

**STRAIGHT OUTTA COMPTON:
WITNESS THE STRENGTH OF DISABILITY RIGHTS
TAKING ONE LAST STAND
FOR EDUCATION REFORM**

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INTRODUCTION

*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.*¹

Over sixty years ago, the vision of *Brown v. Board of Education* moved the United States toward the racial integration of its public schools. However, decades of legal precedent created stumbling blocks that prevented the opportunity to promote equal access to education, and preserved de facto racism through segregation on the basis of wealth.² On a national scale, studies indicate concentrated poverty results in segregated school districts. In fact, economic segregation between school districts rose by twenty percent between 1990 and 2010, while racial segregation grew by ten percent.³ As a result, schools are just as segregated today as they were in the 1960s.⁴

Once in separate schools, the gap in average test score between low-income and high-income students is double the variance of the average test score between Caucasian and African-American students.⁵ As a result of economic segregation, only nine percent of the approximately 1.1 million low-income students in America will graduate by the time they are twenty-four.⁶

While morally unacceptable, there is a point to be made that *desegregation* imposes additional burdens on minority students. Specifically, students are required to take long daily commutes to

1. *Brown v. Bd. of Educ. of Topeka*, 347 U.S. 483, 493 (1954).

2. See generally *Gratz v. Bollinger*, 539 U.S. 244 (2003) (finding that basing admission on race in order to meet a quota is a violation of the Fourteenth Amendment); *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 54 (1973) (finding that poverty is not a protected class and therefore discrimination on the basis of poverty is not a violation of the Fourteenth Amendment).

3. Economic segregation often occurs between school districts and not just within school districts. See generally HALLEY POTTER & KIMBERLY QUICK, CENTURY FOUND., *A NEW WAVE OF SCHOOL INTEGRATION: DISTRICTS AND CHARTERS PURSUING SOCIOECONOMIC DIVERSITY* 3 (2016), https://tcf.org/assets/downloads/ANewWave_Potter.pdf.

4. GARY ORFIELD & CHUNGMEI LEE, UNIV. OF CAL. L.A., THE CIVIL RIGHTS PROJECT (PROYECTO DERECHOS CIVILES): HISTORIC REVERSALS, ACCELERATING RESEGREGATION, AND THE NEED FOR NEW INTEGRATION STRATEGIES 11–13 (2007), <http://civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/historic-reversals-accelerating-resegregation-and-the-need-for-new-integration-strategies-1/orfield-historic-reversals-accelerating.pdf>; POTTER & QUICK, *supra* note 3, at 1, 3.

5. POTTER & QUICK, *supra* note 3, at 5.

6. *What Can Motivate Low-Income High School Kids to Apply to College?*, PBS NEWSHOUR (Mar. 18, 2016, 8:16 PM), <http://www.pbs.org/newshour/bb/what-can-motivate-low-income-high-school-kids-to-apply-to-college/>.

different neighborhoods with more racially balanced schools.⁷ The remedy is no better because it now places additional burdens on the students already disadvantaged by their socioeconomic status. In addition, any progressive steps toward integration are always met with vocal opposition.⁸ With legal and social obstacles in place, segregation may be an evil that cannot be remedied despite our better angels.

If segregation on the basis of wealth is here to stay, then these low-income school districts need long-term solutions to address additional issues arising within their individual communities. Specifically, students living in low-income communities experience higher rates of victimization and community violence.⁹ The world these students are forced to live in nurtures a mental disability that deprives them of both cognitive and emotional development.¹⁰ In school, policies highlight and worsen the students' disability, effectively depriving these students of equal access to a public education.

The policies include both strict disciplinary procedures ("zero tolerance policy") targeted at students that fail to conform to the classroom environment, and poor anti-bullying laws that fail to incorporate and protect LGBT members from violence in their academic community. These policies force students to live in a constant state of trauma both in and out of school. This Note will outline how such policies not only fail to address, but also perpetuate challenges already faced by students suffering from complex trauma (for purposes of this Note, complex trauma refers to experiencing two or more adverse childhood experiences). In turn, these students are effectively denied access to a public education because of these poorly designed policy

7. FLA. ADVISORY COMM. TO THE U.S. COMM'N ON CIVIL RIGHTS, SCHOOL DISCIPLINE IN FLORIDA: DISCIPLINE PRACTICES LEAVE MANY CHILDREN BEHIND 6 (2010) [hereinafter SCHOOL DISCIPLINE IN FLORIDA], <http://www.usccr.gov/pubs/FLSchoolDisciplineReport.pdf>. In New York State, Rochester is the oldest of eight inter-district programs across the country. Thirteen of the seventeen surrounding districts volunteer in the Urban-Suburban transfer program. The Rochester Urban-Suburban program integrates students on the basis of race and socioeconomic status, but this is a limited opportunity and selected students must commute an hour each way to and from school. *Country's Oldest Voluntary School Desegregation Program Grows in Rochester, New York*, PBS NEWSHOUR (Jan. 10, 2016, 6:59 PM), <http://www.pbs.org/newshour/bb/countrys-oldest-voluntary-school-desegregation-program-grows-in-rochester-new-york-2/>.

8. *Country's Oldest Voluntary School Desegregation Program Grows in Rochester, New York*, supra note 7.

9. JUSTICE POLICY INST., HEALING INVISIBLE WOUNDS: WHY INVESTING IN TRAUMA-INFORMED CARE FOR CHILDREN MAKES SENSE 3 (2010), http://www.justicepolicy.org/images/upload/10-07_REP_HealingInvisibleWounds_JJ-PS.pdf.

10. See *Two Types of Trauma Diagnoses*, CTR. FOR EARLY CHILDHOOD MENTAL HEALTH CONSULTATION, http://ecmhc.org/tutorials/trauma/mod1_2.html (last visited Feb. 8, 2017).

choices.¹¹

*Peter P. v. Compton Unified School District*¹² attempts, in one fell swoop, to address these failed policies through implementing trauma-sensitive programs by means of the Rehabilitation Act (“Section 504”) and the Americans with Disabilities Act (ADA).¹³ *Compton Unified* is a test case for pushing the limits of Section 504 and the ADA to not only acknowledge “complex trauma” as a disability protected by disability rights laws, but also to implement education reform for struggling, low-income school districts by replacing failed policies with a trauma-sensitive program.¹⁴

In *Compton Unified*, five expelled and suspended students of schools located in the Compton Unified School District are claiming their exposure to community violence placed the school district on notice that the majority of students suffered from complex trauma.¹⁵ In addition, not only did the district fail to accommodate the students, but the district also retriggered the students’ trauma-induced disability by implementing current district policies.¹⁶ On September 29, 2015, the district judge stated,

The Court does not endorse the legal position that exposure to two or more traumatic events is, without more, a cognizable disability under either [Section 504 or the ADA]. 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.¹⁷

11. Complaint at 3, *Peter P. v. Compton Unified Sch. Dist.*, No. 2:15-cv-03726 (C.D. Cal. filed May 18, 2015), ECF No. 1.

12. The “facts” in this Note are obtained from legal complaints and media reports. The author does not make any representations regarding their accuracy. As of the time of publication, the parties have been in settlement negotiations since March 17, 2016, and are scheduled to remain in discussion until at least October 23, 2017. See *Peter P. v. Compton Unified Sch. Dist.*, No. 2:15-cv-03726 (C.D. Cal. filed Mar. 17, 2016); *Peter P. v. Compton Unified Sch. Dist.*, No. 2:15-cv-03726 (C.D. Cal. filed Jan. 9, 2017).

13. Complaint, *supra* note 11, at 3 (first citing 29 U.S.C. § 794 (2012); and then citing 42 U.S.C. § 12101 (2012)).

14. Jane Meredith Adams, *Lawsuit Says Schools Are Legally Required to Address Student Trauma*, EDSOURCE (May 19, 2015), <http://edsource.org/2015/lawsuit-says-schools-are-legally-required-to-address-student-trauma/79952> (“The lawsuit is believed to be the first in the nation to use special education law to argue for accommodations for students whose ability to concentrate and learn is impaired by the stress of repeated violence, abuse and neglect.”).

15. See Complaint, *supra* note 11, at 9, 12, 14.

16. *Id.* at 14–15.

17. *Peter P. v. Compton Unified Sch. Dist. (Compton Unified I)*, 135 F. Supp. 3d 1098, 1103 (C.D. Cal. 2015).

If the court continues to find in the plaintiffs' favor, a trauma-sensitive policy could be implemented in the forty schools within the district and impact twenty-six thousand students.¹⁸

This Note will build on the work done in *Compton Unified*. Part I will argue failed school policies worsen a student's disability, and a trauma-sensitive program is more effective in fostering cognitive and emotional development. Part II will argue a federal claim under Section 504 and the ADA is the only appropriate approach—outside of legislative or regulatory action—to replace failed policies with trauma-sensitive programs. Part III will argue complex trauma is a disability under Section 504 and the ADA, and therefore failure to implement a trauma-sensitive program will continue to deprive victimized students suffering with complex trauma from their civil right of equal access to a public education.

I. A BRIEF INTRODUCTION TO COMPLEX TRAUMA

Complex trauma is different from posttraumatic stress disorder (PTSD). PTSD is associated with a one-time spontaneous event that threatens one's life or physical well-being—such as a crime, accident, or natural disaster.¹⁹ The symptoms of PTSD manifest as re-experiences of the traumatic event and “may include recurrent bad dreams, physical reactions, flashbacks, startle[d] reaction, loss of interest in usual activities, [and] avoiding reminders of the event.”²⁰

Complex trauma on the other hand addresses one's exposure to multiple, simultaneous, and sequential traumatic events.²¹ Complex trauma occurs for children who feel overwhelmed or terrorized by two or more adverse childhood experiences (ACEs) and, just like PTSD, complex trauma can also result from “severe, or life-threatening

18. *Students with Violent, Traumatic Pasts Say They Are Disabled, Sue California School District*, FOX NEWS (May 18, 2015), <http://www.foxnews.com/us/2015/05/18/students-with-violent-traumatic-pasts-say-are-disabled-sue-california-school.html>.

