</sup> The child exhibited behavior problems in middle school, was placed in an "at risk" program, and even engaged in theft of property and robbery of a school concession stand.<sup>62</sup> Despite these acts, the child continued to pass all of his classes and meet statewide achievement standards.<sup>63</sup> In that case, the court found that there was no negative impact on the child's education and, therefore, held that the child did not need special education services.<sup>64</sup>

A child needing special education services must receive an educational benefit from those services.<sup>65</sup> The concept of "some educational benefit" was set forth in *Board of Education of Hendrick Hudson Central School District v. Rowley*.<sup>66</sup> Because of this ambiguous standard, where "some educational benefit" was not clearly defined, school systems argue that they have met the IDEA's requirements if a child makes any educational progress, however slight.<sup>67</sup> Nevertheless, "school districts are not insulated from legal liability if a child makes only minimally acceptable educational progress."<sup>68</sup> When a child makes progress despite the statute being violated,<sup>69</sup> a school will be liable

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58. Weber, *supra* note 20, at 103.

59. 503 F.3d 378 (5th Cir. 2007).

60. *See id.* at 383-84 (discussing the factual basis for the court's determination that there needed to be an evident negative impact on the child's education in order for there to be a need for special education services).

61. *Id.* at 379-80.

62. *See id.* at 380.

63. *See id.*

64. *See id.* at 384.

65. Weber, *supra* note 20, at 103.

66. 458 U.S. 176, 202 (1982) ("We do not attempt today to establish any one test for determining the adequacy of educational benefits conferred upon all children covered by the [IDEA].").

67. Ellen A. Callegary, *The IDEA's Promise Unfulfilled: A Second Look at Special Education & Related Services for Children with Mental Health Needs After Garret F*, 5 J. HEALTH CARE L. & POL'Y 164, 175 (2002).

68. *Id.*

69. *See Manalansan v. Bd. of Educ. Balt. City*, No. AMD 01-312, 2001 WL 939699, at \*14 (D. Md. Aug. 14, 2001). In *Manalansan*, a seven-year-old child made some educational progress despite the significant gaps in the elementary school's implementation of his IEP. *Id.* It was held that some not significant educational progress cannot be used as the means to deny the student the opportunity to benefit from his educational program in the ways deemed appropriate by the IEP. *Id.* Thus, the statute of educational benefit was still violated. *Id.* In a different case, *Hall v. Vance*

regardless of the child's progress.<sup>70</sup> If it is determined that the child needs special education services to gain an educational benefit, she is classified under one of the thirteen categories, which, in turn, affects what services will be provided.<sup>71</sup>

If the child cannot form social relations, attend school regularly, or control behavior, yet performs well academically, the child's disability will not be found to adversely impact her educational performance.<sup>72</sup> Thus, the child would not be eligible for special education without regard for the need for assistance.<sup>73</sup> Therefore, it is imperative that the child's educational performance be impaired to receive any benefit; though, the educational impairment standard is not always the clearest.<sup>74</sup>

## 2. The Free Appropriate Public Education Mandate

The IDEA requires that all students that fall within the category of a "child with a disability" receive a FAPE.<sup>75</sup> The child must be provided with sufficient instruction to permit her to educationally benefit from the instruction.<sup>76</sup> A FAPE must provide not only an educational benefit but also a benefit that is "meaningful" to the child.<sup>77</sup> The IDEA's FAPE requirement is satisfied when the state provides personalized instruction with sufficient services to permit a child with a disability to benefit educationally.<sup>78</sup> The Supreme Court summarized its view of the term FAPE by explaining that "instruction and services must be provided at public expense, must meet the State's educational standards, must

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*County Board of Education*, the district court did not err in discounting the child's promotions in light of the school's policy of social promotion and the child's test scores and independent evaluations. 774 F.2d 629, 635 (4th Cir. 1985). Nor was the district court compelled by a showing of minimal improvement on some test results to rule that the school had given James a FAPE. *Id.* The court in *Board of Education of Hendrick Hudson Central School District v. Rowley* recognized that a FAPE must be tailored to the individual child's capabilities and that while one might demand only minimal results in the case of the most severely handicapped children, such results would be insufficient in the case of other children. 458 U.S. 176, 200-02 (1982). Clearly, Congress did not intend that a school system could discharge its duty under the EAHCA by providing a program that produces some minimal academic advancement, no matter how trivial. *Id.*

70. Callegary, *supra* note 67, at 175 (describing how the IDEA functions and is enforced even if a child can progress and be promoted despite a school's failure to comply with the child's IEP and federal law).

71. Weber, *supra* note 20, at 103.

72. Garda, Jr., *supra* note 40, at 461.

73. *Id.*

74. *Id.* at 460 ("Some [courts and hearing officers] require that academic performance be adversely affected before eligibility attaches, while others find eligibility when any aspect of the human experience is adversely affected, resulting in both over and under-identification.").

75. Weber, *supra* note 20, at 83, 89-90.

76. Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 203 (1982).

77. Polk v. Cent. Susquehanna Intermediate Unit 16, 853 F.2d 171, 182 (3d Cir. 1988).

78. See *Rowley*, 458 U.S. at 203.

approximate the grade levels used in the State's regular education, and must comport with the child's IEP."<sup>79</sup>

### 3. The Individualized Education Plan

One of the IDEA's fundamental components is the IEP, which provides the framework for how a school will ensure that a child with a disability receives all of the IDEA's mandates.<sup>80</sup> Schools that receive funding under the IDEA must provide every child with a disability within their districts a FAPE.<sup>81</sup> They must do so by developing an IEP for each child.<sup>82</sup> To be classified as a child with a disability, a child's parent, a teacher, or a school staff member must refer the child for a special education evaluation.<sup>83</sup> After the evaluation, if the child is found eligible for special education, the IEP team comes together to create a unique IEP.<sup>84</sup> The IEP outlines which special education services and related services the child will receive.<sup>85</sup> "Related Services" are defined as "developmental, corrective and other support services" assisting students with disabilities to allow them to benefit from instruction.<sup>86</sup>

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79. *Id.*

80. See Paolo Annino, *The Revised IDEA: Will It Help Children with Disabilities?*, 29 MENTAL & PHYSICAL DISABILITY L. REP. 11, 11 (2005) (explaining how the IDEA is based on a non-hierarchical team approach giving every member of the team an equal say in the dialogue about what the child needs); Oelrich, *supra* note 41, at 13-14.

81. *Fort Osage R-1 Sch. Dist. v. Sims*, 641 F.3d 996, 1002 (8th Cir. 2011). The particular child in the case was provided with a FAPE, as the school was funded by the state. *Id.* at 998. The parents chose to remove the child from the school, but they were denied reimbursement because the school provided the child with FAPE and could prove that they met annually, updated the IEP, and provided all services listed to reach the IEP goals. *Id.* at 999-1000.

82. *Id.*

83. See Oelrich, *supra* note 41, at 13-14; see also 20 U.S.C. § 1414(a) (2012) (setting forth the procedures used to identify a child as having a disability).

84. See § 1414(d); see also Joseph B. Tulman, *Disability and Delinquency: How Failures to Identify, Accommodate, and Serve Youth with Education-Related Disabilities Leads to Their Disproportionate Representation in the Delinquency System*, 3 WHITTIER J. CHILD & FAM. ADVOC. 3, 9 (2003). When it is determined that a child is eligible for special education "and related services, school personnel, including teachers and evaluators, together with the parent and with the child, must develop an [IEP] to remediate the child's weaknesses. The IEP is a written document that states the specific special education, related services, and transition services to which the child is entitled." *Id.*

85. See Oelrich, *supra* note 41, at 14; *Individualized Educations Programs (IEPs)*, KIDS HEALTH, <http://kidshealth.org/parent/growth/learning/iep.html#> (last visited Feb. 15, 2016) (describing some support services that may include speech therapy, occupational or physical therapy, counseling, audiology, medical services, nursing, vision or hearing therapy, and any services that help to meet the child's needs).

86. *Special Education Services: As Part of a Unified Delivery System*, N.Y.C. DEP'T EDUC. 20, <http://schools.nyc.gov/documents/d75/iep/Continuum%20of%20Services.pdf> (last visited Feb. 15, 2016) (discussing the possibility of services including counseling, hearing education services, occupational therapy, orientation and mobility services, physical therapy, school health services, speech/language therapy, vision education services and other support services).

#### 4. The Least Restrictive Environment Mandate

The LRE mandate was created to require students with disabilities to be integrated with their non-disabled peers to the maximum extent possible.<sup>87</sup> Schools are required to educate children with disabilities “[t]o the maximum extent *appropriate*” with children who are not disabled.<sup>88</sup> Moreover, a school must consult with a child’s parents or guardians and the child, if she is capable, before choosing a placement.<sup>89</sup>

The purpose of the LRE mandate is to help “avoid stigma, isolation, and lowered expectations for students with disabilities.”<sup>90</sup> “Maximum extent appropriate” means that the student should attend the same school and classroom she would attend if not disabled, unless it is determined that such placement would not allow the student to make meaningful progress.<sup>91</sup> Separate classes or schools, or resource room interventions, may be considered only if the child will not be successful in the general education setting.<sup>92</sup> The LRE mandate ensures that all children with special needs, regardless of the severity of their disability, will learn in an educational setting that is appropriate for them.<sup>93</sup>

#### 5. The Child Find Mandate

The “IDEA mandates State and local educational agencies to identify, locate, and evaluate all children” that present with disabilities.<sup>94</sup> This mandate includes children who are home-schooled, homeless, or in

87. See Oelrich, *supra* note 41, at 16; see also Colker, *supra* note 36, at 792-93 (“[A]s formulated in 1974, children with disabilities are to be educated with children who are not disabled ‘to the maximum extent appropriate’ unless ‘the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.’” (quoting Education of the Handicapped Amendments of 1974, Pub. L. No. 93-380, § 613(a)(13)(B), 88 Stat. 579, 581-82 (1974))).

