being taken into police custody to mitigate imminent risk). The court referred to *Pembroke Hosp. v. D.L.*, 122 N.E.3d 1058 (Mass. 2019) and *Matter of a Minor*, 148 N.E.3d 1182 (Mass. 2020), which both discuss the laws relating to conditions of prolonged confinements as requiring narrow tailoring to serve legitimate governmental interest and the least restrictive means to vindicate that interest.

In the ruling, the court held that the five days of confinement that C.R. experienced were justified, given that the period of confinement was no longer than necessary to find a clinically appropriate placement. The court refrained from defining a set time period for ED confinement and deferred the question of length of ED confinement to the state legislature.

Discussion

Massachusetts, similar to other states, has a distinct set of laws governing involuntary mental health treatment. Mass. Gen. Laws ch. 123 § 12 (2018) allows for confinement for purposes of evaluation at a psychiatric facility for a three-day period. The statute, however, is silent on the length of time of confinement in the ED prior to placement at a psychiatric facility. It is possible that this is because, at the time the statute was written, the legislature did not anticipate patients being held for significant periods of time in the ED. Currently, however, it is not surprising for patients to be held in the ED for extended periods of time, due largely to a lack of available inpatient resources.

In stating that MGH was reasonable in holding the patient for as long as they did, the Massachusetts Supreme Judicial Court highlighted the theoretical possibility of a patient's being held indefinitely in the ED should appropriate inpatient placement not be available. This raises a practical concern that affects all psychiatric patients, especially those in the most vulnerable psychiatric patient populations, such as children and individuals with low baseline levels of functioning (e.g., those with autism spectrum disorder or intellectual disability). It is unfortunate that the populations of patients most negatively affected by being confined to an ED are the same ones who are most likely to be confined for a longer period of time.

As a second topic, this case highlighted that the right to appeal involuntary commitments under the Mass. Gen. Laws ch. 123 § 12 is applicable only from a psychiatric facility (i.e., a patient in the ED cannot petition the court). The court noted that EDs are not incentivized to prolong confinement of patients and that any delays in confinement would therefore be required for accurate assessment and stabilization. The court also cited the Expedited Psychiatric Inpatient Admission Protocol 2.0 (EPIA 2.0) of the Massachusetts Office of Health and Human Services, which has laid out clear steps for managing cases of individuals who are difficult to place. The court stated that the question of setting a time limit would be better addressed by the legislature, which was "diligently working" on situations of prolonged ED confinements. Enforcing a time limit on ED stays would also run the risk of premature discharges of patients with a level of psychiatric instability that would put them at risk for negative consequences to their mental health and safety or for endangering the public. This would disproportionally affect high-risk populations such as intellectually disabled or autistic children who already have limited options.

Balancing autonomy and civil liberty with paternalism (i.e., the need for mandated confinement or treatment for those severely ill) is not an uncommon challenge in psychiatric practice. Defining the time period that a patient may be held in the ED may be logical from a liberty perspective given the reality of limited resources, but such a time limitation is not practical. The utopian health system would have more beds than required, limited ED stays, and prompt treatment. In the absence of such a utopian system, both the legislature and the health care systems and providers need to continue to focus on addressing the challenges raised in this case, not by imposing time limits on ED confinement but rather by increasing available resources.

A Reasonable-Time Standard for Identifying and Evaluating Students with Suspected Disability

Cara Struble, MA
Predoctoral Fellow in Clinical Psychology

Alexander Westphal, MD, PhD
Associate Professor of Psychiatry

Law and Psychiatry Division
Department of Psychiatry

Yale University School of Medicine
New Haven, Connecticut

Compliance with a Child-Find Duty Inferred a Reasonable-Time Standard Based upon Proactive Steps Rather than Length of Delay

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Key words: children; emotional disturbance; IDEA law; child find; evaluation

In *Spring Branch Indep. Sch. Dist. v. O.W.*, 961 F.3d 781 (5th Cir. 2020), the U.S. Court of Appeals for the Fifth Circuit affirmed the decision by the U.S. District Court for the Southern District of Texas that Spring Branch Independent School District violated a child-find duty, a requirement of school districts to identify, locate, and evaluate children with suspected disabilities under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1412(a) (2015)).

Facts of the Case

The parents of O.W. registered their minor son in the fifth grade at Nottingham Elementary School in the Spring Branch Independent School District for the 2014–2015 academic year. Prior to this, O.W. had attended kindergarten at Nottingham, followed by four years of private school enrollment. While enrolled at a therapeutic private school, O.W. received daily counseling and was under the care of a psychiatrist. O.W. had a history of exhibiting behavioral and social and emotional difficulties dating back to kindergarten. He was identified as having above-average intellectual capabilities and being gifted in mathematics.

