Conference of the National Association for the Advancement of Colored People (“ ”); and the parents and guardians of the identified Plaintiff children as well as members of FL NAACP. They bring this suit to end the District’s unlawful and unjustifiable abuse of their rights and to end the District’s ongoing abuses.

Defendants’ Motion to Dismiss[1] Plaintiffs’ First Amended Complaint (“ ”) misstates federal law and fails to respond to the stated legal bases of Plaintiffs’ claims. Indeed, it displays the same attitude that produced the District’s abuse of the Baker Act in the first place. The District ignores any of Plaintiffs’ allegations they find inconvenient, just as they have ignored prior warnings that their policies and practices are illegal. Its repeated misstatement of the law echoes the District’s own trainings and policies that are replete with legal misrepresentations. Plaintiffs respectfully request that this Court reject Defendants’ effort to evade responsibility and deny their Motion.

When an involuntary examination under the Baker Act occurs, an armed officer of the state takes a child into custody and delivers them to a locked institution. This is a “massive curtailment of liberty,” *Doe v. State*, 217 So.3d 1020, 1026 (Fla. 2017) (quoting *Humphrey v. Cady*, 405 U.S. 504, 509 (1972)), which is unconstitutional when applied to “a nondangerous individual who is capable of surviving safely in freedom by himself or with the help of willing and responsible family members or friends.” *O’Connor v. Donaldson*, 422 U.S. 563, 576 (1975).

[1] Defendants’ Motion is divided into two sections, one

Florida law codifies this standard, allowing this serious deprivation of liberty only[2] "if there is reason to believe that the person has a mental illness *and* because of his or her mental illness . . . [t]here is a substantial likelihood that without care or treatment the person will cause serious

Attention Deficit Hyperactivity Disorder (“ ”). FAC ¶¶ 72-73. The day of the involuntary examination, D.P. had recently experienced a death in his family. FAC ¶ 78. He became upset and threw a stuffed animal. FAC ¶¶ 71, 79. He was then placed in a prone restraint in which two adults held him to the ground using their body weight. FAC ¶ 82. According to the police report he threatened himself or others. FAC ¶ 88. But in that situation, it would not be surprising that he was angry and said things he neither meant nor had the ability to follow through on. Simply allowing him some time to sit and calm down would have resolved the situation. FAC ¶ 81. Instead of consulting a medical professional, letting D.P. go home to a responsible adult, or simply allowing him to calm down in place, Officer Margolis seized and handcuffed D.P., who was then left awaiting transport in the back of a police car for more than an hour. FAC ¶¶ 92-94. P.S., D.P.’s grandmother, was notified he was being involuntarily examined but her consent was not sought. FAC ¶ 91. D.P. remained handcuffed for approximately 30 minutes during transport, for a total of 90 minutes of handcuffing. FAC ¶¶ 96, 376. In the aftermath of this experience, D.P. became aggressive and upset more easily, and, despite participating in two years of therapy, still fears that police and school staff are out to get him. FAC ¶¶ 101, 329, 382.

E.S. was just nine years old and in third grade when Officer Cuellar seized him for involuntary examination under the Baker Act. FAC ¶ 102. As his school knew, E.S. has ASD, ADHD, and Dyslexia, was placed in a classroom for children with ASD, and had a Board Certified Behavior Analyst (“ ”) who worked with him in school. FAC ¶¶ 102-05. On the day he was involuntarily examined, he became upset, started eating some pieces of paper, and was taken to an office. FAC ¶ 107. There he was upset, yelled, and swung his arms, striking a window, but not damaging it, and hit his BCBA’s chest, hard enough to leave a red mark but not hard enough to injure her. FAC ¶ 108. He calmed down successfully thereafter. FAC ¶ 109.

However, by this point the school had contacted Officer Cuellar. FAC ¶ 109. When he arrived, he tackled E.S. to the ground, injuring his knees, 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." FAC ¶¶ 110, 111, 387. Even though "the tantrum behavior had ceased," and E.S.'s BCBA believed it was not necessary, Officer Cuellar seized E.S. under the Baker Act. FAC ¶¶ 112-13. He contacted J.S., E.S.'s mother, but did not seek her consent, and even told her there was "no point" in hurrying to the hospital because she would not be allowed to see E.S. FAC ¶ 116. Officer Cuellar handcuffed E.S. for approximately 30 minutes during transport to the receiving facility. FAC ¶¶ 115, 392. E.S. experienced both physical harm (injury to his knees) and psychological harm as a result of this incident. FAC ¶ 390. He became extremely afraid of Officer Cuellar and upset in his presence, experienced anxiety, and developed a more generalized fear of all men, especially men in uniform. FAC ¶¶ 119, 398. An internal-affairs investigation of the incident found "concerns which should be addressed through training, with regards to Baker Acts involving students with Autism", but the District has not acted on those recommendations. FAC ¶¶ 228-29.