88. 20 U.S.C. § 1412(a)(5)(A) (2012) (emphasis added) (discussing the statutory requirement of ensuring that a child with a disability be included in general education classes, to the maximum extent appropriate, for that child to benefit educationally).

89. See Honig v. Doe, 484 U.S. 305, 311-12 (1988).

90. Susan F. Cole, *Special Education & Student Discipline*, in 2 MASS. CONTINUING LEGAL EDUC., INC., CHILD WELFARE PRACTICE IN MASSACHUSETTS 24.7, 24.10.5 (2006 & Supp. 2012).

91. § 1412(a)(5)(A); see Cole, *supra* note 90, at 24.12.2.

92. Cole, *supra* note 90, at 24.10.5; see Terri Mauro, *Choose the Right Special Education Placement for Your Child*, ABOUT PARENTING, <http://specialchildren.about.com/od/specialeducation/p/specialedrooms.htm> (last visited Feb. 15, 2016) (illustrating the various special education placements and levels of restrictions, including inclusion classes, resource room, self-contained classes, and out-of-district placements for specialized needs).

93. Michael Mastrangelo, *Fighting for Educational Stability in the Face of Family Turmoil*, 17 CUNY L. REV. 33, 46 (2013) (describing the reasons behind creating a LRE mandate in the IDEA).

94. Torin D. Togut & Jennifer E. Nix, *The Helter Skelter World of IDEA Eligibility for Specific Learning Disability: The Clash of Response-to-Intervention and Child Find Requirements*, 32 J. NAT’L ASS’N ADMIN. L. JUDICIARY 568, 586 (2012).

private schools.<sup>95</sup> This affirmative duty is known as the “Child Find Mandate,” or simply “Child Find.”<sup>96</sup>

The courts have found that there are Child Find obligations when a teacher or school official has reason to suspect that a child has a disability and may need special education services.<sup>97</sup> The courts have held that a Child Find evaluation of a student is triggered when members of the school community have reason to suspect that (1) the student has a disability, and (2) there is a resulting need for special education services.<sup>98</sup> Once this obligation is activated, the school must evaluate the student within a “reasonable time.”<sup>99</sup> As discussed in *W.B. v. Matula*,<sup>100</sup> though, the Child Find requirements do not specifically create a time limit for when children who are suspected of having a disability must be identified.<sup>101</sup>

The Eastern District of Virginia has extended the Child Find requirement, holding that a school district’s failure to comply with Child Find constituted a procedural violation of IDEA.<sup>102</sup> In *School Board of Norfolk v. Brown*,<sup>103</sup> a child demonstrated behavioral difficulties for two years, including harassing classmates, making threats, and being placed on several suspensions for other behavior.<sup>104</sup> The hearing officer<sup>105</sup> in

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95. *Id.*

96. *Id.* at 586-91; § 1412(a)(3).

97. *Togut & Nix, supra* note 94, at 587.

98. *Id.* at 587-89 (discussing that when this obligation has been triggered, the IEP team and school must evaluate the student within a “reasonable time,” and that courts look to the specific facts and circumstances in each instance to determine the Child Find duty).

99. *Id.*; *see, e.g., New Paltz Cent. Sch. Dist. v. St. Pierre ex rel. M.S.*, 307 F. Supp. 2d 394, 401 (N.D.N.Y. 2004) (holding that a delay of approximately ten months from the time the mother informed the school district that her son was experiencing difficulties until performance of comprehensive evaluation constituted a Child Find violation); *O.F. ex rel. N.S. v. Chester Upland Sch. Dist.*, 246 F. Supp. 2d 409, 417-18 (E.D. Pa. 2002) (finding that a viable issue existed as to whether a delay of almost twelve months from observation that a child was having emotional difficulties in school until completion of comprehensive evaluation constituted a Child Find violation); *Dep’t of Educ., Haw. v. Cari Rae S.*, 158 F. Supp. 2d 1190, 1195-97 (D. Haw. 2001) (finding that a delay, however long, from when the school had reason to suspect the child had a disability to scheduling an evaluation constituted a Child Find violation).

100. 67 F.3d 484 (3d Cir. 1995).

101. *Id.* at 501 (inferring from the Child Find requirement that it must be met within a “reasonable time” after school officials are on notice of behavior that may indicate a disability).

102. *Sch. Bd. of Norfolk v. Brown*, 769 F. Supp. 2d 928, 943 (E.D. Va. 2010) (quoting *Bd. of Educ. of Fayette Cnty. v. L.M.*, 478 F.3d 307, 313 (6th Cir. 2007)).

103. 769 F. Supp. 2d 928 (E.D. Va. 2010).

104. *Id.* at 943 (explaining the factual circumstances that led to a school violating the Child Find obligation listed within the IDEA, including particular behaviors that should trigger a response by school and special education personnel).

105. *ADVOCATES FOR CHILDREN OF N.Y., AFC’S GUIDE TO SPECIAL EDUCATION IMPARTIAL HEARINGS 3* (2015). The Advocates for Children of New York have explained how to qualify as an Impartial Hearing Officer and that position’s role as follows:

this case found that because the school failed to evaluate the child and overlooked the disability, Child Find had been violated.<sup>106</sup> To establish a procedural violation of Child Find, the parent “must show that school officials overlooked clear signs of a disability and were negligent in failing to order testing, or that there was no rational justification for not deciding to evaluate.”<sup>107</sup>

### C. *The Impact of Trauma*

Trauma can negatively impact a child’s ability to learn, function in the classroom, or obtain diverse types of information.<sup>108</sup> Child traumatic stress occurs when children or adolescents are exposed to traumatic events or traumatic situations.<sup>109</sup> This exposure overwhelms their ability to cope with what they have experienced.<sup>110</sup>

One type of trauma is community violence.<sup>111</sup> Community violence is that which arises from conflicts between non-family members and includes shootings, stabbings, beatings, rapes, and other violent acts.<sup>112</sup> Children may experience trauma as victims, as witnesses, or even as perpetrators.<sup>113</sup> Exposure to community violence is especially prevalent in poor inner-city neighborhoods.<sup>114</sup> Unfortunately, in populations that

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[A]n attorney certified by the New York State Education Department to conduct impartial hearings. The hearing officer acts as a judge would.

... After hearing all of the testimony and reviewing the evidence, the hearing officer will issue a written decision that explains why she ruled the way she did. The decision is final unless you or the DOE appeals the decision to the New York State Review Officer.

*Id.*

106. *Sch. Bd. of Norfolk*, 769 F. Supp. 2d at 943 (illustrating that if a school overlooks a clear disability that a child possesses, that school would then be considered to have violated the IDEA).

107. Togut & Nix, *supra* note 94, at 589 (citations omitted) (expressing the process of Child Find and how it is necessary to ensure that a child receives proper services).

108. See COLE ET AL., *supra* note 1, at 15-16.

109. *Types of Traumatic Stress*, NAT’L CHILD TRAUMATIC STRESS NETWORK, <http://www.nctsn.org/trauma-types> (last visited Feb. 15, 2016) (defining childhood traumatic stress and what the impact of this stress is on a child).

110. *Id.*

111. *Id.*

112. *Id.* (discussing the definition of community violence and examples of how exposure to this form of violence can impact a child).

113. *Id.* (illustrating the way in which children can be traumatically impacted and how a child does not need to have a direct involvement in the violence but can just be in the presence, or experience the after-impact).

114. Carl C. Bell & Ester J. Jenkins, *Community Violence and Children on Chicago’s Southside*, 56 PSYCHIATRY: INTERPERSONAL & BIO. PROCESSES 46, 46 (1993); *Community Violence*, CITY CAPE TOWN <https://www.capetown.gov.za/en/smartcape/Community/pages/smartcapestd.aspx?pid=460> (last visited Feb. 15, 2016). In the late 1980s, over 1000 students, ages ten to nineteen, were asked about their exposure to violence. Bell & Jenkins, *supra*, at 49. The majority of these students had witnessed violence. *Id.* Three out of four students had witnessed a

contain high rates of community violence, there is a greater risk for chronic stress and uneasiness among individuals.<sup>115</sup>

“Domestic violence,” another type of trauma, is defined as any sort of actual or threatened physical violence, sexual violence, or emotional abuse between adults that are in an intimate relationship.<sup>116</sup> Every year, as many as ten million children are exposed to domestic violence in the United States.<sup>117</sup> Children that experience or witness domestic violence are more likely to exhibit aggressive and antisocial behaviors.<sup>118</sup> These children also have a more significant chance of becoming anxious or depressed.<sup>119</sup> In addition, children that witness domestic violence have been shown to experience greater struggles in school and with testing.<sup>120</sup>

“Child neglect” is the “most common form of abuse reported to child welfare authorities.”<sup>121</sup> Child neglect occurs when a caretaker does not provide a child what she needs to maintain a healthy lifestyle.<sup>122</sup> This can include clothing, food, medications, mental health services, or education.<sup>123</sup> There are various kinds of child neglect that can put a child in harm’s way, such as physical neglect, educational neglect, or

robbery, stabbing, shooting, or killing. *Id.* Thirty-nine percent had witnessed a shooting and almost a quarter had seen a killing. *Id.* Fifty percent of the shooting victims were either a classmate, friend, neighbor, or family member, as were forty percent of those murdered. *Id.*

115. *Community Violence*, *supra* note 114. One mother describes her thoughts about the community violence she experiences, “I worry about my kids being molested, my house being burglarized, my oldest boy being shot . . . [W]e are innocent bystanders being bothered as we walk by. There’s fighting, shooting or cutting someone up outside the house all the time. Out there is a jungle; innocent people get killed.” *Id.*

116. *Types of Traumatic Stress*, *supra* note 109 (showing the significant number of children who are exposed to domestic violence, and how this could negatively impact their future).

