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I. INTRODUCTION

In *Doe v. Darien Board of Education*, the United States District Court for the District of Connecticut considered the admissibility of hearsay statements[1] made by plaintiff John Doe (John), a then twelve-year-old boy with Down syndrome.[2] The hearsay statements were offered to prove that 1) defendant Zachary Hasak (Hasak), John's paraprofessional aide at Tokeneke Elementary School, had sexually assaulted him;[3] and 2) defendants Darien Board of Education (BOE) and its employees had notice of the sexual abuse and failed to take corrective action, making them potentially liable for the alleged assault.[4]

During the course of litigation, the court barred John's out-of-court statements that he notified his school principal and school psychologist about the incident. The decision to block this vital evidence from trial reinforced a dangerous precedent that effectively discourages victims from bringing future claims before the court. This result reflects a common theme among the legislative and judicial branches: Children with disabilities are not credible, and consequently are not afforded equal protection under the law.[5]

"Child abuse is one of the most difficult crimes to detect and prosecute" because, in many cases, the only witnesses are the alleged assailant and the victim.[6] When the victims are children with disabilities, detecting child abuse becomes even more difficult. Although studies have shown that children with disabilities are more likely to be abused than their non-disabled peers, the abuse often goes unreported.[7] Yet our lawmakers and justice system continue to demonstrate an unwillingness to provide special needs children with adequate legal safeguards to deter potential abusers, depriving some victims of any redress.[8]

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1. Hearsay refers to any "statement that: (1) the declarant does not make while testifying at the current trial or hearing; and (2) a party offers in evidence to prove the truth of the matter asserted in the statement." Fed. R. Evid. 801(c).

2. 110 F. Supp. 3d 386, 393 (D. Conn. 2015).

3. *Id.* at 393, 395.

4. *Id.* at 403.

5. *Cf.* Frances Ellery et al., Out from the Shadows: Sexual Violence Against Children with Disabilities 17–20 (2011), https://resourcecentre.savethechildren.net/node/4917/pdf/4917.pdf (discussing the widespread discrimination against children with disabilities by legislative and judicial institutions on a global scale).

6. Pennsylvania v. Ritchie, 480 U.S. 39, 60 (1987).

7. *See* UNICEF, Children and Young People with Disabilities: Fact Sheet 25–26 (2013), https://www.unicef.org/disabilities/files/Factsheet_A5__Web_REVISED.pdf (noting that children with disabilities are three to four times more likely to experience abuse, and that protection and reporting mechanisms are often inadequate); *see also* Leigh Ann Davis, *Abuse of Children with Intellectual Disability*, Arc, https://www.thearc.org/document.doc?id=3666 (last updated Mar. 1, 2011) (stating that despite an increased likelihood of abuse, communication problems or an inability to discern inappropriate or abusive conduct leave many cases of abuse against children with disabilities unreported).

8. *See* UNICEF, *supra* note 7; *see generally* Nat'l Council on Disability, Broken Promises: The Underfunding of IDEA 9 (2018), https://ncd.gov/sites/default/files/NCD_BrokenPromises_508.pdf (highlighting the grossly inadequate funding of the Individuals with Disabilities Education Act).

This Note contends that the current landscape diminishes the possibility of redress for children with disabilities who are victims of sexual abuse at school.[9] Established precedent imposes a rigid standard for these victims to hold school districts accountable for their employees' conduct. Lower courts bound by precedent fail to take this rigid standard into account when they block vital testimony from being admitted at trial, and strict adherence to evidentiary rules in cases involving vulnerable children with disabilities frustrates the ability of sexual abuse claims to survive motions for summary judgment.

To remedy this outcome, this Note offers three potential solutions. First, the Federal Rules of Evidence should be amended to include a new exception to the rule against hearsay statements, tailored to determine the sufficiency and admissibility of statements made by children with disabilities. Alternatively, courts should interpret and apply the existing hearsay exceptions in a way that affords children with disabilities a voice rather than a muzzle. Finally, Congress should fully fund the Individuals with Disabilities Education Act (IDEA)[10] so school districts have the resources necessary to provide a proper education to children with disabilities in an abuse-free environment.