L.A. was just eight years old and living with her mother in a homeless shelter when she was involuntarily examined. FAC ¶¶ 129, 131. L.A. had been evaluated for disabilities and the school knew that her only diagnosis was ADHD and that she had a therapist. FAC ¶¶ 130, 132. On the day she was examined, she became upset and embarrassed after a teacher mistook her drawing of a rocket for a drawing of male genitalia. FAC ¶ 133. L.A. left class, intending to visit a trusted adult, the assistant principal, as she had done before. FAC ¶ 134. Instead, the school principal intercepted her and took her to his office. FAC ¶¶ 134-35, 138. In response, she called him a "devil" with "eyes like momo." FAC ¶¶ 136-38. She did not threaten herself or others with serious bodily harm, or any harm, for that matter. FAC ¶ 138. The school did not employ de-

escalation strategies that would have been effective, such as letting her see her mother or draw by herself until she calmed down. FAC ¶¶ 134, 139. A mobile response team member evaluated L.A. and recommended she receive counseling *but not* that that she be involuntarily examined. FAC ¶ 141. The school also did not contact her regular therapist to seek their insight. FAC ¶ 146. Instead, Officer Blocher overruled the mobile crisis team member's recommendation, seized L.A. for examination, and placed her in handcuffs while he walked her to his car. FAC ¶¶ 142, 149, 403. A.B., L.A.'s mother, was contacted by the school about the situation and arrived there before L.A. was transported, but was not allowed to see L.A. FAC ¶¶ 144-45. L.A. experienced trauma as a result of the incident, including the handcuffing. FAC ¶ 153. After her seizure, she had nightmares, experienced bullying by other students who knew she had been involuntarily examined, and, for the first time, had suicidal thoughts. FAC ¶¶ 153, 155, 405.

W.B. was just ten when he was involuntarily examined. FAC ¶ 156. W.B. has an Emotional/Behavioral Disability and had been placed in a class intended to meet the needs of such students. FAC ¶ 157. He has an aversion to physical touch, especially by men, of which the District was aware. FAC ¶ 158. One day W.B. became upset over a dispute with another student. FAC ¶ 162. He threw chairs and accidentally touched a staff member. *Id.* He was then handcuffed to a chair by Officer Brown; this understandably also upset him, particularly given his known aversion to touch. FAC ¶ 164. While W.B. was angry and requested that his handcuffs be removed, he did not get up from the chair he was sitting in. FAC ¶ 164. He said he would "jump over a gate"—presumably to escape the situation—but did not say that he wanted to harm himself or others. FAC ¶ 168. Though both his mother and father arrived at the school, neither was allowed to take him home. FAC ¶¶ 164, 166. The school did not contact W.B.'s regular therapist and, while it initially called the mobile response team, it cancelled that request before

contains enough facts to state a claim to relief that is plausible on its face." *Bilal v. Geo Care, LLC*, 981 F.3d 903, 911 (11th Cir. 2020) (cleaned up). "A claim is plausible on its face 'when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.'" *Id.* (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)); *see also Randall v. Scott*, 610 F.3d 701, 709–10 (11th Cir. 2010) (no heightened pleading standard in qualified immunity or § 1983 cases).

The FAC alleges that the District's use of involuntary examinations under the Baker Act and/or use of handcuffs on Plaintiff children D.P., E.S., L.A., W.B. and M.S. violated Title II of the Americans with Disabilities Act, 42 U.S.C. § 12132, Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and the Florida Educational Equity Act, Fla. Stat. § 1000.05, and seek damages and injunctive and declaratory relief (Counts 1-5). Plaintiffs P.S., J.S., L.H., A.B. and FL NAACP allege that they were deprived of their fundamental rights to care, custody, and control over and to make medical decisions for their children without adequate due process, and seek injunctive and declaratory relief (Counts 6 and 7). Plaintiffs D.P., E.S., L.A., W.B., DRF, and FL NAACP allege that the children were seized for involuntary examination in violation of the Fourth Amendment and seek declaratory and injunctive relief (Count 8), while each of the individual children also brings a claim for damages on this basis (Counts 9-12). Finally, Plaintiffs D.P., E.S., L.A., W.B., M.S., DRF, and FL NAACP allege that the unnecessary use of handcuffs during their seizures violated the Fourth Amendment's prohibition on excessive force and seek declaratory and injunctive relief (Count 13), while each individual child also seeks damages on this basis (Counts 14-18). Defendants on these claims are, as laid out in the FAC, the

set forth below, Plaintiffs have properly stated each of their claims, have alleged facts sufficient to establish municipal liability under *Monell*, and have sufficiently alleged that the Officer Defendants are not entitled to qualified immunity as to each of the § 1983 claims.

Defendants also claim that Plaintiffs have failed to make clear who the plaintiffs and defendants are in their claims, but Plaintiffs, in fact, clearly laid out that information for each claim in the FAC, including in an appendix attached to the FAC. This is a complex case, and Plaintiffs have endeavored to plead it in a way that balances the need to avoid an excessive number of counts with the differing legal and factual issues raised by various parties and causes of action. To that end, they combined claims by multiple Plaintiffs against multiple Defendants into single counts where the facts and legal issues were common. This is precisely what the Rules of Civil Procedure call for. *Compare* Fed. R. of Civ. P. 8(a)(2) (requiring "a short and plain statement of the claim showing that the pleader is entitled to relief") *with* Fed. R. of Civ. P. 10(b) ("[a] party must state its claims . . . each limited *as far as practicable* to a single set of circumstances" and "*[i]f doing so would promote clarity*, each claim founded on a separate transaction or occurrence . . . must be stated in a separate count or defense." (emphasis added)). The FAC's factual background section, only the relevant portions of which are incorporated by reference in each count, explains what each Defendant is alleged to have done.[8]

