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

D.P. et al.,

Plaintiffs,

v.

SCHOOL BOARD OF PALM BEACH COUNTY, et al.,

Defendants.
_____/

CASE NO.: 21-81099-CIV-CANNON

DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT

COME NOW, the Defendants, the School Board of Palm Beach County, Florida (the "School Board"), Dr. Donald E. Fennoy, II, Daniel Alexander, Officer Jose Cuellar, , Officer Howard Blochar, Officer Johnny Brown, and Officer Jordan Lauginiger, (collectively, "School Board Defendants"), and Officer Joseph M. Margolis, Jr.,[1] by and through their undersigned counsel, and move to dismiss the Plaintiff's Complaint for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6).

Legal Standard

Pursuant to Rule 12(b)(6), the Court may dismiss a plaintiff's cause of action for failure to state a claim upon which relief may be granted. A Complaint must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). This

[1] All defendants, with the exception of Officer Margolis, are employed by the School Board of Palm Beach County and are represented by its General Counsel's Office. Officer Margolis is employed by the City of Lantana and is represented by independent counsel. Pursuant to the Court's Order, all defendants submit this joint Motion to Dismiss. Officer Margolis' portion of this Motion begins on page 27, *infra*.

obligation "requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citation omitted). To survive dismissal, the factual allegations must be "plausible" and "must be enough to raise a right to relief above the speculative level." Id. at 555. *See also Edwards v. Prime Inc.*, 602 F.3d 1276, 1291 (11th Cir. 2010). This requires "more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citations omitted).

In deciding a Rule 12(b)(6) motion to dismiss, the Court must accept all factual allegations in a complaint as true and take them in the light most favorable to the plaintiff. *Erickson v. Pardus*, 551 U.S. 89 (2007), but "[l]egal conclusions without adequate factual support are entitled to no assumption of truth." *Mamani v. Berzain*, 654 F.3d 1148, 1153 (11th Cir. 2011) (citations omitted). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal*, 556 U.S. at 678. "Factual allegations that are merely consistent with a defendant's liability fall short of being facially plausible." *Chaparro v. Carnival Corp.*, 693 F.3d 1333, 1337 (11th Cir. 2012) (internal citations omitted). "When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." *Iqbal*, 556 U.S. at 679.

The Florida Mental Health Act

The Florida Legislature enacted the Florida Mental Health Act, also known as the "Baker Act," to provide treatment programs designed to "reduce the occurrence, severity, duration, and disabling aspects of mental, emotional and behavioral disorders." Fla. Stat. § 394.453. These programs were intended to provide community, health, social and rehabilitative services to

"persons requiring intensive short-term and continued treatment..." *Id.* The Legislature specifically stated that the Act was created to provide individuals with "emergency service and temporary detention when required" and to allow individuals to be admitted "to treatment facilities on a voluntary basis when extended or continuing care is needed." *Id.* It further provided that "involuntary placement [should] be provided only when expert evaluation determines that it is necessary." *Id.* The law specifically requires an expert evaluation take place prior to the involuntary admission of any individual, regardless of the age of the individual.

The statute clearly delineates the difference between an involuntary *examination* and an involuntary *admission* (commitment) of a patient to a mental health facility. In this case, the Plaintiffs allege that they were wrongfully subjected to an involuntary examination and have not brought any claims that they were subjected to a wrongful admission to any facility providing mental health treatment under the Act[2]. As to involuntary examinations, the Act states as follows:

> (1) CRITERIA.—A person may be taken to a receiving facility for involuntary examination if there is reason to believe that the person has a mental illness and because of his or her mental illness:
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> (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
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> 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).

[2] The Plaintiffs nevertheless devote several pages of their First Amended Complaint to the alleged harm caused by merely being in the receiving facilities. *Compl.* ¶¶ 60-70.

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 SB 590 requiring school principals to make "a reasonable attempt" to contact a parent before a 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.

The First Amended Complaint Should be Dismissed as a Shotgun Pleading

At the outset, Plaintiffs' First Amended Complaint must be dismissed as a shotgun pleading. Pursuant to Federal Rule of Civil Procedure 8, "[a] pleading that states a claim for relief must contain . . . a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Federal Rule of Civil Procedure 10(b) requires parties to plead claims and defenses clearly and to separate claims founded on separate transactions or occurrences. Fed. R. Civ. P. 10(b). Failure to comply with these pleading guidelines results in shotgun pleadings, which are "altogether unacceptable." *Cramer v. Florida*, 117 F.3d 1258, 1263 (11th Cir. 1997); *see also Fullman v. Graddick*, 739 F.2d 553, 557 (11th Cir. 1984) (acknowledging that "a 'shotgun' approach to litigation . . . leav[es] the court with the cumbersome task of sifting through myriad claims, many of which [may be] foreclosed by [various] defenses").

One form of shotgun pleadings is one "asserting multiple claims against multiple defendants without specifying which of the defendants are responsible for which acts or omissions, or which of the defendants the claim is brought against." *Weiland v. Palm Beach Cty. Sheriff's Off.*, 792 F.3d 1313, 1323 (11th Cir. 2015). Plaintiffs' First Amended Complaint falls into this category of shotgun pleadings. The vast majority of Plaintiffs' counts asserts claims from multiple plaintiffs against multiple defendants, "without specifying which of the defendants are responsible for which acts or omissions, or which of the defendants the claim is brought against." Id. For instance, Count 6 states it is a procedural due process claim by "P.S., J.S., A.B., L.H., and FL NAACP against All Defendants except Officer Lauginiger." Compl. p. 51. As pled, it is unclear whether each of these plaintiffs is asserting a claim against each of the referenced defendants, or if only certain plaintiffs are asserting claims against some of the referenced defendants. This pleading deficiency, which is repeated throughout the First Amended Complaint, fails "to give the

defendants adequate notice of the claims against them and the grounds upon which each claim rests." *Weiland*, 792 F.3d at 1323.

Accordingly, Plaintiffs' First Amended Complaint must be dismissed as a shotgun pleading. *Barmapov v. Amuial*, 986 F.3d 1321, 1324 (11th Cir. 2021)("Shotgun pleadings are 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 an opponent's case, especially before the jury, can be masked." (citation and quotation omitted)).

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 clearly limited the scope of any claims under Florida's Baker Act, where Florida Statute 394.459(10), states "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

liability if such person commits negligence." The only causes of action that may arise from Florida's Baker Act is violations or abuse of patient's rights and/or negligence, all other actions 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 faith in the application of the initiation of an involuntary examination under Florida's Mental Health Act. The allegations do not set forth that the Defendants failed to follow the requirements of initiating an involuntary examination under the Act, but instead attempt to add additional actions the Defendants should have taken - *in the Plaintiffs' opinion*s. Where the Plaintiffs have not alleged that the Defendants failed to act in good faith, under Florida law, the Defendants are entitled to immunity from civil and criminal liability for all the claims set forth in the Amended Complaint. They have not raised the one exception to the Act's immunity provision – a cause of action for negligence.

The Plaintiffs Have Failed to State a Cause of Action Under Section 504, the Americans with Disabilities Act and the Florida Educational Equity Act (Counts 1-5)

The Plaintiffs allege that they are students or parents/guardians of students who have been diagnosed with a variety of disabilities. Section 504 of the Rehabilitation Act and the Americans with Disabilities Act of 1990 define disability as: (1) a physical or mental impairment that substantially limits a major life activity; (2) a record of such an impairment; or (3) being regarded as having such an impairment. *See* 29 USC. §705(9)(B); and 42 USC §12102.

