

Emotional Disturbance and Social Maladjustment: Doing Away with the IDEA’s “Social Maladjustment Exclusionary Clause”

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The Individuals with Disabilities Education Act (IDEA) states that in order to qualify for special education services, a student must meet the criteria of at least one of thirteen different disability categories.¹ Among the thirteen is a category termed “Serious Emotional Disturbance” (SED or ED).² Since its creation, the SED category has caused a great amount of controversy primarily due to problems in the federal definition.³ The federal definition states that in order to be eligible for special education services as “emotionally disturbed,” the student must meet one or more of five characteristics over a long period of time, which adversely effect educational performance.⁴ However, immediately after listing the five indicia of emotional disturbance, the definition states that “[Serious Emotional Disturbance] does not include children who are socially maladjusted, unless it is determined that they are seriously emotionally disturbed.”⁵ This line of the definition has come to be known as the “Social Maladjustment Exclusionary Clause”

¹ 20 U.S.C.A. § 1401 (West).

² *Id.*

³ See Kenneth Merrell & Hill Walker, *Deconstructing a Definition: Social Maladjustment versus Emotional Disturbance and Moving the EBD Field Forward*, 41 PSYCHOL. IN THE SCH. 899, 900 (2004) (stating that “[a]lthough the definition of ED cannot be blamed for all the problems related to students with ED, it certainly shares some culpability”).

⁴ 34 C.F.R. § 300.5(b)(8).

Seriously emotionally disturbed is defined as follows:

(i) The term means a condition exhibiting one or more of the following characteristics over a long period of time, which adversely affects educational performance:

- (A) An inability to learn which cannot be explained by intellectual, sensory, or health factors;
- (B) An inability to build or maintain satisfactory relationships with peers and teachers;
- (C) Inappropriate types of behavior or feelings under normal circumstances;
- (D) A general pervasive mood of unhappiness or depression; or
- (E) A tendency to develop physical symptoms or fears associated with school problems

(ii) The term includes children who are schizophrenic. The term does not include children who are socially mal-adjusted, unless it is determined that they are seriously emotionally disturbed

Id.

⁵ *Id.*

because it seeks to exclude students who are “socially maladjusted” from receiving special education services unless they are also emotionally disturbed.⁶

The social maladjustment exclusionary clause is confusing and problematic and should be done away with in future reauthorizations of the IDEA. The clause has been attacked for years on various grounds. The first complaint is that it is difficult to understand who is being excluded because the IDEA never defines the term “Social Maladjustment (SM).”⁷ Relatedly, because there is no federal definition, states and local education agencies are left to create their own definition, which leads to inconsistency in eligibility determinations.⁸ Others have argued that SM and ED are indistinguishable and that doctors lack the assessment tools to differentiate between a student with SM and a student with ED.⁹ A final complaint is that it is not particularly difficult for schools to exclude students using this clause and, rather than using the definition to exclude students, everyone involved should be focused on developing ways to serve the large population of students with emotional and behavioral problems.¹⁰

This paper attempts to review the various problems with the social maladjustment exclusionary clause and advocates that the clause should be removed from the IDEA due to these

⁶ See Russel Skiba & Ken Grizzle, *The Social Maladjustment Exclusion: Issues of Definition and Assessment*, 20 SCH. PSYCHOL. REV. 580 (1991) [hereinafter *Issues of Definition*] (“The exclusionary clause in the federal definition of serious emotional disturbance reads ‘does not include children who are socially maladjusted, unless it is determined that they are seriously emotionally disturbed’”); see also Tammy L Hughes & Melissa A. Bray, *Differentiation of Emotional Disturbance and Social Maladjustment: Introduction to the Special Issue*, 41 PSYCHOL. IN THE SCH. 819 (2004) (stating that children who have SM but also have ED should be included in special education services).

⁷ Merrell, *supra* note 3 at 901.

⁸ See *id.* (stating that because the term has never been defined in federal law, creating a definition has been left to “individuals and organizations within the field, as well as to the state and local education agencies responsible for implementing special education services”); see also Thomas Kehle ET AL., *Emotional disturbance/social maladjustment: Why is the incidence increasing?*, 41 PSYCHOL. IN THE SCH. 861, 862 (2004) (noting that because there is no federal definition of socially maladjustment, the term has been left open to a liberal interpretation).