117. *Id.* (explaining that the majority of children who are exposed to domestic violence are under the age of eight).

118. Jeffrey L. Edleson, *Problems Associated with Children’s Witnessing of Domestic Violence*, NAT’L. RESOURCE CTR. ON DOMESTIC VIOLENCE, [http://vawnet.org/print-document.php?doc\\_id=392&find\\_type=web\\_desc\\_AR](http://vawnet.org/print-document.php?doc_id=392&find_type=web_desc_AR) (last visited Feb. 15, 2016).

119. *Id.*; John W. Fantuzzo & Wanda K. Mohr, *Prevalence and Effects of Child Exposure to Domestic Violence*, 9 *FUTURE CHILD* 21, 21 (1999) (discussing how “childhood exposure to domestic violence can be associated with increased display of aggressive behavior, increased emotional problems . . . , lower levels of social competence, and poorer academic functioning”).

120. Anna Marie Medina et al., *Children’s Exposure to Violence—Community Violence, Domestic Violence—General Effects*, STATEUNIVERSITY <http://education.stateuniversity.com/pages/2531/Violence-Children-s-Exposure.html> (last visited Feb. 15, 2016).

121. *Types of Traumatic Stress*, *supra* note 109; see *Ware v. Indiana*, 441 N.E.2d 20, 21 (Ind. App. 1982); see also N.Y. FAM. CT. ACT § 1012(f)(i) (McKinney 2010). The *New York Family Court Act* provides the definition of a neglected child as follows:

“Neglected child” means a child less than eighteen years of age (i) whose physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired as a result of the failure of his parent or other person legally responsible for his care to exercise a minimum degree of care.

*Id.*

122. *Types of Traumatic Stress*, *supra* note 109.

123. *Id.*

emotional neglect.<sup>124</sup> Physical neglect is when a parent or caregiver does not provide the child with basic living necessities, thereby endangering the child's physical health, well-being, psychological growth, or development.<sup>125</sup> Physical neglect also includes child abandonment, inadequate supervision, or rejection of a child leading to expulsion from the home.<sup>126</sup> Educational neglect is when a caregiver fails to enroll a child in school, to provide appropriate home schooling, or to arrange for necessary special educational training, or when a caregiver allows a child to miss numerous school days.<sup>127</sup> Educational neglect can have serious ramifications in terms of life skills, emotional well-being, or psychological growth.<sup>128</sup> Actions by parents that could be considered emotional neglect are ignoring, verbally assaulting, isolating, terrorizing, or encouraging the child to engage in destructive or illegal acts.<sup>129</sup> Emotional neglect could cause the child to have a poor self-image or to exhibit other harmful behaviors.<sup>130</sup>

“Child abuse,” or “physical abuse,” is the punching, beating, or kicking of a child.<sup>131</sup> This may consist of a single act or repeated acts.<sup>132</sup>

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124. *Child Neglect*, AM. HUMANE ASS'N, <http://www.americanhumane.org/children/stop-child-abuse/fact-sheets/child-neglect.html> (last visited Feb. 15, 2016) (discussing the various types of neglect—physical, educational, emotional/psychological, and medical).

125. *Id.*

126. See N.Y. PENAL LAW § 260.10 (McKinney 2008). The New York statute states:

A person is guilty of endangering the welfare of a child when:

1. He or she knowingly acts in a manner likely to be injurious to the physical, mental or moral welfare of a child less than seventeen years old or directs or authorizes such child to engage in an occupation involving a substantial risk of danger to his or her life or health; or
2. Being a parent, guardian or other person legally charged with the care or custody of a child less than eighteen years old, he fails or refuses to exercise reasonable diligence in the control of such child to prevent him from becoming an “abused child,” a “neglected child,” a “juvenile delinquent” or a “person in need of supervision,” as those terms are defined in articles ten, three and seven of the family court act.

*Id.*

127. *Child Neglect*, *supra* note 124; *see, e.g., In re Ashley X*, 854 N.Y.S.2d 794, 795 (App. Div. 2008) (holding that in order to establish that there is educational neglect, the petitioner was required to prove by a preponderance of the evidence that the child's physical, emotional, or mental condition was impaired, or was in imminent danger of becoming impaired due to the parent's failure to provide the child with appropriate education).

128. *Child Neglect*, *supra* note 124.

129. *Id.*

130. See *id.* Medical neglect is where the parent or guardian fails to provide appropriate health care for a child, even if they are financially able to do so. *Id.* Medical neglect can result in a multitude of medical problems and poor overall health. *Id.* Medical neglect often occurs in areas of poverty. *Id.* Although parents may not intentionally be neglectful, if the children's medical needs are neglected, the children may still be in need of services to assist them. *Id.*

131. *Types of Traumatic Stress*, *supra* note 109.

132. *Id.*

Child abuse occurs at every socioeconomic level, within all ethnic groups and cultures, and at all levels of parental education.<sup>133</sup> Commentators have established a clear link between child abuse and a variety of medical, emotional, and behavioral disorders in children—such as depression, alcohol abuse, and juvenile delinquency.<sup>134</sup>

Sexual abuse in children is another factor that can cause trauma.<sup>135</sup> Child sexual abuse includes a wide range of sexual behaviors that occur between a child and an adult or between a child and another child.<sup>136</sup> Sexually abusive behavior can include a variety of contact: fondling, forcing a child to touch an adult's sexual organs, or penetrating a child's vagina or anus, no matter how slight, with a penis or any object, without a valid medical purpose.<sup>137</sup> Sexual abuse does not even need to include contact at all: genital exposure, applying sexual pressure, or exploitation.<sup>138</sup> Reactions to sexual abuse can include depression or self-abusive behavior, and such abuse can lead to a difficulty with intimate relationships later in life for the abused.<sup>139</sup>

The last type of trauma this Note explores is the impact natural disasters, such as tornadoes, hurricanes, fires, and floods, have upon children.<sup>140</sup> Children have a variety of responses to natural disasters that

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133. *What Is Child Abuse?*, BERKSHIRE DISTRICT ATT'Y, <http://www.mass.gov/berkshireda/crime-awareness-and-prevention/child-abuse/child-abuse.html> (last visited Feb. 15, 2016).

134. *Id.*

135. *Types of Traumatic Stress*, *supra* note 109.

136. *Id.*

137. *Child Sexual Abuse*, AM. HUMANE ASS'N, <http://www.americanhumane.org/children/stop-child-abuse/fact-sheets/child-sexual-abuse.html> (last visited Feb. 15, 2016).

138. *Id.*; see N.Y. PENAL LAW § 130.75 (McKinney 2009). Section 130.75 of the *New York Penal Law* states:

1. A person is guilty of course of sexual conduct against a child in the first degree when, over a period of time not less than three months in duration:
  - (a) he or she engages in two or more acts of sexual conduct, which includes at least one act of sexual intercourse, oral sexual conduct, anal sexual conduct or aggravated sexual contact, with a child less than eleven years old; or
  - (b) he or she, being eighteen years old or more, engages in two or more acts of sexual conduct, which include at least one act of sexual intercourse, oral sexual conduct, anal sexual conduct or aggravated sexual contact, with a child less than thirteen years old.
2. A person may not be subsequently prosecuted for any other sexual offense involving the same victim unless the other charged offense occurred outside the time period charged under this section.

Course of sexual conduct against a child in the first degree is a class B felony.

*Id.*

139. *Child Sexual Abuse*, *supra* note 137.

140. *Hurricanes*, NAT'L TRAUMATIC STRESS NETWORK, <http://www.nctsn.org/trauma-types/natural-disasters/hurricanes#tabset-tab-5> (last visited Feb. 15, 2016); *Child Sexual Abuse*, *supra* note 137.

will depend on the circumstances of the disaster.<sup>141</sup> For example, in response to a hurricane, the length of time it will take a child to recover will depend on how frightening she found the hurricane, the particular damages and loss she suffers, and the ensuing financial hardship she endures.<sup>142</sup> Children have very similar reactions in response to other natural disasters.<sup>143</sup>

#### D. *The Impact of Trauma on Children*

There are several emotional impacts of trauma on children: a diminished sense of self-worth, self-blame, feelings of hopelessness or lack of control, and shutting down.<sup>144</sup> All of these emotional responses are considered typical and can overwhelm the child.<sup>145</sup> Furthermore, mild stressful interactions may serve as trauma reminders and trigger intense emotional responses.<sup>146</sup>

Childhood experiences define the developing brain.<sup>147</sup> According to an article written by Dr. Bruce D. Perry, a child's brain mirrors the world in which she was raised.<sup>148</sup> If a child's environment was consumed by threat, chaos, instability, and fear, her brain's responses

141. *Hurricanes*, *supra* note 140.