Section 504 of the Rehabilitation Act of 1973 provides, "[n]o otherwise qualified individual with a disability … shall, *solely by reason of his or her disability*, be excluded from the

participation in, be denied the benefits of, or be subjected to discrimination under a program or activity receiving Federal financial assistance." 29 U.S.C. §794(a) (emphasis supplied). To establish a claim under either Section 504 of the Rehabilitation Act of 1973 ("Section 504") or the Americans with Disabilities Act ("ADA") against a school receiving federal funding, each individual plaintiff must show that he or she: "that [the plaintiff] is a 'handicapped individual under the Act, (2) that [he or she] is 'otherwise qualified' for the [benefit] sought, (3) that [he or she] was [discriminated against] solely by reason of [his] handicap, and that (4) the program or activity in question receives federal financial assistance." *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. 2d 1161, 1165-66 (M.D. Fla. 2005) and *Grzan v. Charter Hosp. of Northwest Indiana*, 104.F. 3d 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 this case, the First Amended Complaint details the individual circumstances surrounding each of the decisions to transport a student pursuant to the Florida Mental Health Act and summarily concludes that each of them was unnecessary. However, in none of the cases is it alleged that the decision to transport the student was made "solely by reason of [his or her] handicap." According to the First Amended Complaint:

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 ("ASD") and language impairment. Compl. ¶72. On the date he was transported, the Plaintiffs allege that he became upset and started throwing objects around his classroom. He was apparently so "out of control" that he had to be put into a two-person prone restraint. Compl. ¶¶ 79-82. He told his teacher, "I wish I could shoot you in your [expletive] head," and "Right now I am thinking I want to hold my breath so I can die." Compl. ¶88.

The Plaintiffs report that E.S. was transported under the Act following an incident whereby E.S. was "ripping up and eating some pieces of paper" and "swung his arm and hit [his behavioral analyst] 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." *Compl.* ¶¶ 107-108. The Plaintiffs allege that E.S. de-escalated and therefore should not have been transported to a receiving facility. They further alleged that Officer Cuellar was aware E.S. had an ASD diagnosis. However, there is no allegation that he was transported solely because of ASD diagnosis. To the contrary, Plaintiff's describe the circumstances that did lead to the officer's discretionary conclusion.

Similarly, the rationale behind the decision to transport Plaintiff L.A. to a receiving facility is detailed in the First Amended Complaint. The decision followed a series of events that began with L.A. drawing a picture, becoming embarrassed and fearing she would get into trouble. Officer Blocher's Incident Report "stated that [L.A.] wanted to kill herself; that she did not want to go home with her mother; that she suffered abuse at home; that she had the devil inside her; and that she wanted her mom to take her to church. She also stated that 'Momo' is real and asked the officer take out his phone 'so I can show you how I'm going to kill all of you.'" Compl. ¶ 136. The Plaintiffs claim that L.A.'s comments were misinterpreted and that there were multiple

strategies that would have effectively calmed her down. Even if there were other strategies that could have been implemented, and even if the comments were misinterpreted, Plaintiffs' critique of the circumstances does not lead to a conclusion L.A.'s disability (Attention Deficit 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 transported after "he became involved in a physical altercation with another student over a mouse pad. He became upset and began throwing chairs and, when a staff member approached him and started to touch him, he inadvertently came in physical contact with her." Compl. ¶ 162. Furthermore, Officer Brown's report stated "W.B. wanted to commit suicide by jumping off a building and that he wanted to take the police officer's supervisor's gun and kill people." Compl. ¶ 167. W.B.'s mother "said that W.B. commented that he had been looking up ways to kill people on the internet." *Id.* These circumstances as described by Plaintiffs form the rationale as to why W.B. was transported to a receiving facility. Again, there is no allegation that W.B.'s Emotional/Behavioral Disability was the sole reason for the transportation to the receiving facility.

In Paragraphs 181, 184 and 186 of the First Amended Complaint, the Plaintiffs allege that "there had been a student report of M.S. engaging in self harm," that she "was examined by a 'mental health professional,'" and that she had "'attempted suicide'" using 'the sharpened edge of her student ID card.'" These facts established the reasons for the transportation to a receiving facility. Again, there is no allegation that the student's Post Traumatic Stress Disorder was the sole reason for the transportation to the receiving facility.

The Plaintiffs in this case were each transported to a facility pursuant to the Mental Health Act. There are no allegations that any of the Defendants violated the Act. Rather, the claims

appear to jump to an erroneous conclusion that merely utilizing the statutory discretion provided by the Act resulted in discrimination against the Plaintiffs. However, these claims should be dismissed because they have not alleged sufficient facts to show that Defendants transported them solely because of their disability. *See J.A.M. v. Nova Southeastern University*, Inc., 646 Fed.Appx. 921, 927 (11th Cir. 2016) (dismissal affirmed where 504 claimant did not allege facts demonstrating that he was dismissed from university solely by reason of his mental disability).

The School Board Does Not Have a Widespread or Pervasive Practice or Policy of Unconstitutional Conduct

"The Supreme Court has placed strict limitations on municipal liability under § 1983." *Grech v. Clayton Cnty.*, 335 F.3d 1326, 1329 (11th Cir.2003) (citing *City of Canton v. Harris*, 489 U.S. 378, 385 (1989) and *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 694 (1978)). A government agency's liability under Section 1983 "may not be based on the doctrine of *respondeat superior*." *Id.* A local government is "liable under Section 1983 only for acts for which the local government is actually responsible." *Marsh v. Butler Cnty.*, 268 F.3d 1014, 1027 (11th Cir.2001), *abrogated on other grounds*, *Twombly*, 550 U.S. 544. "Indeed, a county is liable only when the county's 'official policy' causes a constitutional violation." *Grech*, 335 F.3d at 1329. Thus, Plaintiff must "'identify a municipal 'policy' or 'custom' that causes his injury.'" *Id.* (*quoting Gold v. City of Miami*, 151 F.3d 1346, 1350 (11th Cir.1998)).

A plaintiff asserting a claim under §1983 "has two methods by which to establish a county's policy: identify either (1) an officially promulgated county policy or (2) an unofficial custom or practice of the county shown through the repeated acts of a final policymaker for the county." *Id.* "Because a county rarely will have an officially-adopted policy of permitting a particular constitutional violation, most plaintiffs... must show that the county has a custom or

practice of permitting it and that the county's custom or practice is 'the moving force [behind] the constitutional violation.'" *Id.* at 1330 (quoting *City of Canton*, 489 U.S. at 389).

To establish "§1983 liability against a municipality based on custom, a plaintiff must establish a widespread practice that, 'although not authorized by written law or express municipal policy, is so permanent and well settled as to constitute a custom or usage with the force of law.'" *Brown v. City of Fort Lauderdale*, 923 F.2d 1474, 1481 (11th Cir.1991) (quoting *City of St. Louis v. Praprotnik*, 485 U.S. 112, 127 (1988)); *see also Wayne v. Jarvis*, 197 F.3d 1098, 1105 (11th Cir.1999), *overruled on other grounds, Manders v. Lee*, 338 F.3d 1304 (11th Cir. 2003) ("To establish a policy or custom, it is generally necessary to show a persistent and widespread practice.").

The Plaintiffs have attempted to establish that the School Board, along with its executives and police officers, had a policy of unnecessarily sending students for involuntary examinations by using non-party minors' incidents of crisis, and downplaying the seriousness of any threats of self-harm or harm to others. Threats of suicide (the end-result of some incidents of self-harm) or harm to other students or staff is not something that anyone can or should downplay or dismiss, especially in a vulnerable group such as students in a school setting. In fact, the Defendants have an even higher burden to protect students from potential mental health crisis after the tragedy at Marjory Stoneman Douglas High School in February 2018, with the Florida legislature mandating schools provide expanded mental health services. *See* Fla. Stat. §1011.62(16) (detailing the provision of funding to expand and enhance public school mental health resources). Schools must be vigilant of potential threats to student and school safety, including potential self-harm or harm to others by students in crisis.

Even assuming that the eighteen scenarios presented by the Plaintiffs in the Amended Complaint all represented unnecessary involuntary examinations under Florida's Mental Health 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 district's student population. 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 establish the School Board's liability under a §1983 claim.

Furthermore, the Plaintiffs cannot consistently show that the "unnecessary" involuntary examinations were the *result* of a pervasive practice. Indeed, the circumstances surrounding each involuntary examination of the five minor Plaintiffs and the non-party children were wildly divergent. The Plaintiffs offer no common thread among them, except to offer an opinion that the officers involved were unreasonable in their determinations that they met the criteria for examination under the Act.

