

IN WHOSE BEST INTERESTS?

FINDING A ROLE FOR STUDENT VOICE IN THE DEVELOPMENT OF IEPs

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INTRODUCTION

When evaluating the legal rights of minors, courts are often tasked with assessing the “best interests of the child.”¹ This standard, first developed by the Supreme Court of Texas,² has been adopted around the globe. In fact, the U.N. Convention on the Rights of the Child reads that “[i]n all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, or legislative bodies, the best interests of the child shall be a primary consideration.”³ But how are judges and attorneys actually meant to assess a child’s best interests? Whose opinions should be considered?

State legislatures have codified a range of factors to assist courts with applying the best interests standard to custody determinations.⁴ Many of these statutes parallel the Uniform Marriage and Divorce Act (UMDA), a model law which encourages judges to consider factors like

¹ See, e.g., PRINCIPLES OF THE L. OF FAM. DISSOLUTION: OBJECTIVES; BEST INTERESTS OF THE CHILD DEFINED § 2.02 (AM. L. INST. 2023) (outlining the best interests standard as applied to custody proceedings).

² See *Holley v. Adams*, 544 S.W.2d 367, 371–72 (Tex. 1976) (holding that a father was unable to sever his legal relationship with his son absent record evidence indicating that doing so would serve his son’s best interests).

³ G.A. Res. 44/25, art. 3, Convention on the Rights of the Child (Nov. 20, 1989).

⁴ See, e.g., CAL. FAM. CODE § 3042 (West 2023); TEX. FAM. CODE ANN. § 153.002 (West 2023); MICH. COMP. LAWS ANN. § 722.23 (West 2023).

“the wishes of the child’s parent or parents as to his custody; . . . the child’s adjustment to his home, school, and community; and the mental and physical health of all individuals involved.”⁵ Notably, the UMDA also encourages judges to consider “the wishes of the child as to his custodian.”⁶ It might seem obvious that the assessment of a minor’s personal opinions is essential to evaluating their best interests. However, this principle is not universally recognized.

Individualized education programs (IEPs) are written plans designed to serve the best interests of K-12 students with special education needs.⁷ IEPs are effectively the vehicle by which students with qualifying disabilities are able to secure free and appropriate public educations.⁸ These plans are meant to be developed through the collective efforts of students, parents, educators, administrators, and experts⁹—However, this normative vision of the IEP process is rarely achieved. Although IEP teams are required to invite students aged fourteen and older to their IEP meetings, there is no statutory requirement for students to

⁵ UNIF. MARRIAGE & DIVORCE ACT § 402 (UNIF. L. COMM’N 1973).

⁶ Id.

⁷ Individuals with Disabilities Education Improvement Act (IDEA) of 2004, § 612(a)(1)(A), Pub. L. No. 108–446, 118 Stat. 2647 (codified as amended at 20 U.S.C. §§ 1400–1487) [hereinafter IDEA].

⁸ Id. § 612(a)(1)(A).

⁹ PETER BLANCK, MICHAEL WATERSTONE, WILLIAM N. MYHILL & CHARLES D. SIEGEL, *DISABILITY CIVIL RIGHTS LAW AND POLICY: CASES AND MATERIALS* 716 (3d ed. 2014) (citing id. § 1414(d)(1)(B)).

actually attend.¹⁰ Furthermore, even when students are present at their IEP meetings, research shows that they only speak about 3 percent of the time.¹¹

So although IEPs are meant to serve students' best interests, student feedback is rarely incorporated into their development. This lack of student voice would not pose a problem if IEP teams were consistently providing students with plans that appropriately served their needs. However, existing research indicates that this is not always the case. In this note, I argue that IEP teams often struggle to (1) balance necessary accommodations with minimally restrictive learning environments, (2) incentivize student investment in education, and (3) assess mental and emotional disabilities that present more limited physical manifestations. Furthermore, my research indicates that increased opportunities to share student voice in IEP meetings can at least partially remedy these deficiencies.

In Part I of this note, I examine students' rights in the context of IEP law. I begin by outlining the basic legal requirements of the Individuals with Disabilities Education Act (IDEA). I then assess the current state

¹⁰ IDEA app. A § 303.15(d).

¹¹ Daniel Biegun, Ynez Peterson, John McNaught & Chloe Sutterfield, Including Student Voice in IEP Meetings Through Use of Assistive Technology, 52 TEACHING EXCEPTIONAL CHILD. 348, 348 (2020). Compare with special educators, who speak 55 percent of the time; general educators, who speak 19 percent of the time; and family members, who speak 16 percent of the time. Id.

of children's rights in the United States. After that, I discuss some potential benefits and barriers related to increased participation. In Part II, I describe a series of three student interviews that I conducted to evaluate my hypotheses. I start by outlining my methodology and the demographic data of the three student interviewees. I then describe each student's interview, along with a related benefit of increased participation, in three separate subparts. Finally, in Part III, I touch on the major limitations of my analysis. I conclude by discussing the structure of a hypothetical, comprehensive study of student participation in the context of IEPs.

I. STUDENTS' RIGHTS IN THE CONTEXT OF IEP LAW

In Part I, I provide important background information about students' rights in the context of IEP law. In Part I.A, I first discuss some necessary information for understanding IEP law under the IDEA. In Part I.B, I then discuss the reason why a broader grant of legal rights would prove to be an infeasible method of increasing student participation in the development of IEPs. Finally, in Part I.C, I discuss the existing legal requirement for student participation, along with some of the surface-level benefits and barriers related to increased student participation.

A. IEPs as Defined by the Individuals with Disabilities Education Act (IDEA)

In 1975, just two years after the passage of the Rehabilitation Act,¹² Congress enacted the Education for All Handicapped Children Act.¹³ This Act, now known as the IDEA, has been amended and reauthorized multiple times—most recently, in 2004.¹⁴ But despite these changes, the IDEA has largely retained its original character and purpose. The primary goal of the Act is to provide a “free appropriate public education” (FAPE) to all children with disabilities between the ages of three and twenty-one.¹⁵ Notably, the IDEA’s definition of disability differs from that of the Americans with Disabilities Act Amendments Act.¹⁶ Instead of defining disability in general terms, the IDEA enumerates specific categories of students who might qualify for accommodations if they also “need[] special education and related services.”¹⁷ Thus, a student (1) must

¹² Rehabilitation Act of 1973, Pub. L. No. 93–112, 87 Stat. 355 (codified as amended at 29 U.S.C. § 794).

¹³ Education for All Handicapped Children Act of 1975, Pub. L. No. 94–142, 89 Stat. 773 (codified as amended at 20 U.S.C. §§ 1400–1487).

¹⁴ See IDEA, supra note 7.

