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Litigating Trauma as Disability in American Schools

Taylor N. Mullaney*

Neva Bowers teaches French at Whitehaven High School in Memphis, Tennessee.¹ In five years at Whitehaven, approximately seven hundred students had passed through her classroom.² Teaching in a city where 43% of children live in poverty,³ Bowers says she has witnessed the effects of childhood trauma on her students firsthand.⁴ One student in particular comes to mind for Bowers: a young woman who was typically motivated and optimistic but seemed sidetracked one day in class. “I passed her a note that said, ‘Are you okay?’ and she wrote me back that she . . . had been raped a long time ago, and . . . [s]he was worried about the same thing happening to her sisters.”⁵

Unfortunately, that student’s experience with a potentially traumatic event is far from unique. After experiencing trauma, Bowers says, many of her students cannot continue to function normally in class. “[For] so many of my other students, the trauma often results in them shutting down and being more quiet or more guarded.”⁶

Bowers has noticed that a collaborative learning environment seems especially burdensome for students who face challenging circumstances outside of school: “In my class . . . you are always having to talk, turn and talk to a partner, or be in groups, and when students are closed off or really guarded . . . that is hard for them,” Bowers says.⁷ “Just paying attention is hard. To know some of the things that my students have gone through, and then to expect them to be in

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¹ Telephone Interview with Neva Bowers, World Language Teacher, Whitehaven High Sch. (Oct. 30, 2016).

² *Id.*

³ UNIV. OF MEMPHIS, MEMPHIS POVERTY FACT SHEET 1 (2016), <http://www.memphis.edu/benhooks/programs/pdf/2016povertyfactsheetwebversion.pdf>.

⁴ Telephone Interview with Neva Bowers, *supra* note 1.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

class and read everything they're supposed to and spend their whole brain thinking about French is . . . insane.”⁸

In-depth research on childhood trauma supports Bowers' observations.⁹ The National Child Traumatic Stress Network (NCTSN) reports that by high school, trauma can negatively impact students' behavior, performance, and attendance.¹⁰ Trauma can also cause intrusive thoughts that prevent paying attention and may increase difficulties concentrating, make students prone to aggressive behavior, and lead to low grades.¹¹

As a teacher, Bowers says she desperately wants to help her students, but she lacks the expertise and resources to do so effectively.¹² She felt powerless upon hearing that her student had been raped: “I reported it. But that was it . . . there was nothing, no other guidance for how I could communicate with her or things I could do in my classroom to support her.”¹³

Bowers recalls that same feeling of helplessness in January 2016, when a student at her school was shot and killed.¹⁴

“No one did *anything*,” she said. “I think we have a school psychologist? But she bounces back and forth between many different schools. I don't know who she is [S]tudents don't know their guidance counselors, so they're not going to go to them. They're going to go to their teachers. And as teachers, it might be nice to know what we ought to do when that happens.”¹⁵

A class action lawsuit currently pending in the Central District of California attempts to address the frustrations Bowers describes. *Peter P., et al., v. Compton Unified School District, et al.* aims to qualify trauma as a disability under Section 504 of the Rehabilitation Act and the Americans with Disabilities Act (ADA).¹⁶ If trauma was treated as a disability under these federal laws, children with trauma would be eligible for individualized services in schools to ensure a “free appropriate public education,” or an education comparable to that provided to students without disabilities.¹⁷ In part, this Comment argues that although pursuing a class action lawsuit and labeling trauma as a disability under the ADA may not ultimately prevail, plaintiffs need not win for the lawsuit to push Compton and other districts in the right direction: increased awareness of trauma's serious impact and more robust strategies to serve the children it affects.

⁸ *Id.*

⁹ Cheryl Smithgall, Gretchen Cusick, & Gene Griffin, *Responding to Students Affected by Trauma: Collaboration Across Public Systems*, 51 FAM. CT. REV. 401, 401 (2013) (noting that trauma can affect concentration, understanding, responding to classroom instruction, problem solving, abstraction, group work, sequential organization, forming relationships, classroom transitions, abstract thinking, and regulating emotions).

¹⁰ *School Personnel*, NAT'L CHILD TRAUMATIC STRESS NETWORK, <http://www.nctsn.org/resources/audiences/school-personnel/effects-of-trauma> (last visited Mar. 21, 2018).

¹¹ *Id.*

¹² Telephone Interview with Neva Bowers, *supra* note 1.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Complaint & Demand for Jury Trial at ¶ 197, *Peter P. v. Compton Unified Sch. Dist.* (C.D. Cal. 2015) (No. CV 15-3726-MWF (PLAx)), 2015 WL 2393294.

¹⁷ *Id.* at ¶ 214.

I. INTRODUCTION

The consequences of childhood trauma seep well beyond the walls of the classroom. Recent academic literature identifies childhood trauma as the “root [cause] of a public health crisis.”¹⁸ In a 2014 study, the Centers for Disease Control and Prevention found that the experience of childhood trauma could cost \$210,012 per child over his or her lifetime.¹⁹ That number amounts to \$124 billion for one year of confirmed childhood trauma cases over the lifespan of those children.²⁰ In the past, society treated children with traumatic experiences as outliers, believing that seemingly rare traumatic occurrences were effectively addressed through the criminal justice system, foster care, Child Protective Services, and alternative schools.²¹ Now, however, research suggests that in some cases, children become entangled in these systems as a *result* of experiencing childhood trauma—and that going through these systems might actually worsen symptoms of trauma.²²

In the juvenile justice system, 75% to 93% of youth report experiencing at least one traumatic event.²³ As a point of comparison, this means that students in the juvenile justice system exhibit post-traumatic stress disorder rates comparable to those of soldiers returning from Iraq.²⁴ Consequently, many of these youth struggle in school.²⁵ Simultaneously, success in school may actually mitigate trauma’s effects and the likelihood of high-risk behavior.²⁶

With this reality in mind, trauma experts advocate for an “effective, coordinated system of care for high-risk youth” across the juvenile justice, foster care, and public education systems.²⁷ Experts have come to a consensus that the very systems intended to serve children, increase social mobility, and mitigate trauma’s adverse effects may actually exacerbate symptoms of trauma.²⁸

This Comment will focus on effective implementation of approaches to deal with childhood trauma in public elementary and secondary schools. In Part II, I will define trauma through expert input, including examples of events that might qualify as traumatic depending on how individual children experience them.²⁹

In Part III, I will show that the United States is at a trauma-informed moment³⁰ by describing the history of trauma perception, the prevalence of recent trauma research, and

¹⁸ Jane Ellen Stevens, *Childhood Trauma: Root Causes of a Public Health Crisis*, 32 DEL. LAW. 10, 10 (2015).

