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DISTRICT OF WYOMING
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UNITED STATES DISTRICT COURT
DISTRICT OF WYOMING

BLAISE CHIVERS-KING, *et al.*,

Plaintiffs,

v.

WYOMING DEPARTMENT OF FAMILY
SERVICES, WYOMING BOYS' SCHOOL,
et al.,

Defendants.

Case No. 24-CV-39

**ORDER GRANTING IN PART AND DENYING IN PART
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT
AS TO PLAINTIFF BLAISE CHIVERS-KING'S CLAIMS**

This matter comes before the Court on Defendants' joint motion for summary judgment and accompanying memorandum. (ECFs 148, 149.) Plaintiffs responded in opposition (ECF 227), and Defendants replied (ECF 238). The Court granted a motion for separate trials on September 10, 2026, and each Plaintiff's claims will be tried separately. (ECF 268.) As Plaintiff Blaise Chivers-King's claims will be tried first, this order addresses only those claims. Having considered the parties' arguments and exhibits and otherwise being fully advised, the Court will grant the motion in part and deny it in part.

BACKGROUND

Mr. Chivers-King is a former resident of Wyoming Boys' School (WBS), a state-run correctional facility for minors who are adjudicated delinquent. (ECF 89, Fourth Am. Compl. ¶¶ 1–2.) He and his Co-Plaintiffs bring this action alleging unlawful practices against several WBS employees; WBS itself; and the Wyoming Department of Family Services (DFS), a state agency that governs and certifies WBS. (*Id.* ¶¶ 1–2, 16–31.)

Mr. Chivers-King resided at WBS twice after being adjudicated delinquent in juvenile court and placed into DFS custody. (ECF 149 at 22, 26, SMF 59, 75.) His first placement was 11 months long, from April 1, 2020, to March 5, 2021. (ECF 291-1 at 2, Stip'd Facts ¶ 4.) His second placement was 11.5 months long, from May 25, 2021, to May 5, 2022, although he was not physically at WBS from November 7, 2021, to November 15, 2021, and from December 10, 2021, to April 7, 2022. (*Id.* ¶¶ 5–7.) While at WBS, Mr. Chivers-King was 15–17 years old. (*See* ECF 225-46 at 1, Ex. MMM, Chivers-King Critical Info. Card.)

Mr. Chivers-King brings claims against WBS and DFS as institutions; Dale Weber in his official and individual capacities; and Del Olson, Thad Shaffer, Mike Nelson, and Mark Nelson in their individual capacities. (ECF 89 at 53–69.) The individual Defendants' roles at WBS during Mr. Chivers-King's placements are as follows:

- Weber was deputy or interim superintendent until around March 2022, when he became superintendent. (ECF 149 at 1–2, SMF 2; ECF 226 ¶ 2.)
- Olson was Dorm 2 director; after Dorm 2 closed in December 2020, he became intake coordinator. (ECF 149 at 2, SMF 4–5; ECF 227 at 1 n.1.)
- Shaffer was part of the Risk Management Officer (RMO) team. (ECF 152-15 at 2, Ex. 15, Shaffer Aff. ¶ 3.)
- Mike Nelson was part of the RMO team until May 2020, worked on Dorm 1 until July 2021, and was Dorm 4 director until late April 2022. (ECF 162-11 at 3, Ex. 171, Mike Nelson Aff. ¶¶ 6–7.)
- Mark Nelson was an RMO until being placed on leave in December 2021. (ECF 193-2 at 3–4, Ex. 311, Mark Nelson Dep. 18:4–10, 18:18–20, 22:6–14.)

Additional facts will be discussed below as relevant to the analysis.

In Plaintiffs' Fourth Amended Complaint, Mr. Chivers-King asserts Defendants violated his constitutional rights under the Fourteenth Amendment (Claims 1–4) and engaged in disability discrimination prohibited by the Americans with Disabilities Act (ADA) and Rehabilitation Act (Claims 5–6). (ECF 89 at 53–69.) Defendants request summary judgment against all Mr. Chivers-King's claims, arguing they are entitled to qualified immunity on all constitutional claims and the disability-discrimination claims fail. (ECF 148.)

SUMMARY JUDGMENT STANDARD OF ADJUDICATION

Under Federal Rule of Civil Procedure 56(a), a court “shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” A fact is material when, under the applicable substantive law, it could affect the outcome of the lawsuit. *Jones v. Norton*, 809 F.3d 564, 573 (10th Cir. 2015); *see also Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (“Factual disputes that are irrelevant or unnecessary will not be counted.”). A dispute is genuine “if a rational jury could find in favor of the non-moving party on the evidence presented.” *Jones*, 809 F.3d at 573.

When the moving party does not bear the burden of persuasion at trial, as here, it bears both “the initial burden of production on a motion for summary judgment and the burden of establishing that summary judgment is appropriate as a matter of law.” *Pelt v. Utah*, 539 F.3d 1271, 1280 (10th Cir. 2008) (citing *Trainor v. Apollo Metal Specialties, Inc.*, 318 F.3d 976, 979 (10th Cir. 2002)). “The moving party may carry its initial burden either by producing affirmative evidence negating an essential element of the non-moving party's claim, or by showing that the [non-moving] party does not have enough evidence to carry its burden of persuasion at trial.” *Id.* (quoting *Trainor*, 318 F.3d at 979). A movant who does not bear the burden of persuasion at trial need not disprove the other party's claim; rather, its burden “may be discharged by ‘showing’—

that is, pointing out to the district court—that there is an absence of evidence to support the nonmoving party’s case.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986).

Once the moving party has met its initial burden, the non-moving party cannot rest on the pleadings. *Sec. Nat’l Bank v. Belleville Livestock Comm’n*, 619 F.2d 840, 848 (10th Cir. 1979). The non-moving party must identify specific facts showing the presence of a genuine dispute of material fact for trial. *Est. of Hurtado v. Smith*, 119 F.4th 1233, 1236 (10th Cir. 2024). While the Court views the record in the light most favorable to the non-moving party, “[u]nsubstantiated allegations carry no probative weight in summary judgment proceedings.” *Id.* (quoting *Self v. Crum*, 439 F.3d 1227, 1230 (10th Cir. 2006)). “[M]ere speculation, conjecture, or surmise” cannot defeat a summary judgment motion. *Alcala v. Ortega*, 128 F.4th 1298, 1306 (10th Cir. 2025) (quoting *Bones v. Honeywell Int’l, Inc.*, 366 F.3d 869, 875 (10th Cir. 2004)); *see also Lawnmaster v. Ward*, 125 F.3d 1341, 1347 (10th Cir. 1997) (“The mere existence of a scintilla of evidence in support of the nonmovant’s position is insufficient to create a dispute of fact that is ‘genuine.’”). As discussed below, this analysis varies somewhat where a defendant asserts the affirmative defense of qualified immunity.

DISCUSSION

1. Claims 1–4: The Fourteenth Amendment and § 1983

Mr. Chivers-King asserts in his first four claims that Defendants violated substantive and procedural due process rights guaranteed to him by the Fourteenth Amendment. (ECF 87 at 53–65.) But the amendment itself does not establish a vehicle through which a detainee may challenge the conditions of his detention. Mr. Chivers-King thus brings his first four claims via 42 U.S.C. § 1983, which “provides, in essence, that any person who, under the color of state law, causes another to be deprived of rights secured by the Constitution or laws of the United States

shall be liable to the injured party in an action at law or a suit in equity.” *Milonas v. Williams*, 691 F.2d 931, 939 (10th Cir. 1982).