⁹ See Council for Children with Behavioral Disorders, *Position Paper on Definition and Identification of Students with Behavioral Disorders*, 15 BEHAVIORAL DISORDERS 180 (1989) [hereinafter *CCBD*] (arguing that there are no technically adequate measures that have been validated for the purpose of identifying SM); see also *Issues of Definition*, *supra* note 6 (noting that in one study, less than half of practicing psychologists even attempted to differentiate between SED and SM).

¹⁰ Merrell, *supra* note 3 at 904.

problems. It begins by discussing the history of the federal definition and the invention of the exclusionary clause. In this section, it also considers Congress' intent, which may be relevant for determining which students should qualify for special education at the local level. It next discusses the literature attempting to define "Social Maladjustment" and considers why the term cannot be distinguished from Emotional Disturbance. Later, this paper discusses the various problems caused by the social maladjustment exclusion. Finally, this paper concludes by considering the arguments for and against doing away with the SM exclusion and endorses removing the exclusionary clause from the federal definition.

History of the Federal Definition

Congress first adopted the definition of Emotional Disturbance that is still in use today in 1975 when it enacted the Education for All Handicapped Children Act.¹¹ Congress borrowed the definition from a California study conducted by Eli Bower in the 1950s.¹² While Bower's definition included five different characteristics of emotional disturbance and noted that students exhibiting one of the five could be termed emotionally disturbed, Bower did not include a social maladjustment exclusion in his definition.¹³

The invention of the social maladjustment exclusion has a long and complex legislative history. Before the passage of the Education for All Handicapped Children Act, Congress' original method of educating students with disabilities was to fund grant programs both for research on teaching and fellowships and scholarships to train teachers who would eventually

¹¹ *Id.* at 900 (stating that the drafters of the 1975 law were influenced by Bower's definition).

¹² *Id.*; Issues of Definition, *supra* note 6. The California State legislature commissioned Bower to attempt to define the contours of Emotional Disturbance. Following the study, Bower compiled the data and drafted a definition highlighting five characteristics of emotional disturbance. These five characteristics were later incorporated into the federal definition. *Id.*

¹³ Issues of Definition, *supra* note 6. However, even without an SM exclusionary clause, authors have criticized Bower's definition. For example, some say that Bower's definition "obviously lacks the precision necessary to take subjectivity out of decision making." JAMES M. KAUFFMAN, CHARACTERISTICS OF EMOTIONAL AND BEHAVIORAL DISORDERS OF CHILDREN AND YOUTH 17 (Prentice Hall, 8th ed. 2004).

work with children with disabilities.¹⁴ However before 1963, Congress did not provide funding for teacher training in all disability areas.¹⁵ When Congress finally decided to train teachers in “all areas of exceptionality,” it became necessary to define the many different categories of exceptional children.¹⁶

The concept of “social maladjustment” first appeared in an omnibus bill to fund teacher training in 1957.¹⁷ The bill stated that exceptional children included “children who are maladjusted emotionally and socially, including the institutionalized delinquent.”¹⁸ Likewise, the later 1963 funding bill that passed the Senate also grouped SM and ED together, using disjunctive terminology “emotionally disturbed or socially maladjusted.”¹⁹ However, in what has been described as a “highly irregular political move,” when the Senate’s bill arrived in the House of Representatives, the bill was referred to a subcommittee of the House Committee on Interstate and Foreign Commerce, rather than to the Committee on Education and Labor which had been working on similar legislation for some time.²⁰ It was in these House committee hearings that it was first determined that social maladjustment could be distinguished from ED and should be

¹⁴ D. H. Cline, *Interpretations of Emotional Disturbance and Social Maladjustment as Policy Problems: A Legal Analysis of Initiatives to Exclude Handicapped/disruptive Students from Special Education*, 15 BEHAVIORAL DISORDERS 159, 165 (1990).