Similarly, the Plaintiffs' claims for failure to train the argument fall short of the requisite showing that there was a widespread pattern of similar constitutional violations by the School Police Department such that the Board evidenced "deliberate indifference" in failing to train its employees or that the need for training was so obvious that the failure to train was sure to result in a violation of the Constitution.

> "[T]here are limited circumstances in which an allegation of a 'failure to train' can be the basis for liability under § 1983." *Canton*, 489 U.S. at 387. "[T]he 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." *Id.* at 388. "Only where a municipality's failure to train its employees in a relevant respect evidences a 'deliberate indifference' to the rights of its inhabitants can such a shortcoming be properly thought of as a city 'policy or custom' that is actionable under § 1983." *Id.* at 389. In this respect, "'[m]unicipal liability under § 1983 attaches where—and only where—a deliberate choice to follow a course of action is made from among various alternatives' by city policymakers. Only where a failure to train reflects a 'deliberate' or 'conscious' choice by a municipality—a 'policy' ... can a city be liable for such a failure under § 1983." *Id.* (internal citations omitted).
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> "Deliberate indifference can be established in two ways: by showing a widespread pattern of similar constitutional violations by untrained employees or by showing that the need for training was so obvious that a municipality's failure to train its employees would result in a constitutional violation." *Mingo v. City of 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). "To establish a city's deliberate indifference, 'a plaintiff must present some 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 action.'" *Lewis v. City of W. Palm Beach, Fla.*, 561 F.3d 1288, 1293 (11th Cir. 2009) (quoting *Gold*, 151 F.3d at 1350). "[A] pattern of similar constitutional violations by untrained employees is ordinarily necessary to demonstrate deliberate indifference for purposes of failure to train." *Weiland v. Palm Beach Cty. Sheriff's 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 of subjecting students to "unnecessary" involuntary 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 failure to adequately train police officers in recognizing mental illness "falls far short of the kind of 'obvious' need for training that would support a finding of deliberate indifference to constitutional rights on the part of the [School Board]… There are thus no clear constitutional guideposts for municipalities in this area, and the diagnosis of mental illness is not one of the 'usual and recurring situations with which [the police] must deal.'

The lack of training at issue here is not the kind of omission that can be characterized, in and of itself, as a 'deliberate indifference' to constitutional rights." *Canton*, 489 U.S. at 396-97 (O'Connor, J., concurring in part and dissenting in part; internal citations omitted). Accordingly, the Plaintiffs' claims 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 13-18). The allegations in the First Amended Complaint, however, fail to establish that the individual-capacity Defendants' conduct violated a constitutional right and/or that the right was clearly established at the time of the alleged misconduct.

Qualified immunity, generally

It should be obvious that a plaintiff "may not maintain a Section 1983 claim based on a violation of Florida's Baker Act, as the Baker Act is not a federal constitution or law of the United States." *Haley v. Judd*, 2012 WL 3204591, *2 (M.D. Fla. 2012) (quoting *Constantino v. Madden*, 2003 WL 22025477, *4 (M.D. Fla. 2003). The Plaintiffs' claims against the individual defendants must therefore arise out of an alleged violation of their constitutional rights.

"Although the 'defense of qualified immunity is typically addressed at the summary judgment stage of a case, it may be… raised and considered on a motion to dismiss.' Generally speaking, it is proper to grant a motion to dismiss on qualified immunity grounds when the 'complaint fails to allege the violation of a clearly established constitutional right.'" *Corbitt v. Vickers*, 929 F.3d 1304, 1311 (11th Cir. 2019) (quoting *St. George v. Pinellas Cty.*, 285 F.3d 1334, 1337 (11th Cir. 2002)). "Once [a defendant] has raised the defense of qualified immunity, the burden of persuasion on that issue is on the plaintiff." *Id.* Furthermore, qualified immunity is an entitlement to immunity from suit rather than a mere defense to liability - accordingly, unless a plaintiff's allegations state a claim of violation of clear-established law, "a defendant pleading qualified immunity is entitled to dismissal before the commencement of discovery." *Mitchell v. Forsyth*, 472 U.S. 511, 105 S.Ct. 2806 (1985) (citing *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S.Ct. 2727, 2738 (1982)).

"Qualified immunity provides complete protection for government officials sued in their individual capacities where their conduct 'does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Quinette v. Reed*, 805 F. App'x 696, 701 (11th Cir. 2020) (per curiam) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). A government official "is entitled to qualified immunity where his actions would be objectively reasonable to a reasonable [official] in the same situation." *Id.* (citing *Anderson v. Creighton*, 483 U.S. 635, 638–41 (1987)). To assert a qualified immunity defense, a government official must have been acting within the scope of his discretionary authority when the allegedly wrongful acts occurred. *Id.* (citation omitted). Once the government official establishes that they were acting within the scope of their discretionary authority, the burden shifts to the plaintiff to show that the defendants violated a clearly established constitutional right. *See Carter v. Butts*

Cnty., Ga., 821 F.3d 1310, 1319 (11th Cir. 2016) (citation omitted). Courts employ a two-step inquiry to determine whether government officials are entitled to qualified immunity: (1) the facts alleged in the complaint show the official's conduct violated a constitutional right, and (2) the right was clearly established at the time of the alleged misconduct. *See Pearson v. Callahan*, 555 U.S 223, 232 (2009). Courts need not address these steps in sequential order. *See id.* at 236.

To demonstrate that a constitutional right is clearly established, "a legal principle must have a sufficiently clear foundation in then-existing precedent." *District of Columbia v. Wesby*, 138 S. Ct. 577, 589 (2018). "The rule must be settled law, . . . which means it is dictated by controlling authority or a robust consensus of cases of persuasive authority." *Id.* at 589–90. (internal citations and quotation marks omitted). "The precedent must be clear enough that every reasonable official would interpret it to establish the particular rule the plaintiff seeks to apply." *Id.* at 590 (citation omitted). The ultimate inquiry is "whether the state of the law gave the defendants fair warning that their alleged conduct was unconstitutional." *Vaughan v. Cox*, 343 F.3d 1323, 1332 (11th Cir. 2003) (citation and internal quotation marks omitted).

"[I]f case law, in factual terms, has not staked out a bright line, qualified immunity almost always protects the defendant." *Oliver v. Fiorino*, 586 F.3d 898, 907 (11th Cir. 2009) (citation and internal quotation marks omitted). A court may, however, find that a right is clearly established in the absence of case law where the case is one of "obvious clarity"—one "where the officer's conduct 'lies so obviously at the very core of what the Fourth Amendment prohibits that the unlawfulness of the conduct was readily apparent to [the officer], notwithstanding the lack of fact-specific case law' on point." *Id.* (quoting *Vinyard v. Wilson*, 311 F.3d 1340, 1355 (11th Cir. 2002)). "Under this test, 'the law is clearly established, and qualified immunity can be overcome, only if the standards set forth in *Graham* and [Eleventh Circuit] case law inevitably lead every reasonable

officer in [the defendant's] position to conclude the force was unlawful.'" *Id.* (quoting *Lee*, 284 F.3d at 1199).

As to all of the alleged claims brought under 42 U.S.C. §1983, the individual-capacity Defendants are entitled to qualified immunity. There is no authority suggesting that minors have a right to be free from seizures and involuntary examinations under the Mental Health Act. Indeed, the officers' actions were in conformance with the law, which compelled them to act. The Plaintiffs can point to no precedent – in state or federal law – that reasonably would put any of the Defendants on notice that their actions were unlawful. Nor was their conduct so obviously abhorrent to the rights protected by the Constitution that it would have been readily apparent to the Defendants.