¹⁹ *Id.* at 14 (referencing Fang et al., *The Economic Burden of Child Maltreatment in the United States and Implications for Prevention*, 36 CHILD ABUSE & NEGLECT: THE INT’L J. 156, 160 (2012)).

²⁰ Stevens, *supra* note 18, at 14 (referencing Fang et al., *supra* note 19, at 161).

²¹ *Id.* at 13-14.

²² Smithgall, Cusick, & Griffin, *supra* note 9, at 401–02.

²³ Samantha Buckingham, *Trauma Informed Juvenile Justice*, 53 AM. CRIM. L. REV. 641, 654 (2016).

²⁴ *Id.*

²⁵ Smithgall, Cusick, & Griffin, *supra* note 9, at 401.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.* at 402.

²⁹ *See infra* Part II.

³⁰ I use the term “trauma-informed moment” to mean that in 2017-2018, we 1) recognize what trauma is, 2) universally acknowledge the serious adverse effects of trauma on learning, and 3) have developed well-

approaches to combat the complex effects of trauma in schools. Part III will focus in particular on the flexible framework provided by the Trauma and Learning Policy Institute (TLPI).

In Part IV, I will turn to *Peter P.*, the case that strives to implement trauma-informed approaches in Compton, California schools.³¹ I will describe the lawsuit's general framework and procedural posture before exploring the potential advantages and the potential drawbacks to litigation as a strategy for implementation.

Finally, in Part V, I will provide alternative suggestions for implementation of trauma-informed approaches, placing litigation in the context of a broader movement toward addressing trauma in schools. Holistically, this Comment will argue that the time is ripe for implementation because we have arrived at a "trauma-informed moment," but litigation must be accompanied by other strategies to address trauma effectively on a large scale.

II. WHAT IS TRAUMA, AND HOW DOES IT AFFECT STUDENTS?

To understand how trauma affects learning, trauma must first be defined. According to experts, there are three "E's" of trauma: event, experience, and effects.³²

The Adverse Childhood Experiences study, which legislators have adopted, provides a list of events that are potentially traumatizing.³³ That list includes, but is not limited to, suffering sexual, verbal, or physical abuse, having a parent who suffers from mental illness or alcoholism, having a mother who is a domestic violence victim, having an incarcerated family member, and losing a parent through divorce or abandonment.³⁴ Importantly, the imposition of a negative experience *or* the absence of positive experiences, as in cases of neglect, can impair normal development and potentially act as trauma.³⁵

The second part of trauma—experience—is inherently subjective; not all events are automatically traumatizing, and individual children will experience difficult events in different ways.³⁶ Notably, there are certain factors that can shield children from the effects of trauma by fostering resilience, such as supportive adults and safe spaces.³⁷

Finally, even if a child has endured an adverse event and experienced it negatively, that child must show the effects or symptoms of trauma before he or she is said to have experienced trauma.³⁸ A child should never be treated for trauma without manifesting

researched, effective approaches to curtail those effects. Prior to this time period, such information was not yet available.

³¹ Complaint & Demand for Jury Trial, *supra* note 16, at ¶ 197.

³² Interview with Gene Griffin, Clinical Psychologist, formerly of Nw. Feinberg Sch. of Med., in Chicago, Ill. (Oct. 20, 2016); *see also* SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN., U.S. DEP'T OF HEALTH & HUMAN SERVS., CONCEPT OF TRAUMA AND GUIDANCE FOR A TRAUMA-INFORMED APPROACH 8(2014), <http://store.samhsa.gov/shin/content/SMA14-4884/SMA14-4884.pdf>.

³³ *Violence Prevention*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/violenceprevention/acestudy/about.html> (last updated June 14, 2016).

³⁴ *Id.*

³⁵ *Id.*; Interview with Gene Griffin, *supra* note 32.

³⁶ SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN., *supra* note 32, at 8.

³⁷ *Id.*

³⁸ *Id.*

symptoms.³⁹ Some symptoms include difficulty sleeping, nightmares, regressive behaviors, aggressive behaviors,⁴⁰ stomachaches and headaches, irritability, withdrawal, startling easily, and difficulty learning or concentrating.⁴¹ It is critical that all three “E’s,”—meaning event, experience, and effects—are present for a child to receive a trauma diagnosis and subsequent care.⁴²

Whether Bowers’ student would have received a trauma diagnosis is unclear since, to Bowers’ knowledge, the student never saw a school psychologist.⁴³ Certainly, though, her student was not alone in her struggle to concentrate and learn following a traumatic experience.⁴⁴ More specifically, those who experience toxic stress:

[Live] much of their lives in fight, flight or fright (freeze) mode. They respond to the world as a place of constant danger. With their brains overloaded with stress hormones and unable to function appropriately, they can’t focus on learning. They fall behind in school or fail to develop healthy relationships with peers or create problems with teachers and principals because they are unable to trust adults. Some kids do all three.⁴⁵

We cannot rely on schools to remedy all social ills, but perhaps we can connect them to psychological services and other resources without which students, teachers, and administrators all suffer. My hope is that a discussion of litigation and other strategies for implementing trauma-informed approaches will make a small contribution to this

³⁹ Interview with Gene Griffin, *supra* note 32.

⁴⁰ To understand why a child who experienced trauma might appear unnecessarily aggressive, Dr. Gene Griffin, an attorney and clinical psychologist who specializes in child welfare and trauma, often shares the following scenario: Suppose a parent has a habit of checking on his children when he gets up at night to use the restroom. He might glance inside their bedrooms to make sure their covers have not fallen off. If they have, he might walk to his child’s bedside and re-tuck the child in, gently pulling up the covers. If this wakes the child, he or she will see an adult looming above. A child who has not experienced trauma will likely have a normal, adaptive response; he or she will likely be unaffected and fall back asleep. Now, imagine a child who has been sexually abused. Upon seeing an adult overhead at night, he or she might scream, run, or become aggressive toward that adult. The adult, of course, has done nothing wrong—but most would argue the child has not done anything wrong either in this case, though he or she might be punished if the adult has no knowledge of the prior trauma. Neva Bowers acknowledged a related teaching scenario: “Never do we really do real training about things like touching a student on a shoulder—just a normal, casual thing that could be a huge trigger for someone.” Telephone Interview with Neva Bowers, *supra* note 1; Interview with Gene Griffin, *supra* note 32.

