



# Legal Case for Providing Special Education Services to Children who Suffer from Trauma

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**It is no surprise that developmental trauma and childhood traumatic stress have a direct impact on a child's educational success.** Schools and school districts have increasingly recognized the effect trauma has on children as they are engaging school counselors, social workers and psychologists to provide trauma-informed, school-based mental health services for their students. These mental health services often exist outside or ancillary to special education services due to barriers under federal and Nevada state law of recognizing developmental trauma as a disability for which a child may need special education supports. This article discusses the legal basis practitioners may use to assist with obtaining necessary special education services for children who have experienced trauma and traumatic stress, and need these services to succeed educationally.

Trauma is defined as an emotional response to an event that is frightening, dangerous and/or violent that poses a threat to a child's life or bodily integrity. Children who suffer from child traumatic stress or developmental trauma are those who have been exposed to one or more traumas over the course of their lives and develop reactions that persist and affect their daily lives after the events have ended. Traumatic reactions can include a variety of responses, such as intense and ongoing emotional upset, depressive symptoms or anxiety, behavioral changes, difficulties with self-regulation, problems relating to others or forming attachments, regression or loss of previously acquired skills, attention and academic difficulties, nightmares, difficulty sleeping and eating, and physical symptoms, such as aches and pains. Older children may use drugs or alcohol, behave in risky ways, or engage in unhealthy sexual activity. Developmental trauma can also lead to increased use of health and mental health services, and increased involvement with the child welfare and juvenile justice systems. Without

treatment or support, repeated childhood exposure to traumatic events can affect the brain and nervous system, and increase health-risk behaviors (e.g., smoking, eating disorders, substance use and high-risk activities). Research shows that trauma survivors can be more likely to have long-term health problems (e.g., diabetes and heart disease) or to die at an earlier age.<sup>1</sup>

Two federal statutes mandate the provisions of identification of and supports to students with disabilities. Under Section 504 of the Americans with Disabilities Act of 1974 (ADA) schools must make efforts to accommodate children with disabilities when those disabilities impact their access to school curriculum and impede their educational progress.<sup>2</sup> The Individuals with Disabilities Education Act (IDEA) was passed in 1975 and requires states to provide specialized services to children who are made eligible for services under one or more of 13 recognized disability categories and who are found to be in need of those services after a comprehensive evaluation.<sup>3</sup> When these federal laws were passed, the science of



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trauma and its physiological and mental effects were not well understood, and thus developmental trauma was not legally identified as a disability.

There is no denying the link between childhood trauma and the potential for school difficulties. Throughout the past decade, the judiciary has recognized the effect trauma has on students especially as it relates to Section 504 of the ADA. In 2015, in *Peter P. v. Compton Unified School District*, the court highlighted recent findings that complex trauma, which can include violence, placement in foster care, physical abuse or neglect, homelessness and racism can create neurobiological changes that impair a child's ability to perform activities essential to education and could be considered a disability within the meaning of Section 504 to the extent

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that it survived the school district's motion to dismiss.<sup>4</sup> Further, in *Stephen C. v. Bureau of Indian Education*, the District Court of Arizona denied

the school district's motion to dismiss finding that complex trauma can create physiological changes that can be constituted as a disability within the meaning of ADA Section 504.<sup>5</sup> A Section 504 Accommodations Plan (504 Plan) as outlined by Section 504 of the ADA may be put into place for children who have experienced trauma. A 504 Plan can be used for students who can access the general education curriculum but need some accommodations to provisions of their education to help remove disability-related barriers.

However, accommodations in a 504 Plan might not be sufficient to ameliorate

the adverse effects of trauma. Some children's trauma is such that they need specialized supports and developed trauma-responsive programming at the school level. This level of service is beyond what a 504 Plan can provide. Specialized services and supports could be provided through an Individualized Education Plan (IEP) as outlined by the IDEA. There are substantive differences between an IEP and 504 Plan. If a child is qualified with a disability under IDEA then an IEP is a legal document that has present levels of academic and emotional functioning, academic or emotional goals a student should reach within a year, as well as a list of accommodations, modifications, or supportive services to assist the student in reaching those goals. The IEP team must meet at least annually to review goals and progress. A 504 Plan is not required to be reviewed annually, not required to be based on evidence-based assessments and not required to contain goals to ensure educational progress.

