UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 21-81099-CIV-CANNON

D.P. et al.,

Plaintiffs,

v.

SCHOOL BOARD OF PALM BEACH COUNTY,

Defendant.

STATEMENT OF INTEREST OF THE UNITED STATES

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The United States submits this Statement of Interest[1] to address the application of Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12131-34, to a public entity's response to young children with disabilities experiencing behavioral challenges. Congress charged the Department of Justice with enforcement and implementation of Title II of the ADA. *Id.* §§ 12133-34. The Department therefore has an interest in supporting the proper and uniform application of the ADA, in furthering Congress's intent to create "clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities," as well as Congress's intent to reserve a "central role" for the federal government in enforcing the ADA. *Id.* § 12101(b)(2)-(3).

This case involves the involuntary seizure of young children by law enforcement officers in their schools. Plaintiffs are children with disabilities who attend elementary and middle schools in Palm Beach County, Florida, and receive services and modifications related to those disabilities. Without their guardians or parents' consent, each child was removed from their classroom, handcuffed, and driven away in the back of a police car to a locked facility to be psychiatrically examined. In some cases, the children were separated from their families for not just a few hours, but days. The police were not acting in response to any suspected criminal activity. Rather, they took the children into their custody in response to behavioral health episodes. In doing so, the officers invoked a Florida law known as the Baker Act, which allows police to seize a person for involuntary psychiatric examination under specific circumstances.

[1] The Attorney General is authorized "to attend to the interests of the United States" in any case pending in federal court. 28 U.S.C. § 517.

The young children and their guardians have asserted several claims arising out of these incidents against Defendant School Board of Palm Beach County, including claims of disability discrimination under Title II of the ADA and Section 504 of the Rehabilitation Act of 1973. Plaintiffs allege that Defendant violated these statutes by failing to provide them with reasonable modifications that could prevent unnecessary police interactions and hospitalization.

Defendant now moves for summary judgment, arguing that its duty to provide reasonable modifications was not triggered because Plaintiffs did not specifically demand them on the day in question. ECF No. 183 at 53, Def. Mot'n for S.J. Defendant also asserts that the proposed modifications are not reasonable because they would fundamentally alter what it views to be the program or activity at issue in this case, police seizures under the Baker Act. *Id.* at 58.

The Department respectfully submits this Statement of Interest to clarify two legal principles: (1) a public entity is obligated to provide reasonable modifications where it knows or reasonably should know of the disability-based need for modifications; and (2) reasonably modifying Defendant's response to children experiencing behavioral health challenges to utilize known strategies and interventions is not a fundamental alteration.

INTEREST OF THE UNITED STATES

The Department of Justice implements and enforces Title II, which prohibits disability discrimination by public entities in the provision of their services, programs, or activities. 42 U.S.C. §§ 12132–34; 28 C.F.R. pt. 35. Under the ADA, the Department is the designated agency that implements Title II as to "[a]ll programs, services, and regulatory activities relating to law enforcement . . . ." 28 C.F.R. § 35.190(b)(6). The United States therefore has a strong interest in the proper interpretation of Title II and its corresponding regulations in this context.

BACKGROUND

I. Legal Framework

Title II of the ADA provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132. Title II obligates public entities to "make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity." 28 C.F.R. § 35.130(b)(7)(i).

II. Factual Background[2]

The following facts are relevant to Plaintiffs' reasonable modification claims.

D.P., a nine-year-old student with Autism

At the time of his removal from school, D.P. was a nine-year-old child with Autism Spectrum Disorder (ASD). ECF No. 177, Joint Statement of Undisputed Fact (JSUF) ¶¶ 2-3. D.P. attended a classroom exclusively for children with ASD, *id.* ¶ 12, and his educational records showed that he had impaired judgment and difficulty communicating, including when he became upset. ECF No. 181, Plaintiffs' Statement of Material Facts (PSF) ¶¶ 1-2; JSUF Ex. 5 at 12, 15, 20. Defendant not only had experience de-escalating D.P. during behavioral episodes, it had also documented successful strategies like giving him a "safe place" and "an opportunity to