⁴¹ *Early Childhood Trauma*, NAT’L CHILD TRAUMATIC STRESS NETWORK, <http://www.nctsn.org/trauma-types/early-childhood-trauma/Symptoms-and-Behaviors-Associated-with-Exposure-to-Trauma> (last visited Mar. 27, 2018).

⁴² *Id.*

⁴³ Telephone Interview with Neva Bowers, *supra* note 1.

⁴⁴ Like Bowers, I was a teacher in Memphis City Schools/Shelby County Schools. I taught high school English and French for two years. My students were kind, capable, and resilient. In the short two years I spent teaching, students endured problems related to drug use, weapons, and foster care, as well as the incarceration and untimely deaths of fellow students and other loved ones. My experience was extremely limited. Even so, toxic stress was real. It had an undeniable impact on students’ ability to think clearly and learn effectively. Guidance counselors were overburdened because they led registration and the college application process, and other forms of psychological assistance were rare.

⁴⁵ Stevens, *supra* note 18, at 13.

“trauma-informed moment” such that, step by step, we can implement solutions for kids who deserve so much better than what we currently offer them.⁴⁶

III. RECOGNIZING A “TRAUMA-INFORMED” MOMENT

Despite its widespread prevalence and potentially devastating effects, trauma has not always been in our collective consciousness as a major problem in public schools. According to the TLPI, “often without realizing it, teachers have been dealing with trauma’s impact for generations. What *is* new is that trauma researchers can now explain the hidden story behind many classroom difficulties plaguing our educational system.”⁴⁷

Until the 1990s or early 2000s, mental illness was a sort of “catch-all” for children exhibiting symptoms of trauma.⁴⁸ In the past decade or so, the pendulum has swung so far toward recognizing trauma that there may be a tendency toward over-diagnosis today.⁴⁹ Nevertheless, it is critical to bear in mind how “trauma-sensitive school environments benefit all children—those whose trauma history is known, those whose trauma will never be clearly identified, and those who may be impacted by their traumatized classmates.”⁵⁰

Over the last ten to twenty years, research regarding childhood trauma grew significantly. Online searches for “trauma-informed schools” have increased by nearly 100% in the U.S. since 2011.⁵¹ Searches for “childhood trauma” have increased over 50% during that time.⁵² The National Institutes of Health conducted a major study about how traumatic stress affects the brain in 2006⁵³ and another about the impact of trauma and trauma-informed care in 2014.⁵⁴ On legal research databases, the vast majority of articles related to “childhood trauma” and “trauma-informed practices” were published in 2013 and later.⁵⁵ Though we cannot draw specific conclusions from these trends, at the very least, these sources suggest a rise in conversation about trauma.

⁴⁶ *Id.*

⁴⁷ SUSAN F. COLE ET AL., HELPING TRAUMATIZED CHILDREN LEARN: SUPPORTIVE SCHOOL ENVIRONMENTS FOR CHILDREN TRAUMATIZED BY FAMILY VIOLENCE 15 (2005), <https://traumasensitiveschools.org/wp-content/uploads/2013/06/Helping-Traumatized-Children-Learn.pdf>.

⁴⁸ Interview with Gene Griffin, *supra* note 32.

⁴⁹ *Id.*

⁵⁰ COLE ET AL., *supra* note 47, at 112.

⁵¹ Search Trend for “Trauma Informed Schools”, GOOGLE TRENDS, <https://www.google.com/trends/explore?geo=US&q=trauma%20informed%20schools> (select time range as “2004 to present”).

⁵² Search Trend for “Childhood Trauma”, GOOGLE TRENDS, <https://www.google.com/trends/explore?geo=US&q=childhood%20trauma> (select time range as “2004 to present”).

⁵³ J. Douglas Bremner, *Traumatic Stress: Effects on the Brain*, 8 DIALOGUES CLINICAL NEUROSCIENCE 445, 445 (2006).

⁵⁴ U.S. DEP’T OF HEALTH & HUMAN SERVS., A TREATMENT PROTOCOL: TRAUMA-INFORMED CARE IN BEHAVIORAL HEALTH SERVICES 1 (2014), https://www.ncbi.nlm.nih.gov/books/NBK207201/pdf/Bookshelf_NBK207201.pdf.

⁵⁵ This claim is based on Westlaw and Lexis searches for “trauma-informed schools” and “children with trauma” under “Secondary Sources.”

Alongside growth in trauma awareness has come an increase in research about approaches to address it effectively in schools. One of those initiatives will be explored in depth here to illustrate how schools might approach the issue. The TLPI works to ensure that children traumatized by adverse childhood experiences can succeed in school through various forms of research and advocacy.⁵⁶ The Massachusetts organization provides an intensively researched, flexible framework for how schools can become “trauma-sensitive.”⁵⁷ A pattern of violence among kids who were often suspended or expelled⁵⁸ in school in Massachusetts catalyzed TLPI’s efforts in the mid 1990s.⁵⁹ Experts from related disciplines created a task force to study the effects of domestic violence on education, and from that study, they began to understand more precise ways in which trauma impacts the classroom.⁶⁰ Following this study, the Massachusetts legislature allocated grants to schools for experimentation with trauma-sensitive approaches.⁶¹

In 2000, Massachusetts Advocates for Children and Harvard Law School partnered to publish *Helping Traumatized Children Learn*.⁶² In 2013, they published a second volume entitled *Helping Traumatized Children Learn: Creating and Advocating for Trauma-Sensitive Schools*.⁶³ The first volume provides a flexible framework⁶⁴ to integrate a comprehensive trauma-sensitive approach in schools.⁶⁵ The report focuses on three topics: the impact of trauma on learning, a plan for schools to create an overall environment that supports traumatized children, and policy recommendations.⁶⁶ The evidence-based policy recommendations lay out a plan: 1) the legislature must provide the funds necessary to develop school-wide action plans, 2) stakeholders must come to a consensus about early intervention, 3) teachers and administrators must learn trauma-sensitive approaches, and 4) community mental health professionals must work with

⁵⁶ *About TLPI: History and Background*, TRAUMA & LEARNING POL’Y INITIATIVE, <https://traumasensitiveschools.org/about-tlpi> (last visited Mar. 22, 2018).

⁵⁷ *Resources: TLPI Publications*, TRAUMA & LEARNING POL’Y INITIATIVE, <https://traumasensitiveschools.org/tlpi-publications> (last visited Mar. 22, 2018).