19. *Two Types of Trauma Diagnoses*, *supra* note 10; Michael Scheeringa, *PTSD for Children 6 Years and Younger*, U.S. DEP'T VETERANS AFF. NAT'L CTR. FOR PTSD, http://www.ptsd.va.gov/professional/PTSD-overview/ptsd_children_6_and_younger.asp (last visited Feb. 8, 2017) (“Young children are exposed to many types of traumatic experiences, placing them at risk for PTSD. These include: Abuse; Witnessing interpersonal violence; Motor vehicle accidents; Experiences of natural disasters; Conditions of war; Dog bites; Invasive medical procedures.”).

20. *Two Types of Trauma Diagnoses*, *supra* note 10; *see also* Deirdre M. Smith, *Diagnosing Liability: The Legal History of Posttraumatic Stress Disorder*, 84 TEMP. L. REV. 1, 2 (2011).

21. *Two Types of Trauma Diagnoses*, *supra* note 10.

injuries; illness; and accidents.”²²

ACEs are defined as follows: “Physical Abuse, Emotional Abuse, Sexual Abuse, Physical Neglect, Emotional Neglect, Single Parent Home (due to any: separation, divorce, [deportation, or] incarceration), [Household] violence, Community violence, [Household] substance abuse, [or Household] mental illness.”²³ Twenty-three percent of children in the United States experience two or more ACEs in their lifetime.²⁴ As a result, the child experiences a “loss of safety, direction, and the ability to detect or respond to danger cues,” which prevents the child from developing both cognitively and emotionally by the time they reach adulthood.²⁵

A. Complex Trauma & Victimization

Compton is located south of downtown Los Angeles and struggles with violence, murder, and poverty.²⁶ The latter condition, poverty, is an indicator but one not directly correlated to causing complex trauma: “research shows that more than half of those living in poverty *do not* experience debilitating trauma.”²⁷ For example, in a San Diego suburb, one-fourth of “mostly middle class, mostly white, working folks with medical insurance . . . experienced [three] or more ACEs.”²⁸

Despite the fact that every demographic exposes children to ACEs, one consistent source of complex trauma “is being the victim of a crime.”²⁹ The Department of Justice (DOJ) has also acknowledged that

22. Chiara Viscomi, *Branching Out: Toward a New Model of Trauma Recovery with Polyvagal Theory*, HEALTHYPSYCH (Oct. 6, 2016), <https://healthypsych.com/branching-toward-new-model-trauma-recovery-polyvagal-theory/>; see also Daun Kauffman, *Childhood Trauma Versus Public Education . . . Let’s Confront It Explicitly*, LUCIDWITNESS (Feb. 26, 2015), <https://lucidwitness.com/2015/02/26/childhood-trauma-versus-public-education-lets-confront-it-explicitly/> [hereinafter Kauffman, *Childhood Trauma*].

23. Kauffman, *Childhood Trauma*, *supra* note 22; see also Olga Khazan, *Half of All Kids Are Traumatized*, ATLANTIC (Dec. 11, 2014), <http://www.theatlantic.com/health/archive/2014/12/half-of-all-kids-experience-traumatic-events/383630/>.

24. Khazan, *supra* note 23.

25. *Two Types of Trauma Diagnoses*, *supra* note 10; see also ATTORNEY GEN.’S NAT’L TASK FORCE ON CHILDREN EXPOSED TO VIOLENCE, *DEFENDING CHILDHOOD 1* (2012), <https://www.justice.gov/sites/default/files/defendingchildhood/legacy/2012/12/12/cev-executive-sum.pdf>.

26. Sarah Sidner, *Lawsuit: Childhood Trauma ‘Disables’ Students*, CNN, <http://www.cnn.com/2016/01/21/us/california-lawsuit-violence-disabled-students/> (last updated Jan. 21, 2016, 8:55 AM).

27. Daun Kauffman, *Common Sense . . . Defending Childhood*, LUCIDWITNESS (July 28, 2015), <https://lucidwitness.com/2015/07/28/common-sense/> [hereinafter Kauffman, *Common Sense*] (emphasis added).

28. *Id.*

29. JUSTICE POLICY INST., *supra* note 9, at 3.

“exposure to violence is not limited to one community or one group of children. It occurs among all ethnic and racial groups; in urban, suburban, and rural areas; in gated communities and on tribal lands.”³⁰

However, poverty is still a variable because those “most likely to experience victimization include people of color, people from single-parent households, people living in an urban environment or people from disadvantaged communities.”³¹ Specifically, the odds of being a victim of violence for an African-American with an annual income of less than \$7500 is double the odds of a Caucasian being a victim of violence at the same income level.³²

In Compton, stray bullets require students to stay indoors.³³ Children as young as eight will witness their first murder.³⁴ Some students are forced to trespass and sleep at the school because they are homeless, and must go hungry on weekends because their only source of food is controlled and distributed by the school.³⁵ Students are then reminded of their living conditions during the weekday when school guards carry AR-15 assault rifles for protection—not for the students, but for themselves.³⁶

In addition to young minorities, youth who identify with the LGBT community have an increased likelihood of experiencing complex trauma through victimization.³⁷ In fact, LGBT youth experience verbal harassment, exclusion, and physical attack at school twice as often as their non-LGBT peers.³⁸

30. Robert L. Listenbee, Jr. & Joe Torre, *Introduction from the Task Force Co-Chairs to DEFENDING CHILDHOOD*, *supra* note 25, at 5.

31. JUSTICE POLICY INST., *supra* note 9, at 3.

32. *Id.*

33. Avi Asher-Schapiro, *Should Growing Up in Compton Be Considered a Disability?*, VICE NEWS (Oct. 20, 2015, 9:24 PM), <https://news.vice.com/article/should-growing-up-in-compton-be-considered-a-disability>.

34. Complaint, *supra* note 11, at 11.

35. Public Counsel, *Peter*, YOUTUBE (May 18, 2015), <https://www.youtube.com/watch?v=6953khkaHaw>; *see also* Complaint, *supra* note 11, at 31–32 (“There are 1,751 homeless students in Compton schools, or 7.8% of the total student population. . . . Children may go to school each day not knowing where they will sleep that evening. Plaintiff Peter P., for example, spent two months of homelessness sleeping on the roof of his high school cafeteria.”).

36. Rina Palta, *Compton School Police Authorized to Carry AR-15 Assault Weapons*, S. CAL. PUB. RADIO (Aug. 18, 2014), <http://www.scpr.org/news/2014/08/18/46025/school-police-assault-rifle-policy-raises-question/>; *see also* Complaint, *supra* note 11, at 33 (“[Mistrust between the community and the police] causes students to experience fear and tension during interactions with law enforcement, thereby further exacerbating exposure to trauma.”).

37. Complaint, *supra* note 11, at 7.

38. Stephen Peters, *LGBT Youth Deserve to Learn in Environments Free from*

Therefore, Compton Unified School District provides a demographic where the population is more likely to experience ACEs. The next Section explains the struggle for students with complex trauma, and how failed policies worsen their academic experience.

B. School Performance & Policy

Children suffering from complex trauma are two and a half times more likely to either repeat a grade or be disengaged with their classwork.³⁹ Of the twenty-three percent of children that suffer from complex trauma, approximately twenty-two to forty-five percent are physiologically incapable of learning.⁴⁰ The students of Compton Unified that are both bullied at school and live in an environment of poverty, violence, and abuse are forced to adapt physiologically in order to survive their daily ritual. However, their behavior is dismissed as “immaturity or poor judgment” and not seen as a disability.⁴¹ Zero tolerance policy and the failure of anti-bullying laws to protect LGBT students re-victimizes⁴² students suffering from complex trauma and school performance suffers as a result with drastic implications.⁴³

Harassment and Bullying, HUM. RTS. CAMPAIGN (Jan. 29, 2015), <http://www.hrc.org/blog/lgbt-youth-deserve-to-learn-in-environments-free-from-harassment-and-bullyi> (“Among LGBT youth, 51 percent have been verbally harassed at school, compared to 25 percent among non-LGBT students; 48 percent say they are often excluded by their peers because they are different, compared to 26 percent among non-LGBT students; and 17 percent report they have been physically attacked at school, compared to 10 percent among non-LGBT students.”).

39. Khazan, *supra* note 23.

40. Kauffman, *Common Sense*, *supra* note 27; Khazan, *supra* note 23.

41. *Compton Unified I*, 135 F. Supp. 3d 1098, 1007, 1113 (C.D. Cal. 2015) (quoting *Stearns v. Bd. of Educ. for Warren Twp. High Sch. Dist. No. 121*, No. 99 C 5818, 1999 U.S. Dist. LEXIS 17981, at *8 (N.D. Ill. Nov. 16, 1999)).

42. The terms “re-victimization” and “re-traumatization” are instances that “can inadvertently trigger a memory of the traumatic event or a flashback.” SUBSTANCE ABUSE & MENTAL HEALTH SERVICES ADMINISTRATION, *BEHIND THE TERM: TRAUMA 4* (2016), http://www.nrepp.samhsa.gov/Docs%5CLiteratures%5CBehind_the_Term_Trauma.pdf.

43. *See* Complaint, *supra* note 11, at 2, 5, 7, 27, 63. These two policies highlight two examples of how complex trauma is retriggered in a school environment, but the scope of this Note will not be able to capture every cause of complex trauma. *See id.* at 1, 27, 63 (“Trauma stems from such causes as exposure to violence and loss, family disruptions related to deportation, incarceration and/or the foster system, systemic racism and discrimination, and the extreme stress of lacking basic necessities, such as not knowing where the next meal will come from or where to sleep that night. Complex trauma stems from the exposure to multiple persistent sources of violence, loss, and other adverse childhood experiences (‘ACEs’), and describes children’s exposure to these events and the impact of this exposure.”).