¹⁵ Id. § 612(a)(1)(A), 682(d)(1)(A).

¹⁶ Compare id. § 602(3)(A), with Americans with Disabilities Act Amendments Act of 2008 § 4(a), Pub. L. No. 110–325, 122 Stat. 3553 (codified as amended in scattered sections of 20 U.S.C. and 42 U.S.C.).

¹⁷ IDEA § 602(3)(A)(ii). These categories include autism, deaf-blindness, deafness, developmental delay, emotional and behavioral

have an eligible disability and (2) must suffer an adverse effect on their education from that disability in order to qualify for accommodations under the IDEA.

Schools are required to seek out and evaluate potentially eligible students under the Act's "child find" provision.¹⁸ However, parents tend to play a more active role in initiating student evaluations; parents often request independent educational evaluations (IEEs) for their children, sometimes at public expense.¹⁹ But even with the use of comprehensive IEEs, it remains difficult for parents and schools to identify certain mental health disorders that present more limited physical manifestations.²⁰

After a full evaluation is completed, the student's parents will meet with school staff to discuss the results. If the child is eligible for accommodations under the IDEA, an IEP team will convene to create an individualized plan that meets the FAPE standard.²¹ The IEP team will consist of the "parent(s), at least one regular education teacher, at least

disorders, hearing impairment, intellectual disability, multiple disabilities, orthopedic impairment, other health impairment, specific learning disability, speech or language impairment, traumatic brain injury, and visual impairment, including blindness.

¹⁸. Id. § 612(a)(3)(A).

¹⁹. Id. § 615(b)(1).

²⁰. J. Phillip Reimherr & Jon M. McClellan, Diagnostic Challenges in Children and Adolescents with Psychotic Disorders, 65 J. CLINICAL PSYCHIATRY (Supp. 6) 5, 7–8 (2004).

²¹. IDEA § 614(a)-(d).

one special education teacher, a representative of the local educational agency, an individual who can interpret the assessment results, other individuals with special expertise, and, when appropriate, the student.”²² Students’ plans are reviewed annually by their IEP teams. The IDEA requires that all students aged fourteen or older are invited to attend their IEP meetings, but the Act does not require attendance.²³ Under current law, this is the full extent of a student’s required participation in the IEP process. This is despite a range of evidence suggesting that student engagement is essential to creating a sense of belonging in schools and to maximizing students’ educational opportunities.²⁴

A student’s FAPE must be provided in the “least restrictive environment” (LRE) that is appropriate for their needs. This means that students with and without disabilities should be educated together when possible, and that students should be afforded all necessary accommodations in a minimally intrusive manner.²⁵ While the LRE requirement aligns with the common belief that “unjustified . . . isolation of persons with disabilities is a form of discrimination,”²⁶ it is a difficult standard to assess in practice. Indeed, scholars have recognized a fundamental tension between the FAPE standard (which

²². Blanck, Waterstone, Myhill & Siegel, supra note 9, at 716.

²³. IDEA app. A § 303.15(d).

²⁴. JON DOUGLAS WILLIAMS, *STUDENT ENGAGEMENT AT SCHOOL: A SENSE OF BELONGING AND PARTICIPATION* 51–55 (2000).

²⁵. IDEA § 612(a)(5).

²⁶. *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581, 600 (1999).

necessarily requires some degree of specialized assistance) and the LRE requirement (which demands minimal separation of students with disabilities).²⁷ This is an uneasy balance, and there is reason to believe that increased student involvement would aid schools and parents in coming to clearer conclusions.

B. The (Limited) Scope of Children's Rights

An easy method of increasing participation in the development of IEPs would be to expand the legal requirement for student involvement. That is, Congress could pass an updated version of the IDEA that mandates a certain level of input from students. Unfortunately, this kind of change would prove to be infeasible for two reasons: (1) it would be impossible to identify a single, proper standard for student participation, and (2) expanding student rights in such a manner would be inconsistent with the existing model of parental rights that has been adopted in the United States—at least for minors.

Regarding the former issue, there is no standard by which Congress could determine the “proper” extent of student participation. Students are different, and the degree to which they can participate in the development of their IEPs is variable. As such, any expansion of participation would need to be highly individualized.

With regard to the latter issue, the existing model of American parental rights affords relatively little space for independent input from

²⁷ Martha Minow, Learning to Live with the Dilemma of Difference: Bilingual and Special Education, 48 *LAW & CONTEMP. PROBS.* (Spring) 157, 181 (1985).

children. Scholars have long recognized a kind of “triangular model” by which parents, children, and the state—using its parens patriae power—collectively regulate the legal rights of children.²⁸ But this is not to say that the parties in this tripartite framework are afforded equal rights. Indeed, in a series of three cases, the Supreme Court affirmed the rights of parents above those of children or the state.²⁹ The rights of parents remain paramount—Parents’ decisions about their children are only limited in narrow circumstances where the interests of the state are particularly strong. But what kind of input are children afforded in the evaluation of their interests?

Generally, courts have determined that children have limited, if any, rights to determine their legal affairs. The dominant view is that their lesser maturity warrants this conclusion. Parents and the state are sufficiently invested in the interests of children such that they can make

²⁸. Joanna L. Grossman, Limits on Grandparent Visitation: The Continuing Ripples of Troxel v. Granville, VERDICT (Sept. 27, 2016), <https://verdict.justia.com/2016/09/27/limits-grandparent-visitation-continuing-ripples-troxel-v-granville>.

²⁹. Meyer v. Nebraska, 262 U.S. 390 (1923) (upholding the parent’s right to choose the language education that their child receives free from state interference); Pierce v. Soc’y of Sisters of the Holy Names of Jesus and Mary, 268 U.S. 510 (1925) (upholding the parent’s right to choose whether their child attends private or parochial school); Prince v. Massachusetts, 321 U.S. 158 (1944) (limiting the parent’s right to have their child work, but observing a strong deference for parental rights in reaching this holding).

adequate decisions on their behalf.³⁰ This is not to say that children’s independent interests are never considered. Take, for example, the Supreme Court of Illinois’ holding in In re E.G.³¹ In E.G., the court determined that a minor had demonstrated sufficient maturity to refuse a life-saving medical treatment for religious purposes.³² That is, her interest superseded that of the state. Notably, the interests of the parent and the child were similar in this case. The mother also desired for her daughter to remain untreated on account of their shared religion.³³ It is possible that the court would have reached a different result if E.G.’s mother instead wanted her to undergo treatment—State legislatures have taken a variety of approaches to regulating instances where the interests of parents and mature minors are unaligned.³⁴ Overall, many states use the “mature minor” doctrine to afford independent rights to children. However, the doctrine is often limited to issues regarding medical treatment; it probably cannot be applied to IEPs.

