IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

T.H. as next friend T.B., et al., Plaintiffs, v. DEKALB COUNTY SCHOOL DISTRICT, et al., Defendants.	CIVIL ACTION FILE NO. 1:19-CV-3268-TWT

OPINION AND ORDER

This is a civil rights action. It is before the Court on the Plaintiffs' Motion for a Remedial Order [Doc. 237]. For the reasons set forth below, the Plaintiffs' Motion for a Remedial Order [Doc. 237] is GRANTED in part and DENIED in part, with the terms of the remedial relief ordered set forth in the Permanent Injunction and Remedial Order filed herewith.

I. Background

On January 22, 2021, the Court certified two classes in this action: the "IDEA Class," defined as "[a]ll youth detained at the Dekalb County Jail with a disability, as defined by the IDEA[;]"[1] and the "Discrimination Subclass," defined as "[a]ll members of the IDEA Class who are qualified individuals with

[1] Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1400 *et seq.*

a disability, as defined by the ADA or Section 504 of the Rehabilitation Act." (Jan. 22, 2021 Order at 12.) On September 16, 2021, the Court granted the Plaintiffs' Motion for Summary Judgment as to Liability [Doc. 159] in part and denied it in part, and likewise granted Defendant Sheriff Maddox's Motion for Summary Judgment [Doc. 201] in part and denied it in part. (Sept. 16, 2021 Order at 1, 22.) The Court found that the Sheriff could be held liable for violations of the IDEA and, more specifically, that the Sheriff violated her child-find duty and her obligation to facilitate the DeKalb County School District's ("DCSD") access to IDEA Class members requiring special education, resulting in a denial of the free and appropriate public education ("FAPE") required by law. (*Id.* at 13-16.) The Court also found that the Plaintiffs' claims under Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131 *et seq.* and Section 504 of the Rehabilitation Act, 29 U.S.C. § 794 failed as a matter of law. (*Id.* at 20-22.)

The Plaintiffs now move for a remedial order—a permanent injunction—to remedy the Sheriff's IDEA violations. (Pls.' Br. in Supp. Of Pls.' Mot. for Remedial Ord., at 1-2.) The Sheriff consents to all but two major sections of the Plaintiffs' proposed remedial order, which are provisions addressing special education access and the appointment of a monitor to ensure compliance. (Def.'s Resp. in Opp'n to Pls.' Mot. for Remedial Ord., at 2.)

II. Legal Standard

In civil actions brought under the IDEA, the Court is authorized to "grant such relief as [it] determines is appropriate. 20 U.S.C. § 1415(i)(2)(C)(iii). This language confers "broad discretion" on federal courts "to fashion whatever relief is appropriate in light of the IDEA's purpose." *R.L. v. Miami-Dade Cnty. Sch. Bd.*, 757 F.3d 1173, 1178 (11th Cir. 2014) (internal quotation marks omitted). To obtain a permanent injunction, a plaintiff must demonstrate that: (1) he has suffered an irreparable injury; (2) the remedies available at law, including money damages, would not adequately compensate him for that injury; (3) considering the hardships suffered by both the plaintiff and the defendants, an equitable remedy is warranted; and (4) the public interest would not be disserved by the injunction's issuance. *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006). The decision whether to grant or deny permanent injunctive relief is likewise within the discretion of the district court. *Id.*

Under the Prison Litigation Reform Act ("PLRA"), in any "civil action with respect to prison conditions[,]" district courts "shall not grant or approve any prospective relief unless the court finds that such relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right." 18 U.S.C. § 3626(a)(1). The district court additionally "shall

give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the relief." *Id.*

The PRLA defines a "civil action with respect to prison conditions" as "any civil proceeding arising under Federal law with respect to the conditions of confinement or the effects of actions by government officials on the lives of persons confined in prison." *Id.* § 3626(g)(2). The term "prisoner" includes "any person subject to incarceration, detention, or admission to any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or [a] diversionary program." *Id.* § 3626(g)(3).

The Eleventh Circuit has interpreted the word "finds" in subsection (a)(1) to require district courts to make "particularized findings that each requirement imposed by the [permanent] injunction satisfies each of the need-narrowness-intrusiveness criteria." *United States v. Sec'y, Fla. Dep't of Corr.*, 778 F.3d 1223, 1228 (11th Cir. 2015). Whether the PLRA applies to civil actions brought by inmates alleging IDEA violations in a jail setting appears to be an issue of first impression in this Circuit, but based on the PLRA's broad definition of the phrase "civil action with respect to prison conditions[,]" the Court determines that it does. *See, e.g.*, *Handberry v. Thompson*, 446 F.3d 335, 344-45 (2d Cir. 2006); *Tillman ex rel. A.T. v. Harder*, 298 F. Supp.3d 391, 412 (N.D. NY 2018) (applying 18 U.S.C. § 3626(a) to an IDEA claim). Accordingly,

the Court has made particularized findings regarding the requirements set forth in 18 U.S.C. § 3626(a)(1) in Section B of this Order as to all remedial relief ordered in the Permanent Injunction and Remedial Order simultaneously filed herewith.

