

# Can Social Science Teach Congress New Tricks?: Addressing the Need for Educational Support Dogs in Classrooms

BY: ELAINA H. WILSON\*

## ABSTRACT

*In the United States, children with disabilities are afforded protections in three federal statutes: the Individuals with Disabilities Education Act; Section 504 of the Rehabilitation Act of 1973; and the Americans with Disabilities Act of 1990. However, these laws fail to provide for educational support dogs in public schools, despite the common and successful use of educational support dogs in other countries. The success of educational support dogs abroad is not surprising, as recent waves of social science research make clear the benefits of dogs in schools, from increased productivity within the classroom to improved morale within the school community at large. Additionally, this research suggests that dogs in educational settings can have the biggest impact on children with disabilities. Still, these U.S. laws generally bar children with disabilities from accessing educational support dogs in public schools.*

*To address this problem, this Note focuses on attention deficit hyperactivity disorder, as it is one of the most common neurodevelopmental disorders in children, as well as the Individuals with Disabilities Education Act, as it allows for the most flexibility and opportunity for collaboration, compared to the other two laws affording protections to children with disabilities. Specifically, this Note urges Congress to consider recent social science understandings and amend the Individuals with Disabilities Education Act to add a provision mirroring the Companion Animals Act 1998 of New South Wales, Australia, which allows for educational support dogs in classrooms when and where school officials see fit. This provision would provide children, particularly those with ADHD and other disabilities, better opportunity to access educational support dogs in U.S. public schools and, thus, experience the multitude of benefits identified by the studies highlighted in this Note.*

## INTRODUCTION

We have all heard that a dog is man's best friend. But what if dogs were also an essential, standard part of our classrooms? Study after study shows that dogs reduce anxiety and promote productivity, comprehension, and motivation in children in educational settings—particularly in children with disabilities.<sup>1</sup> Additionally, these benefits would extend beyond the students receiving the educational support dog's

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\* J.D. Candidate 2022, Indiana University Maurer School of Law; B.A.J., 2018, Indiana University Bloomington. Many thanks to the members of the *Indiana Law Journal* for their diligent and thorough review of this Note and Professor Roger Levesque for his guidance and feedback during the writing process. Finally, to my parents, I would not be here without your unwavering support and encouragement. Thank you so much for everything.

1. See *infra* Part III.

services, as improved morale and increased well-being in the school community would also likely occur.<sup>2</sup> In fact, implementing educational support dogs into classrooms and schools is already a common practice in some parts of the world, and many schools with educational support dogs have reported their far-reaching benefits.<sup>3</sup>

In the United States, three federal statutes, the Individuals with Disabilities Education Act (IDEA),<sup>4</sup> Section 504 of the Rehabilitation Act of 1973 (Section 504),<sup>5</sup> and the Americans with Disabilities Act of 1990 (ADA),<sup>6</sup> provide protections for children with disabilities. However, these statutes predominantly bar children with disabilities from accessing educational support animals in public schools,<sup>7</sup> as educational support dogs can fall into an unclear “gray area” between the ADA’s definitions of a traditional service animal and a therapy or support animal.<sup>8</sup>

Recent precedent makes clear that children with attention deficit hyperactivity disorder (ADHD)—one of the most common neurodevelopmental disorders<sup>9</sup>—*can* qualify as “disabled” under these federal statutes;<sup>10</sup> however, it can be incredibly challenging to do so.<sup>11</sup> Either way, despite the growing social science research demonstrating the vast cognitive and behavioral benefits animals can have on children, particularly those impaired by ADHD,<sup>12</sup> and regardless of whether a child can prove they are disabled under these statutes in court, children in the United States generally cannot access educational support dogs. Part I of this Note addresses the federal government’s failure to best address the developmental needs of children diagnosed with ADHD notwithstanding its enacting of the IDEA, Section 504, and the ADA. Each of these legislative initiatives are outlined in Part II. The social science understandings are summarized in Part III, and the lack of legal response is further described in Part IV.<sup>13</sup>

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2. See *infra* note 226 and accompanying text.

3. See *infra* text accompanying notes 211–26.

4. 20 U.S.C. §§ 1400–1409 (2018).

5. 29 U.S.C. § 794 (2018).

6. 42 U.S.C. §§ 12101–12213 (2018).

7. See *infra* Parts II and IV. See *infra* notes 204–08 and accompanying text for a definition of “educational support dog.”

8. See *infra* notes 155–66 and accompanying text. Support and therapy dogs are generally afforded less protections under federal law than bona fide, traditional service animals, meaning that they are allowed in fewer places. *Id.* See also Gabriela Sandoval, *Service, Therapy, and Emotional Support Animals*, 44 COLO. LAW. 69 (2015), for further discussion about the differences between service, therapy, and emotional support animals under the ADA.

9. See *infra* text accompanying note 27.

10. See *infra* notes 57–61 (ADA), 66–68 (Section 504), and 88–92 (IDEA) and accompanying text.

11. See *infra* notes 80–86, 93–101 and accompanying text. These challenges may include simply proving a disability in court or having to jump through unclarified administrative “hoops” in order to bring certain legal claims. *Id.*

12. See *infra* Part III. See *infra* text accompanying 116–26 for information and summarized research on the benefits of animals on children with ADHD specifically.

13. See *infra* Part III and Part IV.

The IDEA involves more measurable, impactful processes and plans specially crafted by school staff, specialists, and parents or guardians for the benefit of students with disabilities compared to the ADA and Section 504. Part V of this Note advocates for the amending of the IDEA to include a provision closely mirroring the Companion Animals Act 1998 of New South Wales, Australia. This Act allows for educational support dogs in classrooms when and where school officials or principals see fit.<sup>14</sup> Part V also proposes that, in amending the IDEA, Congress define and clarify the purpose of educational support dogs as its own category separate from traditional service animals and therapy or support animals. This addition to the IDEA would allow American school principals and support staff to decide when and where educational support dogs would be the *most* beneficial, not only to children impaired by ADHD, but to the classroom and school community as a whole.<sup>15</sup>

### I. ADHD IN CHILDREN

ADHD is “one of the most common neurodevelopmental disorders of childhood.”<sup>16</sup> ADHD “is usually first diagnosed in childhood and often lasts into adulthood.”<sup>17</sup> Children with ADHD might have extreme difficulty focusing and behaving, causing them to have issues at school and with peers,<sup>18</sup> as “[t]hey are less able than other kids their age to manage powerful feelings without an outburst.”<sup>19</sup> Typically, ADHD is treated with a combination of medication and behavior therapy.<sup>20</sup> The Centers for Disease Control and Prevention (CDC) recommends that preschool-aged children with ADHD receive behavior therapy before using medication.<sup>21</sup> This recommendation avoids short-term and long-term side effects of medication, such as irritability, curbing hunger, difficulty sleeping, and stunting growth.<sup>22</sup> The CDC and the American Academy of Pediatrics (AAP) further recommend that school-age children, those age six years and older, combine

14. *Companion Animals Act 1998* (N.S.W.) (Austl.). Available at: <https://www.legislation.nsw.gov.au/view/whole/html/inforce/current/act-1998-087>. See *infra* Part V.

15. See *infra* text accompanying notes 152–69.

16. *What is ADHD?*, CTRS. FOR DISEASE CONTROL & PREVENTION (Oct. 23, 2020), <https://www.cdc.gov/ncbddd/adhd/facts.html>.

17. *Id.*

18. *Id.* For example, though “tantrums and defiance are not symptoms of ADHD itself, . . . they are often a result of ADHD symptoms.” Caroline Miller, *ADHD and Behavior Problems*, CHILD MIND INST., <https://childmind.org/article/adhd-behavior-problems> (last visited Apr. 9, 2021). Further, “[i]nattention and impulsivity can make it very difficult for kids to tolerate tasks that are repetitive, or take a lot of work, or kids find boring.” *Id.* This difficulty can lead to frustration, which then leads to impulsive behavior, such as “throwing a shoe or pushing someone or yelling ‘shut up!’” *Id.* However, “[s]ome kids with ADHD develop negative behavior patterns,” and, in cases of chronic defiance, are “diagnosed with a behavior disorder called oppositional defiant disorder (ODD).” *Id.*

19. *Id.*

20. *What is ADHD?*, *supra* note 16.

21. *Id.*

22. *ADHD Treatment: CDC Recommends Therapy Before Drugs*, C8 SCI. (July 8, 2016), <https://www.c8sciences.com/adhd-treatment-cdc-recommends-therapy-drugs/>.

medication treatment with behavior therapy, including behavioral interventions in the classroom.<sup>23</sup>

ADHD treatments can be costly, especially for low-income families. Overall, raising a child with ADHD costs American families an estimated \$5.8 billion each year—five times more than raising a child without ADHD.<sup>24</sup> A 2012 study estimated the annual costs of caring for childhood ADHD to be about \$2,720.<sup>25</sup> Even more recently, one survey found that people spent an average of “\$2,125 out of pocket just for ADHD doctor and therapist appointments for children in 2016.”<sup>26</sup> These families further spent \$935 on medications for their children.<sup>27</sup> Furthermore, a majority of families still pay for non-medical treatment, such as coaching or non-prescription supplements—costing, on average, \$3,509 in additional annual expenses.<sup>28</sup> Even parents with health insurance struggle to pay for ADHD diagnoses and treatment for their children.<sup>29</sup>

Additionally, stimulants, the most commonly known and most widely used form of ADHD medication, only reduce ADHD symptoms in 70–80% of children diagnosed with ADHD.<sup>30</sup> Another option is nonstimulants, but often, this type of medication does not work as quickly as stimulants.<sup>31</sup> Because these medications can “affect children differently,” “[h]ealthcare providers who prescribe medication may need to try different medications and doses.”<sup>32</sup> The CDC and the AAP recommend that parents “work with their child’s healthcare providers to find the medication [and the dosage] that work[] best for their child.”<sup>33</sup> It cannot be doubted that, for many parents and legal guardians of children with ADHD, these prescriptions, appointments, and back-and-forth conversations with doctors can be costly and time consuming. Thus, for some families, many treatments may not be a viable option or justifiable when weighed against the costs.

## II. THE FEDERAL LAWS THAT PROVIDE PROTECTIONS FOR CHILDREN WITH ADHD

It can be challenging for classroom teachers to help students manage their ADHD symptoms, as these children tend to require extra assistance and accommodations on

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23. *Treatment of ADHD*, CTNS. FOR DISEASE CONTROL & PREVENTION (Sept. 21, 2020), <https://www.cdc.gov/ncbddd/adhd/treatment.html>.

24. Fla. Int’l Univ., *Raising a child with ADHD costs five times more than raising a child without ADHD, study finds*, MED. XPRESS (Apr. 8, 2019), <https://medicalxpress.com/news/2019-04-child-adhd.html>.

25. Katherine Ellison, “*We Can’t Afford to Treat Our ADHD*”, ADDITUDE (Aug. 23, 2018), <https://www.additudemag.com/adhd-treatment-costs-struggle-to-afford-meds-therapy/>.

26. *Id.*

27. *Id.*

28. Ellison, *supra* note 25.

29. *Id.*

30. *Treatment of ADHD*, CTNS. FOR DISEASE CONTROL & PREVENTION (Sept. 21, 2020), <https://www.cdc.gov/ncbddd/adhd/treatment.html>.

