IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

D.P. et al.,

R E O L J D W L R Q ³ U H T X L U H V P R U H W K D Q D E R O V K L Q J F R Q F O X V L R Q R I D F D X V H R I D F W L R Q Z K L F K Z D V F D X V H G E \ W K H R I I H Q V H

Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (citation

In addition, the Act requires a law enforcement officer to take a person who appears to meet these criteria into custody and to transport them to an appropriate facility for involuntary examination. See Fla. Stat § 394.463(2)(a)2.

Although the Legislature did not create a separate standard for minors, it included specific requirements timelines for examination of minors upon their arrival at a designated receiving facility. See Fla. Stat. § 394.463 (requiring that minors be examined by a physician, clinical psychologist or psychiatric nurse within 12 hours after arrival at a facility to determine if the minor meets criteria for involuntary services. It is clear, therefore, that the Legislature intended for the Act to be applied to minors. If the Legislature intended to provide additional rights to minors or to the parents of minors, it would have expressly addressed these at the time the law was enacted. In fact, as the Plaintiffs correctly point out, the Legislature recently revisited this issue and passed 6% UHTXLULQJ VFKRRO SULQFLSDOV WR PDNH ³D UHDVR child is removed from school for involuntary examination. Compl. p.11, FN3.

Interestingly, the Plaintiffs are not challenging the constitutionality of the Act itself. Nor do they assert that any of the individual Defendants acted in bad faith or with some malicious purpose; rather, they assert that the Defendants did not act reasonably under the circumstances ±a claim that appears to be more akin to common-law negligence than a violation of federally-protected civil rights. Regardless, the factual allegations in the First Amended Complaint, even if taken as true, establish that the Defendants were in full compliance with the Act itself, and as more fully set forth below, the Plaintiffs have failed to state a claim upon which relief may be granted.

defendants adequate notice of the claims against them and the grounds upon which each claim U H V W Wel V and, 792 F.3d at 1323.

$ F F R U G L Q J O \ 3 O D L Q W L I I V ¶) L U V W $ P H Q G H G & R P S O D L pleading. Barmapov v. Amuial) G W K & L U [3] 6 K R W J X Q flatly forbidden by the spirit, if not the letter, of these rules because they are calculated to confuse the enemy, and the court, so that theories for relief not provided by law and which can prejudice D Q R S S R Q H Q W V F D V H H V S H F L D O O \ E H I R U H W K H M X U \ F D Q

The School Board Defendants are Entitled to Immunity Under the Mental Health Act

To state a claim under 42 U.S.C. §1983, a plaintiff must allege that a person, while acting under color of state law, deprived him of a federal or constitutional right. Edwards v. Wallace Community College, 49 F.3d 1517, 1522 (11th Cir. 1995). The Supreme Court has held that there can be no deprivation of procedural due process rights where the state has provided an adequate post-deprivation remedy. Hudson v. Palmer, 468 U.S. 517 (1984). See also Merritt v. Brantley, 936 F. Supp. 988, 991 (S.D. Ga. 1996); Lee v. Hutson, 600 F. Supp. 957, 966 (N.D. Ga. 1984) (holding that a section 1983 claim cannot prevail where adequate state remedies exist to redress a grievance).

The Florida legislature cl H D U O \ O L P L W H G W K H V F R S H R I D Q \ F O D L P Z K H U H) O R U L G D 6 W D W X W H [3] Any person who violates or abuses any rights or privileges of patients provided by this part is liable for damages as determined by law. Any person who acts in good faith in compliance with the provisions of this part is immune from civil or criminal liability for his or her actions in connection with the admission, diagnosis, treatment, or discharge of a patient to or from a facility. However, this section does not relieve any person from

OLDELOLW\ LI VXFK SHUVRQ FRPPLWV QHJOLJHQFH ´ 7KH)ORULGD¶V %DNHU $FW LV YLRODWLRQV RU DEXVH RI SDWI

are immune from liability either civilly or criminally. Plaintiffs may seek redress under these, if the facts arise to these causes of action, but they cannot seek remedy under a §1983 claim where these alternatives under state law exist.