III. Discussion

The Sheriff does not oppose the entry of a permanent injunction with regards to Sections 1, 2(a),(b), (c)(1), (c)(3), and (d)(1-4) of the Plaintiffs' proposed remedial order.[2] The Plaintiffs' Motion for a Remedial Order is therefore GRANTED as to those provisions, which are specifically delineated in the Permanent Injunction and Remedial Order. The Sheriff objects, however, to certain other provisions of the Plaintiffs' proposed remedial order. As a preliminary matter, the Sheriff has waived any argument that the Plaintiffs do not meet the first, second, and fourth prongs of the permanent injunction standard by failing to raise any argument as to those prongs in her response brief. *See Sapuppo v. Allstate Fla. Ins. Co.*, 739 F.3d 678, 681 (11th Cir. 2014); (Def.'s Resp. in Opp'n to Pls.' Mot. for Remedial Ord., at 5-6.) For that reason, the Court's discussion is limited to application of the hardship prong of the permanent injunction standard.

[2] The Plaintiffs' proposed remedial order is docketed as Doc. 237-2.

A. Hardship to the Sheriff

First, the Sheriff objects to the provisions of the Plaintiffs' proposed remedial order that would require her to identify released inmates aged 21 and younger on a weekly basis and to implement formal, written policies and procedures to ensure that the DeKalb County Jail ("Jail") meets the requirements set forth in Section 2 of the proposed remedial order. (Def.'s Resp. in Opp'n to Pls.' Mot. for Remedial Ord., at 2, 14.) The Court finds the Sheriff's hardship argument as to the identity provision—namely, that the Jail releases a large volume of inmates weekly and that identifying eligible inmates from among those released would take extra effort—to be unavailing. (*Id.* at 13-14.) Although the Sheriff points out that eligible inmates no longer appear on the report currently provided weekly to DCSD as of the week following their release, DCSD requires the identities of all released youths aged 21 and younger in order to continue satisfying its child-find obligation and to continue providing eligible student inmates their FAPE. (*See* Sheriff's Aff. ¶¶ 32, 35.) Providing a weekly report of all potentially eligible inmates necessarily requires updating that report each week to remove eligible inmates who have been released and compiling the names of the released inmates into a separate list therefore cannot fairly constitute a hardship to the Sheriff. *See eBay Inc.*, 547 U.S. at 391. On that basis, the Court will require the Sheriff to provide a weekly report to DCSD containing the identities of all inmates aged 21 and

younger released from the Jail during the preceding week.

The Court is sympathetic, however, to the Sheriff's position that requiring her to implement formal, written policies and procedures to ensure compliance with the identification provisions in Section 2 of the Permanent Injunction and Remedial Order could pose a hardship to the Sheriff in light of the unique challenges presented by operating a Jail with an immense staffing shortage during an ongoing pandemic. (*See* Doc. 241-1 ¶¶ 7-10 ("Sheriff's Aff.").) The Court has no ability to remedy the logistical challenges opposing the Sheriff's compliance with her IDEA obligations amidst these practical concerns, in addition to limited classroom space and separation requirements among the eligible student inmates. (*See* Sheriff's Aff. ¶¶ 19-30.) Accordingly, the Court declines to implement Section 2(e) of the Plaintiffs' proposed remedial order and will not require the Sheriff to implement formal, written child-find policies and procedures at this time.

Second, the Sheriff objects to Section 3(a) of the proposed remedial order, which would require her to provide IDEA Class members with access to special education services provided by DCSD by: (1) providing notice to Class members of special education services and transportation to and from those services; (2) providing paper, soft-cover books, and writing implements; (3) facilitating Class member access to the DCSD online learning platform; (4) providing classroom space for educational services, including alternative spaces for Class

members unable to participate in the classroom; and (5) providing access to the Jail to DCSD personnel. (*Id.*; Pl.'s Proposed Remedial Ord. at 3.) However, the Sheriff's main challenge to Section 3(a) appears to be that, if she were to provide officers to secure the two available classrooms in the Jail, there would be housing units with no security during school hours due to the Jail's ongoing staffing shortage. (*See* Def.'s Resp. in Opp'n to Pls.' Mot. for Remedial Ord., at 6-10; Sheriff's Aff. ¶¶ 7-8). She also contends that the practical realities of providing classroom space for opposite gender, mixed-classification, gang-affiliated, and "keep separate" inmate students within the two available classrooms in the Jail would make complying with these provisions nearly impossible, and that the empty housing units in the Jail are not wired for internet access. (Def.'s Resp. in Opp'n to Pls.' Mot. for Remedial Ord., at 10-13; Sheriff's Aff. ¶¶ 19-31).