[2] The following facts are from the parties' Joint Statement of Undisputed Facts and the Plaintiffs' Statement of Facts, as to the three children for whom Plaintiffs move for summary judgment. At the summary judgment stage, factual inferences are drawn and reasonable doubts about the facts are resolved in the nonmovant's favor. *Denney v. City of Albany*, 247 F.3d 1172, 1181 (11th Cir. 2001).

calm down." PSF ¶¶ 3-4. D.P. became upset on the day in question, but he was able to calm down. JSUF ¶¶ 16, 20. School administrators requested, and then decided to cancel, a call to a mobile crisis team. *Id.* ¶ 17. Mobile crisis teams are behavioral health professionals who help de-escalate and evaluate children. After D.P. "was back to his normal self," an officer who was stationed at the school under a contract between Defendant and a local police department decided to Baker Act[3] D.P. based on statements he made while he was upset. *Id.* ¶¶ 7-8, 20. Plaintiffs contend that school employees who were present knew that D.P. had Autism. PSF ¶ 7. The officer was aware that a mobile crisis team was available to respond to the school and evaluate D.P. JSUF ¶ 17. Plaintiffs contend that prior to being placed in police custody, neither D.P.'s guardian nor his counselor had a chance to speak with him. PSF ¶¶ 5, 10.

E.S., a nine-year-old student with Autism

At the time of his removal from school, E.S. was a nine-year-old child with ASD. JSUF ¶¶ 28-29. E.S. attended school in a classroom designated for children with Autism, and he had a behavioral aide who was privately retained by his mother to provide support in the classroom. *Id.* ¶¶ 36, 41, 43. According to E.S.'s educational records, he had "outbursts and tantrums a few times a week." *Id.* ¶ 46. Prior to his removal, E.S.'s school principal was aware that that E.S.'s. disability-related behaviors included "outbursts and reacting negatively to non-preferred tasks." *Id.* ¶ 47. The principal had "sometimes been able to deescalate E.S. by providing him with Marvel superhero books or by trying to talk about some of the things he was going to be doing over the weekend." *Id.* ¶ 50. Prior to the date of his removal, school staff "had experience

[3] In this Statement of Interest, the United States uses "Baker Act" as both a noun ("the Baker Act") and verb ("the person was Baker Acted"). When used as a verb, it means that an individual was seized by law enforcement for an involuntarily examination under the Florida Mental Health Act, Fla. Stat §§ 394.451–.47892 (2022), known as the Baker Act.

deescalating E.S. when he was agitated" and had "contacted [E.S.'s mother] when they needed additional behavioral supports for E.S." *Id.* ¶¶ 49, 51.

On the day in question, "E.S. became agitated in his classroom" and was escorted to the school's office by his behavioral aide. *Id.* ¶¶ 58-59. The principal and a school behavioral health specialist attempted to deescalate E.S. verbally, and E.S. hit his behavioral aide, whose only observable injury was a red mark on the aide's chest. *Id.* ¶¶ 61-63. E.S. then hit a thick glass window but did not injure himself or break the window. *Id.* ¶¶ 65-66.

A police officer employed by Defendant, who knew that E.S. had Autism before the day in question, arrived and "decided to initiate an involuntary examination under the Baker Act" upon seeing E.S. hitting the window. *Id.* ¶¶ 32, 57, 67. The officer handcuffed E.S, who remained calm while he was removed from school in police custody. *Id.* ¶¶ 76-77, 85-87. Neither the officer nor the principal contacted E.S.'s mother until after the involuntary examination was initiated, nor gave her the option to calm her son down. *Id.* ¶¶ 88-92.