In the present matter, Plaintiffs have not alleged that the Defendants did not act in good

participation in, be denied the benefits of, or be subjected to discrimination under a program or

DFWLYLW\ UHFHLYLQJ)HGHUDO ILQDQFLDO DVVLVWDQFH ´

establish a claim under HLWKHU 6HFWLRQ RI WKH 5HKDELOLWDWLRQ

$PHULFDQV ZLWK 'LVDELOLWLHV $FW ³$'$´ DJDLQVW D V

/KH ³W

XQGHU WKH $FW WKDW >KH RU VKH@ LV µRWKHUZLVH T

she] was [discriminated against] solely by reason of [his] handicap, and that (4) the program or

activity in question receives federal financial DVVLVWDQFH J.P.M. v. Palm Beach County Sch. Bd.

916 F.Supp.2d. 1314 (S.D. Fla. 2013) (quoting Schiavo ex. Rel Schindler v. Schiavo, 358 F. Supp.

116, 119 (7th Cir. 1997)).

Similarly, the Plaintiffs have failed to state a claim for which relief may be granted under the Florida Educational Equity Act (FEEA). FEEA, codified at Fla. Stat. §1000.05(3)(d), prohibits (among other things) discrimination on the basis of disability, and is the state counterpart to the ADA. Federal and state courts in Florida have noted the legal similarities between federal discrimination claims and actions brought under the FEEA and have applied the same analysis to these claims. See, e.g., King v. School Bd. of Monroe County, Fla., 2006 WL 3747359, 33 NDLEP 239, (S.D. Fla. 2006).

In

The Plaintiffs alleged that D.P. had been diagnosed with ADHD, and was eligible for exceptional student education services as a result of Autism Spectrum Disorder ³$6´ DQG language impairment. Compl. ¶72. On the date he was transported, the Plaintiffs allege that he

strategies that would have effectively calmed her down. Even if there were other strategies that could have been implemented, and HYHQ LI WKH FRPPHQWV ZHUH PLVLQWHU RI WKH FLUFXPVWDQFHV GRHV QRW OHDG WR D FRQFOX Hyperactivity Disorder) was the sole reason that the transportation (or any action taken that day) took place.

In Paragraph 162 of the First Amended Complaint, Plaintiffs allege that W.B. was WUDQVSRUWHG DIWHU ³KH EHFDPH LQYROYHG LQ D SK\VLFD pad. He became upset and began throwing chairs and, when a staff member approached him and VWDUWHG WR WRXFK KLP KH LQDGYHUWHQWO\ FDPH LQ)XUWKHUPRUH 2IILFHU %URZQ¶V UHSRUW VWDWHG ³: % Z building and that he wanted to take the police of

Compl. ¶ 162.

Even assuming that the eighteen scenarios presented by the Plaintiffs in the Amended &RPSODLQW DOO UHSUHVHQWHG XQQHFHVVDU\ LQYROXQWD Act, these eighteen incidents, from the four-year span alleged of 2016-2020, out of the 1200 alleged involuntary examinations from that time period, only represents 1.5% of the total involuntary examinations in that time period. On a larger scale, the 1200 involuntary examinations over the four-year period, averages 300 involuntary examinations per year, which the 300 out of the 180,000 students in Palm Beach County Schools each year, would represent .16% of the GLVWULFW¶V VWXGHQW SRSXODWLRQ Even if ALL of the 1200 involuntary examinations alleged by Plaintiffs were found to be unnecessary, it would still not rise to the level of pervasiveness to HVWDEOLVK WKH 6FKRRO %RDUG¶V OLDELOLW\ XQGHU D §1983 claim.