142. *Id.*; *see, e.g.*, Marilyn Elias, *Trauma Shapes Katrina's Kids*, USA TODAY, [http://usatoday30.usatoday.com/news/nation/2007-08-16-katrina-kids\\_N.html](http://usatoday30.usatoday.com/news/nation/2007-08-16-katrina-kids_N.html) (last updated Aug. 16, 2007, 4:10 AM). In an article for *USA Today*, Marilyn Elias reviews New Orleans pediatrician Dr. Corey Hebert's explanation of the effects of Hurricane Katrina on the youth of the city:

[He] dreads the rainy weeks when he knows he'll face about 20 sobbing, screaming children in full-blown panic attacks. "They can't be calmed because they're terrified another hurricane is coming," he says. Parents bring them in because there are no therapists around. Hebert says about 5% of children in his medical practice had mental-health problems before Hurricane Katrina; now it's 50%.

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"What's unique about Katrina is how much children have lost," he says. "So many have lost virtually everything: their homes, their neighborhoods, close extended families who are often scattered, their friends and churches."

Elias, *supra*.

143. *Hurricanes*, *supra* note 140 (discussing the responses to types of natural disasters, such as hurricanes, where the response would depend on the evacuation time, how frightening it was, and how well the family can cope with the afterward stress).

144. *See* COLE ET AL., *supra* note 1, at 15.

145. *Id.*

146. *Id.* at 17; Virginia Molgaard, *Helping Children Manage Stress*, STRESS: TAKING CHARGE (Iowa State University Extension), Nov. 1996, at 1.

147. *See, e.g.*, *How Trauma Affects Child Brain Development*, CHILDREN'S SERV. PRAC. NOTES, May 2012, at 1, 2 ("Exposure to chronic, prolonged traumatic experiences has the potential to alter children's brains, which may cause longer-term effects in areas such as: [attachment; physical health; emotional regulation; dissociation; cognitive ability; and self-concept] . . .").

148. Bruce D. Perry, *Traumatized Children: How Childhood Trauma Influences Brain Development*, AM. ACAD. EXPERTS TRAUMATIC STRESS (2000), <http://www.aets.org/article196.htm>.

will reflect just that.<sup>149</sup> Experiencing trauma can affect the brain's chemistry, resulting in changes in a child's ability to pay attention, issues with impulses, or problems sleeping.<sup>150</sup> In understanding the persistence of the fear, anxiety, emotional, and behavioral results of trauma, it is the hope of doctors and psychiatrists that it will eventually lead to more focused therapeutic responses that could assist the brain with coping.<sup>151</sup>

When children confront a suspected threat to their safety, their brains trigger a set of chemical events known as the "stress response."<sup>152</sup> This response causes the child to fight, freeze, or leave an unsafe event.<sup>153</sup> The stress response can help keep a child safe;<sup>154</sup> but, when these responses are overwhelmed, they can cause a child to have these reactions in a context that is not rational for the situation.<sup>155</sup>

In addition to changes in brain development, recent studies show that trauma can actually alter one's genetic make-up.<sup>156</sup> An article by the American Association of Pediatrics describes how children who witnessed violence are more likely to undergo cellular aging.<sup>157</sup> This results in a higher risk for cardiovascular disease, diabetes, obesity, and mental illness.<sup>158</sup>

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149. *Id.*

150. *Id.* (discussing that catecholamines are the principal neurotransmitters that mediate a variety of the central nervous system functions, such as motor control, cognition, emotion, memory processing, and endocrine modulation).

151. *Id.*

152. *See* COLE ET AL., *supra* note 1, at 17.

153. *Id.*

154. *See id.* (describing how a child's stress response may help them avoid future trauma, but it can perhaps not be beneficial when the child is not in fact involved in a traumatic situation).

155. *Id.*; *see, e.g.*, Bessel A. van der Kolk & Jose Saporta, *The Biological Response to Psychic Trauma: Mechanisms and Treatment of Intrusion and Numbing*, 4 ANXIETY RES. 199, 208-09 (1991). The effects of stress are demonstrated by the reactions of war veterans. *Id.* Studies have shown "that the autonomic nervous system is centrally involved in many of the symptoms of PTSD, including startle reactions, irritability, nightmares and flashbacks and explosive outbursts of aggression. It is therefore predictable that those medications which affect autonomic arousal would prove helpful in relieving the symptoms of PTSD." *Id.* at 208.

156. Rebecca Catalanello, *Childhood Family Violence Alters DNA, Tulane Study of New Orleans Kids Shows*, TIMES-PICAYUNE, [http://www.nola.com/health/index.ssf/2014/06/childhood\\_violence\\_alters\\_dna.html](http://www.nola.com/health/index.ssf/2014/06/childhood_violence_alters_dna.html) (last updated June 16, 2014, 4:06 PM).

157. *Id.*; *see* Stacy S. Drury et al., *The Association of Telomere Length with Family Violence and Disruption*, 134 OFFICIAL J. AM. ACAD. PEDIATRICS e128, e129 (2014).

158. Drury et al., *supra* note 157, at e128-29, e135. The study in the *Official Journal of The American Academy of Pediatrics* shows how trauma, in particular family violence, can actually alter DNA in children. *Id.* This is significant because the article also gives advice as to how to help prevent the negative effects of family violence and how it is more prevalent in young girls than in boys. *Id.*; *see* Catalanello, *supra* note 156.

*E. The Impact of Trauma on Academic Performance  
and Classroom Behavior*

Trauma can impact a child's academics and classroom behavior in a variety of ways.<sup>159</sup> Trauma can damage language and communication skills, disrupting the ability to process verbal information and effectively utilize language to communicate.<sup>160</sup> In addition, children who have faced trauma often have issues with social and emotional communication, as they tend to build walls and use language that keeps others at a distance.<sup>161</sup> Children who have experienced trauma may also have their ability to problem-solve impacted.<sup>162</sup> Traumatic experiences can inhibit the ability to organize material sequentially, which can cause difficulty in processing the content of academic lessons.<sup>163</sup> As one child explained:

I couldn't stand to be in the school. Often I felt like I couldn't breathe. I would stare out the window and let my mind go all over the place. Sometimes whole weeks would go by and I would not even be aware that time had passed. Next thing I would know I was being told I was yet again failing a course.<sup>164</sup>

Children who have experienced trauma may also have trouble understanding cause-and-effect relationships, and they may not understand that those relationships influence what happens in other areas of their lives.<sup>165</sup> If students do not grasp that they have control over their actions, it can result in a lack of motivation, timeliness, and attentiveness with regard to academic tasks.<sup>166</sup> The ability to comprehend another person's point of view can also be seriously impacted.<sup>167</sup> Children who

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159. See COLE ET AL., *supra* note 1, at 21.

160. *Id.* at 22.

161. *Id.* at 25.

162. *Id.* at 25-26 (describing the constant struggle with solving issues that the child is presented with in a school setting, such as being presented with difficult problems by the teacher, other students, or the environment itself).

163. *Id.* at 26; see, e.g., Bessel A. van der Kolk, *Developmental Trauma Disorder*, 35 PSYCHIATRIC ANNALS 401, 404 (2005) ("If children are exposed to unmanageable stress and if the caregiver does not take over the function of modulating the child's arousal, as occurs when children are exposed to family dysfunction or violence, the child will be unable to organize and categorize its experiences in a coherent fashion."). The effects of stress are different on children, as "children do not have the option to report, move away or otherwise protect themselves; they depend on their caregivers for their very survival." *Id.*

164. See COLE ET AL., *supra* note 1, at 37.

165. *Id.* at 27.

166. *Id.*

167. *Id.* at 28; see, e.g., DISABILITY RIGHTS WIS. ET AL., A PRACTICAL GUIDE FOR CREATING TRAUMA-INFORMED DISABILITY, DOMESTIC VIOLENCE AND SEXUAL ASSAULT ORGANIZATIONS 9 (2011) ("A car accident might result in trauma, but typically it involves a single event that was not caused intentionally. A car accident is an example of 'acute' trauma. 'Complex' trauma, also known

have faced trauma can, at times, be distracted in class and may be unable to keep up with tasks because they are consumed with their own thoughts and anxiety.<sup>168</sup> Studies indicate that the ability to self-regulate and control emotions can be a key predictor of academic and social success.<sup>169</sup> Difficulty in regulating emotions can cause poor impulse control, an unpredictable sense of self, oversensitivity, and nervous behavior.<sup>170</sup>

Trauma can also impair a child's ability to control impulsive reactions if something reminds the child of the traumatic event.<sup>171</sup> A nurturing home, where a child has a stable environment and secure attachments to adults, is beneficial for the child.<sup>172</sup> This type of environment instills a positive self-image and view of the world.<sup>173</sup> Attachments to adults and a positive approach to life are essential for a child to regulate her emotions and do well in school.<sup>174</sup> Conversely, violence can create negative expectations and, thus, negatively impact a child's approach to life and, specifically, academics.<sup>175</sup>

An adult survivor of childhood sexual abuse explained how her traumatic experience impacted her schooling as follows:

I remember crying in the night. I found it difficult to hear Mrs. Patterson when she spoke in the classroom. I felt as if she were speaking from beneath tumbling water, or from the end of a long tunnel. She assumed I was daydreaming. I stopped imagining that I might one day be a teacher . . . . No longer did my imagination dance

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as 'psychological' trauma, involves experiences like domestic violence and sexual abuse that are intentional, interpersonal, and often repeated and prolonged. As a result, they often have lasting effects on a person's view of the world, of others, and of herself. The prevalence of psychological trauma and its pervasive impact on people's lives is significant.”)

