

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 18-Civ-80810-Dimitrouleas/Matthewman

H.C., a minor, by and through his parent and natural guardian, Jenny C.; M.F., a minor, by and through his parent and natural guardian, Asisa Rolle,

Plaintiffs,

v.

RIC BRADSHAW, Palm Beach County Sheriff, in his official capacity; SCHOOL BOARD OF PALM BEACH COUNTY

Defendants.

STATEMENT OF INTEREST OF THE UNITED STATES OF AMERICA

I. Introduction

Plaintiffs allege that their placement in solitary confinement¹ at the Palm Beach County Jail causes them serious harm including, for children with disabilities, a lack of access to special education and related services. Defendants do not dispute that children with disabilities in solitary confinement are not receiving the special education and related services to which they are entitled. Rather, each Defendant alleges that the other is to blame for the denial of access to

¹ Plaintiffs use the term “solitary confinement” to refer to a unit within the Jail consisting of small, individual cells, each approximately six feet by twelve feet. Am. Compl. ¶ 13-14, ECF No. 38. According to Plaintiffs, children in solitary confinement remain in their cells for 23-24 hours a day, for several months or even a year at a time, and are not permitted to participate in any group activities, including school. Am. Compl. ¶ 14. The United States has referred to similar conditions of confinement as “restrictive housing,” however, we adopt the Parties’ terminology in this Statement of Interest for purposes of clarity before the Court.

special education services. Under federal law, however, both Defendants are responsible for ensuring that eligible children with disabilities at the Jail receive special education and related services. Defendants cannot avoid responsibility by claiming the other is responsible.

The United States submits this Statement of Interest to affirm and clarify the protections afforded to children with disabilities by the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400-1482 (2012) (IDEA) and its implementing regulations.²

II. Interest of the United States

The United States files this Statement of Interest pursuant to 28 U.S.C. § 517 (2012), which authorizes the Attorney General “to attend to the interests of the United States” in any case pending in federal court.³ The United States has an interest in the enforcement of the provision of the Violent Crime Control and Law Enforcement Act that gives the Attorney General the authority to seek declaratory and injunctive relief for violations of the Constitution or federal law by entities responsible for “the incarceration of juveniles.”⁴ 34 U.S.C. § 12601 (2012) (Section 12601) (formerly codified at 42 U.S.C. § 14141). The United States has a history of remedying violations of the IDEA pursuant to the Attorney General’s authority under Section 12601 and the Civil Rights of Institutionalized Persons Act § 1997 (CRIPA), and thus has an interest in ensuring the appropriate and consistent interpretation of the IDEA and its

² The United States takes no position as to whether Defendants are violating the IDEA.

³ The full text of 28 U.S.C. § 517 is as follows: “The Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State, or to attend to any other interest of the United States.”

⁴ Under relevant Florida law, the terms “juvenile,” “child,” and “youth” are synonymous and defined as “any person under the age of 18 or any person who is alleged to have committed a violation of law occurring prior to the time that person reached the age of 18 years.” Fla. Stat. § 985.03(7) (2018).

implementing regulations. Accordingly, the United States believes that its views regarding the application of the IDEA to children with disabilities at the Jail will be of interest to the Court in resolving the IDEA issues presented in this case.

III. Background

The Palm Beach County Jail is a correctional facility located in West Palm Beach, Florida that houses more than 2,000 inmates. Am. Compl. ¶ 13; Def. Bradshaw's Resp. to Mot. For Prelim. Inj. at 2, ECF No. 37. The Jail houses both adult inmates as well as children (*i.e.*, under the age of 18) charged with adult crimes. Am. Compl. ¶ 13; Def. Bradshaw's Resp. to Mot. For Prelim. Inj. at 2.

Plaintiffs are two individuals who are or were minors at the time they were charged with adult crimes and confined to the Jail's solitary confinement unit, and a putative class of "all present and future children (*i.e.*, children under the age of eighteen and charged as adults) who are now or will be incarcerated in solitary confinement at the Palm Beach County Jail. Pls.' Mot. For Class Cert. E at 1, ECF No. 7; Am. Compl. ¶ 9-10. The putative class includes a subclass of children with disabilities "in need of special education and related services ("IDEA Subclass")." Am. Compl. ¶ 142.⁵ Plaintiffs allege that members of the IDEA Subclass do not receive the special education and related services identified in their "individualized education programs (IEP)"⁶ and required by the IDEA. Am. Compl. ¶ 24. At best, members of the IDEA Subclass

⁵ The IDEA Subclass in the instant case is limited to children under the age of 18. Am. Compl. ¶ 13. Therefore, this case does not address the application of the IDEA to some students with disabilities between the ages of 18 and 21 in adult correctional facilities. *See generally* 34 C.F.R. § 300.102(a)(2); § 300.320.