Furthermore, the Plaintiffs cannot consistently show that the ³XQQHFHVVDU\´ LQYRO

SROLFH FRPH Id.DWR FRQ2VDEWZKHLSDOLW\¶V IDLOXUH
LWV HPSOR\HHV LQ D UHOHYDQW UHVSHFW HYLGHQFHV
RI LWV LQKDELWDQWV FDQ VXFK D VKRUWFRPLQJ EH SU
FXVWRP¶ WKDW LV DFWXDOO\ DEOLQXVWLHVSHFW ³µ>P(
liability under § 1983 attaches where ² and only where ² a deliberate choice to
IROORZ D FRXUVH RI DFWLRQ LV PDGH IURP DPRQJ
SROLF\PDNHUV 2QO\ ZKHUH D IDLORUHµWRQWUDLQ¶H
choice by a municipality ² D µSROLF\¶ FDQ D FLW\ EH OLDEOH IR
† Id. (internal citations omitted).

³'HOLEHUDWH LQGLIIHUHQFH FDQ EH HVWDEOLVKHG LQ
pattern of similar constitutional violations by untrained employees or by showing
WKDW WKH QHHG IRU WUDLQLQJ ZDV VR REYLRXV WKD
HPSOR\HHV ZRXOG UHVXOW LQ Id.D Ci\ RI Mobile, Ala.,
592 F. App'x 793, 799-800 (11th Cir. 2014) (citing Connick v. Thompson, 563 U.S.
51, 131 S.Ct. 1350, 1360, 179 L.Ed.2d 417 (2011); Gold, 151 F.3d at 1350 ±52).
³7R HVWDEOLVK D FLW\¶V GHOLEHUDWH LQGLIIHUHQF
evidence that the municipality knew of a need to train and/or supervise in a
particular area and the municipality made a deliberate choice not to take any
DFWLRQ¶´ City of W. Palm Beach, Fla., 561 F.3d 1288, 1293 (11th Cir.
2009) (quoting Gold) G DW ³>$@ SDWWHUQ RI VLPLC
violations by untrained employees is ordinarily necessary to demonstrate deliberate
LQGLIIHUHQFH IRU SXUSRVHV RI DQ Id.DDLOXUH WR WUDLQ´
Office, 792 F.3d 1313, 1328 (11th Cir. 2015) (citation omitted).

Watkins v. Bigwood, 2020 WL 3791610, *8 (S.D. Fla. 2020). Much as the Plaintiffs have failed to show a pervasive practice RI VXEMHFWLQJ VWXGHQWV WR ³XQQHF examinations, they cannot show a pattern of constitutional violations arising out of a failure to provide adequate training ±18 examples out of more than 1200 reports purportedly reviewed by the Plaintiffs and their attorneys can hardly be indicative of a need for training or additional supervision of its police officers.

The IDLOXUH WR DGHTXDWHO\ WUDLQ SROLFH RIILFHUV I
IDU VKRUW RI WKH NLQG RI µREYLRXV¶ QHHG IRU WUDLQLQJ
LQGLIIHUHQFH WR FRQVWLWXWLRQDO UL Jakevius RQ WKH SDU
clear constitutional guideposts for municipalities in this area, and the diagnosis of mental
LOOQHVV LV QRW RQH RI WKH µXVXDO DQG UHFXUULQJ VLW

The lack of training at issue here is not the kind of omission that can be characterized, in

DQG RI LWV HOI DV D µGHOLEHUDWH Canton, 489 U.S. at Q F H ¶ WR F

396-97 (O'Connor, J., concurring in part and dissenting in part; internal citations omitted).

$ F F RU G L Q J O \ Wlaims for inadequate training and supervision must be dismissed.