Children are also able to obtain independent rights through emancipation, the “legal process by which children gain freedom from the

³⁰. Grossman, supra note 28.

³¹. 549 N.E.2d 322 (Ill. 1989).

³². Id. at 328.

³³. Id. at 323.

³⁴. Compare Ala. Code § 22–8-4 (2023), Ark. Code Ann. § 20–9-602 (2023), and Nev. Rev. Stat. § 129.030 (2023), with N.M. Stat. Ann. § 24–7A-6.1 (2023).

care, custody, and control of their parents before the age of majority.”³⁵

While emancipation would certainly grant children a greater role in the development of their IEPs, it is an extreme and unwise method of increasing student voice. Emancipation typically ends the right to parental support—in fact, it is not uncommon for parents to argue that their children are emancipated as a method of terminating their obligations of support.³⁶ Furthermore, a number of states only allow children to become emancipated upon marriage, joining the military, or obtaining a valid court order.³⁷ Clearly, this is an impractical method of increasing student involvement in the IEP process.

It is apparent that an extension of legal rights would be an infeasible method of expanding student participation. For that reason, the state (in this instance, schools and school districts) and parents must be the parties that are willing to broaden the participation of children in the creation of their IEPs. I thus take an analytical approach in this note, attempting to convince parents and schools of the importance of participation through case studies and a synthesis of existing research.

³⁵. DOUGLAS NEJAIME, R. RICHARD BANKS, JOANNA L. GROSSMAN & SUZANNE KIM, *FAMILY LAW IN A CHANGING AMERICA* 539 (2020).

³⁶. See, e.g., *Nicholason v. Follweiler*, 735 A.2d 1275 (Pa. Super. Ct. 1999) (holding that a non-custodial father could not terminate his child support obligations for his 16-year-old son based on the argument that the son was emancipated).

³⁷. Nejaime, Banks, Grossman & Kim, supra note 35, at 539–40.

C. Expanding Student Involvement in IEP Law: Benefits and Barriers

The existing requirement for student participation in the development of IEPs is minimal—Students who are fourteen or older must be invited to their meetings, and they need not attend. I began my research with the underlying assumption that expanding student participation would better serve the interests of children and teenagers. This does not, however, mean that there would be no additional drawbacks or barriers to an expansion of participation. In this subpart, I discuss some of the most apparent benefits of and barriers to expanding student voice in the creation of IEPs.

One would expect students to be more aware of their academic needs than any other party. This is not a novel concept, but existing research has cast some aspersions on this seemingly simple conclusion. For example, Tom Stafford, a professor of psychology and cognitive sciences at the University of Sheffield, has suggested that students' false beliefs about their academic needs can actually impede their ability to process novel information.³⁸ Stafford argues that some combination of student-led and teacher-led learning—with both parties doing their best to serve the needs of the student—should be employed to educate students in an optimal manner.³⁹ But given the exceedingly low degree of student participation that is currently required in the IEP process, an expansion of

³⁸. Tom Stafford, [Do Students Know What's Good for Them?](https://neurosciencecommunity.nature.com/posts/12584-do-students-know-what-s-good-for-them), SPRINGER NATURE: NEUROSCIENCE (Oct. 7, 2016), <https://neurosciencecommunity.nature.com/posts/12584-do-students-know-what-s-good-for-them>.

³⁹. Id.

student involvement would probably bring students and teachers closer to this optimal balance that Stafford describes. More generally, a number of other studies have confirmed that increased student participation and involvement can create significant improvements for academic outcomes.⁴⁰ This effect is substantial, and it has even been found in undergraduate students.⁴¹

But what specific issues can be remedied by increased participation in the IEP process? The student case studies described in Part II suggest three independent benefits that might result from paying greater attention to student voice: (1) student voice can assist in the identification of necessary accommodations, (2) student voice can increase a student's personal stake in their education, and (3) student voice can prove useful for addressing certain mental and emotional disabilities that are particularly difficult to identify.

Of course, there are also barriers to increased participation. First and foremost, it is not always true that students will be able to voice their

⁴⁰. See, e.g., Julie A. Gray & Melanie DiLoreto, *The Effects of Student Engagement, Student Satisfaction, and Perceived Learning in Online Learning Environments*, 11 INT'L J. EDUC. LEADERSHIP PREPARATION 89 (2016); Essie Sutton, *Student Engagement: Why It's Important and How To Promote It*, BRANCHING MINDS (Mar. 3, 2021), <https://www.branchingminds.com/blog/student-engagement-remote-in-person>.

⁴¹. Armando P. Delfino, *Student Engagement and Academic Performance of Students of Partido State University*, 15 ASIAN J.U. EDUC. 42, 47–52 (2019).

needs in IEP meetings. This is particularly apparent for students with relatively severe intellectual or developmental disabilities (IDD). However, by no means does this imply that schools or parents should ignore input from students with IDDs when such input is available. It simply means that input from these students will probably be offered in comparatively rarer circumstances, and that schools and parents might need to work harder to solicit feedback.

But this effect is not limited to students with IDDs. In fact, nearly all minors face some barriers to adequately voicing their needs in IEP meetings.⁴² And while some of these barriers might stem from the lesser maturity of minors more generally, others stem from the disabilities that actually qualify these students for IEPs. While such barriers are not easily remedied, a number of scholars have recommended the use of assistive technologies to help children and teenagers with disabilities communicate their needs in IEP meetings.⁴³ For example, some schools have started to incorporate the use of speech-generating devices, presentation software, and tablets in IEP meetings.⁴⁴ This is a highly promising development, but it will not solve all of the difficulties that

^{42.} See generally Biegun, Peterson, McNaught & Sutterfield, supra note 11 (describing the difficulties that students face voicing their needs in IEP meetings, and encouraging the use of assistive technologies to aid with communication).

^{43.} Id. at 349.

^{44.} Id. at 350.

minors face in attempting to communicate their needs. This is a serious barrier to increased participation.

Finally, there are some particular topics and needs that are difficult for students to discuss in and of themselves. For example, many articles have been written on the intersection between disability and sex.⁴⁵ Denise Sherer Jacobson—a disability educator with cerebral palsy—stated that when she contracted gonorrhea as a young adult, she was initially misdiagnosed “because the surgeon decided, how could I be sexually active?”⁴⁶ Her experience is not unique; it is not uncommon to discount the intersection between disability and sex entirely. Student participation in IEP meetings can be used to address a prospective need for something like sex education. However, IEP teams are at least partially composed of students’ parents and teachers. This obviously makes IEP meetings an uncomfortable environment for most students to share any sex-related needs, and there is no clear method of remedying

^{45.} See, e.g., Susannah Baines, Eric Emerson, Janet Robertson & Chris Hatton, Sexual Activity and Sexual Health Among Young Adults with and Without Mild/Moderate Intellectual Disability, 18 BMC PUB. HEALTH 667 (2018); Clive Glass & Bakulesh Soni, Sexual Problems of Disabled Patients, 318 BMJ 518 (1999); Nick Winges-Yanez, We Need to Make Sex Education for People With Intellectual Disabilities a Priority, UT NEWS (Feb. 9, 2018), <https://news.utexas.edu/2018/02/09/make-sex-ed-for-people-with-disabilities-a-priority/>.

