IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF THE SOUTHERN DISTRICT OF FLORIDA

WEST PALM BEACH DIVISION

D.P. by and through his next friend P.S.; P.S. in her individual capacity; E.S., by and through his next friend J.S.; J.S. in her individual capacity; L.A. by and through her next friend A.B.; A.B. in her individual capacity; W.B. by and through his next friend

as young as five years old, are not being charged with a crime. Instead, school employees have decided these children are a threat to themselves or others and are taking them to a psychiatric facility for involuntary psychiatric examination. Though SDPBC police officers have limited or no mental health training, they are vested with the power to subject children to involuntary psychiatric examination, pursuant to the Florida Mental Health Act, Fla. Stat. §§ 394.451-.47892, known as the Baker Act. This decision is often made without parents' input, consent, or prior knowledge, and even over their strenuous objections.

2. The overwhelming majority of these children do not need or benefit from involuntary examination and are deeply traumatized by the experience. Once sent for an examination, children wait hours or days in a psychiatric facility, also known as a "receiving facility," without their parents, for an examination by a clinician. The Baker Act permits them to be held for up to 12 hours, including overnight, before this examination even begins. The receiving facility has up to 72 hours to complete this examination, after which the facility must either release the child or seek a court hearing for longer-term detention.

3. Under the Baker Act, courts, medical professionals, and law enforcement officers may initiate an involuntary psychiatric examination of a person in specific circumstances, including when there is reason to believe that (a) the person has a mental illness and (b) because of that mental illness, they pose an imminent danger to themselves or others. The practice is so common that it has become a verb: a person detained for involuntary examination is often referred to as having been "Baker Acted."

4. SDPBC used the Baker Act to initiate at least 1,216 involuntary examinations of its students in the 2016-2020 school years, including 252 times on elementary school students. SDPBC seized Black children for involuntary examination at twice the rate of white children, a disparity that worsens for young children: 40 of 59 children under age eight examined under the Act in that period were Black.

5. SDPBC has taken children for involuntary examination over their parents' pleas to be allowed to bring their children home and parents' assurances that they will protect their

children from harm. It has seized

8. Plaintiffs bring this suit to end SDPBC's harmful and illegal use of the Baker Act. Plaintiffs are children who have been wrongfully subjected to involuntary examination under the Baker Act, their parents, Disability Rights Florida, and the Florida Conference of the NAACP. They bring this suit for damages for harm to the individual Plaintiffs and injunctive relief to prevent future harm to all Plaintiffs and their members and constituents.

**JURISDICTION AND VENUE**

9. This action arises under 42 U.S.C. § 1983, 42 U.S.C. § 12132, the Americans with Disabilities Act, and 29 U.S.C. § 794, § 504 of the Rehabilitation Act. This Court has subject-

14. Plaintiff E.S. is an eleven-year-old white student who was formerly enrolled in the School District of Palm Beach County. He is a student with a disability and qualifies for Exceptional Student Education ("ESE") under the exceptionality of Other Health Impaired ("OHI").

15. Plaintiff J.S. is E.S.'s mother. She brings this suit as next friend to E.S. and on her own behalf.

16. Plaintiff W.B. is a ten-year-old Black student enrolled in the School District of Palm Beach County. He is a student with a disability and qualifies for ESE with the exceptionality of Emotional Behavioral Disability.

17. Plaintiff L.H. is W.B.'s mother. She brings this suit as next friend to W.B. and on her own behalf.

18. Plaintiff L.A. is a ten-year-old Black student enrolled in the School District of Palm Beach County. She is a student with a disability of Attention Deficit Hyperactivity Disorder ("ADHD").

19. Plaintiff A.B. is L.A.'s mother. She brings this suit as next friend to L.A. and on her own behalf.

20. Plaintiff M.S. is an eleven-year-old biracial student enrolled in the School District of Palm Beach County. She is a student with a disability of Post-Traumatic Stress Disorder ("PTSD").

21. Plaintiff S.S. is M.S.'s mother. Plaintiff R.S. is M.S.'s father. They bring this suit as next friends to M.S. and on their own behalf.

privacy protection given to their children [ot Tw 12 -i002 Tw 0746t4EMC 1(.S)1(.')-2(s222)-2 Tw ox [71.72(.

22. Plaintiff Disability Rights Florida ("DRF") is an independent, non-profit corporation organized under the laws of the State of Florida and its primary office is in Tallahassee, FL.

23. DRF is Florida's Protection and Advocacy system, as that term is defined under the Developmental Disabilities Assistance and Bill of Rights Act ("DD Act"), 42 U.S.C. § 15041 et seq., the Protection and Advocacy for Individuals with Mental Illness Act of 1986 ("PAIMI Act"), 42 U.S.C. § 10801 et seq., and the Protection and Advocacy of Individual Rights Act ("PAIR Act"), 29 U.S.C. § 794e et seq., with offices in the State of Florida located at: 2473 Care Drive, Suite 200, Tallahassee, FL 32308; 4723 NW 53rd Ave Suite B, Gainesville, FL 32653; 1000 North Ashley Drive, Suite 640, Tampa, FL 33602; and 1930 Harrison Street, Suite 104, Hollywood, FL 33020.

24. As Florida's Protection and Advocacy system, DRF is specifically authorized to pursue legal, administrative, and other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights of individuals with disabilities. 42 U.S.C. § 15043(a)(2)(A)(i). DRF's constituents consist of all individuals residing in Florida who have been diagnosed with a disability, have a disability which has not yet been diagnosed, or are perceived as or regardedigagaea j07()(.TJ 0()0 Tc a)-18 re fCTm ae)5a 53p[(s)4d4(e)-1(c)bui5 0 Td [(syT*

27. Pursuant to the authority vested in it by the United States Congress to file claims of abuse, neglect, and rights violations on behalf of individuals with disabilities, DRF brings claims on behalf of its constituents

of this mission, FL NAACP is committed to eliminating discrimination on the basis of race in healthcare and public education.

32. FL NAACP has a longstanding commitment to ending the disproportionate use of exclusionary discipline, which includes arrest, suspension, expulsion, and other forms of school discipline, on Black children in Florida and spends a significant portion of its organizational resources on this priority. It understands that use of the Baker Act in Florida is inextricably linked to the disproportionate use of all forms of exclusionary discipline on Black children and that the Baker Act itself has been disproportionately used as a form of exclusionary discipline on Black children in the SDPBC.

33. FL NAACP has standing to bring this action on behalf of its individual members in families with children attending school in SDPBC. Black children, including those of FL NAACP members, are at disproportionate risk of being excluded from school, detained and involuntarily examined in a psychiatric facility due their race and/or disability. Black children are twice as likely to be subjected to examination under the Baker Act as white children. Young Black children are examined under the Act even more disproportionally, constituting 68 percent of children under age eight who are examined but only 28 percent of the SDPBC student population. Black children are also underdiagnosed with ASD, which can manifest in behaviors that lead to use of the Baker Act but which are not a legal basis for use of the Act.

## II. DEFENDANTS

34.

37. The School Board and SDPBC employ school police officers through the Palm Beach County School District Police Department.