The Individual-Capacity School Board Defendants are Entitled to Qualified Immunity

In this case, the Plaintiffs have named Superintendent Fennoy and Officers Cuellar, Margolis, Blocher, Brown and Lauginiger in their individual capacities, alleging various theories of liability for constitutional violations enforceable under 42 U.S.C. § 1983. These counts can broadly be placed into three categories: (1) due process claims for deprivation of parental rights to custody and control, and for medical decision-making (Counts 6 and 7); (2) due process claims for unreasonable seizures (Counts 8-12); and (3) due process claims for excessive force (Counts 13-

³$OWKRXJK WKH µGHIHQVH RI TXDOLILHG LPPXQLW\ LV the summary

MXGJPHQW VWDJH RI D FDVH LW PD\ EH« UDLVHG DQG FRQ

Cnty., Ga., 821 F.3d 1310, 1319 (11th Cir. 2016) (citation omitted). Courts employ a two-step

the nearest receiving facility). The Plaintiffs allege that each of the individual Defendants acted in accordance with their duties and within the scope of their authority. Compl. ¶¶ 40-49.

The officers had at least arguable probable cause to seize the minor plaintiffs

The Plaintiffs claim most of the students at issue[4] were subject to an unlawful seizure by WKH RIILFHUV LQYROYHG EHFDXVH WKH RIILFHUV GLG QRW im PLQHQW UISN RI VHULRXV ERGLO\ LQMXU\ WR WKHPVHOI RU RWKHUV 360. Under the facts alleged, however, counts 8-12 should be dismissed because the individual-capacity Defendants are entitled to qualified immunity.

> [The 11th &LUFXLW@ KDV KHOG WKDW WKH ³DPRXQW RI IRUFH SHUPLWWHG E\ WKH RIILFHU VWRSV DQ LQGLYLGXDO WR DVFHUWDLQ WKDW SHUV
> requires the officer to have probable cause to believe the person is dangerous either to KLPVHOI RU RWKHUV´ Mayes, 846 Fed.Appx. at 727-28 (quoting in part Roberts, 643 F.3d at 905).
> ³µ>7@R EH HQWLWOHG WR TXDOLILHG LPPXQLW\ IURP D)RXU QRW KDYH DFWXDO SUREDEOH FDXVH EXW WKH FLUFXPVWDQFHV
> circumstances must be such that the officer reasonably could have believed that probable FDXVH H[LVWHG´ Id. at 728 (quoting Montoute v. Carr, 114 F.3d 181, 184 (11th Cir. 1997)).

Ellison v. Hobbs, 786 Fed.Appx. 861, 875 (11th Cir. 2019). See also, Cochrane v. Harvey, 2005 WL 2176874, *4 (N.D. Fla. 2005) (summary judgment entered where VKHULII¶V GHSXWLHV at least arguable probable cause to seize plaintiff for involuntary examination, even where evidence was not conclusive and subject to differing reasonable interpretations); and Lillo v. Bruhn, 2009 WL 2928774, *4 (N.D. Fla. 2009) (officers had at least arguable probable cause to seize plaintiff for involuntary examination where they found him nude, defecating in public, wandering in traffic and had knowledge of prior involuntary commitment).

In this case, all of the seizures were supported - at least - by arguable probable cause, based upon the allegations in the First Amended Complaint. The students at issue are alleged to have

[4] M.S., who had brought such a claim in the original Complaint, has apparently voluntarily withdrawn her claim for unlawful seizure in the First Amended Complaint. Her claim for excessive force remains.

been exhibiting various behaviors that would lead a reasonable officer to believe that they met the criteria for involuntary examination under the Act. The students acted out violently, told school officials or the officers that they intended to harm or kill themselves or others, and in at least one case, attacked a bystander[5]. ³$UJXDEOH SUREDEOH FDXVH LV GHWHUPLQHG E\ WKH RIILFHU SRVVHVVHG¶´ DQG WKH RIILFHU QHHG QRW check every detail of the circumstances surrounding behavior leading to an arrest or detention. See Bright v. Thomas, 754 F3d.Appx. 783, 787 (11th Cir. 2018) (quoting Durruthy v. Pastor, 351 F.3d 1080, 1089 (11th Cir. 2003)) (where man detained under Baker Act claimed witnesses to behavior were lying, officers entitled to qualified immunity).