The individual-capacity School Board Defendants were acting within their discretionary authority

There appears to be no question that the individual Defendants were acting within their discretionary authority during the events described in the First Amended Complaint. To act within the scope of discretionary authority means that the actions were: (1) undertaken pursuant to the performance of the officer's duties; and (2) within the scope of his authority. *Collier v. Dickinson*, 477 F.3d 1306, 1307, n.1 (11th Cir. 2007). Clearly here, the acts of detaining, evaluating and transporting the students under the Mental Health Act fall squarely within their discretionary authority[3]. *See* Fla. Stat. § 394.463(2)(a)2 (providing that a law enforcement officer "shall" transport a person who appears to meet the criteria for involuntary commitment under the Act to

[3] The only Defendant sued in his individual capacity who is not a law enforcement officer is the School Board's former superintendent, Dr. Fennoy, however, as set forth below, the Plaintiffs have alleged no facts that would subject him to individual liability.

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 the officers involved because the officers did not "reasonably believe" their behavior "posed an imminent risk of serious bodily harm to himself or others." Compl. ¶¶ 315, 324, 336, 348 and 360. Under the facts alleged, however, counts 8-12 should be dismissed because the individual-capacity Defendants are entitled to qualified immunity.

> [The 11th Circuit] has held that "[i]n the context of a mental-health seizure, '[w]hen an officer stops an individual to ascertain that person's mental state ... the Fourth Amendment requires the officer to have probable cause to believe the person is dangerous either to himself or to others.'" *May*, 846 F.3d at 1327-28 (quoting in part *Roberts*, 643 F.3d at 905). "'[T]o be entitled to qualified immunity from a Fourth Amendment claim, an officer need not have actual probable cause, but only arguable probable cause'—that is, 'the facts and circumstances must be such that the officer reasonably could have believed that probable cause existed.'" *Id.* at 1328 (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 sheriff's deputies who had 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]. "Arguable probable cause is determined 'in light of the information the officer possessed'" and the officers are not required to fact-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], the Plaintiffs' claims for excessive force all stem from an alleged policy or practice of employing handcuffs "and/or hobble restraints[7]." The Plaintiffs claim they 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, each and every Plaintiff claims they were "psychologically injured" by the use of handcuffs.

"Pursuant to the Fourth Amendment, an officer may not use excessive force in the course of a lawful arrest." *Williams v. Sirmons*, 307 F.App'x 354, 360 (11th Cir. 2009) (per curiam) (citing

[5] These allegations support not just "arguable" probable cause, but actual probable cause – accordingly, not only are the individual-capacity Defendants immune from suit, but the School Board and official-capacity Defendants are not liable for any "unreasonable" seizures of the minor Plaintiffs. *See Rankin v. Evans*, 133 F.3d 1425, 1435 (11th Cir. 1998) (noting that probable cause is an "absolute bar" to a §1983 claim for false arrest).

[6] In addition to being handcuffed, E.S. claims Officer Cuellar "slammed" him on a couch and on a floor and scuffed his knees in the process. *Compl.* ¶¶ 387, 390. Nevertheless, Cuellar remains immune, as his use of force did not violate a clearly-established constitutional right. *See, e.g., Anderson v. Snyder*, 389 F.Supp.3d 1082, 1096 (S.D. Fla. 2019) (officer who used taser on Baker Act subject entitled to qualified immunity).

[7] None of the named Plaintiffs actually allege that they were subjected to "hobble restraints."

Graham v. Connor, 490 U.S. 386, 388 (1989)). "Determining whether the force used to effect a particular seizure is 'reasonable' under the Fourth Amendment 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." *Graham*, 490 U.S. at 396 (citation and internal quotation marks omitted). "[T]he question is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." *Id.* at 397.

"To determine whether an officer's force was unreasonable, the Supreme Court has directed that [courts] consider (1) the severity of the crime; (2) whether the individual 'posed an immediate threat to the safety of the officers or others'; and (3) whether the individual 'actively resisted arrest or attempted to evade arrest by flight.'" *Patel v. City of Madison, Ala.*, 959 F.3d 1330, 1339 (11th Cir. 2020) (quoting *Graham*, 490 U.S. at 396) (alterations adopted)). The Eleventh Circuit has also considered "(4) the need for force to be applied; (5) the amount of force applied in light of the nature of the need; and (6) the severity of the injury." *Id.* (citing *Lee v. Ferraro*, 284 F.3d 1188, 1197–98 (11th Cir. 2002); *Sebastian v. Ortiz*, 918 F.3d 1301, 1308 (11th Cir. 2019)). Nonetheless, it remains well established in the Eleventh Circuit 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." *Williams*, 307 F. App'x at 360. This analysis is true for claims of excessive force arising out of 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).

There is no legal authority suggesting that handcuffing juveniles constitutes excessive force. This is particularly so where no physical injury is alleged. "The relevant inquiry in assessing excessive force claims relates to *physical* harm suffered. *See Stephens v. DeGiovanni*, 852 F.3d 1298, 1325 (11th Cir. 2017) ("*The nature and extent of physical injuries sustained by a plaintiff are relevant in determining whether the amount and type of force used by the arresting officer were excessive.*") (emphasis in original)... Even painful handcuffing does not, by itself, amount to excessive force. *See Rodriguez v. Farrell*, 280 F.3d 1341, 1351 (11th Cir. 2002) (citing *Nolin v. Isbell*, 207 F.3d 1253, 1257–58 (11th Cir. 2000))." *DiGennaro v. Malgrat*, 2021 WL 3025322 *5 (S.D. Fla. 2021).

In light of the Plaintiffs' failure to allege any physical injury arising out of the use of handcuffs, the facts alleged to not arise to a violation of the Plaintiffs' constitutional rights. In each and every one of the events described by the Plaintiffs, the responding officer was not just entitled, but *required* under the Mental Health Act to take the Plaintiffs into custody and transport them to the nearest receiving facility. *See* Fla. Stat. §394.463(2)(a)2. "[W]here 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." *Williams*, 307 F. App'x at 360. There is no claim being made that the use of handcuffs extended beyond the period required to secure the Plaintiffs and transport them to the nearest receiving facility.

Even assuming that allegations of the officers' conduct in the First Amended Complaint were not objectively reasonable, they are entitled to qualified immunity, as the Plaintiffs cannot show that the officers violated a "clearly-established" constitutional right. The Plaintiffs cannot demonstrate any controlling authority or a "robust consensus of cases of persuasive authority"

staking out a "bright line" rule prohibiting law enforcement officers from handcuffing juveniles upon either executing a lawful arrest or transporting them under the Mental Health Act. *See District of Columbia*, 138 So.Ct. at 589-90; and *Oliver*, 586 F.3d at 907. Accordingly, even if there was a constitutional violation, the individual-capacity Defendants would be entitled to qualified immunity for the claims of excessive force[8].

The Plaintiffs have failed to state claims for deprivation of parental rights to custody and control and for medical decision-making

Counts 6 and 7 should be dismissed with respect to all Defendants, as they fail to allege that the Plaintiffs were deprived of a recognized constitutional right without the benefit of due process. There is no authority suggesting that a temporary detention and transportation of a person subject to the Baker Act constitutes a deprivation of parental rights to custody or control over medical decision-making, and the Plaintiffs have failed to state how they were deprived of any due process rights. Indeed, there appears to be little authority for such a proposition when it comes to involuntary mental health evaluations. Furthermore, the individual-capacity Defendants similarly enjoy qualified immunity from these claims and for the same reasons as the other §1983 claims.