38. The Police Department is supervised by the School Board and SDPBC's superintendent.

39. Defendant Dr. Donald E. Fennoy II is the superintendent of the School District of Palm Beach County.

40. Defendant Fennoy is responsible for supervision of the Palm Beach County School District Police Department, including selecting the Police Chief.

41. Defendant Fennoy has issued and has the power to issue in the future policies concerning the implementation of the Baker Act in SDPBC schools.

42. Defendant Daniel Alexander is the Police Chief of the Palm Beach County School District Police Department. Defendant Alexander is [illegible] supe-[illegible]

> (a)1. The person has refused voluntary examination after conscientious explanation and disclosure of the purpose of the examination; or
> 2. The person is unable to determine for himself or herself whether examination is necessary; and
> (b)1. Without care or treatment, the person is likely to suffer from neglect or refuse to care for himself or herself; such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; and it is not apparent that such harm may be avoided through the help of willing family members or friends or the provision of other services; or
> 2. There is a substantial likelihood that without care or treatment the person will cause serious bodily harm to himself or herself or others in the near future, as evidenced by recent behavior.

Fla. Stat. § 394.463(1).

53. While courts and some medical and mental health professionals are also authorized by the Baker Act to initiate involuntary examinations, police officers initiate the vast majority of examinations that begin while a child is in school.[3] SDPBC employs its own police officers through the Palm Beach County School District Police Department. Nearly every Baker Act originating in an SDPBC school was initiated by an officer of the School District Police Department.

54. SDPBC has "mobile response teams," also known as "mobile crisis units," which are intended to be used to assess and deescalate crisis situations and be available to support

[3] Initiation by a police officer provides the fewest procedural protections under the statute. When the court initiates an involuntary examination, it must "enter an ex parte order stating that a person appears to meet the criteria for involuntary examination and specifying the findings on which that conclusion is based," and the order "must be based on written or oral sworn testimony that includes specific facts that support the findings." Fla. Stat. § 394.463(2)(a)1. When a medical or mental health professional initiates an involuntary examination, they must "execute a certificate stating that he or she has examined a person within the preceding 48 hours and finds that the person appears to meet the criteria for involuntary examination and stating the observations upon which that conclusion is based." Fla. Stat. § 394.463(2)(a)1. In both cases, a police officer will then take the person into custody and transfer them to a receiving facility only if "other less restrictive means, such as voluntary appearance for outpatient evaluation, are not available." Fla. Stat. § 394.463(2)(a)1.-3. In contrast, for a police officer to initiate an involuntary examination, the only statutory requirement is to "execute a written report detailing the circumstances under which the person was taken into custody." Fla. Stat. § 394.463(2)(a)2.

disfigurement or protracted loss or impairment of the function of any body part or organ."

understandably and virtually inevitably traumatized by the experience.[5] The use of restraints, including mechanical restraints, has been found to subject children, especially children with disabilities, to a high risk of harm.[6] Compared to children who are not handcuffed during an encounter with police, children who are handcuffed by police report significantly higher emotional distress during the interaction, and social stigma and post-traumatic stress afterwards.[7]

62. This trauma is compounded when children arrive at a receiving facility, where they must wait hours or days for examination in a locked jail-like facility—indeed, some children refer to their time in Baker Act facilities as when they were "in jail." In this unfamiliar place, they often spend a night or more away from their parents for the first time in their lives. Sometimes they are not even allowed to talk to their parents for days, and in-person visitations are regularly limited to once a week.

63. The conditions within psychiatric facilities have been found to traumatize individuals. In one of the most comprehensive studies of experiences in psychiatric facilities, researchers found that patients experienced physical assault and sexual assault at high rates in mental health facilities, and most witness traumatic events while there.[8] Other studies have

similarly found that the majority of individuals in mental health facilities experience trauma victimization and that almost half suffer from post-traumatic stress disorder as a result of their experiences in the psychiatric facility itself.[9] These experiences can be especially damaging or retraumatizing for patients in psychiatric facilities who may already be vulnerable or have experienced past trauma.[10]

64. Childhood traumatic stress can have significant and lasting effects on a child's development. It can impact a child's physical and mental development, make it more difficult to learn and focus, and impact a child's way of thinking about the world around them and their own future.[11]

65. Receiving facilities are not equipped to provide treatment for ongoing psychiatric conditions. Involuntary examination is intended only to provide emergency stabilization of people in genuine psychiatric crises that pose a risk to themselves or others and to determine if longer-term institutionalization is necessary for that same purpose. Even if a child has a serious mental illness that is not responding to existing treatment, involuntary examination is not beneficial unless it serves these goals. Indeed, facilities often provide little or no therapy and are often unable to administer children medications they have already been prescribed and need.

66. Research on children subjected to involuntary examination has shown that children learn from the experience that if they are open with adults about their thoughts and emotions, including normal feelings of sadness, they will be punished and taken away from their parents.[12] This lesson makes it less likely that children will be willing to engage in future mental

[9] *See* Karen J. Cusack, et al., *Trauma Within the Psychiatric Setting: A Preliminary Empirical Report*, 30 Administration and Policy in Mental Health 453-460 (2003).
[10] *See* Frueh et al., n. 8 above.
[11] *See* The National Child Traumatic Stress Network, *What is Child Traumatic Stress?*, (2003), https://www.samhsa.gov/sites/default/files/programs_campaigns/childrens_mental_health/what-is-child-traumatic-stress.pdf.
[12] *See* Jones, N., Gius, B.K., Shields, M. et al., *Investigating the impact of involuntary psychiatric hospitalization on youth and young adult trust and help-seeking in pathways to care*, Soc Psychiatry & Psychiatric Epidemiol (2021).

they help their children deal with the trauma they have experienced from the involuntary examination.

## III. SDPBC ILLEGALLY INITIATED INVOLUNTARY EXAMINATIONS OF SCHOOLCHILDREN

### A. D.P.

70. D.P. was nine years old and in third grade when SDPBC school police Officer Joseph M. Margolis, Jr. seized him for involuntary examination after he became upset. According to the officer's report, the incident began when D.P. threw stuffed animals around the classroom.

71. D.P. was eligible for ESE with exceptionalities of ASD and Language Impaired. D.P. also has a medical diagnosis of ADHD, of which the school had been informed.

72. SDPBC has been aware of D.P.'s disabilities since at least 2013, when SDPBC identified D.P. as a child with disabilities through the district's Child Find program for preschool aged children. During his third-grade year, the 2018-2019 school year, he was placed in an ASD classroom.

73. D.P. lives with P.S., his grandmother, who is his legal guardian.

74. D.P. had targeted case management services in the community. SDPBC staff were aware of these services.

75. On multiple occasions in the 2018-2019 school year, D.P. was restrained in the ASD classroom. After at least one incident, school staff documented rug burns on D.P.'s head as a result of a restraint.

76. On October 22, 2018, P.S. met with school staff and expressed concern ov.001 Tc -0.-1(r)-0.001 i

78. According to Officer Margolis' report, on November 8, 2018, while in his ASD classroom, D.P. became upset and threw one or more objects.