168. See COLE ET AL., *supra* note 1, at 28, 30 (“Difficulty regulating emotions can lead to a host of problems in and out of school. These potential difficulties include poor impulse control, aggression against the self and/or others, trouble interpreting emotional signals, chronic uncertainty about the reliability of other people, and lack of a predictable sense of self.”).

169. *Id.* at 29-30.

170. *Id.* at 30.

171. *Id.* at 34; see also *Trauma and Children: An Introduction for Foster Parents*, 10 FOSTERING PERSP. (2005), [http://www.fosteringperspectives.org/fp\\_v10n1/trauma.htm](http://www.fosteringperspectives.org/fp_v10n1/trauma.htm) (“Unpredictability and the unknown are two things that will make a traumatized child more anxious, fearful, and, therefore, more symptomatic.”).

172. See COLE ET AL., *supra* note 1, at 15.

173. *Id.*

174. See, e.g., *What Is Therapeutic Parenting*, ATTACHMENT & TRAUMA NETWORK, INC., <http://www.radzebra.org/therapeuticparenting.html> (last visited Feb. 15, 2016) (“In therapeutic parenting, limiting a child's choices, their activities or their access to stimulating things is necessary. But this high structure can also seem very controlling. This is why it must be done with an attitude of love and respect for the child.”).

175. See COLE ET AL., *supra* note 1, at 15.

me through the leaves. The sound of ringing church bells irritated me.  
Mostly I felt ashamed, different.<sup>176</sup>

The survivor's reaction to her childhood abuse explains how difficult it can be for a child to leave her trauma at the classroom door.<sup>177</sup> Children who have faced trauma may view the world as a dangerous place that causes them constant stress.<sup>178</sup> Children may also act verbally or physically aggressive toward others.<sup>179</sup> For these reasons, children that have faced some level of trauma do best in a calm environment that limits negative behavior.<sup>180</sup> Fear may be a response of trauma, and children who face fear may act defiantly in an attempt to control the situation.<sup>181</sup> Withdrawn behavioral reactions are also plausible for children who have experienced trauma because of the level of vulnerability.<sup>182</sup> Depending on the particular trauma faced, children can often be afraid to disappoint others and become perfectionists to the point that they are never satisfied with any achievements.<sup>183</sup> These perfectionist children may become easily frustrated and give up if they face a challenge in completing an assignment.<sup>184</sup> It can appear to others that such children are simply refusing to try, but really they are scared to fail.<sup>185</sup>

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176. See, e.g., JENNY HORSMAN, TOO SCARED TO LEARN: WOMEN, VIOLENCE, AND EDUCATION 85-86 (2000) (discussing literacy learning and the feeling of disassociation many survivors of child abuse may experience).

177. See *id.* at 87.

178. See COLE ET AL., *supra* note 1, at 15.

179. See *id.* at 34.

180. See, e.g., Joyce Dorado & Vicki Zakrzewski, *How to Help a Traumatized Child in the Classroom*, GREATER GOOD ACTION (Oct. 23, 2013), [http://greatergood.berkeley.edu/article/item/the\\_silent\\_epidemic\\_in\\_our\\_classrooms](http://greatergood.berkeley.edu/article/item/the_silent_epidemic_in_our_classrooms). There are many ways in which educators can help to create transitions that are calm and tranquil to assist children that have faced trauma. *Id.* Transitions between activities can easily trigger a student into a mode in which they may have an emotional breakdown. *Id.* The feeling of not being sure what will happen next can cause a child to associate that with something they have experienced in their own lives. *Id.* Some teachers will play music or ring a meditation bell or blow a harmonica to signal it is time to transition. *Id.* The important thing is to build a routine around transitions so that children know what the transition will be like, what they should be doing in the process, and what is going to happen next. *Id.*

181. See COLE ET AL., *supra* note 1, at 36.

182. *Id.* at 36.

183. *Id.* at 37.

184. *Id.*; see, e.g., Audrey Marlene, *Perfectionism*, AUDREY MARLENE LIFE COACH (2011), <http://www.audreymarlene-lifecoach.com/perfectionism.html>. Those impacted with childhood trauma may often be prone to becoming perfectionists. *Id.* This is because they have a strong need to control all aspects of their lives and especially how others may look to them. *Id.* Further, perfectionists set very high standards for themselves because they have a need to prove their value and worth. *Id.*

185. See COLE ET AL., *supra* note 1, at 37.

### III. FAILURES OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT'S CURRENT DEFINITION OF EMOTIONAL DISTURBANCE

The current definition of “Emotional Disturbance” does not address the specific needs of a child who has faced trauma.<sup>186</sup> These children are often left undetected and without proper services to allow them to benefit academically.<sup>187</sup> The definition is too vague, and, therefore, it is unclear as to who would be eligible.<sup>188</sup> A trauma subcategory would allow for a more individually-tailored approach to providing special education services to those children who have faced trauma.<sup>189</sup> This Part explores the issues that stem from the current definition of Emotional Disturbance.<sup>190</sup> It will discuss the current definition of the classification of Emotional Disturbance and explain certain failures within this definition.<sup>191</sup> In addition, this Part looks into how the definition of Emotional Disturbance is too vague and how, because of this vagueness, this definition often excludes children that could benefit from services once classified in this category.<sup>192</sup> Further, this Part analyzes the issue with the language of the definition and will describe how it leads to an identification dilemma in schools.<sup>193</sup> Lastly, this Part provides an example of the impact of trauma on children and will discuss one teacher and her response to the needs of her students.<sup>194</sup>

#### A. Emotional Disturbance Defined

According to the IDEA, Emotional Disturbance is a condition exhibiting one or more of certain listed characteristics, over a long period of time, to a marked degree, that adversely affect a student's educational performance.<sup>195</sup> The term's definition is unclear, however, because the U.S. Department of Education does not define the term “condition.”<sup>196</sup> Without a statutory definition, one can assume that Congress intended that the ordinary definition be used.<sup>197</sup> *Webster's*

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186. O'Neill, *supra* note 7, at 1206 (describing how the current definition of Emotional Disturbance is failing youth because it is imprecise and inconsistent with constructs of emotional and mental health disorders).

187. *Id.*

188. *Id.*

189. *See infra* Part IV.

190. *See infra* Part III.

191. *See infra* Part III.A.

192. *See infra* Part III.B.

193. *See infra* Part III.C.

194. *See infra* Part III.D.

195. 34 C.F.R. § 300.8(c)(4)(i) (2007).

196. *See Oelrich, supra* note 41, at 19.

197. *Id.*

*Dictionary* defines “condition” as “something essential to the appearance or occurrence of something else . . . [;] a restricting or modifying factor.”<sup>198</sup> “Condition” could refer to certain behaviors exhibited by a single student, which may not occur in other students, making it difficult to identify a student in this classification.<sup>199</sup>

In addition to this lack of specificity, there are five characteristics that must be demonstrated over a “long period of time” and to a “marked degree” adversely affecting the child’s educational performance:

- (A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.
- (B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.
- (C) Inappropriate types of behavior or feelings under normal circumstances.
- (D) A generally pervasive mood of unhappiness or depression.
- (E) A tendency to develop physical symptoms or fears associated with personal or school problems.<sup>200</sup>

The definition adds an inclusionary clause, stating that the term incorporates schizophrenia.<sup>201</sup> In contrast, the definition excludes students who are “socially maladjusted,” unless it is determined that their social maladjustment is due to their Emotional Disturbance and not just their behavior.<sup>202</sup>

### *B. The Definition of Emotional Disturbance Is Too Vague*

The definition of Emotional Disturbance has barely been altered in the thirty-plus years since the IDEA was passed.<sup>203</sup> This outdated definition does nothing more than confuse schools and leave children, such as those facing trauma, without the services that they need.<sup>204</sup> Due to the ambiguous nature of the Emotional Disturbance classification, states and schools are applying different interpretations of the definition and varying criteria, which fails to inspire unity across state lines for special education purposes.<sup>205</sup>

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198. *Condition*, MERRIAM-WEBSTER, <http://www.merriam-webster.com/dictionary/condition> (last visited Feb. 15, 2016).

199. See Oelrich, *supra* note 41, at 19.

200. § 300.8(c)(4)(i).

201. § 300.8(c)(4)(ii).