The Officers Did Not Use Excessive Force

With one exception[6] WKH 3ODLQWLIIV¶ FODLPV IRU H[FHVVLYH SROLF\ RU SUDFWLFH RI HPSOR\LQJ[7] KDQGFXIIV DQG IRU FKRNH were handcuffed during the events for a period of time ranging from 5 minutes (L.A., Count 16) to 90 minutes (D.P., Count 14). Significantly, none of them claim any physical injury arising out of the use of handcuffs; rather, HDFK DQG HYHU\ 3ODLQWLII FODLPV WKH\ Z by the use of handcuffs.

³3XUVXDQW WR WKH)RXUWK $PHQGPHQW DQ RIILFHU P RI D ODZIXO DUUHVW ´) $SS¶[2009) (per curiam) (citing

[5] 7KHVH DOOHJDWLRQV VXSSRUW QRW MXVW ³DUJXDEOH SUREDEOH FDX

Graham v. Connor 8 6 ³'HWHUPLQLQJ ZKHWKHU W
SDUWLFXODU VHL]XUH LV µUHDVRQDEOH¶ XQGHU WKH)RXU
nature and quality of the intrusion o Q WKH LQGLYLGXDO¶V)RXUWK $PHQGP
FRXQWHUYDLOLQJ JRYHUQPHQWDO Graham, 490 U.S. at 396 (citation and internal VWDNH
TXRWDWLRQ PDUNV RPLWWHG ³>7@KH TXHVWLRQ LV ZKH
reasonable ¶ LQ OLJKW RI WKH IDFWV DQG FLUFXPVWDQFHV FR
XQGHUO\LQJ LQWHQW Id. at 397. RU PRWLYDWLRQ ´
³7R GHWHUPLQH ZKHWKHU DQ RIILFHU¶V IRUFH ZDV X
directed that [courts] consider (1) the severLW\ RI WKH FULPH ZKHWKHU WKH
LPPHGLDWH WKUHDW WR WKH VDIHW\ RI WKH RIILFHUV RU
UHVLVWHG DUUHVW RU DWWHPSWHG Pace v. City of Madison, 847 F. App'x 689, 691 (11th Cir. 2021) DUUHVW E
1330, 1339 (11th Cir. 2020) (quoting Graham, 490 U.S. at 396) (alterations adopted)). The
(OHYHQWK &LUFXLW KDV DOVR FRQVLGHUHG ³ WKH QHHG
applied in light of the nature of the need; and (6) the severity of WKH LQM (citing Lee v.
Ferraro, 284 F.3d 1188, 1197–98 (11th Cir. 2002); Sebastian v. Ortiz, 918 F.3d 1301, 1308 (11th
&LU 1RQHWKHOHVV LW UHPDLQV ZHOO HVWDEOLVKH
is supported by probable cause, the application of de minimis force as needed to effect the arrest,
ZLWKRXW PRUH ZLOO QRW VXSSRUW D FODLP IRU H[FHVVLY
Williams) $SS¶[DW 7KLV DQDO\VLV LV ZHOO-settled IRU FOD
involuntary commitments. See, e.g., Wilson v. Gee, 2012 WL 13106092, *5 (M.D. Fla. 2012)
(citing Owens v. City of Fort Lauderdale, 174 F.Supp.2d 1298, 1308 (S.D. Fla. 2001) and Lillo v.
2009 WL 2928774).

Police Department and the power to issue policies concerning the implementation of the Baker Act. Compl. ¶¶ 40-42. Nowhere do the Plaintiffs allege that played any role in the events leading

' 3 ¶V OHJDO JXDUGLDQ GXULQJ WKH DOOHJHG Officer F LGHQW

Margolis is a police officer with the Lantana Police Department and, at the time of the alleged incident, was stationed at a school in Palm Beach County. Id. ¶ 45.