79. D.P. said he was upset because his teacher told him he could not use the computer.

80.

89. Nonetheless, P.S. was called and told that D.P. would be taken for an involuntary examination under the Baker Act. P.S. explained that she had to go to her father's funeral and that D.P.'s aunt was caring for him. The district was aware that P.S. would be out of town for her father's funeral.

90. No medical or mental health professional was consulted about the decision to use the Baker Act on D.P.

91. In the Report of Law Enforcement Officer Initiating Involuntary Examination, Officer Margolis detailed the behavioral issues from the day and the statements allegedly made by D.P., along with the guardian's unavailability to pick him up. However, there was no mention of D.P.'s ASD diagnosis or placement in an ASD classroom, other options to deescalate D.P., or any attempts to contact D.P.'s aunt.

92. Upon information and belief, D.P. was handcuffed in the back of the police car awaiting transport for over an hour.

93. To induce D.P. to get in the police car, Officer Margolis told him that he was being taken home. D.P. did not know that he was being sent for involuntary examination until he

105. On August 30, 2019, E.S. was in his classroom working on a computer when he allegedly became upset and started ripping up and eating some pieces of paper. He was taken from the classroom to the main office.

106. At the office, E.S. yelled. While his BCBA worked to de-escalate him, he swung his arm and hit her twice in the chest, hard enough to leave a red mark but not hard enough to injure her. He also hit a window but did not damage it.

107. Shortly thereafter, E.S. was able to self-soothe and was seated with his arms crossed across his chest, breathing heavily. However, the school staff had already contacted Officer Jose Cuellar, the SDPBC Police Officer assigned to E.S.'s campus that day. Officer Cuellar was not regularly assigned to the campus—instead he was there that day filling in for another officer.

108. According to the BCBA's employee incident report, Officer Cuellar tackled E.S. to the ground and said, "If you're going to act like a fool I'm going to treat you like a fool," and "You are coming with me." E.S. became upset again.

109. When E.S. was slammed to the floor by Officer Cuellar, E.S.'s knees were scraped.

110. Even though E.S. had at that point de-escalated, Officer Cuellar decided to initiate an involuntary examination under the Baker Act and handcuffed E.S.

111. The BCBA who E.S. had struck in the chest disagreed with Officer Cuellar's decision to initiate an involuntary examination and stated in her report that "the tantrum behavior had ceased and was under control."

112. The school principal called and told J.S. that E.S. had been taken away in handcuffs but she did not know where E.S. had been taken.

113. In fact, the still-handcuffed E.S. had been transported in the back of a SDPBC police car to the Baker Act receiving facility.

114. Officer Cuellar later contacted J.S. and told her that, regardless of E.S.'s disability, he would have initiated an involuntary examination under the Baker Act. Officer

Cuellar also stated that there was "no point" in J.S. racing to the hospital because she was not going to be allowed to see E.S.

115. After examination, the Baker Act receiving facility told J.S. that E.S. was not a danger to himself or others, and she was allowed to take him home the same day.

116. E.S. returned to school after several days.

117. After the incident, E.S. was extremely afraid of Officer Cuellar and became upset whenever Officer Cuellar was present. E.S.'s fear extended to all men, especially men in uniform.

118. After the Baker Act incident, Officer Cuellar repeatedly approached E.S.'s BCBA and asked her to press charges against E.S. for hitting her. The BCBA refused.

119. After the incident, J.S. requested that the school district investigate the school and the officer's conduct. Office Cuellar told department investigators that he knew E.S. had a diagnosis of ASD.

120. ASD, a developmental disability, is explicitly excluded from the definition of mental illness under the Baker Act.

121. Officer Cuellar had no reason to believe that E.S. had a mental illness.

122. Officer Cuellar had no reason to believe that E.S. was at imminent risk of causing serious bodily harm to himself or others.

123. No mobile response team or other medical professional was consulted about the decision to initiate an involuntary examination under the Baker Act on E.S.

124. E.S.'s BCBA stated she did not think the involuntary examination under the Baker Act was appropriate.

125. SDPBC did not employ the Baker Act on E.S. again, but he was repeatedly suspended and physically restrained by school personnel.

126. After some time J.S. lost trust in the school's ability to ensure her son's education and keep him safe and placed E.S. in a private school using a state voucher program. If that trust is restored, she would be interested in exploring his return to SDPBC.

### C. L.A.

127. L.A. was eight years old and in the third grade when SDPBC school police Officer Howard Blocher seized her for involuntary examination, despite SDPBC's mobile response team recommending against involuntary examination.

128. More than a month earlier, L.A.'s mother, A.B., had provided school officials—including the assistant principal—with documentation of L.A.'s diagnosis of ADHD. This was L.A.'s only diagnosis.

129. School officials had a pattern of regularly calling A.B., who speaks English as a second language and was at that time living with L.A. in a homeless shelter, over minor matters and questioning her fitness as a mother. They regularly demanded she visit the school campus to discuss minor issues and sit with her children in class, even though they knew she had difficulty arranging transportation to the school campus and this disrupted her ability to find and retain employment.

130. School officials were also aware that L.A. was receiving therapy outside of school and had a targeted case manager.[23]

131. On March 1, 2019, L.A., who loves to draw, drew a picture of a rocket with a girl hugging it and showed it some classmates. A teacher saw it and thought that it was a drawing of male genitalia. L.A. became upset out of embarrassment and fear that she would get in trouble.

132. L.A. ran out of the classroom, as she had done on previous occasions when she was upset. She typically went to the assistant principal, who would talk to her and help her return to class. On this day, she was intercepted by the principal, who did not employ the same de-escalation strategies.

133. Instead, school staff contacted both the school police officer, Officer Howard Blocher, and the mobile response team, and brought L.A. to the principal's office.

[23] A targeted case manager assists a client in accessing needed medical, mental health, social, educational, and other services.

141. Officer Blocher had no reason to believe that L.A. posed an imminent danger of serious bodily harm to herself or others.

142. L.A.'s mother, A.B. was contacted by school staff. Since A.B. had no vehicle for transportation, she walked to the school. She asked to see her child and the school refused. She asked to take her home and the school refused.

143. A.B. told the school staff that she would come and take care of L.A., and that L.A. did not need to be hospitalized. Officer Blocher deemed the mother "uncooperative" because she demanded to see her child. Officer Blocher told A.B. she could see L.A. at the hospital.

144. L.A.'s therapist and case manager were never contacted to determine possible strategies to deescalate L.A., or whether they could have provided treatment and services to her

167. The school and police officers did not take action to deescalate W.B. In particular, they failed to contact W.B.'s counselor or prescriber; told the mobile response team not to come; and handcuffed a child who has an aversion to touch.

168. Officer Brown had no reason to believe that W.B. posed an imminent danger of serious bodily harm to himself or others.

169. Instead, Officer Brown transported W.B., handcuffed, in his police car, to a receiving facility for involuntary examination. This facility is more than 50 miles away and takes an hour to drive to without traffic.

170. As of the next day, W.B. was still in a "hold department" and not admitted because there were no beds available. He spent the previous day and night in a reclining chair in front of the television in the emergency room. His parents were not permitted to visit him at the facility.