1. Zero Tolerance Policy & the School-to-Prison Pipeline

Schools began to embrace the philosophy of zero tolerance as the appropriate form of discipline in the 1990s.⁴⁴ The program was originally designed to address drug use.⁴⁵ However, zero tolerance has expanded its reach to any form of misbehavior or nonconformity with school regulations.⁴⁶ The general assumption is that the rise in zero tolerance policy is because of the rise in school violence, but school violence and disruption have remained stable since 1985.⁴⁷ Instead of reducing disruption, zero tolerance policy increases misbehavior, suspension, and expulsion rates.⁴⁸

In fact, zero tolerance policy (1) creates “a negative school climate,” (2) increases “dropout rates and school failure,” and (3) alienates and isolates “students who are in the most need of school interventions.”⁴⁹ In addition, there is a history of disproportionate discipline for minority students.⁵⁰ In fact, African-American and Latino students are often disciplined more frequently and severely for less serious offenses.⁵¹ For example, African-American students in the Compton Unified School District make up only nineteen percent of the population, but receive forty-five percent of “Defiance Suspensions.”⁵²

The results of zero tolerance policy are more troubling for students that suffer from complex trauma. Research shows that “[c]lassroom behavioral adaptations to [complex] trauma include aggression, defiance, withdrawal, perfectionism, hyperactivity, reactivity, impulsiveness, and/or rapid and unexpected emotional swings”⁵³:

44. Am. Psychologist Ass’n Zero Tolerance Task Force, *Are Zero Tolerance Policies Effective in the Schools? An Evidentiary Review and Recommendations*, 63 AM. PSYCHOLOGIST 852, 852 (2008), <http://www.apa.org/pubs/info/reports/zero-tolerance.pdf>.

45. *Id.*

46. *See id.*

47. *Id.* at 853.

48. *Id.* at 854.

49. SCHOOL DISCIPLINE IN FLORIDA, *supra* note 7, at 3.

50. Am. Psychologist Ass’n Zero Tolerance Task Force, *supra* note 44, at 854.

51. Adams, *supra* note 14; Am. Psychologist Ass’n Zero Tolerance Task Force, *supra* note 44, at 854.

52. Complaint, *supra* note 11, at 34 (citing CAL. DEP’T OF EDUC., SUSPENSION AND EXPULSION REPORT FOR 2013–14, <http://dq.cde.ca.gov/dataquest/> (from “Level” select “District” dropdown; from “Subject” select “Expulsion and Suspension” dropdown; follow “Submit” hyperlink; from “Select Year” select “2013–14” dropdown; under “Type portion of the name. . .” enter “Compton” (without quotation marks); follow “Submit” hyperlink; select “48900(k) Defiance Suspension and Expulsion”; then follow “Submit” hyperlink) (last visited Feb. 8, 2017)).

53. *Id.* at 49 (citing RAY WOLPOW ET AL., THE HEART OF LEARNING AND TEACHING: COMPASSION, RESILIENCY, AND ACADEMIC SUCCESS 13 (3d prtng. 2016), <http://k12.wa.us/>

For example, if a student's sensitized nervous system overreacts to a seemingly innocuous stimulus, such as hearing their name unexpectedly called by a teacher, they may freeze, both cognitively and physically. The teacher may then give that child a directive, which the child is unable to acknowledge due to the impact of the situation on his or her physiology. In turn, the teacher understandably perceives the student to be disobedient and is likely to repeat the directive, this time with an explicit or implicit threatened consequence if the student continues to "misbehave." This "'threat' makes the child feel more anxious, threatened, and out of control. . . . If sufficiently terrorized, the 'freezing' may escalate into complete dissociation."⁵⁴

In an educational environment that is not trauma-sensitive, that student is treated as disruptive and may be isolated from other students, suspended, or even expelled.⁵⁵

The increased expulsion rate then effectively lays the foundation for the "school-to-prison pipeline."⁵⁶ Just one suspension makes a student twice as likely to drop out of school and three times as likely to enter the criminal justice system within the following year.⁵⁷ On average, between seventy-five and ninety-three percent of children entering the juvenile justice system suffer from complex trauma.⁵⁸ Once

CompassionateSchools/pubdocs/TheHeartofLearningandTeaching.pdf).

54. *Id.* at 39 (quoting Bruce D. Perry et al., *Childhood Trauma, the Neurobiology of Adaptation, and "Use-dependent" Development of the Brain: How "States" Become "Traits,"* 16 *INFANT MENTAL HEALTH J.* 271, 279–80 (1995)).

55. *Id.* at 36.

56. *See generally* Complaint, *supra* note 11, at 5 ("Instead of providing these and other accommodations to address complex trauma, Defendants subject trauma-impacted students to punitive and counter-productive suspensions, expulsions, involuntary transfers, and referrals to law enforcement that push them out of school, off the path to graduation, and into the criminal justice system."); *SCHOOL DISCIPLINE IN FLORIDA*, *supra* note 7, at 3 ("A growing body of research provides evidence that policies emphasizing punishment (e.g. reprimands, extra tasks, detentions, suspensions) are associated with (a) increased antisocial behaviors (e.g. aggression, vandalism, truancy), (b) increased coercive interactions between students and adults, (c) decreased academic performance, and (d) increased dropout rates.").

57. *See* Katherine Reynolds Lewis, *Why Schools Over-Discipline Children with Disabilities*, *ATLANTIC* (July 24, 2015), <http://www.theatlantic.com/education/archive/2015/07/school-discipline-children-disabilities/399563/>; Teresa Watanabe, *L.A. Unified Bans Suspension for 'Willful Defiance,'* *L.A. TIMES* (May 14, 2013), <http://articles.latimes.com/2013/may/14/local/la-me-laUSD-suspension-20130515>.

58. *JUSTICE POLICY INST.*, *supra* note 9, at 1, 7 ("In the context of often overcrowded juvenile facilities, incarcerated youth may experience increased suicidal behavior, stress-related illness and psychiatric problems. Additionally, youth in secure confinement often do not develop social skills (such as self-control and conflict resolution) on par with those who remain in the community. Overall, studies show that imprisoned youth have higher recidivism rates, are less likely to 'age out' of illegal behavior, suffer more mental illness and are less likely to succeed at education and employment than youth who stay in the community.").

in the criminal justice system, “there is risk of re-traumatization by staff and other people in correctional facilities.”⁵⁹ The disproportionate representation of children with complex trauma is one of the reasons public schools need to build a pipeline with the public health system and sever the one with the criminal justice system.⁶⁰

Zero tolerance policy effectively introduces students of low-income schools to fewer cognitive and emotional resources for adulthood, and creates lasting problems with law enforcement and the criminal justice system.

2. *Anti-Bullying Laws & LGBT Suicide*

As of 2015, all fifty states have established an anti-bullying law, which requires schools to implement individualized anti-bullying procedures.⁶¹ Typical school policy requires the school to either counsel the bully or remove the victim from the bully.⁶² While anti-bullying is addressed at the state and local level, the federal government only steps in when severe bullying is carried out persistently against a protected class to the point of creating a hostile environment.⁶³ Despite steps the LGBT community has achieved in securing the fundamental right to marriage, members of the LGBT community remain outside of this protected class.⁶⁴ However, bullying toward an LGBT student targets their non-conformity to gender norms, and the courts and federal agencies (during the Obama administration) have slowly begun to use Title IX of the Education Amendments of 1972 to ensure an LGBT student’s equal access to federally funded educational programs and activities.⁶⁵

59. *Id.* at 2.

60. *See infra* Section II.A–B (discussing enacted and proposed state and federal legislation, respectively, that bring a trauma-sensitive model into schools).

61. *See Policies & Laws*, STOPBULLYING.GOV, <http://www.stopbullying.gov/laws/> (last updated May 27, 2015).

62. Maggie Clark, *49 States Now Have Anti-Bullying Laws. How’s that Working Out?*, GOVERNING (Nov. 4, 2013), <http://www.governing.com/news/headlines/49-States-Now-Have-Anti-Bullying-Laws-How’s-that-Working-Out.html>.

63. *Federal Laws*, STOPBULLYING.GOV, <http://www.stopbullying.gov/laws/federal/index.html> (last updated Mar. 31, 2014).

64. *See generally* Obergefell v. Hodges, 135 S. Ct. 2584 (2015) (finding a fundamental right to marriage); Romer v. Evans, 517 U.S. 620 (1996) (Scalia, J., dissenting) (discussing how race and identifying as LGBT are not the same because the LGBT community is well represented in the political process and therefore not a protected class).

65. *See generally* Office for Civil Rights, U.S. Dep’t of Educ., Dear Colleague Letter on Harassment and Bullying 7–8 (Oct. 26, 2010), <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf> (“[I]t can be sex discrimination if students are harassed either for exhibiting what is perceived as a stereotypical characteristic for their sex, or for failing

Despite state and federal regulations, only half of anti-bullying policies established by school districts on a national level address bullying based on both sexual orientation and perceived sexual orientation.⁶⁶ In addition, only fourteen percent of anti-bullying policies by school districts on a national level bar bullying of one's gender identity or expression.⁶⁷ The LGBT community requires inclusive anti-bullying laws because "LGBT youth are twice as likely to experience verbal harassment, exclusion and physical attack at school."⁶⁸ Indeed, twenty-one percent of LGBT students identify school bullying and harassment as the primary problem in their lives.⁶⁹

But, with limited federal regulations in place, should it matter whether states require *local* school districts to implement inclusive anti-bullying policies regarding LGBT students? Studies show the rate of suicide among young members of the LGBT community decreases when schools implement their own anti-bullying policy that protects sexual orientation.⁷⁰ On average, thirty-one percent of LGBT members attempt suicide in counties with a non-inclusive anti-bullying policy, while attempted suicide by LGBT students drops to seventeen percent for schools with an LGBT inclusive anti-bullying policy.⁷¹

Therefore, "bullying and harassment of LGBT youth contributes to

to conform to stereotypical notions of masculinity and femininity."); Office for Civil Rights, U.S. Dep't of Educ., Dear Colleague Letter on Transgender Students 2 (May 13, 2016), <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf> ("If sex-based harassment creates a hostile environment, the school must take prompt and effective steps to end the harassment, prevent its recurrence, and, as appropriate, remedy its effects."); Adele P. Kimmel, *Title IX: An Imperfect but Vital Tool to Stop Bullying of LGBT Students*, 125 YALE L.J. 2006, 2010–12 (2016) (discussing the impact of *Davis v. Monroe County Board of Education*, 526 U.S. 629, 650 (1999) in providing LGBT students with a means to sue school districts under Title IX for failing to protect them from peer bullying based on either their sexual orientation or gender identity). *But see* Office for Civil Rights, U.S. Dep't of Educ., Dear Colleague Letter 1–2 (Feb. 22, 2017), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201702-title-ix.docx>.

