
**DISPARATE TREATMENT AND LOST OPPORTUNITY:
COURTS' APPROACH TO STUDENTS WITH MENTAL
HEALTH DISABILITIES UNDER THE IDEA**

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The United States is experiencing a mental health epidemic. Millions of Americans suffer from untreated mental health disabilities. Consequently, prisons and homeless shelters are packed with individuals struggling with those disabilities. The Individuals with Disabilities Education Act, the flagship civil rights legislation for students with disabilities, presents a significant opportunity to address this crisis. However, this opportunity has not been realized because a large number of courts have adopted a narrow approach to the Act that denies students with mental health disabilities equal access to special education supports and services. This Article examines this narrow approach and argues that it is both legally flawed and problematic from a policy perspective.

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I. INTRODUCTION

The United States is experiencing a mental health epidemic. Millions of Americans suffer from untreated mental health disabilities, and as a consequence, prisons and homeless shelters are packed with individuals struggling with such disabilities. Sadly, these outcomes are unsurprising given our nation's approach to mental health.

Mental health disabilities occupy a unique position relative to other types of disabilities. Mental health issues are routinely discounted and individuals confronted with these issues are often denied the same level of supports and accommodations provided to those with other types of disabilities.

An extremely troubling context in which this bias manifests is special education. A large number of courts interpreting the Individuals with Disabilities Education Act (IDEA),¹ the flagship civil rights legislation for students with disabilities, approach students with mental health disabilities as less deserving of the services and supports offered by the IDEA than students with other disabilities.² This differential treatment is undoubtedly a contributing factor as to why students with mental health disabilities have the worst outcomes of all groups of students receiving special education services. Students with mental health disabilities have the highest dropout rates,³ and they receive the lowest grades of any group of special education students.⁴

Anecdotally, the recent tragedy at Sandy Hook Elementary School in Newtown, Connecticut powerfully demonstrates how the IDEA has failed students with mental health disabilities. Adam Lanza, who was responsible for the deaths of twenty-eight individuals, including himself, suffered from severe mental health issues throughout his educational career.⁵ But, Adam received "minimal" special education supports for these issues from his various schools.⁶

1. Individuals with Disabilities Education Act, Pub. L. No. 101-476, 104 Stat. 1103 (1990) (codified as amended at 20 U.S.C. §§ 1400-1482 (2012)). The IDEA is administered by the Office of Special Education Programs, which falls under the Office of Special Education and Rehabilitative Services within the U.S. Department of Education. See *OSEP: Mission Statement*, U.S. DEP'T EDUC., <http://www2.ed.gov/about/offices/list/osers/osep/mission.html> (last modified July 8, 2004). IDEA services and supports are commonly known as "special education services and supports." E.g., *Building the Legacy: IDEA 2004*, U.S. DEP'T EDUC., <http://idea.ed.gov/> (last visited Apr. 1, 2016) (referring to "special education services").

2. See *infra* notes 158-75 and accompanying text for evidence of this argument.

3. NAT'L ALL. ON MENTAL ILLNESS, MENTAL ILLNESS FACTS AND NUMBERS 1 (2013), http://www2.nami.org/factsheets/mentalillness_factsheet.pdf [hereinafter MENTAL ILLNESS FACTS AND NUMBERS].

4. Ann M. Aviles, Tanya R. Anderson & Erica Davila, *Child and Adolescent Social-Emotional Development Within the Context of School*, 11 CHILD & ADOLESCENT MENTAL HEALTH 32, 35 (2006).

5. SARAH HEALY EAGAN ET AL., OFFICE OF THE CHILD ADVOCATE, SHOOTING AT SANDY HOOK ELEMENTARY SCHOOL 6-9 (2014), <http://www.scribd.com/doc/247759563/Sandy-Hook-Report>.

6. *Id.* at 8.

For example, in elementary school Adam demonstrated signs of anxiety and depression and created a book for a school project that included references to “child murder, cannibalism, and taxidermy.”⁷ Yet, Adam did not receive any mental health-related special education services, such as counseling or behavior therapy, during elementary school.⁸ According to a report developed by Connecticut’s Office of the Child Advocate, this failure amounted to a “lapse[]” in the education system’s response to Adam’s needs.⁹

It is critical that we address the differential treatment of students with mental health disabilities under the IDEA. The legal protections and resources offered by the IDEA, combined with the unique position of schools in children’s lives, present an opportunity to identify mental health disabilities earlier and address them more effectively.

This Article argues that the differential treatment experienced by students with mental health disabilities results from the judiciary’s narrow interpretation of the term “educational” within the context of the IDEA. Specifically, a large number of courts interpret “educational” to encompass purely academic domains. Given the structure of the IDEA, this interpretation has a disparate impact on students with mental health disabilities. In addition, it is inconsistent with the text and purpose of the IDEA and appears to be driven, in part, by misperceptions that are explained by well-known social science theories.

Legal scholars have highlighted the tendency of many courts to deny students with social and emotional needs access to services by narrowly interpreting the IDEA.¹⁰ Much of the scholarship argues that ambiguities in the text of the IDEA have led to this outcome.¹¹ As a result, a number of scholars have suggested that changes to the text of the IDEA are needed.¹² This Article

7. *Id.* at 29.

8. *See id.* at 32 (explaining that even though Adam “received some speech support and occupational therapy early on,” his services not only inadequately “focused on a very narrow range of behaviors,” but also he “was exited from special education services entirely [by] the fourth grade”).

9. *Id.* at 8.

10. *See, e.g.,* 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, 187–88 (2002) (discussing a problematic judicial interpretation of “educational performance” resulting from ambiguous mental health-related definitions in the IDEA); Theresa Glennon, *Disabling Ambiguities: Confronting Barriers to the Education of Students with Emotional Disabilities*, 60 TENN. L. REV. 295, 325–28 (1993) (critiquing courts that frame behavioral issues as “non-educational”); Lois A. Weithorn, *Envisioning Second-Order Change in America’s Responses to Troubled and Troublesome Youth*, 33 HOFSTRA L. REV. 1305, 1357–58 (2005) (acknowledging the tendency of courts to narrowly interpret “emotional disturbance” to the exclusion of students with conduct disorders); Lucy W. Shum, Note, *Educationally Related Mental Health Services for Children with Serious Emotional Disturbance: Addressing Barriers to Access Through the IDEA*, 5 J. HEALTH CARE L. & POL’Y 233, 241–44 (2002) (highlighting conflicting approaches to eligibility determinations for students with mental health disabilities).

11. *See, e.g.,* Callegary, *supra* note 10, at 183–89; Glennon, *supra* note 10, at 334–37; Weithorn, *supra* note 10, at 1357–59; Shum, *supra* note 10, at 239–40.

12. *See, e.g.,* Callegary, *supra* note 10, at 205–07 (recommending a revised definition of “emotional disturbance” under the IDEA); Glennon, *supra* note 10, at 355–57 (arguing that Congress should revise “key definitions” in the IDEA related to students with mental health disabilities).

differs from the existing literature as it asserts that courts are failing to properly interpret the Act. Amendments to the IDEA are therefore unnecessary; instead, in order to realize the IDEA's potential to address the needs of students with mental health disabilities, it is courts that must correct their flawed approach.

This Article also adds to the literature by using social science theory to explain the underlying reasons for courts' narrow approach to the IDEA. In her 1993 article, "Disabling Ambiguities: Confronting Barriers to the Education of Students with Emotional Disabilities," Professor Theresa Glennon puts forth an insightful analytical framework for understanding the perceptions influencing decisions in IDEA cases involving students with mental health issues.¹³ This Article builds upon Glennon's work by contextualizing courts' decision-making processes within social science literature. Furthermore, through an analysis of recent case law, this Article illustrates that, despite the passage of over twenty years since Glennon's article, the same biases still influence courts today.

II. DEFINING THE PROBLEM

A. *Mental Health in America*

The statistics on the scope and effects of mental health issues in the United States are staggering. Approximately one in four adults—over sixty million Americans—experiences mental health issues in a given year.¹⁴ In addition, one in five youths between the ages of thirteen and eighteen experiences mental health emergencies annually.¹⁵ However, fewer than one in five youths suffering from a mental health disorder receives some form of intervention.¹⁶

Untreated and undertreated mental health disabilities have significant effects on our economy, communities, and families. Mental health issues are highly correlated with incarceration and homelessness. More than one in five people who are incarcerated suffer from a mental health condition, and seventy percent of youth involved in the juvenile justice system suffer from at least one mental health condition.¹⁷ One-third of homeless adults also experience mental health issues,¹⁸ and one study estimates that, due to their effect on productivity,

13. Glennon, *supra* note 10.

14. MENTAL ILLNESS FACTS AND NUMBERS, *supra* note 3, at 1.

15. *Id.*

16. Alexis L. Toma, Comment, *Identifying the Unidentifiable: How Washington's Public Education System Can Aid in the Prevention and Detection of Childhood Mental Illness*, 33 SEATTLE U. L. REV. 255, 258 (2009) (noting that the National Institute of Mental Health estimates that fewer than one in five children suffering from mental illness severe enough to cause impairment receive treatment); see also CTRS. FOR DISEASE CONTROL & PREVENTION ET AL., ATTITUDES TOWARDS MENTAL ILLNESS: RESULTS FROM THE BEHAVIORAL RISK FACTOR SURVEILLANCE SYSTEM 4 (2012) [hereinafter ATTITUDES TOWARDS MENTAL ILLNESS], http://www.cdc.gov/hrqol/Mental_Health_Reports/pdf/BRFSS_Report_InsidePages.pdf ("Only about 20% of adults with a diagnosable mental health condition saw a mental health provider in the previous year." (citations omitted)).

17. MENTAL ILLNESS FACTS AND NUMBERS, *supra* note 3, at 1.

18. *Id.* ("Approximately 26 percent of homeless adults staying in shelters live with serious mental illness and an estimated 46 percent live with severe mental illness and/or substance use

serious mental health conditions are associated with an annual loss of earnings totaling \$193.2 billion.¹⁹

While alarming, these outcomes are not altogether surprising. Intertwined with our mental health crisis is a civil rights crisis. Discrimination against persons with mental health disabilities is pervasive in the United States. Research shows that stigma is a major barrier to them obtaining treatment, quality housing, and employment.²⁰ They are also discriminated against by various federal and state laws and policies. For example, Medicaid laws specify that “funds may be used for hospitals treating physical conditions but generally not for mental health [issues].”²¹ Similarly, Medicare laws “limit[] the number of days that [individuals with mental health disabilities] can receive inpatient psychiatric care,”²² while placing no such limits on inpatient care for those with physical disabilities.²³ In addition, states across the country have directly discriminated against persons with mental health disabilities by adopting laws that strip them of basic rights. As of 1999, about one-third of the fifty states restricted the rights of an individual with mental health issues to hold elective office, participate in juries, and vote.²⁴ And, around half of states limited the marriage and child custody rights of people with mental health disabilities.²⁵

B. *Understanding Discrimination Against Persons with Mental Health Disabilities*

Two social science theories are helpful in understanding discrimination against persons with mental health disabilities: “attribution theory” and the “medical model” theory of disability. Attribution theory posits that “behavior is determined by a cognitive-emotional process: persons make attributions about

disorders.”); see also Thomas R. Insel, *Assessing the Economic Costs of Serious Mental Illness*, 165 AM. J. PSYCHIATRY 663, 663–65 (2008) (discussing the relationship between mental illness and homelessness).

19. Insel, *supra* note 18, at 663 (citing the National Comorbidity Survey Replication).

20. See Patrick Corrigan et al., *An Attribution Model of Public Discrimination Towards Persons with Mental Illness*, 44 J. HEALTH & SOC. BEHAV. 162, 163–64 (2003) (discussing the tendency of people to stigmatize individuals with mental health issues as dangerous, erratic, and hostile, and emphasizing that this stigma negatively impacts how others approach such individuals).

21. Liz Szabo, *Cost of Not Caring: Stigma Set in Stone*, USA TODAY (Jun. 25, 2014), <http://www.usatoday.com/story/news/nation/2014/06/25/stigma-of-mental-illness/9875351/>.

22. *Id.*

23. *Id.*

24. Craig Hemmens et al., *The Consequences of Official Labels: An Examination of the Rights Lost by the Mentally Ill and Mentally Incompetent Ten Years Later*, 38 COMMUNITY MENTAL HEALTH J. 129, 132–36 (2002). For an overview of recent state restrictions on the voting rights of people with mental illness, see BAZELON CTR. FOR MENTAL HEALTH LAW ET AL., *VOTE 2012—IT’S YOUR RIGHT! ADDENDUM TO THE 2008 VOTING RIGHTS GUIDE FOR PEOPLE WITH MENTAL DISABILITIES* (2012), <http://www.bazelon.org/LinkClick.aspx?fileticket=szZrfSzI8U0%3d&tabid=543>.