The officer later testified that before initiating E.S.'s involuntary examination, he did not: (1) "think about strategies that might have prevented E.S. from hurting himself other than use of the Baker Act"; (2) ask about E.S.'s disabilities; (3) ask if E.S.'s mother had been contacted; (4) ask what anybody had done to calm E.S. down in the past; (5) ask whether there were adults E.S. trusted who could help calm E.S. down; or (6) discuss contacting any other mental health resources or the mobile crisis response team. *Id.* ¶¶ 68-69, 71-75. The officer also testified that there was time to wait for the mobile crisis response team to evaluate E.S. because E.S. was calm and not hurting himself. *Id.* ¶ 95 (Ex. 7 at 143:19-144:2).

W.B., a ten-year-old student with an emotional/behavioral disability

At the time of his removal from school, W.B. was a ten-year-old child with a disability attending a classroom exclusively for children with emotional/behavioral disabilities. *Id.* ¶¶ 108-09, 118. W.B.'s educational records contained modifications such as offering a safe place or person when W.B. felt frustrated and remaining non-reactive in the face of negative behaviors. PSF ¶ 22. Records also reflected that W.B. did not like to be touched by males, JSUF ¶ 123, and school staff testified in deposition that they had successfully used intervention strategies such as giving W.B. time and space to calm down, walking with him, doing breathing exercises, and allowing his mother to come to school and talk with him. *Id.* ¶¶ 124-25, 129. Staff also testified that although W.B. made threats to others, because he frequently did so as "just . . . part of his vocabulary," they did not believe he was actually going to harm anyone. *Id.* ¶¶ 126-28. W.B. became upset on the day in question and threw chairs in his classroom. *Id.* ¶ 131. He then ran outside and began to climb a fence. *Id.* ¶ 132. School staff were able to stop him from jumping the fence. *Id.* ¶ 133. Shortly after, a school police officer employed by Defendant placed W.B. in handcuffs. *Id.* ¶ 134-35. W.B. was transported for inpatient examination without the officer speaking to his mother, PSF ¶ 24, the school therapist who W.B. met with weekly, or any school staff about de-escalation strategies that could help W.B. JSUF ¶¶ 136-38. The officer later testified that he did not think a student's disability was relevant to his decision to Baker Act a child. PSF ¶ 25.

DISCUSSION

This Statement of Interest clarifies two legal principles. First, a public entity is obligated to provide reasonable modifications to qualified individuals with disabilities where it knows or reasonably should know of the disability-based need for modifications. Second, modifications to

a public entity's behavioral response that utilize known strategies and interventions are reasonable and not a fundamental alteration.

I. Plaintiffs' known and documented need for reasonable modifications put Defendant on sufficient notice to trigger Defendant's duty to modify on the day in question.

Defendant argues that its obligation to provide reasonable modifications was not triggered because Plaintiffs, young children (some with disabilities that impact communication), and their guardians (who were not present or even aware of the incidents), did not make specific demands for modifications on the days in question. ECF No. 183 at 53. This argument is unavailing. Although reasonable modifications may follow a request from a person with a disability, nothing in the Title II regulation limits a public entity's obligation to provide modifications only in those situations where it receives a request. To the contrary, the plain language of the regulation makes no mention of a request requirement when it states that a public entity "shall make" such reasonable modifications, indicating an affirmative obligation. 28 C.F.R. § 35.130(b)(7)(i).

Accordingly, several circuit courts have held that public entities must provide reasonable modifications regardless of a request where the need to modify is apparent and obvious. *See Robertson v. Las Animas Cnty. Sheriff's Dep't*, 500 F.3d 1185, 1196 (10th Cir. 2007) (holding that a public "entity must have knowledge that the individual is disabled, either because that disability is obvious or because the individual (or someone else) has informed the entity of the disability."); *Greer v. Richardson Indep. Sch. Dist.*, 472 F. App'x 287, 296 (5th Cir. 2012) (holding that a "failure to expressly 'request' an accommodation is not fatal to an ADA claim where the defendant otherwise had knowledge of the individual's disability and needs but took no action"); *Duvall v. Cnty. of Kitsap*, 260 F.3d 1124, 1139 (9th Cir. 2001) ("When the plaintiff has alerted the public entity to his need for accommodation or where the need for

accommodation is obvious . . . the public entity is on notice that an accommodation is required . . . ") (internal brackets omitted); *see also Bennett-Nelson v. Louisiana Bd. of Regents*, 431 F.3d 448, 454-55 (5th Cir. 2005) (public entities have "an affirmative obligation to make reasonable accommodations for disabled individuals. Where a defendant fails to meet this affirmative obligation, the cause of that failure is irrelevant.").