⁵⁸ Bowers emphasized a similar issue at her own school, saying her students receive in-school suspension or out-of-school suspension when they break rules. She says she believes those consequences have no restorative effect and eventually become meaningless. She wishes her students had access to a psychologist or a team of psychologists: “Whether it’s a kid who has experienced trauma at home and needs help processing and being able to cope with that to be able to perform academically, or a kid who wore an out-of-uniform shirt to school, or a kid who cussed out a teacher, our focus should be on keeping them in the classroom and empowering them to learn more and changing their behavior rather than sending them out...That’s something we don’t have the funds for.” Telephone Interview with Neva Bowers, *supra* note 1.

⁵⁹ *About TLPI: History and Background*, *supra* note 56.

⁶⁰ *Id.*

⁶¹ *Id.*; see also *DESE Grant Program 2018*, TRAUMA & LEARNING POL’Y INITIATIVE, <https://traumasensitiveschools.org/dese-grant-program/> (last visited Mar. 22, 2018).

⁶² *Resources: TLPI Publications*, *supra* note 57.

⁶³ *Id.*

⁶⁴ COLE ET AL., *supra* note 47, at 7 (acknowledging that the “flexible framework” was created to be adaptable to various schools’ educational philosophies, organizational structures, and community needs).

⁶⁵ *Id.*

⁶⁶ *Id.* at 1.

schools.⁶⁷ The ideal progression, then, is 1) funding, 2) buy-in, 3) training school personnel, and 4) connecting schools with outside health professionals.⁶⁸

More specifically, the report's flexible framework includes staff training to cover three core areas: 1) strengthening relationships between students and teachers and conveying how vital a role staff play, 2) identifying and using outside support, such as social workers and psychologists, and 3) helping students regulate their emotions to gain social and academic confidence.⁶⁹ The report provides a specific picture of how that training might be carried out in the classroom.⁷⁰

This kind of training seems potentially beneficial for teachers like Bowers when they are confronted with student trauma; it provides a way to contextualize their role and enables them to refer students to more help than what they are equipped to give, while still driving students toward academic gains.⁷¹ Bowers believes the problem is that "so many kids go through these things not knowing who they could turn to and not really even knowing that's [psychological services] an option."⁷² The report provides various ways to link students with mental health professionals so that psychological services would be a realistic option.⁷³ TLPI makes its resources available for free download online so that all school systems can access them.⁷⁴

The second volume of *Helping Traumatized Children Learn* focuses heavily on buy-in, or assessing when schools are ready for a tailored trauma-sensitive approach.⁷⁵ That assessment and preparation process, according to the second report, can include educating teachers and staff about the impact of trauma on learning, performing surveys to understand employees' perspectives, and holding school-wide discussions.⁷⁶ It also prioritizes the need to measure progress as the trauma-sensitive approach progresses.⁷⁷ Contributors indicate that investment at every level of the school is necessary for a trauma-sensitive approach to be effective over time.⁷⁸ This point is critical to analyzing the best ways to implement such approaches.

This Comment emphasizes the TLPI's framework because it is extraordinarily comprehensive and research-based.⁷⁹ Clearly, however, TLPI is not the only organization doing excellent work around trauma-sensitive approaches. Several examples follow.

⁶⁷ *Id.* at 80–83.

⁶⁸ *Id.*

⁶⁹ *Id.* at 50.

⁷⁰ *Id.* at 50–58.

⁷¹ *Id.*

⁷² Telephone Interview with Neva Bowers, *supra* note 1.

⁷³ COLE ET AL., *supra* note 47, at 58–60.

⁷⁴ *Resources: TLPI Publications, supra* note 57.

⁷⁵ SUSAN F. COLE ET AL., *Helping Traumatized Children Learn: Creating and Advocating for Trauma-Sensitive Schools* 44–55 (2013), <https://traumasensitiveschools.org/wp-content/uploads/2013/11/HTCL-Vol-2-Creating-and-Advocating-for-TSS.pdf>.

⁷⁶ *Id.*

⁷⁷ *Id.* at 66–67, 70–82.

⁷⁸ *Id.* at 36–38.

⁷⁹ COLE ET AL., *supra* note 47, at 12, 85–86 (noting that this 129 page report, which includes discussion of the impact of trauma on learning, the flexible framework, policy recommendations, and more, was the result of "years of case work, coalition building, and policy analysis"); Jane Ellen Stevens, *Addressing Childhood Trauma in San Francisco's El Dorado Elementary School*, TRAUMA & LEARNING POL'Y

The NCTSN has researched and amassed *Treatments That Work*.⁸⁰ Its website provides evidence-based programs and practices, fact sheets on clinical and research evidence for trauma-informed interventions, a broad description of how effective interventions work, and forty-six specific interventions with targeted populations.⁸¹

Additionally, in 2008, experts at the University of California at San Francisco introduced the Healthy Environments and Response to Trauma in Schools (HEARTS) program to address traumatized children's needs in the San Francisco Unified School District.⁸² Borrowing from TLPI's research,⁸³ HEARTS involves a three-level approach. The first level, for students, prescribes individual and group psychotherapy as well as classroom presentations on how to regulate emotions under stress.⁸⁴ The second level focuses on caregivers, including parents and school staff.⁸⁵ Parents can attend workshops and support groups, while professional development and consultations with mental health professionals are available for school staff.⁸⁶ Finally, at the school district level, policies and procedures are "examined through a trauma lens," which might mean employing restorative justice approaches, as opposed to traditional discipline like suspensions and expulsions.⁸⁷ The San Francisco school district reported that these measures were successful at the three schools where they were piloted,⁸⁸ and the District was later hailed as one of several model school systems for addressing student trauma.⁸⁹

Still, other programs have focused more specifically on changing disciplinary practices as a way to mitigate trauma. For example, Sound Discipline, a Seattle-based nonprofit, helps teachers address the root causes of challenging behaviors.⁹⁰ Some schools, like Aspire Coleman Elementary in Memphis, Tennessee, have addressed trauma on their own by considering trauma in relation to students' identities. In doing so, Aspire saw suspensions decrease by two-thirds.⁹¹ Positive results at these schools and in Massachusetts demonstrate that experts have researched and developed models that work.

INITIATIVE (June 6, 2014), <https://traumasensitiveschools.org/addressing-childhood-trauma-san-francisco-el-dorado-elementary-school/>.