25. See Hemmens et al., *supra* note 24, at 135 tbl.2. For an updated analysis of the restrictions on the rights of parents with mental health issues, see Jennifer Mathis, *Keeping Families Together: Preserving the Rights of Parents with Psychiatric Disabilities*, 46 J. POVERTY L. & POL’Y 517, 518–22 (2013).

the *cause* and *controllability* of a person's [disability] that lead to inferences about *responsibility*."²⁶ Under the theory, when people perceive an individual as being responsible for her behavior, they are more likely to view her in a negative light and, therefore, are less willing to help her. In light of widely held stereotypes about persons who exhibit mental health issues, this theory is particularly relevant here. Whereas physical disabilities are perceived as beyond an individual's control, behaviors associated with mental health conditions are seen as involving individual agency and, in turn, "elicit anger, antipathy, and reduce [others'] willingness to help."²⁷ Moreover, this perception that persons suffering from mental health issues are in control of, and responsible for, their behaviors is exacerbated by the dominant view that they are dangerous.²⁸ Perceptions of dangerousness reinforce the attribution of those persons' behavior to "bad character."²⁹

People's tendency to view individuals with mental health issues as in control their mental-behavioral conditions has two important effects that contribute to discrimination. First, people tend to blame persons with mental health disabilities for their conditions.³⁰ This leads to an unwillingness to work towards removing barriers that these individuals face. Second, many people view "disabilities" as impairments that an individual cannot overcome through her own efforts.³¹ In other words, lack of agency over a condition is seen as a defining characteristic of disability. As a result, persons with mental health issues are often viewed as not having "real" disabilities, and they do not receive the same protections and accommodations as individuals with other types of disabilities.³²

26. Corrigan et al., *supra* note 20, at 164–65.

27. *Id.* at 165 ("In research on other groups, Weiner, Perry, and Magnusson (1988) found that physical disabilities . . . were perceived as not controllable and therefore elicited little anger, greater pity, and more willingness to help. On the other hand, mental-behavioral conditions . . . were perceived as controllable and elicited anger, little pity, and less willingness to help." (citing Bernard Weiner, Raymond P. Perry & Jamie Magnusson, *An Attributional Analysis of Reactions to Stigma*, 55 J. PERSONALITY & SOC. PSYCHOL. 738, 738–48 (1988))).

28. See Bruce G. Link et al., *Public Conceptions of Mental Illness: Labels, Causes, Dangerousness, and Social Distance*, 89 AM. J. PUB. HEALTH 1328, 1330 (1999) ("A central aspect of the stereotype of mental illness is dangerousness."); Bernice A. Pescolido et al., *The Public's View of the Competence, Dangerousness, and Need for Legal Coercion of Persons with Mental Health Problems*, 89 AM. J. PUB. HEALTH 1339, 1341 (1999) (finding that the public widely perceives persons with mental health issues as being at risk for violent behaviors).

29. See e.g., Corrigan et al., *supra* note 20, at 166 ("[W]hen persons are thought to be dangerous they are likely to be believed to be more responsible for their behavior, which in turn leads to social rejection."); Jack Martin et al., *Of Fear and Loathing: The Role of 'Disturbing Behavior,' Labels, and Causal Attributions in Shaping Public Attitudes Toward People with Mental Illness*, 41 J. HEALTH & SOC. BEHAV. 208, 220 (2000) (finding that "attributing problems to 'bad character' also appears to be due to perceptions of dangerousness"). In "Of Fear and Loathing," Martin et al. explore the social exclusion experienced by persons with mental health issues. They find that stigma related to perceptions denoting this group as "dangerous" and "disturbed" drives such exclusion. *Id.* at 219–20.

30. Corrigan et al., *supra* note 20, at 165.

31. *Id.*

32. See, for example, *infra* Section IV for a discussion of cases affirming school district decisions

The medical model of disability offers further insight into discrimination against persons with mental health disabilities. The medical model provides a way of describing norms that have traditionally governed Western society's understanding of disability.³³ It "presumes that a person's disability is a 'personal, medical problem, requiring . . . an individualized medical solution.'"³⁴ Through this lens, disabilities are synonymous with pathology and should be remedied through an individual's own efforts and treatment from medical professionals.

Over the past several decades, disabilities rights advocates have made significant efforts to supplant the medical model with a different conceptualization of disability.³⁵ Advocates find the medical model problematic because it pathologizes disability, thereby reinforcing stereotypes that "something is wrong" with persons with disabilities.³⁶ The model also ignores the socially constructed barriers that contribute to disparate outcomes among persons with disabilities. Accordingly, advocates have pushed to normalize an alternative model: the "social model" of disability.³⁷

to preclude students afflicted with mental health disabilities from services available to students with other forms of disability.

33. Bradley A. Areheart, *When Disability Isn't "Just Right": The Entrenchment of the Medical Model of Disability and the Goldilocks Dilemma*, 83 IND. L.J. 181, 185–87 (2008).

34. *Id.* at 185–86 ("[The medical model presumes] that people who have disabilities face no 'group' problem caused by society or that social policy should be used to ameliorate. The medical model views the physiological condition *itself* as the problem. In other words, 'the individual is the locus of disability.' . . . Understood simply as a biological trait, disability leaves the individual in need of physiological assistance to remediate the effects of the disability. Under the medical model, people with disabilities are often characterized as having individual attributes of incapacity and dependence." (footnotes omitted)); see also Lisa Eichhorn, *Hostile Environment Actions, Title VII, and the ADA: The Limits of the Copy-and-Paste Function*, 77 WASH. L. REV. 575, 597 (2002) (stating that the medical model focuses on "leveling the players rather than the playing field" (quoting Anita Silvers, *Formal Justice*, in ANITA SILVERS ET AL., *DISABILITY, DIFFERENCE, DISCRIMINATION: PERSPECTIVES ON JUSTICE IN BIOETHICS AND PUBLIC POLICY* 13, 70 (1998))).

35. The Americans with Disabilities Act (ADA) illustrates the success that advocates have had in moving towards a social model of disability. Instead of relying on the assumption that disabilities are a pathology that individuals must overcome, the ADA illuminated the social dimension of disability by providing statutory recourse to acts of employment discrimination (Title I), mandating that public entities be accessible (Title II), and providing accommodation (Title III). Areheart, *supra* note 33, at 190–91.

36. *E.g., id.* at 185–87. Within scholarship focused on the IDEA, mental health disabilities are referred to as "emotional and behavioral disabilities." See, e.g., Cynthia A. Dieterich, Nicole D. Snyder & Christine J. Villani, *A Legal Study of Children with Emotional Disturbance and Mental Health Needs and Implications for Practice*, 45 J.L. & EDUC. 39, 46 (2016) (referring to "emotional and behavioral disabilities," but noting the lack of "consensus among practitioners and researchers as to how to define emotional and behavioral disabilities in children" (quoting Jeffrey A. Anderson, *The Need for Interagency Collaboration for Children with Emotional and Behavioral Disabilities and Their Families*, 81 J. CONTEMP. HUM. SERVS. 484, 485 (2000))). Although "mental health" tends to pathologize emotional and behavioral disabilities, this Article uses this term in order to contextualize the issues discussed within broader public health efforts.

37. *E.g., id.* at 188–92. Notably, however, while many laud the social model, it has also been criticized by various commentators. *E.g.*, Adam M. Samaha, *What Good Is the Social Model of Disability?*, 74 U. CHI. L. REV. 1251, 1251 (2007).

The social model of disability redefines disability as a social construct.³⁸ It holds that society, not the individual, is flawed; society has constructed artificial barriers that limit the ability of persons with disabilities to equally participate in their communities.³⁹ Viewing disability through the social model dictates a completely different approach to addressing the effects of disability. Whereas the medical model leads to the conclusion that medical solutions are needed “to adjust the individual to fit society, the social model focuses on adjusting the social environment to fit individuals.”⁴⁰

Unfortunately, the medical model, not the social model, often prevails with respect to mental health disabilities. Thus, persons with those disabilities are less likely to receive accommodations and more likely to be directed to medical professionals—who may or may not be there to assist—when barriers to access arise.

III. INTRODUCTION TO THE IDEA

The driving purpose of the IDEA is to foster self-sufficiency and independence among students with disabilities by providing them with equal educational opportunities.⁴¹ Prior to the enactment of the IDEA in 1975, schools routinely denied students with disabilities access to an education and, in turn, deprived them of the chance to become self-sufficient, productive citizens.⁴² Congress passed the IDEA to address these injustices.

The text of the IDEA directs states that accept IDEA funding to establish “a goal of providing full educational opportunity to all [students] with disabilities.”⁴³ The Act’s legislative history is also replete with statements

38. See Tom Shakespeare, *The Social Model of Disability*, in *THE DISABILITY STUDIES READER* 214, 215 (Lennard J. Davis ed., 4th ed. 2013) (“[Under the social model,] it is society which disables . . . impaired people. Disability is something imposed on top of our impairments, by the way we are unnecessarily isolated and excluded from full participation in society.” (quoting Paul Hunt, Founder, Union of the Physically Impaired Against Segregation, Discussion on Fundamental Principles of Disability (Nov. 22, 1975), <http://disability-studies.leeds.ac.uk/files/library/UPIAS-fundamental-principles.pdf>)).

39. Areheart, *supra* note 33, at 188–89. For example, persons with visual impairments who need braille to read would not be “impaired” with respect to reading if all of society relied on braille. Broader society’s decision to use print as opposed to braille causes these individuals to be denied equal access to reading materials.

40. Areheart, *supra* note 33, at 189; see also Shakespeare, *supra* note 38, at 216 (“Social model thinking mandates barrier removal, anti-discrimination legislation, independent living and other responses to social oppression.”).

41. 20 U.S.C. § 1400(c)(1) (2012).

42. See 121 CONG. REC. 19,486 (1975) (statement of Sen. Williams). In 1975, 1.75 million students with disabilities did not receive any educational services, and 2.5 million students were not provided an appropriate education. *Id.* (statement of Sen. Williams).

43. 20 U.S.C. § 1412(a)(2). The IDEA was originally named the “Education for All Handicapped Children Act.” U.S. OFFICE OF SPECIAL EDUC. PROGRAMS, HISTORY: TWENTY-FIVE YEARS OF PROGRESS IN EDUCATING CHILDREN WITH DISABILITIES THROUGH IDEA (2007), <http://www2.ed.gov/policy/speced/leg/idea/history.pdf>. In 1990, Congress renamed the Act the IDEA. *Id.*

demonstrating congressional intent to provide equal educational opportunities to students with disabilities.⁴⁴ Furthermore, this intent is illustrated by the Act's relationship to two federal court cases, *Pennsylvania Association for Retarded Children v. Pennsylvania*⁴⁵ and *Mills v. Board of Education*,⁴⁶ which both involved equal protection challenges to various state laws and policies that denied students with disabilities "access to the schoolhouse door."⁴⁷ Both cases are cited extensively in the IDEA's legislative history,⁴⁸ and the IDEA's Senate report describes the statute as having incorporated the major principles of the cases.⁴⁹

In addition to a desire to achieve equity, this focus on equal educational opportunities is motivated by the IDEA's goal of fostering self-sufficiency and independence. In *Board of Education v. Rowley*⁵⁰ the Supreme Court explored this "self-sufficiency and independence" goal. The Court stated that Congress's intention, which is "frequently expressed in the legislative history, [is] that handicapped children be enabled to achieve a reasonable degree of self-sufficiency."⁵¹ Indeed, the IDEA's Senate report states:

The long range implications of these statistics [relating to students with disabilities] are that public agencies and taxpayers will spend billions of dollars over the lifetimes of these individuals to maintain such persons as dependents and in a minimally acceptable lifestyle. With proper education services, many would be able to become productive citizens,

44. See, e.g., S. REP. NO. 94-168, at 9 (1975) (contending that Congress should take a more proactive role in "guarantee[ing] that handicapped children are provided *equal* educational opportunity" (emphasis added)); 121 CONG. REC. 23,708 (1975) (statement of Rep. Mink) ("[H]andicapped children . . . are denied access to public schools because of a lack of trained personnel . . ."); 121 CONG. REC. 19,502 (1975) (statement of Sen. Cranston) (observing that millions of handicapped "children . . . are largely excluded from the educational opportunities that we give to our other children"); 121 CONG. REC. 19,494 (1975) (statement of Sen. Javits) ("[A]ll too often, our handicapped citizens have been denied the opportunity to receive an adequate education."); 121 CONG. REC. 19,483 (1975) (statement of Sen. Stafford) ("We can all agree that all handicapped children should be receiving an education. We can all agree that that education should be equivalent, at least, to the one those children who are not handicapped receive.").

45. 343 F. Supp. 279 (E.D. Pa. 1972).

46. 348 F. Supp. 866 (D.D.C. 1972).