⁶ An "individualized education program" is a written statement, developed by the child's teachers and other relevant professionals, setting out the plan for meeting the academic and related needs of a child with a disability. 20 U.S.C. § 1414(d)(1)(A).

allegedly receive “packets of work shoved under a cell door or have brief moments to speak with a teacher standing outside of their locked door.” Am. Compl. ¶ 24. According to Plaintiffs, Defendants violate the IDEA by failing to identify, evaluate, recommend and provide special education and related services to the IDEA Subclass. Am. Compl. ¶ 187. Plaintiffs allege that Defendants also violate the IDEA by failing to provide specific procedural safeguards, including “manifestation determinations,”⁷ required by the IDEA to ensure that children with disabilities have access to special education and related services. Am. Compl. ¶ 187.

Defendant Ric Bradshaw is the Sheriff of Palm Beach County and, as head of the Palm Beach County Sheriff’s Office, has final governing authority over the Jail. Am. Compl. ¶ 11. Defendant School Board of the Palm Beach County School District is responsible for the oversight and overall management of public education services in Palm Beach County, including the provision of education services to children at the Jail. Am. Compl. ¶ 12. In a “Cooperative Agreement between The School Board of Palm Beach County, Florida and The Palm Beach County Sheriff’s Office (Jail),” dated July 1, 2016 and attached to Plaintiffs’ Motion for Preliminary Injunction, Defendants state they are “mutually committed to cooperate in the development of a program designed to offer high quality educational services” to children with disabilities, and set forth their individual and collective responsibilities for the provision of educational services at the Jail. *See* Pls.’ Mot. For Prelim. Inj. Ex. A-6 at 1, ECF No. 6-1.

⁷ A “manifestation determination” is a comprehensive review conducted by a child’s team of teachers and other relevant professionals whenever he or she is removed from an educational placement for more than 10 school days for disciplinary reasons. 20 U.S.C § 1415(k)(1)(E). The purpose of the review is to determine whether the questioned behavior was caused by, or had a direct and substantial relationship to, the child’s disability or the failure to implement the child’s IEP. 20 U.S.C § 1415(k)(1)(E).

Plaintiffs filed this lawsuit on June 21, 2018, alleging that the conditions of solitary confinement at the Jail violate Plaintiffs' constitutional rights as well as federal laws, including the IDEA. *See generally* Compl., ECF No. 1. On the same date, Plaintiffs filed a Motion for Preliminary Injunction requesting immediate relief for all claims, including the IDEA claim. ECF 6.

On August 2, 2018, Defendants filed responses to Plaintiffs' Motion for Preliminary Injunction. In responding to Plaintiffs' Motion, neither the Sheriff nor the School Board contends that children with disabilities in solitary confinement have the access required by the IDEA to special education and related services. *See* Def. Bradshaw's Resp. to Mot. For Prelim. Inj., ECF No. 37; Def. School Bd.'s Mem. of Law in Opp'n to Mot. For Prelim. Inj., ECF No. 36. Rather, both Defendants essentially blame each other for this denial of access. *See, e.g.*, Def. Bradshaw's Resp. to Mot. For Prelim. Inj. at 4 (referencing Defendants' Cooperative Agreement and stating that "[t]he Sheriff's Office does not interfere with School Board employees' duties and obligations regarding the provision of educational instruction services."); Def. School Bd.'s Mem. of Law in Opp'n to Mot. For Prelim. Inj. at 5 (alleging that "every claimed denial of services stemmed solely from circumstances within [the Sheriff's Office's] control."). As explained below, however, both Defendants are responsible for ensuring that eligible children with disabilities at the Jail receive special education and related services.

IV. Discussion

A. Defendants Share Responsibility for Providing Special Education Services to Eligible Children with Disabilities at the Jail.