66. Rebecca Klein, *Few School Districts Have Anti-Bullying Policies Protecting LGBT Students*, HUFFINGTON POST (July 15, 2015, 12:01 AM), http://www.huffingtonpost.com/2015/07/15/school-lgbt-bullying-policies_n_7796254.html.

67. *Id.*

68. Peters, *supra* note 38 ("Among LGBT youth, 51 percent have been verbally harassed at school, compared to 25 percent among non-LGBT students; 48 percent say they are often excluded by their peers because they are different, compared to 26 percent among non-LGBT students; and 17 percent report they have been physically attacked at school, compared to 10 percent among non-LGBT students.").

69. *Id.*

70. Mark L. Hatzenbuehler & Katherine M. Keyes, *Inclusive Anti-Bullying Policies and Reduced Risk of Suicide Attempts in Lesbian and Gay Youth*, 53 J. ADOLESCENT HEALTH S21, S24 (2013).

71. *Id.*

high rates of absenteeism, dropout, adverse health consequences and academic underachievement⁷²—each an unnoticed and ignored indicator of complex trauma.⁷³

3. Trauma-Sensitive High Schools

The issue of incorporating schools into the solution does not indicate a lack of willingness on the part of teachers. “Empathetic and compassionate teachers and school staff” attempt to help students suffering from complex trauma.⁷⁴ However, these individuals lack the training, resources, and support, which results in “secondary traumatic stress”—stress resulting from having to work directly with students suffering from a trauma-induced disability.⁷⁵ This burnout leads to employment turnover, which creates more instability in a student’s daily ritual.⁷⁶ The plaintiffs in *Compton Unified* explained, “Relationships between staff and students are often disrupted, and students can be further traumatized by the loss of yet another supportive adult in their lives, especially if they have previously endured a great deal of loss.”⁷⁷

Individualized efforts should be commended, but they are not a sustainable long-term solution. In fact, behavior programs are more successful when implemented school-wide because a school-wide “approach establishes an environment conducive to the instruction of pro-social behaviors across all school settings and including all students and staff.”⁷⁸

The trauma-sensitive model offers “principles and strategies for instruction that further help schools create an environment of respect and compassion to support learning.”⁷⁹ As outlined above, “unaddressed trauma is a powerful predictor of academic failure.”⁸⁰ A trauma-sensitive learning environment increases the child’s sense of safety, and academic achievement as a result.⁸¹

72. Peters, *supra* note 38.

73. See also *infra* text accompanying note 98.

74. Complaint, *supra* note 11, at 45. While this Note focuses on the student-plaintiff, it is worth mentioning here that teachers are also plaintiffs in the action. *Id.* at 14–15.

75. *Id.* at 14, 45; see also BEHIND THE TERM: TRAUMA, *supra* note 42, at 4 (“Secondary trauma ≈ compassion fatigue”).

76. Complaint, *supra* note 11, at 45.

77. *Id.*

78. SCHOOL DISCIPLINE IN FLORIDA, *supra* note 7, at 13.

79. Cheryl Smithgall, Gretchen Cusick & Gene Griffin, *Responding to Students Affected by Trauma: Collaboration Across Public Systems*, 51 FAM. CT. REV. 401, 405 (2013).

80. Complaint, *supra* note 11, at 3; see *supra* Section I.B.

81. Smithgall, Cusick & Griffin, *supra* note 79, at 405.

The plaintiffs in *Compton Unified* summarized the core components of such trauma-sensitive schools as follows:

(1) training educators to recognize, understand, and proactively recognize and address the effects of complex trauma, in part through building students' self-regulation and social-emotional learning skills; (2) developing restorative practices to build healthy relationships and resolve conflicts peacefully and avoid re-traumatizing students through the use of punitive discipline; and (3) ensuring consistent mental health support is available to appropriately meet student needs. Together, these whole-school practices can create a safe, consistent, and supportive learning environment to contribute to the healing process and enable students exposed to trauma to learn.⁸²

In sum, the trauma-sensitive model creates a predictable atmosphere to counter a student's chaotic weekend and evenings.⁸³ The model requires schools to facilitate conversations when confrontations arise and no longer allows schools to exclude misbehaving students—unlike zero tolerance policy, which is a method of re-traumatizing and worsening a student's condition.⁸⁴ Instead, students must be incorporated and trained on how to resolve issues.⁸⁵ The trauma-sensitive model is therefore “more successful when implemented school-wide.”⁸⁶

As a result of a school-wide approach, the model places a larger burden on schools to intercept and identify complex trauma in its students. The model requires “school staff [to] refer families to [the] appropriate mental health resources and follow[] up on referrals.”⁸⁷ The model shifts away from the zero tolerance policy model that creates a strong relationship with local police and the judicial system. Instead, the trauma-sensitive model moves toward school-community partnerships with mental health organizations.

The next Part of this Note will outline the success of school intervention to argue that schools need to be “regarded as an ideal point of [intervention by] mental health services for children.”⁸⁸

82. Complaint, *supra* note 11, at 4.

83. *Id.* at 59.

84. See Am. Psychologist Ass'n Zero Tolerance Task Force, *supra* note 44, at 857–59.

85. SCHOOL DISCIPLINE IN FLORIDA, *supra* note 7, at 13.

86. *Id.*

87. MAURA MCINERNEY & AMY MCKLINDON, EDUC. LAW CTR., UNLOCKING THE DOOR TO LEARNING: TRAUMA-INFORMED CLASSROOMS & TRANSFORMATIONAL SCHOOLS 8 (2015), <http://www.elc-pa.org/wp-content/uploads/2015/06/Trauma-Informed-in-Schools-Classrooms-FINAL-December2014-2.pdf>.

88. *Id.* at 17.

II. PUBLIC AWARENESS AND THE CALL FOR CHANGE

In 1979, U.S. Surgeon General Julius B. Richmond identified both stress control and addressing violent behavior as a national priority.⁸⁹ “This report emphasized that the health community could not ignore the consequences of violent behavior in an effort to improve the health of children, adolescents, and young adults.”⁹⁰ In 2012, the DOJ stated, “Children . . . experiencing and witnessing violence” is “one of the most significant challenges to the future of America’s children that we have ever known.”⁹¹ The DOJ continued by stating, “Exposure to violence is a national crisis that affects *approximately two out of every three of our children*. Of the seventy-six million children currently residing in the United States, an estimated forty-six million can expect to have their lives touched by violence, crime, abuse, and psychological trauma this year.”⁹²

The DOJ’s 2012 report recommended that a national initiative needs to be placed in motion.⁹³ The report specified that standards and a curriculum need to be created to train educators on (1) “the scope of the problem of children’s exposure to violence” and (2) the signs and symptoms of children exposed to violence in order to identify, screen, and assess evidence-based trauma-specified treatment.⁹⁴ The report specified that “[t]reatment providers should be made available in every setting in which children spend their days—schools, youth centers, even the family’s home—as well as where children receive care . . . and . . . encounter the legal system.”⁹⁵ The report expanded on its recommendations for schools by specifying that “[e]very school in our country should have trauma-informed staff and consultants providing school-based trauma-specific treatment.”⁹⁶ The report specifically identified two classes of students that schools should focus on: children exposed to community violence and children exposed to bullying.⁹⁷

While originally forewarned in 1979, complex trauma has become

89. JULIUS RICHMOND, U.S. DEP’T OF HEALTH, EDUC. & WELFARE, HEALTHY PEOPLE: THE SURGEON GENERAL’S REPORT ON HEALTH PROMOTION AND DISEASE PREVENTION 10-20 to 10-34, 11-6 (1979), <https://profiles.nlm.nih.gov/ps/access/NNBBGK.pdf>.

90. Linda L. Dahlberg & James A. Mercy, *History of Violence as a Public Health Problem*, 11 AM. MED. ASS’N J. ETHICS 167, 168 (2009).

91. Listenbee, Jr. & Torre, *supra* note 30.

92. DEFENDING CHILDHOOD, *supra* note 25, at 1.

93. *Id.* at 5.

94. *Id.* at 5–6.

95. *Id.* at 8.

96. *Id.* at 13.

97. DEFENDING CHILDHOOD, *supra* note 25, at 13.

a national public health issue all three levels of government are attempting to address. Beyond the impact on school performance alone, studies show the impact of untreated complex trauma in adulthood manifests with a “doubled risk of depression, adolescent pregnancy, lung disease, and liver disease. [Complex trauma] triples the risk of alcoholism and STDs. There is a [five time] increase in attempted suicide. . . . [I]f unaddressed, [complex trauma] results in work absenteeism and lost productivity, measured in billions of dollars.”⁹⁸

In sum, the direct and indirect cost associated with untreated complex trauma makes the disability one of the most costly public health issues in the United States.⁹⁹ The local, state, and federal government appear to be in agreement that complex trauma is a national health crisis and should be addressed through implementing trauma-sensitive programs in a school setting. As one plaintiff in *Compton Unified* stated, “If it’s not going to be the school system, then who?”¹⁰⁰

A. Local & State Government

In 2004, Massachusetts established a grant program to create trauma-sensitive schools.¹⁰¹ As previously discussed, trauma-sensitive schools address the “educational and psycho-social needs of children whose behavior interferes with learning, particularly those who are suffering from the traumatic effects of exposure to violence.”¹⁰² Brockton Public Schools was one of the first districts to take action.¹⁰³ Brockton held a community-wide meeting with the district’s twenty-three schools, local police, local counseling agencies, and Massachusetts Departments of Children and Families, Youth Services, and Mental Health.¹⁰⁴

As of 2012, many of Brockton’s twenty-three schools implemented

98. Kauffman, *Common Sense*, *supra* note 27.

99. JUSTICE POLICY INST., *supra* note 9, at 10.

100. Sidner, *supra* note 26. *But see id.* (“While the adults may agree with the science behind the lawsuit, helping students cope with trauma in school is clearly not a perfect science. When asked if either one of the teens would consider talking to mental health counselors if they were available at school, both recoiled.”).