171. Once W.B. was finally moved to the children's department, he was involuntarily detained for another day before he was finally examined by a doctor.

172. After W.B. was evaluated and released, the only change to his mental health treatment was a slight increase in his existing medication – medication that school staff were aware he was already prescribed.

173. W.B. expressed that he did not want to go back to the Baker Act facility and that he did not like being away from his family.

174. Because of the SDPBC's unnecessary use of the Baker Act against him and because W.B. was not allowed to return to school until a meeting with school staff was scheduled, W.B. missed a significant amount of school and L.H. missed days of work.

175. W.B. and his family have suffered from the SDPBC's use of involuntary examinations under the Baker Act. The trauma of being handcuffed, taken away from his family in a police car, and locked away from them for days has created tremendous harm for W.B.

**E. M.S.**

176. M.S. was eleven years old and in sixth grade when she was twice seized from her school for involuntary examination under the Baker Act, despite the availability of less restrictive options.

177. M.S. lives with her parents S.S. and R.S.

178. Over the course of 2020, M.S. experienced a number of traumatic events.

179. On January 27, 2021, M.S. was allegedly seen in her art class scratching her left forearm with a dull, clay-modeling knife. The clay-modeling knife had been provided to M.S. by her art teacher for use in art class, and M.S. referred to it as a "Play-Doh knife."

180. S.S. and R.S. were called to M.S.'s school by the school's assistant principal. They were told that M.S. had "scratched herself," and were told by the assistant principal that the school wanted S.S. and R.S. to come to school to create a school safety plan for M.S.

181. When they arrived at the school, they were brought to the assistant principal's office where they met with SDPBC staff, a child protective investigator from the Department of Children and Families and a sheriff's deputy from the Palm Beach County Sheriff's Office.

182. After the group had created a safety plan, S.S. and R.S. were informed that M.S. would be transported to a Baker Act receiving facility for involuntary examination. S.S. and R.S. questioned the appropriateness of the involuntary examination in light of M.S.'s recent traumas. R.S. stated that, although M.S. had scratched her forearm, everyone in the meeting had agreed that she was not suicidal. R.S. asked if it was necessary to take such an extreme step as initiating an involuntary examination under the Baker Act.

183. The sheriff's deputy responded to R.S. by saying that the Baker Act gives them the authority to take children, not just when they are suicidal, but also when they have harmed themselves. R.S. and S.S. were informed that there was no other option.

184. The sheriff's deputy handcuffed M.S. and escorted her to a police car. This happened during the school dismissal period and M.S. was seen by fellow students while she was escorted to the police car by the sheriff's deputy.

192. On February 25, 2021, S.S. and R.S. were called by the assistant principal with Officer Silva and Officer Doe, another SDPBC officer, on the line. They were informed that M.S. had attempted to cut herself with the corner of a plastic school identification card.

193. S.S. and R.S. were told that SDPBC was going to initiate an involuntary examination under the Baker Act for M.S. S.S. and R.S. asked if they could wait to transport M.S. to the receiving facility until her parents could come to the school. Officer Doe told them that he could not wait for them to arrive at school because he needed to return to lunch duty.

194. Neither Officer Silva nor Officer Doe had reason to believe that M.S. posed an imminent danger of serious bodily harm to herself or others. immy c Neither Doe 0.002 TcTw (y c)-1(0 pd [(imgr

201. M.S. and her family have suffered greatly from the trauma of SDPBC's misuse of the Baker Act on her. M.S.'s involuntary examination compounded her pre-existing traumatic experiences. M.S. has told her mother that she felt a lot of guilt and shame, because she thought she was treated like a criminal in front of her classmates when she was taken to the facility. After M.S.'s experience with the Baker Act, she has become withdrawn and gets upset more easily. This harm has created lasting impacts on M.S.

**F. Other Children**

202. SDPBC's treatment of D.P., E.S., W.B., M.S., and L.A. is sadly typical of its use of the Baker Act on youth. Review of other police reports written by SDPBC officers to justify

c. After a police officer learned that a thirteen-year-old girl had been treated by the school nurse for scratching her wrist with a plastic knife, he took her for involuntary examination. The officer made the decision without consulting a mobile response team even though the student had an appointment with her counselor later that day and had documented trauma from a past experience with the Baker Act.

d. An eight-year-old who made comments suggesting a desire to self-harm was taken for involuntary examination by school police against the recommendations of SDPBC's own mobile response team.

e. School police used the Baker Act on a twelve-year-old boy, without the involvement of a mobile response team, after he left class without permission and was "defiant" toward staff when they tried to restrain him. The police report gives no reason to think he had a mental illness.

f. A school police officer and a mobile response team member employed the Baker Act on a seven-year-old boy after he told an officer that he wanted to "tie up [his teacher]

These incidents, and the many more like them in the District's records, show that the District's misuse of the Baker Act on D.P., E.S., W.B., M.S., and L.A. were not aberrations but instead consistent with its routine practice.

**IV.**

times in 2017-

c. In about 10 percent of cases, there was evidence the child had been involuntarily examined under the Baker Act previously.

212. SDPBC's disproportionate and inappropriate use of the Baker Act is unfortunately unsurprising given the inadequate and inaccurate information about the law the district provides to its employees.

213. Police officers employed by the SDPBC initiate involuntary examination under the Baker Act of children independently or, more typically, after they are contacted by teachers or school administrators. Despite assigning police to determine when young children will undergo the traumatic experience of involuntary psychiatric examination, SDPBC provides police officers with inaccurate information about the legal standard for involuntary examination and inadequate training on applying that legal standard accurately and without discrimination against children with disabilities.

214. In an August 10, 2018 "Bulletin" entitled "Baker Act Decision Tree Protocol," Deputy Superintendent Keith Oswald wrote to district principals that the "[c]riteria for an involuntary exam are that the individual: presents a danger to self or others; and/or appears to have a mental illness as determined by a licensed mental health professional."

215. This short statement contains multiple false claims and crucial omissions about the Baker Act. The use of the term "and/or" is patently incorrect, as *both* of the identified factors are required in order to legally initiate a Baker Act. The statement also omits the statutory requirements that the danger posed by the person subject to the Baker Act must be "in the near future," "evidenced by recent behavior," and constitute "serious bodily harm." Fla. Stat. § 394.463(1)(b)2.

216.

217. The Bulletin does not clarify that behavior that is the result of a developmental disability is not a legal basis for use of the Baker Act.

218. The 2018 Bulletin also includes a "Baker Act Decision Tree." This document suggests that police will make the final decision to employ the Baker Act, even when mental health professionals are involved or disagree: it states that after the "school contacts District Response Team/School Police" and the "student remains in crisis and exhibits behaviors which potentially meet Baker Act criteria" then either "School Police determines behavior does not meet Baker Act criteria" or "School Police/licensed staff initiate Baker Act, if criteria met."