¹⁵ *See id.* (explaining that it was with the passage of the Mental Retardation Facilities and Community Mental Health Centers Construct Act in 1963, funding for teacher training in all areas of disability became available).

¹⁶ *See id.* at 165-166 (stating that the debates over categories of disabilities, including emotional disturbance, began in the committee hearings and floor sessions regarding these funding bills).

¹⁷ *Id.* at 166.

¹⁸ *Id.* Congresswoman Lenore Sullivan introduced the bill, which eventually failed to pass. In introducing the bill, Congresswoman Sullivan stated that society usually labeled socially maladjusted children as juvenile delinquents, but as the language of the bill shows, trained teachers funded by the bill were still expected to serve this category of children. *Id.*

¹⁹ *Id.* at 167.

²⁰ *See id.* (citing testimony of various government officials in congressional hearings).

defined as consisting of non-handicapped delinquent students whose only difficulties were anti-social behavior.²¹

The legislative history and other historical circumstances do not support the notion that the seriously emotionally disturbed were meant to be excluded. Those who have written about Congress' intent substantially agree that based on Congress' discussion of social maladjustment in the bills and laws leading up to the passage of the Education for All Handicapped Children Act and based on the Act itself, Congress simply intended to exclude juvenile delinquents who were not seriously emotionally disturbed.²² The very idea of creating an exclusionary clause supports this notion because exclusions are meant to be narrow omissions from an otherwise broadly inclusive definition.²³ In fact, Bower himself did not support the addition of an exclusionary clause and called it inherently illogical because the emotionally disturbed child must be socially maladjusted in school.²⁴ Likewise, one of the cornerstones of the Act was to provide appropriate services to underserved populations, one of which was children with emotional disabilities.²⁵ Finally, the definition itself clearly states that a student qualifies for

²¹ *Id.* at 168. As Cline's research indicates, some in committee hearings, including the Assistant Surgeon General, stated agreed that while many emotionally disturbed children were also socially maladjusted, some students were only socially maladjusted and not "sick." *Id.*

²² See CCBD, *supra* note 9 ("It appears that the social maladjustment exclusionary clause was added solely to restrict special education services to adjudicated juvenile delinquents who were not seriously emotionally disturbed"); see also Cline, *supra* note 14 at 168 ("The House version, after the committee hearings, deleted the socially maladjusted in an obvious attempt to convey the message that the legislation did not include nonhandicapped delinquents"); see also Mark C. Weber, *The IDEA Eligibility Mess*, 57 BUFF. L. REV. 83, 120 (2009) ("Commentators agree that turning social maladjustment into an exclusion undermines congressional intent and harms children").

²³ CCBD, *supra* note 9. As the Council for Children with Behavioral Disorders position paper states:

A clause excluding a given population makes sense only within the context of a broadly inclusive definition. If the definition of serious emotional disturbance was not viewed by Congress as broadly inclusive, there would have been no reason to have added a clause excluding a specific population (e.g., adjudicated juvenile delinquents)

Id.

²⁴ Merrell, *supra* note 3 at 901; Hollie Pettersson, & Megan Farley, *Social Maladjustment or Emotional Disturbance?*, 24 UTAH SPECIAL EDUCATOR, 28-29 (2003); Issues of Definition, *supra* note 6.

²⁵ CCBD, *supra* note 9.

services as emotionally disturbed if he or she is simultaneously emotionally disturbed and socially maladjusted.²⁶

Defining Social Maladjustment

As noted above, the federal statutes and implementing regulations have never defined social maladjustment.²⁷ Despite the lack of federal guidance, researchers, psychologists and concerned observers have formulated at least three ways of thinking about social maladjustment: characterizing it as purposive behavior, applying it only to those who have been formally adjudicated, and contrasting those demonstrating internalized emotion to others demonstrating externalized behavior.²⁸

