

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

A.A.; B.B.; C.C., a minor, by **JENNY
CARROLL**, his Next Friend; **E.E.**, a minor,
by **CHRISTINE FREEMAN**, her Next

, a
minor, by **CHRISTINE FREEMAN**, her
Next Friend;

Plaintiffs,

Civil Action No.: 2:21-cv-367-ECM

v.

NANCY T. BUCKNER, Commissioner of
the Alabama Department of Human
Resources, in her official capacity,

Defendant.

CLASS ACTION

ORAL ARGUMENT RS

TEDARG

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Placement Is Necessary

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2	Expert Report of John Mayo (C.C.)
3	Expert Report of John Mayo (F.F.)
4	Expert Report of John Mayo (G.G.)
5	Declaration of C.C.
6	Declaration of F.F.
7	Declaration of G.G.
8	Expert Report of Todd MacKenzie
9	Excerpt of Therapeutic Foster Care Manual (ADHR02378200)
10	Expert Report of Mathis Wagner
11	Excerpt from 2023.06.01 Deposition Transcript-DHR 30(b)(6) (Designee: Cathy Tylicki)
12	Excerpt from 2022.10.26 Deposition Transcript-DHR 30(b)(6) (Designee: Shea Cobb-England)
13	Expert Report of Dr. Thomas Simpatico
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PRELIMINARY STATEMENT

The state of Alabama administers its foster care system in a manner that arbitrarily and unnecessarily directs children with disabilities into congregate and highly restrictive, psychiatric residential treatment facilities (PRTFs), also known as intensive placements, for purposes of obtaining mental health treatment, even when their identified needs can be adequately met in the community.

As the state agency administering the child welfare system in Alabama, federal law requires Alabama to place children with disabilities in the least restrictive, most integrated environment appropriate to serve their needs. See 28 C.F.R. § 35.130(d). In violation of federal law and applicable standards of care, rather than the least restrictive, community-based placement, DHR instead too often relies on restrictive, congregate settings to furnish mental and behavioral health care, institutionalizing children with mental health disabilities, many of whom do not oppose and earnestly desire to live in their home communities.

Unnecessary institutionalization of children with disabilities violates Title II of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794. See 28 C.F.R. § 35.130(d); 28 C.F.R. § 41.51(d); *Olmstead v. L.C.*, 527 U.S. 581, 600 (1999). The Alabama child welfare system perpetuates the historic isolation and segregation of children with disabilities that the ADA was designed to eradicate. See 42 U.S.C. § 12101(a)(2). Plaintiffs, on behalf of themselves and the putative class, seek injunctive and declaratory relief requiring DHR to remedy these statutory violations. In support of their claims, Plaintiffs move to certify the following class:

Children who are adjudicated dependent under Ala. Code § 12-15-314(a)(3), and who have, or have a record of, a mental health impairment that substantially limits one or more major life activities.

In addition, Plaintiffs request that the Court appoint the Named Plaintiffs as class representatives, and certify the class of children who are dependent and who have a mental health impairment that substantially limits one or more major life activities. Fed. R. Civ. P. 23(a)(4), (g).

FACTS

As the state child welfare agency, DHR is responsible for arranging and securing appropriate foster care placements for children in its custody for whom out-of-home placement is necessary. DHR is required to maintain, either directly or through contract provisions, a continuum of placement options that range from community-based, nonrestrictive placements, including foster homes and relatives, to highly restrictive PRTFs. Ex. 1, ADHR00012855 at -876-914.

PRTFs are non-

However, DHR administers its child welfare system in a manner that results in the unnecessary institutionalization of children with mental and behavioral health needs in PRTFs. F J Tø'r qñekgu"cpf "r tcevegu."cpf "rcenlj gt gqh "rgcf "vq"unnecessary institutionalization in at least two respects.

First, DHR initially places children into PRTFs contrary to their needs. These improper placements occur because DHR (a) fails to maintain an adequate array

(ADHD). Ex. 2, Mayo Decl. (C.C.) ¶¶ 17, 36. Since he entered DHR custody in October of 2016, C.C. has spent over four years in PRTF placements, and he is currently placed in a PRTF in Florida.

See generally id.

F.F. is a sixteen-year-old child whose diagnoses include reactive attachment disorder, ODD, and ADHD. Ex. 3, Mayo Decl. (F.F.) ¶¶ 17, 59. When she joined this case in May 2023, she had been residing in a PRTF placement for almost two years. *Id.* ¶¶ 42-44. She currently resides in a moderate residential placement, and is at risk of returning to a PRTF placement in the future.

G.G. is a fifteen-year-old child whose diagnoses include ADHD and PTSD. Ex. 4, Mayo Decl. (G.G.) ¶¶ 17, 53.