47. Gary L. Monserud, *The Quest for A Meaningful Mandate for the Education of Children with Disabilities*, 18 ST. JOHN'S J. LEGAL COMMENT., 675, 815 n.459 (2004); Bd. of Educ. v. Rowley, 458 U.S. 176, 192 (1982) ("Both the House and the Senate Reports attribute the impetus for the Act and its predecessors to two federal-court judgments rendered in 1971 and 1972."); Monserud, *supra*, at 688 ("Two federal district court cases in the early 1970s were especially important [to the passage of the Act], *Pennsylvania Association for Retarded Citizens v. Pennsylvania* (PARC) and *Mills v. Board of Education of the District of Columbia*." (footnote omitted)).

48. 121 CONG. REC. 25,540-41 (1975) (observing how these cases affirmed the constitutional right of all children to a public education); 121 CONG. REC. 37027 (1975) (citing *Mills* as holding that "all children regardless of any exceptional conditions have a constitutional right to publicly supported education"); 121 CONG. REC. 37025 (1975) (referring to landmark judicial decisions and some forty-six court cases regarding this right).

49. See S. REP. NO. 94-168, at 6, 9-10 (1975).

50. 458 U.S. 176, 192 (1982).

51. *Rowley*, 458 U.S. at 201 n.23.

contributing to society instead of being forced to remain burdens. Others, through such services, would increase their independence, thus reducing their dependence on society.⁵²

Moreover, according to one of the principal sponsors of the Act: “[P]roviding appropriate educational services now means that many . . . individuals [with disabilities] will be able to become a contributing part of our society, and they will not have to depend on subsistence payments from public funds.”⁵³

The text of the IDEA also makes clear Congress’s intent to foster self-sufficiency among students with disabilities.⁵⁴ The IDEA’s “Findings” section states that:

Improving educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities.⁵⁵

And, the Act goes on to proclaim that its purpose is “to ensure that all children with disabilities have available to them . . . special education and related services designed to meet their unique needs and *prepare them for further education, employment, and independent living.*”⁵⁶

To achieve these “equality” and “self-sufficiency and independence” goals, the IDEA “ensures” that students with disabilities receive a “free appropriate public education” (FAPE).⁵⁷ The vehicle for providing FAPE is an Individualized Education Program (IEP).⁵⁸ An IEP must put forth accommodations, services, and educational goals and objectives that address a student’s unique deficits and allow her to make educational progress.⁵⁹ A student is unlawfully denied FAPE if her IEP is not reasonably calculated to afford her meaningful educational benefit.⁶⁰

To be eligible for an IEP and the protections of the IDEA, a student must have a “qualifying disability” and require special education as a result of that disability.⁶¹ There are a number of enumerated qualifying disabilities under the

52. S. REP. NO. 94-168, at 9 (1975).

53. 121 CONG. REC. 19,492 (1975) (statement of Sen. Williams).

54. For congressional statements demonstrating this widely held intention, see 121 CONG. REC. 37,410 (statement of Sen. Randolph); *id.* at 37,416 (statement of Sen. Williams); *id.* at 37,024–25 (statement of Rep. Brademas); *id.* at 37,027 (statement of Rep. Gude); *id.* at 25,541 (statement of Rep. Harkin).

55. 20 U.S.C. § 1400(c)(1) (2012).

56. *Id.* § 1400(d)(1)(A) (emphasis added).

57. *Id.*

58. *Id.* § 1414(d) (defining individualized education program); see *J.D.G. v. Colonial Sch. Dist.*, 748 F. Supp. 2d 362, 379–80 (D. Del. 2010) (“An IEP is a detailed instruction plan tailored to address the child’s educational needs, and serves as the ‘primary mechanism’ to ensure that a disabled child receives a FAPE.” (citing *Susan N. v. Wilson Sch. Dist.*, 70 F.3d 751, 756 (3d Cir. 1995))).

59. 34 C.F.R. § 300.320 (2016).

60. *Polk v. Cent. Susquehanna Intermediate Unit 16*, 853 F.2d 171, 184 (3d Cir. 1988); *Wexler v. Westfield Bd. of Educ.*, 784 F.2d 176, 183 (3d Cir. 1986).

61. 34 C.F.R. § 300.8(a)(1)–(2) (delineating which disabilities qualify for special education services, but rendering a child ineligible for such services if the child, despite having one of the

IDEA, including hearing impairment, speech or language impairment, visual impairment, autism, specific learning disability, and emotional disturbance.⁶² “Emotional disturbance” is the category of impairment under which students with mental health disabilities are typically classified.⁶³ 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”: (1) “[a]n inability to learn that cannot be explained by intellectual, sensory, or health factors”; (2) “[a]n inability to build or maintain satisfactory interpersonal relationships with peers and teachers”; (3) “[i]nappropriate types of behavior or feelings under normal circumstances”; (4) “[a] general pervasive mood of unhappiness or depression”; or (5) “[a] tendency to develop physical symptoms or fears associated with personal or school problems.”⁶⁴

The IDEA provides for a number of supports for addressing the needs of students with emotional disturbance, and thus mental health disabilities. For example, the Act requires that students receive “related services” if they need those services to benefit from special education.⁶⁵ Related services include counseling services provided by social workers, psychologists, and guidance counselors; psychological assessments; positive behavioral interventions strategies; and psychological services.⁶⁶ The Act also provides for a number of specific behavioral supports, including functional behavior assessments⁶⁷ and behavior intervention plans.⁶⁸

As a result of these various guarantees, since the enactment of the IDEA, the outcomes of students with disabilities have significantly improved. In 1970, schools in the United States educated only twenty percent of children with disabilities.⁶⁹ Many state laws “exclud[ed] certain students from school, including children who were deaf, blind, emotionally disturbed, or intellectually

disabilities listed, would “only need[] a related service”).

62. *Id.*

63. See Shum, *supra* note 10, at 233 (framing emotional disturbance as the “point of access” to IDEA services for students with mental health issues). Additionally, the cases cited in note 65 *infra* assess IDEA eligibility of students with mental health disabilities by considering emotional disturbance. Because the IDEA’s emotional disturbance provision serves as the Act’s primary proxy for mental health disabilities, this Article draws upon scholarship that focuses on emotional disturbance specifically, and that which discusses mental health disabilities more generally. While the author acknowledges noteworthy variances across the mental health disability spectrum, and that emotional disturbance occupies only a limited subsection of this spectrum, the terms will occasionally be used interchangeably.

64. 34 C.F.R. § 300.8(c)(4)(i).

65. *Id.* § 300.8(a)(1).

66. *Id.* § 300.34(c)(2), (10), (14).

67. *Id.* § 300.350(f). Functional behavior assessments are defined as “[a] process for identifying the events that predict and maintain patterns of problem behavior.” 32 C.F.R. § 57.3 (2016).

68. 34 C.F.R. § 300.324(a)(2)(i).

69. U.S. DEP’T OF EDUC., THIRTY-FIVE YEARS OF PROGRESS IN EDUCATING CHILDREN WITH DISABILITIES THROUGH IDEA 3 (2014), <https://www2.ed.gov/about/offices/list/osers/idea35/history/idea-35-history.pdf>.

disabled.”⁷⁰ Currently, nearly all students with disabilities have access to public schools, and over thirty percent of students with disabilities are enrolling in postsecondary programs.⁷¹

While the IDEA’s impact on students with disabilities as a whole cannot be denied, the benefits of the Act have been unevenly distributed. In particular, students with mental health disabilities have fared worse under the Act than students with other types of disabilities. According to a congressional finding, “children with serious emotional disturbance remain the most underserved population of students with disabilities.”⁷² Students suffering from mental health issues are underserved in two respects. First, they are frequently denied the protections of the IDEA. Although nearly twenty percent of students ages thirteen to eighteen experienced serious mental health emergencies in a given year,⁷³ only 0.7% of all students from 1995 to 2004 were found eligible for special education as a result of an emotional disturbance.⁷⁴ Second, students with mental health disabilities who are found eligible under the IDEA do not receive adequate services. This is evidenced by the fact that over fifty percent of special education students ages fourteen and older who have mental health conditions drop out of school—the highest dropout rate of any disability group.⁷⁵ Moreover, these students receive lower grades than any other group of students with disabilities.⁷⁶ Finally, fifty-eight percent of youth with serious emotional disturbance are arrested within five years of leaving school, as opposed to thirty percent of all students with disabilities.⁷⁷

Considering the approach that a large number of courts, and in turn school districts, take to the IDEA, these disparate outcomes are unsurprising. Courts have limited the IDEA rights of students with mental health disabilities by framing their deficits as noneducational. As a result, these students are frequently denied the services they require to achieve equal educational opportunity and the chance to become self-sufficient, independent adults.

IV. EXCLUSION BY NARROWLY DEFINING “EDUCATIONAL”

Courts’ interpretation of the term “educational” is critical to students with mental health disabilities accessing IDEA services. In order to be eligible for services under the Act, a student must have a disability that “adversely affects

70. *Id.*

71. *Id.* at 2.

72. H.R. REP. NO. 101-544, at 39 (1990), reprinted in 1990 U.S.C.C.A.N. 1723, 1761. While this finding is over twenty years old, data on outcomes of students with mental health disabilities demonstrate that this issue persists. See MENTAL ILLNESS FACTS AND NUMBERS, *supra* note 3, at 1.

73. MENTAL ILLNESS FACTS AND NUMBERS, *supra* note 3, at 1.

74. 1 U.S. DEP’T OF EDUC., 28TH ANNUAL REPORT TO CONGRESS ON THE IMPLEMENTATION OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT 42 (2006) [hereinafter 28TH ANNUAL REPORT TO CONGRESS], <https://www2.ed.gov/about/reports/annual/osep/2006/parts-b-c/28th-vol-1.pdf>.

75. MENTAL ILLNESS FACTS AND NUMBERS, *supra* note 3, at 1.

76. Aviles et al., *supra* note 4, at 35.

77. *Id.*

[her] *educational* performance.”⁷⁸ Additionally, the IDEA requires only that an eligible student be afforded meaningful *educational* benefit.⁷⁹ Hence, if a student is struggling in areas deemed noneducational but is making educational progress, her school district has no obligation to provide her special education supports and services; or, in cases where the student is already eligible for special education, the school district has no obligation to provide any additional supports and services.

Students with mental health disabilities are routinely denied access to the special education services they need because many courts have adopted a narrow interpretation of “educational” that excludes the types of deficits associated with mental health issues.⁸⁰ Courts frequently interpret “educational” to mean “academic.”⁸¹ Consequently, as long as a student is able to make progress in traditional academic areas, such as reading, writing, and arithmetic, she will be denied services even if she is not making progress in a number of areas that are critical to self-sufficiency. This approach has a disparate impact on students with mental health disabilities because their disabilities often affect areas of development that are nonacademic, such as forming interpersonal relationships, regulating behavior, and interacting in community settings.⁸² Specifically, narrow court readings deny students with mental health disabilities (1) IDEA eligibility,

78. 34 C.F.R. § 300.8(c)(4)(i) (2016) (emphasis added).

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

80. As noted above, a number of authors have attributed the difficulty students with mental health disabilities have with obtaining special education services to the “adversely affects” language in 34 C.F.R. § 300.8. *E.g.*, Shum, *supra* note 10, at 244 (“[T]he adverse effect clause generally operates to exclude children from educationally related mental health services.”). However, there is limited discussion in the literature regarding the judicial approach to the term “educational” and the specific ways in which this approach has a disparate impact on students with mental health disabilities.

81. *See, e.g., Mr. N.C. v. Bedford Cent. Sch. Dist.*, 300 F. App’x 11, 13 (2d Cir. 2008) (assessing a student’s “educational performance” by considering solely his grade point average); *R.B. ex rel. F.B. v. Napa Valley Unified Sch. Dist.*, 496 F.3d 932, 946 (9th Cir. 2007) (finding that a student’s disability did not affect her educational performance because she maintained As and Bs); *J.D. ex rel. J.D. v. Pawlet Sch. Dist.*, 224 F.3d 60, 67 (2d Cir. 2000) (defining “educational” in terms of basic academic skills); *G.H. v. Great Valley Sch. Dist.*, No. 12-2735, 2013 WL 2156011, at *7 (E.D. Pa. May 20, 2013) (“[The student’s] grades and her assessment results during her year at General Wayne do not reflect a negative educational impact. [Her] grades throughout the year were above average, all As and Bs.”); *J.S. v. Scarsdale Union Free Sch. Dist.*, 826 F. Supp. 2d 635, 662 (S.D.N.Y. 2011) (equating “educational performance” with “academic achievement”); *C.T. v. Croton-Harmon Union Free Sch. Dist.*, 812 F. Supp. 2d 420, 433 (S.D.N.Y. 2011) (focusing on the student’s “ability to attain passing marks” when considering the impact of his disability on his education); *Katherine S. v. Umbach*, No. CIV.A. oo-T-982-E, 2002 WL 226697, at *11 (M.D. Ala. Feb. 1, 2002) (holding that the student’s education was not impacted by her disability because she “was able to make academic progress”). *But see Mr. I. ex rel. L.I. v. Me. Sch. Admin. Dist. No. 55*, 480 F.3d 1, 12 (1st Cir. 2007) (“[E]ducational performance . . . is more than just academics.”); *City of San Diego v. Cal. Special Educ. Hearing Office*, 93 F.3d 1458, 1467 (9th Cir. 1996) (“[E]ducational benefit [under the IDEA] is not limited to academic needs, but includes the social and emotional needs that affect academic progress, school behavior, and socialization.”). Thus, while a large number of courts have narrowly interpreted “educational,” the judiciary has not uniformly taken this approach.