Some researchers define social maladjustment as a “pattern of engagement in purposive antisocial, destructive, and delinquent behavior.”²⁹ These researchers often try to equate SM, a statutory term, to medical diagnoses and often compare SM with diagnoses such as conduct disorder, oppositional defiant disorder and attention deficit/hyperactivity disorder.³⁰ Under this approach, SM involves willful behavior and conduct that is purposive whereas the behavior of students with ED is not goal oriented and ED students are not necessarily “choosing” to misbehave.³¹ However, scholars in the area criticize the association with purposive behavior on two grounds. First, they argue that defining SM as involving purposive behavior requires relying

²⁶ 34 C.F.R. § 300.5(b)(8); Weber, *supra* note 22 at 111 (stating that the child can meet the eligibility criteria when they are both emotionally disturbed and socially maladjusted and only those students who fail to meet one of the five criteria of emotional disturbance are excluded).

²⁷ See CCBD, *supra* note 9 (stating that SM was not defined in the EHA and means different things in different contexts); see also Kehle, *supra* note 8 at 862 (noting that it is peculiar that the authors of the IDEA did not define SM, but “nevertheless exclude children with this undefined disorder from qualifying for special education services”).

²⁸ Merrell, *supra* note 3 at 901-02 (stating that some researchers believe that the term only applies to those engaging in purposive conduct while others believe that it is reserved for those who are formally adjudicated); Kehle, *supra* note 8 at 862 (describing the internalizing versus externalizing method of defining SM and differentiating it from ED).

²⁹ Merrell, *supra* note 3 at 901.

³⁰ Pettersson, *supra* note 24 at 28; Merrell, *supra* note 3 at 901-02. Conduct disorder, which is sometimes used as a synonym for social maladjustment, involves “repetitive and persistent violation of age-appropriate social norms.” Kehle, *supra* note 8 at 862.

³¹ Merrell, *supra* note 3 at 902.

on the questionable practice of attempting to look within the child and make external inferences about a student's internal motivations.³² Additionally, others argue that distinguishing ED and SM on the basis of intentionality involves creating false dichotomies because both groups are capable of purposeful or planned behavior and both are capable of impulsive or unintentional acts.³³

Others suggest that SM refers to students who have been formally adjudicated for delinquent behavior.³⁴ This construct agrees that such youths engage in antisocial behavior in a willful manner (like the purposive construct), but adds an additional requirement that the students must have engaged in unlawful behavior.³⁵ The explanation for the association of these concepts is simply that "socially maladjusted" is a "less noxious term" for juvenile delinquent.³⁶

A third construct contrasts internalized reactions against externalizing behaviors.³⁷ Under this approach, the student with ED internalizes these emotional problems (similar to those with major depressive disorder) whereas the student with SM externalizes them through behaviors (like those with conduct disorders).³⁸ However, this definition has also been criticized. As an initial argument, detractors note that children who have conduct disorders (or SM) often exhibit emotional problems and children with ED often exhibit conduct problems.³⁹ Moreover, detractors also point to the federal regulations which explicitly describe situations where children

³² See Merrell, *supra* note 3 at 902 ("these traditional models of SM are often constructed around the problematic search for "within-child" pathology and making external attributions or inferences about the internal motivations of students, a questionable practice which has been criticized even by advocates of the exclusionary clause").

³³ Kehle, *supra* note 8 at 862.

³⁴ Merrell, *supra* note 3 at 902.

³⁵ *Id.* This behavior is explained by the youth's desire to engage their social status within some antisocial peer oriented group (such as a gang). *Id.* at 902-03.

³⁶ Weber, *supra* note 22 at 110-11.

³⁷ Kehle, *supra* note 8 at 862; CCBD, *supra* note 9.

³⁸ Issues of Definition, *supra* note 6.

³⁹ See CCBD, *supra* note 9 ("Although distinctions between broad-band syndromes such as 'internalizing' and 'externalizing' are theoretically useful, research has consistently shown that children with conduct disorders can and do exhibit significant emotional problems, and vice versa"); see also Weber, *supra* note 22 at 114 (stating that someone with externalizing behaviors such as conduct disorder should still qualify for ED if they meet one of the factors set out in the regulation).

with outwardly disruptive behaviors must be moved out of the general education classroom so that the needs of this child can be met.⁴⁰ Without agreement as to the meaning of the term, it is difficult to justify excluding a population that may be in need of services.