[8] Officer Margolis objects to being listed in certain claims brought by multiple Plaintiffs alongside other Officer Defendants, arguing that the organizational Plaintiffs and individual Plaintiffs whose involuntary examinations he

Defendants do not contest that Plaintiffs have sufficiently alleged that Plaintiff children[9] are individuals with disabilities or that Plaintiffs were excluded from participation in or denied the benefits of a public entity. Mot. at 7-11.[10] Their only challenge to Plaintiffs'[11] disability discrimination claims is that Plaintiffs were not excluded solely by reason of their disabilities. *See* Mot. at 11. In fact, though, only Plaintiffs' intentional discrimination claim under Section 504 requires a showing that the discrimination occurred "solely" by reason of the Plaintiff children's disabilities. Plaintiffs do not need to show sole causation to prevail on an ADA claim for intentional discrimination; for claims under the ADA, Section 504, or the FEEA that the Defendants failed to provide reasonable modifications and accommodations to avoid discrimination; or for claims that the District employed methods of administration that discriminated against Plaintiffs.

The ADA does not require plaintiffs to show that intentional discrimination occurred solely on the basis of disability. In

warranted under the statute's plain language, is not authorized by section 12201(a), and is not consistent with the explicitly stated purpose of the statute," *id.* at 1074, and that Congress deliberately omitted the word "solely" from Title II of the ADA "because it believed inclusion of the word 'solely' in Title II could lead to absurd results." *Id.* at 1075.[12]

Moreover, Plaintiffs have sufficiently pled facts that support a claim of intentional discrimination under the ADA and Section 504. In *J.P.M.*, the court was deciding a motion for summary judgment after full fact discovery had occurred; therefore, *J.P.M.* is not instructive as to the standard on a motion to dismiss. *Id*. at 1315. Here, Plaintiffs have alleged sufficient facts to properly plead that they were excluded from participation in their public school (which Defendants do not dispute, Mot. at 7-11) both by reason of and solely because of disability. For example, Plaintiffs have alleged that Defendants were aware of D.P.'s and E.S.'s needs as students with known ASD, and decided to initiate involuntary examinations under the Baker Act despite the Baker Act's express prohibition on its use for individuals whose needs arise from developmental disabilities. FAC ¶¶ 57, 71-73, 92-93, 102-06, 112, 121-22. Indeed, Plaintiffs allege that Defendant Cuellar told District investigators that he knew E.S. had ASD and informed J.S., E.S.'s mother, that he would have initiated an involuntary examination regardless of E.S.'s disability. FAC ¶¶ 116, 121. Plaintiffs have additionally alleged that Defendants were aware that W.B. was, due to his disability, particularly sensitive to touch, especially by men, and nonetheless handcuffed W.B. FAC ¶¶ 158, 164, 169, 171. Similarly, Plaintiffs have alleged that Defendants were aware of M.S.'s counseling for

Broward Cnty. Fla., 87 F. Supp. 3d 1319, 1332 (S.D. Fla. 2015) (citing *Bennett–Nelson v. La. Bd. of Regents*, 431 F.3d 448, 454 (5th Cir. 2005) for the proposition that "the only material difference between the rights and remedies afforded plaintiffs under Title II and Section 504 lies in their respective causation requirements, but that difference [is] immaterial where the plaintiff's claims are based on a failure to make reasonable accommodations for [individuals with disabilities]").[15]

Under Section 504 and the ADA, a qualified plaintiff with a disability states a failure-to-

the effect of subjecting Plaintiffs to discrimination and the effect of defeating or substantially impairing the public entity's objectives regarding individuals with disabilities. FAC ¶¶ 248, 252, 270. Plaintiffs have alleged that Defendants: have a blanket policy of handcuffing all children for whom Defendants are initiating an involuntary examination under the Baker Act, FAC ¶ 194; fail to sufficiently train their police employees and contractors regarding applying the legal standard contained within the Baker Act without discrimination to children with disabilities, FAC ¶¶ 213-14, 216; have failed to act on recommendations regarding improving training "with regards to Baker Acts involving students with Autism," FAC ¶¶ 228-29, 232; provide school officials with inaccurate information regarding when an involuntary examination can be legally initiated, particularly for students with development disabilities, FAC ¶¶ 205-12, 215; fail to consult appropriately trained mental health professionals to identify alternatives to involuntary examination, FAC ¶¶ 217-19; and fail to instruct school officials about employing less traumatic alternatives to involuntary examination, FAC ¶ 6. Defendants' Motion to Dismiss should therefore be denied as to Plaintiffs' disability discrimination claims.

Plaintiffs bring four sets of claims under 42 U.S.C. § 1983. D.P., E.S., W.B., and L.A.

bring claims that the District failed to provide sufficient procedural due process when it interfered with their fundamental rights to care, custody, and control of and to make medical decisions for their children.[18] Defendants' Motion is not always clear, but it appears that they challenge each § 1983 cause of action on the basis that (1) Defendants did not violate any constitutional rights; (2) the Officer Defendants are entitled to qualified immunity; and (3) the School Board and the official capacity Defendants are not liable under *Monell*.