On the contrary, the Act itself provides the officers with authority (indeed, the duty) to take persons who appear to meet the criteria for an involuntary evaluation into custody. As explained above, such a seizure requires the officer to have probable cause. Furthermore, the Act itself provides significant due process protections for both adult and juvenile patients – for example, it

[8] The same is true for the allegations that Officer Cuellar used excessive force when restraining E.S., resulting in "scuffed knees." The Plaintiffs allege that E.S. was acting erratically, eating paper, yelling, struck a window and even struck his behavioral analyst twice in the chest, leaving a red mark. Indeed, other courts have found that far more egregious uses of force against individual suffering a mental health crisis have failed to overcome qualified immunity. *See, e.g., Wilson*, 2012 WL 13106092 (summary judgment granted on qualified immunity grounds where responding officers tased noncompliant, mentally-ill man eight times and subjected him to three-point disabling restraint); and *Lillo*, 2009 WL 2928774 (summary judgment granted where prone restraint of Mental Health Act subject caused him to asphyxiate).

provides that minors must be examined within 12 hours of arrival at the facility, after which they must either be released, consent to voluntary treatment or the facility must petition the courts for involuntary treatment. *See* Fla. Stat. § 394.463(2)(g). The Act also provides a robust notification provision – after the minor arrives at the receiving facility, the facility must attempt parental notification on an hourly basis during the first 12 hours after arrival[9]. *See* Fla. Stat. § 394.4599(2)(c)2. Significantly, the Plaintiffs do not allege that they were not afforded the opportunity for notice, a hearing or that they were not contacted. *See Grady v. Baker*, 404 Fed.Appx. 450, 454 (11th Cir. 2010) (complaint properly dismissed where plaintiff claiming procedural due process violation arising out of unlawful Baker Act commitment failed to plead that he was denied notice, a hearing or a post-deprivation review).

In addition, it should be noted that the Plaintiffs do not appear to take any issue with actual medical decisions that were made on behalf of the students. Florida law is clear that compliance with the Mental Health Act is not a "medical decision" requiring *See Southern Baptist Hospital of Florida, Inc. v. Ashe*, 948 So.2d 889, 891 (Fla. 4th DCA 2007) (where plaintiff challenged hospital's decision to release decedent after an involuntary examination, the cause of action sounded in ordinary negligence and not medical malpractice because the alleged wrongful acts did not involve the rendering of medical care or services). It's not clear from the First Amended Complaint whether all of the Plaintiffs received any medical treatment at the receiving facilities,

[9] In ¶295 of the First Amended Complaint, the Plaintiffs allege (against all Defendants except Lauginiger) that the Defendants failed to "provide any type of notice or consent" prior to removing the children, however each and every one of the Plaintiffs admit earlier in the factual recitations of the First Amended Complaint that they were contacted at the time of the transport. Furthermore, it should be noted that the Act does NOT require parental consent for an involuntary examination. It 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. Indeed, at least one of the minor Plaintiffs said she had been suffering abuse at home. *Compl.* ¶¶ 136.

but assuming they did, they have not alleged any facts supporting the allegation that they were deprived of procedural due process.

Finally, with regard to these counts and the individual-capacity Defendants, the same qualified immunity analysis is required as for the Plaintiffs' other §1983 claims. There is zero authority suggesting that subjecting minors to an involuntary examination under similar circumstances violated any clearly-established constitutional rights.

Defendants Fennoy and Alexander Should be Dismissed Entirely

Official-capacity Defendants are redundant and unnecessary

Defendants Fennoy and Alexander have been sued in their official capacities as the superintendent of the School District of Palm Beach County and the Chief of the School District's Police Department, respectively. Compl. ¶¶ 40-44. As to all "official capacity" claims, the same standards applicable to the School Board are applicable to Fennoy and Alexander, and bringing such claims is unnecessary and redundant. *See Kentucky v. Graham*, 473 U.S. 159, 167, 105 S.Ct. 3099, 3106 (1985) (in all respects except name, such suits are to be treated as suits against the entity); and *Busby v. City of Orlando*, 931 F.2d 764, 776 (11th Cir. 1991) ("Because suits against a municipal officer sued in his official capacity and direct suits against municipalities are functionally equivalent, there no longer exists a need to bring official-capacity actions against local government officials…").

The Plaintiffs have not alleged sufficient facts to sue Fennoy in his individual capacity

The Plaintiffs have also sued Fennoy in his individual capacity, however the First Amended Complaint is devoid of any allegations that would give rise to such a claim. In summary, they allege that Fennoy, as the superintendent, was responsible for supervision of the School District

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 to the transportation of the minor Plaintiffs other than either an extremely distant supervisory role or a policy-making role.

"It is well-established that supervisors are not subject to § 1983 liability under theories of respondeat superior or vicarious liability." *Keith v. DeKalb Cnty., Ga.*, 749 F.3d 1034, 1047 (11th Cir.2014) (citing *Cottone v. Jenne*, 326 F.3d 1352, 1360 (11th Cir. 2003)). Instead, supervisors can violate federal law and be held individually liable for the conduct of their subordinates only "when the supervisor personally participates in the alleged constitutional violation or when there is a causal connection between the actions of the supervising official and the alleged constitutional deprivation." *Id.* (quoting *Cottone*, 326 F.3d at 1360) (internal quotation marks omitted). A plaintiff can establish a causal connection by alleging that: (1) a history of widespread abuse puts the responsible supervisor on notice of the need to correct the alleged deprivation, and he fails to do so; (2) a supervisor's custom or policy results in deliberate indifference to constitutional rights; or (3) facts support an inference that the supervisor directed subordinates to act unlawfully or knew that subordinates would act unlawfully and failed to stop them from doing so. *Williams v. Santana*, 340 Fed.Appx. 614, 617 (11th Cir. 2009) (citations omitted). "The deprivations that constitute widespread abuse sufficient to notify the supervising official must be obvious, flagrant, rampant and of continued duration, rather than isolated occurrences." *Santana*, 340 Fed.Appx. at 617 (quoting *Brown v. Crawford*, 906 F.2d 667, 671 (11th Cir.1990)). "In short, the standard by which a supervisor is held liable in his individual capacity for the actions of a subordinate is extremely rigorous." *Keith*, 749 F.3d at 1048 (citation and internal quotation marks omitted).

There is no allegation that Fennoy participated in the events at issue. To the extent that the Plaintiffs allege that Fennoy knew or should have known the officers were inadequately trained or supervised, they have failed to allege sufficient facts to meet this extraordinarily "rigorous" standard. Indeed, there are no facts alleged indicating that Fennoy was in direct supervision of these officers, or knew that there was any "widespread abuse" that would put him on notice of an "obvious, rampant and of continued duration" issue regarding the officers' actions. Imposing individual liability on the superintendent of the School District, merely because he has nominal supervisory authority over the District's Police Department, under a theory of failure to train or supervise is tantamount to imposing de facto respondeat superior liability. *See Iqbal*, 556 U.S. at 677, 129 S.Ct. 1937 ("In a § 1983 suit ... – where masters do not answer for the torts of their servant – the term 'supervisory liability' is a misnomer"); *City of Canton* 489 U.S. at 391 (explaining that letting the existence of a random deficiency or officer shortcoming support a failure to train claim would mean imposing "de facto respondeat superior" liability on the municipality and municipal supervisors, a liability that the Court has repeatedly rejected).

Arguments of Officer Margolis

Officer Margolis is the only Defendant who is not employed by the School Board. Accordingly, he is represented by independent counsel and he makes the following arguments against allegations made specifically against him. To the extent that the Defendants' arguments and citations to authority are supportive of each other, the Defendants adopt the same.

BACKGROUND

At the relevant time, plaintiff, D.P., was a nine-year-old student at a school in Palm Beach County. Compl. ¶¶ 12, 71. Plaintiff, P.S. is D.P.'s grandmother and legal guardian; P.S. was

D.P.'s legal guardian during the alleged incident giving rise to this lawsuit. *Id.* ¶ 74. Officer 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.

"According to Officer Margolis' report, on November 8, 2018, while in his ASD[10] classroom, D.P. became upset and threw one or more objects." *Id.* ¶ 79.[11] Officer Margolis' report further provides that when an assistant principal approached D.P. in an effort to deescalate the situation, D.P. "struck her in the face with [a] stuffed animal." Exhibit "A," p. 1. D.P. was then restrained by school staff and the other students were removed from the classroom. *Id.*; Compl. ¶ 82. D.P. eventually "calmed down" and the assistant principal left the room. Compl. ¶ 84. Shortly thereafter, D.P. made remarks about "wanting to hurt himself," and the assistant principal called Officer Margolis to come to the classroom. *Id.* ¶¶ 84-85.