^{46.} CRIP CAMP: A DISABILITY REVOLUTION (Higher Ground Productions 2020), at 52:49.

this issue. Thus, student needs pertaining to sensitive topics will probably remain difficult for IEP teams to ascertain, even with increased participation from students.

Overall, these drawbacks and barriers must be weighed against the prospective benefits in assessing the degree to which parents and schools should attempt to increase student participation in the development of IEPs.

II. FINDING A ROLE FOR STUDENT VOICE

In Part II, I discuss the results of my interviews with three students who have all had IEPs for a number of years. All of their responses highlight separate and positive roles that student voice can potentially play in the development of IEPs. In Part II.A, I discuss the demographic data of the students I interviewed, and the questions that the students were asked. In Part II.B, I discuss Student One's responses, and how they indicate that student voice can be used to identify appropriate accommodations. In Part II.C, I discuss Student Two's responses, and how they indicate that student voice can be used to increase students' personal investment in their education. Finally, in Part II.D, I discuss Student Three's responses, and how they indicate that student voice can be used to address mental and emotional disabilities with limited physical manifestations that are generally more difficult to diagnose.

A. Methodology and the Demographic Data of the Student Interviewees

I conducted virtual interviews with three high school students who have had IEPs throughout all of high school. I obtained parental and student consent prior to each of these interviews. Both the parents and

the students knew that the interviews were entirely voluntary, and all of the students willingly participated. One of the students is a tenth grader, one is an eleventh grader, and the other is a twelfth grader. The students attend the same high school. Student One and Student Two are both seventeen, and Student Three is nineteen. All three of the students are ethnically Hispanic. All three of the students are also cisgender males from relatively low-income backgrounds.

Of course, the shared background of these students creates advantages and disadvantages. The fact that these students have similar racial, ethnic, geographic, gender, and socioeconomic identities reduces the statistical noise related to variation in the sample.⁴⁷ However, this consistency also minimizes the generalizability of the results.⁴⁸ For example, it is unclear how my findings would have differed if I had instead interviewed female, upper-income, or white students. This is an obvious drawback. But given the small size of my sample, I felt that minimizing noise was a more achievable goal—It would have been impossible to create fully generalizable results from a study of only three students.

I also need to note my personal connection with the interviewees. I had the opportunity to teach all of these students during the 2021–2022 academic year. These existing relationships have provided me

⁴⁷ Marc H. Bornstein, Justin Jager & Diane L. Putnick, Sampling in Developmental Science: Situations, Shortcoming, Solutions, and Standards, 33 DEVELOPMENTAL REV. 357, 364–65 (2013).

⁴⁸ Id. at 364–365.

with a better understanding of their behaviors. I also believe that these relationships led the students to discuss their IEPs in a more honest way. However, despite my best efforts, my personal connections likely introduced bias into my findings. A more comprehensive study should aim to eliminate such bias in the future.

I will also maintain student anonymity throughout this note. I will refer to each of the interviewees as Student One, Student Two, and Student Three. I feel that this is the best method of protecting their privacy while also fully delving into the sensitive intersection between disability law and education.

Each interview lasted approximately twenty minutes. The interviews were conversational, and they were largely student-led. However, I did ask a consistent set of four questions in every interview in order to achieve some standardization. These questions were: (1) what is an IEP, (2) what does your IEP do, (3) what are your thoughts and feelings about your IEP, and (4) are there any changes that you would like to make to your IEP. Their answers were highly varied, and the students demonstrated very distinct understandings of their IEPs. A brief summary of their answers will be provided in each of the following subparts.

B. Student One: Student Voice as a Method of Identifying Accommodations

Student One is a seventeen-year-old who has had an IEP throughout all of high school and middle school. He is currently in eleventh grade, and he has a relatively severe case of attention deficit / hyperactivity disorder (ADHD). Initially, Student One expressed negative sentiments

about his IEP. He stated that his IEP does nothing for his education, and that if “normal kids had IEPs, nothing would change.”⁴⁹ When asked to elaborate on this idea, he said that IEPs do not benefit any students, regardless of their specific needs.⁵⁰ It is worth noting that Student One contradicted this statement soon after, discussing several positives associated with his IEP. But it is also important to note the precise language that he used to convey this sentiment. Student One’s reference to “normal students,” a category that did not include himself, appears to highlight the unfortunate stigma that is commonly associated with IEPs. Indeed, a number of academics and educators have carefully studied the persistence of this stigma, even despite the exceedingly large number of public school students who receive some degree of IEP support.⁵¹

When asked if there was anything in particular that he would like to change about his IEP, Student One was able to articulate more positives. He stated that he sometimes uses the extra time he receives

⁴⁹. Telephone Interview with Student One (Apr. 20, 2023).

⁵⁰. Id.

⁵¹. See, e.g., Chris Hale, Urban Special Education Policy and the Lived Experience of Stigma in a High School Science Classroom, 10 CULTURAL STUD. SCI. EDUC. 1071 (2015); Stephanie L. Haft, Caroline Greiner de Magalhães & Fumiko Hoefft, A Systematic Review of the Consequences of Stigma and Stereotype Threat for Individuals with Specific Learning Disabilities, 56 J. LEARNING DISABILITIES 193 (2023); Peter DeWitt, The Stigma of Special Education, EDUCATIONWEEK (Aug. 11, 2011), <https://www.edweek.org/education/opinion-the-stigma-of-special-education/2011/08>.

on tests and that he would like to keep that time.⁵² However, he mostly discussed the one-on-one support that he receives from a school-based occupational therapist (OT)—Student One said that the “OT helps me learn, and it would be good if we met more like we did in middle school.”⁵³ Although he might not have known it, Student One identified one of the most common controversies in the development of students’ academic supports.