202. *Id.*

203. See Oelrich, *supra* note 41, at 20.

204. *Id.*

205. O’Neill, *supra* note 7, at 1201-02.

The various criticisms of the Emotional Disturbance classification would be pointless if the students in this category had positive outcomes in future employment, academic performance, and suspension rates.<sup>206</sup> Research indicates that students determined to fall in the Emotional Disturbance classification have the *worst* outcomes of all special education classifications.<sup>207</sup> Specifically, data from Maryland in 2006 indicated that students classified as Emotionally Disturbed had a dropout rate that was sixteen times the dropout rate of students in general education classes.<sup>208</sup> Further, although students classified as Emotionally Disturbed comprised only about eight percent of students in the special education disability categories in Maryland, they represented fifty-two percent of all suspensions in the state.<sup>209</sup> The current definition of Emotional Disturbance allows for these tremendous percentages because the ambiguity of the definition lacks a connection to a more specific disability that the proposed subcategory would seek to mend.<sup>210</sup> Without a significant association to a specific disability, the precise services that children classified as Emotionally Disturbed may need are difficult to identify; thus, these ignored children are dropping out of school and are getting suspended.<sup>211</sup> Because a child identified with Emotional Disturbance typically exhibits disruptive behaviors, such as acting out in class, if one of these children is not given the help that she needs, these problems often get worse.<sup>212</sup> Ultimately, this is part of what the trauma subcategory proposed in this Note would repair.<sup>213</sup>

Beyond the issues with dropout rates and suspensions, there are significant problems in many other facets of education and life for students identified as Emotionally Disturbed.<sup>214</sup> Mary Wagner explains that students classified as Emotionally Disturbed had lower grade point averages, more absences, lower employment rates, higher instances of arrest, and failed more classes.<sup>215</sup> Wagner went further to explain that fifty-eight percent of students classified with Emotional Disturbance had

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206. Dikel & Stewart, *supra* note 6, at 600-01.

207. *Id.*

208. See Carol Ann Baglin, *Maryland's Children in Special Education with Emotional Disturbance: An Overview of Data and Current Outcomes*, MD. ST. DEP'T EDUC. 38 (2008) (noting that the dropout rate for students classified as Emotionally Disturbed was forty-nine percent compared with the three percent dropout rate for students in general education).

209. *Id.* at 36.

210. Dikel & Stewart, *supra* note 6, at 601; see *infra* Part IV.

211. Dikel & Stewart, *supra* note 6, at 601.

212. *Id.*

213. See *infra* Part IV.

214. Dikel & Stewart, *supra* note 6, at 600-01.

215. Mary M. Wagner, *Outcomes for Youths with Serious Emotional Disturbance in Secondary School and Early Adulthood*, 5 FUTURE CHILD. 90, 97-98 (1995).

been arrested within three to five years of finishing high school.<sup>216</sup> Wagner concluded that children classified as Emotionally Disturbed did not succeed in school because they were rarely treated effectively and given the proper services once classified.<sup>217</sup>

### C. *The Problem with Exclusionary Language*

Currently, children classified as Emotionally Disturbed often have difficulties in school that lead to both internalizing and externalizing behaviors.<sup>218</sup> Children who are considered socially maladjusted are often diagnosed as evidencing “poor academic performance, low school motivations and negative perceptions of school.”<sup>219</sup> Inadequate school organization, poor functioning of the school generally, and lack of appropriate support systems can contribute to a child’s maladjustment.<sup>220</sup> This maladjustment can further lead the child to have disruptive behaviors.<sup>221</sup> Based on the idea that both Emotional Disturbance and social maladjustment could lead to negative impacts in school, an identification of either Emotional Disturbance *or* social maladjustment could mean that the child is in need of special education services.<sup>222</sup>

Since the Emotional Disturbance classification excludes children who are socially maladjusted, it leads to a multitude of problems for schools in applying the current Emotional Disturbance classification.<sup>223</sup> This definition also encourages school personnel to take the identification approach from a behavioral standpoint rather than a clinical one.<sup>224</sup> Equating social maladjustment with poor behavior

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216. *Id.* at 103.

217. Dikel & Stewart, *supra* note 6, at 601. The Emotional Disturbance classification can be described as follows:

[B]ased on outdated concepts; is tautological; lacks a connection to any specific disability; has no mandate to accommodate to mental health disabilities when they are present; is based on behavioral conceptualizations that are inappropriate for many psychiatrically disabled students; and has very poor outcomes. In short, it is a failed concept.

*Id.*

218. Jeffrey A. Miller et al., *Using Multimodal Functional Behavioral Assessment to Inform Treatment Selection for Children with Either Emotional Disturbance or Social Maladjustment*, 41 *PSYCHOL. SCH.* 867, 872 (2004).

219. *Id.* at 874.

220. *Id.*

221. *Id.*

222. O’Neill, *supra* note 7, at 1205.

223. *See id.* at 1201-02 (“Because the IDEA’s definition of ‘emotional disturbance’ is ambiguous, states are able to use different definitions of the term for identification and assessment for special needs purposes resulting in extreme discrepancies in reporting rates.”).

224. Dikel & Stewart, *supra* note 6, at 596.

encourages a policy decision to be tough on the children who act out in school, including more suspensions and expulsions.<sup>225</sup>

In *Springer v. Fairfax County School Board*,<sup>226</sup> the Fourth Circuit affirmed a district court decision which determined that the child being socially maladjusted did not end the inquiry as to whether or not he would qualify for a special education under an Emotional Disturbance classification.<sup>227</sup> Among the totality of the circumstances presented, the parents described the child as “respectful of teachers and appropriate,” and indicated that he “got along well with his teachers.”<sup>228</sup> There was no evidence presented that the child was unable to maintain relationships for any period of time.<sup>229</sup> The court said that a student might be socially maladjusted and also suffer an independent Emotional Disturbance that would qualify her for special education services under the IDEA.<sup>230</sup> Social maladjustment alone is not enough to qualify a student.<sup>231</sup> The *Springer* case exemplifies the difficulty in qualifying a student under the Emotional Disturbance category and reveals why exclusion of the term “social maladjustment” excludes so many children that could benefit from special education services.<sup>232</sup> A child who has faced trauma may show characteristics that could fall under either social maladjustment or the Emotional Disturbance classification.<sup>233</sup> Therefore, children who have experienced trauma may be found ineligible for special education services when they really need the services based on inappropriate distinctions.<sup>234</sup>

*D. An Example of the Impact of Trauma on Children:  
Reactions in the Classroom*

Rachel Kirk, a secondary foreign language teacher at Landry Walker High School in New Orleans, Louisiana, discussed her experience in interacting with children with special needs and the unique impact of trauma on her students' lives.<sup>235</sup> At Landry Walker High

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225. O'Neill, *supra* note 7, at 1203.

226. 134 F.3d 659 (4th Cir. 1998).

227. *Id.* at 664-65.

228. *Id.* at 665; *see* 34 C.F.R. § 300.8(c)(4)(i) (2007) (providing the updated regulations for consideration).

229. § 300.8(c)(4)(i); *Springer*, 134 F.3d at 665.

230. *Springer*, 134 F.3d at 664-65.

231. *Id.*

232. *Id.* at 664.

233. O'Neill, *supra* note 7, at 1205.

234. *Id.*

235. Telephone Interview with Rachel Kirk, High Sch. Foreign Language Teacher, Landry Walker High Sch. (Jan. 16, 2015).

School, 90.9% of students receive free or reduced lunch, and 99.3% are African American.<sup>236</sup> When asked about the trauma she saw in her students' lives, Kirk said it was very prevalent.<sup>237</sup> She spoke of a few of her students, and described one in particular ("JG"), who not only endured the devastation of Hurricane Katrina but also went through personally traumatic events.<sup>238</sup> JG experienced violence at the hands of his father, who murdered his mother and two siblings while he was in the home.<sup>239</sup> This extreme act of violence is by no means the type of trauma that all children face, but regrettably, according to Kirk, death of loved ones via street violence is an unfortunate reality for her students.<sup>240</sup>

JG would have strong reactions in school, such as sleeping through class, screaming at teachers, walking out of the classroom, and refusing to complete work.<sup>241</sup> Kirk explained that the only place JG felt comfortable was on the football field.<sup>242</sup> She felt that JG was not being given proper support in this school, as there were only two social workers for almost nine hundred students, many of whom needed some level of assistance.<sup>243</sup> JG was not classified with Emotional Disturbance, but when prompted, Kirk indicated that she believed he should have been.<sup>244</sup> Since the current definition of Emotional Disturbance does not include the trauma subcategory, the reactions and circumstances that JG experienced are not addressed.<sup>245</sup>

Kirk also felt that she and other teachers at the school were not properly equipped with knowledge of how to approach the particular needs of students that have faced trauma.<sup>246</sup> Kirk said she is constantly looking for ways to help her students, even if she is not sure how or

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236. *L.B. Landry-O.P. Walker College and Career Preparatory High School*, LA SCH. FINDER, <http://laschoolfinder.com/schools/detail/92/L.-B.-Landry-O.-P.-Walker-College-and-Career-Preparatory-High-School> (last visited Feb. 15, 2016).