1.1 The Qualified Immunity Defense

Defendants invoke the affirmative defense of qualified immunity. (ECF 149 at 65.) Qualified immunity renders officials immune from suit unless their conduct “violate[ed] clearly established statutory or constitutional rights of which a reasonable person would have known.” *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). It “balances two important interests—the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably.” *Pearson v. Callahan*, 555 U.S. 223, 231 (2009).

To overcome the individual Defendants’ presumed immunity, Mr. Chivers-King must satisfy a two-prong test. He must show (1) a violation of a constitutional right and (2) that the right was clearly established. *Lance v. Morris*, 985 F.3d 787, 793 (10th Cir. 2021) (citing *Donahue v. Wihongi*, 943 F.3d 1177, 1186 (10th Cir. 2020)). To satisfy prong two, Mr. Chivers-King must show a reasonable official “would have understood that their conduct had violated the Constitution.” *Id.* at 798–99 (citing *Mullenix v. Luna*, 577 U.S. 7, 11 (2015) (per curiam)). Generally, “there must be a Supreme Court or Tenth Circuit decision on point, or the clearly established weight of authority from other courts must have found the law to be as the plaintiff maintains.” *Medina v. City and Cnty. of Denver*, 960 F.2d 1493, 1498 (10th Cir. 1992) (citing *Stewart v. Donges*, 915 F.2d 572, 582–83 (10th Cir. 1990)). However, decisions need not have identical facts. Officials “can still be on notice that their conduct violates established law even in novel factual circumstances.” *Hope v. Pelzer*, 536 U.S. 730, 741 (2002). The essential question is whether the state of the law at the time of the alleged rights violation “gave respondents fair

warning” that their action or inaction was unconstitutional. *Id.*

With this standard in mind, the Court considers whether Mr. Chivers-King has shown violations of his clearly established rights for Claims 1–4.

1.2 Mr. Chivers-King’s Fourteenth Amendment Claims

The Fourteenth Amendment states: “No State shall ... deprive any person of life, liberty, or property, without due process of law.” U.S. Const. amend. XIV. In so doing, it guarantees due process to people legitimately incarcerated by the government but not convicted of any crime. *Bell v. Wolfish*, 441 U.S. 520, 523 (1979). It provides for two types of due process: substantive (ensuring the state does not deprive an individual of a qualifying right for an arbitrary reason) and procedural (ensuring the state, in depriving an individual of a qualifying right, does so with adequate process). *Albright v. Oliver*, 510 U.S. 266, 271–72 (1994); *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976). Mr. Chivers-King’s first three claims assert violations of his substantive due process rights; his fourth asserts violation of his procedural due process rights.

While the Fourteenth Amendment is often said to cover “pretrial detainees,” it protects not just people awaiting trial but also juveniles adjudicated delinquent and detained—including Mr. Chivers-King. *Bell*, 441 U.S. at 523; *Blackmon v. Sutton*, 734 F.3d 1237, 1242 (10th Cir. 2013). This is because the Eighth Amendment, which prohibits cruel and unusual punishment, applies to those convicted of a crime; juveniles adjudicated delinquent are not. *Colbruno v. Kessler*, 928 F.3d 1155, 1162 (10th Cir. 2019); *JP v. State*, 514 P.3d 785, 790 (Wyo. 2022) (“Proceedings brought under [Wyoming’s] Juvenile Justice Act are not criminal proceedings”). A finding of juvenile delinquency “is not deemed a conviction of guilt, but is a determination that judicial intervention is necessary for the best interest and welfare of the child and the public.” Wyo. Stat. § 14-6-225(b). Indeed, “[o]ne of the purposes of a delinquency proceeding is ‘to remove, where appropriate, the

taint of criminality from children committing certain unlawful acts.” *JP v. State*, 514 P.3d at 790 (quoting *Vaughn v. State*, 391 P.3d 1086, 1091–92 (Wyo. 2017)).

Although the Eighth Amendment’s prohibition on cruel and unusual punishment applies only to convicted criminals, its principles still inform Fourteenth Amendment jurisprudence because of the intuitive logic that “[c]onduct that violates the clearly established rights of convicts necessarily violates the clearly established rights” of other detainees. *Blackmon*, 734 F.3d at 1241. Officials must provide detainees with “the minimum civilized measure of life’s necessities,” including food, clothing, shelter, and medical care. *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981). At a minimum, “[c]onditions must not involve the wanton and unnecessary infliction of pain.” *Id.*

The Fourteenth Amendment contains an important enhancement to the Eighth Amendment’s protections: It “prohibits any punishment” of those detainees who may invoke its substantive due process protections. *Blackmon*, 734 F.3d at 1241. The Supreme Court has noted the definition of “punishment” in this constitutional sense is nuanced. The essential purpose of detention facilities, after all, is to detain; “loss of freedom of choice and privacy are inherent incidents of confinement in such a facility.” *Bell*, 441 U.S. at 537. The question for Fourteenth Amendment purposes, then, is whether a condition was imposed “for the purpose of punishment or ... [was] but an incident of some other legitimate government purpose.” *Id.* at 538.

That a particular condition or restriction was imposed as punishment may be demonstrated in two ways. First, plaintiffs may show detention facility officials had an “expressed intent to punish.” *Id.* Second, plaintiffs may show the condition was not reasonably related to a legitimate government objective; in other words, it was arbitrary or purposeless. *Id.* at 539. Maintaining security and order at an institution is a legitimate government objective. *Id.* at 540. Additional “useful guideposts” for the punishment analysis include:

[w]hether the sanction involves an affirmative disability or restraint, whether it has historically been regarded as a punishment, whether it comes into play only on a finding of scienter, whether its operation will promote the traditional aims of punishment—retribution and deterrence, whether the behavior to which it applies is already a crime, whether an alternative purpose to which it may rationally be connected is assignable for it, and whether it appears excessive in relation to the alternative purpose assigned[.]

Id. at 537–38 (quoting *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168–69 (1963)). The inquiry may turn on levels of intensity: A condition or restriction may be reasonably related to a legitimate government interest in theory but become unreasonable if it is excessive in degree. *Id.* at 540.

Although the Court may not use the punishment analysis to impose its own views about how best to operate a detention facility, it also need not take the facility’s asserted purpose at its word. *Littlefield v. Deland*, 641 F.2d 729, 731 (10th Cir. 1981). (“[T]he court must apply the Bell standard to the facts underlying a § 1983 claim ... to determine whether that policy in fact constitutes punishment *whatever its asserted purposes may be.*” (emphasis added)).

1.2(a) Isolation

Mr. Chivers-King first alleges Weber and Mike Nelson violated his Fourteenth Amendment rights by placing him in isolation, which deprived him of basic human needs. (ECF 89 at 53.) In invoking qualified immunity, Defendants argue “every instance of claimed ‘isolation’ served a legitimate purpose and was not excessive in relation to that purpose.” (ECF 149 at 68.) The Court disagrees. Mr. Chivers-King has carried his burden, identifying evidence showing Defendants violated his clearly established rights by placing and retaining him in isolation when doing so was not reasonably related to a legitimate government interest. The Court thus declines to issue summary judgment finding qualified immunity on this claim as to both Weber and Mike Nelson.

Mr. Chivers-King was on “detention status,” which is WBS’s most restrictive status and which Plaintiffs argue constitutes solitary confinement, eight times during his first stay and nine

times during his second stay. (ECF 149 at 5, 22–23, 26–27, SMF 20, 61, 78; ECF 227 at 3–4, 10, 11, RSMF 20, 61, 78.) Six times, he was on detention status for more than five days. (ECF 149 at 22, 26–27, SMF 61, 78.) He was also on “administrative hold,” which Defendants characterize as a status used “when safety was at a heightened or unknown risk” and Plaintiffs argue was euphemistically used “to impose punitive, fixed-duration solitary confinement,” for 14 days during his first stay. (ECF 149 at 6, SMF 23, 61; ECF 227 at 4, RSMF 23.)