A number of researchers have studied the inherent tension between the FAPE standard and the LRE requirement. Martha Minow, the former Dean of Harvard Law School, has noted that “[e]xactly what these substantive requirements mean for individual children has emerged as a legal battleground.”⁵⁴ A cursory glance at the legal landscape of IEP law would seem to indicate that Minow is correct. For example, consider Sacramento City Unified School District Board of Education v. Rachel H.⁵⁵ In this Ninth Circuit case, the appellee parents argued that their daughter with an IDD was entitled to a full-time education in a typical second grade classroom.⁵⁶ In other words, Rachel’s parents believed that her FAPE included standard classroom instruction with supplemental interventions as needed. Any further isolation would have constituted an overly restrictive learning environment (and thus, would have violated the

^{52.} Student One, supra note 49.

^{53.} Id.

^{54.} Minow, supra note 27, at 176.

^{55.} 14 F.3d 1398 (9th Cir. 1994).

^{56.} Id. at 1400.

LRE requirement). The Sacramento School District disagreed. Despite the fact that Rachel did not appear to interrupt classroom learning, the District argued that she “was too severely disabled to benefit from full-time placement in a regular class.”⁵⁷ Although the court declined to identify the proper placement for Rachel, they did outline a series of relevant factors for consideration, including “(1) the educational benefits of placement full-time in a regular class; (2) the non-academic benefits of such placement; (3) the effect Rachel had on the teacher and children in the regular class; and (4) the costs of mainstreaming Rachel.”⁵⁸ It is notable that Rachel’s personal interests were never explicitly considered in this test; while the court did account for “educational benefits” and “non-academic benefits,” they failed to clarify how these benefits would be calculated and by whom.

Compare Rachel H. with Board of Education of Downers Grove Grade School District No. 58 v. Steven L.⁵⁹ In this Northern District of

⁵⁷. Id.

⁵⁸. Id. at 1404. Despite the decision not to rule on Rachel’s optimal academic placement, the court also failed to remand this case to the district court—instead, the Ninth Circuit affirmed the hearing officer’s initial judgment in favor of the parents. Id. at 1405. As such, it would seem that the court, in reality, did issue a final decision. The court’s hesitancy to grant a definitive ruling in explicit terms might stem from their own recognition of the difficult balance between the FAPE standard and the LRE requirement.

⁵⁹. 898 F. Supp. 1252 (N.D. Ill. 1995), vacated as moot 89 F.3d 464 (7th

Illinois case, Andrew L.'s parents and the Downers Grove School District found themselves on opposite sides of the FAPE / LRE debate. While Andrew's parents felt that he was entitled to additional supervised reading time (even though this supervision would create a more restrictive learning environment), Downers Grove disagreed.⁶⁰ The court ultimately determined that Downers Grove had met the FAPE standard and that the District was entitled to summary judgment.⁶¹

It might seem odd that the parents in Rachel H. were arguing for a less restrictive environment, while the parents in Steven L. were arguing for a more restrictive environment. Clearly, both sets of parents cared about the education that their child received. Furthermore, there is a fair argument that Sacramento and Downers Grove were also trying to serve the best interests of Rachel and Andrew, respectively. Thus, these cases highlight two facts about IEP litigation: (1) it often involves the efforts of multiple parties attempting to act in a student's best interests, and (2) there are rarely obvious "correct" answers.

In Student One's case, it seems that his IEP team reached an agreement. Over the last year, he has received only minimal one-on-one support in an effort to provide him with a less restrictive learning environment. This decision follows logically from Student One's academic performance. He has seen remarkable improvements in

Cir. 1996). The defendant named in this case is Andrew L.'s father.

⁶⁰. Id. at 1254.

⁶¹. Id. at 1263.

his grades since he has returned to in-person schooling following the COVID-19 pandemic.

But his IEP team's conclusion might have been in error. In fact, Student One took a great deal of time to emphasize that his one-on-one support was one of the reasons that he felt more confident in school.⁶² This is despite the fact that one-on-one academic support tends to be stigmatized, particularly in high school.⁶³ By removing this support, Student One's IEP team may have inadvertently hindered his academic performance. Clearly, finding the proper balance between a student's FAPE and the LRE requirement is a difficult task. However, Student One has offered a fairly mature perspective about what he believes to be the proper balance between the two. In making these challenging assessments, IEP teams should consider giving greater deference to students' own perspectives when they are available.

C. Student Two: Student Voice as a Method of Increasing Personal Investment

Student Two is a seventeen-year-old who has also had an IEP throughout all of high school and middle school. Student Two is currently enrolled in tenth grade, and he has had to repeat two years of school. Student Two has a very severe case of ADHD. Despite his average to above-average aptitude, he is typically unable to complete his schoolwork. When asked about the general purpose of IEPs, Student Two stated that they are intended "to help [students] learn and do their

⁶². Student One, supra note 49.

⁶³. See Dewitt, supra note 51.

work.”⁶⁴ But when asked about his own IEP, Student Two said that “it doesn’t help.”⁶⁵ Student Two was unable to identify any changes that he would make to his IEP, but he stated multiple times that he knew his IEP team cared about him.⁶⁶

Out of all three interviewees, Student Two has had the most consistent academic struggles. Student Two twice mentioned that he does not wish to complete high school.⁶⁷ He feels that high school is unhelpful, and that he would achieve more success in another environment. Admittedly, this is probably not the kind of input that an IEP team should consider—the very purpose of an IEP is to ensure that students are afforded a proper education. But Student Two’s comments do suggest a more general concern that might be ameliorated through increased participation.

In a recent survey, researchers found that American high schoolers have overwhelmingly negative feelings about their schooling.⁶⁸ The surveyed students indicated that they tend to feel tired, stressed, and

⁶⁴. Telephone Interview with Student Two (Apr. 20, 2023).

⁶⁵. Id.

⁶⁶. Id.

⁶⁷. Id.

⁶⁸. Britta Belli, National Survey: Students’ Feelings About High School Are Mostly Negative, YALENEWS (Jan. 30, 2020), <https://news.yale.edu/2020/01/30/national-survey-students-feelings-about-high-school-are-mostly-negative>.

bored while learning.⁶⁹ Although these results are not necessarily surprising, they are undeniably concerning. Current research also indicates that student engagement has sharply declined following the COVID-19 pandemic. For example, public schools have reported “increased student absenteeism . . . consistently across a wide range of school types.”⁷⁰

But there are still ways for teachers, schools, and parents to motivate students. A recent study that examined the relationship between student voice and student engagement in urban high schools found that increased opportunities to share student voice can lead to higher levels of autonomy, belonging, and competence in student populations.⁷¹ These increases, in turn, translate into higher student engagement.⁷² This study aligns with existing research on the self-determination theory of

⁶⁹. Id.

⁷⁰. Press Release, Nat’l Ctr. for Educ. Stat., More than 80 Percent of U.S. Public Schools Report Pandemic Has Negatively Impacted Student Behavior and Socio-Emotional Development (July 6, 2022), https://nces.ed.gov/whatsnew/press_releases/07_06_2022.asp.