⁸⁰ *Treatments that Work*, NAT'L CHILD TRAUMATIC STRESS NETWORK, <http://www.nctsn.org/resources/topics/treatments-that-work/promising-practices> (last visited Mar. 27, 2018).

⁸¹ *Id.*

⁸² Stevens, *supra* note 79; Patricia Yollin, *UCSF Brings HEARTS to Children Affected by Trauma*, U. CAL. S.F. (July 19, 2012), http://coe.ucsf.edu/coe/spotlight/ucsf_hearts_story.html.

⁸³ Stevens, *supra* note 79.

⁸⁴ Yollin, *supra* note 82.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ Stevens, *supra* note 79.

⁸⁹ *See* Complaint & Demand for Jury Trial, *supra* note 16, at ¶ 171. Other school systems noted in the *Peter P.* complaint for their beneficial trauma-sensitive programming include California's Oakland Unified School District and Vallejo City Unified School District.

⁹⁰ SOUND DISCIPLINE, <http://www.sounddiscipline.org> (last visited Mar. 27, 2018).

⁹¹ Caroline Bauman, *Here's how One Memphis School is Changing the Way it Disciplines Girls of Color*, CHALKBEAT (Mar. 2, 2017), <http://www.chalkbeat.org/posts/tn/2017/03/02/heres-how-one-memphis-school-is-changing-the-way-it-disciplines-girls-of-color/> (noting that a special focus on how girls of color have experienced trauma, achieved through staff training and open discussions with students, led to school-wide decreases in suspensions).

Following the success of these schools' models, we should share these tactics in organizations, schools, and districts nationwide.

Bowers is not alone in her desire for these models to be implemented within schools. When leaders tried to implement trauma-sensitive approaches in Illinois schools, teachers were extremely receptive, saying they had always recognized trauma as a significant problem and were desperate for resources.⁹² Now that we are at a pivotal "trauma-informed moment," we stand at a crossroads. If we care about children with trauma moving past their adverse experiences to perform well in school and increase social mobility, the remaining question is how best to implement these approaches in school districts across the country.

IV. EVALUATING LITIGATION AS A WAY TO IMPLEMENT TRAUMA-SENSITIVE APPROACHES

On May 18, 2015, five students and three teachers from the Compton Unified School District (CUSD or the District) in Compton, California, filed a class action complaint.⁹³ The complaint outlines the serious effects of trauma on learning and demands that the school district devise a plan to address the trauma many of its students have endured, such that they may receive a "free appropriate public education" (FAPE).⁹⁴ The plaintiffs allege that the education CUSD currently provides violates Section 504 of the Rehabilitation Act, regulations about location and notification, procedural safeguards, regulations regarding appropriate public education from the Department of Education, and the ADA.⁹⁵ Their complaint effectively marks the first attempt at using litigation to implement trauma-sensitive approaches.⁹⁶

The complaint also asserts that the District currently punishes students⁹⁷ instead of taking reasonable steps to address their needs with existing evidence-based practices.⁹⁸ Parties to the suit demand that CUSD "incorporate proven practices that address trauma in the same way public schools have adapted and evolved in the past decades to help students who experience physical or other barriers to learning."⁹⁹ The complaint specifically names certain "effective reasonable accommodations," including:

⁹² Interview with Gene Griffin, *supra* note 32.

⁹³ Complaint & Demand for Jury Trial, *supra* note 16, at ¶¶ 40–47, 54.

⁹⁴ *Id.*

⁹⁵ *Id.* at ¶¶ 200, 202, 205, 210, 214, 223.

⁹⁶ Until *Peter P.*, no case had alleged similar violations with a proposed remedy of implementing trauma-informed approaches. The complaint acknowledges that it is the first of its kind.

⁹⁷ Bowers echoes this frustration from her own experience: "The issue is, so many of these students, they just get swept up by all of these suspensions and referrals. By the time they're a junior and a senior, they've been suspended ten times. It doesn't mean anything anymore. They're not learning at all. And no one is talking to them about it because their teachers are busy, their parents are fed up because they keep getting suspended...the administration's just mad at them and writing them up as much as possible so they can kick them out. I would love to see us handling those situations with more focus on, 'Okay how can we help this kid?'.... Oftentimes those are probably the kids who have experienced a lot of trauma, but we can't dig that deep into it because we don't have the money. We, we don't have the time, so they're going to keep lashing out." Telephone Interview with Neva Bowers, *supra* note 1.

⁹⁸ Complaint & Demand for Jury Trial, *supra* note 16, at ¶ 7.

⁹⁹ *Summary & Key Documents*, TRAUMA & LEARNING, <http://www.traumaandlearning.org/summary--key-documents> (last visited Apr. 2, 2018).

[P]roviding training, coaching, and consultation to teachers, administrators, and all school staff for effective strategies for interacting with class members in a positive and trauma-sensitive way, establishing restorative practices to prevent, address, and heal after conflict, and making mental health professionals available who could assist in the diagnosis of trauma and implementation of interventions.¹⁰⁰

On September 15, 2015, orders were issued denying defendants' motion to dismiss,¹⁰¹ denying plaintiffs' motion for class certification,¹⁰² and denying plaintiffs' motion for preliminary injunction.¹⁰³ The language of the order denying the motion to dismiss, however, was notably cautious.¹⁰⁴ Now, both parties may be engaged in attempts to negotiate and settle before the more adversarial parts of litigation ensue.¹⁰⁵ As an implementation strategy, litigation poses both advantages and disadvantages for any grassroots-oriented social movement, and it is worth examining *Peter P.* on its merits to determine the best implementation tactics moving forward.

Peter P. proposes providing services for students who have experienced trauma, like those that schools must currently provide for students with physical disabilities and other documented learning disabilities in order to provide a FAPE.¹⁰⁶ The lawsuit calls for “whole school trauma-sensitive practices” and “an approach that creates a foundational infrastructure that provides a level of mental health support appropriate to meet student needs.”¹⁰⁷ On its face, this plan seems aligned with TLPI's trauma-sensitive schools flexible framework theory. However, given this relatively broad proposal, it is useful to consider how the remedy might play out on the ground.

¹⁰⁰ Complaint & Demand for Jury Trial, *supra* note 16, at ¶ 198.

¹⁰¹ Order Denying Defendants' Motion to Dismiss, *Peter P.*, 135 F. Supp. 3d 1098 (C.D. Cal. 2015).

