IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

G.H., a minor, by and through his parent and legal guardian, Gregory Henry, ET AL.,

***Plaintiffs*,**

v. **CASE NO.: 4:19cv431-MW/CAS**

SIMONE MARSTILLER, in her official capacity as Secretary of the Florida Department of Juvenile Justice, ET AL.,

***Defendants*.**
_____/

ORDER DENYING DEFENDANTS' MOTION TO DISMISS, AND ALTERNATIVELY, MOTION FOR A MORE DEFINITE STATEMENT

This Court has considered, without hearing, Defendant Florida Department of

repeatedly isolate children for days at a time, with no time lim

50, 52. On the other hand, Plaintiffs sue Defendant DJJ for violations of their rights protected by the ADA and RA. ECF No. 2, at 53, 55. There is no redundancy here. While it would be redundant for Plaintiffs to sue both the Secretary in her official capacity and the state agency for the same claims, *see, e.g.*, *Taylor v. Fla. Dep't of Corr.*, Case No. 2:10-cv-641-ftm-38UAM, 2013 WL 12213191, at *7 (M.D. Fla. Aug. 14, 2013), that is not the case here.

Additionally, if this Court were to dismiss claims against Defendant Marstiller, Plaintiffs would be barred from seeking relief under 42 U.S.C. § 1983. Generally, "[a] state, a state agency, and a state official sued in [her] official capacity are not 'persons' within the meaning of § 1983 . . . ." *Edwards v. Wallace Cmty. Coll.*, 49 F.3d 1517, 1524 (11th Cir. 1995) (citation omitted). But, when prospective relief, including injunctive relief, is sought, "a state official sued in [her] official capacity is person for purposes of § 1983." *Id.* Here, Plaintiffs seek injunctive relief and have, therefore, properly sued Defendant Marstiller in her official capacity under § 1983.

For these reasons, this Court will not dismiss Plaintiffs' claims against Defendant Marstiller.

IV. First and Second Cause of Action (42 U.S.C. § 1983; Eighth and Fourteenth Amendment)

Plaintiffs' claims under the Fourteenth and Eighth Amendment are evaluated under the same standard. *See Bozeman v. Orum*, 422 F.3d 1265, 1271 (11th Cir.

2015), *abrogated on other grounds by Kingsley v. Hendrickson*, 135 S. Ct. 2466 (2015). "The Eighth Amendment 'set[s] limits on the treatment and conditions states may impose on prisoners.' " *Quintanilla v. Bryson*, 730 F. App'x 738, 746 (11th Cir. 2018) (citation omitted). "[U]nder the Eighth Amendment, the State must respect the human at

U.S. at 570. That is to say, Plaintiffs have sufficiently alleged that the isolation along with the conditions they have been subjected to deprived them of basic human needs that resulted in a

471, 476 (2012) (observing that "[youth] is a moment and condition of life when a person may be most susceptible to influence and to psychological damage" and recognizing "children are constitutionally different from adults for sentencing purposes").

Why, then, should the case be different in the conditions of confinement context? Defendants' answer is simple—because none of these cases are about conditions of confinement—but unpersuasive. *See* ECF No. 13, at 21–22. The standard for conditions of confinement in the Eighth Amendment context most certainly requires juveniles to be treated differently from adults. It is, partly, an objective test from the point of view of the prisoner. When that prisoner is a juvenile, the standard requires this Court to analyze whether the conditions pose an unreasonable risk of serious damage to future health or safety of a child. Given the fact that the Supreme Court has recognized that juveniles suffer from certain psychological vulnerabilities when compared to adults, it would be disingenuous to suggest that the same conditions imposed on adults and children would2 (s t)5 vuti0.01 Tw [(b2

have the power to grant the prospective relief sought. But courts can, and routinely do, address violations of constitutional rights and issue prospective relief to remedy violations in a civil action challenging prison conditions. *See, e.g.*, *Thomas v. Bryant*, 614 F.3d 1288, 1318 (11th Cir. 2010); *V.W. v. Conway*, 236 F. Supp. 3d 554, 590 (N.D.N.Y. 2017) (granting a preliminary injunction and enjoining defendants from imposing 23-hour disciplinary isolation on juveniles at the Justice Center); *A.T. v. Harder*, 298 F. Supp. 3d 391, 4 391 3()-4.3 (N.)-1.8 (D.)-1.89(N.)]TJ0 Tc 0 Tw 36.86150 Td(Y)Tj(

No. 2, ¶¶ 47–57. Rule 8 merely requires "a short and plain statement of the claim" that is "plausible on its face"—one that "calls for enough facts to raise a reasonable expectation that discovery will reveal evidence" of an alleged violation. *Twombly*, 550 U.S. at 555–56. Plaintiffs satisfy this requirement. Plaintiffs make general allegations about the policies, practices, and customs that reflect when and for how long a juvenile is placed in solitary confinement. ECF No. 2, ¶¶ 47–51. Additionally, Plaintiffs provide specific examples of deprivation of basic human needs that accompany isolation. ECF No. 2, ¶¶ 52–57. The specific policies, practices, or customs underlying the isolation and the conditions imposed during isolation will likely be revealed during discovery. *See Harvard v. Inch*, Case No. 4:19-cv-212-MW-CAS, 2019 WL 5587314, at *3 (N.D. Fla. Oct. 24, 2019). For the purpose of this motion, Plaintiffs have alleged sufficient facts to bring a suit under § 1983.