Problems caused by the social maladjustment exclusion

The Social Maladjustment exclusionary clause should be taken out of the federal definition because it serves as a potential stumbling block to eligibility, it does not provide a means for differentiating SM from ED, it can lead to inconsistent application in the school districts and because it is confusing to researchers and practitioners.

The primary problem with the social maladjustment exclusionary clause is that it may be leading to the underservice of students in need of special education and related mental health services.⁴¹ A 2002 congressional report on the implementation of the IDEA showed that less than 1% of students across the U.S. have been identified as eligible for services under the Emotional Disturbance category.⁴² However, studies have shown that at least 3% of students and as many as 6% should receive services under the ED classification.⁴³ Nonetheless, while some writing about the topic claim that the SM exclusionary clause is to blame for underservice, at least one study demonstrated that the exclusionary clause does not impact the prevalence of ED classifications.⁴⁴

Regardless of the effects in the aggregate, the problems caused by underservice are too great to

⁴⁰ CCBD, *supra* note 9 (citing 34 C.F.R. 300.552 which states “Where a handicapped child is so disruptive in a regular classroom that the education of other students is significantly impaired, the needs of the handicapped child cannot be met in that environment. Therefore, regular placement would not be appropriate for his or her needs”).

⁴¹ KAUFFMAN, *supra* note 13 at 19-20.

⁴² Merrell, *supra* note 3 at 904.

⁴³ See KAUFFMAN, *supra* note 13 at 32; see also Merrell, *supra* note 3 at 904 (noting that more students should be served and that the level of service has been stable since the original implementation of the ED category in the 1970s).

⁴⁴ KAUFFMAN, *supra* note 13 at 19 (claiming that “the addenda to Bower’s definition allow so many interpretations that students who need services can be easily excluded”); but see Russell Skiba ET AL., *Opening the Floodgates? The Social Maladjustment Exclusion and State SED Prevalence Rates*, 32 J. OF SCH. PSYCHOL. 267, 278 (1994) [hereinafter *Opening the Floodgates?*] (arguing that “the presence of the clause has little influence on the proportion of children receiving SED services at the state level” and that the data does not support a “simplistic prediction that a change in one portion of the federal SED definition, the social maladjustment exclusion, will directly increase the prevalence of serious emotional disturbance”).

ignore and any potential stumbling blocks to legitimate eligibility (and eventual special education services) should be removed. As a practical matter, excluding students with social maladjustment will mean placing them back in classrooms without supports where they may cause difficulties for teachers and other students.⁴⁵ Furthermore, if no services are provided to students because they are termed “socially maladjusted,” then they will continue in the paths of students before them who are more likely to fail in school, become members of gangs, drop out of school and eventually commit crimes.⁴⁶

Another difficulty with the SM exclusionary clause is that it may be useless because “Emotional Disturbance” cannot be distinguished from “Social Maladjustment.”⁴⁷ Proponents of this argument suggest that perhaps if SM were defined or if the Department of Education suggested some means of differentiating the two, then the distinction would be useful or workable.⁴⁸ However, there may not even exist reliable assessment instruments (such as tests or medical examinations) or empirically validated methods capable of differentiating between the two.⁴⁹ Nonetheless, even if one believes that SM and ED can be distinguished, there remains the issue of co-morbidity (the presence of both disorders simultaneously).⁵⁰ Research indicates that although there may be some students who engage in anti-social, purposive conduct who do not

⁴⁵ CCBD, *supra* note 9.

⁴⁶ *Id.*

⁴⁷ Merrell, *supra* note 3 at 901 (arguing that the exclusionary clause implies that SM is either separate or distinguishable from ED).

⁴⁸ *Id.*; KAUFFMAN, *supra* note 13 at 24 (noting the comments of a professor at UCLA who feels that differentiating between these disorders may only be useful at the extremes).