¹⁰² Order Denying Plaintiffs' Motion for Class Certification, *Peter P.*, No. CV 15-3726-MWF (PLAx), 2015 WL 5752770 (C.D. Cal. Sept. 29, 2015).

¹⁰³ Order Denying Plaintiffs' Motion for Preliminary Injunction, *Peter P.*, 135 F. Supp. 3d 1126 (C.D. Cal. 2015).

¹⁰⁴ See Order Denying Defendants' Motion to Dismiss, *supra* note 101, at 1102–03 (showing the order denying the motion to dismiss states: “Clearly, the Court is *not* making a final decision as to how the merits of this action will be resolved, *nor* does it make any decisions as to whether any particular student actually suffers from a cognizable disability for the purposes of the Rehabilitation Act or the ADA. The Court does *not* endorse the legal position that exposure to two or more traumatic events is, without more, a cognizable disability under either of the Acts. The Court simply acknowledges the *allegations* that exposure to traumatic events *might* cause physical or mental impairments that *could* be cognizable as disabilities under the two Acts. In other words, the Court has determined that, for purposes of surviving a motion to dismiss, the allegations in the Complaint *suffice for now.*”) (emphasis added).

¹⁰⁵ Jeremy Loudonback, *Compton Trauma Lawsuit Near Resolution?*, LA SCH. REP. (June 9, 2016), <http://laschoolreport.com/compton-trauma-lawsuit-near-resolution>.

¹⁰⁶ Schools are currently required to provide an Individualized Education Plan (IEP) for students who qualify as having a disability under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C.A. § 1400 (West 2010), and a 504 Plan for students who qualify as having a disability under Section 504 of the Rehabilitation Act. 29 U.S.C.A. § 794 (West 2016). While the ADA does not explicitly provide for FAPE, it can provide additional protection in combination with actions brought under Section 504, especially to parts of a special education program that provide community-based skills and job training.

¹⁰⁷ Complaint & Demand for Jury Trial, *supra* note 16, at ¶¶ 159, 161.

Reflecting on her own concerns about a solution, Bowers expressed fear about a trauma-sensitive approach becoming an area in which teachers simply “check boxes”:

I really, really believe in . . . helping students cope with things and deal with things and handle things, especially low-income students whose parents are not able to send them to a psychologist . . . But my fear is that it’ll turn into another safe schools training.¹⁰⁸ And it’ll become another kind of blanket roll-out thing—that teachers need to make sure they do this so that we’re in compliance, and schools need to do this so we’re in compliance, and not so that we can really help our kids who need it the most.¹⁰⁹

There are several points of caution that must be addressed so that Bowers’s fears will not be realized. First, if the plaintiffs win after a lengthy litigation process, consider how the adversarial process might affect implementation. It is possible that the process will engender animosity among those who will need to constantly collaborate for the remedy to be effective.¹¹⁰ The school district will likely be forced to provide services or devise a plan, perhaps without the funding or grassroots buy-in, which were so essential in the Massachusetts and San Francisco school districts hailed as models in the *Peter P.* complaint.¹¹¹

Beginning with training essentially starts at step three of the TLPI’s model. Though the *Peter P.* complaint appears laden with excellent intentions for students, its remedy would come not from the bottom up through investment at the school and individual levels. Instead, if the plaintiffs win, the court will impose the remedy. Since buy-in at all levels is imperative, a potential problem might be reluctance on the part of the school district to implement a long-term solution that is effective for kids—or, since actors in school systems often already feel overburdened, how easily a remedy might become a “box-checking” procedure when it is imposed from above. Plaintiffs might consider requesting that the District use teacher surveys and focus group input to get more information about a remedy tailored to Compton.

Moreover, the complaint does not name any specific program or experts that the District should use.¹¹² The complaint communicates that these students and teachers desperately want the District to do *something*, rather than treating trauma with traditional school discipline. Whatever the approach, developing a program will entail more work

¹⁰⁸ Safe schools trainings are the online modules that Bowers has to review by a certain date each year to remain in compliance with district expectations of teachers. The trainings focus on issues like workplace safety, asbestos, and harassment. For more information on these trainings, see SAFE SCHS., <http://www.safeschools.com> (last visited Apr. 2, 2018).

¹⁰⁹ Telephone Interview with Neva Bowers, *supra* note 1.

¹¹⁰ See, e.g., Carrie Menkel-Meadow, *The Trouble with the Adversary System in a Post-Modern, Multicultural World*, 38 WM. & MARY L. REV. 1, 7 (1996) (stating that “modern life presents us with complex problems, often requiring complex and multifaceted solutions” and that courts “may not be the best institutional settings for resolving some of the disputes that we continue to put before them”).

¹¹¹ Complaint & Demand for Jury Trial, *supra* note 16, at ¶ 125.

¹¹² *Id.*

for District administrators and teachers who often feel overburdened already.¹¹³ Though an effective plan to address trauma will undoubtedly require some serious lifting from school personnel, perhaps possibilities could be addressed that relieve them of some of the burden, such as potential sources of extra funding to hire experts or a trauma specialist at each school.

Furthermore, assuming sufficient investment from teachers and administrators, another point of caution is how to identify traumatized children. The proposed remedy entails a whole-school approach but still suggests that services will be targeted toward students who have experienced trauma.¹¹⁴ However, as previously discussed, the mere experience of a potentially traumatic event does not mean that a child is traumatized.¹¹⁵ (The *Peter P.* complaint seems to imply as much, given that it does not reference trauma symptoms in the parties to the suit.¹¹⁶) Thus, the remedy would require a mechanism to locate kids who 1) have had traumatic experiences and 2) exhibit symptoms of being traumatized.

Teachers might be best positioned to give referrals to guidance offices because they see kids' behaviors every day over a sustained period of time. Currently, it is common practice for teachers to refer students to the principal's office for disciplinary infractions. For children without disabilities, those infractions can culminate in informal disciplinary hearings.¹¹⁷ Before being used as grounds for suspensions and expulsions, in the context of a trauma-sensitive approach, repeated infractions would signal the possibility of a larger issue to school administrators. With the proper system in place, administrators could see a pattern of discipline and, in response, use school psychological services personnel to evaluate the child and get to the bottom of the issue instead of exercising a zero-tolerance policy. Currently, children with disabilities can have due process hearings for denial of FAPE or manifestation determination reviews to determine whether adverse behavior is a manifestation of a student's disability. If either of these scenarios is determined to be the case, the Individualized Education Plan (IEP) team must conduct a functional behavioral assessment and implement a behavior intervention plan (BIP) or review the current BIP.¹¹⁸ Again, getting to such a stage should trigger the need for evaluation and possible identification. As will be discussed more below, documentation of hearings rarely includes conversation around possible trauma.