II. THE IMPLIED RIGHT OF ACTION UNDER TITLE IX AND THE RULE AGAINST HEARSAY

When a student alleges that a teacher in their school district has sexually abused them, they have a cause of action for damages under Title IX of the Education Amendments of 1972 (Title IX).[11] In 1998, the U.S. Supreme Court in *Gebser v. Lago Vista Independent School District* held that a school district may only be liable for sexual abuse of a student if a school district official with authority to take corrective action possesses actual knowledge of the abuse.[12] For recovery under this section, a plaintiff must show not only that the abuse occurred, but also that school officials were aware of the abuse and responded with "deliberate indifference to discrimination."[13] Thus, the Court imputed a rigid standard into Title IX, ensuring

9. This Note focuses exclusively on children with disabilities who have a documented difficulty communicating effectively with others.

10. 20 U.S.C. §§ 1400–82 (2017).

11. Gebser v. Lago Vista Indep. Sch. Dist., 524 U.S. 274, 283–84 (1998); *see also* 20 U.S.C. § 1681(a) (2015). Title IX provides in pertinent part that "no person . . . shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." *Id.*

12. 524 U.S. at 277; s*ee also* Davis v. Monroe Cty. Bd. of Educ., 526 U.S. 629, 633 (1999) (extending liability under Title IX to cases of student-on-student sexual harassment).

13. *Gebser*, 524 U.S. at 290; *see also* Doe v. Darien Bd. of Educ., 110 F. Supp. 3d 386, 408 (D. Conn. 2015) ("Deliberate indifference may be found both when the defendant's response to known discrimination is clearly unreasonable in light of the known circumstances, and when remedial action only follows after a lengthy and unjustified delay.").

the burden of proof lies heavily on the plaintiff.[14] This high standard was set to eliminate any "risk that the recipient [of federal funding] would be liable in damages not for its own official decision, but for its employees' independent actions."[15]

However, what happens when a disabled student who is unable to communicate effectively is sexually abused? How can the victim notify school officials of the harm? Even if details of the abuse are properly conveyed, does the school district act with deliberate indifference if it fails to take corrective action because it views the report of abuse as a fabrication resulting from the child's disability? What if the victim is unable to testify in court due to their inability to communicate? How should courts adduce evidence of actual knowledge and apply the deliberate indifference standard to these scenarios? How can the trier of fact properly decide on a verdict when evidence of a vital fact is unavailable?

Supreme Court precedent and the evidentiary rules place a nearly insurmountable burden on children with disabilities attempting to recover damages for abuse suffered at school. Children with disabilities often experience difficulties communicating effectively,[16] which can prevent a school official from taking a disabled child's allegation seriously.[17] If the child cannot testify in court about statements they made to a school official, their only other proof of notice might be hearsay evidence, which is generally inadmissible.[18] Importantly, if a court finds that none of the hearsay exceptions apply, the evidence will be barred, increasing the likelihood that the plaintiff will be unable to defeat a motion for summary judgment.[19] But there are exceptions to the rule against hearsay, the most relevant to this analysis being the excited utterance and residual hearsay exceptions.[20]

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14. *See Gebser*, 524 U.S. at 290; *see also Davis*, 526 U.S. at 642–43 (noting the "high standard" that *Gebser* imposed to render school districts liable under Title IX).

15. *Gebser*, 524 U.S. at 290–91. The Court reasoned that permitting damages recovery against a school district based on principles of respondeat superior would frustrate the purpose of Title IX. *Id.* at 283.

16. Children with disabilities often suffer from receptive or expressive communication problems, including speech delay or impairment and verbal apraxia (difficulty making muscle movements to speak clearly). *Understanding Language Disorders*, Understood, https://www.understood.org/en/learning-attention-issues/child-learning-disabilities/communication-disorders/understanding-language-disorders (last visited Jan. 16, 2019). These and other communication difficulties sometimes arise as a product of Down syndrome or autism. *See id.*

17. *See, e.g.*, *Darien*, 110 F. Supp. 3d at 398 ("Defendants' contention [is] that John's account is unreliable because he sometimes repeats things he has heard on television and because he has used inappropriate language in the past . . . ."); *see also* Doe v. E. Irondequoit Cent. Sch. Dist., No. 16-CV-6594 (CJS), 2018 U.S. Dist. LEXIS 76798, at *73–74 (W.D.N.Y. May 7, 2018) (dismissing a child's discrimination claim for failure to plead to the court's satisfaction that she was sexually abused because of her disability).

18. *See* Fed. R. Evid. 802 (stating that hearsay is not admissible unless provided by a federal statute, the Federal Rules of Evidence, or by other rules prescribed by the U.S. Supreme Court).

19. *See Darien*, 110 F. Supp. 3d at 395.

20. *See* Fed. R. Evid. 803(2), 807.