From the start of fifth grade, O.W. was regularly interrupting class, warranting his removal due to inappropriate behaviors including acts of physical aggression and property destruction, disruption, and use of vulgar language. These behaviors violated the student code of conduct. Ms. W. made frequent contact with school officials from the beginning of the academic year due to the aforementioned behavioral difficulties. She provided letters from O.W.'s prior health providers stating that O.W. had received a diagnosis of attention deficit/hyperactivity disorder. Ms. W. described mood and anxiety symptoms as well as a diagnosis of oppositional defiant disorder.

In September 2014, Ms. W. provided consent for an initial evaluation and submitted a family history form and a prior evaluation to document O.W.'s behavioral problems. Section 504 of the Rehabilitation Act of 1973 protects individuals with disabilities from discrimination in programs that receive federal funding, including public schools (Pub. L. No. 93-112, 87 Stat. 394 (1973)). In contrast to IDEA requirements, § 504 does not require an individual education plan (IEP) on the basis of a student's unique needs. In October 2014, it was determined that O.W. qualified for accommodations under § 504. A behavior intervention plan (BIP) was put in to place with limited effect in reducing O.W.'s disruptive behaviors. O.W.'s grades declined through the semester. After he assaulted his fifth-grade teacher in January 2015, the school held another § 504 meeting where O.W. was referred for a special education evaluation. O.W. was transferred to the school district's Turnaround Opportunities through Active Learning (TOTAL) program while a Full Individual Evaluation (FIE) was completed.

The results from the FIE completed on February 24, 2015 concluded that O.W. "'was a student with poor emotional and behavioral regulation' who suffers from an Emotional Disturbance" (*Spring Branch Indep. Sch. Dist.*, p 787). An Admission, Review, and Dismissal Committee (ARDC) developed an IEP for O.W in March 2015; it included steps to reduce inappropriate behaviors (such as aggression and property destruction) using positive approaches, including redirection and choice offering. O.W. was enrolled at Ridgecrest Elementary School where the IEP was implemented.

At Ridgecrest, O.W. was given "take-desk" directions to have a seat at his desk in an area free of distractions following inappropriate behaviors after unsuccessful redirections and warnings. He was physically restrained as a result of aggression on eight occasions. The school called for police assistance to de-escalate on four occasions. Following an instance on May 5, 2015, school officials and Ms. W. agreed in writing that O.W. would begin his school day 1.5 hours after the official start time. On May 18, 2015, officials and Ms. W. discussed via email shortening O.W.'s school day to three hours and holding an ARDC meeting. On the basis of O.W.'s increasing behavioral difficulties and poor school performance, his parents removed him from school during the final week of the academic year.

Mr. and Ms. W. enrolled him in a private institution, Fusion Academy, for the 2015–2016 academic year after O.W. demonstrated improvements in a summer tutoring program. O.W. attended Fusion for the 2016–2017 academic year but was removed after setting fire to a trash can on school premises. Following this incident, he was enrolled in a residential school, Little Keswick, in Virginia.

An administrative complaint was filed on October 28, 2015 by O.W.'s parents seeking tuition reimbursement. A hearing officer decided in favor of O. W., finding that the school district did not comply with child-find requirements due to delay in referral for a special education evaluation, thus failing to provide O.W. with free appropriate public education (FAPE). The hearing officer found that O.W.'s IEP was not fully implemented because of his reduced school day and use of time-outs, restraints, and police involvement, as these interventions were not addressed in O.W.'s IEP. On the basis of these violations, O.W. was entitled to a tuition reimbursement of $50,250 and a compensatory education award. The school district appealed the hearing officer's decision to the U.S. District Court for the Southern District of Texas on August 30, 2016, which the district court upheld on March 29, 2018. The school district then appealed to the U.S. Court of Appeals for the Fifth Circuit.

Ruling and Reasoning

U.S. Court of Appeals for the Fifth Circuit upheld the district court's decision that a child-find violation did occur as there was an unreasonable delay between the school district's notice of suspected disability and subsequent evaluation of O.W., thus violating the IDEA obligation regarding a child-find requirement. Though 20 U.S.C. § 1412(a)(3) (2015) does not specify timeliness in identification, location, or evaluation of students with a suspected disability, the court used two cases to decide on reasonableness in delay of child find, *Krawietz ex rel. Parker v. Galveston Indep. Sch. Dist.*, 900 F.3d 673 (5th Cir. 2018) and *Dallas Indep. Sch. Dist. v. Woody,* 865 F.3d 303 (5th Cir. 2017). The court stated that "the reasonableness of a delay is not defined by length of time but by the steps taken by the district during the relevant period" (*Spring Branch Indep. Sch. Dist.*, p 793), and that a reasonable delay involves a district's "proactive steps to comply with its child-find duty" (*Spring Branch Indep. Sch. Dist.*, p 793). The court stated that § 504 accommodations do not absolve a school district of child-find duties and may not necessarily qualify as an appropriate intermediate step, particularly when the behavior is severe and not age-appropriate.