To receive federal grants pursuant to the IDEA, states must ensure that a “free appropriate public education is available to all children with disabilities residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school.”⁸ 20 U.S.C. §§ 1411, 1412. The IDEA defines “free appropriate public education” as “special education and related services” that conform to specific statutory requirements. 20 U.S.C. § 1401(9).⁹

IDEA regulations broadly describe the public agencies within a state that are obligated to ensure access to a free appropriate public education as “all political subdivisions of the State that are involved in the education of children with disabilities,” and specifically identify “local educational agencies” and “State and local juvenile and adult correctional facilities” as covered by the IDEA. 34 C.F.R. § 300.2(b)(1)(ii) and (iv). A “local educational agency” is “a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State.” 20 U.S.C. §1401(19)(A). In Florida, children with disabilities who are detained in a county detention facility “shall be offered educational services by the local school district in which the facility is located.” Fla. Stat. § 951.176(2) (2018). Thus, the School District

⁸ As noted, the IDEA Subclass in the instant case is limited to children under the age of 18. Am. Compl. ¶ 13.

⁹ See also 20 U.S.C. § 1401(3)(A) (defining “child with a disability” as a child with an impairment who “needs special education and related services.”).

is a local educational agency under the IDEA and obligated to ensure that eligible children with disabilities at the Jail receive a free appropriate public education.

As the governing authority of a local correctional facility “involved in the education of children with disabilities,” the Sheriff’s Office is likewise obligated to ensure that eligible children with disabilities receive a free appropriate public education. 34 C.F.R.

§ 300.2(b)(1)(iv). Florida law requires that the Sheriff’s Office develop a cooperative agreement with the School Board to address “the provision of educational services” to children with disabilities at the Jail. Fla. Stat. § 951.176(2). Consistent with this law, Defendants’ Cooperative Agreement acknowledges the parties’ mutual obligation to ensure the provision of special education services to children at the Jail, and sets forth their respective and collective responsibilities. *See* Pls.’ Mot. For Prelim. Inj. Ex. A-6 at 1, ECF No. 6-1 (both Defendants pledging to “cooperate in the development of a program designed to offer high quality educational services to . . . persons with disabilities” and “develop and support joint initiatives that will facilitate the effective and efficient delivery of services for youth served in the educational Program.”).

The Sheriff contends that he is not responsible for the denial of special education and related services to the IDEA Subclass because the duty to provide education to children at the Jail lies with the School Board. Def. Bradshaw’s Resp. to Mot. For Prelim. Inj. at 4 (referencing Defendants’ Cooperative Agreement and stating that “[t]he Sheriff’s Office does not interfere with School Board employees’ duties and obligations regarding the provision of education instruction services.”). The School Board likewise contends that it is not responsible for the denial of special education and related services to children with disabilities in solitary confinement because it has no “discretion as to the placement of juveniles into solitary

confinement.” Def. Sch. Bd.’s Mot. to Dismiss at 3, ECF 32 (also noting that the “custody of the juveniles and control of the jail is alleged to be solely within the purview of the Sheriff and his employees.”).

As explained above, however, both Defendants are public agencies with obligations under the IDEA. Public agencies cannot avoid their IDEA obligations by allowing another entity to interfere with carrying out its responsibilities. The IDEA’s statutory scheme accounts for situations where, as here, a non-educational public agency in the State shares responsibility for providing special education and related services to children with disabilities, and expressly requires that States have mechanisms, such as Defendants’ Cooperative Agreement, in place to address these situations. *See* 20 U.S.C. § 1412(a)(12); 34 C.F.R. § 300.154; Fla. Stat. § 951.176(2). The IDEA does not exempt one public agency from its duty to provide special education services because another public agency shares that duty.¹⁰

B. The IDEA Requires Defendants to Provide Eligible Students with Special Education and Related Services.

Congress enacted the IDEA in 1975 to ensure that children with disabilities that affect their ability to learn receive a “free appropriate public education that emphasizes special education and related services designed to meet their unique needs.” 20 U.S.C. § 1400(d)(1)(A); *see also Honig v. Doe*, 484 U.S. 305, 309 (1988). With limited exceptions for certain students aged 18 through 21 that are inapplicable in this case, students with disabilities in adult correctional facilities are entitled to a free appropriate public education under the IDEA. 34 C.F.R. § 300.2(b)(1)(iv); § 300.101; § 102; § 300.324 (d)(1)(i).