101. Act of July 1, 2004, ch. 194, 2004 Mass. Acts 826 (codified as amended MASS. GEN. LAWS ch. 69, § 1N (2015)) (establishing an alternative education grant program).

102. Mass. Gen. Laws ch. 69, § 1N(b) (2015); *see supra* Section I.B.3; *see also* Jessica Feirman et. al, *Stemming the Tide: Promising Legislation to Reduce School Referrals to the Courts*, 51 FAM. CT. REV. 409, 411 (2013).

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

104. *Id.*

a trauma-sensitive program.¹⁰⁵ Around three hundred educators learned about teaching traumatized children through a course developed by the school district with Lesley University.¹⁰⁶ As a result of these efforts, one school worth mentioning, Arnone Elementary School, has seen a forty percent drop in suspension rates.¹⁰⁷

In 2014, based on the success of these programs, the Commonwealth of Massachusetts passed School and Safety Provisions, which created schools that

(i) enable[d] students to develop positive relationships with adults and peers, regulate their emotions and behavior, achieve academic and non-academic success in school and maintain physical and psychological health and well-being; and (ii) integrate[d] services and align[ed] initiatives that promote students' behavioral health, including social and emotional learning, bullying prevention, trauma sensitivity, dropout prevention, truancy reduction, children's mental health, foster care and homeless youth education, inclusion of students with disabilities, positive behavioral approaches that reduce suspensions and expulsions and other similar initiatives.¹⁰⁸

The State of Washington is the only other state legislature to have successfully passed a statute that makes implementing trauma-sensitive schools the next step in education reform.¹⁰⁹ Local municipalities, school districts, and individual charter schools have also taken the initiative to implement trauma-sensitive school programs.¹¹⁰

105. *Id.*

106. *Id.*

107. *Id.*

108. Act of Aug. 11, 2014, ch. 284, § 6, 2014 Mass. Acts 1100, 1102 (codified as amended MASS. GEN. LAWS ch. 69, § 1P(a) (2015)).

109. WASH. REV. CODE § 70.305.005 (2014) (“The legislature finds that adverse childhood experiences are a powerful common determinant of a child’s ability to be successful at school and, as an adult, to be successful at work, to avoid behavioral and chronic physical health conditions, and to build healthy relationships.”); *see also* Bethany Bray, *Handle with Care: Addressing Child Trauma in West Virginia*, COUNSELING TODAY (May 5, 2015), <http://ct.counseling.org/2015/05/handle-with-care-addressing-child-trauma-in-west-virginia/> (“The first pilot schools in West Virginia adopted the program in 2013. . . . Now, after its success in five different pilot schools at the elementary, middle and high schools levels, the stage is being set to roll the . . . program out statewide.”).

110. *See* Press Release, S.F. Pub. Sch., Board Establishes Policy to Further Improve School Climate and Reduce School Suspensions (Feb. 26, 2014), <http://www.sfusd.edu/en/news/current-news/2014-news-archive/02/board-establishes-policy-to-further-improve-school-climate-and-reduce-school-suspensions.html> (follow “Press Release” hyperlink) (discussing how San Francisco Unified enacted trauma-sensitive schools in its district in 2009, and how by 2014, 2500 educators received training and suspension rates in the district dropped thirty percent); Beth Fertig, *When Home Is Tough, Making Students Feel Good at School*, NPR (Sept. 12, 2015, 8:12 AM), <http://www.npr.org/sections/ed/2015/09/12/439155605/when-home-is-tough-making-students-feel-good-at-school> (discussing New York

B. Federal Government

In Congress, Representative Grace Napolitano for California's 38th Congressional District has introduced the Mental Health in Schools Act three times since 2011.¹¹¹ If ever enacted, this will become the federal government's most appropriate remedy. The 2015 version of the proposed bill funded a comprehensive school-mental health program by partnering schools with a community agency or program involved with mental health from the same neighborhood, which would assist children in dealing with complex trauma.¹¹² Absent any progress in passing the bill, or any of its provisions, the three current statutes potentially available to students suffering from complex trauma are the Individuals with Disabilities Education Act (IDEA), Section 504, and the ADA.¹¹³

In *Compton Unified*, the plaintiffs' prayer for relief calls for a preliminary injunction that requires Compton Unified "to train all . . . teachers, administrators, and school-site staff [on] understanding and recognizing the effects of complex trauma, including its effects on development and the ability to learn, think, read, concentrate, and

charter school implementing a trauma-sensitive program); Meredith Kolodner, *How Schools Can Lower Suspension Rates and Raise Graduation Rates*, HECHINGER REP. (Apr. 2, 2015), <http://hechingerreport.org/how-schools-can-lower-suspension-rates-and-raise-graduation-rates/> ("[In response to zero tolerance policy,] a dozen other schools in Connecticut work with . . . a trauma response program that provides drama therapists to work with teachers to identify trauma, prevent problems from escalating and respond effectively when students do act out. The therapists—who hold master's degrees with training in psychology and theater—offer one-on-one therapy and use drama and role playing in a mandatory class for freshmen."); *School Board Unanimously Approves Resolution for Creating Wellness Centers*, L.A. UNIFIED SCH. DISTRICT (May 13, 2014), <http://home.lausd.net/apps/news/article/379899> (discussing L.A. Unified's resolution to introduce clinics in all schools).

111. Mental Health in Schools Act, H.R. 1211, 114th Cong. (2015); Mental Health in Schools Act, H.R. 628, 113th Cong. (2013); Mental Health in Schools Act, H.R. 751, 112th Cong. (2011). In addition, Senate Bill 195 was introduced by Senator Al Franken in response to the Sandy Hook Elementary School Shooting. Mental Health in Schools Act, S. 195, 113th Cong. (2013); Al Franken & Jim Ramstad, *Improving Care for Mental Illness*, STARTRIBUNE (Feb. 26, 2013, 7:21 PM), <http://www.startribune.com/al-franken-jim-ramstad-improving-care-for-mental-illness/193416241/>. The Sandy Hook Shooting initiated the effort by many state legislatures to bring mental health awareness and intervention into schools, but all except for Washington and Massachusetts have failed to enact trauma-sensitive school policies. See *supra* Section II.A; see also Andrea Spencer, *Congress Must Act Now to Address Mental Illness in Schoolchildren*, HILL (May 13, 2013, 6:30 PM), <http://thehill.com/blogs/congress-blog/education/299335-congress-must-act-now-to-address-mental-illness-in-schoolchildren>.

112. H.R. 1211.

113. See also Americans with Disabilities Amendments Act of 2008, 42 U.S.C. § 12102(2)(A), (B) (2012) ("[M]ajor life activities include, but are not limited to . . . learning, reading, concentrating, thinking, communicating, and working. . . . [A] major life activity also includes the operation of a major bodily function, including but not limited to . . . neurological, brain . . . [and] endocrine . . . functions.").

communicate, in accordance with [the trauma-sensitive model].”¹¹⁴ The following Sections will highlight how IDEA is not the proper approach for implementing a school-wide trauma-sensitive program. In contrast to IDEA, the best approach—taken by the plaintiffs in *Compton Unified*—is to link the effects of complex trauma to Section 504 and the ADA.

1. Individuals with Disabilities Education Act

The Office of Special Education and Rehabilitative Services, under the U.S. Department of Education, administers IDEA at the federal level.¹¹⁵ IDEA provides a “specially designed instruction, at no cost to [the] parents, to meet the unique needs of a child with a disability” and provides related services so an eligible disabled student may benefit from an Individualized Education Program (IEP).¹¹⁶ To qualify under IDEA requires the student to (1) have a disability under one of ten categories (2) that affects the student’s school performance.¹¹⁷ IDEA is funded as a grant program by the federal government and a state’s education department distributes funds to schools with IEPs.¹¹⁸ With federalism in mind, IDEA makes sure that states receive funds to assist in extending their education system to the handicapped, but does not require a specific methodology to reach this end.¹¹⁹

2. Section 504 of the Rehabilitation Act & the Americans with Disabilities Act

Section 504 and the ADA are civil rights laws designed to prohibit discrimination by public programs and activities.¹²⁰ Section 504 applicability is limited to programs and activities that receive federal

114. Memorandum of Points & Authorities in Support of Motion for Preliminary Injunction at 1, *Peter P. v. Compton Unified Sch. Dist.*, No. 2:15-cv-03726, 135 F. Supp. 3d 1126 (C.D. Cal. filed July 9, 2015), ECF No. 42 [hereinafter Motion for Preliminary Injunction].

115. *Protecting Students with Disabilities*, U.S. DEP’T EDUC., <http://www.ed.gov/about/offices/list/ocr/504faq.html> (last visited Feb. 8, 2017).

116. 20 U.S.C. § 1401(9)(D), (29) (2012).

117. *Id.* § 1401(3)(A) (“[I]ntellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance . . . , orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities.”).

118. *Protecting Students with Disabilities*, *supra* note 115.

119. *See* Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 180, 207–08 (1982) (“[I]t seems highly unlikely that Congress intended courts to overturn a State’s choice of appropriate educational theories in a proceeding conducted pursuant to [IDEA’s procedural requirements as codified in] 20 U.S.C. § 1415(e)(2).”).