An excited utterance is "[a] statement relating to a startling event or condition, made while the declarant was under the stress of excitement that it caused."[21] Courts consider several factors when analyzing testimony under the excited utterance exception.[22] These factors include: 1) the lapse of time between the startling event and the out-of-court statement; 2) the age of the declarant; 3) the physical and mental condition of the declarant; 4) the characteristics of the event; and 5) the subject matter of the statements.[23]

Under the residual hearsay exception, a hearsay statement that is not covered under any of the other recognized exceptions may be admissible if "(1) the statement has equivalent circumstantial guarantees of trustworthiness; (2) it is offered as evidence of a material fact; (3) it is more probative on the point for which it is offered than any other evidence that the proponent can obtain through reasonable efforts; and (4) admitting it will best serve the purposes of [the Federal Rules of Evidence] and the interests of justice."[24]

These exceptions would appear to provide an avenue for admitting hearsay statements made by children with disabilities notwithstanding the rigid pleading standard required by Title IX; however, this avenue is not foolproof. In *Doe v. Darien*, the court refused to apply these exceptions to alleged statements that were not "specific enough" to show that the school was notified of the abuse, hence failing to create a genuine issue of material fact—a requirement for defeating a motion for summary judgment.[25] Thus, a narrow application of the hearsay exceptions allows courts to block vital testimony from being entered into evidence.

III. THE PROBLEM AND ITS IMPACT ON REDRESS

In *Doe v. Darien*, John Doe raised various claims against Hasak, his teacher, the school psychologist, the school principal, and the BOE.[26] The claims relied almost entirely on evidence that John was sexually abused and that he provided the defendants with notice of the alleged abuse.[27] The defendants filed a motion for

21. *Id.* 803(2).

22. *Darien*, 110 F. Supp. 3d at 396–97 (citing United States v. Iron Shell, 633 F.2d 77, 85–86 (8th Cir. 1980)).

23. *Id.*

24. Fed. R. Evid. 807 (a)(1)–(4).

25. 110 F. Supp. 3d at 403.

26. This Note focuses primarily on the Title IX claim against the BOE. The suit against the BOE included violations of the Americans with Disabilities Act, 42 U.S.C. §12132; § 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794; Title IX, 20 U.S.C. §1681(a); and procedural due process under the Fourteenth Amendment. *Darien*, 110 F. Supp. 3d at 393. The suit against Hasak alleged assault and battery and reckless and wanton conduct. *Id.* All defendants (excluding the Town of Darien) were sued for general negligence and for violating substantive due process under the Fourteenth Amendment. *Id.*

27. *Darien*, 110 F. Supp. 3d at 395. On the issue of notice, John and his parents claimed John's teacher, the school psychologist, the school principal, and the assistant director of special education for Darien elementary schools had notice of the allegations of sexual abuse. *See id.* at 403.

summary judgment, arguing that all of the statements were inadmissible hearsay.[28] Since there was uncertainty as to whether John would testify at trial,[29] much of these statements would indeed have been inadmissible hearsay, consisting mostly of testimony by John's parents that John told them he had made school officials aware of the alleged abuse, and a transcript of an interview conducted with John shortly after the alleged incident.[30] Because a party cannot rely on inadmissible hearsay when opposing a motion for summary judgment, the court had to determine the likelihood that the hearsay evidence would be admitted under a hearsay exception at trial.[31]

The court found that John's out-of-court statements offered to prove the alleged abuse would likely be admissible at trial under either the excited utterance or residual hearsay exceptions.[32] However, when determining the admissibility of that evidence to show that the school district had notice, the court engaged in a more exacting analysis of the hearsay exceptions. The court sided with the defendants, finding John's statements to his parents and the interview transcript to lack specificity in timing and substance, such that a reasonable juror could not conclude that the school had actual knowledge of the abuse.[33] Thus, John's statements alleging that he told his school psychologist and his principal about the abuse were barred.[34] At trial, a federal jury found that Hasak was liable for damages for the allegations against him, but the BOE was not liable because school officials did not have notice of the abuse.[35]

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28. *See id.* at 393.

29. *Id.* at 395 n.3.

30. *See id.* at 401. The interview was conducted by a Sexual Assault Response Team (SART)—a team charged with addressing the needs of sexual assault victims. *Id.* at 394; *see* Nat'l Sexual Violence Res. Ctr., https://www.nsvrc.org/sarts/toolkit/1 (last visited Jan. 9, 2019). The interview was arranged by the Stamford Child Guidance Center in conjunction with the Darien Police Department and the Board of Education. *Darien*, 110 F. Supp. 3d at 394.