D.P. told his teacher, "I wish I could shoot you in your fucking head." Exhibit "A," p. 1; Compl. ¶ 88.; D.P also stated, "I deserve to be dead," "Shut the fuck up, before I kill you," ["]I will run out of this school and get myself murdered," ["]Grandma does not love me, nobody loves me," and "Right now I am thinking I want to hold my breath so I can die." Exhibit "A," pp. 1-4; Compl. ¶ 88. Officer Margolis also observed D.P. "jump on two desk[s] and run to the teacher's

[10] ASD refers to Autism Spectrum Disorder. *See* Compl. ¶ 12.

[11] The key facts surrounding this incident are set forth in Officer Margolis' report, which plaintiffs cite and quote throughout their First Amended Complaint. A redacted copy of the report is attached as Exhibit "A." The Court may consider this report, which is incorporated by reference into plaintiffs' complaint, at the motion to dismiss stage of the proceedings. *Maxcess, Inc. v. Lucent Techs., Inc.*, 433 F.3d 1337, 1340 n.3 (11th Cir. 2005)(noting that on a motion to dismiss, a court may consider matters "outside the four corners of the complaint" if "central to the plaintiff's claims and [] undisputed in terms of authenticity"); *Day v. Taylor*, 400 F.3d 1272, 1276 (11th Cir. 2005)("[I]f the document's contents are alleged in a complaint and no party questions those contents, we may consider such a document provided it meets the centrality requirement . . . ." (citations omitted)). To the extent the Court declines to consider Officer Margolis' report, Officer Margolis is nonetheless entitled to dismissal based upon the portions of Officer Margolis' report that are directly quoted in the First Amended Complaint.

desk" where he was "looking at a container that held pens and scissors and place[d] his hands on it." Exhibit "A," p. 4.

As a result of the above actions, P.S. "was called and told that D.P. would be taken for an involuntary examination under the Baker Act." Compl., ¶ 91. In response, "P.S. explained that she had to go to her father's funeral and that D.P.'s aunt was caring for him." *Id.* In Officer Margolis' report, Officer Margolis further states that P.S. advised "there was no way she could come by and pick him up and request[ed] we help in getting him help." Exhibit "A," p. 4. D.P. was allegedly placed in handcuffs for approximately ninety minutes while awaiting transport and during transport to a treatment facility. Compl., ¶¶ 94, 96.

A. The First Amended Complaint is as a Shotgun Pleading

As noted *supra*, the First Amended Complaint must be dismissed as a shotgun pleading. *Weiland*, 792 F.3d at 1323.

B. The FL NAACP, DRF, J.S., A.B., L.H., E.S., L.A., W.B., M.S. Lack Standing to Assert Claims Against Officer Margolis

Counts 6 and 7 state they are asserting claims by "P.S., J.S., A.B., L.H., and FL NAACP against All Defendants except Officer Lauginiger"; Count 8 states it is asserting claims by "D.P., E.S., L.A., W.B., DRF, and FL NAACP against All Defendants except Officer Lauginiger"; Count 9 states it is asserting a claim by "D.P. against the School Board, Superintendent Fennoy, and Officer Margolis"; Count 13 states it is asserting a claim by "D.P., E.S., L.A., W.B., M.S., DRF, and FL NAACP against All Defendants"; and Count 14 states it is asserting a claim by "D.P. against the School Board, Superintendent Fennoy and Officer Margolis" Compl., pp. 51, 53, 54, 55, 63, 64.

As noted above, these Counts are pled in quintessential shotgun pleading fashion, as it is unclear whether each plaintiff is asserting a claim against each defendant, or whether only certain

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

"Standing is the threshold question in every federal case, determining the power of the court to entertain the suit." *CAMP Legal Def. Fund, Inc. v. City of Atlanta*, 451 F.3d 1257, 1269 (11th Cir. 2006)(citation and quotation omitted). Without standing, "a court is not free to opine in an advisory capacity about the merits of a plaintiff's claims." *Bochese v. Town of Ponce Inlet*, 405 F.3d 964, 974 (11th Cir. 2005). To establish standing, a plaintiff must satisfy three constitutional requirements: "(1) an injury in fact, meaning an injury that is concrete and particularized, and actual or imminent, (2) a causal connection between the injury and the causal conduct, and (3) a likelihood that the injury will be redressed by a favorable decision." *Granite State Outdoor Advert., Inc. v. City of Clearwater, Fla.*, 351 F.3d 1112, 1116 (11th Cir. 2003).

The individual plaintiffs (aside from D.P. and P.S.) cannot allege an injury in fact attributable to Officer Margolis because the First Amended Complaint makes clear that Officer Margolis has no relation to these plaintiffs and has not caused them a concrete or particularized injury. Accordingly, these plaintiffs lack standing to assert any claims against Officer Margolis. *See Granite State Outdoor Advert., Inc. v. City of Clearwater, Fla.*, 351 F.3d 1112, 1116 (11th Cir. 2003)("An 'injury in fact' requires the plaintiff to show that he *personally* has suffered some actual or threatened injury." (emphasis in original)(citation and quotation omitted)).

The FL NAACP and DRF likewise lack standing to assert their claims against Officer Margolis. An organization has standing to bring a claim on behalf of its members only if it can satisfy three requirements: "(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither

the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Hunt v. Washington State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977).

The FL NAACP and DRF cannot satisfy the first requirement of the organizational standing test. That is, the FL NAACP and DRF's members would not have standing to bring this action against Officer Margolis in their own right, because the members could not assert a constitutional claim on behalf of D.P or P.S. (or any of the other individual plaintiffs). Specifically, the members would not be able to allege a constitutional injury in fact attributable to Officer Margolis for Officer Margolis' alleged violation of D.P. and P.S. constitutional rights. *See Granite State Outdoor Advert., Inc.*, 351 F.3d at 1116 ("An 'injury in fact' requires the plaintiff to show that he *personally* has suffered some actual or threatened injury. (emphasis in original)(citation and quotation omitted)); *Warth v. Seldin*, 422 U.S. at 499 (A "plaintiff generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties.").

C. P.S. has Failed to State a Claim for Deprivation of her Procedural Due Process Rights (Counts 6 and 7)[12]

In Count 6, P.S. asserts that Officer Margolis violated her procedural due process rights, by depriving P.S. of her right to custody and control over D.P. (Count 6) and her right of control over medical decision-making (Count 7). Specifically, P.S. contends she was denied due process because Officer Margolis transported D.P. to a treatment facility "without notifying or seeking consent from" P.S. Compl. ¶¶ 293, 304.

The bases of these claims, however, are refuted by the allegations in P.S.'s own pleading. In the First Amended Complaint, P.S. alleges that, after Officer Margolis was called into D.P.'s

[12] As noted *supra*, J.S., A.B., L.H., and FL NAACP lack standing to assert claims against Officer Margolis. However, to the extent the Court finds otherwise, those plaintiffs have also failed to state a claim for the reasons set forth below.

classroom, "P.S. was called and told that D.P. would be taken for an involuntary examination under the Baker Act." Compl. ¶ 91. The First Amended Complaint alleges that, in response, "P.S. explained that she had to go to her father's funeral and that D.P.'s aunt was caring for him." *Id.*

P.S.'s own pleading, therefore, makes clear that she was provided notice and an opportunity to consent to D.P.'s examination under the Baker Act. There is simply nothing in the First Amended Complaint indicating that P.S. received no notice or opportunity to consent to D.P's 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 contends was required: notice and an opportunity to consent to D.P.'s treatment. *Arrington v. Helms*, 438 F.3d 1336, 1347 (11th Cir. 2006)("[A] § 1983 claim alleging a denial of procedural due process requires proof of . . . [a] constitutionally-inadequate process.").

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 due process claim, a plaintiff must allege "three elements: (1) a deprivation of a constitutionally-protected liberty or property interest; (2) state action; and (3) constitutionally-inadequate process." *Arrington*, 438 F.3d at 1347 (citation and quotation omitted). Even assuming *arguendo* that P.S. never received the notice discussed above, P.S. still cannot plausibly satisfy the third element.