31. *Id.*

32. *Id.*

33. *Id.*

a daily basis.<sup>34</sup> Most children with ADHD receive federally-funded school services, including special education services and other accommodations, “to lessen the effect of ADHD on their learning.”<sup>35</sup> There are three main federal laws that govern special services and accommodations for children with disabilities: the Americans with Disabilities Act of 1990 (ADA),<sup>36</sup> Section 504 of the Rehabilitation Act of 1973 (Section 504),<sup>37</sup> and the Individuals with Disabilities Education Act (IDEA).<sup>38</sup> However, as this Note concludes, the IDEA has more of an individualized, measurable impact on children with ADHD and other disabilities than the ADA and Section 504.<sup>39</sup> Thus, this Note focuses primarily on the IDEA. Regardless, all three statutes can still impact children with ADHD. The next three Sections analyze each Act in the context of and in relation to children impaired by ADHD.

*A. The Effect of the Americans with Disabilities Act of 1990 on Children with ADHD*

First, the ADA *can* impact individuals with ADHD. The ADA was enacted, in part, “to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities” and “to ensure that the Federal Government plays a central role in enforcing the standards established in [the ADA] on behalf of individuals with disabilities.”<sup>40</sup> Disability, according to the ADA, means “a physical or mental impairment that substantially limits one or more major life activities of such individuals,” “a record of such an impairment,” or “being regarded as having such an impairment.”<sup>41</sup> Title II of the ADA provides protections to individuals with disabilities within “public entities,”<sup>42</sup> including state or local governments, as well as departments, agencies, and any other instrumentality of such governments.<sup>43</sup> A school district is a “public entity” under Title II of the ADA.<sup>44</sup>

34. *ADHD in the Classroom: Helping Children Succeed in School*, CTDS. FOR DISEASE CONTROL & PREVENTION (Sept. 3, 2020), <https://www.cdc.gov/ncbddd/adhd/school-success.html>.

35. *Id.*

36. 42 U.S.C. §§ 12101–12213 (2018).

37. 29 U.S.C. § 794 (2018).

38. 20 U.S.C. §§ 1400–1409 (2018).

39. *See infra* text accompanying notes 91–93.

40. 42 U.S.C. §§ 12101(b)(1), (3).

41. *Id.* § 12102(1)(A). The ADA further provides that “major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.” *Id.* § 12101(2)(A).

42. *See id.* §§ 12131–12132, 12141–12150, 12161–12165 (Title II).

43. *Id.* § 12131(1).

44. *DeBord v. Bd. of Educ. of Ferguson-Florissant Sch. Dist.*, 126 F.3d 1102, 1104 (8th Cir. 1997) (“Title II of the ADA [is] applicable to public entities including public schools.”); *Swenson v. Lincoln Cty. Sch. Dist. No. 2*, 260 F. Supp. 2d 1136, 1146 (D. Wyo. 2003) (“A school district is a ‘public entity’ under Title II of the ADA.”) (citing *DeBord*, 126 F.3d 1104).

While some courts hold that ADHD alone does not qualify as a disability under the ADA,<sup>45</sup> others have, or at least hinted at the possibility.<sup>46</sup> For example, in *Calef v. Gillette Co.*, an employee of Gillette Company was fired due to displaying “irrational behavior” at work, which was believed by his doctor to be caused by his ADHD.<sup>47</sup> Though the court ultimately held that the plaintiff’s ADHD did not render him disabled, it concluded that “[o]n different facts, ADHD might disable an individual such that the ADA applies.”<sup>48</sup> Thus, it is possible that an individual, including children, with ADHD can qualify as having a disability under the ADA if she can meet the standard outlined in the statute. Scholars have argued that the ADA and courts applying it need to recognize neurodevelopmental disorders such as ADHD, as current interpretation and application has left disabled people who are or

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45. See, e.g., *Johnson v. Sedgwick Cty. Sheriff’s Dep’t*, 461 F. App’x 756, 759 (10th Cir. 2012) (holding that plaintiff’s ADHD did not qualify as a disability under the ADA because he provided no evidence that his ADHD substantially limited a major life activity); *Weaving v. Hillsboro*, 763 F.3d 1106 (9th Cir. 2014) (holding that plaintiff’s “ADHD did not substantially limit either his ability to work or to interact with others”); *Lewis v. D.B.I. Servs.*, 397 F. Supp. 3d 902, 903 (W.D. Tex. 2019) (“[T]he Fifth Circuit has not definitively held that ADHD constitutes a disability under the ADA, neither has it held that it does.”). Before the 2008 amendments to the ADA, which broadened its definition of “disabled,” “courts addressing ADHD and the ADA declined to hold that ADHD should categorically be rejected as a qualifying disability and emphasized that whether an individual has a disability under the ADA is ‘an individualized inquiry.’” *Lewis*, 397 F. Supp. 3d at 903–04 (citing *Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999)).

46. 322 F.3d 75, 86 (1st Cir. 2003); see text accompanying notes 54–55. See also *Halpern v. Wake Forest Univ. Health Servs.*, 669 F.3d 454, 462 (4th Cir. 2012) (“[Plaintiff’s] ADHD and anxiety disorder constitute disabilities giving rise to protection under the . . . ADA.”). Before the 2008 ADA amendments, the Seventh Circuit has also acknowledged that attention deficit disorder (ADD) *could* qualify as a disability under the ADA. *Davidson v. Midelfort Clinic, Ltd.*, 133 F.3d 499, 508–09 (7th Cir. 1997). In *Davidson*, however the court ultimately concluded that the plaintiff failed to show that her ADD substantially limited a major life activity. *Id.* Traditionally, ADD and ADHD were considered different disorders, but today, according to the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition (DSM-5), ADD and ADHD are considered “subtypes of the same diagnosis.” ADHD Editorial Board & William Dodson, *ADD vs. ADHD: What’s the Difference in Symptoms?*, ADDITUDE (Sept. 3, 2019) <https://www.additudemag.com/slideshows/add-vs-adhd>. ADD is now seen as an outdated term “typically used to describe inattentive-type ADHD,” and characterized by disorganization, forgetfulness, and lack of focus. *Id.*; see also *Attention-Deficit/Hyperactivity Disorder (ADHD): Symptoms and Diagnosis*, CTRS. FOR DISEASE CONTROL & PREVENTION (Sept. 21, 2020), <https://www.cdc.gov/ncbddd/adhd/diagnosis.html>.

47. 322 F.3d at 78.

48. *Id.* at 86. The court noted that though the plaintiff’s ADHD may “involve episodic incapacity during high periods of stress,” people rarely find handling stress to be easy. *Id.* at 85–86. In assessing whether the plaintiff had a disability under the ADA, the court further noted that the plaintiff’s impairment was compensated through medication and counseling. *Id.* at 85. In the end, the court concluded that “[t]here was no evidence in [the] record that [the] plaintiff could not perform some usual activity compared with the general population, or that he had a continuing inability to handle stress at all times, rather than only episodically.” *Id.* at 86.

seem successful in work and academic environments without adequate protection under the law.<sup>49</sup>

*B. The Effect of Section 504 of the Rehabilitation Act of 1973 on Children with ADHD*

Second, Section 504 is a civil rights law that prohibits programs receiving federal funds from discriminating against children with disabilities.<sup>50</sup> Under certain circumstances, the law requires school districts to make accommodations for students impaired by ADHD.<sup>51</sup> Section 504 provides, in relevant part: “No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance . . . .”<sup>52</sup> The Office for Civil Rights enforces Section 504 in “programs and activities that receive Federal financial assistance from [the U.S. Department of Education],” which includes public school districts.<sup>53</sup>

Children with ADHD can qualify as a person with a disability under Section 504,<sup>54</sup> but whether the child receives support at school typically depends on if they meet the eligibility requirements for a 504 Plan as established by the law.<sup>55</sup> Section 504 “does not specifically list which disabilities are included . . . [, but it is] usually

49. *Rhodes v. Langston Univ.*, 462 Fed. App’x 773, 778 (10th Cir. 2011) (“The ADA does not define the term ‘substantially limits.’”). See Christine M. Muller, *Expanding Protection for Attention Deficit Hyperactivity Disorder Individuals Under the Americans with Disabilities Act*, 17 LOY. J. PUB. INT. L. 61 (2015), for an example of scholarship advocating for this change in ADA law to be made.

50. *The Civil Rights of Students with Hidden Disabilities Under Section 504 of the Rehabilitation Act of 1973*, U.S. DEP’T OF EDUC. (Jan. 1, 1995), <https://www2.ed.gov/about/offices/list/ocr/docs/hq5269.html>.

51. *Protecting Students with Disabilities*, U.S. DEP’T OF EDUC. (Jan. 10, 2020), <https://www2.ed.gov/about/offices/list/ocr/504faq.html> [hereinafter *Protecting Students*]; see also Eileen Bailey, *Is an IEP or 504 Plan Best for Your Child? How to Decide*, ADDITUDE (Aug. 20, 2019), <https://www.additudemag.com/iep-step-5-evaluate-your-options/>.

52. 29 U.S.C. § 794.

53. *Protecting Students*, *supra* note 51.

54. See, e.g., *Centennial Sch. Dist. v. Phil L. ex rel. Matthew L.*, 799 F. Supp. 2d 473 (E.D. Pa. 2011). The court in this case relied upon the ADA’s definition of “disability” in determining whether the plaintiff qualified as having a disability under Section 504. *Id.* “Since [Section] 504’s definition of disability is identical to the ADA’s definition, it is appropriate to look to the ADA for guidance in interpreting this definition . . . . Thus, the ADA affords individuals at least as much protection as provided by the Rehabilitation Act.” *Id.* at 483. The district court ultimately held that the child was disabled under Section 504 during the times that he was not properly and frequently taking ADHD medication, *id.* at 486–87, which “mitigate[d] the effect of [his] ADHD to such a degree that it no longer substantially limit[ed] his major life activities of thinking and learning,” *id.* at 486.

55. Andrew M.I. Lee, *Section 504 of the Rehabilitation Act of 1973: What You Need to Know*, UNDERSTOOD, <https://www.understood.org/en/school-learning/your-childs-rights/basics-about-childs-rights/section-504-of-the-rehabilitation-act-of-1973-what-you-need-to-know> (“If the school determines that a child is eligible under Section 504, it must provide appropriate services and supports. This happens through a 504 Plan.”).

limited to those with long-term disabilities, such as attention deficit and hyperactivity disorder.”<sup>56</sup> Section 504 is “intentionally left as broad a statement of possible physical and mental impairments so that each school can determine eligibility on the basis of an individual case.”<sup>57</sup> 504 Plans spell out accommodations and modifications “needed for the student to have an opportunity to perform at the same level as their peers.”<sup>58</sup> Examples of these accommodations and modifications include blood sugar monitoring, extra check-ins from teachers, placing a child at the front of the classroom, and providing a wheelchair ramp.<sup>59</sup>

A 504 Plan is developed to ensure that a child with a disability attending an elementary or secondary educational institution “receives accommodations that will ensure their academic success and access to the learning environment.”<sup>60</sup> Accommodations in 504 Plans are “designed so that a student can learn in a classroom environment for the entire day and participate in school just as they would if they didn’t have a disability, rather than being taught in separate special education classrooms.”<sup>61</sup> Each 504 Plan is individually created and specially suited to each student’s needs.<sup>62</sup> Getting a 504 Plan approved and implemented can be a lengthy process, often started by contacting the child’s teacher or principal with concerns and possibly getting an official disability diagnosis for the child.<sup>63</sup> Then, the school will follow their protocols for determining whether a 504 Plan is appropriate by assessing the child’s test scores, academic performance, comments from the child’s teachers and parents, and the child’s diagnosis.<sup>64</sup> Each school controls the actual format of its own 504 Plans.<sup>65</sup> However, unlike an individualized education plan,<sup>66</sup> a 504 Plan “will not include academic goals, benchmarks, or measurements,” but will simply “list specific accommodations or requirements that will make it possible for your child to succeed in a general education program.”<sup>67</sup>

As in cases involving the ADA,<sup>68</sup> students impaired by ADHD may face challenges establishing they are disabled under Section 504 and, thus, are prohibited from accessing the protections afforded by it. For example, *Zachary M. v. Bd. of Educ. of Evanston Twp. High Sch. Dist. No. 202* involved a student impaired by ADHD who was repeatedly denied accommodations under Section 504 by relevant school officials.<sup>69</sup> Additionally, the First Circuit has found that an ADHD diagnosis,

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56. Terri Mauro, *504 Plans for Students with Disabilities*, VERYWELL FAMILY (Feb. 14, 2021), <https://www.verywellfamily.com/what-is-a-504-plan-3104706>.