31. *Darien*, 110 F. Supp. 3d at 395; *see also* Nyack v. S. Conn. State Univ., 424 F. Supp. 2d 370, 374 (D. Conn. 2006) ("A party 'cannot rely on inadmissible hearsay in opposing a motion for summary judgment . . . absent a showing that admissible evidence will be available at trial.'") (quoting Burlington Coat Factory Warehouse Corp. v. Esprit De Corp., 769 F.2d 919, 924 (2d Cir. 1985)).

32. *Darien*, 110 F. Supp. 3d at 398. The court determined that John's young age, his mental disability, the shocking nature of the alleged abuse, the spontaneity and unsolicited nature of his statements, and the general timing of his statements all supported the conclusion that John's descriptions of the abuse to his parents and the SART interviewers were credible and likely to be admissible as excited utterances. *Id.* at 397–98. The court also determined that the consistency in John's allegations provided sufficient guarantees of trustworthiness, making the evidence admissible under the residual hearsay exception. *Id.* at 400–01.

33. *Id.* at 403. John's father stated that John "could not say exactly but intimated that it happened recently, this week." *Id.* at 397. John claimed during the interview that he told his teacher that "Hasak was trying to kiss him or do something like that." *Id.* at 403. Additionally, at a separate interview with school officials to discuss the allegations, John claimed that he told the school psychologist of the abuse. *Id.*

34. *Id.* The court granted the defendants' motion for summary judgment in part. *Id.* at 414.

35. *See* Martin B. Cassidy, *Former Darien School Aide Found Guilty of Sex Abuse*, NewsTimes (Aug. 13, 2015), http://www.newstimes.com/news/article/Former-Darien-school-aide-found-guilty-of-sex-6441870.php.

Doe v. Darien vividly showcases how the high evidentiary burden of the actual notice standard can prevent children with disabilities from adequate recovery when their school district fails to protect them from sexual abuse at school. Without a video recording or other non-testimonial evidence to prove Title IX's notice requirement, a disabled child must testify in court to avoid the rule against hearsay. This is undoubtedly problematic for children who are unable to communicate effectively and are unable to testify due to trauma.[36]

IV. PROPOSED SOLUTIONS TO THE LACK OF REDRESS

Scholars and international organizations advocating for children with disabilities have recognized the challenges that disabled victims of abuse face when trying to obtain relief.[37] Our judicial system fails to ensure justice for all when disabled survivors of abuse and their families are unable to recover against school districts that have failed to protect them.[38] Instead, the heavy litigation burden shouldered by plaintiffs allows school district officials to operate with the knowledge that legal liability is unlikely.[39] The solutions proposed below aim to ensure that children with disabilities who experience sexual abuse at school have access to redress for the sexually abusive crimes committed against them.

A. New Exception to the Rule Against Hearsay

The Federal Rules of Evidence should be revised to include a new hearsay exception.[40] For cases of sexual abuse, this exception would apply to statements made by children with disabilities who have a documented communication difficulty.[41] This new exception could either be introduced as a stand-alone exception to the rule

36. *See generally* Nat'l Child.'s Advocacy Ctr, Children's Testimony—Issues and Concerns (2014), https://www.nawj.org/uploads/pdf/conferences/2014/CLE/childrens_testimony_issues_and_concerns_ncac.pdf; Barry Nurcombe, *The Child as a Witness: Competency and Credibility*, 25 J. Am. Acad. Child Psychiatry 473, 475 (1986), https://www.jaacap.org/article/S0002-7138(10)60004-0/pdf.

37. *See* UNICEF, *supra* note 7.

38. *Cf.* Ellery et al., *supra* note 5, at 17–19; *see also* Jesse Krohn, *Sexual Harassment, Sexual Assault, and Students with Special Needs: Crafting an Effective Response for Schools*, 17 U. Penn. J.L. & Soc. Change 29, 33 (2014), https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1163&context=jlasc.

39. *Cf.* Ellery et al., *supra* note 5, at 17.

40. Under the Rules Enabling Act, the Supreme Court has the authority to modify the Federal Rules of Evidence. 28 U.S.C. § 2072(a) (2017). For example, in 2014, the Court added clarifying language to Rule 801(d)(1)(B), a declarant-witness's prior statement hearsay exclusion. *See* Letter from John G. Roberts, Jr., Chief Justice, U.S. Supreme Court, to John A. Boehner, Speaker, U.S. House of Representatives & Joseph R. Biden, Jr., President, U.S. Senate (Apr. 25, 2014), https://www.supremecourt.gov/orders/courtorders/frev14_3318.pdf.