In *Rylee v. Chapman*, the Eleventh Circuit stated that a "defendant's duty to provide a reasonable accommodation is not triggered until the plaintiff makes a specific demand for an accommodation." 316 F. App'x 901, 906 (11th Cir. 2009) (internal citation and quotation omitted). Relying on *Rylee*, Defendant argues that because Plaintiff children failed to make a specific demand on the day they were seized under the Baker Act, they were not entitled to reasonable modifications. *See* ECF No. 183 at 53, 61. But *Rylee* does not foreclose Plaintiffs' claim.

In *Rylee*, the plaintiff, who was deaf, brought an ADA claim against a county for failing to provide him with a sign language interpreter during his arrest, booking, and first court appearance. 316 F. App'x at 905 n.5. He was arrested at his home by county police after his son called 911 to report that his father was abusing his mother. *Id.* at 903. During the 911 call, Rylee's wife got on the phone and told police that Rylee was deaf and did not know sign language, but he could read lips if someone spoke slowly. *Id.* The dispatcher relayed this information to the responding officer, and Rylee did not request any other form of communication assistance during his discussions with the officers. *Id.* While he was being booked at the local jail, Rylee requested that the officer hand-write her questions and statements, and the officer complied with this request. *Id.* at 904. Rylee also acknowledged later in the booking process that he could read lips and conceded during litigation that he did not know sign

language. *Id.* at 904, 905 n.5. Based on these facts, the Eleventh Circuit held that Rylee's reasonable modification claim failed where his wife had told officers he could read lips, and there was no evidence that he needed an interpreter during his arrest and booking. *Id.* at 906. The court also concluded that Rylee would not have benefitted from the services of an interpreter because he did not know sign language. *Id.* at 905 n.5.

Although the court's holding in *Rylee* turned on the fact that the plaintiff had not made a request for the specific modification that was the basis for his claim, it also noted the lack of evidence that would have allowed officers to become aware of his need for the modification: "Rylee has presented no evidence *from which one could infer* that the deputies *knew or believed* that Rylee could not read lips or that Rylee requested an interpreter or the aid of a family member." *Id.* at 906 (emphasis added). By discussing facts from which the defendant could have inferred that modifications were necessary, the Eleventh Circuit left open the possibility that the failure (or inability) to make a demand at the very moment a modification is sought is not fatal in every case. *See id.*

The facts of this case are materially different, and there is ample evidence from which to infer the need for reasonable modifications. Unlike the officers in *Rylee*, who had no reason to know or even infer that the plaintiff needed reasonable modifications based on his and his wife's statements, it is undisputed here that Defendant was aware of the children's disabilities. JSUF ¶¶ 12, 36, 117. Even more telling, Defendant concedes it knew that de-escalation strategies, including calling a parent to help with de-escalation, were effective in the past. *See, e.g.*, ECF No. 183 at 59-61 (describing "known" de-escalation strategies that employees "were aware of—and typically utilized"); *see also id.* at 60-61 ("The parties agree that District staff had contacted [the child's mother] when they needed additional behavioral supports for E.S." and "school staff

understood [the child's mother] was capable of calming W.B. down"). Indeed, this Court has pointed out that such strategies were well-known. *See D.P. et al., v. Sch. Bd. of Palm Beach Cnty.*, No. 21-81099-CIV 2023, WL 2178384, *1, *32 ("alternative de-escalation tactics before Baker Acting" were "already known to them and known to be successful"). Thus, unlike the record in *Rylee,* where the defendant provided the modifications that were specifically requested and where there was nothing to suggest any other modification was needed or would have helped, here there is ample evidence in the record that Defendant was aware of modifications that would have helped Plaintiffs during their behavioral episodes. Accordingly, any failure by the children to make a specific request for those modifications should not be deemed fatal to their claim.