To overcome the qualified immunity defense raised by the Officer Defendants on Plaintiffs' damages claims,[19] Plaintiffs must both sufficiently allege that their rights were violated and establish that the alleged violation was of "clearly established statutory or constitutional rights of which a reasonable person would have known." *Davis v. Williams*, 451 F.3d 759, 762 (11th Cir. 2006) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)).[20] While "[t]he usual way of establishing that a constitutional violation was clearly established law is by pointing to a case, in existence at the time, in which the Supreme Court or [11th Circuit] Court found a violation based on materially similar facts . . .'officials can still be on notice that their conduct violates established law even in novel factual circumstances'" if the law at the time would have given them "fair warning when [they] engaged in the conduct giving rise to the claim that [their] conduct was unconstitutional." *Cantu v. City of Dothan, Ala.*, 974 F.3d 1217, 1232–33 (11th Cir. 2020) (quoting *Hope v. Pelzer*, 536 U.S. 730, 741 (2002)).

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[18] The organizational Plaintiffs join these claims in the manner described in more detail above. Because Defendants do not address their claims, Plaintiffs focus on the individual Plaintiffs' claims.

[19] Qualified immunity does not apply to injunctive relief. *See, e.g.*, *Pearson v. Callahan*, 555 U.S. 223, 242–43 (2009).

[20] Plaintiffs do not dispute that use of involuntary examinations under the Baker Act is a discretionary function, a prerequisite for the application of this doctrine.

The liability of the School Board is governed by

1. It is clearly established that seizing a child for in

CV-170/RV/MD, 2006 WL 1836013, at *8 (N.D. Fla. June 30, 2006) ("Florida's involuntary examination statute requires probable cause to believe the person is mentally ill and dangerous to herself or others."). Hence, while it is not clearly established whether

recognizes no extra-statutory basis for such a seizure, and the Fourth Amendment prohibits a seizure absent probable cause to believe the governing substantive standards have been met.").[23]

2. Defendants had no reason to believe D.P., E.S., L.A. and W.B. met the criteria for involuntary examination under the Baker Act.

Defendants' position appears to be that any child, no matter how young, who acts out, yells, or is otherwise unruly can legally be handcuffed and taken to a locked psychiatric facility. But that position, which wildly diverges from accepted best practices for providing mental healthcare to children, FAC ¶¶ 60-67, is thankfully not the law. Use of the Baker Act is only lawful where an officer has "reason to believe" the person has a mental illness (*not* a developmental disability such as ASD) and because of that mental illness they pose a danger of "serious bodily harm" "without care or treatment" in the "near future." Fla. Stat. § 394.463(1). Each of these elements is required to legally seize a person under the Baker Act. *See Khoury*, 4 F.4th at 1126 ("Vague notions about what a person might do—for example, a belief about some likelihood that without treatment a person might cause some type of harm at some point—does not meet" the arguable probable cause standard for use of the Baker Act).

objections of his BCBA. FAC ¶¶ 105, 126. Moreover, in both D.P. and E.S.'s cases, the District was aware that they had each been diagnosed with ASD, and that the behaviors they displayed were consistent with manifestations of ASD, which is not a mental illness. FAC ¶¶ 72-73, 103-04. Taking the facts in the light most favorable to Plaintiffs, Officers Margolis and Cuellar either knew this or failed to take basic steps to investigate if it was true.

The Officer Defendants also lacked reason to believe there was a "substantial likelihood" that these children, who ranged from eight to ten years old, would cause "serious bodily harm" in the "near future." L.A. and E.S. made no verbal threats to do so. FAC ¶¶ 105-08, 138, 168. D.P. was upset but, as he later told the receiving faci

3. The School Board had formal and informal policies promoting illegal Baker Act use and trained its officers to use the Baker Act illegally, causing violation of Plaintiff children's rights.

This is the "rare[]" case in which a municipality "ha[s] an officially-adopted policy of permitting a particular constitutional violation". *Grech v. Clayton Cnty., Ga.*, 335 F.3d 1326, 1330 (11th Cir. 2003). The District's only written policy for all school staff concerning the Baker Act—the "Baker Act Bulletin"—instructed them that they could use the Baker Act on a child who "presents a danger to self or others; *and/or* appears to have a mental illness as determined by a licensed mental health professional" (emphasis added). FAC ¶ 206. This policy, which Defendants' Motion does not bother to mention or defend, wrongly states that only one of these two elements needs to be met to authorize use of the Act and that these are the only two relevant factors, leaving out the requireme

policies of individuals to whom it delegated final decisionmaking authority in a particular area." *Holloman ex rel. Holloman v. Harland*, 370 F.3d 1252, 1291 (11th Cir. 2004).