The parties dispute the particulars of what occurred when WBS residents were placed on detention status or administrative hold. Nonetheless, aggregating the undisputed facts and viewing the remainder in the light most favorable to Mr. Chivers-King,¹ a picture of his experience can be painted. WBS does not use the terms “solitary confinement” or “isolation” to describe its practices, but many of its uses of detention status (and, for that matter, administrative hold and other statuses) bear the hallmarks of isolation. (ECF 149 at 4–6, SMF 19–20, 22–23.) The detention rooms are approximately 8- by 10-foot cinderblock and concrete rooms with no exterior window or carpeting. (ECF 227 at 22, AMF 20.) The doors have small interior windows that are covered with a large magnet at least some of, and possibly all, the time a child is inside. (ECF 227 at 3, RSMF 20; ECF 238 RAMF 20.) The only furniture is a metal toilet-sink attached to the wall. (ECF 227 at 3, RSMF 20.) Children “typically” receive a mattress and bedding at night; these items are removed in the morning. (ECF 149 at 5, SMF 20.) While in the detention rooms, children may be prohibited from participating in dorm, school, and recreational activities. (*Id.*) They may be denied “basic

¹ “[C]ourts are required to view the facts and draw reasonable inferences in the light most favorable to the party opposing the [summary judgment] motion. In qualified immunity cases, this usually means adopting ... the plaintiff’s version of the facts.” *Scott v. Harris*, 550 U.S. 372, 378 (2007) (cleaned up). Only in cases where there is “blatant contradiction” between the plaintiff’s version of the facts and “documentary evidence such as videos or photographs” is it appropriate to decline to adopt the former. *Teetz as next friend of Lofton v. Stepien* (10th Cir. 2025) (citing *Vette v. K-9 Unit Deputy Sanders*, 989 F.3d 1154, 1161–62 (10th Cir. 2021) (quotation marks omitted)).

necessities, such as meals, hygiene and shower opportunities, daily medications and the like” if WBS determines they cannot be provided safely. (*Id.*) They are not allowed to interact with their peers or call their families.² (ECF 227 at 23, AMF 25.) Mr. Weber testified in WBS’s 30(b)(6) deposition that children in detention rooms do not receive classroom instruction or peer interaction, may not receive time outside the rooms to exercise or shower, and may be kept in the rooms for 23–24 hours a day. (ECF 225-4 at 8, 14, 15–16, Ex. W, 30(b)(6) Dep. Tr., at 82:15–25, 99:8–12, 103:24–25, 104:1–3.)

The Tenth Circuit has expressed clear skepticism of the use of isolation, especially for children. In *Milonas v. Williams*, the Tenth Circuit considered the use of isolation at a Utah school for boys that the district court described as “a correctional and detention facility” where “students are locked in and locked up.” 591 F.2d 931, 935 (10th Cir. 1982). As here, the *Milonas* school used “so-called ‘isolation rooms, also referred to as ‘prescription rooms,’ or ‘quiet rooms,’ or ‘time-out rooms’” to detain individual students who violated school rules or were “believed to be emotionally or physically out of control.” *Id.* at 941. The isolation rooms contained no furniture and had one small window in the door. *Id.* The Tenth Circuit upheld a preliminary injunction preventing the use of such rooms except to contain a physically violent child, even considering the institution’s “legitimate needs ... for order and security” and the fact that the rooms were used for not more than 24 hours. *Id.* at 941–92. It emphasized that “[a] person involuntarily confined by the state to an institution retains liberty interests that are protected by the due process clause Such person has the right to reasonably safe conditions of confinement [and] the right to be free from unreasonable bodily restraints.” *Id.* at 942.

² Children at WBS are discouraged from speaking with each other even when not in isolation. (See ECF 252-1 at 9, Ex. Z, McIntosh Dep. 42:1–5 (noting “[i]t’s generally not a practice to let [children] just have a conversation”).)

The Tenth Circuit reinforced its position 30 years later in *Blackmon v. Sutton*, where it characterized *Milonas* as prohibiting “placing [juvenile wards] in isolation rooms for long stretches (up to 24 hours) ‘for any reason other than to contain a [child] who is physically violent.’” 734 F.3d 1237, 1243 n.2 (10th Cir. 2013). Although the *Blackmon* court confronted the case of a child who was placed in a restraint chair, rather than isolation, its broad analysis generally addressed the prohibition on punitive measures against juveniles not convicted of a crime. In discussing *Milonas*, it concluded the practices therein “were clearly out of bounds by 1997” (the year of the events in question in *Blackmon*). *Id.*

Milonas and *Blackmon* both acknowledged that sometimes officials have a legitimate, nonpunitive purpose for restraining or isolating a child, such as when the child is physically violent or attempting suicide. *See Blackmon*, 734 F.3d at 1242 (“No one disputes that the defendants had a legitimate interest in restraining [the child] from ... attempts at self-harm”). But the cases put reasonable officials on notice that placing children in isolation for punishment or longer than necessary to manage a safety threat (e.g., of physical violence or self-harm) violates the Fourteenth Amendment.

Mr. Chivers-King was kept in isolation conditions for more than 42 days total during his first placement at WBS; and for more than 32 days total during his second placement. (ECF 149 at 22, 26, SMF 61, 78.) Some of these isolations may have been legitimate and nonpunitive. (*See, e.g.*, ECF 186-2, Ex. 162, Feb. 22, 2021, Incident Report Form (describing Mr. Chivers-King threatening to kill a staff member before being placed in isolation); ECF 186-16, Ex. 175, July 26, 2021, Incident Report Form (describing Mr. Chivers-King punching and kicking the walls of his room and yelling that he wanted to kill himself before being placed in isolation.) However, there is evidence some were, or became, simply punishment or unrelated to management of a safety

threat. It is for these incidents that Defendants' claims of qualified immunity fail. The underlying facts surrounding an isolation incident determine whether it was punitive or became punitive after a reasonable amount of time; those facts are disputed and require a factfinder to determine.³

Most compellingly, both Weber and Mike Nelson approved placing Mr. Chivers-King in isolation for *predetermined* amounts of time, which is at least arguably unrelated to the legitimate purpose of managing a child who is physically violent or attempting suicide. For example, on November 18, 2021, Mr. Chivers-King was placed in a detention room after going to his room without permission, "kicking and attempting to push his way out of the door" of the room after a staff member locked it, and saying "he didn't wanna be here and that he wanted to die." (ECF 187-10 at 2, Ex. 189.) He then broke the sprinkler head of the fire suppression system in the detention room. (ECF 149 at 29, SMF 88.) Defendants then signed a memorandum placing Mr. Chivers-King on detention status, and thus isolation, at least until November 22, 2021. (ECF 225-71, Ex. OOOO, Nov. 18, 2021, Special Mgmt. Program Mem.) This fixed isolation period was imposed despite notes that Mr. Chivers-King "began to calm down" the evening of November 18 and was deemed safe enough to shower and eat dinner. (*Id.* at 1.)