120. *Protecting Students with Disabilities*, *supra* note 115.

financial assistance from the U.S. Department of Education, while the ADA is limited to state and local government programs and activities.¹²¹ In the context of education, neither statute provides additional funding as reimbursement for accommodations, and any additional funding must be provided at the state and local level.¹²² To qualify under either statute requires a person to (1) have “a physical or mental impairment that substantially limits one or more major life activities,” (2) have “a record of such an impairment,” or (3) be “regarded as having such an impairment.”¹²³ Only a student “with a physical or mental impairment that limits a major life activity is entitled to receive educational services or special treatment.”¹²⁴

The DOJ has delegated to the U.S. Department of Education, Office for Civil Rights (OCR) the power to enforce both disability laws.¹²⁵ Therefore, OCR administers both statutes and, in doing so, considers them essentially identical.¹²⁶ However, while Title II of the ADA applies to public schools as public institutions, OCR provides no specific regulation regarding education programs—with the exception of reasonable accommodation to educational activities and educational settings for eligible students.¹²⁷ Regardless, OCR treats any violation under Section 504 as a violation under the ADA, and any complaint under one statute will trigger an investigation under the other statute.¹²⁸ Therefore, the regulations on education programs in preschool, elementary, and secondary school under Section 504 are applicable to the ADA unless Title II provides otherwise.¹²⁹

While OCR does not engage in formal mediation, OCR does

121. *Id.*

122. *Id.* The 21st Century Cures Act is a possible route for states to fund some mental health services with the assistance of federal block grants (although these services may not be located within the school), but this funding is contingent on the inconsistent variables of both Congress and executive appointments. *See* 21st Century Cures Act, H.R. 34, 114th Cong. §§ 8001, 9008 (2016) (enacted); ERIN BAGALMAN, CONG. RESEARCH SERVS., THE HELPING FAMILIES IN MENTAL HEALTH CRISIS REFORM ACT OF 2016: DIVISION B OF P.L. 114-255, at 6–7, 10 (2016).

123. 42 U.S.C. § 12102(1) (2012); *see* 29 U.S.C. § 794(a) (2012).

124. *Federal Laws Pertaining to ADHD Diagnosed Children*, PBS FRONTLINE, <http://www.pbs.org/wgbh/pages/frontline/shows/medicating/schools/feds.html> (last visited Feb. 8, 2017).

125. *Protecting Students with Disabilities*, *supra* note 115.

126. S. JAMES ROSENFELD, EDLAW, INC., SECTION 504 AND IDEA: BASIC SIMILARITIES AND DIFFERENCES 4 (1996), <http://files.eric.ed.gov/fulltext/ED427487.pdf>.

127. *Id.* at 4–5.

128. *Id.* at 4.

129. *Id.*

facilitate mediation for compliance complaints.¹³⁰ However, OCR does not monitor any agreement reached in mediation.¹³¹ Outside of the administrative process, which must not be exhausted, the only way to enforce a Section 504 accommodation is through the federal court system.¹³² Therefore, as a result of bringing a civil claim under both Section 504 and the ADA, the plaintiffs in *Compton Unified* also bypassed administrative remedies required under IDEA.¹³³

The next Section will explain how, absent legislation, a federal court claim under Section 504 and the ADA remains the best viable option for implementing a school-wide trauma-sensitive program. As one plaintiff represented in *Compton Unified* stated, “[T]he lawsuit seemed to be the only way to get the district’s attention on the issue.”¹³⁴

C. Why Section 504 of the Rehabilitation Act Is a Better IDEA

Because the plaintiffs in *Compton Unified* are requesting injunctive relief for an entire district-wide program, IDEA does not apply as the proper procedure to implement a trauma-sensitive program.¹³⁵ This Section will further explain why Section 504 is the most preferable means to ensure equal access to education for both the plaintiffs and other students suffering from complex trauma in other school districts across the nation.

1. Federal Law that Respects a Local Remedy

Section 504 requires school districts to provide the same IEP provided under IDEA to qualifying students with a disability.¹³⁶ Under Section 504, a court is still allowed to look at IDEA’s statutory guidelines to make sure “the individualized educational program developed through [IDEA]’s procedures [are] reasonably calculated to enable the child to receive educational benefits.”¹³⁷ This similarity

130. *Protecting Students with Disabilities*, *supra* note 115.

131. *Id.*

132. *Id.*

133. *Peter P. v. Compton Unified Sch. Dist. (Compton Unified II)*, 135 F. Supp. 3d 1126, 1139 (C.D. Cal. 2015).

134. *Sidner*, *supra* note 26.

135. *Compton Unified II*, 135 F. Supp. 3d at 1139, 1143 (citing *Jamie S. v. Milwaukee Pub. Sch.*, 668 F.3d 481, 484–87 (7th Cir. 2012)).

136. *Protecting Students with Disabilities*, *supra* note 115.

137. *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 206–07 (1982); *see also Compton Unified II*, 135 F. Supp. 3d at 1137 (first citing 34 C.F.R. § 104.33(b)(2) (2015); then citing 34 C.F.R. § 104.35(d) (2015); and then citing 34 C.F.R. § 104.36 (2015)) (“IDEA and Section 504 do share similarities and satisfaction of IDEA requirements is often a manner of complying with Section 504’s implementing

between IDEA and Section 504 ensures “the decision reached by the state authority is appropriate under the law and in light of proposed alternatives.”¹³⁸ This precedent ensures that applying Section 504 preserves the role of state and local government in deciding proper education policy.¹³⁹ Therefore a Section 504 remedy ensures that these disability laws dovetail with Congress’s intention for IDEA, which is to make sure states extend their education system to the disabled, but not to require a specific methodology to reach this end.¹⁴⁰

2. *Implements a School-Wide Program*

Under Section 504, a remedy will include related educational services—like a trauma-sensitive program—in order to meet the educational needs of a disabled student as adequately as the needs of a nondisabled student.¹⁴¹ Under a trauma-sensitive program implemented through Section 504, a disabled student is accommodated with an equal opportunity to compete in a regular classroom and exercise his or her right to participate in a public education.¹⁴²

Therefore, since Section 504 is a non-discrimination law, an appropriate education is one that meets the needs of a disabled student as adequately as it meets the needs of a student without a disability.¹⁴³ “By contrast, IDEA defines an appropriate education as one that addresses the unique educational needs of an eligible student.”¹⁴⁴ As previously discussed, the trauma-sensitive model is best implemented as a school-wide model instead of an individualized approach.¹⁴⁵ Section 504 will implement a school-wide approach that ensures each student suffering from complex trauma will have equal access to the same

regulations.”).

138. *Crowder v. Kitagawa*, 81 F.3d 1480, 1485 (9th Cir. 1996) (“Otherwise, any state could adopt requirements imposing unreasonable obstacles to the disabled, and when haled into court could evade the antidiscrimination mandate of the ADA merely by explaining that the state authority considered possible modifications and rejected them.”); *see also Rowley*, 458 U.S. at 207–08.

139. *Rowley*, 458 U.S. at 207–08.

140. *Id.* at 208.

141. 20 U.S.C. § 1401(26)(A) (2012) (“The term ‘related services’ means . . . developmental, corrective, and other supportive services (including . . . psychological services, . . . social work services, . . .) as may be required to assist a child with a disability.”); *Protecting Students with Disabilities*, *supra* note 115.

142. *Protecting Students with Disabilities*, *supra* note 115; *see also Federal Laws Pertaining to ADHD Diagnosed Children*, *supra* note 124.

143. 34 C.F.R. § 104.33(b)(1) (2016); *Protecting Students with Disabilities*, *supra* note 115.

144. *Federal Laws Pertaining to ADHD Diagnosed Children*, *supra* note 124.

145. *See supra* Section I.B.3.

quality and standard of education that his or her fellow classmate receives.

3. *Practical & Cost Effective*

In addition, schools will sometimes prefer a child's disability be addressed under Section 504 instead of IDEA because a remedy under Section 504 is designed to "level the playing field" by eliminating barriers to education and is therefore less costly than a remedy under IDEA.¹⁴⁶ A remedy under IDEA, on the other hand, is individualized to meet the needs of each unique child with educational programs and services tailored specifically to the child.¹⁴⁷ A special education program under IDEA may require a student to be in his or her own curriculum, while Section 504 requires a qualifying disabled student to be taught in a regular classroom, unless it is impossible to do so.¹⁴⁸

While the trauma-sensitive program is designed to address the needs of students with complex trauma, it should also be noted that students that act out in a way that is violent or exhibits extreme harm to themselves or others can and will be removed from a school setting. Therefore, establishing a trauma-sensitive program under Section 504 and the ADA still provides the school with "discretion to take appropriate measures to prevent and eliminate such misconduct regardless of whether a student is disabled."¹⁴⁹

III. ENCOMPASSING COMPLEX TRAUMA UNDER SECTION 504 AND THE ADA

Peter P. v. Compton Unified School District revolves around "whether alleged trauma-induced disabilities have caused students to be denied the benefits of a public education, and the degree to which [Compton Unified School District] . . . failed to accommodate students' alleged trauma-induced disabilities so as to afford them meaningful access to a public education."¹⁵⁰ The plaintiffs in *Compton Unified* have argued that "without school-wide trauma-sensitive accommodations

146. ROSENFELD, *supra* note 126, at 2–3; *see also Federal Laws Pertaining to ADHD Diagnosed Children*, *supra* note 124.

147. ROSENFELD, *supra* note 126, at 5.

148. *Federal Laws Pertaining to ADHD Diagnosed Children*, *supra* note 124.

149. Paul Lannon & Elizabeth Sanghavi, *New Title II Regulations Regarding Direct Threat: Do They Change How Colleges and Universities Should Treat Students Who Are Threats to Themselves?*, NACUANOTES, Nov. 1, 2011, <http://www.higheredcompliance.org/resources/resources/NACUANOTE-TitleIIRegs1.pdf>.

150. *Peter P. v. Compton Unified Sch. Dist. (Compton Unified III)*, No. 2:15-cv-03726, 2015 U.S. Dist. LEXIS 134772, at *46 (C.D. Cal. Sept. 29, 2015).