41. Sufficient proof that the child has difficulty communicating can be obtained by reviewing the child's medical files, clinical reports, and school records and evaluations.

against hearsay, or act in conjunction with an existing exception, such as the excited utterance or residual hearsay exception.[42]

Under this proposed exception, a court should consider the following factors: 1) the declarant's documented mental or behavioral disability;[43] 2) the declarant's documented communication skills;[44] 3) the subject matter of the statements offered as evidence;[45] 4) whether the statements are offered to prove a material fact;[46] and 5) whether the declarant can corroborate the statements using reasonable efforts.[47] When weighing these factors, courts should not consider the level of specificity of the statements made at the summary judgment phase of litigation. These factors should be considered together and weighed against the risk of undermining the purpose of the hearsay rule, which is to encourage unwilling witnesses to testify and ensure inaccuracies are exposed before the trier of fact.[48] The end result will be a lower hurdle for plaintiffs to overcome in defeating a motion for summary judgment, allowing them to proceed to trial for a trier of fact to decide how much weight to place on the statements made.

In *Doe v. Darien*, John had a documented medical diagnosis, and an individualized education plan tailored to his cognitive and verbal needs.[49] This new exception would have helped ensure that evidence of the school officials' knowledge was entered into evidence; a trier of fact would then have had the ability to ascertain the credibility of John's statements and fairly determine whether the evidence was sufficient to hold

42. Some states have recognized the need to amend evidentiary rules to meet the needs of disabled children. For example, Mississippi's high court expanded the state's "tender years" exception to the rule against hearsay to consider a child's mental and emotional age when determining whether the exception applies. *See* Veasley v. State, 735 So. 2d 432, 437 (Miss. 1999). Minnesota's high court created a similar rule that admits out-of-court statements made by children or the mentally impaired alleging an act of sexual contact. *See* State v. Conklin, 444 N.W.2d 268, 276 (Minn. 1989) (listing the factors a court should consider when determining the reliability of hearsay evidence); *see also* Minn. Stat. § 595.02, subdiv. 3 (2016) (allowing evidence of certain out-of-court statements made by children less than ten years old or mentally impaired persons).

43. In weighing this factor, courts should consider how severely the documented disability affects the declarant's communication abilities.

44. The degree to which a declarant's speech and comprehension ability is impaired should inform how much weight to place on this factor.

45. For example, statements alleging abuse or neglect of which the declarant is a victim should enjoy a presumption of admissibility due to the severity of the complaint.

46. *Cf.* Fed. R. Evid. 807(a)(2). The more material the fact is to a claim or defense, the more weight the court should place on this factor to tip the scale in favor of admissibility of the hearsay statement, particularly in light of the fifth factor.

47. *Cf. id.* 807(a)(3). For example, if the statement merely corroborates a fact that other admissible evidence supports, then the statement may tip the court toward exclusion. Alternatively, if the statement provides key evidence toward proving a material fact for which no other support exists, the court should consider admitting the statement into evidence. *See, e.g.*, Minn. Stat. § 595.02, subdiv. 3(b)(ii) (allowing hearsay evidence of a declarant child or mentally impaired person when "there is corroborative evidence of the act").

48. Fed. R. Evid. Art. VIII.

49. 110 F. Supp. 3d 386, 393 (D. Conn. 2015).

the school district liable. Most importantly, the court would not have continued a practice of silencing children with disabilities due to their inability to effectively communicate with others.

B. Broader Interpretation of Summary Judgment and Hearsay Rules

As an alternative to creating a new exception, this Note proposes that courts should interpret existing summary judgment and hearsay rules more broadly. For example, in *Doe v. Darien,* the court held that the hearsay exceptions were not applicable to John's statements that he gave school officials notice of his abuse because his allegations were not specific enough.[50] However, specificity is not a factor courts should consider when analyzing the above hearsay exceptions.[51] On the contrary, a lack of specificity or recollection of an abusive incident could be attributed to both the mental state of the declarant and the stress experienced by the victim.[52] The court's narrow approach means that prevailing in a Title IX abuse claim against a school district depends heavily on the disabled child's capacity to communicate the events regarding their abuse effectively. Instead, in a motion for summary judgment, courts should view the alleged statements in the light most favorable to the non-moving party when determining its sufficiency as evidence.[53]

Thus, when a disabled child does not adequately relay specific details regarding when or to whom they reported an alleged incident of sexual abuse, and they are unlikely to testify at trial, courts should deem the alleged statements admissible if any hearsay exceptions could plausibly apply. The burden of proof should then shift to the moving party to prove the statements were not made, or that alternatively, adequate corrective measures were taken. Otherwise, courts will continue to fail children with disabilities by preventing their hearsay statements from being used to hold school districts accountable.