57. *Id.*

58. *Id.*

59. *Id.*

60. *What is the difference between an IEP and a 504 Plan?*, ACCESSCOMPUTING, <https://www.washington.edu/accesscomputing/what-difference-between-iep-and-504-plan> [hereinafter *What is the difference?*].

61. Mauro, *supra* note 56.

62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.*

66. *See infra* footnotes 90–91 and accompanying text.

67. *Id.*

68. *See supra* footnotes 47–50 and accompanying text.

69. 829 F. Supp. 2d 649 (N.D. Ill. 2011).



on its own, is not sufficient to establish a disability.<sup>70</sup> Also, while Title II of the ADA and Section 504 are meant to provide protections to students in schools, courts often hold that students and their parents cannot bring lawsuits asserting a denial of free appropriate public education under either the ADA or Section 504 before exhausting their administrative remedies and options through the IDEA first.<sup>71</sup> This Note further addresses the exhaustion obstacle in the next Section.

*C. The Effect of the Individuals with Disabilities Education Act on Children with ADHD*

Under the IDEA, “[e]ach state receiving federal funding through its provisions must ensure that every disabled school-age child receives a [free and appropriate public education].”<sup>72</sup> Though the IDEA has a specific definition of “child with a disability,” different than the definition used by the ADA and Section 504, Congress left some terms open.<sup>73</sup> For example, though the IDEA, in defining “child with a disability,” spells out “hearing impairments (including deafness),” “visual impairments (including blindness),” and “autism,” it also includes more vague terms such as “other health impairments.”<sup>74</sup> However, the Office of Special Education Programs within the Department of Education, the principal agency designated for administering and carrying out the IDEA,<sup>75</sup> provided guidance on what “other health impairments” means.<sup>76</sup> The agency defines “other health impairments” as “having limited strength, vitality, or alertness, including a heightened alertness to

70. *Calef v. Gillette Co.*, 322 F.3d 75, 86 (1st Cir. 2003). It should be noted that this case involves an employee-employer relationship. *Id.*

71. *See e.g.*, *Durbrow v. Cobb Cty. Sch. Dist.*, 887 F.3d 1182 (11th Cir. 2018) (holding that because the plaintiff’s claims under the ADA, the IDEA and the Rehabilitation Act alleged the denial of a free appropriate public education, the IDEA required exhaustion of administrative remedies). In 2017, the Supreme Court clarified “the circumstances in which parents must exhaust the administrative remedies found in the [IDEA], when their lawsuit purports to assert claims only under *other* federal discrimination statutes—namely, the [ADA] and [Section] 504.” Michael T. Raupp, *Supreme Court Clarifies Administrative Exhaustion Requirements Under IDEA*, HUSCH BLACKWELL (Feb. 25, 2017), <https://www.k-12legalinsights.com/2017/02/supreme-court-clarifies-administrative-exhaustion-requirements-idea>. A unanimous Court held that “parent’s must exhaust IDEA’s administrative procedures only when the ‘substance, or gravamen, of the plaintiff’s complaint’ seeks relief for the denial of a Free Appropriate Public Education.” *Id.*; *see also infra* footnotes 94 and 159–62 and accompanying text.

72. *C.G. ex rel. A.S. v. Five Town Comm. Sch. Dist.*, 513 F.3d 279, 284 (1st Cir. 2008).

73. “The term ‘child with a disability’ means a child . . . with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (referred to in this chapter as “emotional disturbance”), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and who . . . needs special education and related services.” 20 U.S.C.A. § 1401(3)(A). A child who may be experiencing developmental delays also qualifies as “a child with a disability.” *Id.* § 1401(3)(B).

74. *Id.* § 1401(3)(A).

75. *Id.* § 1404(a).

76. *See* 34 C.F.R. § 300.8(c)(9).

environmental stimuli, that results in limited alertness with respect to the educational environment that . . . [i]s due to chronic or acute health problems such as . . . attention deficit disorder or attention deficit hyperactivity disorder,” and “[a]dversely affects a child’s educational performance.”<sup>77</sup>

Plaintiffs in IDEA cases may be “required to utilize the elaborate [administrative] scheme established by the [IDEA] before resorting to the courts to challenge the actions of the local school authorities.”<sup>78</sup> Specifically, the IDEA’s exhaustion provision<sup>79</sup> requires parents or guardians to file a complaint with the appropriate state or local educational agency,<sup>80</sup> which will then spur a “[p]reliminary meeting” to discuss the complaint.<sup>81</sup> If that preliminary meeting does not resolve the dispute, then a mediation process will likely begin.<sup>82</sup> Ultimately, if the issue still has not been resolved, a formal “due process hearing” will take place.<sup>83</sup> The exhaustion of administrative remedies is required so that “disputes related to the education of disabled children are first analyzed by administrators with expertise in the area who can promptly resolve grievances” before turning to courts and judges that simply lack that expertise.<sup>84</sup>

Further, the IDEA ensures “that all children with disabilities have available to them a free appropriate public education [or FAPE] that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.”<sup>85</sup> The term “‘free appropriate public education’ means special education and related services that . . . (A) have been provided at public expense, under public supervision and direction, and without charge; (B) meet the standards of the State educational agency; (C) include an appropriate [school]; and (D) are provided in conformity with the [plan] required under section 1414.”<sup>86</sup> The IDEA further ensures “that *educators and parents* have the necessary tools to improve educational results for children with disabilities.”<sup>87</sup>

The statute further provides for the creation of an Individualized Education Plan (IEP) for a child with a disability.<sup>88</sup> The IEP includes, among other items, statements

77. *Id.*

78. *Frazier v. Fairhaven Sch. Comm.*, 276 F.3d 52, 60 (1st Cir. 2002) (quoting *N.B. by D.G. v. Aluchua Cty. Sch. Bd.*, 84 F.3d 1376, 1378 (11th Cir. 1996)).

79. *Supra* Part II.

80. 20 U.S.C. § 1415(f)(1)(A).

81. *Id.* § 1415(f)(1)(B)(i).

82. *Id.* § 1415(f)(1)(B)(i)(IV); *id.* § 1415(e).

83. *Id.* § 1415(f)(1)(B)(ii).

84. *A. ex rel. A v. Hartford Bd. of Educ.*, 976 F. Supp. 2d 164 (D. Conn. 2013) (quoting *N.S. v. Attica Cent. Schs.*, 386 F.3d 107, 112 (2d Cir. 2004)); *see also Polera v. Bd. of Educ. of the Newburgh Enlarged City Sch. Dist.*, 288 F.3d 478, 487 (2d Cir. 2002). However, landmark Supreme Court cases make clear that the Court is still able—and willing—to make decisions regarding children’s developmental needs in classrooms. *See, e.g., Meyer v. Nebraska*, 262 U.S. 390 (1923) (making developmental assumptions regarding the benefits of children learning foreign languages and education generally).

85. 20 U.S.C. § 1400(d)(1)(A).

86. *Id.* § 1401(9).

87. *Id.* § 1400(b)(C)(3) (emphasis added).

88. *See id.* § 1414(d).

of the child's current levels of academic achievement and performance; measurable annual goals and descriptions of the child's progress toward meeting those goals; statements detailing the anticipated frequency and duration of the services, as well as the extent to which the child will participate with nondisabled children in the classroom and the special education; and "related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child."<sup>89</sup> Additionally, the IDEA provides that an "individualized education program team," or "IEP Team," is the group of individuals comprised of a child's parents, at least one regular-education teacher, at least one special education teacher or provider, a qualified and knowledgeable representative of the local education agency, and an individual who can interpret the institutional implications of the results of the evaluation.<sup>90</sup> Thus, an IEP is individually created by the group of people that work the closest with a child and know their needs best.

This Note focuses on the IDEA, as opposed to the ADA or Section 504, as IEPs are specially crafted by school staff, parents, and specialists for the benefit of students with disabilities. Further, the "IDEA process is more involved than that of Section 504 . . . and requires documentation of measurable growth."<sup>91</sup> The Supreme Court has also clarified that the "IDEA guarantees individually tailored educational services for children with disabilities, while Title II [of the ADA] and [Section] 504 promise nondiscriminatory access to public institutions for people with disabilities of all ages."<sup>92</sup> Additionally, while the prevalence of children with disorders of executive function, such as ADHD, is relatively low in the general population, "these children likely comprise the vast majority of the school-age children eligible for special education services under the [IDEA] in the [United States]."<sup>93</sup>

Despite the fact that those who work the closest with disabled students are given the legal right to create IEPs, this Note argues that the IDEA should expressly provide for the option to allow students access to educational support dogs, especially considering the incredibly promising recent social science understandings demonstrating the overwhelming benefits of educational support animals on both children impaired by ADHD and children in classrooms generally.<sup>94</sup> Part III summarizes the recent growth of social science research surrounding human-animal

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89. *Id.* § 1414(d)(1)(A).

90. *Id.* § 1414(d)(1)(B).

91. *What is the difference?*, *supra* note 60.

92. *Fry v. Napoleon Cmty. Sch.*, 137 S. Ct. 743, 747, 756 (2017).

93. Sabrina E. B. Schuck & Aubrey H. Fine, *School-based Animal-Assisted Interventions for Children with Deficits in Executive Function*, in *HOW ANIMALS HELP STUDENTS LEARN: RESEARCH AND PRACTICE FOR EDUCATORS AND MENTAL-HEALTH PROFESSIONALS* 69 (Nancy R. Gee, Aubrey H. Fine, & Peggy McCardle eds., 2017) ("ADHD is considered to be a result of a psychological disruption of dopaminergic systems resulting in impaired EF."). Though the ADA does not define "substantially limits," *see supra* note 41, it should be noted that courts have held that the "mere receipt of an [IEP] under the IDEA by itself [does not] demonstrate a substantial limitation" of a major life activity, *see, e.g.*, *Ellenberg v. N.M. Military Inst.*, 572 F.3d 815, 821 (10th Cir. 2009).

94. *See generally, e.g.*, *HOW ANIMALS HELP STUDENTS LEARN: RESEARCH AND PRACTICE FOR EDUCATORS AND MENTAL-HEALTH PROFESSIONALS* (Nancy R. Gee, Aubrey H. Fine, & Peggy McCardle eds., 2017).

interaction, especially as it pertains to children and children with disabilities, including ADHD.

### III. THE RECENT WAVE OF HUMAN-ANIMAL INTERACTION RESEARCH

Though research on human-animal interaction—particularly involving children in education settings—is still in its infancy, the findings thus far are incredibly promising.<sup>95</sup> Research on the effects of animal interaction on human cognition has grown dramatically in the last two decades.<sup>96</sup> Specifically, studies show that bringing animals into classrooms result in a multitude of positive benefits and effects on children, ranging from improved mood and motivation<sup>97</sup> to the opportunity of teaching responsibility and conscientiousness in the classroom.<sup>98</sup>

Human-animal interaction can be particularly beneficial for children with ADHD.<sup>99</sup> Preliminary research suggests that participating in dog training activities may enhance social competence and reduce problem behaviors, such as anger management and frustration tolerance, in children and teenagers with ADHD.<sup>100</sup>

95. Aubrey H. Fine & Nancy R. Gee, *How Animals Help Children Learn: Introducing a Roadmap for Action*, in HOW ANIMALS HELP STUDENTS LEARN: RESEARCH AND PRACTICE FOR EDUCATORS AND MENTAL-HEALTH PROFESSIONALS 3 (Nancy R. Gee, Aubrey H. Fine, & Peggy McCardle eds., 2017).