⁷¹. Jerusha Conner, Michael Posner & Bright Nsowaa, The Relationship Between Student Voice and Student Engagement in Urban High Schools, 54 URB. REV. 755, 756–58 (2022).

⁷². Id. at 759–61; see also Larry Ferlazzo, Increasing Student Engagement with Student Choice, EDUCATIONWEEK (Jan. 27, 2021), <https://www.edweek.org/teaching-learning/opinion-increasing-engagement-with-student-choice/2021/01>.

motivation. Essentially, when “social environments, including the places where we receive health care, are more supportive of . . . psychological needs, the quality of [students’] motivation is more autonomous.”⁷³

Researchers have also used case studies to confirm that choice within the classroom can boost student engagement and motivation. When three classrooms of high school students were given greater opportunities to choose the material they studied, the assignments they completed, and the peers they worked with, their teachers reported consistently higher levels of engagement.⁷⁴ Researchers have found similar benefits in the context of online learning. When online courses are centered on student discussion and participation, teachers have reported higher levels of student engagement.⁷⁵

These studies indicate that greater and more meaningful opportunities for students to share their voices and make choices about their education can lead to higher levels of student investment. For that

⁷³. Our Approach, UNIV. OF ROCHESTER MED. CTR., [HTTPS://WWW.URMC.ROCHESTER.EDU/COMMUNITY-HEALTH/PATIENT-CARE/SELF-DETERMINATION-THEORY.ASPX](https://www.urmc.rochester.edu/community-health/patient-care/self-determination-theory.aspx) (last visited June 17, 2023).

⁷⁴. Frieda Parker, Jodie Novak & Tonya Bartell, To Engage Students, Give Them Meaningful Choices in the Classroom, KAPPAN (Oct. 1, 2017), <https://kappanonline.org/engage-students-give-meaningful-choices-classroom/>.

⁷⁵. Arshia Khan, Ona Egbue, Brooke Palkie & Janna Madden, Active Learning: Engaging Students to Maximize Learning in an Online Course, 15 ELECTRONIC J. E-LEARNING 107, 111–12 (2017).

reason, providing students with a chance to share their thoughts and feelings in IEP meetings has the potential to create related benefits for student learning. This is not to say, however, that increased participation in IEP meetings would act as a comprehensive remedy to low student engagement. Student Two's responses suggest that he has become extremely disinterested in his education, and greater participation in only one facet of his learning would do relatively little to change that sentiment. Thus, while increased student participation in IEP meetings is likely to create some benefits for student engagement, it should be coupled with other, more robust opportunities to share student voice.

D. Student Three: Student Voice as a Method of Addressing Emotional Disabilities

Student Three is a successful example of how student voice can be used in the development of IEPs. Student Three is a nineteen-year-old enrolled in twelfth grade. He has had to repeat multiple years of school, and he has had an IEP throughout all of high school. While Student Three is a highly capable student, he has demonstrated consistent symptoms of childhood trauma and a long pattern of mental health disorders. He has received diagnoses for severe forms of anxiety and depression. Because of these disabilities, he is often unable to attend his classes. After returning to school from these absences, he tends to feel overwhelmed by the amount of work that he needs to complete. This can create a cycle that makes it very difficult for Student Three to finish required tasks.

In our interview, Student Three stated that “IEPs are used to provide support; they’re for students who need extra help with work or emotional problems.”⁷⁶ When asked about his IEP team, he shared that “they care a lot. Usually it’s kind of bad news whenever I’m in there. Usually I’m a little frustrated . . . but I do feel like my feedback factors in.”⁷⁷ When asked for an example of how his feedback is included in his IEP, Student Three told me that he often feels dysregulated throughout the school day. He also said that he benefits from five-minute walks. Thus, Student Three advocated for a system where he is able to approach his teachers during work time to take up to three short walk breaks a day. When I asked him if this system worked, he shared that “it was helpful . . . I think it made things a little bit easier.”⁷⁸

Approximately 32% of all IEPs are developed for students with a “specific learning disability.”⁷⁹ This category includes disabilities like dyslexia and ADHD.⁸⁰ It is the most common category of disability for

⁷⁶. Telephone Interview with Student Three (May 2, 2023).

⁷⁷. Id.

⁷⁸. Id.

⁷⁹. NAT’L CTR. FOR EDUC. STAT., ANNUAL REPORTS: STUDENTS WITH DISABILITIES (2023).

⁸⁰. See Types of Learning Disabilities, LEARNING DISABILITIES ASS’N OF AM., <https://ldaamerica.org/types-of-learning-disabilities/> (last visited June 17, 2023); ADHD, LEARNING DISABILITIES ASS’N OF AM., <https://ldaamerica.org/disabilities/adhd/#:~:text=ADHD%20is%20not%20considered%20to,to%20receive%20special%20education%20services> (last visited

students with IEPs.⁸¹ Approximately 19% of all IEPs are developed for students with speech or language impairment, 15% are developed for students with IDD, 15% are developed for students with some “other health impairment,” and 12% are developed for students with autism.⁸² Only 5% of IEPs are developed for students with emotional disturbances, and only 2% of IEPs are developed for students with multiple disabilities.⁸³ These statistics seem to indicate that conditions like depression, anxiety, post-traumatic stress disorder (PTSD), and complex-PTSD are underrepresented in the development of IEPs. This is particularly probable given the increasing prevalence of mental health disorders among high school students. In early 2020, about 66% of high school administrators and 84% of high school counselors reported that student mental health concerns had increased over the past five years.⁸⁴ These concerns only worsened during the COVID-19 pandemic. According to a recent Centers for Disease Control and Prevention (CDC) survey, 37% of students at public and private high schools reported “that their mental health was not good most or all of the time during the

⁸¹. See ANNUAL REPORTS, supra note 79.

⁸². Id.

⁸³. Id.

⁸⁴. THE JED FOUND., UNDERSTANDING AND ADDRESSING THE MENTAL HEALTH OF HIGH SCHOOL STUDENTS: VIEWS OF SCHOOL ADMINISTRATORS, CAREGIVERS, AND STUDENTS (2020).
See ENR, supra note 79 (2020).

pandemic.”⁸⁵ In this survey, the CDC defined “poor mental health” as including stress, anxiety, and/or depression.⁸⁶ Admittedly, it is probably not the case that all of these students would benefit from IEP supports. However, this does not change the fact that a significant portion of these students might have eligible disabilities that hinder their academic performance.