219. Under the Bulletin, contacting parents is "recommended" but there is no suggestion that parental consent be sought or obtained before a child is transported to a receiving facility. Instead, the Decision Tree includes parents in only two steps. First, after learning of a potential Baker Act situation, the tree indicates that a principal should contact the parents but does not suggest that they be involved further nor that their involvement might change the course of the situation. Second, the Decision Tree provides that after a school police officer or licensed staff has initiated an exam under the Act, a "School Designee contacts and informs parent(s)/legal guardian(s) and informs them that the decision has been made to BA and is being transported."

220. SDPBC has not publicly disavowed use of the Baker Act Decision Tree or publicly released any updated or different Baker Act policy.

221. SDPBC provides its officers with plainly inadequate training on determining when it is necessary that young children undergo the traumatic experience of involuntary psychiatric examination.

222. According to SDPBC's response to public records requests, the only Baker Act training the district provides to its officers is a single 23-

"individuals who have a mental illness, *or* who may harm or neglect themselves or others" (emphasis added). Like the language in the Bulletin, this a serious misstatement of the law. In reading the statute out loud, the instructor entirely omits the mental illness requirement. The video also states that "[y]oung children that [sic] cannot regain control AND are putting themselves at significant risk" are "candidates" for the Baker Act, but does not mention any of the other statutory requirements such as mental illness, substantial bodily harm, or imminence. Finally, the instructor recommends that officers contact mobile response teams only "if you are unsure of whether to Baker Act a person."

223. The SDPBC Police Department's policy on Baker Act use is similarly inadequate. It quotes the statutory criteria for Baker Act initiation but gives officers no other guidance on when to use the Act. It does not define any of the terms in the Baker Act or give any examples of situations in which it could be appropriately used. It does not address the Baker Act's requirement that handcuffs and other restraints only be used when necessary for safety purposes. Fla. Stat. § 394.459(1). Finally, the policy says that parents will be contacted when involuntary examination under the Baker Act is initiated but does not suggest or require that this occur before the child is transported to a receiving facility or that parents be involved in the decision to do so.

224.

school police officers can and sometimes do to initiate involuntary examinations regardless of these recommendations.[27]

227. SDPBC has no policy or practice of regularly reviewing or evaluating individual us

233. Over the 2018-19 and 2019-2020 school years, the school district's police department conducted two internal affairs investigations of officers who initiated a Baker Act, including the case of E.S. Both were conducted only after the child's parents made a complaint.

234. In E.S.'s case, the use of the Baker Act was inappropriate: E.S.'s behavior was due to his ASD and he was not a danger to himself or others in any respect—let alone an imminent danger or a danger of serious bodily harm. Despite the complete absence of any evidence that E.S. met the legal criteria, the Internal Affairs investigation found that Officer Cuellar was not in violation of the District's Baker Act procedures. The Internal Affairs report

He instead concluded that, unlike other children with ASD whom he perceived as “in their own world,” this child was “cognizant of his actions.” The officer’s statement suggests that he thought the child’s behavior deserved punishment because his actions were “calculated” and that he viewed use of the Baker Act as a form of punishment.

239.

250. Nonetheless, despite repeatedly being made aware of Baker Act misuse, SDPBC

259. Through the acts and omissions set forth above, Defendants violate Title II of the ADA and discriminate against Plaintiffs by reason of their disability or their known relationship or association with individuals with disabilities by:

a. Denying Plaintiff Children an opportunity to participate in and benefit from education services equal to that afforded to other students;

b. Denying Plaintiff Children education services that are as effective in affording equal opportunity to obtain the same result, gain the same benefit, or reach the same level of achievement as that provided to other students;

c. Denying Plaintiff Children the opportunity to receive educational programs and services in the most integrated setting appropriate to their needs;

d. Putting Plaintiff Children at risk of denial of the opportunity to receive educational programs and services in the most integrated setting appropriate to their needs;

e. Failing to reasonably modify SDPBC's programs and services as needed to avoid discrimination against Plaintiffs;

f. Using methods of administration that have the effect of defeating or substantially impairing the accomplishment of the objectives of the Defendants' programs with respect to the Plaintiffs; and

g. Excluding or otherwise denying equal services, programs, or activities to Plaintiffs because of their disabilities or their known relationship or association with individuals with disabilities.

260. The Plaintiff Children did not and do not pose a significant risk to the health or safety of others, or any risk posed could have been or could be eliminated by the provision of reasonable modifications and/or non-discriminatory services.

## COUNT 4

**P.S., J.S., A.B., L.H., S.S., and R.S and FL NAACP against All Defendants: § 1983 Procedural Due Process Claim for Deprivation of Parental Right to Custody and Control**

280. Plaintiffs re-allege the paragraphs 12-21, 31-49, and 59-255.

281. Parents have a fundamental right to the care, custody, and control of their children.

282. Parents cannot be deprived of this fundamental right without constitutionally sufficient due process under the Fourteenth Amendment.

283. Plaintiff Parents bring this claim against Defendants because SDPBC employee school police officers took Plaintiff Children into their custody and transported them to a receiving facility, where Plaintiff Children were denied contact with their parents, without notifying or seeking consent from Plaintiff Parents, and/or over Plaintiff Parents' objections.

284. No actual or perceived emergency existed that would justify SDPBC depriving Plaintiff Parents of their fundamental rights without any due process protections.

285. The failure to provide any type of notice or consent requirement prior to removing Plaintiff Children from their parents' custody and control is constitutionally insufficient and violates Plaintiff Parents' procedural due process rights.

286. These violations of Plaintiffs Parents' rights by SDPBC police officers were the result of longstanding District policies adopted by, ratified by, acquiesced to and endorsed by Defendants School Board, Fennoy, and Alexander and their predecessors. The District's Baker Act Decision Tree provides that even contacting parents before initiating an examination, let alone seeking their permission, is only "recommended."

287. These violations were also the result of those Defendants' failure to supervise and train SDPBC police to seek parental consent before initiating a Baker Act examination. Despite being aware that hundreds of children were being Baker Acted and that many of those Baker Acts could be prevented by contacting children's parents, Defendants failed to train their officers to do so.

288. These violations interfered with the Plaintiff Parents' relationship with their children at a time those children needed them most. This caused Plaintiff Parents and Plaintiff Children great distress. Without adequate relief Plaintiffs are at significant risk of suffering similar harms in the future.

289. Due to Defendants' ongoing violations of the Fourteenth Amendment, injunctive and declaratory relief are appropriate remedies.

## COUNT 5

### P.S., J.S., A.B., L.H., S.S., R.S., and FL NAACP against All Defendants: § 1983 Procedural Due Process Claim for Control Over Medical Decision-Making Under the Fourteenth Amendments

290. Plaintiffs re-allege paragraphs 12-21, 31-49, and 59-255.

291. Parents have a fundamental right to the care, custody, and control of their children.

292. Parents c

Defendants School Board, Fennoy, and Alexander and their predecessors. The District's Baker Act Decision Tree provides that even contacting parents before initiating an examination, let alone seeking their permission, is only "recommended."

298. These violations were also the result of those Defendants' failure to supervise and train SDPBC police to seek parental consent before initiating a Baker Act examination. Despite being aware that hundreds of children were being seized for involuntary examination under the Baker Act and that many of those Baker Acts could be prevented by contacting children's parents, Defendants failed to train their officers to do so.