⁴⁹ CCBD, *supra* note 9; Pettersson, *supra* note 24 at 29. In addition to the federal regulations, 34 states also include a social maladjustment exclusion in their state special education regulations. However, of the 34 states whose statutes contain their own exclusionary clauses, only three identify specific assessment procedures that may be used to differentiate social maladjustment from emotional disturbance. Opening the Floodgates?, *supra* note 44 at 274. *See also* Issues of Definition, *supra* note 6 for a discussion of various tests used to attempt to distinguish SM and ED and their various flaws.

⁵⁰ *See* Issues of Definition, *supra* note 6 (noting that “children's behavior disorders may not fit neatly into mutually exclusive categories”); Merrell, *supra* note 3 at 903.

demonstrate any emotional problems, this is probably the exception.⁵¹ In fact, one study of special education students found that 70% of special education students participating in the study also displayed characteristics usually associated with SM.⁵² More importantly, however, research also indicates that a large percentage of those whose primary challenge is a conduct disorder also exhibit emotional difficulties.⁵³

Those arguing for the abolition of the SM exclusion also cite the fact that the lack of a definition means that states and local education agencies are left to invent their own definitions.⁵⁴ This in turn can lead to inconsistent eligibility determinations and inconsistent placement decisions between districts or even within a single district.⁵⁵ For example, if a state or local school district equates SM with a conduct disorder, they may choose to deny special education services to that student by claiming that he or she is socially maladjusted and not emotionally disturbed.⁵⁶ However, a different school district in another state that does not equate the two may have found that very same student eligible. Likewise, different schools in different areas might arbitrarily exclude some students but not others because doing so will lead to fewer expenditures on special education and can help them stay within their budgets.⁵⁷ Thus, because a uniformly recognized definition does not exist, different localities have a wide range of options when it comes to implementation.⁵⁸

⁵¹ Merrell, *supra* note 3 at 903.

⁵² See Pettersson, *supra* note 24 at 29 (citing the 1992 National Longitudinal Transitional study).

⁵³ CCBD, *supra* note 9.

⁵⁴ See Merrell, *supra* note 3 at 901 (“Given that SM has never been defined in the federal law, the description of this construct has been left to individuals and organizations within the field, as well as to the state and local education agencies responsible for implementing special education services”).

⁵⁵ Opening the Floodgates?, *supra* note 44 at 277; Cline, *supra* note 14 at 159 (“ambiguity in language inviting alternative paths to implementation leading to disparate treatment of children and youth across jurisdictions”).

⁵⁶ See Issues of Definition, *supra* note 6 (explaining the line of reasoning that school administrators may use to exclude a conduct disordered child).

⁵⁷ KAUFFMAN, *supra* note 13 at 32. James Kauffman, a researcher in the area of emotional difficulties, notes that “Official nonidentification is a convenient way for many school officials to avoid the hassles, risks, and costs of expanded services.” *Id.*

⁵⁸ Cline, *supra* note 14 at 159.

Finally, advocates for a new definition that does not include a social maladjustment exclusion also cite the fact that the current definition has confused practitioners and researchers for years.⁵⁹ The exclusion has been attacked as “illogical,” “nonsense,” “unclear,” “without support in research” and “incomprehensible.”⁶⁰ The general complaint is that one cannot be socially maladjusted without exhibiting at least one of the five ED characteristics over a period of time.⁶¹ Specifically, the socially maladjusted child will, by definition, have an inability to build or maintain satisfactory interpersonal relationships with peers and teachers (criteria B) or inappropriate types of behavior or feelings under normal circumstances (criteria C) or both.⁶² Thus, the exclusionary clause, at the very least, is bad public policy because it defeats itself and confuses those responsible for implementing it.⁶³

Moving forward

The social maladjustment exclusionary clause should be discarded as a means for determining special education eligibility in any future re-authorization of the IDEA. The primary question that should be asked is whether the student is adversely affected by a diagnosable condition that inhibits educational progress.⁶⁴ The more time educators and psychologists spend focusing on how to exclude students, the less time they spend on providing support to students in need.⁶⁵ To be fair, the services currently provided to ED students are not overwhelmingly effective. Research indicates that students with ED fare worse than students with other disabilities in that they are still more likely to drop out of school and, despite receiving services,

⁵⁹ Merrell, *supra* note 3 at 901.