A. Objective Prong: Conditions of Confinement Poses an Unreasonable Risk of Serious Harm

"Whether conditions of confinement are cruel and unusual is judged under a 'contemporary standard of decency'—that is, 'the evolving standards of decency mark the progress of maturing society.' " *Quintanilla*, 730 F. App'x at 746; *see also Thomas*, 614 F.3d at 1304. "As such, Plaintiffs, to properly state a claim for relief under the Eighth Amendment, must show that the conditions of confinement violate contemporary standards of decency." *Harvard*, 2019 WL 5587314, at *3.

deprivation of sanitation). Courts have recognized exercise, social interaction, environmental stimulation, and sanitation as basic human needs. *See Harvard*, 2019 WL 5587314, at *8 (collecting cases recognizing exercise, human contact, social interaction, and environmental stimulation as basic human needs); *Brooks v. Warden*, 800 F.3d 1295, 1304–05 (11th Cir. 2015) (citing cases that recognize deprivation of basic sanitary conditions can constitute an Eighth Amendment violation).

For each of these broad allegations of deprivation of basic human needs, Plaintiffs list specific conditions of confinement. For example, Plaintiffs allege that Defendants deprive them of sanitation because, among other things, 1) Defendants have failed to maintain plumbing which has resulted in toilets to back-up and flood the cells, 2) toilets reek of human waste and children are required to eat in the cells where the toilets are loar(e)9(ic)12.1 icg[-0.004 T110.011 Tw -28.12 -97d(,)Tj0.0040 Tw (-

¶¶ 88–89. In that case, DJJ Secretary was informed that "[i]solation is contraindicated for adolescents with developmental disabilities, mental illness, and self-harming behavior." ECF No. 2, ¶ 89. From this, it can be inferred that Defendants knew the harm isolation caused to adolescents with developmental disabilities, mental illness, and self-harming behavior. Each of the named Plaintiffs suffers from developmental disability or mental illness, and at least one has engaged in self-harm. *See infra* Section V. In response to

educational materials, regular mental health evaluation, or daily exercise were unconstitutional conditions of confinement, especially for children with mental health needs or children at risk for suicide.

confinement. First, Plaintiffs' counsel notified Defendants of the risk of harm to children subject to solitary confinement on behalf of youth who had engaged in self-harm behavior and were at a risk for suicide. ECF No. 2, ¶ 95. Second, Defendants received grievances from children, including Plaintiffs, asking to be removed from

choke himself. ECF No. 2, at ¶¶ 18-19. This shows that his mental illness substantially limits his ability to take care of himself. *See Peters v. Baldwin Union Free Sch. Dist.*, 320 F.3d 164, 168 (2d Cir. 2003) ("A mental illness that impels one to suicide can be viewed as a paradigmatic instance of inability to care for oneself."). Plaintiff R.L. has been diagnosed with bipolar disorder, post-traumatic stress disorder, major depressive disorder, conduct disorder, and intermittent explosive disorder which substantially limits her brain function. ECF No. 2, ¶ 23; *see* 28 C.F.R. § 35.108(d)(2)(iii)(K) ("Major depressive disorder, bipolar disorder . . . substantially limits brain function). Finally, Plaintiff B.W. suffers from Attention Deficit Hyperactivity Disorder and impaired vision which substantially limits her thinking, concentration, and ability to see. ECF No. 2, ¶ 30; *see* 28 C.F.R. §§ 35.108(b)(1), (c)(1) & (d)(2)(iii)(B).

Next, Defendants argue that Plaintiffs were not discriminated against because of their disability. Specifically, Defendants claim that none of the Plaintiffs were placed in isolation or have remained in isolation because of their disability. ECF No. 13, at 28. This is not the case. At least one of the named Plaintiff alleges that he remained in isolation because of his disability. ECF No. 2, ¶ 15 (Plaintiff G.H. retained in isolation for behaviors related to his disability). Further, "[a]n ADA claim may proceed on the theory that the Defendant failed to reasonably accommodate the

Plaintiffs' disability."

confinement again because they posed no imminent risk of harm to themselves or others, but were instead at risk of harm in confinement. ECF No. 2, at ¶ 95.

For these reasons, Plaintiffs have sufficiently pled their claims for relief under the

confinement juveniles are subjected to at DJJ facilities, 2) the conditions and deprivations that are imposed during solitary confinement, 3) the effects isolation has on juveniles, 4) the lack of penological justification supporting the use of solitary confinement, 5) the deliberate indifference of Defendant Marstiller to the effects of isolation and the conditions it imposes, and 6) the nature of discrimination children with disabilities face in DJJ's facilities.

For these reasons, Defendants' motion for a more definite statement is denied.

VII. Conclusion

Defendants have not convinced this Court that dismissal or a more definite statement is warranted. Therefore, Defendant's motion, ECF No. 13, is **DENIED**.

SO ORDERED on December 6, 2019.

s/Mark E. Walker
Chief United States District Judge