Unnecessary institutionalization occurs, in part, because of three system-wide failures: (1) FJ Tø'hckwtg"v"eqpf wev"comprehensive assessments of child needs and strengths to determine whether PRTF placement is necessary; *4+"FJ Tø'hckwtg"v" utilize and procure well-supported, community-based placements; cpf "5+FJ Tø'hckwtg"v"gpwtg" that robust

Multi-F lo gpukqpcn' Cuuguo gpv' Vqqn' *öO CVö+² Ex. 9, ADHR02378200 at -210; Ex. 1 at ADHR00012889-90. Vj g"O CV" gzco kpgu" vj g"ej kf au" kpf kxf wcn' r u{ej quqekcn' eqpf kkpup" cpf" identifies strengths and needs. The scoring or result on the MAT generates a recommendation for a particular level of care dcugf "qp"vj g"ej kf au" behavioral and mental health condition and needs, such that the recommended placement level is ecktdcvgf "vq"o gg'vj g"ej kf au" pggf u"kp"vj g" rgcuv" restrictive, appropriate environment. Ex. 10. 'Gzr gtv'Tgr qt'vqh'O cy ku'Y ci pgt"*öY ci pgt'Tgr qt'vö" at 8, 21-22; Ex. 11, DHR Dep. Tr. (Tylicki, June 1, 2023) at 13-19.

FJ Tætgs wktgo gpv'vj cv'c'O CV'dg'eqpf wvgf 'y j gp'c'ej kf 'ku'tghgtgf "vq'c" TFC or moderate residential placement demonstrates FJ Tæt' hwn' cr r tgekvkqp" vj cv' child-serving systems must complete comprehensive assessments when determining the placements of children entrusted to their care. However, unlike for moderate residential and therapeutic foster care placements, DHR does not require a comprehensive, standardized assessment of a child before placement in a PRTF. DHR policy instead requires that the DHR caseworker and the case planning team assess and recommend the intensive placement and have a doctor fill out a form referred to as a Certificate of Need. Ex. 1 at ADHR00012890. DHR officials have testified that the MAT is not required as part of the case planning vgo au'determination that a child is appropriate for an intensive placement. See Ex. 11, DHR Dep. Tr. (Tylicki, June 1, 2023) at 28; Ex. 12, Transcript of 30(b)(6) Deposition of DHR (Cobb-Gpi rpf +*öFJ T'F gr 0Vt0*Cobb-England+ö+"cv'51.

The DHR case worker, case planning team, and Certificate of Need are not a replacement for comprehensive assessments. The Certificate of Need does not require the signing physician to

² TFC placements are less restrictive than moderate residential placements because they are family-like settings in the community, while moderate placements are institutions more like (and sometimes in the same building as) PRTFs. Ex. 11, Transcript of 30(b)*8+F gr qukkqp"qh'FJ T'*V{ rdenk'Lvpg'3."4245+*öFJ T'F gr 0Vt0*V{ rdenk'Lvpg'3."

pgguuct { 000Vj ku'r tqeguul'uj qwf 'lpxqrxg'000]c_'y qtqwi j 'uxcpf ctf k gf 'cuuguuo gpv'qh'yj g'ej kf øu' pggf u'cpf "tkumö" *Id.* at 15. The lack of comprehensive assessment prior to placing youth in intensive settings contributes to the unnecessary segregation of children in settings that are more restrictive than the child needs. *See* Ex. 13, Simpatico Report at 20. öCp'lpf kxkf wrk gf 'cuuguuo gpv' of these children might have revealed that an intensive setting was not cr r tqr tkvg"vq"o gg'v'y gk" needs cpf 'y cv'c'rguu'tgutkxg'r rnego gpv'y qwf 'j cxg'dggp'cr r tqr tkvgö'Ex. 15, Expert Report of Narell Joyner *öLq{pgt"Tr qtö+ at 23.⁴ Instead, DHR placed and places children in intensive settings without sufficiently evaluating their needs.

2. Failure to Procure and Utilize Well-Supported Community-Based Placements.

To prevent the unnecessary institutionalization of children with mental health impairments, state foster care agencies like DHR must make available an array of community-based placements that can accommodate the service populationø'ci i tgi cvg"pggf s. Ex. 16, Expert Report of Mary Cto utqpi *öCto utqpi "Tr qtö+cv'3.'6-7. As part of its placement array for foster children, DHR provides a type of community-based placement for children with mental impairments called therapeutic foster care (öTFCö). TFC combines a family environment with active and structured treatment. *Id.* at 5. TFC is a non-restrictive, family-like placement type, because it allows children to live in integrated community settings. *See* Ex. 9 at ADHR02378205. TFC ögzkuu"vq"ugtxg" ej kf tgp"cpf "{ qwj ö'y j q. ölp"y g"cdugpeg"qh'uwej 'r tqi tco u."l_y qwf "dg"cv'tkum'qh'r rnego gpv'lpvq" restrictive residential settings, e.g. . . . residential trgcvo gpv'r tqi tco uö *Id.* at ADHR02378244.

DHR contracts with various private entities to provide TFC placements for children in foster care. Ex. 12, DHR Dep. Tr. (Cobb-England) at 22-24. However, in Alabama, most

TFC placement often do not receive one.