So why do students with emotional disturbances make up such a small proportion of all students with IEPs? Generally, these disturbances have limited physical manifestations, and they are often difficult to diagnose. Even under the best circumstances, children and teenagers’ “behaviors and emotions can change frequently and rapidly. . . . [S]uch behaviors may indicate a more serious problem in some children,” but they may indicate typical childhood development in others.⁸⁷ Even when students do exhibit clear symptoms of emotional disturbances, teachers sometimes attribute these symptoms to willful misbehavior on the part of

⁸⁵. See Katherine Schaeffer, [In CDC Survey, 37% of U.S. High School Students Report Regular Mental Health Struggles During COVID-19 Pandemic](https://www.pewresearch.org/short-reads/2022/04/25/in-cdc-survey-37-of-u-s-high-school-students-report-regular-mental-health-struggles-during-covid-19/), PEW RSCH. CTR. (Apr. 25, 2022), <https://www.pewresearch.org/short-reads/2022/04/25/in-cdc-survey-37-of-u-s-high-school-students-report-regular-mental-health-struggles-during-covid-19/> (summarizing the major findings of the CDC mental health survey).

⁸⁶. Id.

⁸⁷. Children and Mental Health: Is This Just a Stage?, NAT’L INST. OF MENTAL HEALTH, <https://www.nimh.nih.gov/health/publications/children-and-mental-health> (last visited June 17, 2023).

the student.⁸⁸ This is particularly true for students of color. Children of color exhibit mental and emotional disabilities at a relatively higher rate than their white peers.⁸⁹ Additionally, children of color are more likely than similarly situated white children to have their conduct construed as willful misbehavior.⁹⁰ As such, there is reason to believe that children of color might be even more underrepresented in the identification and evaluation of mental and emotional disabilities. This would also imply that children of color are underrepresented in the development of IEPs, which could be a contributing factor to the well-documented racial gap in American educational achievement.⁹¹

^{88.} See Amy Szarkowski & Jason Fogler, [Supporting Students with Disabilities in Trauma-Sensitive Schools](#), 78 EDUC. LEADERSHIP 64, 64 (2020).

^{89.} See generally Margarita Alegria, Melissa Vallas & Andres Pumariega, [Racial and Ethnic Disparities in Pediatric Mental Health](#), 19 CHILD & ADOLESCENT CLINICS N. AM. 759 (2011) (discussing the persistent gap in mental health status and care for children who are racial and ethnic minorities).

^{90.} Paul L. Morgan & George Farkas, [Evidence and Implications of Racial and Ethnic Disparities in Emotional and Behavioral Disorders Identification and Treatment](#), 41 BEHAV. DISORDERS 122, 124–26 (2016).

^{91.} [Achievement Gaps](#), NAT'L CTR. FOR EDUC. STAT., <https://nces.ed.gov/nationsreportcard/studies/gaps/> (last visited June 18, 2023); see also Ayesha Rascoe, [The Pandemic Widened the Education Gap for Students of Color](#), NPR (July 17, 2022), <https://www.npr.org/2022/07/17/1111912934/>

Schools do not appear to be providing IEP support to all eligible students. This may be due, at least in part, to the difficulty of identifying mental and emotional disabilities. Thus, for the purpose of identifying these disabilities—and for determining a proper course of treatment—student voice can be a valuable tool. Student Three demonstrated that a vocal student participant can secure important and targeted IEP benefits. Granted, Student Three is uniquely mature. As noted prior, it is often difficult for students to articulate their academic and social needs. For that reason, the other members of the IEP team should try to solicit student feedback about mental and emotional health whenever possible. This inquiry, of course, should occur in a minimally intrusive manner.

But it is worth revisiting a prior-referenced statistic before continuing on to Part III. Only 2% of IEPs are developed for students with multiple disabilities.⁹² This is a concerningly low figure. A recent study concluded that the rate of co-occurring mental disorders in children with IDD ranges from 30–50%.⁹³ This would seem to indicate that many students with co-occurring disabilities are not being classified as such in their IEPs. This might not matter if students are receiving the correct kinds of support regardless of how their disabilities are categorized. However, research indicates that independent and accurate diagnostic labels are

[the-pandemic-widened-the-education-gap-for-students-of-color.](#)

⁹². See ANNUAL REPORTS, supra note 79.

⁹³. Kerim M. Munir, The Co-Occurrence of Mental Disorders in Children and Adolescents with Intellectual Disability / Intellectual Developmental Disorder, 29 CURRENT OP. PSYCHIATRY 95, 99 (2016).

often helpful for identifying appropriate treatment options (in this case, appropriate academic plans).⁹⁴ Therefore, it seems that students with multiple disabilities are underrepresented as a proportion of all students with IEPs, and this may hinder the effectiveness of those students' IEPs. Once again, student voice can serve to highlight the presence of multiple disabilities—and to identify adequate treatment—with proper guidance from IEP teams.

III. LIMITATIONS AND TOPICS FOR FUTURE RESEARCH

In Part III, I discuss the limitations of my research and prospective topics for future research. In Part III.A, I explain the limitations of the student interviews and my personal analysis. Despite these drawbacks, the student interviews are still useful for understanding how student voice can be incorporated into the IEP process. In Part III.B, I describe relevant topics for future research. I outline a more comprehensive study of student voice in the IEP process, along with some of the major barriers to implementing this study.

A. Limits of the Analysis

I have identified four serious limitations of the methods that I used in this note. This is not an exhaustive list, but it does capture the most

⁹⁴. David J. Franz, Tobias Richter, Wolfgang Lenhard, Peter Marx, Roland Stein & Christopher Ratz, The Influence of Diagnostic Labels on the Evaluation of Students: A Multilevel Meta-Analysis, 35 EDUC. PSYCH. REV. (2023), <https://link.springer.com/article/10.1007/s10648-023-09716-6>.

serious flaws in my analysis: (1) I entered the interviews with personal biases, (2) I am unable to generalize my findings, (3) I never solicited feedback from the students' IEP teams, and (4) I used little empirical evidence to confirm my conclusions.

First, as noted prior, I previously taught these students. This almost surely biased my findings. Granted, these pre-existing relationships might have caused the students to provide more honest answers. Furthermore, these relationships did provide me with helpful context for the students' responses. But regardless, it is important to acknowledge any personal bias that I might have introduced into this study.

Second, my findings cannot be generalized. Given that I only spoke with three students from relatively similar backgrounds, it is impossible to draw any generalizable conclusions from these interviews.⁹⁵ This is not to say, however, that these interviews were without purpose. All three of these students presented me with interesting and variable theories for how increased student participation can benefit the IEP process.