[they] will continue to be denied meaningful access to public education on account of their disabilities.”¹⁵¹

The plaintiffs claim Section 504 and the ADA require schools to accommodate students experiencing complex trauma because they are otherwise being denied benefits of an educational program.¹⁵² The plaintiffs specifically call on Compton Unified to “intervene early and consistently . . . in order to ensure that [complex] trauma does not determine a young person’s educational attainment and life chances.”¹⁵³

The major challenge in *Compton Unified* is that the case is working with relatively new science on the study of the brain.¹⁵⁴ Up until recently, most research on PTSD has been focused on combat veterans.¹⁵⁵ Scientists are just now beginning to understand the similarities between combat and gang warfare.¹⁵⁶ In fact, in Chicago, the Urban Warriors program is addressing the trauma associated with growing up in gang warfare by creating a support group between teens from the area and local combat veterans.¹⁵⁷

Despite this limited understanding, on September 29, 2015, the district judge denied Compton Unified’s Motion to Dismiss, stating,

The Court does not endorse the legal position that exposure to two or more traumatic events is, without more, a cognizable disability under either [Section 504 or the ADA]. 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.¹⁵⁸

151. Motion for Preliminary Injunction, *supra* note 114, at 1.

152. Complaint, *supra* note 11, at 3.

153. *Id.*

154. Asher-Schapiro, *supra* note 33.

155. *Id.*

156. *Id.*

157. Audie Cornish, *Chicago Teens and Combat Veterans Join Forces to Process Trauma*, NPR (Jan. 25, 2016, 4:05 PM), <http://www.npr.org/2016/01/25/463875598/chicago-teens-and-combat-veterans-join-forces-in-urban-warriors-program>; *Youth Safety and Violence Prevention-Programs: Urban Warriors*, YMCA METRO CHI., <http://www.ymcachicago.org/programs/youth-safety-and-violence-prevention-urban-warriors> (last visited Feb. 8, 2017).

158. *Compton Unified I*, 135 F. Supp. 3d 1098, 1102–03 (C.D. Cal. 2015). One additional challenge the plaintiffs need to address is certifying a class in order to implement a trauma-sensitive program for the entire district instead of individual schools. *See generally Compton Unified III*, No. 2:15-cv-03726, 2015 U.S. Dist. LEXIS 134772, at *15–16 (C.D. Cal. Sept. 29, 2015) (citing FED. R. CIV. P. 23(b)(2)) (discussing how class certification is proper for claims brought under Section 504 and the ADA when the plaintiffs only seek injunctive relief). Medical evidence according to the stricter standards of *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 597 (1993) will be required in order to establish typicality. *Id.* at *19, *62–63. Therefore, success in education reform requires establishing a disability

The final important difference between Section 504 and IDEA is the definition of a disability, which will establish eligibility under each program. As regulated, the definition of a disability under Section 504 is much broader than the definition under IDEA.¹⁵⁹

This Note concludes by arguing that complex trauma is a disability that both occurs after exposure to two or more traumatic events and falls under Section 504 and the ADA—not only because medical evidence indicates complex trauma is an impairment, but also because complex trauma restricts a non-accommodated student’s civil right to an education.

A. Complex Trauma as an Impairment

To qualify under IDEA requires the student to have a disability that fits into one of ten categories and that disability must affect how the child performs in school.¹⁶⁰ It is possible for a child suffering from complex trauma to be qualified through IDEA under at least one of the ten categories: serious emotional disturbance.¹⁶¹ However, Section 504 and ADA eligibility requirements are less strict, so potentially more students suffering from complex trauma—but with less severe symptoms—can be covered under the latter two disability laws.¹⁶²

Section 504 regulations do not provide “an exhaustive list of specific diseases and conditions that may constitute physical or mental impairments because of the difficulty of ensuring the comprehensiveness of such a list.”¹⁶³

Although it is not necessary for disabilities to be recognized by the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5)*, the *DSM-5* loosened standards for diagnosing complex trauma under PTSD.¹⁶⁴ In 2013, *DSM-5* shifted the focus from whether the child had a subjective immediate reaction based on fear, helplessness, or horror, to whether the child directly experienced, witnessed, or

under both disability rights and the FED. R. CIV. P. 23.

159. ROSENFELD, *supra* note 126, at 3.

160. 20 U.S.C. § 1401(3)(A) (2012).

161. *Id.*

162. *See Federal Laws Pertaining to ADHD Diagnosed Children*, *supra* note 124.

163. *Protecting Students with Disabilities*, *supra* note 115 (discussing 34 C.F.R. § 104.3(j)(2)(i) (2016)); *see* 34 C.F.R. § 104.3(j)(2)(ii) (explaining that major life activities include caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working); ROSENFELD, *supra* note 126, at 4.

164. AM. PSYCHIATRIC ASS’N, HIGHLIGHTS OF CHANGES FROM DSM-IV-TR TO DSM-5, at 9 (2013), file://hd.ad.syr.edu/01/c13a9a/Documents/Downloads/APA_DSM_Changes_from_DSM-IV-TR_to_DSM-5.pdf; *see* 34 C.F.R. § 104.3(j)(2)(iv); *see also* *Compton Unified I*, 135 F. Supp. 3d 1098, 1099–1111 (C.D. Cal. 2015).

indirectly experienced the traumatic event.¹⁶⁵ Therefore, a person *experiencing* two or more ACEs makes complex trauma a mental impairment, regardless of how he or she subjectively reacted to the experience.¹⁶⁶

As this Note previously discussed, the rate of students susceptible to complex trauma has become a national crisis with dire consequences.¹⁶⁷ A summary of the disability and its symptoms is as follows:

Complex trauma can have devastating effects on a child's physiology, emotions, ability to think, learn, and concentrate, impulse control, self-image, and relationships with others. Across the life span, complex trauma is linked to a wide range of problems, including addiction, chronic physical conditions, depression and anxiety, self-harming behaviors, and other psychiatric disorders.¹⁶⁸

A student living in adverse circumstances "becomes oversensitized to any potential stimulus that might cue a threat, so the individual perceives ordinary encounters as threatening ones, triggering a reactive 'fight or flight' or dissociative ['freeze'] mode."¹⁶⁹ The triggering results in the brain breaking away from a balanced level of homeostasis into a mode of hyperarousal "[w]hen there are rapid, novel, threatening, or unpredictable changes in the environment."¹⁷⁰ Tunnel vision sets in as the child lives in an unpredictable world and resolves to survival skills of fight or flight.¹⁷¹ However, the intensity and frequency

165. HIGHLIGHTS OF CHANGES FROM DSM-IV-TR TO DSM-5, *supra* note 164, at 9, 19.

166. *Id.* at 9; *see also* *Complex PTSD*, U.S. DEP'T VETERANS AFF. NAT'L CTR. FOR PTSD, <http://www.ptsd.va.gov/professional/PTSD-overview/complex-ptsd.asp> (last visited Feb. 8, 2017) ("Because results from the DSM-IV Field Trials indicated that 92% of individuals with Complex PTSD[] also met diagnostic criteria for PTSD, Complex PTSD was not added as a separate diagnosis classification."). *But see* BEHIND THE TERM: TRAUMA, *supra* note 42, at 3 ("Complex PTSD is not currently included in the *DSM-5* and transcends the PTSD criteria, in that complex PTSD involves emotion dysregulation, the loss of self-integrity, and disturbances in the ability to relate to and be intimate with others.").

167. *See supra* Parts I, II.

168. *Complex Trauma*, NAT'L CHILD TRAUMATIC STRESS NETWORK, <http://www.ncts.net.org/trauma-types/complex-trauma> (last visited Feb. 8, 2017) ("Many children with complex trauma histories suffer a variety of traumatic events, such as physical and sexual abuse, witnessing domestic and community violence, separation from family members, and revictimization by others."); *see also* Complaint, *supra* note 11, at 2, 7, 59.

169. Complaint, *supra* note 11, at 36 (citing Bruce D. Perry & Ronnie Pollard, *Homeostasis, Stress, Trauma, and Adaptation: A Neurodevelopmental View of Childhood Trauma*, 7 CHILD & ADOLESCENT PSYCHIATRIC CLINICS N. AM. 33, 36 (1998)).

170. *Id.* at 37.

171. *Id.* at 37–38 (citing BRUCE D. PERRY, THE CHILD TRAUMA ACAD., EFFECTS OF TRAUMATIC EVENTS ON CHILDREN: AN INTRODUCTION 3 (2003)); *see also* Bruce D. Perry, Senior Fellow, Child Trauma Acad., Inaugural Margaret McCain Lecture: Maltreatment and

of stress may result in the brain failing to regain its homeostasis balance, which will result in a “dissociative” or “freeze and surrender” response¹⁷²:

Unlike the fight or flight response, the dissociative [“freeze”] response manifests in cognitive and physical immobilization, decreased heart rates, and disengagement from external stimuli.

The spectrum of dissociation ranges from daydreaming to loss of consciousness. When an educator is unaware of the symptoms of a dissociative reaction, it is easy for him or her to misinterpret a student’s dissociative behavior.¹⁷³

Therefore, complex trauma is a clear impairment. However, Section 504 and the ADA are civil rights laws. Their purpose is to protect against discrimination.¹⁷⁴ While it is necessary to establish an impairment, a student suffering from complex trauma must also establish the impairment has an impact on the student’s life.¹⁷⁵

B. Complex Trauma as a Disability

To qualify under Section 504 and the ADA, a person must (1) have “a physical or mental impairment that substantially limits one or more major life activities,” (2) have “a record of such an impairment,” or (3) be “regarded as having such an impairment.”¹⁷⁶ Only a student “with a physical or mental impairment that limits a major life activity is entitled to receive educational services or special treatment.”¹⁷⁷

“[T]he critical question is whether a student’s impairment substantially limits the ability to learn.”¹⁷⁸ The answer is “Yes.” As outlined above, unaddressed complex trauma “is a powerful predictor of

the Developing Child: How Early Childhood Experience Shapes Child and Culture (Sept. 23, 2014), <http://www.lfcc.on.ca/mccain/perry.pdf>.

172. Complaint, *supra* note 11, at 38–39 (citing Perry & Pollard, *supra* note 169, at 35–37, 44).

173. *Id.* at 39 (citing Perry et al., *supra* note 54, at 279–80).