96. Karin Hediger, Nancy R. Gee, & James A. Griffin, *Do Animals in the Classroom Improve Learning, Attention, or Other Aspects of Cognition?*, in HOW ANIMALS HELP STUDENTS LEARN: RESEARCH AND PRACTICE FOR EDUCATORS AND MENTAL-HEALTH PROFESSIONALS 56, 57 (Nancy R. Gee, Aubrey H. Fine, & Peggy McCardle eds., 2017). Some of these studies “provide the basis for discussing the impact of dogs on children’s attention and cognition.” *Id.*

97. Kerstin Meints, Victoria Brelsford, Nancy R. Gee, & Aubrey H. Fine, *Animals in Education Settings: Safety for All*, in HOW ANIMALS HELP STUDENTS LEARN: RESEARCH AND PRACTICE FOR EDUCATORS AND MENTAL-HEALTH PROFESSIONALS 13 (Nancy R. Gee, Aubrey H. Fine, & Peggy McCardle eds., 2017) (citing Nancy R. Gee, Aubrey H. Fine, & Sabrina Schuck, *Animals in Educational Settings: Research and Practice*, in HANDBOOK ON ANIMAL-ASSISTED THERAPY 195-210 (4th ed. 2015)).

98. *Id.* (citing Clarissa M. Uttley, *Animal Attraction: Including Animals in Early Childhood Classrooms*, YOUNG CHILDREN, Sept. 2013, at 16; Eberhard Hummel & Christoph Randler, *Living Animals in the Classroom: A Meta-Analysis on Learning Outcome and a Treatment-Control Study Focusing on Knowledge and Motivation*, 21 J. SCI. EDUC. & TECH. 95 (2012) (including a more meta-analysis)).

99. See generally Sabrina E. B. Schuck & Aubrey H. Fine, *School-based Animal Assisted Interventions for Children with Deficits in Executive Function*, in HOW ANIMALS HELP STUDENTS LEARN: RESEARCH AND PRACTICE FOR EDUCATORS AND MENTAL-HEALTH PROFESSIONALS 69, 69–77 (Nancy R. Gee, Aubrey H. Fine, & Peggy McCardle eds., 2017) (describing effects of human-animal interaction on children with ADHD).

100. *Id.* at 75–76 (citing Aubrey H. Fine, Avril Lindsay Dennis, & Christine Bowers, *Incorporating Animal-Assisted Interventions in Therapy with Boys at Risk*, in ENGAGING BOYS IN TREATMENT: CREATING APPROACHES TO THE THERAPY PROCESS 115–33 (C. Haen, ed., 2011)). Social competence is the “condition of possessing the social, emotional, and intellectual skills and behaviors needed to succeed as a member of society” and necessary “for successful social adaptation.” *Social Competence*, ENCYCLOPEDIA OF CHILD. HEALTH, <http://www.healthofchildren.com/S/Social-Competence.html>.

Further research suggests that children who completed social training sessions with dogs demonstrated lower levels of aggression than groups of children who completed the training without the presence of dogs.<sup>101</sup> These findings can be incredibly beneficial for children with ADHD, as they “often have a harder time monitoring their social behavior than other children,” and “don’t always know how to read social situations and others’ reactions.”<sup>102</sup> Poor social competence may have detrimental effects on several aspects of a child’s health and wellbeing, including cognitive abilities, relationships, and emotion regulation.<sup>103</sup> Data also demonstrates that a relationship exists between lower levels of social competence and lower academic performance and achievement.<sup>104</sup>

Additional research concludes that the mere presence of a registered therapy animal reduces stress in learning environments.<sup>105</sup> Reducing stress is beneficial for children impaired by hyper-sensory stimulation as it “allow[s] anxious or over-stimulated children to better focus.”<sup>106</sup> Moreover, while support dogs often have a calming effect on people,<sup>107</sup> studies have shown that dogs may also promote productivity and task completion in individuals with the “sluggish cognitive tempo” commonly associated with ADHD.<sup>108</sup> Children also demonstrate higher levels of

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101. Patricia Pendry, Alexa M. Carr, & Jaymie L. Vandagriff, *Does Animal Presence or Interaction Impact Social and Classroom Behaviors Conducive to Student Educational Success?*, in HOW ANIMALS HELP STUDENTS LEARN: RESEARCH AND PRACTICE FOR EDUCATORS AND MENTAL-HEALTH PROFESSIONALS 49 (Nancy R. Gee, Aubrey H. Fine, & Peggy McCardle eds., 2017) (citing I. Tissen, A. Hergovich, & C. Spiel, *School-Based Social Training with and Without Dogs: Evaluation of Their Effectiveness*, 20 ANTHROZOÖS 365-73 (2007)).

102. Janice Schreier, *Helping a child with ADHD develop social skills*, MAYO CLINIC HEALTH SYSTEM (Feb. 24, 2020), <https://www.mayoclinichealthsystem.org/hometown-health/speaking-of-health/helping-a-child-with-adhd-develop-social-skills>. “ADHD and anger often go hand in hand. Trouble with self-control and expressing emotions can lead to outbursts.” *ADHD and Anger*, UNDERSTOOD, <https://www.understood.org/en/learning-thinking-differences/child-learning-disabilities/add-adhd/adhd-and-anger-what-you-need-to-know>.

103. Pendry et al., *supra* note 101 (citing Lenneke R. A. Alink, Dante Cicchetti, Jungmeen Kim, & Fred A. Rogosch, *Longitudinal Associations Among Child Maltreatment, Social Functioning, and Cortisol Regulation*, 48 DEVELOPMENTAL PSYCH. 224, 224-36 (2012); and then citing L. J. Luecken, D. S. Roubinov, & R. Tanaka, *Childhood Family Environment, Social Competence and Health Across the Lifespan*, 30 J. SOC. & PERS. RELATIONSHIPS 171, 171-78 (2013)).

104. *Id.* at 42 (citing M. A. SØRLIE & T. NORDHAL, *PROBLEMATFERD I SKOLEN: HOVEDFUNN, FORKLARINGER OG PEDAGOGISKE IMPLIKASJONER*, NOVA RAPPORT 12A (1998); KATHRYN R. WENTZEL, *RELATIONS BETWEEN SOCIAL COMPETENCE AND ACADEMIC ACHIEVEMENT IN EARLY ADOLESCENCE*, 62 CHILD DEVELOPMENT 1066, 1066-78 (1991)).

105. See Marlene Cimons, *Your dog can make you feel better, and here’s why*, WASH. POST: HEALTH & SCI. (Sept. 19, 2016), [https://www.washingtonpost.com/national/health-science/your-dog-can-make-you-feel-better-and-heres-why/2016/09/19/fde4aacc-6a2a-11e6-8225-fbb8a6fc65bc\\_story.html](https://www.washingtonpost.com/national/health-science/your-dog-can-make-you-feel-better-and-heres-why/2016/09/19/fde4aacc-6a2a-11e6-8225-fbb8a6fc65bc_story.html); Schuck & Fine, *supra* note 96, at 71.

106. Schuck & Fine, *supra* note 93, at 71.

107. Cimons, *supra* note 105.

108. Schuck & Fine, *supra* note 93, at 71 (citing Benjamin B. Lahey, Elizabeth A. Schaughency, George W. Hynd, Caryn L. Carlson & Naomi Nieves, *Attention Deficit*

social interaction, productivity, and attentiveness—all of which children with ADHD struggle with—when a dog is present in the classroom compared to when a dog is not present.<sup>109</sup>

Additionally, this growing field of research has demonstrated that trained dogs in classrooms can have positive benefits on children *not* affected by ADHD. For example, children’s task performance is improved in the presence of a dog, compared to in the presence of a stuffed toy dog or a human.<sup>110</sup> Additionally, high cortisol levels can have negative effects on memory and attention,<sup>111</sup> and studies have shown that interactions with dogs can reduce cortisol levels in high-stress situations.<sup>112</sup> Strong bonds between children and support dogs are also likely to have positive effects on children’s cognitive processes.<sup>113</sup> Thus, these findings suggest that feelings of support when it comes to a relationship with an animal may enhance a child’s overall academic performance.<sup>114</sup> The results of studies in this area also indicate that dogs can moderate stress responses in many different situations, and, by reducing stress

*Disorder with and Without Hyperactivity: Comparison of Behavioral Characteristics of Clinic-Referred Children*, 26 J. AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY 718, 718–23 (1987); Ronald Neeper & Benjamin B. Lahey, *The Children’s Behavior Rating Scale: A Factor Analytic Developmental Study*, 15 SCH. PSYCHOL. REV. 277, 277–88 (1986); see also *id.* at 76, 78.

109. Pendry et al., *supra* note 101, at 49 (citing Andreas Hergovish, Bardia Monshi, Gabriele Semmler & Verena Zieglmayer, *The Effects of the Presence of a Dog in the Classroom*, 15 ANTHROZOÖS 37, 37–50 (2002)). For a list of symptoms of ADHD in children, see *Attention-deficit/hyperactivity disorder (ADHD) in children*, MAYO CLINIC, <https://www.mayoclinic.org/diseases-conditions/adhd/symptoms-causes/syc-20350889>.

110. Hediger et al., *supra* note 96, at 57–58 (citing Nancy R. Gee, Meredith T. Church & Christie L. Altobelli, *Preschoolers Make Fewer Errors on an Object Categorization Task in the Presence of a Dog*, 23 ANTHROZOÖS 173, 173–84 (2010)) (then citing Nancy R. Gee, Jared K. Gould, Chad C. Swanson & Ashley K. Wagner, *Preschoolers Categorize Animate Objects Better in the Presence of a Dog*, 25 ANTHROZOÖS 187, 187–98 (2012)).

111. *Id.* at 62 (citing S. Het, G. Ramlow & O. T. Wolf, *A Meta-Analytic Review of the Effects of Acute Cortisol Administration on Human Memory*, 30 PSYCHONEUROENDOCRINOLOGY 771, 771–84 (2005)). Put simply, cortisol is the body’s primary stress hormone. *Chronic Stress Puts Your Health at Risk*, MAYO CLINIC (Mar. 19, 2019), <https://www.mayoclinic.org/healthy-lifestyle/stress-management/in-depth/stress/art-20046037>. While cortisol can be helpful in dangerous or threatening situations, “overexposure to cortisol and other stress hormones . . . can disrupt almost all [of the] body’s processes,” which can put humans at an increased risk of several health problems, including digestive problems, heart disease, and memory and concentration impairment, to name a few. *Id.*

112. *Id.* (citing Andrea Beetz, Kurt Kotschal, Dennis C. Turner, Karin Hediger, Keerstin Uvnäs-Moberg & Henri Julius, *The Effect of a Real Dog, Toy Dog and Friendly Person on Insecurely Attached Children During a Stressful Task: An Exploratory Study*, 24 ANTHROZOÖS 349, 349–68 (2011); J. S. Odendaal & R. Meintjes, *Neurophysiological Correlates of Affiliate Behavior Between Humans and Dogs*, 165 VETERINARY J. 296, 296–301 (2003)).

113. *Id.* at 63 (citing June McNicholas & Glyn M. Collis, *Animal as Social Supports: Insights for Understanding Animal-Assisted Therapy*, in HANDBOOK ON ANIMAL-ASSISTED THERAPY: THEORETICAL FOUNDATIONS AND GUIDELINES FOR PRACTICE 49–71 (2d ed. 2006); Detlef H. Rost & Anette H. Hartmann, *Children and Their Pets*, 7 ANTHROZOÖS 242, 242–54 (1994)).