Similarly, on May 13, 2020, Weber signed a memorandum approving placement of Mr. Chivers-King in isolation contingent "[u]pon successful completion of two consecutive days" after Mr. Chivers-King "refused to meet his behavioral expectations by laying down, yelling, disrupting the dorm, hitting the windows and walls, looking out his window, and communicating with his

³ Neither party has individually analyzed the numerous instances Mr. Chivers-King was placed in isolation, making it particularly difficult for this Court to evaluate the application of the qualified immunity defense. Moreover, at trial it would appear that the jury will be required to analyze the facts and circumstances surrounding each of Mr. Chivers-King's placements in isolation independently, as opposed to collectively, and determine whether each incident was reasonably related to a legitimate government interest.

peers.” (ECF 225-72 at 1, Ex. PPPP, May 13, 2020, Special Mgmt. Program Mem.) The memorandum noted “Blaise will have his earliest opportunity to be removed from Detention Status on Thursday, May 14, 2020, at 8:00 p.m.” (*Id.* at 2; *see also* ECF 225-34 at 4, Ex. AAA, April 23, 2020, Special Mgmt. Program Mem. (Weber approving Mr. Chivers-King having “his earliest opportunity to be removed from Detention Status on Tuesday April 21, 2020” after he was placed in isolation on April 17, 2020).)

The release dates in these memoranda, being fixed and noncontingent on behavior, were divorced from the safety risks that may have initially justified Mr. Chivers-King being placed in isolation. Thus, a reasonable jury could find they were not reasonably related to a legitimate purpose. Even if Mr. Chivers-King had become a model WBS resident overnight, posing zero risk to himself, others, or property, he would not have been allowed out of isolation. *Milonas* and *Blackmon* clearly establish such use of isolation to punish juveniles not convicted of a crime is unconstitutional.

The Court finds Mr. Chivers-King has borne his burden as to Weber and Mike Nelson on his isolation claims; Defendants’ motion for summary judgment is denied as to these claims.⁴

⁴ The Court finds consideration of Mr. Chivers-King’s other arguments unnecessary to defeat qualified immunity but notes they also have merit, particularly regarding Weber. Record evidence suggests Mr. Chivers-King was placed or kept in isolation for “minor infractions” and vague behavioral issues that had nothing to do with a safety threat, including “refus[ing] to do his push-ups,” making “disrespectful comments,” and “refus[ing] to meet his expectations.” (ECF 227 at 29, AMF 55; ECF 225-72 at 2, Ex. PPPP, May 13, 2020, Special Mgmt. Program Mem. at 2 (Weber approving extension of isolation until May 14, 2020, at 8 p.m. at the earliest). *See also* ECF 227, AMF 56 (Mr. Weber approved retention of Mr. Chivers-King in isolation because he “chose to sleep in the late morning,” “chose to look under the detention room door for a short period,” and “[c]hose to yell under the door ‘I want to go home’”).) Mr. Chivers-King also identified evidence that he was kept in isolation “long after any purported safety concerns had dissipated.” (ECF 227 at 30, AMF 57 (citing ECF 187-11, Ex. 190, Nov. 18–24, 2021 Special Mgmt. Log (Weber reviewing removal of Mr. Chivers-King from detention status after three positive days in isolation) and ECF 187-14, Ex. 193, Nov. 28–Dec. 9, 2021, Special Mgmt. Log (Weber reviewing removal of Mr. Chivers-King from detention status after seven positive days in isolation))).) Finally, there

1.2(b) Excessive force

Mr. Chivers-King next alleges Mike Nelson, Mark Nelson, Shaffer, and Olson violated his Fourteenth Amendment rights by using excessive force against him.⁵ (ECF 89 at 57–60.) As with isolation, the Fourteenth Amendment Due Process Clause protects Mr. Chivers-King from use of excessive force that “amounts to punishment.” *Kingsley v. Hendrickson*, 576 U.S. 389, 397 (2015) (quoting *Graham v. Connor*, 490 U.S. 389, 395 n.10 (1989)). The Court finds Mr. Chivers-King has identified evidence regarding incidents on November 3, 2020, and February 23, 2021, from which a reasonable jury could find violations of his constitutional rights as to excessive force used by Mark Nelson, Shaffer, and Olson. It further finds the law was clearly established regarding the use of such force in a punitive manner at the time of these events. The Court thus denies summary judgment on the excessive force claims except as against Mike Nelson.

To prove an excessive force claim under the Fourteenth Amendment, Mr. Chivers-King must show “the force purposely or knowingly used against him was objectively unreasonable.” *Id.* “[O]bjective unreasonableness turns on the ‘facts and circumstances of each case,’” and the Court must make its analysis from the perspective of a reasonable officer at the scene, “not with the 20/20

is evidence that, while in isolation, he was required to comply with conditions that lacked any legitimate purpose and were punitive in nature. These conditions included “sit[ting] in the corner of the detention room without falling asleep.” (ECF 225-75 at 1, Ex. SSSS, June 14, 2021, Special Mgmt. Log.) Defendants have provided no evidence of purpose, legitimate or otherwise, for this restriction. (*See generally* ECFs 149, 238.) Although some of the detention room restrictions appear rationally related to legitimate purposes, such as requiring the child “to face the corner of the detention room whenever staff enters the room” (which could be reasonably related to staff safety), a general policy requiring children to sit on concrete, facing a blank wall, without falling asleep, lacks facial legitimacy. (ECF 225-52, Ex. VVV, June 14–17, 2021 Special Mgmt. Log.) Thus, viewing the facts in the light most favorable to Mr. Chivers-King, a reasonable jury could infer Defendants had an unconstitutional intent to punish based on these additional incidents.

⁵ Mr. Chivers-King also asserted an excessive force claim against Weber. (ECF 89 at 57.) However, he has conceded that claim cannot survive qualified immunity, and the Court thus does not consider it. (ECF 227 at 62–63 n.23.)

vision of hindsight.” *Id.* (quoting *Graham*, 490 U.S. at 396). The Court must also consider the “legitimate interest” that is the state’s “need to manage the facility,” including “preserv[ing] internal order and discipline and ... maintain[ing] institutional security.” *Id.* (quoting *Bell v. Wolfish*, 441 U.S. 520, 540, 547 (1979)). *Kingsley* lists nonexclusive factors that “may bear” on whether force was reasonable, including

the relationship between the need for the use of force and the amount of force used; the extent of the plaintiff’s injury;⁶ any effort made by the officer to temper or to limit the amount of force; the severity of the security problem at issue; the threat reasonably perceived by the officer; and whether the plaintiff was actively resisting.

Id.

Mr. Chivers-King points to three incidents during which he argues Mike Nelson, Mark Nelson, Shaffer, and Olson used excessive force against him.⁷

Regarding the first incident, on May 30, 2020, Mr. Chivers-King argues Mike Nelson “tackled [him] to the ground as [he] was standing with arms crossed in his room.” (ECF 227 at

⁶ Defendants contend Mr. Chivers-King’s claim fails because he does not allege more than *de minimis* injury. (ECF 149 at 69–70 (citing *Cortez v. McCauley*, 478 F.3d 1108, 1129 (10th Cir. 2007).) While injury is a useful data point to determine whether force was excessive, the Tenth Circuit has held that the *Cortez de minimis* requirement is not applicable beyond handcuffing-only cases. *See U.S. v. Rodella*, 804 F.3d 1317, 1327 (10th Cir. 2015); *Maresca v. Bernalillo Cnty.*, 804 F.3d 1301, 1315 (10th Cir. 2015). Where a district court dismissed a prisoner’s excessive force claim because the prisoner’s injuries were *de minimis*, the Supreme Court reversed and noted that “[i]njury and force ... are only imperfectly correlated, and it is the latter that ultimately counts.” *Wilkins v. Gaddy*, 559 U.S. 34, 38 (2010).