174. *Federal Laws Pertaining to ADHD Diagnosed Children*, *supra* note 124. Disability rights laws are different from entitlement laws. *Cleveland v. Policy Mgmt. Sys. Corp.*, 526 U.S. 795, 803 (1999). While it is highly encouraged to screen for complex trauma under Medicaid, it does not imply (and would not be the proper application of disability rights laws to argue) that coverage under an entitlement program equates to accommodation under a disability rights law. *Id.*; MEDICAID, U.S. DEP’T OF HEALTH & HUMAN SERVS., EPSDT: A GUIDE FOR STATES 1, 12 (2014), https://www.medicaid.gov/medicaid/benefits/downloads/epsdt_coverage_guide.pdf.

175. 34 C.F.R. § 104.3(j)(1) (2016).

176. 29 U.S.C. § 794(a) (2012); 42 U.S.C. § 12102(1) (2012).

177. *Federal Laws Pertaining to ADHD Diagnosed Children*, *supra* note 124.

178. ROSENFELD, *supra* note 126, at 4.

academic failure.”¹⁷⁹ When examining the neurobiological effects of complex trauma, the effects impair the ability of students to “perform activities essential to education—including, but not limited to, learning, thinking, reading, and concentrating—and thus constitute a disability.”¹⁸⁰

Of the twenty-three percent of children that suffer from complex trauma, approximately twenty-two to forty-five percent are physiologically incapable of learning.¹⁸¹ As a result, children suffering from complex trauma are two and a half times “more likely [either] to repeat a grade or to be disengaged with their classwork.”¹⁸² The physical and mental impairment results in the brain breaking away from a balanced level of homeostasis into a mode of “fight or flight” or “freeze and surrender” behavior.¹⁸³

Complex trauma does not end once a child acts on either one of these adrenalin or disassociated behaviors. When studying or participating in a class lecture, complex trauma impairs reading ability as well as “attention, organization, comprehension, memory engagement in learning, and trust.”¹⁸⁴ In the classroom, complex trauma manifests as “aggression, defiance, withdrawal, perfectionism, hyperactivity, reactivity, impulsiveness, and/or rapid and unexpected emotional swings.”¹⁸⁵ The students of Compton Unified that are victims of violence and harassment are forced to adapt physiologically in order to survive a daily ritual, but their behavior is dismissed as “immaturity or poor judgment” and not seen as a disability.¹⁸⁶

Teachers and staff usually react with punitive and exclusionary discipline mandated through a zero tolerance policy adopted by many school districts. The disciplinary action retriggers the students’ complex

179. Complaint, *supra* note 11, at 3; *see supra* Section I.B.

180. Motion for Preliminary Injunction, *supra* note 114, at 1; *see* 42 U.S.C. § 12102(2)(A) (2012).

181. Kauffman, *Common Sense*, *supra* note 27; Khazan, *supra* note 23.

182. Khazan, *supra* note 23.

183. *See supra* Section III.A.

184. WOLPOW ET AL., *supra* note 53, at 12; *see also* Bruce D. Perry, *The Memory of States: How the Brain Stores and Retrieves Traumatic Experience*, in *SPLINTERED REFLECTIONS: IMAGES OF THE BODY IN TRAUMA* 24 (1999) (“The capacity to internalize new verbal cognitive information depends upon having portions of the frontal and related cortical areas being activated, which, in turn, requires a state of attentive calm, a state the traumatized child rarely achieves.”).

185. WOLPOW ET AL., *supra* note 53, at 13.

186. *Compton Unified I*, 135 F. Supp. 3d 1098, 1104, 1110, 1113 (C.D. Cal. 2015) (quoting *Stearns v. Bd. of Educ. for Warren Twp. High Sch. Dist. No. 121*, No. 99 C 5818, 1999 U.S. Dist. LEXIS 17981, at *8 (N.D. Ill. Nov. 16, 1999)).

trauma and is counterproductive to their education.¹⁸⁷ Bullying also retriggers the disability, and schools that fail to adopt an LGBT inclusive anti-bullying policy risk doubling attempted suicide rates for that LGBT community.¹⁸⁸ “[H]igh rates of absenteeism, dropout, adverse health consequences and academic underachievement” percolate to the surface as indicators of complex trauma—survival skills developed for living in violent neighborhoods, broken households, and less LGBT inclusive communities.¹⁸⁹ Therefore, complex trauma is not a term used lightly for defining the effects of both victimization from community violence and re-victimization from failed disciplinary policies that both impair and deny any meaningful access to an education.¹⁹⁰

The plaintiffs in *Compton Unified* argue that without a district-wide trauma-sensitive accommodation, they “will continue to be denied meaningful access to public education on account of their disabilities.”¹⁹¹ Without the necessary accommodations to create equal access, failed policies risk retriggering—and further embedding neurologically—a student’s traumatic experiences¹⁹²: “Instead of repair, more damage.”¹⁹³

Zero tolerance policy directed at students who fail to conform to the classroom environment, and failures in anti-bullying laws to protect LGBT students, re-victimizes both student groups suffering from complex trauma.¹⁹⁴ School performance suffers as a result with drastic implications: “In an educational environment that is not trauma-

187. Motion for Preliminary Injunction, *supra* note 114, at 3.

188. Hatzenbuehler & Keyes, *supra* note 70, at S24.

189. Peters, *supra* note 38; see also Michelle Chen, *The PTSD Epidemic in Our Most Violent Neighborhoods*, ALJAZEERA AM. (Mar. 4, 2014, 8:00 AM), <http://america.aljazeera.com/opinions/2014/3/ptsd-mental-healthgunviolencetrauma.html>.

190. See *Community Violence: The Effects on Children and Teens*, U.S. DEP’T VETERANS AFF. NAT’L CTR. FOR PTSD, <http://www.ptsd.va.gov/public/types/violence/effects-community-violence-children.asp> (last updated Sept. 2, 2015); see also *PTSD in Children and Teens*, U.S. DEP’T VETERANS AFF. NAT’L CTR. FOR PTSD, <http://www.ptsd.va.gov/public/family/ptsd-children-adolescents.asp> (last updated Aug. 13, 2015) (“Studies show that about 15% to 43% of girls and 14% to 43% of boys go through at least one trauma. Of those children and teens who have had a trauma, 3% to 15% of girls and 1% to 6% of boys develop PTSD. Rates of PTSD are higher for certain types of trauma survivors.”).

191. Motion for Preliminary Injunction, *supra* note 114, at 1.

192. Kauffman, *Childhood Trauma*, *supra* note 22; see also Daun Kauffman, ‘Defend Childhood’ to Improve Access to Education and Explicitly Confront Childhood Trauma, MORNING ZEN (Aug. 1, 2015), <http://www.cmhnetwork.org/media-center/morning-zen/defend-childhood-confront-trauma> [hereinafter Kauffman, ‘Defend Childhood’].

193. Kauffman, ‘Defend Childhood,’ *supra* note 192.

194. See Complaint, *supra* note 11, at 2, 5, 7, 53.

sensitive, [a] student is treated as disruptive and may be isolated from other students, suspended, or even expelled.”¹⁹⁵ The students that are bullied will decide to isolate themselves to the point that suicide becomes irrationally justified as their only remedy.¹⁹⁶ In turn, these students are effectively denied access to public education because of these poorly designed policy choices.¹⁹⁷

In contrast, a trauma-sensitive learning environment increases the child’s sense of safety and ensures equal access to education. In addition, addressing mental health through schools not only ensures academic achievement in these communities,¹⁹⁸ but also intervenes to address issues of untreated complex trauma that appear in adulthood.¹⁹⁹

CONCLUSION

“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.”²⁰⁰ Unlike characteristics such as race, sex, and national origin, children do not enjoy protected class status.²⁰¹ However, Section 504 and the ADA are about equal access. Here, the courts—and OCR—need to view the back door approach provided in *Compton Unified* as the last remaining legal opportunity to provide equal access to education for students segregated on the basis of wealth (and exposed to higher rates of victimization as a result). Since learning is a major life activity, students diagnosed with complex trauma have demonstrated difficulty learning in school and are therefore eligible under Section 504 and the ADA for special educational services.²⁰²

Compton Unified’s success can be seen as a sign of hope for failing school districts where students live in poverty, violence, and abuse. This Note only begins to capture the legitimacy to the disability rights claim: students that are a part of either a low-income or the LGBT community are both exposed to traumatic events and suffer from complex trauma that requires school districts to provide accommodation through a district-wide trauma-sensitive program.

Despite the individual plight that students born into poverty or as a

195. *Id.* at 36.

196. *See generally* Hatzenbuehler & Keyes, *supra* note 70, at S24.

197. *See* Complaint, *supra* note 11, at 5.

198. Smithgall, Cusick & Griffin, *supra* note 79, at 407.

199. Complaint, *supra* note 11, at 3; Kauffman, *Childhood Trauma*, *supra* note 22; *see supra* text accompanying notes 89–98.

200. *Brown v. Bd. of Educ. of Topeka*, 347 U.S. 483, 493 (1954).

201. *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 28, 105, 107 (1973).

202. *See Federal Laws Pertaining to ADHD Diagnosed Children*, *supra* note 124.

member of the LGBT community must face, the State should not re-victimize students through systematic suppression. Failure of anti-bullying policies to protect the LGBT community and discriminatory application of zero tolerance policy needs to be acknowledged as depriving complex trauma-diagnosed students of equal access to public education.

Peter P. v. Compton Unified School District provides the foundations for a successful strategy to address systematic change by demanding that a new trauma-sensitive model for the entire district be implemented. The remedy applied through Section 504 and the ADA allows the students to bypass administrative procedures under IDEA by focusing on a system-wide, rather than individualized, approach to replacing current failed policies.

In addition, Section 504 and the ADA respect the role of states and local school districts in determining what policy is best to implement in order to provide equal access. The only requirement is that a policy be in place both to address students suffering from complex trauma and to make sure the policy does not worsen their condition. Finally, Section 504 and the ADA incorporate less severe—but still disabling—degrees of complex trauma, and therefore provide equal access to the same quality education for a broader student base.

One can only hope that success in *Compton Unified* will prompt other school districts to implement programs similar to the trauma-sensitive model rather than choose to address the issue in legal battles. While the change will be a small step in the right direction, implementing a new policy to better serve a struggling community is best done through the schools, society's first and only refuge for these students to succeed in life.