Moreover, even if the Baker Act Bulletin does not rise to the level of an officially adopted policy, it is strong evidence that the District has a custom of using the Baker Act on children who do not meet the statutory criteria. *See Praprotnik*, 485 U.S. at 130 (while there was no liability because final decisionmaker had not adopted a policy, "[i]t would . . . be a different matter if a series of decisions by a subordinate official manifested a 'custom or usage' of which the supervisor must have been aware."). Plaintiffs alleged that District "employees have also been made aware of inappropriate use of the Baker Act in numerous individual instances by medical experts and child advocates over the intervening years, including some it employs itself" and that these concerns were brought to the School Board. FAC ¶¶ 223, 225. Had the District investigated these complaints, it would have learned the facts presented in the FAC, including data showing that, over four years, the District employed involuntary examinations more than 1200 times and dozens of times on five-, six-, and seven-year-olds. FAC ¶¶ 197-201, 220, 224.

In the only two incidents where its own police internal affairs department did investigate involuntary examinations under the Baker Act, they found facts showing the examinations were unjustified, yet no action was taken. FAC ¶¶ 226-32. In another case, a school police officer recorded a school principal attempting to convince him to initiate an involuntary examination under the Baker Act on a child, even though the principal conceded the child was not a danger to herself or others; again, no action was taken. FAC ¶¶ 233-37. Plaintiffs also obtained redacted police reports about use of the Baker Act over two years and described thirteen examples of use

incidents . . . is generally insufficient" to meet plaintiffs' burden, "on a motion to dismiss, allegations of anything more than that are generally sufficient". *Williams*, 181 F. Supp. 3d at 1122.

Finally, even if its employees' use of involuntary examinations on children who did not meet the criteria did not rise to the level of a custom, the District's failure to train its officers and other employees would still be a sufficient basis for liability. The District's Baker Act training materials repeat and worsen the false statements of the law in the Baker Act Bulletin, telling officers that any "individuals who have a mental illness, *or* who may harm or neglect themselves or others" can be involuntarily examined and omitting other statutory requirements. FAC ¶ 214. Only fifteen minutes long, the Baker Act portion of the training additionally never explained when the Act should be used or the harms of using it unnecessarily. *Id.*

"Inadequacy of police training may serve as the basis for § 1983 liability only where the failure to train amounts to deliberate indifference to the rights of persons with whom the police come into contact." *Canton*, 489 U.S. at 388. Under normal circumstances, this deliberate indifference must be demonstrated by "[a] pattern of similar constitutional violations by untrained employees". *Connick v. Thompso*n, 563 U.S. 51, 62 (2011). But training officers that they may legally use the Baker Act when use would in fact be illegal falls under the "narrow range of circumstances" where "a pattern of similar violations might not be necessary to show deliberate indifference." *Id.* at 63 (citing *Bd. of Cnty. Comm'rs of Bryan Cnty., Okl. v. Brown*, 520 U.S. at 404; *see Canton*, 489 U.S. at 390 n.10 (1989) (giving as an example the need to train officers who are given guns when they may use deadly force). It should be obvious that if a district trains officers that they may seize children for involuntary examination without any

more evidence be needed, the repeated violations of the rights of Plaintiffs and others alleged in the FAC demonstrate the District's custom. *See* Background, above.

Regardless of the method that plaintiffs

1. Plaintiff children have stated a claim for use of excessive force.

In assessing excessive force claims, courts apply the standard set forth by the Supreme Court in *Graham v. Connor*.[25] 490 U.S. 386 (1989). This requires a careful balancing of "the nature and quality of the intrusion on the individual's Fourth Amendment interests" against the "countervailing governmental interests at stake." *Id.* at 396 (quoting *Tennessee v. Garner*, 471 U.S. 1, 8 (1985)). Factors include severity of the "crime" at issue, whether there is an immediate threat of harm to officers or others, and whether there is an attempt to actively resist or evade the officer, and courts consider the "totality of the circumstances" in making this assessment. *Id.* (quoting *Garner*, 471 U.S. at 8–9). The Eleventh Circuit has specifically noted the importance of a child's age in assessing reasonableness. In *Gray v. Bostic*, it held that it was clearly established that handcuffing a nine-year-old child (who had physically threatened her gym teacher but posed no safety concerns) for at least five minutes constituted excessive intrusion for reasons including her age. 458 F. 3d at 1306–7 ("[H]andcuffing Gray, a compliant, nine-year-old girl for the sole purpose of punishing her was an obvious violation of Gray's Fourth Amendment rights."). The

[25] Even if the Court applied the standard articulated in *New Jersey v. T.L.O.*, 469 U.S. 325 (1985), rather than the *Graham* standard, to this analysis, it should still find that the Plaintiff children were subjected to excessive force. The force used was not "justified at inception" nor "reasonably related in scope" to the circumstances justifying the initial interference, but rather was excessively intrusive given the age of Plaintiff children and other factors. *See Gray*, 458 F. 3d at 1306 ("handcuffing Gray was not reasonably related to the scope of the circumstances that justified the initial investigatory stop" and "the handcuffing was excessively intrusive given Gray's young age and the fact that it was not done to protect anyone's safety."). Note that in *Gray*, the excessive force claims were subsumed by the illegal seizure claims, because the basis of the excessive force claim was that the seizure was illegal, such that any use of force was excessive, and the court analyzed the illegal seizure claim under the *T.L.O.* standard. In contrast, here the excessive force claims are not subsumed by the illegal seizure claims and the *Graham* analysis applies instead. *Id.*

premise that handcuffing children constitutes excessive force in violation of the Fourth Amendment is well-established in other circuits as well.[26]