114. *Id.*

and anxiety, animal presence may generally improve academic performance and productivity in children.<sup>115</sup>

Further still, incorporating animals into classrooms can engage children by capitalizing on their attention and interests—providing for meaningful educational experiences for all children.<sup>116</sup> Additionally, animal presence can assist in the development of self-regulation within children.<sup>117</sup> Self-regulation is a critical skill that involves the volitional control of emotion, attention, and executive functions in order to reach a goal or obtain an end result.<sup>118</sup> One possible way that human-animal interaction could influence a child's development of self-regulation is through stress-regulation.<sup>119</sup> Field studies repeatedly suggest the presence of animals promotes calmness and reduces fear, anxiety, and stress, as well as influences the emotional and cognitive aspects of self-regulation.<sup>120</sup>

Research also suggests that the presence of support dogs in classrooms has positive benefits on children with other disabilities recognized under the IDEA, such as autism.<sup>121</sup> For example, recent research has shown that interacting with animals

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115. See generally Erika Friedmann & Nancy R. Gee, *Companion Animals as Moderators of Stress Responses: Implications for Academic Performance, Testing, and Achievement*, in HOW ANIMALS HELP STUDENTS LEARN: RESEARCH AND PRACTICE FOR EDUCATORS AND MENTAL-HEALTH PROFESSIONALS 98, 104–07 (Nancy R. Gee, Aubrey H. Fine & Peggy McCardle eds., 2017) (summarizing various studies indicating that companion animals moderate stress responses in many situations).

116. Vinaya Rajan, Nancy R. Gee, Roberta Michnick Colinkoff & Kathy Hirsch-Pasek, *Children's Play, Self-Regulation, and Human-Animal Interaction in Early Childhood Learning*, in HOW ANIMALS HELP STUDENTS LEARN: RESEARCH AND PRACTICE FOR EDUCATORS AND MENTAL-HEALTH PROFESSIONALS 124, 126 (Nancy R. Gee, Aubrey H. Fine, & Peggy McCardle eds., 2017).

117. *Id.*

118. *Id.* at 128 (citing Clancy Blair & Alexandra Ursache, *A Bidirectional Model of Executive Functions and Self-Regulation*, in HANDBOOK OF SELF-REGULATION 300–20 (2d ed. 2011)).

119. *Id.* at 128–29 (citing Clancy Blair & C. Cybele Raver, *Closing the Achievement Gap Through Modification of Neurocognitive and Neuroendocrine Function: Results from a Cluster Randomized Controlled Trial of an Innovative Approach to the Education of Children in Kindergarten* (Nov. 12, 2014), <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0112393>).

120. *Id.* at 129 (citing Andreas Beetz, Kerstin Uvnas-Moberg, Heri Julius & Kurt Kotrschal, *Psychosocial and Psychophysiological Effects of Human-Animal Interactions: The Possible Role of Oxytocin*, 3 FRONTIERS IN PSYCHOL, 352 (2012); Andreas Hergovich, Bardia Monshi, Gabriele Semmler & Verena Zieglmayer, *The Effects of the Presence of a Dog in the Classroom*, 15 ANTHROZOÖS 37, 37–50 (2002)).

121. See generally Marguerite E. O'Haire & Robin L. Gabriels, *The Impact of Animals in Classrooms Assisting Students with Autism and Other Developmental Disorders*, in HOW ANIMALS HELP STUDENTS LEARN: RESEARCH AND PRACTICE FOR EDUCATORS AND MENTAL-HEALTH PROFESSIONALS 83 (Nancy R. Gee, Aubrey H. Fine, & Peggy McCardle eds., 2017).

can have a plethora of benefits on autistic children, including increased language and communication,<sup>122</sup> less social withdrawal,<sup>123</sup> and reduced social anxiety.<sup>124</sup>

At the same time, however, it is also important to address the shortcomings and gaps across studies investigating human-animal interaction. Notably, these shortcomings include a lack of scientific rigor and variations in methodologies that often make it difficult to establish comparisons or draw meaningful conclusions.<sup>125</sup> Thus, it is clear that much more research is to be done regarding the impact of animals on children's cognition, physiological well-being, and development.<sup>126</sup> Many questions still remain unanswered. However, if future research continues in the same positive direction as that which has already been conducted, the American legal system should respond and strongly consider incorporating this field's understandings in creating and interpreting laws involving human-animal interaction—particularly in educational settings.

#### IV. THE CURRENT LAGGING LEGAL RESPONSE

Because human-animal interaction is a newer area of research,<sup>127</sup> there seems to be a general lack of policy regarding human-animal interaction in the United States.

122. E.g., Robin L. Gabriels, Pan Zhaoxing, Briar DeChant, John A. Agnew, Natalie Brim & Gary Mesibow, *Randomized Controlled Trial of Therapeutic Horseback Riding in Children and Adolescents with Autism Spectrum Disorder*, 55 J. AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY 541, 541–49 (2015); Mona J. Sams, Elizabeth V. Fortney & Stan Willenbring, *Occupational Therapy Incorporating Animals for Children with Autism: A Pilot Investigation*, 60 AM. J. OCCUPATIONAL THERAPY 268, 268–74 (2006) (establishing that children with autism display more language output and greater verbal fluency with an animal present).

123. E.g., Sandra C. Ward, Kelly Whalon, Katrina Rusnak, Kimberly Wendell & Nancy Paschall, *The Association Between Therapeutic Horseback Riding and the Social Communication and Sensory Reactions of Children with Autism*, 43 J. AUTISM & DEVELOPMENTAL DISORDERS 2190, 2190–98 (2013) (establishing that children with autism engage in less solitary play and display more engagement with peers with an animal present).

124. E.g., Marguerite E. O'Haire, Samantha J. McKenzie, Alan M. Beck & Virginia Slaughter, *Animals May Act As Social Buffers: Skin Conductance Arousal in the Presence of Animals Compared to Toys*, 57 DEVELOPMENTAL PSYCHOBIOLOGY 584, 584–95 (2015); Robert Viau, Geneviève Arseneault-Lapierre, Stéphanie Fecteau, Noël Champagne, Claire-Dominique Walker & Sonia Lupien, *Effect of Service Dogs on Salivary Cortisol Secretion in Autistic Children*, 35 PSYCHONEUROENDOCRINOLOGY 1187–93 (2010) (establishing that children with autism display reduced stress levels leading to an openness to positive social interaction).

125. Meints et al., *supra* note 97, at 12. For example, “the majority of [these] studies conducted utilize convenience samples that are homogeneous in socioeconomic status, race/ethnicity, and cultural and religious background of the participants.” James A. Griffin, Karyl Hurley & Sandra McCune, *Human-Animal Interaction Research: Progress and Possibilities*, FRONTIERS IN PSYCHOL. (Dec. 20, 2019), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6932996>. Further, “[e]ven fewer examine cross-cultural differences employing geographically diverse samples within and across countries.” *Id.*

126. Hediger et al., *supra* note 96, at 64–65 (“The effects on different cognitive functions should systematically be investigated. Further research should also address the extent to which effects vary in different age groups, socio-economic backgrounds, or diagnoses.”).

127. See *supra* Part III.



For example, there is currently no system for tracking or regulating animals in U.S. schools, despite a majority of the members of the National Association for the Education of Young Children reporting having animals in the classroom.<sup>128</sup> Further, state and local governments do not typically provide policies for teachers or school officials handling an animal within an educational facility during the school day.<sup>129</sup> Nevertheless, many educators see integrating animals into classrooms as a way of meeting “both the developmental and educational needs of their students.”<sup>130</sup>

One major legal implication regarding animals in classrooms that must be considered is the potential for injury. While federal law addresses issues surrounding service and support animals,<sup>131</sup> states have created and implemented their own laws to determine liability for injuries caused by animals, particularly dogs.<sup>132</sup> Specifically, “[e]ach state has its own body of law to determine the circumstances under which liability could be assessed.”<sup>133</sup> Thus, both state legislation and common law may apply in the case of an injury caused by an animal.<sup>134</sup> Over half the states impose strict liability in these situations, therefore, liability arises automatically “regardless of whether the person controlling the dog had any knowledge of the possible danger or did anything wrong.”<sup>135</sup> On the other hand, some states have implemented a “one bite rule”—a tort standard in which the owner may be liable if she knew or should have known that the dog was likely to cause an injury.<sup>136</sup> Further, animal bites must be filed with the appropriate state or other local health authorities

128. Fine & Gee, *supra* note 95, at 5 (citing Clarissa M. Uttley, *Animal Attraction: Including Animals in Early Childhood Classrooms*, 68 *YOUNG CHILDREN* 16 (2013)).

129. *See, e.g.*, Indiana State Department of Health, Environmental Public Health Division, *Live Animals in School* (July 2019), <https://www.in.gov/isdh/files/BPM%20Animals%202019.pdf>; Diane C. Lore, *Service Dogs in the Classroom for City’s Public Schools*, SILIVE.COM (Mar. 2, 2019), [https://www.silive.com/news/2015/08/does\\_has\\_no\\_policy\\_for\\_service.html](https://www.silive.com/news/2015/08/does_has_no_policy_for_service.html).

130. *Id.*

131. In 2010, the U.S. Department of Justice (the ADA’s enforcing agency) issued revised final regulations in the Federal Register as to the ADA, including guidance on “service animals” under the Act. 28 C.F.R. § 35.136 (2011).

132. Rebecca J. Huss & Aubrey H. Fine, *Legal and Policy Issues for Classrooms with Animals*, in *HOW ANIMALS HELP STUDENTS LEARN: RESEARCH AND PRACTICE FOR EDUCATORS AND MENTAL-HEALTH PROFESSIONALS* 27, 28 (Nancy R. Gee, Aubrey H. Fine, & Peggy McCardle eds., 2017); *RESTATEMENT (THIRD) OF TORTS: LIABILITY FOR PHYSICAL AND EMOTIONAL HARM CHILDREN* § 23 (AM. LAW INST. 2010).

133. Huss & Fine, *supra* note 132, at 28.

134. *Id.* (citing *TORT LAW DESK REFERENCE: A FIFTY-STATE COMPENDIUM* (Morton F. Daller, ed., 2014)).

135. *See e.g.*, ALA. CODE § 3-6-1 (2020). *See also* Huss & Fine, *supra* note 132, at 28 (citing MARY RANDOLPH, *EVERY DOG’S LEGAL GUIDE: A MUST-HAVE BOOK FOR YOUR OWNER* (7th ed. 2013); *RESTATEMENT (THIRD) OF TORTS: LIABILITY FOR PHYSICAL AND EMOTIONAL HARM CHILDREN* § 23 (AM. LAW INST. 2010)).

136. *See e.g.*, *Bard v. Jahnke*, 848 N.E.2d 463, 466–67 (N.Y. 2006) (citing long-standing rule “that the owner of a domestic animal who either knows or should have known of that animal’s vicious propensities will be held liable for the harm the animal causes as a result of those propensities”). *See also* Huss & Fine, *supra* note 132, at 29 (citing RANDOLPH, *supra* note 135).

or agencies, which may lead to the quarantining of the animal or deeming it as legally “dangerous.”<sup>137</sup> Currently, forty-two states and the District of Columbia have “Dangerous Dog laws” that “regulate dogs believed to exhibit or engage in violent behaviors.”<sup>138</sup>

On the other hand, federal laws are crucial when it comes to service and support animals. For example, under the ADA, a “service animal” is any dog that is “individually trained to do work or perform tasks for people with disabilities.”<sup>139</sup> Such tasks include “guiding people who are blind, alerting people who are deaf, pulling a wheelchair, alerting and protecting a person who is having a seizure, reminding a person with mental illness to take prescribed medications . . . or performing other duties.”<sup>140</sup> Further, the work or tasks that the dog has been trained to complete or provide must be directly related to the individual’s disability.<sup>141</sup> Conversely, a dog whose “sole function is to provide comfort or emotional support do[es] not qualify as service animal under the ADA.”<sup>142</sup> As a result, support animals are not afforded the same protections as bona fide service animals under federal law.