82. Although these areas of development are nonacademic, they are essential to obtaining and maintaining employment, managing a household, and fulfilling community obligations.

(2) access to needed services even when they are IDEA eligible, and (3) access to placements that specialize in addressing mental health issues.

A. *Eligibility Determinations*

J.D. v. Pawlet School District,⁸³ *G.H. v. Great Valley School District*,⁸⁴ and *R.B. ex rel. F.B. v. Napa Valley Unified School District*⁸⁵ illustrate the approach that many courts take when considering the IDEA eligibility of a student struggling with mental health issues. In all three cases, the student at bar had mental health disabilities and exhibited significant deficits in socialization, coping with emotions, and other basic skills required for self-sufficiency. Nevertheless, the courts denied each student access to IDEA services because the respective students were capable of making some academic progress without services.

In *J.D.*, a school and private psychologist found that the student had a mental health disability.⁸⁶ As a result of his disability, the student engaged in aggressive behavior at school, struggled with interpersonal relationships, and experienced feelings of hopelessness.⁸⁷ At the same time, the student had an above-average IQ and maintained satisfactory academic performance.⁸⁸ Despite the student's disability and significant socio-emotional deficits, his school district determined that he was ineligible for special education services.⁸⁹ In considering the student's eligibility for IDEA services, the Court of Appeals for the Second Circuit held that educational performance encompasses only basic academic skills, such as writing, reading, math calculation, math reasoning, and listening comprehension.⁹⁰ Therefore, the court ignored the student's socio-emotional struggles and focused on his academic grades.⁹¹ Because the student achieved satisfactory grades, the court ruled in favor of the school district, holding that the student was not eligible for IDEA services.⁹²

Similarly, in *G.H.*, the Eastern District of Pennsylvania denied the student

83. 224 F.3d 60 (2d Cir. 2000).

84. No. 12-2735, 2013 WL 2156011 (E.D. Pa. May 20, 2013).

85. 496 F.3d 932 (9th Cir. 2007).

86. *J.D.*, 224 F.3d at 63.

87. *See id.*

88. *See id.*

89. *Id.*

90. *Id.* at 66–67.

91. *Id.* at 67–68. Socio-emotional development refers to the development of skills required to form and sustain positive relationships; experience, manage, and express emotions; regulate behavior and engage with various environments; and make responsible life decisions. *Social-Emotional Development Domain*, CAL. DEP'T EDUC. (Jan. 12, 2016), <http://www.cde.ca.gov/sp/cd/re/itf09socemoddev.asp>.

92. *J.D.*, 224 F.3d at 68–70. In arriving at its conclusion, the *J.D.* court relied on a state law definition of “educational performance.” *Id.* at 66. As discussed by Professor Mark Weber, there is nothing in the IDEA that delegates to states the power to define the Act's terms. Mark C. Weber, *The IDEA Eligibility Mess*, 57 BUFF. L. REV. 83, 116–17 (2009). Hence, the court's narrow interpretation of “educational” cannot be justified based on the “applicable” state law.

special education services after narrowly construing the meaning of “educational.” In the course of a school year, the student in *G.H.* engaged in at least five violent tantrums in which she threatened her parents with boiling water, knives, and scissors.⁹³ She also had a number of “problematic” social interactions at school and was admitted to a mental health facility for weeks at a time.⁹⁴ Given these behaviors, the court found that the student had an emotional disturbance.⁹⁵ But, because the student achieved satisfactory grades and performed well on state assessments, the court found that her disability did not impact her educational performance.⁹⁶ Accordingly, it held that the school district properly denied the student IDEA services.⁹⁷

In *R.B.*, the Court of Appeals for the Ninth Circuit also held that educational performance is typically gauged through “academic measures.”⁹⁸ The student in *R.B.* was diagnosed with reactive attachment disorder and post-traumatic stress disorder.⁹⁹ And, as a fifth grader, she was disciplined for, inter alia, “pinching and twisting classmates’ arms on the playground on multiple occasions, tearing up classroom materials, verbalizing her hope that her music teacher would die, poking a classmate with a pencil because he would not help her cheat, and using the f-word.”¹⁰⁰ However, she received mostly As and Bs on her report card.¹⁰¹ In light of this academic performance, the court found that the student was not eligible for services under the IDEA.¹⁰²

The students in *J.D.*, *G.H.*, and *R.B.* each displayed significant learning needs. Their disabilities caused them to struggle to learn critical skills required for adulthood, such as managing interpersonal relationships and behaving in a socially appropriate manner. But, unlike students with learning needs that more clearly impact academic performance, the courts denied these students access to the IDEA, leaving their deficits unaddressed.

B. Access to Services Once Eligible

Even when students with mental health disabilities are found eligible for special education, they are frequently denied access to the services they need to achieve self-sufficiency. This is because many courts have determined that school districts have only a minimal, circumscribed obligation to provide socio-emotional supports and services. Accordingly, regardless of the severity of a

93. *G.H. v. Great Valley Sch. Dist.*, No. 12-2735, 2013 WL 2156011, at *6 (E.D. Pa. May 20, 2013).

94. *Id.*

95. *Id.*

96. *See id.* at *6–7 (using the student’s testing and academic performance as bases to conclude that her disability did not impact her educational performance).

97. *Id.* at *8.

98. *R.B. ex rel. F.B. v. Napa Valley Unified Sch. Dist.*, 496 F.3d 932, 946 (9th Cir. 2007).

99. *Id.* at 935. In addition, at the age of three, R.B. was diagnosed and prescribed medication for attention deficit hyperactivity disorder. *Id.*

100. *Id.* at 945.

101. *Id.* at 946.

102. *Id.* at 946–47.

student's social, emotional, or behavioral difficulties, school districts are able to "meet" their IDEA obligations by simply providing some form of socio-emotional intervention to the student.¹⁰³

The narrow interpretation of "educational" discussed herein drives this result in two ways. First, given the IDEA's focus on *educational* needs, when "educational" is read to mean "academic," it necessarily follows that nonacademic needs (i.e., socio-emotional deficits) are not an IDEA priority and school districts need not provide robust supports for those needs. Second, under that definition of "educational," if a special education student is making some academic progress, then her school district does not need to provide her additional services even if she is regressing socially, emotionally, or behaviorally.

*Coleman v. Pottstown School District*¹⁰⁴ is illustrative. In *Coleman*, the student had a history of emotional disturbance that was related to his diagnoses of reactive attachment disorder, dysthymia, post-traumatic stress disorder, and obsessive-compulsive personality disorder.¹⁰⁵ In addition, he experienced a depressed skull fracture during his childhood.¹⁰⁶ These various issues were compounded by the student's tragic background, which included the death of a brother and the incarceration of a parent.¹⁰⁷ In school, the student engaged in a number of significant problem behaviors, including threatening staff and his classmates, arguing with others, and swearing in class.¹⁰⁸ Yet, the only mental health-related interventions the school district provided were thirty minutes of counseling each week and the setting of a few behavioral goals that were not individualized to the student's needs.¹⁰⁹ Nonetheless, despite finding that the student's behavior "deteriorated" while he was receiving those services, the Court of Appeals for the Third Circuit held that his IDEA rights were not violated.¹¹⁰

As discussed *infra*, prior to *Coleman*, the Third Circuit concluded in *Munir v. Pottsville School District*¹¹¹ that socio-emotional needs are distinct from educational needs, adopting the narrow "academic" interpretation of "educational." This view of "educational" appears to have influenced the

103. See, e.g., *Coleman v. Pottstown Sch. Dist.*, 581 F. App'x 141, 147 (3d Cir. 2014) (pointing to the student's passing grades as evidence that his IEP sufficiently provided him FAPE); *R.C. ex rel. S.K. v. Keller Indep. Sch. Dist.*, 958 F. Supp. 2d 718, 730–33, 737 (N.D. Tex. 2013) (finding that an emotionally disturbed student received FAPE because his IEP provided him with a behavioral contract and "special education counseling"); *C.T. v. Croton-Harmon Union Free Sch. Dist.*, 812 F. Supp. 2d 420, 432 (S.D.N.Y. 2011) (concluding that the school district had provided FAPE to a student, who previously required a residential placement due to severe mental health disabilities, despite his IEP including only counseling and a few behavioral goals).

104. 983 F. Supp. 2d 543 (E.D. Pa. 2013), *aff'd in part*, 581 F. App'x 141 (3d Cir. 2014). This author served as co-counsel for plaintiffs in *Coleman*.

105. *Coleman*, 983 F. Supp. 2d at 554.

106. *Id.*

107. *Id.*

108. *Coleman*, 581 F. App'x at 144 n.4; *Coleman*, 983 F. Supp. 2d at 555, 558–59 n.31.

109. *Coleman*, 581 F. App'x at 143–44.

110. *Id.* at 144 n.4, 148–49.

111. 723 F.3d 423 (3d Cir. 2013).

Coleman court's approach in the two ways noted above.

In support of its conclusion that the school district provided adequate socio-emotional services to the student, the court explained, “[the student’s] behavioral incidents did not result in any lost instructional time.”¹¹² In line with the “academic” interpretation of “educational,” this rationale reflects the perspective that socio-emotional needs are not an IDEA priority. Rather, under the court’s reasoning, those needs do not independently warrant robust intervention—they require comprehensive supports only if they have an undeniable impact on academics, such as preventing the student from attending school altogether. Relatedly, per the applicable standard of review, the court heavily deferred to the lower court’s decision,¹¹³ and that decision, in determining that the school district afforded the student FAPE, placed significant weight on “[a]cademic gains” that the student made.¹¹⁴ Thus, the student’s academic progress seems to have played a role in both courts’ determination that the student did not require additional supports—including socio-emotional interventions—to receive FAPE.

C. *Placements Specializing in Serving Students with Mental Health Needs*

Under the IDEA, a school district can be required to reimburse parents for tuition paid to a private placement when (1) the school district offers an inappropriate IEP, (2) the private placement chosen by parents is appropriate, and (3) the equities favor reimbursement.¹¹⁵ Tuition reimbursement is important because many students require specialized educational settings to make academic and socio-emotional progress. For example, a student with severe dyslexia might require a private placement that provides evidence-based, intensive reading instruction throughout the school day. Without the opportunity to obtain tuition reimbursement from their school district, parents may be unable to provide their child with this type of placement.

However, due to their narrow interpretation of “educational,” many courts have determined that school districts should not be financially responsible when a student is placed in a private setting primarily to address her mental health needs. Therefore, these courts have adopted a more restrictive approach to the “tuition reimbursement” test. Under this approach, to meet the second prong of the test, parents must demonstrate that the purpose for placing their student in the private setting is “primarily educational,” meaning focused on allowing the

112. *Coleman*, 581 F. App’x at 148.

113. *Id.* at 146; *id.* at 148 (“As the District Court considered the adequacy of [the student’s] education, or more specifically, the absence of evidence that it was inadequate, we cannot say that it clearly erred in finding [he] was not denied a FAPE.”).

114. *See Coleman v. Pottstown Sch. Dist.*, 983 F. Supp. 2d 543, 559–61 (E.D. Pa. 2013); *id.* at 570 (“It is significant that [the student’s academic] achievement tests taken at [the school district] showed signs of improvement.”); *id.* at 573 (explaining that the student’s IEP goals were adequate because he “received some meaningful educational benefit,” with “meaningful educational benefit” apparently referring to the student’s academic progress).