Here too, the Court is sympathetic to the Sheriff's position. The Sheriff cannot be obligated to compromise the security of the Jail and the safety of Jail staff and the inmates on account of her IDEA obligations by assigning detention officers to transport student inmates, secure classroom spaces, and escort DCSD personnel around the Jail when the Jail is already operating understaffed. *See* 18 U.S.C. § 3626(a)(1) (providing that substantial weight must be given to any adverse impact on public safety caused by any relief ordered). Similarly, the Sheriff has explained that only the two available

classrooms in the Jail are wired for internet access, and although the Plaintiff suggested making use of empty housing pods for classroom space, the Court cannot fairly require the Sheriff to rewire those areas for internet access. Further, the Court agrees with the Sheriff that the practical realities of attempting to educate and secure student inmates of mixed genders, security classifications, and gang memberships within two classrooms would pose an undue hardship on her. *See eBay Inc.*, 547 U.S. at 391; 18 U.S.C. § 3626(a)(1). Simply put, the logistical obstacles to the Sheriff's compliance with the Plaintiff's requested relief are not ones that may be remedied by a court order.

Nonetheless, the Sheriff has not set forth any argument against providing the student inmates with educational materials including soft-cover books, writing implements, and paper, or with providing notice to IDEA Class members of any scheduled special education services, and the Court sees no obvious hardship to the Sheriff in requiring her to do so. Additionally, the Sheriff has been providing virtual access to DCSD personnel for special education related services. The Court will require the Sheriff to continue to do so.

Third, the Sheriff objects to Section 3(b) of the proposed remedial order, which would require her to: (1) promptly notify DCSD of any punitive removal or segregation of a Class member resulting in the removal of access to special education services; and (2) provide Class members with access to manifestation

determination reviews conducted by DCSD in accordance with the IDEA, 20 U.S.C. §§ 1415(k)(1)(E), (F); 34 C.F.R. § 300.530(e). (Def.'s Resp. in Opp'n to Pls.' Mot. for Remedial Ord., at 2, 14; Pl.'s Proposed Remedial Ord. at 3-4.) The Court finds Plaintiffs' request for the Sheriff to notify DCSD of any punitive removal or segregation to be moot in light of the determination above that the Sheriff logistically cannot be obligated to provide physical classroom space for student inmates given the structural limitations of the Jail. The Sheriff has not put forth any specific argument against providing IDEA Class members with access to manifestation determination reviews conducted by DCSD, however, and the Court concludes that the Sheriff can facilitate that access virtually without bearing any undue hardship. Further, requiring the Sheriff to implement formal, written policies and procedures to ensure compliance with the access provisions in Section 2 of the Permanent Injunction and Remedial Order would cause a hardship on the Sheriff due to the logistical and practical concerns previously addressed. *See eBay Inc.*, 547 U.S. at 391.

Finally, the Sheriff objects to Section 4, which would require the appointment of a monitor to ensure compliance with any injunction order, at her expense, arguing that her "limited budget funds" are needed to hire more officers in light of the immense staffing shortage at the Jail. (Def.'s Resp. in Opp'n to Pls.' Mot. for Remedial Ord., at 2, 14-16; Pl.'s Proposed Remedial Ord. at 4-5.) The Court agrees and declines to require the appointment of a monitor

at this time. Additionally, imposing a monitor requirement at the Sheriff's expense would work against the Plaintiffs' goals by preventing the Sheriff from remedying the staffing shortage, which appears to be one of the biggest obstacles preventing her from satisfying her IDEA obligations.

B. PLRA Findings

In accordance with 18 U.S.C. § 3626(a)(1), the Court finds that the relief granted in the Permanent Injunction and Remedial Order filed herewith is narrowly drawn, extends no further than necessary to correct the IDEA violations outlined in the Court's Order granting the Plaintiff's Motion for Summary Judgment in part, [Doc. 233], and is the least intrusive means necessary to correct those violations. The particularized, enumerated findings below correspond to the numeration in the Permanent Injunction and Remedial Order. *See Sec'y, Fla. Dep't of Corr.*, 778 F.3d at 1227-28.