The court of appeals affirmed that the school district failed to implement O.W.'s IEP fully due to the use of time-outs, which must be designated on a child's IEP per 19 Tex. Admin. Code § 89.1053(g) (2015). In addition, O.W.'s IEP improperly modified O.W's school day to three hours without written documentation or subsequent ARDC meeting, which does not satisfy the requirements of 34 C.F.R. § 300.324(a)(4) (2015). The court reversed the district court's decision that the use of physical restraints and police involvement constituted violations to O.W.'s IEP. In light of these decisions, the court of appeals remanded reimbursement and compensatory decisions back to the district court for reconsideration.

Discussion

This case raises several points of interest to forensic mental health professionals working with school-aged children with mental health or behavioral difficulties. First, the reasonableness in delay between identification and evaluation of a student with a suspected disability may be determined, not by length of time, but by proactive steps taken by the district to fulfill a child-find requirement. It remains unclear, however, what constitutes a proactive step in complying with a child-find duty. Though § 504 accommodations may be an appropriate intermediate step prior to a comprehensive special education evaluation in certain situations, this must be assessed in each case on the basis of developmentally appropriate behaviors, severity of behavioral difficulties, and response to intervention. This decision highlights the variety of considerations that one must make in deciding a child-find violation. One of the questions that remains is who determines what constitutes a proactive step and makes decisions on the basis of the nuanced impact of individual characteristics: mental health professionals, school districts, or the court.

Second, school districts across the country vary with regard to availability of mental health resources to identify and evaluate students suspected of disability. Thus, this decision could lead to increases in time to initial evaluation, whereby school

districts could instead use cost-effective but potentially inappropriate intermediate steps to justify compliance with a child-find duty via these unclearly defined "proactive steps." This could enhance disparities in access to mental health resources and accommodations for students in under-resourced districts. In particular, delays in evaluation and subsequent intervention can have a devastating impact on a child's development, socio-emotional functioning, and prognosis. Additionally, at the current time, the ruling must be interpreted within the context of the coronavirus pandemic, which has amplified limitations in identifying, evaluating, and implementing an IEP for students with mental health difficulties qualifying for special education services.

Admissibility of Statements Made in Forensic Interviews

Kathryn A. Thomas, JD, MEd
Fellow in Forensic Psychology

Paul A. Bryant, MD
Assistant Professor of Psychiatry

Law and Psychiatry Division
Department of Psychiatry
Yale University School of Medicine
New Haven, Connecticut

Statements Made by a Defendant During a Forensic Interview Are Not Admissible for the Truth of the Matter

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Key words: hearsay; expert testimony; psychiatric forensic evaluations

In *Commonwealth v. Rodriguez*, 484 Mass. 677 (Mass. 2020), Christian Rodriguez appealed his conviction of murder in the first degree to the Massachusetts Supreme Judicial Court on the theory of extreme atrocity or cruelty for the beating death of his roommate, Roosevelt Harris. Mr. Rodriguez argued that the trial court erred in ruling that explanations he gave during the forensic interviews were not admissible for the truth of the matter asserted. The court affirmed his conviction, ruling that while a forensic expert may use an individual's statements in forming conclusions, these statements are not themselves admissible.

Facts of the Case

At trial, the Commonwealth presented the following evidence. Mr. Rodriguez, the victim, and three others resided together in a rooming house in Boston. Mr. Rodriguez and the victim had a history of arguments while living together, including both verbal and physical altercations in which Mr. Rodriguez was the aggressor.

Two of the roommates testified that, on February 9, 2012, they heard noises coming from the victim's room, including the sound of someone falling, eight to ten banging noises, and the victim grunting. They also testified that they heard someone run out of the apartment, and they discovered the victim lying face up with significant head trauma, barely breathing. Around the same time, a woman was parking her car and saw Mr. Rodriguez running toward her with a baseball bat. She recognized him from the neighborhood due to a scar on his face. She saw him place the bat in a garbage can, where she later returned to find a bloody metal bat. She also identified Mr. Rodriguez from a photo array.

Subsequently, Mr. Rodriguez's jacket, shirt, and shoes tested positive for blood. A sample from his pants also matched the victim's DNA profile. At trial, Mr. Rodriguez admitted that he used the baseball bat to kill the victim. The cause of death was determined to be blunt trauma to the head with associated skull fractures and brain injuries.

During the trial, the defense argued that Mr. Rodriguez lacked criminal responsibility for the victim's murder. They presented evidence that Mr. Rodriguez was arrested in the early morning hours following the murder after unsuccessfully attempting to steal a car. A probation officer who met with Mr. Rodriguez hours after his arrest found him washing his hair in urine and his cell was smeared with feces. She observed him put his head in the toilet, but noted that he was redirectable when she told him to stop.

Also during the morning following the alleged murder, a state forensic psychologist evaluated Mr. Rodriguez to determine whether he was competent to stand trial. She described him as having brown liquid dripping from his face and noted a brown puddle in his cell. He was agitated, moving rapidly, speaking