Due process "is a flexible concept—particularly where the well-being of children is concerned—and deciding what process is due in any given case requires a careful balancing of the interests at stake, including the interests of parents, children, and the state." *Doe v. Kearney*, 329 F.3d 1286, 1297 (11th Cir. 2003). Such "interests may be implicated to varying degrees depending on the facts of an individual case, which will necessarily affect the degree of procedural due process required." *Id.* Thus, "courts have recognized that a state may constitutionally remove

children threatened with imminent harm when it is justified by emergency circumstances." *Id.* at 1293.

This is a situation where, even if P.S. did not receive prior notice or an opportunity to consent, the threat of imminent harm justified Officer Margolis' actions. As set forth in the First Amended Complaint, D.P. was "yelling and throwing things in the room" and the school's assistant principal "was hit by a stuffed animal when she approached [D.P.]." Compl. ¶ 87. D.P. then told his teacher "I wish I could shoot you in your fucking head," and "Right now I am thinking I want to hold my breath so I can die." *Id.* ¶ 88; Exhibit "A," pp 1-4. D.P. additionally stated: "I deserve to be dead," "Shut the fuck up, before I kill you," ["] I will run out of this school and get myself murdered," and ["]Grandma does not love me, nobody loves me." Exhibit "A," pp 1-4. Officer Margolis also observed D.P. jump on a teacher's desk and put his hands on a container with pens and scissors. *Id.*

Such homicidal and suicidal statements – combined with D.P's actions – would lead a reasonable officer to conclude D.P. posed a threat to himself and others. These actions objectively indicated that D.P. posed a threat to the teacher and his classmates and also posed a substantial threat to himself in light of his suicidal remarks (and because P.S., his legal guardian, was not in town to care for D.P.). Compl, ¶ 91. Thus, even assuming that P.S. received no notice or opportunity to consent (which she did), "a careful balancing of the interests at stake" makes clear that P.S. suffered no deprivation of procedural due process, because a reasonable officer would have concluded that D.P. posed a threat to himself and others, thus warranting intervention under the Baker Act. *Kearney*, 329 F.3d at 1297.[13]

[13] To the extent P.S. asserts Officer Margolis had no reason to believe D.P. suffered from a mental illness under Florida's Baker Act, such a contention is implausible on its face, given D.P.'s actions and repeated suicidal and homicidal remarks.

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

D. D.P. has Failed to State Unlawful Seizure Claims (Counts 8 and 9)[14]

In Counts 8 and 9, D.P. asserts unlawful seizure claims against Officer Margolis. Count 8[15] seeks declaratory and injunctive relief, and Count 9 seeks "damages." Compl. ¶ 330. D.P., however, has failed to state legally sufficient cause of action in Count 8, and Officer Margolis is entitled to qualified immunity on Count 9.

(1) Qualified Immunity Principles

"Qualified immunity provides a complete defense from suit and from liability for government officials who are sued in their individual capacities for the performance of their discretionary functions." *Tague v. Florida Fish & Wildlife Conservation Com'n*, 390 F. Supp. 2d 1195, 1203 (M.D. Fla. 2005), *aff'd*, 154 F. App'x. 129 (11th Cir. 2005). "The determination of whether an officer is entitled to qualified immunity is one of law to be made by the court and not submitted to a jury." *Chaney v. City of Orlando, FL*, 291 F. App'x. 238, 243 (11th Cir. 2008). "Qualified immunity attaches when an official's conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *White v. Pauly*, 137 S. Ct. 548, 550 (2017); *see also Hope v. Pelzer*, 536 U.S. 730, 739 (2002) ("Qualified immunity protects all but the plainly incompetent or those who knowingly violate the law."). "The purpose of this immunity is to allow government officials to carry out their discretionary duties without the fear of personal liability or harassing litigation . . . ." *Lee v. Ferraro*, 284 F.3d 1188,

[14] As noted *supra*, E.S., L.A., W.B., DRF, and FL NAACP lack standing to assert claims against Officer Margolis. However, to the extent the Court finds otherwise, those plaintiffs have also failed to state a claim for the reasons set forth below.

[15] It is unclear whether Count 8 is intended to be asserted against Officer Margolis, as Count 8 focuses entirely on the School Board of Palm Beach County's training. To the extent Count 8 is, in fact, intended to be asserted against Officer Margolis, Count 8 fails to allege a Fourth Amendment violation for the reasons set forth below.

1194 (11th Cir. 2002). "Because qualified immunity is a defense not only from liability, but also from suit, it is 'important for a court to ascertain the validity of a qualified immunity defense as early in the lawsuit as possible.'" *Id.*

To be entitled to qualified immunity, the defendant public official must first show that he was acting within the scope of his discretionary authority when the alleged wrongful acts occurred. *Id.* Once the defendant meets this burden, the burden shifts to plaintiff to establish both (1) that a constitutional right was violated and (2) that the constitutional right was "clearly established" at the time the official acted. *Id.*; *Douglas Asphalt Co. v. Qore, Inc.*, 541 F.3d 1269, 1273 (11th Cir. 2008). If the plaintiff cannot establish either element, the defendant public official is entitled to qualified immunity as a matter of law. *See Pearson v. Callahan*, 555 U.S. 223, 226 (2009).

Here, it is undisputed that Officer Margolis was acting within the scope of his discretionary authority as a police officer when the alleged wrongful acts occurred. Compl. ¶ 45. Accordingly, the burden is on D.P. to establish that a constitutional right was violated and that the constitutional right was "clearly established" at the time of the incident. *See Lee*, 284 F.3d at 1194.

(2) The First Amended Complaint Fails to Allege a Fourth Amendment Violation

The Fourth Amendment to the United States Constitution guarantees the right to be free from unreasonable searches. U.S. Const. amend. IV. The Supreme Court has established that

> the accommodation of the privacy interests of schoolchildren with the substantial need of teachers and administrators for freedom to maintain order in the schools does not require strict adherence to the requirement that searches be based on probable cause to believe that the subject of the search has violated or is violating the law.

New Jersey v. T.L.O., 469 U.S. 325, 341 (1985). Instead, "the legality of a [seizure] of a student should depend simply on the reasonableness, under all the circumstances, of the [seizure]." *Id.*; *Bd. of Educ. of Indep. Sch. Dist. No. 92 of Pottawatomie Cty. v. Earls*, 536 U.S. 822, 829–30

(2002)("Fourth Amendment rights . . . are different in public schools than elsewhere; the 'reasonableness' inquiry cannot disregard the schools' custodial and tutelary responsibility for children." (citation and quotation omitted)).

Determining the reasonableness of a student's seizure involves a two-pronged analysis: first, the seizure must be "justified at its inception." *T.L.O.*, 469 U.S. at 341 (citation and quotation omitted). Second, the seizure must be "reasonably related in scope to the circumstances which justified the interference in the first place." *Id.*

Here, D.P. asserts that the seizure was not justified at its inception because "Officer Margolis did not reasonably believe that D.P.'s behavior posed an imminent risk of serious bodily harm to himself or others, which is required for a legal seizure under the Baker Act." Compl., ¶ 324. D.P. appears to assert that a failure to comply with the Baker Act's requirements gives rise to a constitutional claim. D.P., however, is mistaken. *Greer v. Hillsborough Cty. Sheriff's Off.*, No. 806-CV-213-T-23MSS, 2006 WL 2535050, at *1 (M.D. Fla. Aug. 31, 2006)("A plaintiff may not maintain a Section 1983 claim based on a violation of Florida's Baker Act, as the Baker Act is not a federal constitution or law of the United States." (citation and quotation omitted)); *Knight v. Jacobson*, 300 F.3d 1272, 1276 (11th Cir. 2002)("Section 1983 does not create a remedy for every wrong committed under the color of state law, but only for those that deprive a plaintiff of a federal right . . . . There is no federal right not to be arrested in violation of state law.").