⁷ He also asserts that “[o]n other occasions, Shaffer slammed [him] into the detention room wall, hit [his] head against the wall, and threw [him] to the floor.” (ECF 227 at 41.) These allegations are not tied to specific dates or even to Mr. Chivers-King’s first or second stay at WBS. Totally unmoored from context, it is virtually impossible for the Court to evaluate whether these actions were constitutional violations or reasonable responses. “Context is critical to reasonableness analysis.” *Couture v. Bd. of Educ. of Albuquerque Pub. Sch.s*, 535 F.3d 1243, 1251 (10th Cir. 2008); *see also Barnes v. Felix*, 605 U.S. 73, 76 (2025) (courts “must consider all the relevant circumstances, including facts and events leading up to the climactic moment”). Further, Mr. Chivers-King’s subsequent assertion that Shaffer restrained his arms in a way that caused “excruciating and throbbing pain” is unsupported, since the cited deposition pages are not part of the record. (ECF 227 at 41.) Mr. Chivers-King has not carried his burden of overcoming Defendants’ qualified immunity concerning these other occasions.

41.) But the video footage of the incident contradicts Mr. Chivers-King's rendition of events. The footage clearly shows Mr. Chivers-King slamming his body against the door, punching the light in the ceiling, kicking the door, and yelling. (ECF 184-14, Ex. 149(b), 2020.30.05 Video, 0:05–2:10.) This incident occurred about two months after Mr. Chivers-King's first admission to WBS, and he was six feet tall and weighed 225 pounds at admission. (ECF No. 225-46 at 1, Ex. MMM.) When Mike Nelson and other staff entered the room, Mr. Chivers-King continued acting generally defiant and twice raised his closed fist to threaten Mike Nelson. (ECF 184-14, Ex. 149(b) at 2:31–2:55.) Mike Nelson and the other staff did not respond with force to these threats, instead continuing to talk to Mr. Chivers-King while they moved farther into the room. Mr. Chivers-King backed up near the rear wall of the room with his arms crossed and continued his obvious defiance. (*Id.* at 2:55–3:04.) Mike Nelson and another staff member stepped forward, and each tried to take hold of one of Mr. Chivers-King's arms. (*Id.* at 3:05.) Mr. Chivers-King immediately resisted, starting to wrestle with the staff members and trying to headbutt both. (*Id.* at 3:06–3:09.) Additional staff stepped in to assist, and they took Mr. Chivers-King to the ground on his stomach, without slamming him down. (*Id.* at 3:06–10:05.) Mr. Chivers-King continued to physically resist until staff were able to get handcuffs on him more than six minutes later. (*Id.* at 3:06–10:05.)

The only force employed that wasn't in direct response and proportion to Mr. Chivers-King's active resistance was when Mike Nelson and the other staff member each tried to take hold of one of Mr. Chivers-King's arms. But Tenth Circuit case law demonstrates that applying a modest amount of force, such as “grabb[ing] [the pretrial detainee's] arm three separate times ... [with] relatively minor application of force,” is not objectively unreasonable, particularly where the pretrial detainee is being uncooperative. *Gallegos v. City of Colo. Springs*, 114 F.3d 1024, 1030 (10th Cir. 1997) (first and third alterations in original); see *Rowell v. Bd. of Cnty. Comm'rs of*

Muskogee Cnty., Okla., 978 F.3d 1165, 1174 (10th Cir. 2020) (“we conclude Officer West reasonably applied modest forward pressure to a visibly intoxicated and uncooperative [pretrial detainee] to guide him down the hallway”); *Routt v. Howard*, 764 F. App’x 762, 767 (10th Cir. 2019) (“It is not objectively unreasonable for a jail officer to hold a detainee’s arm and push him, even awkwardly, through a jail hallway.”). The only objectively unreasonable amount of force displayed in this May 30th video is that by Mr. Chivers-King.

A reasonable jury could not find a Fourteenth Amendment violation from this incident. There was a clear non-punitive security reason for Mike Nelson to use reasonable force to prompt compliance with his directions and then neutralize Mr. Chivers-King’s extensive physical resistance and attempts to harm staff (and himself). Moreover, Mr. Chivers-King has failed to cite precedent that governs these facts and circumstances and holds in his favor; indeed, as discussed, the case law appears to run contrary to his argument. The Court thus grants summary judgment in Mike Nelson’s favor on the excessive force claim for this May 30th incident.

In the second incident, on November 3, 2020, Mark Nelson, Shaffer, and seven other staff tackled (or “wrestled”) Mr. Chivers-King to the ground after he stood up from a couch, took off his face mask, and threw his glasses to the floor. (ECF 252-6 at 28, Ex. WW, Mark Nelson Dep. 198:11; Ex. Q, 2020.11.03 Video, 1:42:28–1:42:42.) Olson, then Dorm 2 director, was present but in a wheelchair and not actively restraining Mr. Chivers-King. (Ex. Q at 1:42:28–1:42:42; ECF 252-6 at 27, Ex. WW at 197:21–24.) The WBS incident report reported that Mr. Chivers-King “took an aggressive step toward staff.” (ECF 185-11 at 2, Ex. 156, Nov. 3, 2020, Incident Rep. Form.) But video footage shows he did not take any steps toward staff before being tackled. (Ex. Q at 1:42:28–1:42:42; *see also* ECF 252-6 at 25, 27, Ex. WW at 195:23, 197:10–19 (Mark Nelson identifying himself as involved in the incident and acknowledging he “didn’t see the aggressive

step” upon reviewing video footage).) There is thus a genuine dispute of material fact whether Defendants acted in response to a legitimate security concern. The outcome of the *Kingsley* need-for-force versus amount-of-force-used ratio is debatable. Unlike with the May 30, 2020, incident, Defendants do not assert, and the video footage does not show, Mr. Chivers-King threatened to assault any staff members by raising his fist. (ECF 238 at 16, RAMF 106–07.) Thus, viewing the evidence in the light most favorable to Mr. Chivers-King, the *Kingsley* analysis comes out in Mr. Chivers-King’s favor; there was arguably no security threat, and Defendants used an overwhelming amount of force seemingly without physical provocation.

It is even more ambiguous whether Shaffer employed an objectively reasonable amount of force in the third incident, on November 23, 2021. Here, Mr. Chivers-King asserts he was in the Dorm 3 detention room and Shaffer “charged [in] ... with a riot shield,” pushing him up against the far wall. (ECF 227 at 41, AMF 108; Ex. M, 2021.02.23 Video, 6:52:21–6:52:58.) Several other staff followed and restrained Mr. Chivers-King, bringing him down to the floor. (ECF 227 at 41, AMF 108; Ex. M, 2021.02.23 Video, 6:52:21–6:52:58.) Nothing in the video footage indicates a security threat or other government interest that justifies the use of such force. Mr. Chivers-King “immediately complied” with yelled instructions to “get back,” did not charge or threaten staff, and did not have any weapon. (ECF 227 at 41, AMF 108; ECF 230-1 at 18–19, Ex. III, Thad Shaffer Dep. 204:20–23, 205:4–23 (acknowledging Mr. Chivers-King “backed up a couple of steps” and “[d]idn’t appear” to charge him).) When compared to the video footage, the accuracy of the accompanying incident report, which states Shaffer gave Mr. Chivers-King “verbal commands to sit in the corner” and he “refused to comply,” is disputable. (ECF 227 at 20, AMF 13.) Again, when considering the *Kingsley* factors, the force was objectively great and any evidence justifying that use of force is disputed. Further, the video footage shows Mr. Chivers-

King complying with instructions, not actively resisting (at least until being slammed with a riot shield). (Ex. M at 6:52:21–6:52:58.)