Plaintiff children are children with one or more disabilities who were between eight and eleven years old when they were subjected to involuntary examination under the Baker Act, due to behavior exhibited and/or statements made at school. *See* Background, above. Plaintiffs allege that their actions did not pose threats of serious bodily harm to the Officer Defendants or to others, particularly given their ages. FAC ¶¶ 90, 124, 143, 170, 188, 315. Nor did they actively attempt to evade or resist the Officer Defendants. *Id.* The Officer Defendants' actions caused—rather than prevented—harm to the students. Officer Defendants failed to use sufficient de-escalation techniques or alternative approaches to handcuffing. FAC ¶¶ 93, 125-26, 139, 146, 169, 185. They also forced the children to remain in handcuffs when they were calm and confined to police vehicles, when there was no credible basis for believing the children could have caused harm to themselves, the officers, or others. FAC ¶¶ 112, 115, 376-77, 392-93, 414-15, 426-27. E.S. was also "tackled" to the ground even though he was calm. FAC ¶¶ 109-11.

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[26] The Fourth Circuit, for example, has stated that "[c]ircuit and district courts around the country have recognized that youth is an important consideration when deciding to use handcuffs during an arrest." *E.W. by & through T.W. v. Dolgos*, 884 F.3d 172, 182 (4th Cir. 2018). In that case, the court concluded that the "calm, compliant ten-year-old" plaintiff fell "squarely within the tender age range for which the use of handcuffs is excessive absent exceptional circumstances." *Id.* at 181–82. The Ninth Circuit similarly held that an officer's decision to handcuff a "small, calm" eleven-year-old child in response to a school-related incident "was completely unnecessary and excessively intrusive," and that "none of the *Graham* factors even remotely justified keeping [him] handcuffed for approximately thirty minutes in the back seat of a safety-locked vehicle." *C.B. v. City of Sonora*, 769 F.3d 1005, 1030–31 (9th Cir. 2014). In *Hoskins v. Cumberland Cnty. Bd. of Educ.*, a district court in the Sixth Circuit held that a School Resource Officer (SRO) used excessive force when he handcuffed an 8-year-old after an altercation in physical education class. No. 2:13-CV-15, 2014 WL 7238621, at *8 (M.D. Tenn. Dec. 17, 2014). After its analysis of the *Graham* factors, the Court concluded that the Officer's initial handcuffing of "a very young child in the school setting[] was not objectively reasonable, and his leaving the child handcuffed for forty-five minutes was even less reasonable." *Id.* The court pointed out that the plaintiff "was a startlinglhJ-16heinId minutes "r5et9 "(e p)-4.jass. No.w[(l2. 8492o)-

Plaintiffs have stated a claim that this handcuffing violated the Fourth Amendment's prohibition on excessive force. Simply put, it is not "objectively reasonable" to handcuff young, physically and emotionally vulnerable children with disabilities who are experiencing behavioral issues or emotional distress at school and who pose no immediate safety threat.[27]

Defendants rely on *Williams v. Sirmons*, 307 F. App'x 354 (11th Cir. 2009) (unpublished), for the principle that "where an arrest is supported by probable cause, the application of de minimis force as needed to effect the arrest, without more, will not support a claim for excessive force in violation of the Fourth Amendment." *Id.* at 360. But in *Williams*, the plaintiff was an adult woman who did not allege physical or psychological harm as a result of the force and she was seized after officers believed she was fleeing or resisting an actual arrest. *Id. at* 361–62.[28] Here, though, Plaintiffs have alleged that handcuffing was not necessary "to effect the arrest," or, in this case, seizure for involuntary examination. FAC ¶¶ 377, 393, 404, 415, 427.[29] Moreover, Plaintiffs are young children with disabilities who have alleged psychological injury from traumatic handcuffing. FAC ¶¶ 100-01, 119, 153, 155, 177, 192, 378, 382, 398, 405, 409, 416, 421, 428, 433. Further, the Baker Act itself prohibits the use of "restraining devices utilized

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[27] Defendants' actions were also clearly in conflict with the "right to individual dignity" enumerated in the Baker Act itself: "Procedures, facilities, vehicles, and restraining devices utilized for criminals or those accused of crime shall not be used in connection with persons who have a mental illness, except for the protection of the patient or others." Fla. Stat. § 394.459(1); FAC ¶ 59.

[28] Defendants also cite to *Rodriguez v. Farrell*, 280 F.3d 1341, 1351 (11th Cir. 2002) and *Nolin v. Isbell*, 207 F.3d 1253, 1257–58 (11th Cir. 2000) for the premise that handcuffing in itself does not constitute excessive force. But neither *Rodriguez* nor *Nolin* involved a young child plaintiff, neither alleged psychological injury, and neither involved the Baker Act. Their application to the force used on Plaintiff children here, all of whom suffered psychologically as a result of handcuffing while Baker Acted, is therefore of limited utility.