¹⁰ The United States takes no position on issues of state law, including the proper interpretation of the Cooperative Agreement between the Sheriff’s Office and the School Board.

The IDEA also contains specific procedural safeguards to protect the education rights of children with disabilities, including “manifestation determination” reviews for children removed from their educational placement for more than 10 school days for disciplinary infractions. 20 U.S.C § 1415(k)(1)(E).¹¹ Moreover, whether or not the disciplinary infraction prompting a change of placement is determined to be a manifestation of a child’s disability, after a child with a disability has been removed from his or her placement for 10 cumulative school days, the education provider must provide the services necessary to allow the child “to continue to participate in the general education curriculum . . . and to progress toward meeting the goals set out in the child’s IEP” during any subsequent days of removal. 20 U.S.C. § 1415(k)(1)(D)(i) (2012), 34 C.F.R. § 300.530(b)(2). Defendants’ shared duty to provide special education and related services does not cease when otherwise eligible children with disabilities are assigned to the solitary confinement unit.

¹¹ *See supra* note 7.

V. Conclusion

The IDEA requires public agencies involved in the education of children with disabilities, such as the Sheriff's Office and School Board, to provide special education and related services to children with disabilities at the Jail, including otherwise eligible children in solitary confinement. Defendants cannot avoid their responsibilities under the IDEA by blaming each other. Each have independent and shared responsibilities for the provision of special education and related services to children with disabilities at the Jail.¹²

Dated: October 1, 2018

Respectfully submitted,

Counsel for the United States:

JOHN M. GORE
Acting Assistant Attorney General
Civil Rights Division

STEVEN H. ROSENBAUM
Chief
Special Litigation Section

SHELLEY R. JACKSON
Deputy Chief
Special Litigation Section

/s/ Megan R. Marks
JACQUELINE CUNCANNAN
MEGAN R. MARKS (Special Florida Bar No.
A5502302)
Attorneys
U.S. Department of Justice
Civil Rights Division
Special Litigation Section
950 Pennsylvania Avenue, NW
Patrick Henry Building, 5th Floor
Washington, DC 20530

¹² The United States takes no position on any other claims or issues not specifically addressed in this Statement of Interest.

Phone: (202) 616-2556

Facsimile: (202) 514-4883

E-mail: jacqueline.cuncannan@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by operation of the Court's Case Management/Electronic Case Files (CM/ECF) system on October 1, 2018, on all counsel or parties of record on the Service List below.

/s/ Megan R. Marks
MEGAN R. MARKS
Attorney for the United States

SERVICE LIST

For the Plaintiffs:

Diana Leigh Martin
Theodore Jon Leopold
Cohen, Milstein, Sellers & Toll, PLLC
2925 Pga Blvd. Suite 200
Palm Beach Gardens, FL 33410
561-515-1400
Fax: 561-515-1401
Email: Dmartin@cohenmilstein.Com
Email: Tleopold@cohenmilstein.Com

Sabarish P Neelakanta
Masimba Maxwell Mutamba
Human Rights Defense Center
P.O. Box 1151
Lake Worth, FL 33460
561-360-2523
Fax: 866-735-7136
Email: Sneelakanta@humanrightsdefensecenter.Org
Email: Mmutamba@humanrightsdefensecenter.Org

Melissa Marie Duncan
Legal Aid Society of Palm Beach County
423 Fern Street Suite 200
West Palm Beach, FL 33401
561-655-8944
Fax: 655-5269
Email: Mduncan@legalaidpbc.Org

For Defendant Palm Beach County School Board:

Jon Erik Bell
Laura Esterman Pincus
Lisa A. Carmona
Office of General Counsel
Palm Beach County School District
3320 Forest Hill Boulevard Suite 331
West Palm Beach, FL 33406
561-434 -8500
Fax: 561- 434-8105
Email:Jon.Bell@palmbeachschools.Org
Email:Laura.Pincus@palmbeachschools.Org
Email:Lisa.Carmona@palmbeachschools.Org

For Defendant Palm Beach County Sheriff:

Richard A. Giuffreda
Purdy Jolly Giuffreda Barranco & Jisa PA
2455 E Sunrise Boulevard Suite 1216
Fort Lauderdale , FL 33304
USA
954-462-3200
Fax: 462-3861
Email:Richard@purdylaw.Com