Both the ADA and Section 504 permit a student with a disability to have a service animal at school if that animal meets the ADA’s definition to qualify as a service animal.<sup>143</sup> While courts generally hold that a service animal must receive “special training” in order to qualify as a service animal, they do not specify what that training is or how much training is required.<sup>144</sup> For example, courts hold that “[t]here are no requirements as to the amount or type of training that a service animal must undergo, nor the type of work or assistance that a service animal must provide, but the animal

137. Huss & Fine, *supra* note 132, at 29–30. For example, in Ohio, “anyone who has knowledge” of an animal bite to a person must report it to the health commission in the local health jurisdiction. *Report animal bites*, OHIO.GOV (June 7, 2018), <https://ohio.gov/wps/portal/gov/site/residents/resources/report-animal-bites>.

138. A table including each of these states, their statutes, and their procedure (if any) for deeming an animal as “dangerous” can be found at <https://www.animallaw.info/topic/state-dangerous-dog-laws>. While some states do not have “dangerous dog” statutes, it should be considered that many cities and counties have similar ordinances. *Id.*

139. Civil Rights Division, Disability Rights Section, *ADA Requirements: Service Animals*, U.S. DEP’T OF JUST. (Feb. 24, 2020), [https://www.ada.gov/service\\_animals\\_2010.htm](https://www.ada.gov/service_animals_2010.htm). Approximately four to five million Americans suffer dog bites each year; however, of that number, about “800,000 Americans seek medical attention for these bites while only 0.0002 of these attacks are fatal.” Charlotte Walden, *State Dangerous Dog Laws*, DEP’T MICHIGAN STATE UNIVERSITY ANIMAL LEGAL & HISTORICAL CENTER (2019), <https://www.animallaw.info/topic/state-dangerous-dog-laws>.

140. *Id.*

141. *Id.*

142. *Id.*

143. *Taking a Service Animal to School*, ADA NAT’L NETWORK, <https://adata.org/service-animal-resource-hub/school> (last visited Nov. 11, 2020). Courts handling claims involving service animals under Section 504 generally turn to and use the ADA’s definition. *See, e.g.*, *Alboniga v. Sch. Bd. of Broward Cty.*, 87 F. Supp. 3d 1319 (S.D. Fla. 2015); *E.F. by Fry v. Napoleon Cmty. Schs.*, No. 12-15507, 2019 WL 40670738 (E.D. Mich. Sept. 25, 2019).

144. *See e.g.*, *Cordoves v. Miami-Dade Cty.*, 92 F. Supp. 3d 1221, 1230 (S.D. Fla. 2015) (holding that animal must at least be trained to perform specific tasks related to person’s disability, but no specific amount or type of training is required).

be trained to perform tasks or do for the benefit of a disabled individual.”<sup>145</sup> Some courts have also held that a dog may simply be individually trained at home and still qualify as a service animal under the ADA.<sup>146</sup> Courts “deciding summary judgment motions on ADA claims have set a low bar for demonstrating a genuine issue of fact regarding a dog’s status as a service animal.”<sup>147</sup> Establishing that a dog is a service animal “is not a taxing requirement, . . . and there are no federally-mandated animal training standards.”<sup>148</sup>

In contrast, the “right of a student to have a service animal in school has been considered an ADA right that, although not excluded from coverage under IDEA, is generally not guaranteed in that statute.”<sup>149</sup> Regardless, courts have analyzed the existence of a service animal in an IEP under both the IDEA and Title II of the ADA.<sup>150</sup> Therefore, it could be possible that an animal that “does not meet the definition of service animal under the ADA,” but, rather, is considered an emotional support animal, may “be allowed at the school in order for the student to receive a FAPE.”<sup>151</sup> In recent years, there have been varying approaches among school districts when it comes to allowing animals in classrooms.<sup>152</sup> While some schools have begun welcoming animals with open arms, others slam their doors shut.<sup>153</sup> This

145. *Id.* at 1230 (quoting *Rose v. Springfield-Greene Cnty. Health Dep’t*, 668 F. Supp. 2d 1206, 1214–15 (W.D. Mo. 2009)); *accord* *Green v. Hous. Auth. of Clackamas Cty.*, 994 F. Supp. 1253, 1256 (D. Or. 1998); *Vaughn v. Rent-A-Center, Inc.*, No. 2:06-cv-1027, 2009 WL 723166, at \*10 (S.D. Ohio Mar. 16, 2009). When courts hold that a dog does not qualify as a service animal under the ADA, it is typically because the particular animal was actually an emotional support dog, *see e.g.*, *Houston v. DTN Operating Co., LLC*, No. 4:17-CV-00035, 2017 WL 4653246 (E.D. Tex. Oct. 17, 2017), or because the plaintiff did not allege or provide any evidence as to the animal’s training or ability to perform tasks related to their disability, *see e.g.*, *Delaney v. Cherokee Health Sys.*, No. 3:11-cv-474, 2012 WL 5986349 (E.D. Tenn. Nov. 29, 2012); *Lerma v. Calif. Exposition & State Fair Police*, No. 2:12-cv-1363 KJM GGH PS, 2014 WL 28810 (Jan. 2, 2014).

146. *E.g.*, *Riley v. Bd. of Comm’rs of Tippecanoe Cty.*, No. 4:14-CV-063-JD, 2017 WL 4181143, at \*5 (N.D. Ind. Jan. 6, 2016) (holding that it is not necessary to show documented evidence of training or that dog was trained by certified trainer); *Nicholas v. City of Binghamton*, No. 10-CV-1565, 2012 WL 3261409 (N.D.N.Y. Aug. 8, 2012) (holding that plaintiff’s dog that she personally trained qualified as a service animal under the ADA).

147. *Cordoves*, 92 F. Supp. 3d at 1230.

148. *Id.* (quoting *Prindable v. Ass’n of Apartment Owners of 2987 Kalakaua*, 304 F. Supp. 2d 1245, 1256 (D. Haw. 2003)).

149. Sharan E. Brown, *Legal Brief: Service Animals and Individuals with Disabilities Under the Americans with Disabilities Act (ADA)*, ADA NAT’L NETWORK (2019), [https://adata.org/legal\\_brief/legal-brief-service-animals-and-individuals-disabilities-under-americans-disabilities](https://adata.org/legal_brief/legal-brief-service-animals-and-individuals-disabilities-under-americans-disabilities).

150. *Alboniga v. Sch. Bd. of Broward Cty.*, 87 F. Supp. 3d 1319 (S.D. Fla. 2015).

151. Rebecca J. Huss, *Canines in the Classroom Redux: Applying the ADA or the IDEA to Determine Whether a Student Should be Allowed to be Accompanied by a Service Animal at a Primary or Secondary Educational Institute*, 35 *TOURO L. REV.* 235, 257 (2019). See *supra* text accompanying notes 97–98 for discussion on FAPE.

152. Diana Wiscarson, *Service Animals: Required in the IEP? Not!*, *EXCEPTIONAL PARENT* (July 2017), <https://www.questia.com/magazine/1G1-503939390/service-animals-required-in-the-iep-not>.

153. *Id.*; *see also* Joshua T. Walthall, *The Dog Days in American Public Schools:*

difference seems to stem from which law the school district applied in determining the permissibility of the animal: the ADA or the IDEA.<sup>154</sup> Because of this difference, confusion arose surrounding which statute initiated a claim for plaintiffs seeking accommodations.<sup>155</sup> This widespread confusion also pervaded the courts. Up until 2017, federal district and appellate courts dismissed claims brought under either the ADA or Section 504 because the plaintiffs generally had not yet exhausted their administrative options and remedies through the IDEA.<sup>156</sup>

In 2017, the U.S. Supreme Court addressed the confusion in the case of *Fry v. Napoleon Community Schools*.<sup>157</sup> The Court held that if a complainant seeks an accommodation that is needed to fulfill the IDEA's FAPE requirement, the Act's exhaustion provision applies.<sup>158</sup> In other words, this means that when a student is denied a FAPE by a school, that student and their parents or legal guardians must initially pursue and exhaust the IDEA's administrative procedures before filing suit.<sup>159</sup> Further, that case made clear that a suit is subject to the IDEA's exhaustion requirement if it "seek[s] relief for the denial of a FAPE, because that is the only 'relief' the IDEA makes 'available.'"<sup>160</sup>

In determining "whether a suit indeed 'seeks' relief for such a denial, a court should look to the substance, or gravamen, of the plaintiff's complaint."<sup>161</sup> Thus, the IDEA's exhaustion requirement applies whether a student has an IEP under the Act or a 504 Plan under either Section 504 or the ADA,<sup>162</sup> if the gravamen of the complaint is the denial of a FAPE.<sup>163</sup> This is because the IDEA "requires that a plaintiff exhaust the IDEA's procedures before filing an action under the ADA, the Rehabilitation Act, or similar laws when (but only when) her suit 'seek[s] relief that is also available' under the IDEA," which, again, is relief for the denial of a FAPE.<sup>164</sup> The purpose of the IDEA's exhaustion requirement is to prevent courts from making specific decisions on how to educate students with disabilities,<sup>165</sup> and parents should

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*Observations and Suggestions Regarding the Laws, Challenges and Amazing Benefits of Allowing Service Animals to Accompany Children with Special Needs to School*, 35 CAMPBELL L. REV. 149 (2012).

154. Wiscarson, *supra* note 152.

155. *Id.*

156. *See, e.g.*, Batchelor v. Rose Tree Media Sch. Dist., 759 F.3d 266 (3d Cir. 2014) (holding mother of disabled student was required to exhaust the IDEA's administrative options before bringing claims under Section 504 and the ADA); J.Q. v. Washington Twp. Sch. Dist., 92 F. Supp. 3d 241 (D.N.J. 2015) (holding parents of child impaired by ADHD were required to exhaust IDEA's administrative prior to bringing Section 504 and ADA claims).

157. 137 S. Ct. 743 (2017).

158. *Id.* at 755.

159. *Id.* (holding that the IDEA "requires exhaustion when the gravamen of a complaint seeks redress for a school's failure to provide a FAPE").

160. *Fry*, 137 S. Ct. at 752 (quoting 20 U.S.C. § 1415(l)).

161. *Id.* at 752.

162. Michelle M. Jones, *Failing to Exhaust Remedies Under the IDEA Can Prejudice Non-IDEA Claims*, NEV. LAW. (Sept. 2019), [https://www.nvbar.org/wp-content/uploads/NevadaLawyer\\_Sept2019\\_IDEA.pdf](https://www.nvbar.org/wp-content/uploads/NevadaLawyer_Sept2019_IDEA.pdf).

163. *Fry*, 137 S. Ct. at 752.

164. *Id.*; *see also infra* note 173 and accompanying text.