299. These violations interfered with Plaintiff Parents' ability to make the best medical decisions for their children, harming the interests of both parents and children in ensuring that children's medical needs are met adequately. Without adequate relief Plaintiffs are at significant risk of suffering similar harms in the future.

300. Due to Defendants' ongoing violations of the Fourteenth Amendment, injunctive and declaratory relief are appropriate remedies.

## COUNT 6

### All Plaintiffs against All Defendants: § 1983 Claim for Violation of Due Process Right to be Free of Unreasonable Seizures under the Fourth and Fourteenth Amendments

301. Plaintiffs re-allege paragraphs 12-49 and 59-255.

302. The Fourth Amendment prohibits unreasonable seizures in the context of involuntary psychiatric examinations.

303. The legality of a seizure by a school employee depends on the reasonableness, under all the circumstances, of the seizure. The reasonableness of the seizure is determined using a two-step inquiry: "first, one must consider 'whether the . . . action was justified at its inception.'" *New Jersey v. T.L.O.*, 469 U.S. 325, 341 (1985) (internal citations omitted).

304. "[S]econd, one must determine whether the [seizure] as actually conducted 'was reasonably related in scope to the circumstances which justified interference in the first place.'" *Id.*

the [seizure] and not excessively intrusive in light of the age and sex of the student and the nature of the infraction." *Id.* at 342.

305. School employees, including SDPBC police officers, regularly seize children for involuntary examination who plainly do not meet the criteria of the Baker Act. Specifically, school staff, typically police officers, officers seize children by sending them for involuntary examination when they do not have a reasonable belief that the children have a mental illness and/or when they do not have a reasonable belief that the children are at imminent risk of causing serious bodily harm to themselves or others.

306. Under these circumstances, seizure of a child for involuntary examination is unreasonable and unconstitutional.

307. SDPBC does not accurately train its staff on the law concerning when and on who the Baker Act may legally be used. It does not conduct any after-the-fact review of its employees use of the Act. And when abuses of the Act are reported, it takes no corrective action.

308. As a result of Defendants' unreasonable seizure of children, Plaintiffs have suffered and continue to suffer emotional distress, pain, and humiliation. Plaintiff Children continue to experience fear, distrust, and anxiety, as well as other impacts on their education.

309. Due to Defendants' ongoing violations of the Fourth Amendment, injunctive and declaratory relief are appropriate remedies.

## COUNT 7

**D.P. against the School Board, Superintendent Fennoy, and Officer Margolis: § 1983 Claim for Violation of Due Process Right to be Free of Unreasonable Seizures under the Fourth and Fourteenth Amendments**

310. Plaintiffs re-allege paragraphs 12-13, 34-41, 44, 52-69, 70-99, and 202-255.

311. The Fourth Amendment prohibits unreasonable seizures in the context of involuntary psychiatric examinations.

312. The legality of a seizure by a school employee depends on the reasonableness, under all the circumstances, of the seizure. The reasonableness of the seizure is determined using

a two-

failure to obtain and follow the recommendations of mental health professionals about whether D.P. should be examined was consistent with District Policies adopted or ratified by Defendants School Board and Fennoy. Had Defendants School Board and Fennoy supervised school staff's use of the Baker Act appropriately, they could have identified overuse of the Baker Act, including on children with ASD, and taken steps that would have prevented D.P.'s involuntary examination under the Baker Act.

319. As a result of Defendants' unreasonable seizure of him, D.P. has suffered and continues to suffer emotional distress, pain, and humiliation. D.P. underwent more than two years of therapy and continues to require additional counseling. D.P. also was more aggressive and became upset more easily after the event. D.P. continues to experience fear, distrust, and anxiety, as well as other impacts on his education.

320. Due to Defendants' violation of D.P.'s right to be free from unreasonable seizures, D.P. is entitled to damages.

## COUNT 8

**E.S. against the School Board, Superintendent Fennoy, and Officer Cuellar: § 1983 Claim for Violation of Due Process Right to be Free of Unreasonable Seizures under the Fourth and Fourteenth Amendments**

321. Plaintiffs re-allege paragraphs 14-15, 34-41, 45, 52-69, 100-126, and 202-255.

322. The Fourth Amendment prohibits unreasonable seizures in the context of involuntary psychiatric examinations.

323. The legality of a seizure by a school employee depends on the reasonableness, under all the circumstances, of the seizure. The reasonableness of the seizure is determined using a two-step inquiry: "first, one must consider 'whether the . . . action was justified at its inception.'" *New Jersey v. T.L.O.*, 469 U.S. 325, 341 (1985) (internal citations omitted).

324. "[S]econd, one must determine whether the [seizure] as actually conducted 'was reasonably related in scope to the circumstances which justified interference in the first place.'" *Id.* The measures employed during the seizure must be "reasonably related to the objectives of

the [seizure] and not excessively intrusive in light of the age and sex of the student and the nature of the infraction." *Id.* at 342.

325. Officer Cuellar knew that E.S.'s behavior was due to ASD, a developmental disability, and not due to mental illness as defined in the Baker Act. He did not reasonably believe that E.S.'s behavior was due to mental illness. As a result, seizure under the authority of the Baker Act was not legal and Officer Cuellar's seizure of E.S. was not justified at its inception.

326. In addition, because Officer Cuellar did not reasonably believe that E.S.'s behavior posed an imminent risk of serious bodily harm to himself or others, seizure under the authority of the Baker Act was not legal and Officer Cuellar's seizure of E.S. was not justified at its inception.

327. Even if Office Cuellar's seizure of E.S. was justified at its inception, the seizure as actually conducted was not reasonably related to the objectives of the seizure and was excessively intrusive in light of E.S.'s age and his behavior. Nine-year-old E.S.'s behavior consisted of swinging his arms in the air. In response, in the process of seizing E.S., Officer Cuellar slammed E.S., a nine-year-old boy, on a couch and on the floor, scuffing his knees, and the handcuffed him. E.S. remained in the handcuffs for approximately at least 30 minutes as he was transported to a receiving facility.

328. Officer Cuellar violated the Fourth Amendment prohibition on unreasonable seizures and is liable for damages under § 1983.

329. Officer Cuellar exhibited wanton disregard and malicious intent in his seizure of E.S.

330. The School Board and Superintendent Fennoy are liable for Officer Cuellar's actions because they knew that Officer Cuellar was inadequately trained and supervised and knew that, based on at least one earlier materially similar instance of unconstitutional conduct by SDPBC police officers, additional training and supervision were necessary to prevent further

violations, and they made a deliberate choice not to provide additional training or supervision to Officer Cuellar.

331. Specifically, Officer Cuellar was not trained by SDPBC in the kind of behavior that could reasonably lead to an inference that a child is a danger to himself or others or that the Baker Act could not be legally used for behavior that is a manifestation of a child's ASD. His failure to obtain and follow the recommendations of mental health professionals about whether E.S. should be examined was consistent with District Policies adopted or ratified by Defendants School Board and Fennoy. Had Defendants School Board and Fennoy supervised school staff's use of the Baker Act appropriately, they could have identified overuse of the Baker Act, including on children with ASD, and taken steps that would have prevented E.S.'s involuntary examination under the Baker Act.