But even if a request were necessary in this case, the Eleventh Circuit has considered a request to be made when a covered entity has been sufficiently put on notice of the need for a modification. In *United States v. Hialeah Housing Authority*, decided two years after *Rylee*, the court held that providing enough information about a need for a modification can sufficiently put a covered entity on notice and thus constitute a "specific demand" for disability-based modifications. 418 F. App'x 872, 876-77 (11th Cir. 2011) (Fair Housing Act); *see also Hunt v. Amico Properties, L.P.*, 814 F.3d 1213, 1226 (11th Cir. 2016) (holding that "a plaintiff can be said to have made a request for accommodation under the Fair Housing Act when the defendant has enough information to know of both the disability and desire for an accommodation.") (internal citations and quotations omitted).[4] *Hialeah* involved a claim that the defendant housing

[4] For purposes of determining what constitutes a "specific demand" to trigger an entity's reasonable accommodation obligation under the Fair Housing Act, the Eleventh Circuit has looked to cases interpreting ADA and Rehabilitation Act reasonable modification claims. *See, e.g.*, *Hialeah*, 418 F. App'x at 876 ("We have previously recognized that we look to case law

authority failed to provide a tenant with a reasonable modification in the form of accessible housing that would allow him to use the bathroom without climbing stairs. 418 F. App'x at 873-75. The *Hialeah* court stated that a specific demand is required but that the Eleventh Circuit had "not 'determined precisely what form the request must take.'" *Id.* at 876 (citing *Holly v. Clairson Indus., L.L.C.*, 492 F.3d 1247, 1261 n.14 (11th Cir. 2007)). Cautioning against requiring "magic words," the court held that "for a demand to be specific enough to trigger the duty to provide a reasonable accommodation, *the defendant must have enough information to know of both the disability and desire for an accommodation*," or alternatively that "*circumstances must at least be sufficient to cause a reasonable* [*defendant*] *to make appropriate inquiries about the possible need for an accommodation*." *Hialeah*, 418 F. App'x at 876-77 (internal quotations and citation omitted) (emphasis added). The Eleventh Circuit ultimately reversed the district court's grant of summary judgment for the defendant, concluding that the tenant could have been deemed to have "made a specific demand for an accommodation" during a prior mediation where his attorney told the housing authority that the tenant "was disabled due to hip and back problems and could not constantly go up and down stairs to use a bathroom." *Id.* at 877.

Here, as in *Hialeah*, there is no dispute that Defendant had sufficient information about the Plaintiffs' disabilities and reasonable modification needs to satisfy a request. This information was not only a part of Plaintiffs' educational records, *see* JUSF ¶¶ 11-12, 15, 46, 48, 120-24, but Defendant used these very modifications in the past, *see, e.g.*, *id.* ¶¶ 49-51, 125; PSF ¶¶ 3-4. Likewise, in *A.V. through Hanson v. Douglas County School District RE-1, et al.*, the

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under the Rehabilitation Act and the Americans with Disabilities Act . . . for guidance in evaluating reasonable accommodation claims under the FHA."); *Hunt*, 814 F.3d at 1226 (citing ADA cases).

court rejected arguments, similar to the ones Defendant makes here, that a ten-year-old child with Autism needed to make a request for reasonable modifications during an encounter with a police officer at school. 586 F.Supp.3d 1053, 1056 (D. Colo. 2022). The court concluded that facts pled showed "an obvious need of an accommodation" and school police officers "failed to reasonably accommodate [the child]" by ignoring those apparent signs. *Id.* at 1065. The court relied in part on allegations that the officers received "advisements and warnings" from a school official and a family member explaining how the child's disability related to his challenging behavior, and that law enforcement also observed obvious signs, such as the child "repeatedly banging his head on the plexiglass and window of the patrol car while handcuffed." *Id*.