Given these factual disputes, a jury could conclude Defendants’ use of force during the described incidents of November 3, 2020, and February 23, 2021, was not reasonably related to a legitimate government objective (e.g., responding to a security threat). This would mean the force was deployed for punitive measures and ran afoul of the clearly established law of *Bell v. Wolfish* and *Blackmon v. Sutton*, which conclude the Fourteenth Amendment prohibits punishment (in the constitutional sense) of juvenile detainees. 734 F.3d 1237, 1241 (10th Cir. 2013); 441 U.S. 520, 538 (1979). *Blackmon* specifically upheld a district court’s refusal to grant qualified immunity at summary judgment where evidence did not exclude the possibility an officer used force against a juvenile detainee as punishment. 734 F.3d at 1244. Because those cases clearly established this principle in 1979 and 2013, respectively, far before the dates of the incidents in question here, Defendants’ qualified immunity argument is insufficient to support summary judgment. The Court thus finds Mark Nelson’s and Shaffer’s motions for summary judgment on Claim 2 fail.

The Court also finds Olson’s motion for summary judgment fails. Olson was present at the November 3, 2020, incident but did not physically participate; video footage shows him in a wheelchair rolling out of the way and observing staff take Mr. Chivers-King to the ground. (Ex. Q at 1:42:28–1:42:42; ECF 252-6 at 27, Ex. WW at 197:21–24 (identifying Olson as in the wheelchair).) However, the Tenth Circuit has clearly established officials may be liable under § 1983 even where they do not “actually participate in the use of excessive force,” when they are “present at the scene and ... fail[] to take reasonable steps to protect the victim of another officer’s use of excessive force.” *Krueger v. Phillips*, 154 F.4th 1164, 1210 (quoting *Mascorro v. Billings*, 656 F.3d 1198, 1204 n.5 (10th Cir. 2011)). Defendants argue the video footage does not “support[]

[the] assertion that [Olson] approved of the force.” (ECF 238 at 16, RAMF 107.) But a failure to intervene claim doesn’t require explicit approval. The official must merely be present, observe the excessive force occurring, and not stop it. *Krueger*, 154 F.4th at 1211. The record evidence does not show whether Olson had authority to govern the other staff members’ conduct, but a reasonable jury might conclude as much, as Olson was the Dorm 2 director at the time. (ECF 149 at 2, SMF 4.) Thus, should a reasonable jury find the other staff used excessive force against Mr. Chivers-King on November 3, 2020, Olson could also be liable.

1.2(c) *Deliberate indifference to serious medical need*

Mr. Chivers-King concedes his deliberate indifference to serious medical need claim cannot survive qualified immunity and the Court thus does not consider it. (ECF 227 at 68 n.26.)

1.2(d) *Procedural due process*

Mr. Chivers-King’s first three claims rest in substantive due process; his fourth stems from procedural due process. When determining whether a person’s procedural due process rights were violated, the Tenth Circuit has engaged in a two-step inquiry. First, did the person possess a protected liberty interest to which due process protection applied? Second, was the person afforded an appropriate level of process? *Camuglia v. City of Albuquerque*, 448 F.3d 1214, 1220 (10th Cir. 2006) (quoting *Clark v. City of Draper*, 168 F.3 1185, 1189 (10th Cir. 1999)). Mr. Chivers-King asserts this claim against Weber and Olson.

Regarding step one, the Tenth Circuit established in *Hubbard v. Nestor* that procedural due process protections are triggered when a pretrial detainee is put in punitive isolation, because punitive isolation violates a detainee’s Fourteenth Amendment substantive due process rights. 830 Fed. Appx. 574, 583 (10th Cir. 2020) (referencing *Blackmon*, 734 F.3d at 1241, and *Bell*, 441 U.S. at 535–37). As here, the *Hubbard* plaintiff-appellee brought a § 1983 action alleging various jail

staffers violated his Fourteenth Amendment rights “by placing him in disciplinary segregation as punishment for disciplinary infractions without ever giving him notice or a hearing.” 830 Fed. Appx. at 576. The staffers moved for summary judgment, invoking qualified immunity. *Id.* The district court found for the plaintiff on the procedural due process claim, concluding a reasonable jury could find (1) placing a detainee in segregation for punitive reasons constitutes unconstitutional punishment; (2) in doing so, defendants violated plaintiff’s procedural due process rights; and (3) it was clearly established that imposing disciplinary sanctions for punitive reasons violated the detainee’s due process rights under the Fourteenth Amendment. *Id.* at 578. The Tenth Circuit affirmed, concluding “because our existing caselaw on the punishment of typical pretrial detainees clearly established the contours of Plaintiff’s asserted right ... Defendants are not entitled to qualified immunity.” *Id.* at 576.

Here, as in *Hubbard*, the dispute rests on the first step of the *Camuglia* procedural due process analysis (whether Mr. Chivers-King had a right to procedural due process at all), rather than the second (whether the provided process was sufficient). Defendants’ only argument, referencing *Hubbard*, is Mr. Chivers-King fails “to show that the conditions of [his] confinement were punishment under clearly established law.”⁸ (ECF 149 at 72.) Consequently, Defendants

⁸ In his complaint and response, Mr. Chivers-King asserts he did not receive meaningful and periodic reviews of his isolation or notice of what he had to do to earn release; Defendants do not directly dispute this, though the briefing on step two is painfully perfunctory on both sides. (ECF 89 at 63–65; ECF 227 at 69.) Defendants briefly argue in their reply that Mr. Chivers-King has “failed to prove Weber or [Olson] violated,” or identify “any clearly established law putting Weber and [Olson] on notice that their conduct violated,” his right to procedural due process—seeming to raise the step two and qualified immunity questions. (ECF 238 at 30.) However, in their initial brief, Defendants denoted the limits of the issue at summary judgment: whether the conditions of Mr. Chivers-King’s confinement were punishment. (ECF 149 at 72.) If Defendants had disputed the *amount* of process due Mr. Chivers-King, or that it was clearly established that punishment triggers procedural due process protection, Mr. Chivers-King’s failure to engage more deeply with the facts and case law in his response would be more problematic. However, the Court finds Mr.

conclude, “this claim fails for the same reasons as the First Claim for Relief.” (*Id.*)

But this Court has found Mr. Chivers-King survives summary judgment on Claim 1 as to Weber. (*See supra*, 1.2(a).) When analyzing Claim 1, the Court concluded a reasonable jury could find certain instances of isolation were punitive. *Hubbard* establishes that where disciplinary measures are imposed for punitive reasons, a detainee has procedural due process rights. Thus, it necessarily follows that Mr. Chivers-King survives summary judgment as to Weber here, on Claim 4, as well.

In contrast, Mr. Chivers-King did not bring an isolation claim against Olson. Nor does he present additional evidence regarding instances where Olson was involved in sending him to punitive isolation without procedural due process. Thus, Mr. Chivers-King’s procedural due process claim against Olson fails.

2. Claims 5–6: The Americans with Disabilities Act and Rehabilitation Act

In addition to his Fourteenth Amendment claims, Mr. Chivers-King asserts DFS, WBS, and Weber (in his official capacity) (“State Defendants”) committed disability discrimination against him in violation of Title II of the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act. (ECF 89 at 65–69.)

Both Title II and Section 504 prohibit discrimination against individuals with disabilities; the ADA focuses on public entities whereas the Rehabilitation Act applies to recipients of federal funds. 42 U.S.C. § 12132; 29 U.S.C. § 794(a). Title II 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

Chivers-King has, at minimum, responded to Defendants’ argument that process was not due at all because the confinement was not punishment.

by any such entity.” 42 U.S.C. § 12132. Section 504 says, “No otherwise qualified individual with a disability ... shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 29 U.S.C. § 794(a).