Third, I never solicited feedback from these students' IEP teams. Interviews with the students' teachers and parents would have proven immensely helpful for contextualizing their responses. While my research indicates that student voice is an important part of creating effective IEPs, this does not mean that students are the sole stakeholders in the IEP process. IEP meetings are meant to incorporate feedback from a range of parties that are all invested in the best interests of the child.⁹⁶ Thus,

⁹⁵. See Bornstein, Jager & Putnick, supra note 47.

⁹⁶. See Linda Jacobson, 'Free and Appropriate': Special Ed

to gain a more complete understanding of these students' academic plans, it would have been helpful to at least speak with their parents and teachers.

Fourth, I used very little empirical evidence in my analysis. For the most part, I synthesized existing research to confirm the hypotheses that I developed in the student interviews. While this was indeed a promising method of initial analysis, a more comprehensive study will be needed to establish a causal relationship. Implementing an experimental study will prove difficult. However, an experimental study will be an important tool for demonstrating the importance of student voice to schools and parents.

B. Future Research

A large-scale experimental study will help to address the limitations that I identified above. First, researchers will need to find a range of schools with racially, ethnically, and economically diverse populations. Second, researchers will need to develop a “treatment”—in this case, the treatment might be a standardized method of asking for explicit assistance from student participants in IEP meetings (and potentially in subsequent academic meetings).⁹⁷ Third, with the consent of students'

Stakeholders Work to Make IEP Meetings Less One-Sided, K-12 DIVE (Oct. 15, 2019), <https://www.k12dive.com/news/free-and-appropriate-special-ed-stakeholders-work-to-make-iep-meetings-l/564423/>.

⁹⁷. See generally MAKOTO HANITA, ET AL., MATCHED-COMPARISON GROUP DESIGN: AN EVALUATION BRIEF FOR EDUCATIONAL STAKEHOLDERS (2017) (describing the proper method for educators to develop matched-comparison group studies).

IEP teams, researchers will need to randomly separate students into treatment and control groups. Collaboration with IEP teams will be necessary at this phase.

Assessing student outcomes is feasible but admittedly difficult. Researchers can survey the treatment and control students before and after the trial. Researchers can ask questions like: (1) how would you rate your academic performance in the past year, (2) how much do you feel like your voice is valued by your teachers and parents, (3) to what extent do you feel like you have a say in your education, etc. Students will then respond to these questions on a ten-point scale. Researchers can analyze student responses while controlling for a range of demographic factors. Statistical software programs like STATA and R will allow for highly precise sub-demographic analyses.⁹⁸ This process will yield more conclusive evidence about the benefits of student voice in the creation of IEPs.⁹⁹

This type of study will remedy the limitations that I identified above. It will yield objective and generalizable results, it will present opportunities

⁹⁸. See JEFF PITBLADO, SURVEY DATA ANALYSIS IN STATA (2009); Timothy C. Heeren & Jacquelin N. Milton, Basic Statistical Analysis Using the R Statistical Package, BOS. UNIV. SCH. OF PUB. HEALTH, https://sphweb.bumc.bu.edu/otlt/MPH-Modules/BS/R/R-Manual/R-Manual_print.html (last visited June 20, 2023).

⁹⁹. See Causal Research: Definition, Examples and How to Use It, QUALTRICS, <https://www.qualtrics.com/experience-management/research/causal-research/> (last visited June 20, 2023).

for additional context from schools and parents, and it will potentially establish a causal relationship between student voice in the creation of IEPs and improved academic and social outcomes. However, there are substantial barriers to implementing this study. Researchers will need to expend significant amounts of time and money to convince schools, parents, and students to assist them. Furthermore, IEPs are confidential under the Family Educational Rights and Privacy Act (FERPA).¹⁰⁰ FERPA will limit the ability of private researchers to investigate the development of IEPs. For that reason, this study will probably need to be conducted with the support of an appropriate government entity, such as the U.S. Department of Education¹⁰¹ or the U.S. Government Accountability Office.¹⁰²

^{100.} See KALA SHAH SURPRENANT & FRANK MILLER, IDEA AND FERPA CROSSWALK: A SIDE-BY-SIDE COMPARISON OF THE PRIVACY PROVISIONS UNDER PARTS B AND C OF THE IDEA AND FERPA (2022).

^{101.} See, e.g., ANNUAL REPORTS, supra note 79 (describing public and private education research that the National Center for Education Statistics conducted on behalf of the U.S. Department of Education).

^{102.} See, e.g., U.S. GOV'T ACCOUNTABILITY OFF., INDIAN EDUCATION: ACTIONS NEEDED TO ENSURE STUDENTS WITH DISABILITIES RECEIVE SPECIAL EDUCATION SERVICES (2023) (providing recommendations to improve the special education services afforded to indigenous populations on the basis of private education data).

CONCLUSION

In this note, I used a series of case studies and a range of existing research to argue that increased opportunities for student participation can lead to the development of more effective IEPs. Student voice can potentially assist IEP teams with (1) identifying the correct balance between necessary accommodations and minimally restrictive learning environments, (2) increasing student investment in education, and (3) assessing mental and emotional disabilities that present more limited symptoms. While expanding the IDEA's legal requirement for student participation might not be feasible, schools and parents can make greater efforts to engage with student perspectives in IEP meetings.

I do, however, want to clarify that this note is not meant to be an indictment of teachers, parents, or school administrators. In most instances, these parties are collectively acting to serve the best interests of students. However, on at least some occasions, they are failing to acknowledge one of the best indicators of student interest—that, of course, being student voice. At the beginning of this note, I mentioned that the UMDA encourages judges to ask children about their own wishes when making custody determinations.¹⁰³ This is a fairly uncontroversial criterion. So why is there no similar criterion for the development of IEPs?

I believe that there is an implicit reluctance to consider the perspectives of students with disabilities. This belief aligns, at least in

¹⁰³. Most states have adopted similarly-phrased recommendations in their custody statutes. See, e.g., CAL. FAM. CODE § 3042 (West 2023).

part, with the social model of disability.¹⁰⁴ It might not be that students with disabilities are unable to contribute in IEP meetings. Rather, it might be that other stakeholders do not believe they can. Scholars have long argued that these kinds of inaccurate expectations can serve as a major barrier to the expansion of civil rights for people with disabilities.¹⁰⁵ In that sense, this advocacy is not isolated. Instead, it is but one part of the broader fight for disability rights—not just a fight against overt discrimination, but a fight against expectations.

^{104.} Rhoda Olkin, Conceptualizing Disability: Three Models of Disability, AM. PSYCH. ASS'N (Mar. 29, 2022), <https://www.apa.org/ed/precollege/psychology-teacher-network/introductory-psychology/disability-models>.

^{105.} See Doris Zames Fleischer, Disability Rights: The Overlooked Civil Rights Issue, 25 DISABILITY STUD. Q., no. 4, 2005.