In any event, D.P.'s assertion that Officer Margolis did not reasonably believe that D.P.'s behavior posed an imminent risk of serious bodily harm to himself or others is utterly implausible. D.P. contends that Officer Margolis could not have believed D.P. posed such a risk because "D.P.'s behavior allegedly consisted of throwing objects, including a stuffed animal, and pushing furniture." Compl. ¶ 324. D.P., however, fails to mention D.P.'s most troubling behavior: that D.P.

made repeated homicidal and suicidal threats, i.e. D.P.'s statements that "I wish I could shoot you in your fucking head," "I deserve to be dead," "Shut the fuck up, before I kill you," ["]I will run out of this school and get myself murdered," ["]Grandma does not love me, nobody loves me," and "Right now I am thinking I want to hold my breath so I can die." Compl. ¶ 88; Exhibit "A," pp. 1-4. As set forth above, such threats, coupled with D.P.'s actions, would lead a reasonable officer to believe that D.P. posed an imminent risk of serious bodily harm to himself and others. Officer Margolis' seizure, therefore, was justified at its inception. *T.L.O.*, 469 U.S. at 341.

D.P. also contends that the seizure was unreasonable in light of D.P.'s age and behavior because he was handcuffed for approximately ninety minutes "while he was awaiting transport" and was "transported to a receiving facility in a police car." Compl. ¶¶ 325, 337. For the same reasons noted above, however, Officer Margolis' actions were reasonable in light of D.P.'s behavior. *T.L.O.*, 469 U.S. at 341. Indeed, such actions were necessary and appropriate to ensure D.P. could not harm himself after he stated ["]I will run out of this school and get myself murdered," and "Right now I am thinking I want to hold my breath so I can die." Exhibit "A," pp. 1-4; Compl. ¶ 88.

(3) The First Amended Complaint Fails to Allege a "Clearly Established" Right

Even assuming *arguendo* that D.P. could allege a Fourth Amendment violation, he cannot demonstrate that Officer Margolis violated a "clearly established" right. In *City of Escondido v. Emmons*, 139 S. Ct. 500 (2019), the United States Supreme Court recently emphasized that to defeat qualified immunity, "the clearly established right must be defined with specificity . . . ." *Id.* at 503. "[O]nly Supreme Court cases, Eleventh Circuit caselaw, and [state] Supreme Court caselaw can 'clearly establish' law in this circuit." *Thomas ex rel. Thomas v. Roberts*, 323 F.3d 950, 955 (11th Cir. 2003)(citation omitted). Under this analysis, "the contours of an asserted constitutional right

must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." *Jones v. Cannon*, 174 F.3d 1271, 1282 (11th Cir. 1999)(citations and quotations omitted).

There is no case from the United States Supreme Court, the Eleventh Circuit, or the Florida Supreme Court establishing that Officer Margolis violated the Fourth Amendment by transporting D.P. to a medical facility pursuant to Florida's Baker Act. Accordingly, Officer Margolis respectfully requests that the Court dismiss Counts 8 and 9 with prejudice.

E. D.P. has Failed to State Federal Claims for Excessive Force (Counts 13 and 14)[16]

In Counts 13[17] and 14, D.P. asserts that Officer Margolis used excessive force and violated D.P.'s Fourth Amendment rights by handcuffing D.P. "prior to and during transportation to the receiving facility for a total of approximately at least 90 minutes." Compl. ¶ 376. In Count 13, D.P. seeks declaratory and injunctive relief, and in Count 14, D.P. seeks "damages." *Id.* ¶¶ 372, 383. D.P., however, has failed to state a claim in Count 13, and Officer Margolis is entitled to qualified immunity on Count 14.

As an initial matter, it appears D.P. asserts that Officer Margolis used excessive force because Officer Margolis had no right to seize D.P. at all. To the extent that is the crux of D.P.'s claims, the excessive force claims are subsumed in the unlawful seizure claims and are due to be dismissed. *See Bashir v. Rockdale Cty., Ga.*, 445 F.3d 1323, 1331 (11th Cir. 2006)("[A] claim that any force in an illegal [seizure] is excessive is subsumed in the illegal stop or arrest claim and is

[16] As noted *supra*, E.S., L.A., W.B., M.S., DRF, and FL NAACP lack standing to assert claims against Officer Margolis. However, to the extent the Court finds otherwise, those plaintiffs have also failed to state a claim for the reasons set forth below.

[17] It is unclear whether D.P. intends to assert Count 13 against Officer Margolis, as Count 13 focuses entirely on the SDPD's policies and procedures. To the extent Count 13 is, in fact, intended to be asserted against Officer Margolis, D.P. has failed to allege a Fourth Amendment violation for the same reasons set forth below.

not a discrete excessive force claim." (citations and quotation omitted)). However, even if the excessive force claims are independent of the unlawful seizure claims, Counts 13 and 14 should nonetheless be dismissed for the reasons set forth below.

(1) The First Amended Complaint Fails to Allege a Fourth Amendment Violation[18]

"The Fourth Amendment's freedom from unreasonable searches and seizures encompasses the plain right to be free from the use of excessive force . . . ." *Lee*, 284 F.3d at 1197. To determine whether an officer used excessive force, a court must assess whether the officer's actions were "objectively reasonable in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." *Graham v. Connor*, 490 U.S. 386, 397 (1989)(citation and quotation omitted). 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 under the facts of the particular case." *Oliver v. Fiorino*, 586 F.3d 898, 905 (11th Cir. 2009)(quotation and citation omitted).

Here, there can be no doubt that Officer Margolis' actions were objectively reasonable in light of the circumstances facing him. As set forth above, D.P. was transported to a treatment facility because he (1) was throwing classroom items (one of which hit an assistant principal in the face); (2) stated he wanted to shoot his teacher in the head; (3) repeatedly made suicidal remarks; and (4) reached for a container with pens and scissors. D.P.'s actions would lead a reasonable officer to believe D.P. posed a risk to others and, especially, to himself. Indeed, the use of handcuffs ensured D.P. could not harm himself during transport to the treatment facility. Thus, balancing

[18] It is clear that Officer Margolis was acting within the scope of his discretionary authority as a police officer when the alleged wrongful acts occurred. Compl. ¶ 45. Accordingly, the burden is on D.P. to establish that a constitutional right was violated and that the constitutional right was "clearly established" at the time of the incident. *See Lee*, 284 F.3d at 1194.

D.P.'s "Fourth Amendment interests against the countervailing governmental interests at stake"—the governmental interest in ensuring D.P. cannot harm himself while in transport to a treatment facility—would lead a "reasonable officer on the scene" to find the use of handcuffs necessary and appropriate. *Oliver*, 586 F.3d at 905.

Accordingly, D.P. has failed to allege a violation of the Fourth Amendment because Officer Margolis' actions were "objectively reasonable in light of the facts and circumstances confronting" him. *Graham*, 490 U.S. at 397.

(2) The First Amended Complaint Fails to Allege a "Clearly Established" Right

Even assuming *arguendo* that D.P. could allege a Fourth Amendment violation, he cannot demonstrate that Officer Margolis violated a "clearly established" right. *City of Escondido*, 139 S. Ct. at 503. There is no case law from United States Supreme Court, the Eleventh Circuit, or the Florida Supreme Court establishing that Officer Margolis violated the Fourth Amendment by handcuffing D.P.—who stated he wanted to shoot his teacher in the face, made repeated suicidal remarks, and reached for a container with scissors and pens during the incident—as he was transported to a medical facility pursuant to Florida's Baker Act.

In fact, the Eleventh Circuit has held that handcuffing alone, even painful handcuffing, does not constitute the use of excessive force. *See Rodriguez v. Farrell*, 280 F.3d 1341, 1351 (11th Cir. 2002)(noting that "[p]ainful handcuffing, without more, is not excessive force"). Accordingly, Officer Margolis respectfully requests that the Court dismiss Counts 13 and 14 with prejudice.

CONCLUSION

For the reasons set forth above, the Plaintiffs have not and cannot state a legally sufficient cause of action against the Defendants. Accordingly, the Plaintiffs' claims should be dismissed with prejudice.

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

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[19] For Rule 11 purposes, counsel for the School Board Defendants and counsel for Officer Margolis sign this Motion on behalf of their respective sections of the Motion.

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