The elements for each claim are similar. Title II of the ADA requires a plaintiff show (1) he is a qualified individual with a disability; (2) who was excluded from participation in, or denied the benefits of, a public entity’s services, programs, or activities; or was otherwise discriminated against; (3) “by reason of” his disability. *Brooks v. Colo. Dep’t of Corr.*, 12 F.4th 1160, 1168 (10th Cir. 2021). A claim under Section 504 of the Rehabilitation Act requires a plaintiff show (1) he is a qualified individual with a disability; (2) the program discriminated against him by denying him the benefit of the program’s services (3) “solely by reason of” his disability; and (4) the program received federal financial assistance. *See Crane v. Utah Dep’t of Corr.*, 15 F.4th 1296, 1312–13 (10th Cir. 2021).

Mr. Chivers-King asserts he has the following disabilities: “anxiety, conduct disorder, and adjustment disorder with depressed mood.” (ECF 224 at 44, AMF 125.) For purposes of this summary-judgment motion, State Defendants do not challenge Plaintiffs’ alleged disabilities, and the Court will assume without deciding that Mr. Chivers-King has the foregoing mental health disabilities. Additionally, for this motion, State Defendants do not challenge the allegation that Plaintiffs were denied a service, program, activity, or benefit (e.g., schooling) while in isolation.

The only element in dispute in this summary-judgment motion is causation—“by reason of” under Title II and “solely by reason of” under Section 504.⁹ (ECF 149 at 72–73.) State

⁹ State Defendants explain correctly that if Plaintiffs cannot show a Title II violation, then Plaintiffs cannot overcome State Defendants’ Eleventh Amendment immunity as to the ADA claim. (ECF No. 149 at 72.) *See Brooks*, 12 F.4th at 1168.

Defendants have carried their initial summary-judgment burden by pointing to a lack of evidence that Mr. Chivers-King was discriminated against “by reason of” a disability, arguing “the record shows WBS staff’s actions were based on Plaintiffs’ conduct” and not a disability.¹⁰ (ECF 149 at 74.) The summary-judgment test thus shifts the burden to Mr. Chivers-King to identify record evidence from which a reasonable jury could find discrimination “by reason of” his alleged disabilities. In their summary-judgment response, Plaintiffs note they are asserting two types of disability-discrimination claims: one for exclusion from or denial of benefits and one for ADA discrimination. (ECF 227 at 70.) Plaintiffs agree they “must show that Defendants discriminated against them ‘by reason of’ their disabilities” for each claim. (*Id.*)

Mr. Chivers-King provides little analysis concerning any particular incident, offering only wide-reaching generalities and conclusions such as, “WBS repeatedly responded to Plaintiffs’ disabilities by placing Plaintiffs in solitary confinement and extending their stay in solitary.” (ECF 227 at 71.) Plaintiffs generally argue that when Defendants punished a Plaintiff’s behavior, for example by placing the Plaintiff in isolation, Defendants were necessarily punishing the Plaintiff by reason of his disabilities because his misconduct was a manifestation of those disabilities. (*See* ECF 227 at 45, AMF 129 (“The WBS personnel repeatedly placed the plaintiffs into solitary confinement for extended periods of time for behaviors that were manifestations of their disabilities”) (quoting ECF 225-41, Ex. HHH, Wachtel Report at 46).) Thus, says Mr. Chivers-King, he was punished with the deprivation of a service, program, activity, or benefit due to behavior that was itself caused by his disabilities. As an example, Plaintiffs contend that “‘but for’ Plaintiffs’ disabilities, they would not have been subjected to prolonged solitary confinement at

¹⁰ As the “by reason of” standard of Title II is a lesser burden than Section 504’s “solely by reason of” standard, any failure by Plaintiffs to show discrimination “by reason of” the disability necessarily also fails to show discrimination “solely by reason of” the disability.

WBS.” (ECF 227 at 71.)

The Tenth Circuit’s analysis in *J.V. v. Albuquerque Public Schools*, 813 F.3d 1289 (10th Cir. 2016), demonstrates how Mr. Chivers-King has not raised a genuine dispute as to causation to survive summary judgment. In *J.V.*, a school security officer responded to a report that C.V., a second-grade student, was out of control. *Id.* at 1292-93. After the child assaulted the officer several times and would not settle down, the officer placed the child in handcuffs. *Id.* at 1294. The child’s parents sued the school district for discrimination, alleging the child’s misbehavior “was a ‘manifestation[] of his disability.’” *Id.* at 1296. The Tenth Circuit affirmed the trial court’s summary judgment in favor of Albuquerque Public Schools (APS) based on a lack of causation:

Both ADA claims require proof that APS either denied a benefit or discriminated by reason of C.V.’s disability. Because Appellants did not provide such evidence, APS is entitled to summary judgment.

Our recent decision in [*J.H. ex rel. J.P. v. Bernalillo County*], 806 F.3d 1255 (10th Cir. 2015)], addressed a similar claim and supports affirmance here. In that case, we rejected the claim that an officer violated the ADA when he arrested a disabled student for kicking a teacher, holding the officer acted based on the student’s conduct and not his disability. 806 F.3d. at 1257, 1260. In this case, Officer Sanchez, like her counterpart in *Bernalillo County*, handcuffed C.V. based on his conduct—two hours of disruptive behavior, including running from room to room and kicking Ms. Martinez and Officer Sanchez and refusing to stop—not by reason of his disability.

Instead of offering evidence that Officer Sanchez’s handcuffing of C.V. or any other action taken by APS staff was “by reason of [C.V.’s] disability,” § 12132, Appellants contend C.V.’s behavior was a “manifestation[] of his disability,” Aplt. Br. at 26. Appellants fail to cite any evidence showing his conduct indeed was a manifestation of his disability. Also, they cite no authority suggesting a school may not regulate a student’s conduct if that conduct is a manifestation of a disability. Rather, as *Bernalillo County* indicated, a student’s conduct may be regulated, so long as action is not taken by reason of the student’s disability. 806 F.3d at 1260.

Because Title II claims require a showing that a public entity acted “by reason of” a person’s disability, and because Appellants have failed to provide evidence that APS or its staff took any action by reason of C.V.’s disability, all their claims fail.

J.V., 813 F.3d at 1295-96 (internal footnote omitted).

Mr. Chivers-King suffers the same fatal problem here. He has not presented evidence showing any complained-of action, such as isolation, was “by reason of” his disabilities. For example, Plaintiffs complain that if they “self-harmed or even expressed an urge to self-harm,” they were put in “solitary confinement or an extension of that confinement.” (ECF 227 at 71; *see* ECF 227 at 11, RSMF 80 (asserting Defendants placed Mr. Chivers-King “in solitary for suicidal ideation.”).) But Mr. Chivers-King does not say he was placed in isolation because of his depression (the disability); on the contrary, he does not dispute that he was placed in isolation because of his conduct (expressing suicidal thoughts). The wisdom of placing a person expressing suicidal ideation into isolation might reasonably be questioned, but it is not at issue within Plaintiffs’ disability-discrimination claims, and there is not sufficient evidence to permit a jury to find that Defendants decided to place Mr. Chivers-King in isolation “by reason of” depression or another disability.