Defendant's insistence that on each day in question the children (or their guardians) were required to re-request reasonable modifications before police removed the children from school runs counter to Title II's affirmative obligation and to common sense. Requiring nine- and ten-year-old children with disabilities to request modifications their school already knew they needed in the midst of behavioral outbursts is "baffling as a matter of law and logic." *Pierce v. District of Columbia*, 128 F. Supp. 3d 250, 269 (D.D.C. 2015) (rejecting argument that a request was necessary to provide reasonable modifications to incarcerated person with "known communications-related difficulties"). By that logic, a school employee who relies on a service animal would have to ask permission every time she brings her service dog inside. Such an arrangement would be "untenable" because "[n]othing in the disability discrimination statutes even remotely suggests that covered entities have the option of being passive in their approach to disabled individuals as far as the provision of accommodations is concerned." *Id.*

II. Modifying Defendant's behavioral health response to incorporate known strategies and interventions is reasonable and not a fundamental alteration.

In a Title II reasonable modification case, the defendant bears the burden of "establish[ing] that the requested relief would require . . . [a] fundamental alteration" of its service, program, or activity. *Frederick L. v. Dep't of Public Welfare*, 364 F.3d 487, 492 n.4 (3d Cir. 2004); *see also Haddad v. Arnold*, 784 F. Supp. 2d 1284, 1304 (M.D. Fla. 2010) (declining to recognize fundamental alteration defense where "Defendant provided no *evidence* to support these arguments") (emphasis in original); *Henrietta D. v. Bloomberg*, 331 F.3d 261, 280 (2d Cir. 2003); 28 C.F.R. § 35.130(b)(7). Here, Defendant attempts to meet this burden by arguing that modifications such as de-escalation, involving parents/guardians, contacting mental health professionals, or calling mobile crisis would work a fundamental alteration to seizures under the Baker Act. ECF No. 183 at 58. This argument fails for three reasons.

First, in denying Defendant's motion to dismiss, this court held, "all three of the proposed modifications are reasonable." *D.P.*, 2023 WL 2178384 at *32. Second, the Title II service at issue in this case is not simply the Baker Act seizure, as Defendant would have it. Instead, the service at issue is Defendant's behavioral health response, which includes a range of tools and strategies, of which the Baker Act is but one intervention. In fact, Defendant's narrow framing does not account for Defendant's documented record of reasonably modifying its behavioral health response in previous episodes where it utilized strategies short of placing a child in police custody. And critically, Defendant ignores this Court's prior ruling, which understood the program or service at issue here to be broader than a police seizure: "I fail to see how asking school staff members to employ alternative de-escalation tactics before Baker Acting, especially when those tactics are already known to them and known to be successful . . . would require a fundamental alteration in the nature of the program." *Id.* (internal quotation marks omitted)

(holding that other modifications were also reasonable). By referring to tactics that could have been used prior to seizing a child as reasonable and not a fundamental alteration, this Court indicated that the Title II service at issue here begins before the moment an officer decides to seize a child.

Third, the reasonableness of Plaintiffs' proposed modifications is further underscored by the fact that they are consistent with the Baker Act's statutory scheme. In *Henrietta D.*, the Second Circuit upheld modifications where they were "designed to effectuate [the] goal" of the defendant "perform[ing] its statutory mandate." 331 F.3d at 280. Here, the proposed modifications help Defendants perform their obligations under the Baker Act. The Baker Act is not a criminal statute; it is a mental health law with specific procedures to guide an officer or other authorized individual in determining whether an involuntary examination is necessary for a person who they believe has mental illness. Fla. Stat. § 394.463(1) (2022). If suspected or actual mental illness is present, the Baker Act only supports an involuntary examination under two narrow circumstances: 1) where there is "threat of substantial harm" that cannot "be avoided through help of willing family members or friends or the provision of other services"; or 2) where "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." *Id.* § 394.463(1)(b)1-2. Reasonable modifications such as engaging a child's parent, their behavioral health provider, or mobile crisis do not alter these procedures. To the contrary, they help officers effectuate the law's purposes of avoiding future harm and taking action only where a child's recent behavior is indicative of future serious bodily harm.