237. Telephone Interview with Rachel Kirk, *supra* note 235.

238. *Id.*; see Naomi Martin, *Ex-boyfriend Booked in Slaying of NOPD Dispatcher and 2 Adult Children Will Remain in Jail, Court Rules*, TIMES-PICAYUNE (Oct. 17, 2013), [http://blog.nola.com/crime\\_impact/print.html?entry=/2013/10/ex-boyfriend\\_booked\\_in\\_slaying.html](http://blog.nola.com/crime_impact/print.html?entry=/2013/10/ex-boyfriend_booked_in_slaying.html).

239. Martin, *supra* note 238; Telephone Interview with Rachel Kirk, *supra* note 235.

240. Telephone Interview with Rachel Kirk, *supra* note 235; see *supra* Part II.B.1.

241. Telephone Interview with Rachel Kirk, *supra* note 235.

242. *Id.*; see *Underdogs: Landry Walker High School*, SPORTS ILLUSTRATED (Dec. 15, 2014), <http://www.si.com/high-school/video/2014/12/15/underdogs-landry-walker-high-school-football-season-3>.

243. Telephone Interview with Rachel Kirk, *supra* note 235.

244. *Id.*

245. *Id.*

246. *Id.*

where to begin.<sup>247</sup> JG would benefit from the proposed subcategory because, if a teacher became aware of it, he would be more likely to be classified and receive the proper services that he needs.<sup>248</sup>

#### IV. A NEW TRAUMA SUBCATEGORY OF THE EMOTIONAL DISTURBANCE CLASSIFICATION

The current definition of Emotional Disturbance needs assistance, and so do the children in this country who have faced trauma.<sup>249</sup> This Note proposes a new subcategory of the Emotional Disturbance classification that specifically addresses the needs of children who have faced trauma and are not benefitting academically.<sup>250</sup> The subcategory should follow the guidelines set forth in the IDEA in that the child must be failing to succeed academically to be classified in this subcategory.<sup>251</sup> The definition should encourage training parents, educators, and paraprofessionals to create an awareness of the issue of children facing trauma and to identify certain characteristics of trauma.<sup>252</sup>

This Note recommends that when a child is identified under the Emotional Disturbance classification, the IEP team should look to the subcategory in the IDEA definition of Emotional Disturbance to outline a framework for assisting children who have experienced trauma.<sup>253</sup> Below, this Part provides the language of the proposed new subcategory, which would clarify the current vague Emotional Disturbance definition, allowing it to better identify and assist children who have faced trauma.<sup>254</sup> Without this subcategory, a large group of children will continue to be excluded from the services they so desperately need and the essence of the IDEA will not be suitably followed.<sup>255</sup> Next, this Part discusses the identification process of fitting a child within this category and will explore checklists that have been used to do so.<sup>256</sup> Also, this Part examines how the addition of this subcategory would impact implementing an IEP.<sup>257</sup> Furthermore, this Part then delves into the appropriate training for parents, families, and schools, making a

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247. *Id.*

248. *Id.*; *see infra* Part IV.

249. O'Neill, *supra* note 7, at 1206.

250. *See* Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 203 (1982); *infra* Part IV.A.

251. *See* Rowley, 458 U.S. at 203; *supra* Part II.B.1.

252. *See* COLE ET AL., *supra* note 1, at 50-57.

253. *See supra* Part III.A.

254. *See infra* Part IV.A.

255. *See infra* Part IV.A.

256. *See infra* Part IV.B.

257. *See infra* Part IV.B.1.

comparison to the current trainings relating to the autism spectrum.<sup>258</sup> Lastly, this Part deciphers the possible backlash and benefits of the creation of the subcategory.<sup>259</sup>

*A. Amending the Current Emotional Disturbance Definition*

When evaluating the usefulness of the current definition of Emotional Disturbance, one must remember that, because of its ambiguous language, children who have faced trauma are being left out.<sup>260</sup> The subcategory would attempt to solve the current difficulties with identification by making it clear to parents and teachers when a child would benefit from special education services.<sup>261</sup> The following is the draft subcategory for a modified Emotional Disturbance section:

- (i) Emotional disturbance means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:
  - (A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.
  - (B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.
  - (C) Inappropriate types of behavior or feelings under normal circumstances.
  - (D) A general pervasive mood of unhappiness or depression.
  - (E) A tendency to develop physical symptoms or fears associated with personal or school problems.
- (ii) Emotional disturbance includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance under paragraph (c)(4)(i) of this section.
- (iii) *Emotional disturbance includes children that have faced particular trauma in their life, as witnesses or direct participants, such as community violence, child abuse/neglect, domestic violence, sexual abuse, and natural disasters. In order to properly address the needs of students that fall into this subcategory, schools may provide trauma identification checklists and trauma-sensitive training for parents and teachers.*<sup>262</sup>

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258. See *infra* Part IV.B.2.

259. See *infra* Part IV.C.

260. See Oelrich, *supra* note 41, at 21-22.

261. *Id.*

262. 34 C.F.R. § 300.8(c)(4) (2007). Modifications and additions to the current Emotional Disturbance definition are indicated by italics.

As written today, it is unclear when a child would even be identified under the Emotional Disturbance classification because of its obscurity and exclusionary language.<sup>263</sup> The addition of the proposed subcategory would narrow the language so children who have faced trauma are not ignored.<sup>264</sup>

### B. *Childhood Trauma Identification and Trainings for Parents and Teachers*

If the proposed subcategory were to be implemented, parents and teachers could be equipped with a trauma identification checklist that gives them an opportunity to explore what may be going on in a child's mind.<sup>265</sup> The checklist would separate age levels, such as zero to five and six to eighteen. When utilizing the checklist, the identifier would ask themselves what they already know about the child, and then the identifier would determine if certain behaviors the child exhibits would correlate with a traumatic event.<sup>266</sup> These behaviors include excessive aggression, sexual behaviors not typical for the age of the child, and excessive shyness.<sup>267</sup> This checklist would relate back to the current Child Find Mandate in the IDEA because it would assist teachers and professionals in ensuring that a child who would benefit from special education services would be properly evaluated when considering granting them.<sup>268</sup> Further, this checklist would utilize the *Diagnostic and Statistical Manual of Mental Disorders 5* ("DSM-5") PTSD identification to make certain that teachers, parents, and school personnel would be looking at the medically correct characteristics.<sup>269</sup>

#### 1. Changes to the Individual Education Program and the Individuals with Disabilities Education Act

One aspect that would change on the IEP would be that the listed classification would contain a specific trauma subcategory.<sup>270</sup> In addition, the services will be particular to the need of each individual

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263. *Id.*

264. *See infra* note 270.

265. *CTAC Trauma Screening Checklist: Identifying Children at Risk Ages 0-5 and 6-18*, THE NAT'L CHILD TRAUMATIC STRESS NETWORK, <http://wmich.edu/sites/default/files/attachments/u248/2014/Trauma%20screening%20checklist%200-5%20rev%2011-13-1.pdf> (last updated Nov. 2013).

266. *Id.*

267. *Id.*

268. 20 U.S.C. § 1412(a)(3) (2012).

269. *DSM-5 Criteria for PTSD*, *supra* note 16 (discussing the *DSM-5* definition which includes characteristics such as intrusion, avoidance, negative alterations in cognitions and mood, and alterations in arousal and reactivity).

270. *See supra* Part IV.A.

child who has faced trauma.<sup>271</sup> These services can include certain mental health counseling and strategies in the classroom.<sup>272</sup> A strategy to be implemented may include providing predictability, which offers opportunities to succeed with established routines and positive responses.<sup>273</sup> The subcategory in the Emotional Disturbance classification would allow teachers and parents to delve further into what can help their children succeed academically.<sup>274</sup> Perhaps something as simple as making certain that the teacher writes the daily schedule on the board could support the needs of a child who has faced trauma.<sup>275</sup> In addition, children could be given permission to switch from class to class early.<sup>276</sup> An action plan written in an IEP could also be helpful in detailing the services and various actions to take if a traumatic reaction is triggered.<sup>277</sup> Positive behavioral supports might be helpful in making a traumatized child feel safe.<sup>278</sup> There are a variety of services that could be included on an IEP to specifically address the needs of the child who has faced trauma, all depending on the distinctive needs of that specific child.<sup>279</sup> The addition of the trauma subcategory would bring about these services for the child because the subcategory would create and promote awareness that, if this child falls within the subcategory, she should be provided with a unique level of assistance.<sup>280</sup>

The IEP team must also consider looking at the impact of the disability on academic performance from a non-academic standpoint.<sup>281</sup> How a child interacts with other children, for example in the hallways, extracurricular activities, the lunchroom, or other locations of social interaction, should all be considered when writing the IEP.<sup>282</sup> Throughout the IEP, social and emotional goal writing is an opportunity for the IEP team to come up with ways to encourage academic growth

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271. See *supra* Part IV.A.

272. See COLE ET AL., *supra* note 1, at 58-60.

273. *Id.* at 61-64.

274. See *supra* Part IV.A.

275. See COLE ET AL., *supra* note 1, at 62.

276. See, e.g., Kristina Sauerwein, *Crowded Campuses Stress Students*, L.A. TIMES (Sept. 25, 2000), <http://articles.latimes.com/2000/sep/25/local/me-26374> (“[M]any students say they spend more energy navigating crowds and coping with cramped conditions than learning. As if young people do not have enough to worry about these days, walking onto a chaotic campus makes their lives even more stressful, experts say.”).

277. See COLE ET AL., *supra* note 1, at 63.

278. *Id.* at 64.