[29] For this reason, Defendants' citations to *Wilson v. Gee*, No. 8:10-CV-2104-T-35TBM, 2012 WL 13106092 (M.D. Fla. Nov. 27, 2012), and *Lillo v. Bruhn*, No. 306CV247/MCR/EMT, 2009 WL 2928774 (N.D. Fla. Sept. 9, 2009), are not relevant. In both cases, courts, *on summary judgment*, found that officers' use of force to restrain adults who undisputedly met the Baker Act criteria and *were actively resisting seizure* did not violate § 1983. *Wilson* 2012 WL 13106092 at *4-8; *Lillo* 2009 WL 2928774 at *3.

for criminals or those accused of a crime," such as handcuffs, except when necessary to protect the person subject to involuntary examination or others. Fla. Stat. § 394.459(1).

While the court stated that "[t]he nature and extent of physical injuries sustained by a plaintiff are relevant" to an excessive force claim, clearly emotional and psychological injuries are *also* relevant. *Id.* at 1318, 1325. *Gray* also stands for the proposition that a child's young age should be considered in determining the psychological harm of handcuffing. 458 F.3d at 1307.

3. It is clearly established that handcuffing young, compliant children who pose no threat of bodily harm constitutes excessive force under the Fourth Amendment.

Defendants argue that Officer Defendants are protected from liability from Plaintiffs' damages claims based on qualified immunity. To overcome this defense, Plaintiffs must establish that they have sufficiently alleged that their rights were violated (discussed above) and that the violation was of "clearly established statutory of constitutional rights of which a reasonable person would have known." *Davis v. Williams*, 451 F.3d 759, 762 (11th Cir. 2006) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). In some cases, an officer's conduct is "so obviously at the very core of what the Fourth Amendment prohibits that the unlawfulness of the conduct [should be] readily apparent to [him], notwithstanding the lack of [fact-specific] case law." *Lee v. Ferraro*, 284 F.3d 1188, 1199 (11th Cir. 2002) (quoting *Priester v. City of Riviera Beach, Fla.*, 208 F.3d 919, 926 (11th Cir. 2000). "Even in the absence of factually similar case law, an official can have fair warning that his conduct is unconstitutional when the constitutional violation is obvious, sometimes referred to as 'obvious clarity' cases." *Gray*, 458 F.3d at 1306.

As in *Gray*, the constitutional violation alleged by Plaintiffs is obvious. In *Gray*, the court denied qualified immunity to a deputy who had handcuffed "a compliant, nine-year-old girl" with "no indication of a threat to anyone's safety." *Id.* at 1306–07. Even though there was no prior similar case law, the court found that the deputy had fair warning that his behavior violated

Fourth Amendment, and is sufficiently similar to the Plaintiff's allegations to put Defendants on notice that their conduct was unlawful. Further, as in *Gray*, the constitutional violation inherent in handcuffing young children posing no imminent danger to themselves or others is "obvious" even without similar case law.

4. The School Board has a policy and custom of, and trains its officers to, handcuff all children subjected to the Baker Act, causing harm to Plaintiff children.

handcuffing even when unnecessary or unreasonable, it directly caused the Plaintiff children's injuries and violated their constitutional rights. FAC ¶¶ 369-71.

In addition, the FAC alleges that the School Board does not provide adequate training and supervision regarding the use of force, including handcuffing, against students who were seized and transported for involuntary examination. Officers were not trained on the harms of handcuffing young children, including young children with disabilities, or on the Baker Act's limitations on the use of handcuffs. FAC ¶¶ 6, 205, 213, 228, 229, 232, 327-28, 340, 351, 362, 381, 396, 408, 419, 431. Because this resulted in officers improperly handcuffing children during involuntary examinations under the Baker Act, it directly caused the Plaintiff children's injuries and violated their constitutional rights. FAC ¶¶ 381, 396, 408, 419, 431.

Plaintiff parents P.S., J.S., A.B., and L.H. have stated claims, for only injunctive relief,[30] that all Defendants except Officer Lauginiger interfered with their fundamental parental rights without adequate due process. "[A] § 1983 claim alleging a denial of procedural due process requires proof of three elements: (1) a deprivation of a constitutionally-protected liberty or property interest; (2) state action; and (3) constitutionally-inadequate process." *Arrington v. Helms*, 438 F.3d 1336, 1347 (11th Cir. 2006) (quoting *Grayden v. Rhodes*, 345 F.3d 1225, 1232 (11th Cir. 2003)). Defendants appear to dispute the first and third of these elements.

[30] Defendants' arguments regarding qualified immunity are therefore irrelevant. Mot. at 25, 40.

1. P.S., J.S., A.B. and L.H. were deprived of constitutionally-protected interests.

The Supreme Court has long recognized the fundamental right of parents to direct the upbringing of their children. "[T]he Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation's history and tradition." *Moore v. City of East Cleveland, Ohio*, 431 U.S. 494, 503 (1977) (plurality opinion). Parents' interest in the "care, custody and control" of their children "is perhaps the oldest of the fundamental liberty interests recognized by th[e] Court." *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (plurality opinion).

Parents also have a right to make medical decisions for their children, including regarding psychiatric care. *See Parham v. J.R.*, 442 U.S. 584, 604 (1979) (noting that parents "retain plenary authority to seek [psychiatric] care for their children"). "[N]either the state nor private actors, concerned for the medical needs of a child, can willfully disregard the right of parents to generally make decisions concerning the treatment to be given to their children. '[P]arents have the right to decide free from unjustified governmental interference in matters concerning the growth, development and upbringing of their children.'" *Bendiburg v. Dempsey*, 909 F.2d 463, 470 (11th Cir. 1990) (quoting *Arnold v. Board of Educ. of Escambia County, Ala.*, 880 F.2d 305, 313 (11th Cir. 1989)).[31] In the face of these controlling precedents, Defendants offer no argument whatsoever beyond their assertion that these rights are not "recognized." Mot. at 23.