165. *Fry v. Napoleon Community Schools*, SOUTHEAST ADA CTR.,

want to utilize the IDEA's administrative process instead of turning to court as a quicker, cheaper means to resolve disputes involving accommodations for their children in school.<sup>166</sup>

In the wake of *Fry*, it remains to be seen whether students and their parents seeking to include or incorporate animals into the classroom will “rush to court instead of, or in addition to, pursuing an IDEA due process claim.”<sup>167</sup> However, *Fry* will likely streamline claims on this issue because a service animal can be an integral aspect of a FAPE for some disabled children. Thus, it can be anticipated that more parents will resolve their disputes through the IDEA's administrative process than before. The Ninth Circuit, for example, heard its first case involving the IDEA's exhaustion requirement two-and-a-half years after the *Fry* decision came down.<sup>168</sup>

Only a handful of federal courts have heard cases involving students seeking a service animal as an addition to their IEP. For example, a few years before *Fry*, a federal district court in Florida heard a case involving a boy whose IEP continued to exclude a service dog, despite his parents repeatedly asking the school to include one in their son's plan.<sup>169</sup> As early as 2007, the Second Circuit heard a case involving a student whose school denied a service dog in his IEP.<sup>170</sup> After *Fry*, however, the

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<https://adasoutheast.org/court/fry-v-napoleon-community-schools/>.

166. Sarah Moore & Miranda Watkins, *SCOTUS Service Dog Decision Could Spell Bad News for Schools*, FISHER PHILLIPS: LEGAL ALERT (Feb. 23, 2017), <https://www.fisherphillips.com/resources-alerts-scotus-service-dog-decision-could-spell-bad>.

167. *Id.* See also Rebecca J. Huss, *Canines in the Classroom: Issues Relating to Service Animals and Primary and Secondary Educational Institutions After Fry v. Napoleon Community Schools*, 24 ANIMAL L. REV. 53 (2018), for more discussion relating to the guidance provided by the *Fry* case.

168. Marcy Gutierrez, Sloan Simmons, Amanda Ruiz & Amanda Cordova, *Ninth Circuit Addresses Impact of Dismissals and Settlement of Due Process Complaints on the IDEA's Administrative Remedy Exhaustion Requirement*, LOZANO SMITH (Oct. 2019), [http://www.lozanosmith.com/news-clientnewsbriefdetail.php?news\\_id=2910](http://www.lozanosmith.com/news-clientnewsbriefdetail.php?news_id=2910); Paul G. *ex rel. Steve G. v. Monterey Peninsula Unified Sch. Dist.*, 933 F.3d 1096 (9th Cir. 2019). However, prior to suit, plaintiff's counsel “initiated IDEA administrative proceedings . . . seeking a due process hearing with the California Office of Administrative Hearings (OAH).” *Paul G.*, 933 F.3d at 1099. OAH “dismissed the claims against the state,” then the plaintiffs filed suit, claiming discrimination in violation of the ADA and Section 504. *Id.* The Ninth Circuit held that the “agency's dismissal of the state does not excuse [plaintiff's] failure to pursue the claim against the school district, because that was the only way to obtain an administrative ruling on his claim that he was denied a FAPE.” *Id.* at 1102. The court concluded that the plaintiff “may not maintain [the] action after he failed to seek a final administrative decision.” *Id.*

169. *Alboniga v. Sch. Bd. of Broward Cty.*, 87 F. Supp. 3d 1319 (S.D. Fla. 2015). Ultimately, the court in this case concluded that the plaintiff's requested accommodation—that is, having a service dog at school—was reasonable and required by the school. *Id.* at 1344–45.

170. *Cave v. E. Meadow Union Free Sch. Dist.*, 514 F.3d 240 (2d Cir. 2008). The Second Circuit here stated that a “request for a service dog to be permitted to escort a disabled student at school as an ‘independent life tool’ is . . . not entirely beyond the bounds of the IDEA's educational scheme.” *Id.* at 248. However, ultimately, the court concluded that the district court below should have dismissed the case for lack of subject matter jurisdiction because the complainants failed to exhaust their administrative remedies under IDEA before filing suit. *Id.* at 250–51.

federal appellate courts have only heard one case involving a school district denying the addition of a service animal to a disabled child's IEP.<sup>171</sup>

While courts recognize ADHD as a disability under the IDEA, they generally do not comment on the *legality* of an animal in an IEP or the modification of an IEP to include a service animal.<sup>172</sup> The *Fry* decision made clear, however, that these issues may be addressed in state and local agencies across the country.<sup>173</sup> Regardless, it cannot be doubted that school districts across the country still lack guidance regarding animals in schools, so children with disabilities, including ADHD, are still widely deprived of the benefits of animals in classrooms.

#### V. PROPOSING A DOG-FRIENDLY SOLUTION

Considering the advancements in research regarding human-animal interaction<sup>174</sup> and the general lack of policy surrounding the issue,<sup>175</sup> this Note proposes that the United States Congress amend the IDEA to include an express provision that closely mirrors the Companion Animals Act 1998 of New South Wales, Australia (the "Act").<sup>176</sup> Section 14 of the Act generally prohibits animals in schools *unless* the principal or the individual in control of the school grounds grants permission.<sup>177</sup> Specifically, the Act provides the definition of "companion animals" to include dogs, as well as the definition of "assistance animals," which refers to guide dogs and dogs trained to assist a disabled individual and alleviate the effect of a disability.<sup>178</sup> The definition for a companion animal further clarifies that the "fact

171. *See Doucette v. Georgetown Pub. Schs.*, 936 F.3d 16 (1st Cir. 2019). The plaintiffs in this case "alleged that the school district deprived [their child] of his service animal and subjected him to a dangerous environment in violation of federal and state law, thereby causing [the child] to experience seizures and hospitalization." *Id.* at 18. The First Circuit here concluded that the "crux of the [plaintiffs'] section 504 claim is simple discrimination, irrespective of the school district's FAPE obligation." *Id.* at 28. The court further held that the section 504 claim was thus not subject to the IDEA's exhaustion requirements, *id.*, and remanded the case for further proceedings consistent with its opinion here, *id.* at 33. See also Huss, *supra* note 167, for further discussion of how the *Fry* decision has impacted plaintiffs bringing ADA and/or IDEA claims involving service animals in schools.

172. *See supra* note 156 and accompanying text; *see also supra* text accompanying notes 75–77 and 93. It is not uncommon that courts and the legal system in general fail to best address the developmental needs of children, however. *See* Elizabeth Scott, *The Legal Construct of Childhood* (Univ. of Va. Sch. of L. Pub. L. & Legal Theory, Paper No. 00-18 2000), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=244666](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=244666).

173. *See Fry*, 137 S.Ct. at 749. To begin formal IDEA administrative procedures, "a dissatisfied parent may file a complaint as to any matter concerning the provision of a FAPE with the local or state educational agency." *Id.* (citing 20 U.S.C. § 1415(b)(6)). Then, "[i]f the hearing is initially conducted at the local level, the ruling is appealable to the state agency." *Id.* (citing 20 U.S.C. § 1415(g)).

174. *See supra* Part III.

175. *See supra* notes 97–98 and accompanying text.

176. *Companion Animals Act 1998* (No. 87) (N.S.W.) <https://www.legislation.nsw.gov.au/view/whole/html/inforce/current/act-1998-087>.

177. *Id.* pt 3 div 1 s 14 sub-div (5).

178. *Id.* pt 1 s 5 sub-div (1).

that an animal is not strictly a ‘companion’ does not prevent it being a companion animal for the purposes of this Act.”<sup>179</sup> Instead, “[a]ll dogs are treated as companion animals.”<sup>180</sup> This part of the Act does not apply to assistance animals being “used bona fide by a person with a disability to assist the person.”<sup>181</sup> However, it may apply to educational support dogs, as these dogs generally provide services to a wide range of children at any given time.

An educational support dog is a type of therapy dog that “works with different students across the school.”<sup>182</sup> Thus, educational support dogs fall somewhere in between a service animal and a support animal—at least under the ADA’s definitions.<sup>183</sup> Since the IDEA does not specifically provide for a service animal,<sup>184</sup> and IDEA and ADA claims are often intertwined,<sup>185</sup> it would not be a far reach to assume that courts applying the IDEA would use the ADA’s definitions for these types of animals.<sup>186</sup> However, if Congress were to make this proposed amendment to the IDEA, this uncertainty would be eliminated, as an express definition would be included.

Under this proposed amendment, a teacher or other faculty member would be an educational support dog’s primary care-provider,<sup>187</sup> which, again, distinguishes an educational support dog from a traditional, bona fide assistance or service animal.<sup>188</sup> The fact that educational support dogs fall in this gray area unaddressed by American federal law, yet clearly provide beneficial services to children with and without ADHD, further signifies the importance that Congress define and provide for them in amending the IDEA as this Note proposes.

Australian schools that apply for an educational support dog go through an assessment period during which dog trainers evaluate the environment and determine which skills would be the most beneficial for that particular school.<sup>189</sup> Again, ideally, as in Australia, the “dog would live with a primary carer who worked at the school, and one other person at the school would be trained to take responsibility for the dog.”<sup>190</sup> No one else handles the dog once it is at the school so there is no additional workload for teachers or other school staff.<sup>191</sup> This also provides consistency for the

179. *Id.*

180. *Id.*

181. *Id.*

182. *Dogs: Introduction*, ANIMALS IN SCHS., <http://nswschoolanimals.com/dogs/>. This note relies on this definition when referring to “educational support dogs.”

183. *See supra* text accompanying notes 105–10.

184. *See supra* text accompanying note 114.

185. *See supra* note 115 and accompanying text.

186. *See supra* text accompanying note 162. Further, IEP teams likely consult the ADA’s definition of service animal in developing an IEP providing for the use of a service animal. *See Huss, supra* note 167, at 257.

187. *Id.*

188. A public entity, such as a school, is “not responsible for the care or supervision of a service animal.” 28 C.F.R. § 35.136(e).

189. *Could a Canine Companion Help Your Students Learn?*, INDEP. EDUC. (Oct. 2015), <https://publications.ieu.asn.au/ie1/news5/while-there-are-only-handful-schools-australia-currently/> [hereinafter *Could a Canine Companion Help?*].

190. *Id.*

191. *Id.*

animal.<sup>192</sup> New South Wales schools that have implemented dogs into their schools have reported a number of positive benefits, including memory stimulation,<sup>193</sup> improved literacy skills,<sup>194</sup> and increased moods among students and staff members.<sup>195</sup>

For example, Ruben, a three-year-old Cavalier King Charles Spaniel, enriched “the experience of school for many students at Quakers Hill High School” in New South Wales.<sup>196</sup> Ruben’s owner, Margie Beange, is a special education teacher at the school who trained Ruben to become a “fully qualified School Facility Dog” so he could come to school four days a week and work with students.<sup>197</sup> During a typical day at the New South Wales school, “Ruben will spend most of his time in the school support unit, which accommodates around 28 students with a range of special needs,” while “interact[ing] with all the students in very different ways.”<sup>198</sup> Several years before Ruben’s first appearance at Quakers Hill High School, Beange conducted and compiled research on educational assistance animals as a part of her higher education, focusing on the animals’ effect on students with disabilities.<sup>199</sup> While working at the school, Beange then approached her principal with the research and evidence she compiled and was granted permission to “source a dog suitable for the task.”<sup>200</sup>

Before Ruben could begin his work as a school dog, he had to complete a significant amount of training.<sup>201</sup> Beange began bringing Ruben into school when he was only three months old to “practice sociali[zation] and familiari[zation], as well as basic obedience training.”<sup>202</sup> Ruben began his “career” as a therapy dog, but after completing an additional 160 hours of training, he became a fully qualified school facility dog.<sup>203</sup> Beange reports that Ruben’s work has “had an extremely positive impact on the school community and everyone in it,” noting that the school has seen increased student engagement and higher levels of wellbeing in the support unit Ruben works with, as well as in the mainstream classes.<sup>204</sup> Thus, because of the

192. *Id.*

193. *Therapy Dog*, NSW DEP’T OF EDUC.: CAMPBELL HOUSE SCH., <https://campbellhos.s.schools.nsw.gov.au/supporting-our-students/student-health-and-safety/therapy-dog.html>.