C. Congress Should Fully Fund the Individuals with Disabilities Education Act

Lastly, Congress should fully fund the IDEA as a means of providing school districts with the resources needed to prevent sexual abuse. The IDEA provides federal funding for the education of children with disabilities, yet the federal government has routinely failed to meet its funding obligation.[54] Although the IDEA authorizes funding

50. *Id.* at 403.

51. *See, e.g.*, Redd v. N.Y. State Div. of Parole, 678 F.3d 166, 182 (2d Cir. 2012) (holding that the lack of specific details in a victim's allegations of sexual abuse should not warrant the summary dismissal of her claim, as "[t]he decision as to which witness's version of the events should be credited is one to be made by a fact finder at trial, not by the court").

52. *See* Melissa Hamilton, *The Reliability of Assault Victims' Immediate Accounts: Evidence from Trauma Studies*, 26 Stan. L. & Pol'y Rev. 269, 288 (2015).

53. Tolan v. Cotton, 572 U.S. 650, 657 (2014).

54. *See* Michael Griffith, *Is the Federal Government Shortchanging Special Education Students?*, Ed Note (Sept. 4, 2018), https://www.ecs.org/is-the-federal-government-short-changing-special-education-

of forty percent of the average cost to educate children with disabilities,[55] it does not guarantee this money will be made available to school districts.[56] Since the passage of the IDEA in 1975, Congress has failed to meet even half of that commitment.[57] The cost of funding special education programs is consequently shifted to the states, causing school districts—especially those in low-income areas—to cut critical services that would otherwise be beneficial to their special education students.[58]

Funding less than one half of the IDEA obligation is a gross mockery of what the IDEA claims to stand for—improving educational results for children with disabilities by "providing appropriate special education and related services . . . whenever appropriate."[59] Congress's stated intent in passing the IDEA was to "ensure that the rights of children with disabilities and parents of such children are protected,"[60] and that children with disabilities receive a free and appropriate public education.[61] But how meaningful can the benefit of an education program be if it is substantially underfunded?

By allocating more funds to state and local school districts, Congress would meet its obligations under the IDEA and fulfill the law's stated goals.[62] More funding for school districts would mean better services for children with disabilities, more qualified teachers and paraprofessionals, more resources to properly screen employees who may pose a risk to the safety of students, and better training for existing employees on how to manage allegations of sexual abuse.

V. CONCLUSION

The well-documented lack of redress for children with disabilities is a direct result of the current standards being employed by the courts. The precedent allows courts to discount the credibility of the most vulnerable among us: children with

students (stating that in order to meet its funding goal of forty percent, Congress "would have to provide states and school districts with an additional $19.7 billion in IDEA funding annually").

55. Amanda Litvinov, *Bipartisan IDEA Bill Seeks to Stop Shortchanging Special Needs Students*, Nat'l Educ. Ass'n (Feb. 4, 2015), http://educationvotes.nea.org/2015/02/04/bipartisan-bill-seeks-to-stop-short changing-special-needs-students.

56. *See* Nat'l Council on Disability, *supra* note 8, at 20.

57. *Id.*

58. *See* Litvinov, *supra* note 55. In 2014, the federal cost shifted to states was $17.6 billion. *Id.*

59. 20 U.S.C. § 1400(c)(5)(D) (2017).

60. *Id.* § 1400(d)(1)(B).

61. *Id.* § 1400(d)(1)(A).

62. Congress's stated intent behind the act:

> Disability is a natural part of the human experience and in no way diminishes the right of individuals to participate in or contribute to society. Improving educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities.

§ 1400(c)(1).

special needs. This results in blocking vital testimony from being admitted at trial without regard to the communication challenges a disabled child may have. By tailoring hearsay exceptions for disabled children with impaired communication skills—whether by adopting a new or amending an existing exception—or simply applying a broad interpretation of the existing rules, courts can begin to provide this vulnerable class with the equal protection under the law they so deserve. Regardless of the evidentiary rules, Congress should fully fund the IDEA to provide school districts with the necessary services and resources needed to prevent and identify sexual abuse in their district.