279. *Id.* at 58-60; see 20 U.S.C. § 1414(d) (2012).

280. See COLE ET AL., *supra* note 1, at 68.

281. JANE CRECCO, TRAUMA SENSITIVITY DURING THE IEP PROCESS, <http://fcsn.org/rtsc/wp-content/uploads/sites/2/2013/11/Trauma-Sensitivity-During-the-IEP-Process.pdf> (last visited Feb. 15, 2016).

282. *Id.*

through the services provided elsewhere in the school environment.<sup>283</sup> The proposed subcategory would allow children impacted by trauma further opportunity to heal through the implementations in their IEPs specifically addressing what they need to benefit academically.<sup>284</sup>

## 2. Trainings for Parents and Teachers on Childhood Trauma

As the subcategory would detail, schools may implement training sessions for parents and teachers on trauma as they see fit.<sup>285</sup> Parents of children on the autism spectrum are often provided these training opportunities so that they can learn how to best approach their children's behavioral challenges.<sup>286</sup> The training sessions for parents are practical, and, when implemented, they help to improve tantrums and general daily skills for these particular children.<sup>287</sup> If these programs are being employed throughout the country for parents of children on the autism spectrum, there is no reason why these trainings cannot be implemented to assist parents handling children that have been exposed to some level of trauma.<sup>288</sup> Schools can utilize trauma-sensitive school information to help educate parents and teachers about how to address the needs of children who have faced trauma.<sup>289</sup> Trainings for school districts are being provided in Washington State by the Washington State

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283. *Id.*

284. *Id.* ("Being emotionally healthy leads to academic success. For those kids with the invisible disability of having suffered complex childhood trauma, the IEP process can give them a chance to learn the skills necessary to achieve a life of productivity and independent living.")

285. *See supra* note 259 and accompanying text.

286. Jenifer Goodwin, 'Parent Training' May Help Kids with Autism Behave Better, U.S. NEWS (Mar. 2, 2012, 6:00 AM), <http://health.usnews.com/health-news/news/articles/2012/03/02/parent-training-may-help-kids-with-autism-behave-better>.

287. *Id.*

288. *See, e.g., Trauma Informed Care*, IFAPA (2013), <http://www.ifapa.org/resources/trauma-informed-care.asp>; Mary M. Murray et al., *Knowledge is Power: Empowering the Autism Community Through Parent-Professional Training*, 21 SCH. CMTY. J. 19, 19 (2011). Specifically, there was a program developed called "Project Pace" which included Partnerships for Autism through Collaborative Community Choice and Empowerment project. Murray et al., *supra*, at 19. It was developed to empower parents and professionals through training and education about basic facts relating to individuals with autism. *Id.* Once trained, the participants would become trainers themselves as a way to give back to the community. *Id.* Parents must change the way they cope with their children who have experienced trauma because of the following:

Parenting a child who has experienced trauma requires a shift in the way you think about childhood development as well as the way you communicate with and provide support for the child in your care. Becoming trauma informed opens up a new way of thinking about and acting on the behaviors you experience in your home and can assist you in reducing power struggles and begin to make genuine strides toward improvement.

*Trauma Informed Care, supra.*

289. *Strategies and Resources to Create a Trauma-Sensitive School*, WIS. DEP'T PUB. INSTRUCTION, <http://ssp.wi.gov/sites/default/files/imce/ssp/pdf/traumastrategies.pdf> (last visited Feb. 15, 2016).

University's Area Health Education Center.<sup>290</sup> Professionals that work in the center offer the training, but, now, several organizations have developed training materials that can easily be adopted by parents, teachers, or any school staff member.<sup>291</sup> It would be beneficial if these trainings varied in topic.<sup>292</sup> Perhaps starting with a general overview of what trauma is, and then developing over time into more particular strategies that parents and teachers can use in assisting children that have been impacted would be effective.<sup>293</sup>

### C. Possible Backlash and Benefits

Some evidence suggests that including a subcategory of trauma in the IDEA would cause an over-identification of students in the Emotional Disturbance category who do not necessarily qualify.<sup>294</sup> To avoid this, the trauma subcategory should only include students once they have already been identified as Emotionally Disturbed. This should be clearly understood by the fact that the subcategory is an addition to what has already been implemented in the classification.<sup>295</sup> If children are already classified in the Emotional Disturbance category, then they have already been identified as not gaining an educational benefit.<sup>296</sup> Thus, the addition of the subcategory would only further the specification of services for these children, not over-identify those that do not need special education assistance.<sup>297</sup>

If the IDEA creates this new subcategory, more schools would become "trauma-sensitive," encouraging a paradigm shift in the way

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290. Jane Ellen Stevens, *Massachusetts, Washington State Lead U.S. Trauma-Sensitive School Movement*, ACES TOO HIGH (May 31, 2012), <http://acestoohigh.com/2012/05/31/massachusetts-washington-state-lead-u-s-trauma-sensitive-school-movement>.

291. *Id.*

292. See COLE ET AL., *supra* note 1, at 50-57.

293. *Id.*

294. *Id.* at 40. The goal is not to cause an over-identification of children as requiring special education:

Most children experiencing trauma will not develop diagnoses or disabilities that require special education . . . However, some percentage will require special education and studies show that abused children are more likely to be in special education, have below-grade-level achievement test scores, have poor work habits, and are 2.5 times more likely to fail a grade. When evaluating a student for special education, it is important to consider the possibility that trauma may be playing a role, as it is easy to inadvertently misdiagnose some of the trauma-related symptoms.

*Id.*

295. *Id.*

296. Weber, *supra* note 20, at 103.

297. See Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 203 (1982).

schools approach the education process.<sup>298</sup> The paradigm shift would be further encouraged because parents and teachers could perhaps see the importance of assisting children who have faced trauma if the IDEA incorporated it as a subcategory.<sup>299</sup> Trauma-sensitive schools have been shown to benefit all children, not simply ones that have been identified with special education needs.<sup>300</sup> Factors like predictability, consistency, calm environments, and respectful responses can help all children learn and reach their highest academic potential.<sup>301</sup> If this subcategory were to be adopted, it could help bring about a change in the way all educators and school professionals approach the classroom and school atmosphere.<sup>302</sup>

## V. CONCLUSION

There are a great deal of children in the United States today that have witnessed or experienced some traumatic event.<sup>303</sup> These traumatic events can take a toll on their ability to communicate, build relationships, and ultimately, learn.<sup>304</sup> Because of the frustrations associated with childhood trauma, children in this situation often exhibit identifiable behaviors that negatively impact their academic success.<sup>305</sup> The current definition of the IDEA classification of Emotional Disturbance is too elusive to clearly provide the services and assistance that these particular children need.<sup>306</sup> To provide traumatized children with educational help, a subcategory focused on trauma should be added

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298. Barbara Oehlberg, *Why Schools Need to Be Trauma Informed*, TRAUMA & LOSS: RES. & INTERVENTIONS, WINTER 2008, at 14, <https://www.starr.org/sites/default/files/articles/whyschoolsneed.pdf>. It is imperative for a trauma-sensitive environment to exist in the educational realm especially since this integration can be done with minimal costs. *Id.* Schools are becoming more informed about how brain development is altered due to trauma, and this can have massive implications for school policies and learning techniques. *Id.* The research has given a lot of professionals a different outlook into misbehaviors. *Id.* A trauma-informed school affords significant benefits to staff and students. *Id.*

299. *Id.*

300. See COLE ET AL., *supra* note 1, at 1.

301. *Id.* at 69.

302. *Id.* at 47.

303. See, e.g., Barbara Benham, *Study: Nearly Half of U.S. Kids Exposed to Traumatic Social or Family Experiences*, HUB (Dec. 8, 2014), <http://hub.jhu.edu/2014/12/08/traumatic-experiences-during-childhood/> (“Nearly half of all children in the United States are exposed to at least one social or family experience that can lead to traumatic stress and impact their healthy development . . .”).

304. SUSAN F. COLE ET AL., HELPING TRAUMATIZED CHILDREN LEARN 2: SAFE SUPPORTIVE LEARNING ENVIRONMENTS THAT BENEFIT ALL CHILDREN: CREATING AND ADVOCATING FOR TRAUMA-SENSITIVE SCHOOLS 6-7 (2013).

305. *Id.* at 7.

306. O’Neill, *supra* note 7, at 1206.

into the Emotional Disturbance classification.<sup>307</sup> This subcategory would create a way for children who have faced trauma to develop and grow educationally.<sup>308</sup> This subcategory would also encourage a new shift in creating a trauma-sensitive school approach.<sup>309</sup> Trauma impacts the lives of countless children, and recognizing this impact should be a part of the way special education is perceived.<sup>310</sup>

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307. See *supra* Part IV.

308. See Jane Ellen Stevens, *Trauma-Sensitive Schools Are Better Schools*, HUFFINGTON POST, [http://www.huffingtonpost.com/jane-ellen-stevens/trauma-sensitive-schools\\_b\\_1625924.html](http://www.huffingtonpost.com/jane-ellen-stevens/trauma-sensitive-schools_b_1625924.html) (last updated Aug. 26, 2012, 5:12 AM); *supra* Part IV.

309. See Stevens, *supra* note 308; *supra* Part IV.

310. See Stevens, *supra* note 308; *supra* Part IV.

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