115. *See Florence Cty. Sch. Dist. Four v. Carter*, 510 U.S. 7, 12–13, 15–16 (1993); *Frank G. v. Bd. of Educ.*, 459 F.3d 356, 363–64 (2d Cir. 2006).

child to access academic learning.¹¹⁶ This approach deprives students with mental health disabilities of the same opportunities to be educated in specialized settings as students with other types of disabilities.¹¹⁷

*Dale M. v. Board of Education*¹¹⁸ demonstrates the restrictive approach that courts take to tuition reimbursement cases involving students with mental health issues. In *Dale M.*, the student attended a therapeutic day school because he had various socio-emotional problems.¹¹⁹ While attending the school, the student was frequently truant and consistently abused drugs.¹²⁰ After a year at the school, he was hospitalized with depression and placed on probation for committing burglary and grand theft of an automobile.¹²¹ Following these events, his mother placed him in a residential placement and sought reimbursement from his school district for the placement.¹²² The Court of Appeals for the Seventh Circuit denied the mother's request because it found that the student's issues warranting the placement were not "necessary for educational reasons."¹²³ As such, according to the court, the purpose of the placement was to address problems not "primarily oriented toward enabling a disabled child to obtain an education," which rendered the student's mother ineligible for reimbursement under the IDEA.¹²⁴

The Third and Ninth Circuits have taken a similar approach as the Seventh Circuit. In *Munir* the Third Circuit noted that school districts are "not . . . financially responsible for the placement of students who need [services] for

116. See, e.g., *Munir*, 723 F.3d at 432 (deciding that courts must consider whether some educational benefit—that is, benefit unrelated to social, emotional, or medical needs—is received and how strong the connection is between the services provided at the placement and the educational need); *Richardson Indep. Sch. Dist. v. Michael Z.*, 580 F.3d 286, 299 (5th Cir. 2009) (explaining that services must enable educational instruction); *Dale M. ex rel. Alice M. v. Bd. of Educ.*, 237 F.3d 813, 817–18 (7th Cir. 2001) (denying reimbursement because the student's problems were socio-emotional in nature, as opposed to "primarily educational"). But see *Jefferson Cty. Sch. Dist. R-1 v. Elizabeth E. ex rel. Roxanne B.*, 702 F.3d 1227, 1238 (10th Cir. 2012) (doubting the conclusions of the Fifth and Seventh Circuit Courts of Appeals that academic learning should be the focus in reimbursement).

117. The United Kingdom has structured its special education laws in a manner that significantly mitigates the potential for such an outcome. Under Part Three of the United Kingdom's Children and Families Act of 2014 (CFA), students with disabilities who require more assistance than is normally offered in a mainstream educational setting are eligible for Education, Health, and Care (EHC) Plans. Children and Families Act 2014, c. 6, § 37 (Eng.), http://www.legislation.gov.uk/ukpga/2014/6/pdfs/ukpga_20140006_en.pdf. When developing an EHC Plan, parents have the right to request a specific placement for their child, and the school district must secure the requested placement unless certain exceptions apply. *Id.* c. 6, § 38(1)–(2). By providing parents with the ability to identify a placement for their child, this approach protects students with mental health disabilities from being denied access to the placements they require.

118. 237 F.3d 813 (7th Cir. 2001).

119. *Dale M.*, 237 F.3d at 814.

120. See *id.*

121. *Id.*

122. *Id.*

123. *Id.* at 817 (distinguishing the case before it from *Kruelle v. New Castle Cty. Sch. Dist.*, 642 F.2d 687, 693 (3d Cir. 1981), where residential placement was "necessary for educational reasons").

124. *Id.*

medical, social, or emotional reasons, and receive only an ‘*incidental*’ educational benefit from that placement.”¹²⁵ According to the court, the key question when determining the appropriateness of a private placement is whether the student has to attend the placement because of educational, as opposed to medical, needs.¹²⁶

The student in *Munir* suffered from significant mental health issues that caused him to attempt suicide multiple times.¹²⁷ To address these issues and allow him to more consistently engage in his education, the student’s parents enrolled him in a therapeutic placement and requested tuition reimbursement from their school district.¹²⁸ But, the Third Circuit found that the student did not require a therapeutic placement to access academic services.¹²⁹ Rather, the court found that the placement was needed to treat only the student’s mental health needs.¹³⁰ As a result, it ruled in favor of the school district.

Like *Munir* and *Dale M.*, in *Clovis Unified School District v. California Office of Administrative Hearings*,¹³¹ the Ninth Circuit noted that tuition reimbursement should be awarded only if a placement is necessary for educational purposes rather than for “medical, social, or emotional problems” that are “quite apart from the learning process.”¹³² The student in *Clovis* suffered from neglect and abuse as a young child in the foster care system and developed serious emotional problems as a result.¹³³ Her adoptive parents originally placed her in a mental health day treatment program, but due to her “destructive” behavior, she required a residential treatment program.¹³⁴ At the residential program, her behavior did not improve and the program recommended that she be placed in an acute care facility.¹³⁵ The parents did so and sought reimbursement for the facility from the student’s school district. Although the school district agreed that the student required a highly structured and integrated environment to benefit from any educational program, the court found that her needs were not primarily educational and denied the parents’ claim.¹³⁶

In contrast to *Munir*, *Dale M.*, and *Clovis*, in *Frank G. v. Board of*

125. *Munir v. Pottsville Area Sch. Dist.*, 723 F.3d 423, 432 (3d Cir. 2013) (emphasis added).

126. *Id.* at 432.

127. *Id.* at 426, 428–29, 431.

128. *Id.* at 428–29.

129. *Id.* at 433–34.

130. *Id.* at 433.

131. 903 F.2d 635 (9th Cir. 1990).

132. *Clovis*, 903 F.2d at 643.

133. *Id.* at 639.

134. *Id.*

135. *Id.*

136. Specifically, the court determined that the student was placed in the program in order to receive “medical services.” *Id.* at 645. The court reasoned that the intensity of the mental health services provided to the student indicated that the services were “focused upon treating an underlying medical crisis.” *Id.*

Education,¹³⁷ the Second Circuit considered tuition reimbursement for a student placed in a private setting due to deficits arising from a learning rather than a mental health disability. As in *Munir, Dale M.*, and *Clovis*, the key issue in the case was the appropriateness of the student's private placement.¹³⁸ But, in *Frank G.*, the court's analysis hinged simply on whether the student made progress at the private placement, as opposed to the purpose of his placement.¹³⁹ Because the student improved his grades and achievement testing while in the private placement, the court found the placement appropriate and awarded tuition reimbursement.¹⁴⁰

Frank G., *Munir, Dale M.*, and *Clovis* illustrate the double standard created by the judiciary's flawed approach to students with mental health disabilities. Whereas the parents in *Frank G.* had to show only that the student made educational progress at his private placement, such a showing would not have been enough for the parents in *Munir, Dale M.*, and *Clovis*. Despite the fact that achieving emotional stability likely led to improved academic performance for the students in those cases, the courts did not even consider the students' academic or socio-emotional progress.

V. A LEGALLY FLAWED APPROACH

Despite the clear disparate impact that a narrow interpretation of "educational" has on students with mental health disabilities, it could be argued that this interpretation is proper under the IDEA. The IDEA concentrates on public education, and academics are the focal point of public education. Therefore, courts may simply be carrying out the intent of the Act's drafters.¹⁴¹

137. 459 F.3d 356 (2d Cir. 2006).

138. *Frank G.*, 459 F.3d at 365.

139. *Id.* at 364. Importantly, the outcome in *Frank G.* resulted not from that court's application of a different tuition reimbursement test, but rather, its decision to not impose the "primarily educational" hurdle on parents whose child has learning disabilities.

140. *See id.* at 366 (identifying the student's testing and academic performance as a factor in its determination that reimbursement was appropriate).

141. Relatedly, some might argue that the judiciary's approach is justified because families, as opposed to taxpayers, should bear the financial costs associated with addressing their children's socio-emotional needs. First, parents' decision making and parenting styles significantly influence a child's behaviors and emotional state. U.S. DEP'T OF HEALTH & HUMAN SERVS., MENTAL HEALTH: A REPORT OF THE SURGEON GENERAL 128, 130 (Howard H. Goldman et al. eds., 1999) [hereinafter MENTAL HEALTH: A REPORT OF THE SURGEON GENERAL], <https://profiles.nlm.nih.gov/ps/access/NNBBHS.pdf>. Accordingly, some contend that taxpayers should not foot the bill for "bad parents." *See id.* at 96 (highlighting the tendency to "blame parents for the mental health illness in children"). Second, families, not the state, are ultimately responsible for ensuring their children's well being. *See Our Responsibility to Our Nation*, PREVENT CHILD ABUSE AM. (Feb. 11, 2015), <http://preventchildabuse.org/latest-activity/our-responsibility-to-our-nation/>. But, this argument fails to consider the significant costs imputed on taxpayers when students with mental health disabilities do not receive appropriate supports and services. According to one study, a student with an emotional disturbance who does not receive special education services until age eight has a twenty-four percent chance of dropping out of school or requiring a juvenile or psychiatric program. Richard E. Mattison, Edward L. Spitznagel & Bernard C. Felix, Jr., *Enrollment Predictors of the Special Education Outcome for Students with SED*, 23 BEHAV. DISORDERS 243, 243, 253 (1998). If this student does not receive

However, in light of the text and purpose of the IDEA, courts interpreting “educational” to mean “academic” are committing legal error.¹⁴² Whether adopting a purposive or textualist approach to statutory interpretation, it is clear that Congress intended “educational” to encompass socio-emotional skills.¹⁴³

A. Purposivist Analysis

Under a purposivist approach to statutory construction, congressional intent is determined through an analysis of a statute’s purpose.¹⁴⁴ As demonstrated in Section III of this Article, the IDEA’s purpose is clear from its “Findings” and “Purposes” subsections and its legislative history; the Act seeks to foster self-sufficiency and independence by ensuring equal access to educational opportunities. This purpose requires an interpretation of “educational” that encompasses socio-emotional skills.

To become a self-sufficient, independent adult, a student must learn, inter alia, how to develop relationships with others; act appropriately in professional settings; communicate ideas, feelings, and desires; and carry out day-to-day tasks, such as grooming oneself and completing errands. While not strictly academic, these skills involve areas of learning that are necessary to students realizing Congress’s goal of self-sufficiency. *R.B.*, discussed *supra*, illustrates this point, as

special education services until age twelve, the chance of such an outcome increases to forty-three percent. *Id.* Another study found that: (1) less than half of young adults with an emotional disturbance were competitively employed three to five years after high school, (2) only a quarter were attending postsecondary schooling, and (3) only two-fifths were able to live independently. Jose Blackorby & Mary Wagner, *Longitudinal Postschool Outcomes of Youth with Disabilities: Findings from the National Longitudinal Transition Study*, 62 EXCEPTIONAL CHILD. 399, 404, 407–08 (1996). These outcomes impose substantial financial burdens on taxpayers in the form of entitlement benefits, expenses associated with the criminal justice system, and healthcare costs. See 121 CONG. REC. 25,541 (1975) (underscoring the costs associated with providing a lifetime of benefits to individuals not provided with proper educational services as adolescents).

142. See *supra* note 81 for a list of courts that have determined that the text and purpose of the Act require school districts to address all areas of a student’s disability, including nonacademic areas such as behavior, social, and emotional needs. See Lauren P. *ex rel.* David & Annmarie P. v. Wissahickon Sch. Dist., 310 F. App’x 552, 554–55 (3d Cir. 2009) determining that the school district’s “failure to address [the child’s] behavioral problems in a systematic and consistent way denied [her] a FAPE”; *M.C. v. Cent. Reg’l Sch. Dist.*, 81 F.3d 389, 394 (3d Cir. 1996) (concluding that student’s IEP should have focused on improving the student’s behavioral and communication skills); *Town of Burlington v. Dep’t of Educ.*, 736 F.2d 773, 788 (1st Cir. 1984) (stating that IEPs must address “all of a child’s special needs”), *aff’d sub nom.* *Sch. Comm. of Burlington v. Dep’t of Educ.*, 471 U.S. 359 (1985). The IDEA also requires schools to assess students in “all areas of suspected disability.” 20 U.S.C. § 1414(b)(3)(B) (2012). For a discussion of this language, see generally Mark C. Weber, “All Areas of Suspected Disability,” 59 LOY. L. REV. 289 (2013).

143. Of course, purposivism and textualism are not two monolithic theories of statutory interpretation; courts and legal scholars have put forth a number of versions of these approaches. See, e.g., R. Randall Kelso, *Statutory Interpretation Doctrine on the Modern Supreme Court and Four Doctrinal Approaches to Judicial Decision-Making*, 25 PEPP. L. REV. 37, 41–58 (1997) (offering four additional styles of interpretation: natural law, formalism, Holmesian, and instrumentalism). Nonetheless, most approaches to statutory interpretation are guided by general principles associated with purposivism and textualism.

144. See John F. Manning, *The New Purposivism*, 2011 SUP. CT. REV. 113, 120–21.

the struggles of the student in that case show the importance of such nonacademic skills. Without the ability to control her behaviors, including tearing up classroom materials and telling individuals in a professional setting that she hoped they would die, the student could not be expected to live as a self-sufficient, productive adult.¹⁴⁵ Accordingly, interpreting “educational” to mean “academic” leads to an absurd conclusion: the drafters of the IDEA proclaimed self-sufficiency to be the driving purpose of the Act but defined “educational” so that large swaths of students, like the student in *R.B.*, who require special education supports to become self-sufficient are denied those supports.