332. As a result of Defendants' unreasonable seizure of him, E.S. has suffered and continues to suffer emotional distress, pain, and humiliation. After the incident, E.S. was deeply afraid of men in uniform, including Officer Cuellar, who was still a regular presence at his school. E.S. eventually had to leave public school entirely to feel safe. E.S. continues to experience fear, distrust, and anxiety, as well as other impacts on his education.

333. Due to Defendants' violation of E.S.'s right to be free from unreasonable seizures, E.S. is entitled to damages.

## COUNT 9

**L.A. against the School Board, Superintendent Fennoy, and Officer Blocher: § 1983 Claim for Violation of Due Process Right to be Free of Unreasonable Seizures**

a two-step inquiry: "first, one must consider 'whether the . . . action was justified at its inception.'" *New Jersey v. T.L.O.*, 469 U.S. 325, 341 (1985) (internal citations omitted).

337. "[S]econd, one must determine whether the [seizure] as actually conducted 'was reasonably related in scope to the circumstances which justified interference in the first place.'" *Id.* The measures employed during the seizure must be "reasonably related to the objectives of the [seizure] and not excessively intrusive in light of the age and sex of the student and the nature of the infraction." *Id.* at 342.

338. Officer Blocher's seizure of L.A. was not justified at its inception because Officer Blocher did not reasonably believe that L.A.'s behavior posed an imminent risk of serious bodily harm to herself or others, which is required for a legal seizure under the Baker Act. Specifically, eight-year-old L.A.'s behavior consisted of allegedly stating that she wanted to kill herself and did not want to go home with her mom, and eating paper.

339. Even if Officer Blocher's seizure of L.A. was justified at its inception, the seizure as actually conducted was not reasonably related to the objectives of the seizure and was excessively intrusive in light of L.A.'s age and behavior. Officer Blocher handcuffed L.A. for a total of approximately at least five minutes while she was transported to a police car for transport to a receiving facility.

340. Officer Blocher violated the Fourth Amendment prohibition on unreasonable seizures and is liable for damages under § 1983.

341. The School Board and Superintendent Fennoy are liable for Officer Blocher's actions because they knew that Officer Blocher was inadequately trained and supervised and knew that, based on at least one earlier materially similar instance of unconstitutional conduct by SDPBC police officers, additional training and supervision were necessary to prevent further violations, and they made a deliberate choice not to provide additional training or supervision to Officer Blocher.

342. Specifically, Officer Blocher was not trained by SDPBC in the kind of behavior that could reasonably lead to an inference that a child is a danger to herself or others or that the

Baker Act could not be legally used for behavior that is a manifestation of a child's disability. His use of the Baker Act on L.A. against the recommendations of the mobile response team was consistent with District Policies adopted or ratified by Defendants School Board and Fennoy. Had Defendants School Board and Fennoy supervised school staff's use of the Baker Act appropriately, they could have identified overuse of the Baker Act and taken steps that would have prevent

the [seizure] and not excessively intrusive in light of the age and sex of the student and the nature of the infraction." *Id.* at 342.

349. Officer Brown's seizure of W.B. was not justified at its inception because Officer Brown did not reasonably believe that W.B.'s behavior posed an imminent risk of serious bodily harm to herself or others, which is required for a legal seizure under the Baker Act. Specifically, ten-year-old W.B.'s behavior consisted of throwing chairs and pushing staff.

350. Even if Officer Brown's seizure of W.B. was justified at its inception, the seizure as actually conducted was not reasonably related to the objectives of the seizure and was excessively intrusive in light of W.B.'s age and behavior. Officer Brown handcuffed W.B. for approximately at least 40 minutes

scratching her wrist with a dull clay-modeling knife and with the corner of a school identification card.

361. Even if Officer Silva and Office Doe's seizure of M.S. was justified at its inception, the seizure as actually conducted was not reasonably related to the objectives of the seizure and was excessively intrusive in light of M.S.'s age and behavior. Officer Silva and Officer Doe handcuffed M.S. for a total of approximately at least ten minutes while she was transported to a receiving facility.

362. Officer Silva and Officer Doe violated the Fourth Amendment prohibition on unreasonable seizures and are liable for damages under § 1983.

363. The School Board and Superintendent Fennoy are liable for Officer Silver and Officer Doe's actions because they knew that Officer Silva and Officer Doe were inadequately trained and supervised and knew that, based on at least one earlier T(o)5(f)30 Td1(d)1( )5(w)Four8nanewgiving

incident she has become withdrawn and is more easily upset. Her grades have dropped precipitously. She has told her family that she feels guilt and shame from being treated like a criminal in front of her classmates. M.S. continues to experience fear, distrust, and anxiety, as well as other impacts on his education.

366.

## COUNT 13

**D.P. against the School Board, Superintendent Fennoy and Officer Margolis: § 1983 Claim for Excessive Force under the Fourth and Fourteenth Amendments**

374. Plaintiffs re-allege paragraphs 12-13, 34-41, 44, 58, 60-61, 70-99, 202-203, 224, 234-240, and 255.

375. The Fourth Amendment prohibits the use of excessive force by police officers in conducting arrests and other seizures.

376. To determine where force is excessive, courts examine (1) the need for the application of force, (2) the relationship between the need and amount of force used, and (3) the extent of the injury inflicted.

377. In the process of seizing D.P., Officer Margolis handcuffed him. The handcuffs remained on nine-year-old D.P. prior to and during transportation to the receiving facility for a total of approximately at least 90 minutes.

378. The use of force was clearly excessive and unreasonable because D.P. did not pose an immediate safety threat to Officer Margolis, himself, or others and D.P. did not try or threaten to escape Officer Margolis' custody, either at the school or during transport.

379. D.P. was psychologically injured by the use of handcuffs.

380. Office Margolis, while acting under color of law, intentionally committed acts which violated D.P.'s right not to be subjected to excessive or unreasonable force, and this conduct caused injuries to D.P.

381. Accordingly, Officer Margolis subjected D.P. to excessive force and is liable under § 1983.

382. Defendants School Board and Fennoy are liable for Officer Margolis' use of excessive force because they knew that Officer Margolis was inadequately trained and supervisnd r OfAchato

who was still a regular presence at his school. E.S. continues to experience fear, distrust, and anxiety, as well as other impacts on his education.

400. Due to Defendants' violation of E.S.'s right to be free from excessive force, E.S. is entitled to damages.

## COUNT 15

### L.A. against the School Board, Superintendent Fennoy and Officer Blocher: § 1983 Claim for Excessive Force under the Fourth and Fourteenth Amendments

401. Plaintiffs re-allege paragraphs 18-19, 34-41, 46, 58, 60-61, 127-153, 202-203, 224, 234-240, and 255.

402. The Fourth Amendment prohibits the use of excessive force by police officers in conducting arrests and other seizures.

403. To determine where force is excessive, courts examine (1) the need for the application of force, (2) the relationship between the need and amount of force used, and (3) the extent of the injury inflicted.