As another example, Plaintiffs argue that “when Plaintiffs with ADHD could not comply with WBS’ draconian expectation to sit in the corner of the solitary room all day, WBS responded by punishing them with a longer stay in solitary.”¹¹ (ECF 227 at 71.) In connection with Plaintiffs’ disability-discrimination claims, it is not for the Court to determine whether the WBS’s action, assuming this assertion to be true, is good or correct. *See J.V.*, 813 F.3d at 1295 (“Our role is not to opine on whether it was wrong to handcuff C.V.”). Even assuming the accuracy of this contention, though, it shows that Plaintiffs were denied a service, program, benefit, or activity by reason of their conduct (not sitting in the corner all day), not their disability. *See id.* at 1296 (“Officer Sanchez, like her counterpart in *Bernalillo County*, handcuffed C.V. based on his

¹¹ Mr. Chivers-King does not allege he has ADHD or this sequence of events happened to him. The Court examines this contention only as an example of the causation question.

conduct—two hours of disruptive behavior, including running from room to room and kicking Ms. Martinez and Officer Sanchez and refusing to stop—not by reason of his disability.”) (footnote omitted); *J.H. ex rel. J.P. v. Bernalillo County*, 806 F.3d 1255, 1260 (10th Cir. 2015) (“J.P. was in a special needs class, but no one questions her ability to form the intent necessary to commit a battery by kicking her teacher. It was that battery, rather than a disability, that led to the arrest. As a result, the arrest did not constitute discrimination against J.P. based on her alleged disability.”).

Even assuming his disabilities caused or contributed to his behavior, Mr. Chivers-King has not offered any evidence showing Defendants punished the disability rather than the conduct. That is, Mr. Chivers-King has not pointed to any record evidence where a Defendant deprived him of a service, program, activity, or benefit “by reason of” his disability as opposed to “by reason of” his behavior that preceded the deprivation. And as in *J.V.*, Plaintiffs here “cite no authority suggesting a school may not regulate a student’s conduct if that conduct is a manifestation of a disability.” *Id.* at 1296. “Rather, as *Bernalillo County* indicated, a student’s conduct may be regulated, so long as action is not taken by reason of the student’s disability.” *Id.* (citing *Bernalillo County*, 806 F.3d at 1260).

Mr. Chivers-King’s generalized allegations do not raise a genuine dispute of material fact from which a jury could find discrimination against him “by reason of” disability. He has not identified any instance where he was deprived of a service/program/benefit/activity independent of his behavior, such that an inference could be raised that the deprivation was actually “by reason of” a disability rather than conduct. Mr. Chivers-King has not presented evidence from which a jury could determine Defendants took a challenged action because of his disability rather than because of WBS’s generally applicable conduct standards (the appropriateness of which is not

under examination as part of the disability-discrimination claims).¹²

As noted above, Plaintiffs accurately say they “must show that Defendants discriminated against them ‘by reason of’ their disabilities.” (ECF 227 at 70.) Because Mr. Chivers-King has not identified evidence allowing a reasonable jury to find Defendants discriminated against him by reason of his disabilities, State Defendants are entitled to summary judgment against Mr. Chivers-King’s disability-discrimination claims under both Title II of the ADA and Section 504 of the Rehabilitation Act (Claims 5–6).

Before leaving this discussion, a brief word is warranted on Plaintiffs’ reliance on “but for” causation. In their summary-judgment response, Plaintiffs accurately state the Tenth Circuit has determined the “by reason of” requirement of the ADA is satisfied by showing a plaintiff’s disability is a “but-for cause” of the discrimination. (ECF 227 at 70 (quoting *Crane v. Utah Dep’t of Corr.*, 15 F.4th 1296, 1313 (10th Cir. 2021).) And under Supreme Court guidance, the but-for standard “is established whenever a particular outcome would not have happened ‘but for’ the purported cause.” *Bostock v. Clayton Cnty., Georgia*, 590 U.S. 644, 656 (2020). Accordingly, Plaintiffs argue that “‘but for’ Plaintiffs’ disabilities, they would not have been subjected to prolonged solitary confinement at WBS.” (ECF 227 at 71.) The argument goes that Plaintiffs’ mental health disabilities caused their behavior, which resulted in various complained-of

¹² Mr. Chivers-King and the other Plaintiffs seek compensatory damages for the alleged violations of Title II and Section 504. (ECF 89 ¶¶ 412, 428.) As the parties discussed in their summary-judgment briefing, the Tenth Circuit “requires proof of intentional discrimination before a plaintiff can recover compensatory damages under section 504,” and has “suggested that as much is required under Title II.” *Hamer v. City of Trinidad*, 924 F.3d 1093, 1108-09 (10th Cir. 2019); *see Hans v. Bd. of Shawnee County Comm’rs*, 775 F.App’x 953, 956 (10th Cir. 2019). “So Title II and section 504 plaintiffs are hard-pressed to receive any monetary damages unless they can prove that a service, program, or activity is intentionally discriminatory toward individuals with disabilities, which is surely the exception rather than the rule.” *Id.* at 1109. As Plaintiffs have not shown evidence supporting discrimination “by reason of” disability, they likewise have not shown intentional discrimination sufficient to support their demand for money damages.

consequences, and therefore Defendants were essentially punishing Plaintiffs' disabilities. This issue highlights the difficulty when the Supreme Court's broad pronouncements about but-for causation meet the practical realities of disability-discrimination claims, particularly in the school discipline context. Notably, the Tenth Circuit in *J.V.* and *Bernalillo County* never used the phrase "but for" or discussed the standard. Instead, those decisions focused on the statutory language in determining whether evidence existed showing a triable issue regarding whether the defendant acted "by reason of" the student's disability versus "by reason of" the student's conduct. *See J.V.*, 813 F.3d at 1295–96; *Bernalillo Cnty.*, 806 F.3d at 1260. In any event, of course, judicial discussions about the but-for standard cannot meaningfully alter or replace the statutory language. And in this case, as with *J.V.* and *Bernalillo County*, it simply boils down to Mr. Chivers-King's failure to identify record evidence from which a jury could conclude the challenged action was taken "by reason of" his disabilities.

CONCLUSION AND ORDER

Having considered the extensive record and parties' briefing, the Court determines summary judgment is warranted against some but not all of Mr. Chivers-King's claims.

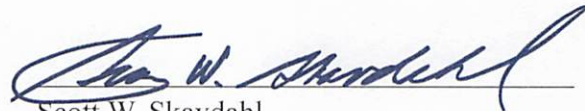
- (1) As to Claim 1 (Fourteenth Amendment substantive due process based on improper isolation): Summary judgment is denied and the claim proceeds against Weber and Mike Nelson.
- (2) As to Claim 2 (Fourteenth Amendment substantive due process based on excessive force): Summary judgment is granted in Mike Nelson's favor as to the May 30, 2020, incident; summary judgment is denied as to the November 3, 2020, incident and the claim proceeds against Mark Nelson, Shaffer, and Olson; and summary judgment is denied as to the November 23, 2021, incident and the claim proceeds

against Shaffer.

- (3) As to Claim 3 (Fourteenth Amendment substantive due process based on deliberate indifference to medical needs): Summary judgment is granted in Defendants' favor as Mr. Chivers-King has conceded the claim.
- (4) As to Claim 4 (Fourteenth Amendment procedural due process): Summary judgment is denied as to Weber but granted in Olson's favor.
- (5) As to Claim 5 (disability discrimination under the ADA) and Claim 6 (disability discrimination under the Rehabilitation Act): Summary judgment is granted in Defendants' favor.

IT IS THEREFORE ORDERED that Defendants' Motion for Summary Judgment (ECF 148) is **GRANTED IN PART AND DENIED IN PART** as to Plaintiff Blaise Chivers-King's claims, as set forth herein.

Dated this 2nd day of October, 2026.



Scott W. Skavdahl

United States District Judge