Along with undermining the Act’s goal of fostering self-sufficiency, defining “educational” to mean “academic” denies students with mental health disabilities access to the same learning opportunities as their nondisabled peers. In other words, that interpretation contravenes the IDEA’s emphasis on equal educational opportunities. Schools provide formal and informal opportunities for students to learn socio-emotional skills. Without special education supports and services, students suffering from mental health disabilities are unable to access these learning opportunities.

Socio-emotional instruction and learning are key responsibilities of educators.¹⁴⁶ Schools provide formal socio-emotional instruction through (1) classroom-based programming, such as lessons on feeling identification, goal setting, conflict resolution, and interpersonal problem-solving skills;¹⁴⁷ (2) school-

145. See *supra* notes 98–102 and accompanying text for a more detailed description of the student’s conduct.

146. See JOHN PAYTON ET AL., COLLABORATIVE FOR ACAD., SOC. & EMOTIONAL LEARNING, *THE POSITIVE IMPACT OF SOCIAL AND EMOTIONAL LEARNING FOR KINDERGARTEN TO EIGHTH-GRADE STUDENTS* 5 (2008), <http://static1.squarespace.com/static/513f79f9e4b05ce7b70e9673/t/526a25cae4b0f35a9effc678/1382688202240/the-positive-impact-of-social-and-emotional-learning-for-kindergarten-to-eighth-grade-students-technical-report.pdf> (“Preparing students for life success requires a broad, balanced education It is important . . . [that] schools . . . identify and effectively implement research-based approaches that promote children’s social, emotional, and academic engagement”); Joseph A. Durlak et al., *The Impact of Enhancing Students’ Social and Emotional Learning: A Meta-Analysis of School-Based Universal Interventions*, 82 CHILD DEV. 405, 406 (2011) (“There is broad agreement among educators, policy makers, and the public that educational systems should graduate students who are . . . able to work well with others from diverse backgrounds in socially and emotionally skilled ways, practice healthy behaviors, and behave responsibly and respectfully.”); Maurice J. Elias et al., *Implementation, Sustainability, and Scaling Up of Social-Emotional and Academic Innovations in Public Schools*, 32 SCH. PSYCHOL. REV. 303, 308 (2003) (“Sound education requires an equivalent focus on [socio-emotional development] and [intellectual development]”); David Osher et al., *A Comprehensive Approach to Promoting Social, Emotional, and Academic Growth in Contemporary Schools*, in 4 BEST PRACTICES IN SCHOOL PSYCHOLOGY 1, 1 (Alex Thomas & Jeff Grimes eds., 5th ed. 2007) (“Successful schools realize strong academic outcomes by combining high behavioral and academic expectations with equally high levels of student and adult support.”).

147. See, e.g., *Behavioral RTI*, OAKLAND UNIFIED SCH. DIST. (Mar. 4, 2012), <http://www.ousd.k12.ca.us/Page/1042> (listing a number of “Positive Behavioral Intervention Supports” provided to students, including social skills instruction and explicit instruction of expected behavior); *Social-Emotional Intervention and Support*, WINFIELD SCH. DIST., <http://www.winfield34.org/SEL> (last visited Apr. 1, 2016) (“All students receive core instruction geared toward promoting a positive

wide programming, including behavior support plans and other school climate initiatives;¹⁴⁸ (3) “single interventions,” such as small group problem-solving sessions and intervention plans when socio-emotional issues arise;¹⁴⁹ and (4) after-school programming that focuses on the development of personal and social skills.¹⁵⁰ Schools also provide informal socio-emotional learning opportunities. School is where students learn to, among other things, interact with their peers and authority figures, overcome adversity, collaborate on group projects, and manage their emotions.

Whereas students without mental health disabilities are able to access these various learning opportunities and develop a strong foundation of socio-emotional competencies, students with those disabilities often require direct, individualized interventions to develop socio-emotional skills. Equating “education” with “academics” denies these students access to the interventions they need to benefit from socio-emotional instruction and, therefore, denies them equal access to educational opportunities.

In sum, given the IDEA’s “equal opportunity” and “self-sufficiency and independence” goals, “educational” must be interpreted to include socio-emotional skills under a purposivist approach to statutory interpretation.

B. *Textualist Analysis*

Textualism assumes that Congress’s intent is most clearly expressed in the text of a statute.¹⁵¹ Courts adopting this approach begin their analysis with an examination of the plain language of the relevant statutory provision.¹⁵² If the language in the provision is “clear” and the plain meaning of the text does not lead to an “absurd” result, then “the words employed are to be taken as the final expression” of Congress’s intent.¹⁵³ But, if the text is unclear or leads to an absurd result, then a court must rely on contextual materials, such as canons of interpretation or previous judicial interpretations, to assist in discerning the

climate and actively practicing skills that promote self-awareness, self-management, social awareness, interpersonal skills, and decision making skills for responsible behaviors.”).

148. See PAYTON ET AL., *supra* note 146, at 5–8; Durlak, *supra* note 146, at 407–09; George Sugai & Robert Horner, *The Evolution of Discipline Practices: School-Wide Positive Behavior Supports*, 24 CHILD & FAM. BEHAV. THERAPY 23, 28 (2002) (“[S]ystemic efforts to implement and sustain effective behavioral interventions . . . focus on taking specific behavioral strategies, practices, and processes beyond the behavior of the individual. The effect has been an increased emphasis on the collective behaviors, working structures, and routines of educators and focusing on the whole school as the unit of analysis.”). School districts have begun providing more details of their behavior support plans and school climate initiatives online.

149. PAYTON ET AL., *supra* note 146, at 7 (providing a number of skills taught in these groups such as “recognizing feelings in oneself and others, making friends, and handling provocations by others”).

150. *Id.* at 14 (describing the positive results associated with after-school programs).

151. Nicholas S. Zeppos, *Legislative History and the Interpretation of Statutes: Toward a Fact-Finding Model of Statutory Interpretation*, 76 VA. L. REV. 1295, 1299–300 (1990).

152. *Id.* at 1334 (describing the “plain language” rhetoric of the textualist approach).

153. *United States v. Mo. Pac. R.R.*, 278 U.S. 269, 278 (1929).

meaning of the text.¹⁵⁴

As demonstrated by courts' conflicting interpretations of "educational," there is no clear plain meaning for the term.¹⁵⁵ Indeed, "education" is a broad term that is vaguely defined. According to Merriam-Webster's Dictionary, "education" means "the action or process of teaching someone especially in a school, college, or university."¹⁵⁶ The Oxford Dictionary defines the term as "[t]he process of receiving or giving systematic instruction, especially at a school or university."¹⁵⁷ Given the ambiguity inherent in the definition of "education," contextual materials are necessary to discern its meaning within the IDEA.

Internal context specific to the IDEA suggests that Congress intended the term "educational" to encompass more than academics.¹⁵⁸ The IDEA explicitly defines "academics," and it references "academics" in a number of sections,¹⁵⁹ thus illustrating that Congress explicitly considered this term when drafting the IDEA. Nonetheless, the drafters used "educational" rather than "academics" in the provisions of the Act specifically addressing eligibility, special education service requirements, and states' general responsibilities to students with disabilities.¹⁶⁰ In interpreting statutory text, courts presume that the use of different words is "purposeful and evinces an intention to convey a different meaning."¹⁶¹ Hence, Congress's decision to use "educational" rather than "academics" demonstrates that the IDEA is meant to address more than academic needs.

The "Evaluation Procedures" section in the Act's implementing regulations

154. See Bradley C. Karkkainen, "Plain Meaning": Justice Scalia's Jurisprudence of Strict Statutory Construction, 17 HARV. J.L. & PUB. POL'Y 401, 406-08 (1994).

155. In addition, although the IDEA has a robust "definitions" section, "education" is not defined therein. See 20 U.S.C. § 1401 (2012).

156. Education, MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY, <http://www.merriam-webster.com/dictionary/education> (last visited Apr. 1, 2016).

157. Education, OXFORD DICTIONARY, http://www.oxforddictionaries.com/us/definition/American_english/education (last visited Apr. 1, 2016).

158. "Internal context" refers to the use of text within the IDEA.

159. See, e.g., 20 U.S.C. § 1401(4) (defining "core academic subjects"); *id.* §§ 1400(c)(5)(e), 1463(b)-(c), 1472(a) (referencing "academics"); 34 C.F.R. § 300.304 (2016) (referencing "academics").

160. See, e.g., 20 U.S.C.A. § 1414 (a)(1)(C) (stating that states must implement evaluation procedures to determine whether a child's "educational needs" warrant special education); *id.* § 1415(f)(3)(E) (delineating that a hearing officer may find that a procedural violation denied a student FAPE if the violation deprived the student of "educational benefit"); 34 C.F.R. § 300.8 (stating that IDEA eligibility turns on whether a child's disability "affects [his] educational performance"); *id.* § 300.109 ("The State must have in effect policies and procedures to demonstrate that the State has established a goal of providing full educational opportunity to all children with disabilities.").

161. *Abbott v. Abbott*, 560 U.S. 1, 33 (2010) (Stevens, J., dissenting); see also *Nken v. Holder*, 556 U.S. 418, 430 (2009) ("[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." (alteration in original) (quoting *INS v. Cardoza-Fonseca*, 480 U.S. 421, 432 (1987))); *Russello v. United States*, 464 U.S. 16, 23 (1983) ("We refrain from concluding here that the differing language in the two subsections has the same meaning in each. We would not presume to ascribe this difference to a simple mistake in draftsmanship.").

is likewise informative. The section puts forth requirements for school districts to follow when evaluating students to determine their IDEA eligibility.¹⁶² Specifically, it states that public agencies “must ensure” that “[a]ssessments and other evaluation materials include those tailored to assess specific areas of educational need.”¹⁶³ The section also requires school districts to assess students in “all areas related to the suspected disability, including . . . social and emotional status.”¹⁶⁴ Read together, these provisions suggest that “social and emotional status” is an area of “educational need.”

External context further supports a broad interpretation of “educational.”¹⁶⁵ *Brown v. Board of Education*¹⁶⁶ is widely viewed as the catalyst for the IDEA, and the principles put forth in *Brown* informed the development of the Act.¹⁶⁷ In *Brown*, the Supreme Court stated:

[Education] is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.¹⁶⁸

Hence, the Supreme Court framed education as involving areas of socio-emotional development, including imparting cultural values and providing children with the skills needed to adjust to their environments. Given *Brown*'s impact on education and its close relationship to the IDEA, the Court's understanding of education provides important contextual evidence of the meaning of “educational” in the Act.

Finally, perspectives within the education community provide important context for this analysis. Educators and education scholars view education as comprising both social and emotional learning.¹⁶⁹ As demonstrated by the

162. 34 C.F.R. § 300.304.

163. *Id.* § 300.304(c)(2).

164. *Id.* § 300.304(c)(4).

165. “External context” is “where the [text] fits in a larger picture that includes legislative history, policy considerations, institutional arrangements, and facts about the world.” Karkkainen, *supra* note 154, at 408.

166. 347 U.S. 483 (1954).

167. See LaDonna L. Boeckman, *Bestowing the Key to Public Education: The Effects of Judicial Determinations of the Individuals with Disabilities Education Act on Disabled and Non-disabled Students*, 46 DRAKE L. REV. 855, 859–65 (1998) (characterizing *Brown* as “[t]he first giant step toward the inclusion of all children in the American public educational system,” and denoting the inclusion of children with disabilities as among the main purposes of the IDEA).

168. *Brown*, 347 U.S. at 493.

169. “Social and emotional learning” is a term of art in the education community; it involves the educational process by which children develop competencies in self-awareness, self-management, social awareness, relationship skills, and responsible decision making. *What Is Social and Emotional Learning?*, COLLABORATIVE FOR ACAD., SOC. & EMOTIONAL LEARNING, <http://www.casel.org/social-and-emotional-learning/> (last visited Apr. 1, 2016). School districts across the country have declared social and emotional learning critical to public education. See, e.g., *Social Emotional Learning*, NAPA

panoply of socio-emotional instruction offered by schools, teaching students social and emotional skills is a priority in the modern education system. In fact, states across the country have embedded social and emotional learning into their educational curriculums by adopting social and emotional learning standards.¹⁷⁰

Thus, as with purposivism, a textualist approach also requires a broader interpretation of “educational” than many courts have embraced thus far.