According to TLPI, whatever the identifying mechanism, it should avoid publicly labeling students as "traumatized" or "abused" because "[l]abeling carries the risk of making trauma into a prominent feature of the child's identity."¹¹⁹

¹¹³ Liz Riggs, *Why Do Teachers Quit?*, ATLANTIC (Oct. 18, 2013), <http://www.theatlantic.com/education/archive/2013/10/why-do-teachers-quit/280699>.

¹¹⁴ Complaint & Demand for Jury Trial, *supra* note 16, at ¶ 6.

¹¹⁵ *Violence Prevention*, *supra* note 33.

¹¹⁶ See Complaint & Demand for Jury Trial, *supra* note 16.

¹¹⁷ *School Discipline Hearings*, DUKE U. SCH. L., <https://law.duke.edu/childedlaw/schooldiscipline/attorneys/hearings/> (last visited Mar. 22, 2018).

¹¹⁸ See, e.g., BUREAU OF SPECIAL EDUC., PA. DEP'T OF EDUC., MANIFESTATION DETERMINATION WORKSHEET 2 (2004),

https://www.achieva.info/files/Resources/Education/Manifestation_Determination.pdf.

¹¹⁹ COLE ET AL., *supra* note 47, at 57.

These points of caution are not to suggest that the proposed remedy could not be carried out well; rather, they are to advise prudence in its implementation and a close look at how other systems have made trauma-sensitive approaches work. Importantly, litigation can provide a widespread remedy that endures through new administrations and leadership. At times, it also includes an enforcement mechanism to make sure changes are truly implemented, which is invaluable.¹²⁰ Still, drawbacks must be addressed and a potential remedy thought out before litigation is replicated in other school districts.

The above analysis of a remedy assumes that a win is possible for the plaintiffs in court. However, denial of class certification¹²¹ and Judge Fitzgerald’s cautious language denying the motion to dismiss¹²² may call the likelihood of a victory for the plaintiffs into question. The need for a common injury in all children with trauma for class certification is especially challenging here.

Still, it is possible that positive change could result from a loss for the plaintiffs—especially if we situate implementing trauma-sensitive approaches in the context of greater social change. Regardless of whether plaintiffs win, the lawsuit brings public awareness to the issue of how trauma affects learning.¹²³ Though the general public is often unaware of the topics of pending lawsuits, *Peter P.* has gained traction with the website that plaintiffs’ law firm Irell & Manella, LLP, created specifically for the case—Trauma & Learning.¹²⁴ The website seems to signal a nontraditional way of using litigation: to bring the issue into the consciousness of the broader public, appealing to a sense of justice and empathy. In a way, even if plaintiffs lose, *Peter P.* can still act as a landmark victory for trauma-informed education because it provides the grassroots awareness so critical to buy-in. Regardless of the outcome, *Peter P.* drives trauma and learning to the forefront of discussion and makes a show of seriousness through investment in litigation.

V. SUGGESTIONS MOVING FORWARD

Ideally, litigation for trauma-sensitive approaches should function “within a framework of multidimensional advocacy” so as to construct organizational identity and mobilize constituents.¹²⁵ Negotiating and interacting with private and public

¹²⁰ One example of such enforcement was in the case of *Corey H. v. Board of Education*, in which the Illinois State Board of Education produced reports on the progress of implementation of special education services in Chicago Public Schools. See 995 F. Supp. 900 (N.D. Ill. 1998).

¹²¹ There are several issues with certifying a class in this case. Dr. Gene Griffin said he actually agrees with the court’s decision not to certify a class because, as written, the complaint does not provide the requisite common injury for class certification, i.e. the same injury for all traumatized children. Of course, if a class is not certified, the plaintiffs can still win, but the remedy will not be extended to students beyond the five who are party to the suit—a result which seems to undermine the greater purpose of this lawsuit.

¹²² See *supra* note 104 and accompanying text.

¹²³ In addition to the website devoted to the case in note 124 *infra*, the case has spurred videos on YouTube with individual interviews with students and counsel, articles in newspapers, etc. See, e.g., Search Results for “Peter P v Compton Case”, YOUTUBE, https://www.youtube.com/results?search_query=Peter+P+v+Compton+Case (last visited Apr. 19, 2018).

¹²⁴ *Did You Know?*, TRAUMA & LEARNING: HOME, <http://www.traumaandlearning.org/home> (last visited Mar. 13, 2018).

¹²⁵ Douglas DeJaime, *Winning Through Losing*, 96 IOWA L. REV. 941, 941 (2011).

adversaries—in this case, with the school district itself—can “[furnish] bargaining power.”¹²⁶ A loss in court could lead not only to awareness, but also to activism in other settings and some alterations from Compton Unified School District, even if not to the full extent of the remedy proposed.¹²⁷ This notion is especially true if lawyers use “a number of tactics aimed at a variety of audiences across multiple institutional domains,” such that we “begin to see how advocates themselves deploy litigation loss to shape strategies and outcomes in other settings.”¹²⁸ Irell has done that through its unusual case website, videos, and resources.

Thus, the benefit of bringing a lawsuit like *Peter P.* is not only the hope of winning. It is also the opportunity to mobilize people in the struggle to recognize trauma and address it in the context of learning.¹²⁹ Litigation can be part of a greater movement that involves policy changes at the school level, at the legislative level, in public awareness campaigns, and more. These options are especially important during this “trauma-informed moment,” when approaches have already been developed to curtail its effects on learning.¹³⁰ Litigation, of course, must tie the problem to existing laws. Though that connection is possible through disability laws, as seen in *Peter P.*, using that nexus might be more challenging than advocating for policy changes. Litigation can be viewed as a viable option¹³¹ as a last resort if school districts refuse to take action after demands from students, teachers, families, community members, and other experts.

Recognizing that litigation is inherently limited, it is worthwhile to evaluate alternatives. First, surveying what keeps administrators and school district personnel from trying to use these approaches or from even coming to the table for negotiations is necessary in the current educational environment. Compton itself might offer an interesting case study in the obstacles that administrators face, and personal interviews might yield useful information. Surveys might seek to understand whether administrators think trauma-informed approaches are necessary in the first place. If they do not, trauma experts might seek to educate those administrators about the effects of trauma on learning. If they do want such approaches, it would be useful to know whether the obstacle is time, money, another constraint, or all of the above. There is a dearth of research about why school districts resist such approaches. Understanding the needs of

¹²⁶ *Id.* at 946.