³$FFRUGLQJ WR 2IILFHU 0DUJROLV¶ UHSRUWV D[10]RQ 1RYH

FODVVURRP ' 3 EHFDPH XSVHW DQG[11]WKUHZ RQH RI KHU ERRNV DW KHU ERRP ¶ E

further provides that when an assistant principal approached D.P. in an effort to deescalate the VLWXDWLRQ ' 3 ³VWUXFN KHU DQG SXVKHG LW [FKHLEZLWK $>´D@ VWX restrained by school staff and the other students were removed from the classroom. Id.; Compl. ¶

' 3 HYHQWXDOO\ ³FDOPHG GRZQ´ DQG WKH DVVLVWDQW

thereafter, ' 3 PDGH UHPDUNV DERXW ³ZDQWLQJ WR KXUW KLPVH

Officer Margolis to come to the classroom. Id. ¶¶ 84-85.

' 3 WROG KLV WHDFKHU ³, ZLVK , FRXOG VKRRW \RX L

Compl. ¶ 88.; D.P DOVR VWDWHG ³, GHVHUYH WR EH GHDG´ ³6KXW

Z „ÞX 0y.¿XY €0 •0€ ODZ• H`\WKE`ŠPH€0 ³F KKL ð Q € •06P`À

plaintiffs are asserting claims against certain defendants. To the extent any of the individual plaintiffs [2] aside from D.P. and P.S. [2] are asserting claims against Officer Margolis, these plaintiffs clearly lack standing to assert such claims against Officer Margolis.

[3] 6WDQGLQJ LV WKH WKUHVKROG TXHVWLRQ LQ HYHU\ I
FRXUW WR HQWHUWDLQ D GLVSXWH, Lewis v. City of Atlanta, 461 F.3d 1257, 1269
(11th Cir. 2006)(citation and quotation omitted). Without standing [3]
DQ DGYLVRU\ FDSDFLW\ DERXW WKH PHULWV RI D GLQWL
F.3d 964, 974 (11th Cir. 2005). To establish standing, a plaintiff must satisfy three constitutional

FODVVURRP ³3 6 ZDV FDOOHG DQG WROG WKDW ' 3 ZRXOG WKH %DNHU $FW ´ &RPSO ^ 7KH QHJDWLYH VWDWHPHQW H[SODLQHG WKDW VKH KDG WR JR WR KHU IDWKHU¶V IXQHU 3 6 ¶V RZQ SOHDGLQJ WKHUHIRUH PDNHV FOHDU WKDW WR FRQVHQW WR 3¶V HDUO Motion under the Baker Act. There is simply nothing in the First $PHQGHG &RPSODLQW LQGLFDWLQJ WKDW 3 6 UHFHLYHG G treatment. Accordingly, P.S. has failed to state a legally sufficient cause of action in Counts 6 and 7 because the First Amended Complaint makes clear that she was afforded precisely what she FRQWHQGV ZDV UHTXLUHG QRWLFH DQG DQ RSSRUWXQLW Helms) G WK &LU leging a denial of procedural ³>L@W LV $ FODLP DO due process requires proof of . . . [a] constitutionally- LQDGHTXDWH SURFHVV ´

Even assuming that P.S. was not provided with notice or an opportunity to consent, P.S. would still fail to state a procedural due process claim. To adequately state a denial of procedural

Accordingly, Officer Margolis respectfully requests that the Court dismiss Counts 6 and 7 with prejudice.

[3])RXUWK $PHQGPHQW ULJKWV DUH GLIIHUHQW

' 3 ¶V ³)RXUWK $PHQGPHQW LQWHUHVWV DJDLQVW ³WKH FRX

Respectfully submitted, this 19th day of August, 2021[19]

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