VI. UNDERSTANDING COURTS’ DECISIONS

Given that the IDEA clearly provides for a broad interpretation of “educational,” the narrow approach to this term adopted by a large portion of the judiciary does not appear to be driven solely by legal considerations. A review of the relevant case law suggests that this approach can be explained, in part, by the medical model of disability and attribution theory.¹⁷¹ Many courts

VALLEY UNIFIED SCH. DIST., <http://www.nvusd.k12.ca.us/PBISsel> (last visited Apr. 1, 2016) (“Research has shown that teaching social-emotional learning is as important as teaching math or language.”); *Social and Emotional Learning First*, AUSTIN INDEP. SCH. DIST. (last visited Apr. 1, 2016), <http://www.austinisd.org/academics/sel> (discussing the school district’s Department of Social and Emotional Learning); *Social-Emotional Intervention and Support*, WINFIELD SCH. DIST., *supra* note 147; *Social-Emotional Learning (SEL)*, SACRAMENTO CITY UNIFIED SCH. DIST., <http://www.scusd.edu/social-emotional-learning-sel-1> (last visited Apr. 1, 2016) (highlighting the school district’s social and emotional learning curriculum). Academic literature demonstrates that education scholars also view education as encompassing this type of learning. *See, e.g.*, BUILDING ACADEMIC SUCCESS ON SOCIAL AND EMOTIONAL LEARNING: WHAT DOES THE RESEARCH SAY? (Joseph E. Zins et al. eds., 2004) (examining the relationship between social and emotional education and school success); MAURICE J. ELIAS ET AL., PROMOTING SOCIAL AND EMOTIONAL LEARNING: GUIDELINES FOR EDUCATORS (1997); Durlak, *supra* note 146, at 405 (stating that “[t]eaching and learning in schools have strong social, emotional, and academic components”); Mark T. Greenberg et al., *Enhancing School-Based Prevention and Youth Development Through Coordinated Social, Emotional, and Academic Learning*, 58 AM. PSYCHOLOGIST 466–67 (2003) (asserting that the core mission of schools is to educate students to be knowledgeable, responsible, socially skilled, healthy, caring, and contributing citizens); Jeffrey S. Kress et al., *Bringing Together Educational Standards and Social and Emotional Learning: Making the Case for Educators*, 111 AM. J. EDUC. 68, 70 (2004) (“[A]ddressing the social and emotional developmental needs of children not only fosters the skills needed for life-long success but also helps children become better learners.”).

170. *See, e.g.*, 405 ILL. COMP. STAT. ANN. 49/15 (West 2016); *Department of Elementary and Secondary Education Guidelines for the Implementation of Social and Emotional Learning Curricula K-12*, MASS. DEP’T ELEMENTARY & SECONDARY EDUC., <http://www.doe.mass.edu/news/news.aspx?id=6403> (last visited Apr. 1, 2016); *School Counseling—Social, Emotional and Character Development*, KAN. ST. DEP’T EDUC., <http://www.ksde.org/Default.aspx?tabid=482> (last visited Apr. 1, 2016); *Social Studies*, PA. DEP’T EDUC., <http://www.education.pa.gov/Teachers%20-%20Administrators/Curriculum/Pages/Social-Studies.aspx#.VrSd4GSAOko> (last visited Apr. 1, 2016) (including student interpersonal skills within the Pennsylvania Department of Education’s curriculum); *see also Social and Emotional Development and Learning*, N.Y. ST. EDUC. DEP’T, <http://www.p12.nysed.gov/sss/sed/> (last visited Apr. 1, 2016) (putting forth voluntary guidelines pertaining to social and emotional learning for school districts).

171. While the medical model and attribution theory provide an informative framework for understanding the judiciary’s approach, they cannot completely explain courts’ decisions. For example, concerns about burdening the education system with the costs associated with meeting students’ socio-emotional needs also appear to influence interpretations of “educational.” *See* Robert Caperton Hannon, Note, *Returning to the True Goal of the Individuals with Disabilities Education Act: Self-*

narrowly defining “educational” tend to (1) view mental health issues through the lens of the medical model of disability, or (2) attribute the effects of mental health issues to character flaws rather than a disability.¹⁷²

A. Courts and the Medical Model of Disability

Whereas disabilities are impairments that our laws seek to accommodate and remediate, medical conditions (i.e., sicknesses) are pathologies that are to be treated. The educational system is an institution that is meant to remediate skills deficits, not provide interventions geared toward healing sickness. Therefore, viewing mental health issues through the medical model of disability leads to the conclusion that school districts are not responsible for addressing those issues. A number of cases demonstrate the tendency of courts to approach the plight of students with mental health issues through the medical model of disability.¹⁷³ This tendency appears to play a significant role in the differential treatment experienced by students with mental health disabilities under the IDEA.

In cases addressing tuition reimbursement for mental health-related private placements, courts often explicitly define mental health needs as medical in nature. For example, in *Munir*, the Third Circuit stated:

The relevant question, however, is whether [the student] had to attend a residential facility because of his educational needs—because, for

Sufficiency, 50 VAND. L. REV. 715, 738 (1997). In “Returning to the True Goal of the Individuals with Disabilities Education Act: Self-Sufficiency,” referring to the Supreme Court’s opinion in *Board of Education v. Rowley*, 458 U.S. 176 (1982), Robert Hannon argues:

To help a child reach a state of self-sufficiency, the child’s IEP should include counseling, psychological services, and drug treatment when required. Courts have not required school districts to provide such treatment, however, for the same reason *Rowley* did not impose a potential maximization standard-cost concerns. While the *Rowley* Court’s cost consideration arguably was legitimate, such cost concerns should not act as a barrier to prevent children from obtaining basic skills necessary to achieve self-sufficiency.

Id.

172. In “Disabling Ambiguities: Confronting Barriers to the Education of Students with Emotional Disabilities,” Professor Glennon argues that educators and courts often approach students with mental health disabilities through either a “punitive paradigm” or a “medical paradigm.” Glennon, *supra* note 10, at 296. These students are perceived to be either “willfully bad and deserving of punishment” or, alternatively, in need of medical help. *Id.* Glennon further argues that ambiguities in the IDEA allow the punitive and medical paradigms to guide schools’ interactions with students with mental health disabilities. *Id.* The punitive and medical paradigms articulated by Glennon are closely related to attribution theory and the medical model of disability discussed herein. As illustrated by this Article’s analysis of recent case law, the paradigms identified by Glennon continue to influence courts more than twenty years after her analysis of these issues. See *infra* Parts VI.A–B.

173. See, e.g., *Fort Bend Indep. Sch. Dist. v. Douglas A.*, 601 F. App’x 250, 254 (5th Cir. 2015) (describing a student’s mental health disability as a “condition” and mental health-related services as “treatment”); *Munir v. Pottsville Area Sch. Dist.*, 723 F.3d 423, 433 (3d Cir. 2013); *Shaw v. Weast*, 364 F. App’x 47, 52–54 (4th Cir. 2010) (grouping socio-emotional issues with medical issues); *Mary T. v. Sch. Dist. of Phila.*, 575 F.3d 235, 244 (3d Cir. 2009); *Clovis Unified Sch. Dist. v. Cal. Office of Admin. Hearings*, 903 F.2d 635, 645 (9th Cir. 1990) (asserting that mental health services received by student were “focused upon treating an underlying medical crisis”); *District of Columbia v. Walker*, No. 14-1941 (RMC), 2015 WL 3646779, at *6 n.5 (D.D.C. June 12, 2015) (grouping socio-emotional issues with medical issues).

example, he would have been incapable of learning in a less structured environment—or rather, if he required residential placement to treat medical or mental health needs segregable from his educational needs.¹⁷⁴

Hence, the court differentiated mental health needs from needs related to other types of disabilities by framing mental health issues as medical problems and asserting those issues require treatment as opposed to accommodation. In contrast, the court approached other types of disabilities through the social model of disability, framing them as “educational needs” that require accommodation, such as a more structured learning environment.¹⁷⁵ Given the court’s conclusion that mental health needs are medical needs, its decision to deny the parents’ claim for tuition reimbursement was a *fait accompli*,¹⁷⁶ the medical profession, rather than the education system, is responsible for addressing pathology.

The court’s approach in *Munir* was influenced by an earlier Third Circuit tuition reimbursement case, *Mary T. v. School District of Philadelphia*,¹⁷⁷ in which the court likewise found that reimbursement was not warranted for the student’s placement at a mental health facility. As in *Munir*, the court’s language and analysis demonstrate that (1) it viewed the student’s mental health disabilities through the medical model of disability and (2) this approach significantly affected its decision.

The student in *Mary T.* had learning disabilities, speech and language impairment, attention deficit hyperactivity disorder (ADHD), and “other mental health disorders.”¹⁷⁸ Demonstrating a “medical model” perspective, the court repeatedly referred to the student’s mental health issues as her “medical condition.”¹⁷⁹ It also equated mental health disabilities to spinal cord injuries and other archetypal medical issues.¹⁸⁰

The *Mary T.* court’s approach to the services provided by the student’s placement illustrate how the court’s adoption of the medical model impacted its decision. According to the court:

[The student]’s behavioral therapist . . . testified that [the student] was enrolled in the “mood disorders group, the psychotic disorders group, medication and psychoeducational group, anxiety disorders group, psychological skills group, life skills training group, and medication

174. *Munir*, 723 F.3d at 433.

175. *Id.*

176. See Nicole Pedi, Note, *Bright “Idea” or Missing the Mark?: The Third Circuit Restricts Reimbursement for Residential Placement Under the Individuals with Disabilities Education Act*, 59 VILL. L. REV. 847, 848–49 (2014) (identifying “*Munir* [a]s representative of an overarching transformation from the Third Circuit’s once broad treatment of qualifying residential placements to a more restrictive view of which services qualify for reimbursement”).

177. 575 F.3d 235 (3d Cir. 2009).

178. *Mary T.*, 575 F.3d at 239.

179. *Id.* at 241, 245, 249.

180. See *id.* at 244 (“A wide variety of facilities—treating a range of issues from substance abuse to mental health and from aging services to spinal cord injuries—can claim to be ‘residential programs.’”).

group.” When asked the purpose of these groups, the therapist responded: “[The student] will learn skills that will help with those specific areas. If [she] is having depressive symptoms it will teach her coping skills to work with her depression and anxiety.” For instance, the psychotic disorders group provided group therapy where the members talked about how psychotic thoughts affect their daily lives and the psychological skills group taught techniques for anger control and managing other emotions.¹⁸¹

Although these various services were designed to teach the student skills needed for self-sufficiency, the court characterized the services as noneducational. Specifically, the court framed the student’s instruction in coping skills, anger control, and life skills as medical in nature because such instruction was a response to the student’s “medical condition.”¹⁸² In turn, the court concluded that the student’s program was not for educational purposes and did not qualify for reimbursement. Thus, the court applied a circular logic driven by its initial labeling of mental health issues as medical conditions; according to the court, interventions in response to a mental health need are de facto medical services because a mental health need is a medical condition.

In the context of the IDEA, this tendency to distinguish mental health issues from other types of disabilities by characterizing mental health as a medical problem is misguided. Analytically, socio-emotional disabilities are no different than a number of disabilities that courts routinely view as “educational” in nature. The effects of ADHD, for example, often must be treated with medication as well as school-based interventions,¹⁸³ such as small class sizes, preferential seating, and repetitive directions. Likewise, the effects of depression often must be remediated with both types of interventions.¹⁸⁴ In addition to antidepressants, students with depression might need specialized instruction to develop coping skills and may also need to be provided opportunities to participate in high-interest activities that help motivate them in the school setting.¹⁸⁵ Nevertheless, despite the similarities between ADHD and depression, many courts view the former as a disability that school districts should accommodate and the latter as a sickness or condition that warrants solely medical treatment.¹⁸⁶ As illustrated by *Munir* and *Mary T.*, this flawed distinction denies students with mental health issues the same protections afforded to students with other types of disabilities.

181. *Id.* at 245.

182. *Id.*

183. MENTAL HEALTH: A REPORT OF THE SURGEON GENERAL, *supra* note 141, at 146–48.

184. *Id.* at 155–56.

185. *Id.*

186. *See, e.g.*, *Fort Bend Indep. Sch. Dist. v. Douglas A.*, 601 F. App’x 250, 251–52, 254 (5th Cir. 2015) (accommodating the student’s ADHD but treating his depression and other mental health disabilities as a medical condition).

B. Courts and Attribution Theory

Courts also frequently use language that implicates attribution theory. The rhetoric used by a large number of courts suggests that they perceive students with mental health issues to be “bad kids,” rather than students struggling with disabilities.¹⁸⁷ Consistent with attribution theory, this perception appears to make those courts less likely to view students with mental health issues as deserving of services and accommodations. *Dale M.* provides an apt example of this tendency, as well as its impact on legal outcomes.