1. Scope: The Court finds that the remedial provisions of this Order satisfy the need-narrowness-intrusiveness criteria in 18 U.S.C. § 3626(a)(1). The remedial relief ordered is necessary to correct the Sheriff's IDEA violations but, as this section ensures, does not expand her obligations or the rights of eligible student inmates under the statute. The remedial relief ordered is limited in scope, narrowly drawn, and extends no further than necessary to correct the statutory violations.

2. Identification of Eligible Youth

(a) Notice of Rights: The Court finds that subsection 2(a) is necessary because without such notice, incarcerated youth may be unaware of their rights to special education services

while detained at the Jail. Subsection 2(a) is the least intrusive and most narrow remedy because DCSD is providing the notice to the Sheriff and her obligation is only to make the notice apparent to inmates at the Jail.

(b) Ability to Request Education: The Court finds that subsection 2(b) is necessary because inmates need a method of requesting services and no formal method currently exists at the Jail. Subsection 2(b) is narrowly tailored and is the least intrusive means of remedying the violation because it does not expand the Sheriff's liability under the IDEA and does not require the Sheriff to identify potentially eligible inmates herself. Rather, it provides a means for inmates to identify themselves. Subsection 2(b) also leaves to the Sheriff's discretion the means of allowing inmates to request services and notifying DCSD, so long as those means are effective and preserve the inmates' confidentiality.

(c) Jail Population Updates: The Court finds that subsections 2(c)(1)-(3) are necessary because DCSD cannot identify these youth on its own and, without such knowledge, DCSD cannot provide services or appropriately transfer released student inmates to a new educational setting. Subsections 2(c)(1)-(3) are narrowly tailored to the Sheriff's responsibility to provide access to special education under the IDEA. Providing reports to DCSD is the least intrusive means of communicating the necessary information.

(d) Timely Evaluations and IEP Meetings: The Court finds that eligible inmates have a right to evaluations and IEP meetings under the IDEA. Subsections 2(d)(1)-(4) are therefore necessary because the Sheriff controls the use of Jail space, the movement of student inmates within the Jail, and the admission of outside visitors. The Sheriff is the only person who can ensure student inmates are present at certain meetings and that outside visitors have access to them, virtually or otherwise. These sections are narrowly tailored and the least intrusive means of remedying the Sheriff's violations because they require only that the Sheriff give access to all relevant parties either virtually or by providing physical meeting space, and they do not require the Sheriff to conduct the evaluations or meetings herself.

Moreover, these sections give the Sheriff wide discretion to determine how to provide the required access and space.

3. Access to Special Education:

(a) Access to Instruction and Materials: The Court finds that Subsections 3(a)(1)-(3) are necessary because in order to receive the education to which they are entitled, Class members must be aware of and have access to educational materials and the personnel providing the educational services. The Jail's cooperation is necessary for DCSD to provide services to Class members. These sections are narrowly tailored and minimally intrusive because the Sheriff is only required to work with DCSD to accommodate and provide access, virtually or otherwise, for the services that DCSD will provide to eligible student inmates. The Sheriff retains discretion regarding how to implement such accommodations in conjunction with DCSD. Subsections 3(a)(1)-(3) therefore meet the need-narrowness-intrusiveness requirements of the PLRA.

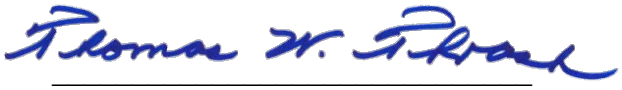
(b) Manifestation Determination Reviews: The Court finds that Subsections 3(b)(1)-(3) are necessary because Class members are statutorily entitled to Manifestation Determination Reviews (MDRs) and functional behavioral assessments to ensure protection of their rights under the IDEA. The Court therefore finds that DCSD must have access to hold MDRs and perform functional behavioral assessments, virtually or otherwise, as required by the IDEA. Like subsections 2(d) and 3(a)(1)-(3), subsections 3(b)(1)-(3) require the Sheriff to provide virtual or physical access and meeting space for the MDRs, allow access to needed materials, and provide for the attendance of all necessary members of the IEP team. Subsections 3(b)(1)-(3) are the least intrusive means of remedying the violation because they require the Sheriff to meet her IDEA obligations while giving her ample discretion to cooperate with the DCSD to determine how to do so.

4. Continuing Jurisdiction: The Court finds that subsection 4 is necessary because it gives the Court continuing jurisdiction and equitable power to enforce the remedial provisions of this Order. It does not place any additional obligations on the Sheriff.

IV. Conclusion

For the reasons set forth above, the Plaintiff's Motion for a Remedial Order [Doc. 237] is GRANTED in part and DENIED in part.

SO ORDERED, this 29th day of April, 2022.



THOMAS W. THRASH, JR.
United States District Judge