Moreover, the Baker Act excludes developmental disability from the definition of mental illness. *Id.* § 394.455(29). Thus, declining to refer a child with Autism to law enforcement to

initiate the Baker Act's procedures, and instead using known de-escalation strategies or other interventions, would be entirely consistent with the law. And even where it may not be known at the outset that a child has Autism, reasonable modifications such as consulting with behavioral health professionals who are familiar with a child, or a mobile crisis team trained in evaluating mental states, would allow both school staff and officers to assess whether mental illness or another disability-related factor, such as Autism-related behavior, is at play, before proceeding further with the Baker Act.

The modifications proposed here are also similar to those found reasonable in other cases involving police encounters with individuals experiencing behavioral health episodes. In *Vos v. City of Newport Beach*, the Ninth Circuit reversed a district court's summary judgment ruling dismissing plaintiffs' ADA claim, holding that officers attempting to apprehend a mentally ill man running around a convenience store with scissors in his hand, "had the time and the opportunity to assess the situation and potentially employ . . . accommodations . . . including de-escalation, communication, or specialized help" prior to using deadly force. 892 F.3d 1024, 1037 (9th Cir. 2018); *see also Brunette v. City of Burlington, Vermont*, No. 2:15-CV-00061, 2018 WL 4146598, at *35 (D. Vt. Aug. 30, 2018) (denying defendant summary judgment because "Plaintiffs have adduced sufficient evidence from which a rational jury could find that the officers failed to reasonably accommodate [plaintiffs' deceased relative's] mental illness" by "wait[ing] for backup" and "employ[ing] less confrontational tactics") (internal citations omitted). Courts have also recognized the obligation to provide reasonable modifications in school police interactions. In *A.G. v. Fattaleh*, a district court denied summary judgment and allowed the case to proceed to trial on plaintiffs' claim that defendants violated the ADA by failing to provide reasonable modifications to a student with Autism when he was sitting calmly

with school staff after a behavior incident. 614 F.Supp.3d 204, 242 (W.D.N.C. 2022) (relying in part on evidence that defendants had no policies or specialized trainings on how to interact with students with disabilities); *see also S.R. v. Kenton Cnty. Sheriff's Ofc.*, No. 2:15–cv–143, 2015 WL 9462973 1, *8 (E.D. Ky. Dec. 28, 2015) (holding that plaintiffs plausibly alleged defendant "failed to modify its practices with respect to disabled students" by declining to take "less severe measures such as crisis intervention, de-escalation, etc. to address their behavioral problems").

Notwithstanding the weight of case law supporting the reasonableness of Plaintiffs' proposed modifications, Defendants rely on a single case to argue fundamental alteration, *Rebalko v. City of Coral Springs*, 552 F.Supp.3d 1285 (S.D. Fla. 2020). *Rebalko* is simply not analogous to the facts and the ADA theory of liability here. In *Rebalko*, the plaintiff, who was not experiencing a behavioral health crisis or episode of any kind, alleged that he was unlawfully detained by officers on the road. *Id.* at 1298. After officers had handcuffed plaintiff, his wife mentioned his "health issues" in appealing to the police to issue him a summons to court rather than arrest him. *Id.* at 1300. The court held that this request to be "unarrested" was a fundamental alteration. *Id* at 1330. Unlike the plaintiff in *Rebalko*, the children here do not seek to undo a seizure or to change the Baker Act's procedures. They seek modifications through the course of their interactions with school staff, including police, that would prevent the need for involuntary psychiatric examination. These modifications are not only available to Defendant, but they also have a documented track record of working to resolve Plaintiffs' behavioral health challenges. Thus, Defendant's fundamental alteration argument should be rejected.

CONCLUSION

For the foregoing reasons, the United States respectfully requests that the Court consider this Statement of Interest in this litigation.

Date: June 26, 2023

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