¹²⁷ *Id.* at 947.

¹²⁸ *Id.*

¹²⁹ Accordingly, in his book *The Hollow Hope*, Gerald N. Rosenberg argues that the courts do not ultimately produce social change, despite our perception of their purpose as social equity. See GERALD N. ROSENBERG, *THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE?* (2d ed. 2008).

¹³⁰ Some might argue the time would be more ripe several years from now to implement trauma-sensitive approaches, when even more research has been done about the effects of trauma on learning. However, I argue that sufficient research has already been conducted, as noted throughout the rest of this Paper. Given jarring rates of childhood exposure to traumatic events published by the American Psychological Association, significant numbers of children are experiencing trauma and declining academically each year as a result. *Children and Trauma*, AM. PSYCHOLOGICAL ASS'N, <http://www.apa.org/pi/families/resources/children-trauma-update.aspx> (last visited Apr. 18, 2018). There is no time to waste.

¹³¹ Its real viability may depend on the outcome of the *Peter P.* case, which should come in the near future. See Docket, *Peter P.* (C.D. Cal. 2015) (No. CV 15-3726-MWF (PLAx)).

teachers is also crucial so that the solution ultimately makes their jobs easier instead of more burdensome with more steps for procedural compliance.

If funding¹³² is a major issue, Title I funds are an excellent source to be diverted toward these efforts. Title I, Part A of the Elementary and Secondary Education Act (ESEA), provides funding to local educational agencies (LEAs) with high numbers or high percentages of children from low-income families.¹³³ LEAs must distribute those funds to schools with high percentages of students living in poverty.¹³⁴ Schools are to spend the funds on students most at risk of failing to meet academic standards.¹³⁵ The U.S. Department of Education specifically notes that “[s]chools in which children from low-income families make up at least 40 percent of enrollment are eligible to use Title I funds for schoolwide programs that serve all children in the school.”¹³⁶

Funds could go toward bringing in experts to train teachers or observe and conduct evaluations in classrooms for the effects of trauma. Money could also be allocated toward making referrals to outside agencies more readily available to students, or securing on-site psychological resources for students. These objectives can be considered “schoolwide programs” that fall under the directives of Title I.

Schools may also consider using funds to put more emphasis on effective disciplinary techniques without necessarily taking the *Peter P.* approach of qualifying trauma as a disability. Currently, as mentioned previously, repeated discipline is not an automatic trigger for behavioral evaluations or counseling in most schools. Instead, students are disciplined through detentions, suspensions, and expulsions through informal school discipline hearings. Typically, these hearings focus far more on procedural adherence and evidence for and against codes of conduct violations than on underlying causes of repeated misbehavior.¹³⁷ In other words, hearings have not caught up to the “trauma-informed moment” in which we find ourselves. Schools and even future plaintiffs may want to consider disciplinary policy revisions, such as more documentation and including board-certified behavior analysts in the process, before moving to justifications derived from disability law.

For schools with obstacles unrelated to funding, administrators might consider in-depth conversations about what holds their schools back. Ultimately, litigation should not be pursued before those discussions take place when the goal is buy-in from the bottom up.

¹³² “Unconstitutionally low” school funding has recently come into the spotlight in Kansas, and other states may follow. Mitch Smith & Julie Bosman, *Kansas Supreme Court Says Education Spending is Too Low*, N.Y. TIMES (Mar. 2, 2017), https://www.nytimes.com/2017/03/02/us/kansas-supreme-court-school-spending.html?smprod=nytcore-iphone&smid=nytcore-iphone-share&_r=0.

¹³³ *Programs*, U.S. DEP’T EDUC., <https://ed.gov/programs/titleiparta/index.html> (last visited Mar. 27, 2018).

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ See generally, *In re Parent on Behalf of Student v. Compton Unified Sch. Dist.* (Cal. Office of Admin. Hearings 2013) (No. 2013010475), available at https://www.documents.dgs.ca.gov/oah/seho_decisions/2013010475.pdf; RANDALL C. FARMER, STUDENT DISCIPLINARY HEARINGS IN GEORGIA PUBLIC SCHOOLS, http://www.gregorydoylefirm.com/wp-content/uploads/Article_Student_Disc_Hearings.pdf; *School Discipline Hearings*, *supra* note 117.

VI. CONCLUSION

We can no longer deny that trauma is prevalent in our elementary, middle, and high schools throughout the country, particularly in areas of high poverty. We have arrived at an understanding of how trauma inhibits learning, and interdisciplinary experts have developed in-depth approaches for how to evaluate and address it in schools. Though the plaintiffs in *Peter P.* might have a difficult time winning their case, the lawsuit represents a milestone in this “trauma-informed moment.”

The recent Supreme Court case, *Andrew F. v. Douglas County School District*, can only help plaintiffs if trauma is in fact viewed as a disability in the future. It directs that school districts must give children with disabilities the chance to make meaningful, “appropriately ambitious” progress.¹³⁸ Thus, if trauma is considered a disability given modern science, school districts will be held to a higher bar for children with trauma than they have been held to in the past, when several circuits held that anything more than *de minimis* progress was sufficient.¹³⁹ Still, it seems the biggest hurdle *Peter P.* must clear is qualifying trauma as a disability deserving of protections under the ADA and Section 504 in the first place, when school districts are often reluctant to take outside factors into account.

Moving forward, litigation should be employed only as a last resort, when administrators and districts will not cooperate. The real work remains: convincing people at all levels of school accountability that schoolwide implementation of trauma-informed approaches can work and is worth some sacrifices. Until then, our students will continue to face tremendous learning challenges due to trauma, and our teachers will struggle without the proper tools and connections to help them.

¹³⁸ *Andrew F. v. Douglas Cty. Sch. Dist.*, 137 S. Ct. 988, 1000 (2017); *see also*, Anya Kamenetz & Cory Turner, *The Supreme Court Rules in Favor of a Special Education Student*, NAT’L PUB. RADIO (Mar. 22, 2017, 12:04 PM), <https://www.npr.org/sections/ed/2017/03/22/521094752/the-supreme-court-rules-in-favor-of-a-special-education-student>.

¹³⁹ *See, e.g., Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. Re-1*, 798 F.3d 1329, 1341 (10th Cir. 2015), *vacated and remanded*, 137 S. Ct. 988 (2017).