⁶⁰ KAUFFMAN, *supra* note 13 at 18.

⁶¹ *Id.*

⁶² *Id.*

⁶³ CCBD, *supra* note 9; Merrell, *supra* note 3 at 901.

⁶⁴ Kehle, *supra* note 8 at 863 (arguing that the current federal definition should not be the basis on which eligibility determinations are made, but rather decisions should be made based on “whether or not the child exhibits persistent problems of sufficient frequency and intensity that mitigates against optimal educational achievement”).

⁶⁵ Merrell, *supra* note 3 at 904 (noting that we should invest our time developing systems and solutions that would allow a greater number of students to receive the appropriate educational and emotional supports).

are still very likely to commit crimes after leaving school.⁶⁶ However, the debate over excluding students has also contributed to this problem because the time wasted on trying to develop models for differentiating ED from SM was time that could have been better used in developing strategies and techniques that can effectively reach these students.⁶⁷ Theoretical debates about externalizing or internalizing behaviors are irrelevant for purposes of eligibility and are only useful insofar as they lead to more effective treatment options.⁶⁸

To date, efforts to change the federal definition have failed.⁶⁹ In the 1990s the National Mental Health and Special Education Coalition created a working group of several professional organizations and developed a new definition that had a strong base of support.⁷⁰ The new definition did away with the SM exclusion.⁷¹ Furthermore, the definition solved many of the current definition's problems by incorporating students solely with emotional disorders as well

⁶⁶ *Id.* at 899 (stating that within three years of leaving school, more than 50% of ED students have been arrested at least once).

⁶⁷ Issues of Definition, *supra* note 6 (arguing that “psychologists and educators would be well-advised to focus on strategies that have shown promise for improving the state of assessment in behavioral disorders...and to use consultation-based strategies to focus on issues of instruction, classroom management, and program planning”); *see also* Kehle, *supra* note 8 at 865 (stating that researchers should not waste time quibbling about diagnostic categories).

⁶⁸ Hughes, *supra* note 6 at 819-20.

⁶⁹ Merrell, *supra* note 3 at 906-07. Advocates proposed a new definition to be included in two different reauthorizations of the IDEA. Despite the fact that these efforts failed, this proposed definition was included in the authorizing legislation for the federal head start program. *Id.*

⁷⁰ KAUFFMAN, *supra* note 13 at 19-20. The proposed definition is as follows:

- i. The term *Emotional or Behavioral Disorder* (EBD) means a disability characterized by behavioral or emotional responses in school so different from appropriate, age, cultural, or ethnic norms that they adversely affect educational performance. Educational performance includes academic, social, vocational, and personal skills. Such a disability
 - (a) is more than a temporary, expected response to stressful events in the environment;
 - (b) is consistently exhibited in two different settings, at least one of which is school-related; and
 - (c) is unresponsive to direct intervention in general education or the child's condition is such that general interventions would be insufficient.
- ii. Emotional and behavioral disorders can co-exist with other disabilities.
- iii. This category may include children or youth with schizophrenic disorders, affective disorders, anxiety disorders, or other sustained disturbances of conduct or adjustment when they adversely affect educational performance in accordance with section 1.

Id.

⁷¹ *Id.*

as students solely with behavioral disorders and by recognizing the possibility of co-morbidity.⁷² Absent a better definition or further advances that would allow for a more precise definition, this proposed definition should replace the current one as soon as practicable.

Conclusion

The purpose of the IDEA and the special education statutes before it has always been to provide services to all students with disabilities. The social maladjustment exclusionary clause serves as a barrier to access to services. While it is true that not all special education services will be effective and that the services provided to students with ED are less effective than the services for other classifications, no qualifying student should be denied access at the outset. The social maladjustment exclusion runs counter to the intent of the IDEA and is ill defined and illogical. Congress would do well to recognize the enormous amount of research in this area and opposition to the definition and replace the exclusionary clause with an inclusive definition intended to aid all those with emotional difficulties and behavioral difficulties.

⁷² *Id.* at 20; Merrell, *supra* note 3 at 907.