194. Kathleen Ferguson, *School in drought-stricken NSW brings in therapy dog to support students*, ABC NEWS (Sept. 2, 2018, 10:51 PM), <https://www.abc.net.au/news/rural/2018-09-03/therapy-dog-lends-helping-paw-to-students-in-drought-hit-town/10194128>.

195. ABC News, *NSW school utilises therapy dogs to help students out*, MICROSOFT NEWS (Aug. 8, 2020), <https://www.msn.com/en-ca/video/watch/nsw-school-utilises-therapy-dogs-to-help-students-out/vp-BB17I4CZ>.

196. Rebecca Vukovic, *Ruben the School Facility Dog Taking the Lead* (Dec. 11, 2018), [https://www.teachermagazine.com/au\\_en/articles/ruben-the-school-facility-dog-taking-the-lead](https://www.teachermagazine.com/au_en/articles/ruben-the-school-facility-dog-taking-the-lead).

197. *Id.*

198. *Id.*

199. *Id.*

200. *Id.*

201. *Id.*

202. *Id.* (brackets added to note American spelling).

203. *Id.*

204. *Id.* However, “Ruben’s impact has been felt most of all by the students with particularly challenging circumstances.” *Id.* According to Beange, Ruben’s work has “brought



Companion Animals Act, this Australian special education teacher saw a need in her school and was able present relevant social science understandings relating to human-animal interaction to her principal and obtain the necessary permission to implement an educational support dog into the school. Further, because of the flexibility and opportunity provided for under the Act, the New South Wales school and its students experienced a slew of positive academic and social benefits thanks to Ruben.

The proposed change to the IDEA would allow school principals, with the assistance of professionals that work closely with students and know their specific needs in the classroom, the opportunity to make careful, individualized decisions pertaining to particular students and their needs. Further, teachers may choose to have educational support animals in the classroom because of the positive effects that animals have on children, including promoting language, imagination, self-reflection, increased empathy, increased responsibility, lower anxiety and stress, and improved behavior and social skills.<sup>205</sup> While some children may find animals to be a distraction from classwork or even cause the child extreme stress or fear,<sup>206</sup> this proposed amendment to the IDEA would allow educators to take an incredibly individualized approach when it comes to animals in particular classrooms or working with particular groups of students.

This change would also provide a valuable non-medicinal form of treatment for children with ADHD and hyper-sensitivity who may not otherwise be able to afford or find other effective types of treatment, whether it be medicine or counseling.<sup>207</sup> While some programs in Australia report training and obtaining educational support dogs to amount to about \$20,000 USD,<sup>208</sup> an investment of an educational support dog is still worthwhile for schools, especially considering the promising research in the field thus far. Additionally, if schools were to obtain educational support dogs to use throughout the building, individual schools or districts could possibly cut down spending needs in other intervention activities or for additional aides, as educational support dogs would likely perform services for a number of children at a time.

Furthermore, depending on the breed, dogs can live up to twelve to seventeen years on average.<sup>209</sup> There are also many health measures dog carers and owners can take to extend the lives of dogs, such as spaying and neutering the dog, as well as ensuring that the dog maintains a healthy weight, participates in mentally stimulating

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people closer together . . . he's encouraged people to talk and smile. He's been described by many as a great asset to the school for everyone here." *Id.*

205. Fine & Gee, *supra* note 95, at 5–6.

206. O'Haire & Gabriels, *supra* note 121, at 91.

207. See *supra* footnotes 18–24 and accompanying text. ADHD treatment—both medicinal and therapeutic—can be incredibly costly for American families. *Id.* It is also not fairly uncommon that children affected by ADHD do not exhibit improved behavior and better focus when taking stimulants. *Id.*

208. *Could a Canine Companion Help?*, *supra* note 189. This source claims that “it takes two years to train [an educational support dog] at a cost of \$27,000,” which comes out to a little less than \$20,000 USD. *Id.*

209. *How Long Do Dogs Live? How to Extend Dog Life Expectancy*, WILD EARTH, <https://wildearth.com/blogs/dog-knowledge/dog-lifespan#.X-uWa-IKh-U>.

activities, and remains up-to-date on vaccinations and medications.<sup>210</sup> Thus, an educational support dog that will live through several school years and be able to help multiple groups of children at once may be an incredibly valuable investment for schools. Additionally, there are numerous organizations in the United States that provide and train service and support dogs for free or at a reduced cost.<sup>211</sup> Perhaps, if the IDEA is amended as this Note proposes, these organizations may grow in popularity and resources, which could, in turn, provide more schools across the country with free or more easily affordable educational support dogs.

Public schools across the country provide special education services through the IDEA to more than seven million children, totaling about fourteen percent of public school students.<sup>212</sup> The IDEA has “always included a commitment to pay 40 percent of the average per student cost for every special education cost,” but the federal government repeatedly fails to fully fund the IDEA.<sup>213</sup> Since 2009, “the annual cost shift from the federal government to the states has averaged about \$19.5 billion,” and organizations such as the National Education Association continue to push for full funding for special education as promised by the federal government in the IDEA.<sup>214</sup> This shortfall in funding creates a substantial burden on local communities and “denies full opportunity to all students—both with and without disabilities.”<sup>215</sup> An educational support dog could provide services to a classroom of children at once and thus help alleviate this financial burden.<sup>216</sup>

Furthermore, although educational support dogs are not bona fide, traditional service animals, they should still be specially trained and carefully selected by schools “based on how well their natural trained skills, and capabilities, fit what they are expected to *do* with, and for, the students with whom they interact.”<sup>217</sup> Additionally, it is critical that potential risks be considered before bringing an animal into a school and each individual classroom. To avoid these potential dangers, a strict action plan should be strategically developed and abided by in order to keep human-animal interactions safe.<sup>218</sup> For example, everyone in the school facility should be well-informed about procedures regarding the animal, adults should be active in monitoring children’s interactions with the animal, and parents should consent and have the option to have their questions and concerns clarified.<sup>219</sup> Moreover, dogs that

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210. *Id.*

211. Examples include Merlin’s Kids, a “nonprofit organization dedicated to providing individual trained service dogs to those in need.” MERLIN’S KIDS, <https://www.merlinskids.org/>.

212. *Special Education*, NAT’L EDUC. ASS’N, <https://www.nea.org/student-success/smart-just-policies/special-education>.

213. *Id.*

214. *Id.*

215. *Id.*

216. *See supra* note 173 and accompanying text.

217. Maureen MacNamara & Evan MacLean, *Selecting Animals for Education Environments*, in *HOW ANIMALS HELP STUDENTS LEARN: RESEARCH AND PRACTICE FOR EDUCATORS AND MENTAL-HEALTH PROFESSIONALS* 183 (Nancy R. Gee, Aubrey H. Fine, & Peggy McCardle eds., 2017).

218. Meints et al., *supra* note 97, at 15.

219. *Id.*

exhibit *any* sign of aggressive or nervous tendencies while training to become service dogs are generally removed from their training programs, meaning that only the most docile and calm dogs complete their training and certification.<sup>220</sup> If educational support dogs are subject to similar training, as the proposed amendments to the IDEA requires, then only the most well-behaved dogs would fill these much-needed roles in schools.

Some schools in the United States have already incorporated dogs into classrooms. For example, classroom dogs “provide learning and emotional support for students” at schools like Monticello Montessori, a public charter school in Ammon, Idaho.<sup>221</sup> Dogs in classrooms are also now a common sighting in private schools in the Washington, D.C., area.<sup>222</sup> However, in recent years, schools and districts within the American public-school system have reached different conclusions regarding dogs in classrooms depending upon which federal statute they relied.<sup>223</sup> Though the Supreme Court, in *Fry*, recently clarified the administrative scheme of the IDEA and how it works *with* the ADA and Section 504,<sup>224</sup> there is still a lack of clear legal direction in response to the growing wave of social science research demonstrating the benefits of dogs on children—particularly those affected by ADHD—in classrooms.<sup>225</sup> Thus, amending the IDEA, as this Note proposes, would provide much-needed guidance on the issue of educational support dogs in classrooms.

Lastly, though the addition of educational support dogs in classrooms would likely prove widely successful, it is still worth noting the unanswered questions remaining from this Note’s proposition. First, though there are likely options when it comes to actually obtaining free or affordable, trained educational support dogs,<sup>226</sup> the cost of caring for a dog, once it is obtained by a school and designated carer, still needs to be addressed. Perhaps the school professional most interested in bringing the educational support dog to the school would be willing to take on the additional costs, as in Ruben’s case,<sup>227</sup> or perhaps additional school funds could cover some of the cost. However, the latter option is the least likely of the two, considering the financial burden the federal government and the IDEA currently place on local and

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220. See *FAQ: Training—Basics*, PSYCHIATRIC SERVICE DOG PARTNERS, <https://www.psychdogpartners.org/resources/frequently-asked-questions/faq-training-basics#:~:text=The%20dog%20must%20be%20trained,disability%2Drelated%20work%20and%20tasks>.

221. Brittni Johnson, *Dogs Help Fill Educational, Emotional Roles at Local School*, EASTIDAHONEWS.COM (last updated Feb. 18, 2020, 9:30 AM), <https://www.eastidahonews.com/2020/02/dogs-help-fill-educational-emotional-roles-at-local-school/>.

222. Steve Hendrix, *Dogs in Classrooms? At These Private Schools, Pets are all over the Place*, WASH. POST (Oct. 2, 2015), [https://www.washingtonpost.com/local/dogs-in-classrooms-at-these-private-schools-pets-are-all-over-the-place/2015/10/01/5fe712ea-6169-11e5-b38e-06883aacba64\\_story.html](https://www.washingtonpost.com/local/dogs-in-classrooms-at-these-private-schools-pets-are-all-over-the-place/2015/10/01/5fe712ea-6169-11e5-b38e-06883aacba64_story.html).

223. See *supra* text accompanying notes 116–19.

224. See *supra* text accompanying notes 121–31.

225. See *supra* Part IV.

226. See *supra* note 173 and accompanying text.

227. See *supra* text accompanying notes 158–62.

state governments when it comes to school funding.<sup>228</sup> Another future consideration is how an individual state's laws regarding liability would change if dogs were more prevalent within schools.<sup>229</sup>

Most notably, more research regarding human-animal interaction needs to take place before Congress makes these proposed amendments to the IDEA. The growing field of human-animal-interaction research has already produced incredibly promising results—especially when it comes to interactions involving children and children with ADHD—and further research solidifying these conclusions would only bolster and highlight the need for educational support dogs in classrooms across the country.<sup>230</sup>

#### CONCLUSION

Recent research and social science understandings in the field of human-animal interaction make clear the vast cognitive and behavioral benefits animals can have on children—especially those with a disability, such as ADHD. However, despite this growing field of research, the federal government still generally does not best address the developmental needs of children diagnosed with ADHD. Instead, current legislation, and courts' application of it, predominantly bars children with ADHD from accessing educational support animals in U.S. classrooms.

In conclusion, if Congress were to amend the IDEA to include a provision that closely mirrors the Companion Animals Act 1998 of New South Wales, Australia, federal law would expressly and clearly allow American school principals, with the help of support staff and parents, to carefully and individually decide when and where educational support dogs would be the most beneficial. The social science research further makes clear that, not only would educational support dogs benefit children impaired by ADHD, but these specially trained dogs would significantly benefit the rest of the classroom and the greater school community. Some principals and school officials would not want animals in their schools, but this proposed amendment to the IDEA would expressly allow for information to be presented and opportunities to be considered before reaching any individual decisions. And, as research regarding human-animal interaction, particularly pertaining to children, continues in the direction it has been in recent years, the need for educational support dogs in American public schools will only be amplified.

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228. *See supra* text accompanying notes 174–78.

229. *See supra* notes 100–06 and accompanying text.

230. *See supra* Part III.