As it relates to IDEA and to the Nevada Revised Statutes (NRS)/Nevada Administrative Code (NAC) as codified in Sections 388, there is less developed case law or statutory guidance on whether complex trauma can be considered a disability under the categories of disabilities listed within it. It has been postulated that trauma could be considered under the eligibility category of "Emotional Disturbance" or "Serious Emotional Disturbance" (ED).<sup>6</sup> ED is defined as a severe emotional disorder that adversely affects academic performance and includes one or more of the following: an inability to learn that is not caused by an intellectual, sensory or health factor, an inability to engage in or to maintain interpersonal relationships with peers and teachers, inappropriate behavior or feelings, a general and pervasive mood of unhappiness or depression, a physical symptom associated with a personal or academic problem or the expression of fears regarding personal or academic problems. ED is a term that was first used in 1975 and focuses on the inability and inappropriateness of a child's ability/

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behavior rather than any recognition that school struggles are manifestations of trauma and extreme distress. ED also has a negative stigma associated with the classification. A child with an ED is often placed in classes separate from their non-disabled peers with other emotionally challenged children, with few therapeutic support services needed to help ameliorate the effects of trauma and little access to more typically behaving peers. These classes are often described as chaotic and unpredictable, which can exacerbate trauma-related symptoms. Further, the label of ED can act as a disqualifier for certain future employment or military involvement opportunities.



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Another eligibility category of disability under IDEA, NRS and NAC in which trauma could be considered as criteria for specialized services is “Health Impairment” or “Health Impairment other than orthopedic impairment” (OHI).<sup>7</sup> OHI is defined as an impairment that limits the strength, vitality or alertness of a pupil that results in limited alertness with respect to the educational environment and is caused by chronic or acute health problems and adversely affects the educational performance of the pupil. Listed within the OHI category are examples of several impairments that include but are not limited to: attention

deficit disorder or attention deficit hyperactivity disorder, childhood disintegrative disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, Rett’s disorder, sickle-cell anemia and Tourette syndrome. The category of OHI has been recognized to include medical diagnoses that affect a child’s mental and physical stamina and thus may limit or impede educational progress. While the list of impairments is not meant to be exhaustive, schools are wary to provide services when a diagnosis or disability is not specifically listed within an eligibility category. This ambiguity creates a barrier to providing services.

In order to ensure that students who have experienced trauma can access disability and special education-related services, it has been suggested that the Nevada State Legislature could create a definition in the NRS of developmental trauma that can be recognized and/or listed as a disability under Section 504 of the ADA and added to the list of impairments under the “Health Impairment” eligibility category under IDEA. A definition of developmental trauma endorsed by the Nevada State Legislature and community partners, and listed in the NRS and NAC could open another channel for school districts to provide school-based supportive services to children whose trauma impacts their education and access federal monies/ supports to do so. A bill advancing this suggestion will be presented to the Nevada Legislature during the 2021 Legislative Session. Until the bill is passed or should the bill get defeated in the legislative process, the legal argument discussed in this article may be used to assist with getting services for children who need them on an individual basis.

## ENDNOTES:

1. [APA.org](http://APA.org).
2. 20 U.S.C. section 1412 (a)(2).
3. See 20 U.S.C. section 1412(a)(3) (2018); 34 C.F.R. section 300.111(a) (2019).
4. 135 F.Supp. 3d 1126, 1130 (C.D. Cal. 2015).
5. No. CV-17-08004-PCT-SPL, 2018 U.S. Dist. LEXIS 68083 (D. Ariz. Mar. 29, 2018).
6. NRS 388.419 and NAC 388.105.
7. NRS 388.419 and NAC 388.046.

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