404. In the process of seizing eight-year-old L.A., Officer Blocher handcuffed her. The handcuffs remained on eight-year-old L.A. until he placed her in his police car, approximately at least five minutes.

405. The use of force was excessive and unreasonable because L.A. did not pose an immediate safety threat to Officer Blocher, herself, or others and L.A. did not try or threaten to escape Officer Blocher's custody, either at the school or during transport.

406. L.A. was psychologically injured by the use of handcuffs.

407. Office Blocher, while acting under color of law, intentionally committed acts which violated L.A.'s right not to be subjected to excessive or unreasonable force, and this conduct caused injuries to L.A.

408. Accordingly, Officer Blocher subjected L.A. to excessive force and is liable under § 1983.

409. Defendants School Board and Fennoy are liable for Officer Blocher's use of excessive force because they knew that Officer Blocher was inadequately trained and supervised and knew that, based on at least one earlier materially similar instance of unconstitutional conduct by SDPBC police officers, additional training and supervision were necessary to prevent further violations, and they made a deliberate choice not to provide additional training or supervision to Officer Blocher.

410. Defendants School Board and Fennoy are also liable because their official policy or custom of requiring handcuffing during transportation to receiving facilities directly caused L.A.'s injuries. As a result of Defendants' use of excessive force against her, L.A. has suffered and continues to suffer emotional distress, pain, and humiliation. Though she did not have a

Defathtr(e)1 re Tw 12.44 0 Td 4.695 EM

423. Due to Defendants' violation of W.B.'s right to be free from excessive force, W.B. is entitled to damages.

## COUNT 17

### M.S. against the School Board, Superintendent Fennoy, Officer Silva, and Officer Doe: § 1983 Claim for Excessive Force under the Fourth and Fourteenth Amendments

424. Plaintiffs re-allege paragraphs 20-21, 34-41, 48-49, 58, 60-61, 175-203, 224, 234-240, and 255.

425. The Fourth Amendment prohibits the use of excessive force by police officers in conducting arrests and other seizures.

426. To determine where force is excessive, courts examine (1) the need for the application of force, (2) the relationship between the need and amount of force used, and (3) the extent of the injury inflicted.

427. In the process of seizing M.S., Officer Silva handcuffed her.

similar instance of unconstitutional conduct by SDPBC police officers, additional training and supervision were necessary to prevent further violations, and they made a deliberate choice not to provide additional training or supervision to Officer Silva and Officer Doe.

433. Defendants School Board and Fennoy are also liable because their official policy or custom of requiring handcuffing during transportation to receiving facilities directly caused M.S.'s injuries.

434. As a result of Defendants' use of excessive force against her, M.S. has suffered and continues to suffer emotional distress, pain, and humiliation. Since the incident she has become withdrawn and is more easily upset. Her grades have dropped precipitously. She has told her family that she feels guilt and shame from being treated like a criminal in front of her classmates. M.S. continues to experience fear, distrust, and anxiety, as well as other impacts on his education.

435. Due to Defendants' violation of M.S.'s right to be free from excessive force, M.S. is entitled to damages.

## PRAYER FOR RELIEF

436. **WHEREFORE**, Plaintiffs request that this Court enter judgment in their favor and grant the following relief:

a. Adjudge and declare that Defendants' actions, policies, practices, and procedures regarding use of the Baker Act violate the rights of Plaintiffs as set forth above in this complaint;

b. Award actual damages to the individual Plaintiffs for harms suffered due to Defendants' illegal use of the Baker Act against Plaintiff Children;

c. Award punitive damages against Officer Cuellar and to the individual Plaintiff E.S. for wanton and malicious violation of his constitution int ah individual

assigns, and all persons acting in concert to:

i. Immediately discontinue all actions, policies, practices, and procedures that do not comply with the laws cited above in this complaint;

ii. Create and broadly disseminate to District teachers, administrators, other district and school-site staff (including District police department staff), and families a School Board-approved written policy statement that (a) explains in detail the circumstances in which the Baker Act may and may not be legally used against students, (b) describes the ways in which inappropriate Baker Act use harms students, (c) directs that no student may be referred for involuntary examination under the Baker Act unless: parental consent for involuntary examination has been obtained or the child

iv. Create a committee (including at least one member from District ESE, School Psychology Guidance, and one external expert), to review the file of, and consult with school staff regarding, any student who has been subjected to an involuntary examination under the Baker Act more than once during the prior or current school year, to identify any services and supports that should be provided to the child, and to prevent against repetitive, unnecessary, traumatic referrals for involuntary examination;

v. Make the following deidentified, aggregated data available to families and to the public on the District website and school-site websites: number of involuntary examinations under the Baker Act initiated by school staff; number of suspensions; number of expulsions; number of student arrests while at school;

vi. For any student referred by Defendants for involuntary examination under the Baker Act, within five days of the student's return to school, convene a School Based Team ("SBT") or Child Study Team ("CST") meeting, whichever is appropriate, that includes a District ESE Behavior Resource Teacher, Behavior Health Professional, School Psychologist, and parents/guardians, and, for students with a dependency team, the dependency team and the Multi-Agency Network for students with Emotional/Behavioral Disabilities, to review the situation and ensure a supported, successful return to school;

vii. Implement improved practices as recommended by experts and engage in ongoing monitoring and evaluation by experts, in the following areas:

(1) District-wide timely access to mental and behavioral health

services, supports, programs, and activities for all students in the most integrated setting appropriate, including positive behavioral supports, trauma-informed de-escalation practices, trauma-informed crisis management systems, universal mental health prevention and promotion interventions and programs, multi-tiered services and supports, targeted interventions, and social-emotional learning programs;

(2) District-wide availability of effective alternatives to the use of involuntary examination under the Baker Act, including ensuring that school arrests are not substituted for involuntary examination under the Baker Act;

(3) Use of and procedures for involuntary examination under the Baker Act for students, particularly students with disabilities and students of color, including in relation to disproportionate use of the Baker Act and the elimination of traumatic aspects of transport for involuntary examination;

(4) Reasonable accommodations and/or modifications to policies and procedures to avoid discrimination against students with disabilities and students of color and to avoid unnecessary traumatization of students;

(5) Policies, procedures, and training to ensure parents/guardian rights to make medical decisions about mental health treatment for their children are protected, and that parents/guardians are provided with a meaningful

opportunity to support de-escalation prior to referral for involuntary examination under the Baker Act;

(6) Training, accountability, and ongoing development for the District's personnel (including school police) regarding: the statutory criteria for use of the Baker Act; developmentally appropriate, trauma-informed crisis response practices; trauma-informed classroom practices; how to appropriately identify and distinguish behaviors that may indicate a serious, imminent risk of harm; understanding of the impact of trauma (including family separation and interaction with police) on child and adolescent development; and limiting the use of the Baker Act, including through provision of appropriate school-based and community-based interventions for students at risk of involuntary examination under the Baker Act;

(7) District's collection and regular review of data regarding use of the Baker Act; and

(8) Effective use of mobile crisis response teams in responding

as authorized by law; and

h. Grant such other and further relief as the Court deems just and proper.

Dated: June 22, 2021