As discussed above, the student in *Dale M.* suffered from depression and exhibited significant behavioral difficulties.¹⁸⁸ Nevertheless, despite his diagnosed mental health disability, the Seventh Circuit approached him as a “problem child.”¹⁸⁹ When describing his difficulties with school, the court stated that “[the student] did not like school, and was excluded from most school activities because of his belligerent attitude.”¹⁹⁰ Additionally, in denying the mother reimbursement for the student’s private placement, the court referred to the student as an “incorrigible truant and lawbreaker.”¹⁹¹ These statements make clear that the court viewed the student’s educational struggles as attributable, at least in part, to character flaws, rather than his disability.

This conceptualization of the student’s socio-emotional deficits directly impacted the court’s ultimate decision to deny his mother tuition reimbursement. In reaching that decision, the court indicated that the student’s placement was not appropriate under the IDEA because its primary purpose was to afford him an environment that minimized his likelihood of committing crimes.¹⁹² Hence,

187. See *Springer v. Fairfax Cty. Sch. Bd.*, 134 F.3d 659, 666 (4th Cir. 1998) (finding student ineligible for IDEA services because his “delinquent behavior appear[ed] to be the primary cause of his troubles”); *W.G. v. N.Y.C. Dep’t of Educ.*, 801 F. Supp. 2d 142, 170–71 (S.D.N.Y. 2011) (attributing the struggles of a student with “many serious emotional problems” to his refusal to learn, defiant behaviors, and a narcissistic personality); *Ashland Sch. Dist. v. Parents of Student R.J.*, 585 F. Supp. 2d 1208, 1231 (D. Or. 2008) (characterizing student with significant socio-emotional issues as a “defiant” teenager), *aff’d*, 588 F.3d 1004 (9th Cir. 2009); *Loch v. Bd. of Educ.*, 573 F. Supp. 2d 1072, 1085 (S.D. Ill. 2008) (concluding that the sole cause of the student’s educational struggles was that she “stopped attending classes and stopped making up her work,” without considering the impact of the student’s “adjustment disorder” on such behaviors); *Tracy v. Beaufort Cty. Bd. of Educ.*, 335 F. Supp. 2d 675, 688–89 (D.S.C. 2004) (using terms such as “unruly,” “delinquent,” and “criminal” to describe behavior of student struggling with depression). This perspective both affects courts’ approaches to IDEA eligibility determinations and influences the types of supports that schools offer to eligible students. Believing that students in this group are *choosing* to behave a certain way, schools regularly approach those students’ needs with punitive interventions. See Yael Cannon, Michael Gregory & Julie Waterstone, *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, 475–78 (2013) (describing the punitive approaches often adopted for students who have an emotional disturbance).

188. *Dale M. ex rel. Alice M. v. Bd. of Educ.*, 237 F.3d 813, 814 (7th Cir. 2001).

189. *Id.* (“[The student] soon became a serious disciplinary problem. He disrupted classes and was truant.”).

190. *Id.* at 815.

191. *Id.* at 817.

192. See *id.* at 817–18.

the court's belief that the student was a "bad kid" factored prominently into its analysis of his mother's claim. Indeed, the court's focus on the student's character appears to have resulted in a truncated, flawed analysis. The IDEA requires that students receive an opportunity to make meaningful educational progress.¹⁹³ Accordingly, if the student in *Dale M.* required a highly structured setting in order to manage his behavior and avoid significant disruptions in his education—as the court's reasoning regarding criminal activity suggested—then such a setting was necessary for him under the IDEA. However, rather than consider this nuance, the court simply dismissed the services requested by the mother as illegitimate.

VII. A MISSED OPPORTUNITY

Courts' approach to students with mental health disabilities under the IDEA is not only legally flawed—it is also extremely troubling from a policy perspective.¹⁹⁴ The IDEA provides a legal framework and resources that can leverage the unique position of schools to greatly bolster our efforts to identify and address mental health issues.¹⁹⁵ As a result of their institutional expertise and daily contact with children, schools are well positioned to identify mental health issues early in a child's life and provide the supports necessary to prevent those issues from escalating.¹⁹⁶ Schools' capacity for such intervention is particularly valuable given that early identification can sharply improve the individual outcomes of those with mental health disabilities.¹⁹⁷ The legal infrastructure and resources offered by the IDEA have the capability to

193. See 34 C.F.R. § 300.320 (2016) (describing educational progress and discussing how it will be measured).

194. See Shum, *supra* note 10, at 258 ("As a matter of public policy, our systems of care must address the need for the effective identification and treatment of students in need. Innovative, child-centered delivery systems of care such as school based mental health services provide policymakers, educators, and health care providers with the opportunities to partner in facilitating positive educational and mental health outcomes.").

195. See Cannon et al., *supra* note 187, at 425 ("The IDEA and its accompanying regulations include provisions that, when implemented effectively, can help to provide stability and promote social, emotional, and behavioral growth, as well as broader educational and life success.").

196. See Weithorn, *supra* note 10, at 1360 (citing Am. Acad. of Pediatrics, Comm. on Sch. Health, *Policy Statement: School-Based Mental Health Services*, 113 PEDIATRICS 1839 (2004); PROVIDING MENTAL HEALTH SERVICES TO YOUTH WHERE THEY ARE: SCHOOL- AND COMMUNITY-BASED APPROACHES (Harinder S. Ghuman et al. eds., 2002); Gail K. Porter et al., *School-Based Mental Health Services: A Necessity, Not a Luxury*, in THE HANDBOOK OF CHILD AND ADOLESCENT SYSTEMS OF CARE: THE NEW COMMUNITY PSYCHIATRY 250 (Andres J. Pumariega & Nancy C. Winters eds., 2003)). According to the Surgeon General, "[S]chools are major settings for the potential recognition of mental disorders in children and adolescents." MENTAL HEALTH: A REPORT OF THE SURGEON GENERAL, *supra* note 141, at 18; see also PRESIDENT'S NEW FREEDOM COMM'N ON MENTAL HEALTH, ACHIEVING THE PROMISE: TRANSFORMING MENTAL HEALTH CARE IN AMERICA 58 (2003) (<http://govinfo.library.unt.edu/mentalhealthcommission/reports/FinalReport/download/FinalReport.pdf>) ("Schools are in a key position to identify mental health problems early on and provide a link to the appropriate services."). Furthermore, research indicates that early identification of mental health issues "can sharply improve individual outcomes." *Id.* at 57.

197. PRESIDENT'S NEW FREEDOM COMM'N ON MENTAL HEALTH, *supra* note 196, at 11.

capitalize on these strengths and transform schools into powerful forces for addressing mental health issues. However, due to the differential treatment that students with mental health disabilities experience under the IDEA, we have largely failed to realize this opportunity.

The steps required to successfully address a child's mental health issues include detection of the issues, "comprehensive assessment and evaluation," identification, "recommendation for target intervention[s]," and providing recommended interventions.¹⁹⁸ Significantly, the IDEA has already established a legal framework that schools can rely on to carry out each of these steps.

First, the IDEA places an obligation on school districts to engage in "child find" efforts.¹⁹⁹ In order to receive federal funding under the IDEA, states must have in place a plan to "identif[y], locate[], and evaluate[]" all children who have a disability.²⁰⁰ As a result of this mandate, states have developed broad networks, which include healthcare providers, childcare providers, and school officials—including school psychologists and guidance counselors—to assist in identifying students with disabilities.²⁰¹

Second, once a student is identified as potentially disabled, the state or school district must evaluate her in "all areas related to the suspected disability, including . . . social and emotional status."²⁰² Hence, states and school districts must ensure school personnel, such as school psychologists, are trained in and have access to various assessments used to determine whether a student has a mental health disability.

Third, as part of the evaluation process, the student's "evaluation team" must determine the special education services that the student needs to make educational progress.²⁰³ As discussed above, these services may include psychological and counseling services, as well as behavioral interventions.²⁰⁴

Because this three-part framework closely tracks the steps required to effectively address mental health issues, schools—through the IDEA—have the legal infrastructure and guidance needed to transform their unique position in the lives of children into a potent force for improving the outcomes of students with mental health disabilities.

But, perhaps even more important than its legal framework, the IDEA offers schools critical resources that they can use to realize their potential to

198. Toma, *supra* note 16, at 261; see MENTAL HEALTH: A REPORT OF THE SURGEON GENERAL, *supra* note 141, at 136–39.

199. 34 C.F.R. § 300.111(a) (2016).

200. 20 U.S.C. § 1412(a)(3) (2012).

201. For example, Montana's Child Find, Referral, and Evaluation Plan states that educational institutions, including private schools, Head Start programs, and public health agencies are involved in the child find process. DIV. OF SPECIAL EDUC., MONT. OFFICE OF PUB. INSTRUCTION, MONTANA'S SPECIAL EDUCATION PROCESS: CHILD FIND, REFERRAL AND EVALUATION PLAN 9–12 (2002), http://www.pluk.org/Pubs/MT/MT_child_find_2002_269K.pdf.

202. 34 C.F.R. § 300.304(c)(4).

203. *Id.* § 300.305(a)(2)(iii)(A).

204. See *supra* notes 65–68 for a list of services provided by the IDEA to support students in special education.

address mental health disabilities.²⁰⁵ The U.S. Department of Education provides states around eleven billion dollars each year in general grants to assist them in fulfilling the IDEA's requirements.²⁰⁶ The Department of Education also (1) offers a number of discretionary grants to assist states and school districts with personnel and technology development, (2) funds projects designed to identify best practices and improve the provision of services to students with disabilities, and (3) provides direct technical assistance to states and school districts.²⁰⁷ This valuable assistance can be tailored to bolstering schools' capacity to address students' mental health needs. For example, the Department of Education established the Technical Assistance Center on Positive Behavioral Interventions and Supports, which assists states and school districts in addressing students' behavioral needs.²⁰⁸ These resources, combined with schools' unique level of contact with students and institutional knowledge of child development, provide schools with the capacity to offer comprehensive interventions for mental health disabilities.

If courts approach the IDEA in a manner that is more inclusive of mental health disabilities, schools will be incentivized—and empowered—to take a more active role in addressing those disabilities. In turn, schools will come closer to realizing their potential as powerful forces in the fight against the United States' mental health epidemic.²⁰⁹ Considering the scope and impact of the epidemic, we can no longer afford to miss this opportunity.

VIII. CONCLUSION

Beyond a lost opportunity, the treatment of students with mental health disabilities under the IDEA is an important civil rights issue. These students are being denied an equal opportunity to receive an education and become self-sufficient, independent citizens. Put simply, they are being discriminated against. While this discrimination may not be intentional, it amounts to a critical denial of equal rights and deserves the attention of the broader civil rights community.²¹⁰ Indeed, as long as individuals with mental health disabilities are

205. Beyond the IDEA, school districts receive funding and resources for school-based mental health services from a variety of other sources, including Medicaid, federal block grants, and private foundations. Shum, *supra* note 10, at 257.

206. *Part B Grant Award Letters and Funding Tables*, U.S. DEP'T EDUC., <http://www2.ed.gov/fund/data/award/idea/ptballyears.html> (last visited Apr. 1, 2016).

207. *OSEP Grant Opportunities and Funding: Information on Grant Opportunities and Funding from the Office of Special Education Programs (OSEP)*, U.S. DEP'T EDUC., <http://www2.ed.gov/fund/grant/apply/osep/index.html> (last visited Apr. 1, 2016).

208. *About Us*, POSITIVE BEHAV. INTERVENTIONS & SUPPORTS, <https://www.pbis.org/about-us> (last visited Apr. 1, 2016).

209. That said, schools should not be the only institutions addressing mental health disabilities. They do not have the institutional capacity or the expertise to address the most severe mental health issues on their own. Nonetheless, schools can do more, and the intent and text of the IDEA requires them to do more.

210. Within the civil rights community, discussion and awareness of the plight of these students is limited. Cf. Jonathan Kenneth Burns, *Mental Health and Inequality: A Human Rights Approach to Inequality, Discrimination, and Mental Disability*, 11 HEALTH & HUM. RTS. 19, 19 (2009) ("Mental

denied an equal opportunity to receive an education, they will be unable to achieve the momentum and influence required to eliminate the widespread injustices they have been forced to endure. The first step in addressing this discrimination and its effects is simple: courts and schools must start properly interpreting the IDEA.

disability and mental health care have been neglected in the discourse around health, human rights, and equality.”). Several factors appear to contribute to this outcome. Although the IDEA has a significant impact on the lives of students with disabilities, it is a complex statute and its nuances are not readily discernible. *Pedi*, *supra* note 176, at 848 (noting “multiple references to difficulties interpreting the IDEA and its practical ramifications”). In addition, the discrimination experienced by this group of students is subtle and, therefore, does not give rise to the same emotional fervor that accompanies openly hostile discrimination. *See Corrigan et al.*, *supra* note 20, at 164 (discussing research that “focuses on more subtle forms of behavioral discrimination that may regularly undermine the opportunities of those with mental illness”). As a result, this discrimination goes largely unnoticed.