[31] Additionally, a 2021 Florida Law reaffirms that "parental rights are reserved to the parent of a minor child . . . including . . . [t]he right to make health care decisions for his or her minor child, unless otherwise prohibited by law." HB 241 (2021), codified at Fla. Stat. § 1014.04(1). *See also Vazzo v. City of Tampa*, 415 F. Supp. 3d 1087, 1098 (M.D. Fla. 2019) ("The law in Florida is that, with very few exceptions, parents are responsible for selecting the manner of medical treatment received by their children, and this continues until age 18.") (citing Fla. Stat. § 743.07 (2019)).

2. Pre-deprivation process was required before P.S., J.S., A.B. and L.H. were deprived of these liberty interests.

Due process generally requires pre-deprivation notice and hearing before the State deprives a person of a liberty interest. *Zinermon v. Burch*, 494 U.S. 113, 127 (1990). The Defendants appear to argue that if adequate post-deprivation remedies are available, Plaintiffs cannot state a claim for a due process violation. Mot. at 6 (citing *Hudson v. Palmer*, 468 U.S. 517, 534 (1984) (holding that where a post-deprivation remedy was available, deprivation of property interest did not violate due process)). However, the Supreme Court has described *Hudson*

officers' power to prevent the deprivation by instructing officers to allow parents to take custody of their children to avoid an involuntary examination under the Baker Act. FAC ¶ 208.[32]

3. P.S., J.S., A.B. and L.H. have pled that they did not receive due process when their children were removed without their consent.

The state may, under a civil statute, constitutionally remove a child from their parents' custody without consent or a court order only in "true emergencies" where "there is probable cause to believe the child is threatened with imminent harm." *Doe v. Kearney*, 329 F.3d 1286, 1294–95 (11th Cir. 2003).[33] Similarly, it is clearly established that parents can only be deprived of their rights to make medical decisions for their children if there is a true or reasonably perceived emergency. *Bendiburg v. Dempsey*, 909 F.2d 463, 468 (11th Cir. 1990) ("The validity of the [state consent to a child's surgery without a parent's consent], both for constitutional and state law battery purposes, turns on whether such an emergency existed, or was thought to exist by the state employees, so as to make constitutional what would be unconstitutional in the absence of a medical emergency . . . .").

The FAC alleges that there was no "true emergency" or even a reasonable perception of an emergency as to D.P., E.S., L.A. and W.B. and that police officers working for the District

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[32] Moreover, even if the constitutionality of Defendants' actions could be saved through post-deprivation review, Plaintiffs have alleged that Defendants conduct no such review. FAC ¶ 220. Defendants' argument appears to be that their constitutional violations can be remedied by the acts of the receiving facility, Mot. at 23-24, acts in which the Defendants play no role and acts which the Defendants do nothing to guarantee occur. But any actions by receiving facility staff only address potential legal violations caused by the receiving facility. They do not and cannot remedy Defendants' failure to provide notice or an opportunity to consent to parents before the decision to seize their child for an involuntary examination occurs, or the Defendants' denial of any meaningful opportunity to be heard to parents before depriving them of their liberty interest in the care, custody, and control of and medical decision-making regarding their child. FAC

regularly seize other children in similar circumstances. *See* Background, above. Taking all of Plaintiffs' asserted facts as true and making all inferences in their favor, the Court must conclude that no emergency existed that would justify depriving P.S., J.S., L.H. and A.B. of their rights to care, custody and control and to make medical decisions for their children.

Defendants also argue that "[i]t would be an irrational policy to require parental consent for involuntary examination, as some children would be barred from receiving the interventions they need during a mental health crisis, due to abusive or neglectful parents." But this can hardly be a justification for ignoring parents' wishes when there is *no reason to suspect* they are abusive, and it is not the constitutional standard, which requires an emergency or imminent harm before temporarily depriving parents of their rights. *See Parham*, 442 U.S. at 602–03 ("The statist notion that governmental power should supersede parental authority in all cases because some parents abuse and neglect children is repugnant to American tradition.") (internal citation omitted). Defendants do not argue that they had any reason to doubt the fitness of P.S., J.S., or L.H. to make decisions for their children. In A.B.'s case, the police report makes a cursory reference to abuse "at home," without any further substantiation. FAC ¶¶ 136, 140. It is apparent that any investigation was minimal at best, and that the evidence was insufficient to meet the emergency or imminent harm standard required to constitutionally deprive A.B. of her rights over her child.[34]

[34] Defendants also allege that they complied with the Baker Act. However, whether or not that is true, that is

4. District policies, customs, and failure to train caused violations of Plaintiff parents' rights.

Defendants do not dispute that they took the D.P., E.S., L.A. and W.B. into custody without parental consent. Defendants also do not dispute that the District routinely seizes children for involuntarily examination, including children of members of

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