On paper, DHR arguably procures a sufficient number of TFC slots to serve the population of foster children across the state. In practice, based on data that DHR collects from its TFC providers every month, most of those slots—over 60%—go unused.⁵ Ex. 10, Wagner Report at 28. Indeed, the fact that FJ Tø'r tqxkf gtu'tglge'v'j g'rcti g'o clqtk{ "qh'v'j g'ej kf tgp'FJ T" refers to them—in fact, upwards of 90% of referrals to TFC are rejected.⁶ Ex. 10, Wagner Report at 28. This staggeringly high rejection rate is in clear violation of the standard contract between DHR and its TFC providers, which sets 10% as the maximum allowable rejection rate. *Id.* at 27.

The issue of TFC capacity and utilization is not a new one: in 2022, DHR admitted in its report that TFC placement is designed to serve such youth. Ex. 17, ADHR02325669 at -808. Nearly identical language appeared in FJ Tø'r federal reporting submitted in the previous two years. *See* Ex. 18, ADHR02346857 at -995; Ex. 19, ADHR02377880 at -8007.

TFC slots may go unused even as the large majority of referrals are rejected, for a number of reasons. First, DHR is not ensuring that its contracted TFC providers have recruited a sufficient number of foster parents who are willing to accept certain demographics of children. Ex. 16, Armstrong Report at 17. Second, DHR fails to provide services and support to the TFC provider, the child, and the foster family to make the placement successful. *Id.* at 18. While a documented referral represents a clear determination by DHR that a child should be placed in TFC, the

⁵ FJ Tø'r clpvc'p'u'c' h'g'x'g'l'q'h'v'j g'tcr gw'le 'h'q'u'v't'ect g'ecm'g'f "ö'G'p'j c'p'eg'f "V'j g'tcr gw'le 'H'q'u'v't'ect g'ö'ö'ö'VHE-Gö+y j lej" provides more intensive services than TFC. Ex. 1 at ADHR00012881. While TFC-E, did have a higher utilization rate during the period of time analyzed than TFC, there was still demonstrated unused contracted capacity at the TFC-E level. Ex. 10, Wagner Report at 28.

⁶ In a sample month examined in more detail by Dr. Wagner, each child was referred to just over 5 different TFC providers on average, but still over 80% of referred children were not accepted into any TFC placement during the sample month or the following month. Ex. 10, Wagner Report at 40-41.

experiences of children in Plaintiffs' class could have benefitted from TFC, but were never referred at all— perhaps in part because their case planning treatment teams are aware that referrals are highly likely to be denied. *Id.* at 15.

Despite its demonstrated awareness, DHR has not fixed this problem; instead, it has continued to renew its contracts with the very same providers under virtually the same terms, most recently in 2022.⁷ The network of providers that is supposed to serve the population of youth in the putative class exists only in theory. In practice, this network goes largely unused. Without this community-based network, the putative class is largely unused.

effectiveness of services for both children and caregivers, requesting and obtaining assessments, challenging the results of assessments. See Ex. 21, Transcript of 30(b)(6) Deposition of DHR (Casteel, October 4, 2024), at 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

Given this scope of responsibility, the effective operation of the ISP process is critical to ensure that children in DHR custody receive the most integrated placements appropriate to their needs. FJ Tø"KUR'r rnekgu'tghge'vj ku understanding. DHR policies require ISPs to be conducted at regular intervals, be consistently reviewed and adjusted as needed, and to focus on a child and hco kn(ø" utgpi y ulpggf u." y kj " engct" ugr u" vq" r tqo qvg" c" vko gn(" tgvwtp" j qo g. " r rægo gpv" y kj " relatives, or another permanency goal. Ex. 20 at ADHR00012631-33.

However, DHR fails to ensure adherence with its own ISP policies, resulting in inadequate individualized case planning for the putative class, which contributes to unnecessary institutional placements. Despite some progress made in this area since 2022, DHTø"o quv'tgegpv'hgf gtrni reporting identified persistent issues in case plan development, noting that ISP meetings are held qwwulf g"r rne(" vko ghtco gu"cpf "vgco "o go dgtu"ctg"pqv"cy c{u"lpxkvgf Ø'Crædco c"F gr ø"qh"J wo Ø' Resources, *2024 Annual Progress & Services Report* (June 30, 2023), <https://dhr.alabama.gov/wp-content/uploads/2023/12/2024-Annual-Progress-and-Services-Report.pdf>.

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Another inevitable consequence of poor ISP planning is a failure to timely discharge youth from intensive settings when they are ready to leave. *Id.* at 21. The ISP team should begin planning for intensive placement the day the child enters the placement. *Id.*; Ex. 21, DHR Dep. Tr. (Casteel) at 182. However, the case file review found there is a 95% confidence level that 85.5% to 99.6% of youth in DHR custody who had a PRTF placement during the period under review received no discharge planning. Ex. 8, MacKenzie Report at 7. Moreover, there is a 95% confidence level that 35.9% to 70.2% of youth in DHR custody who had a PRTF placement during the period under review also experienced a documented untimely discharge. *Id.* Failure to timely discharge youth occurs in part, due to a breakdown at the ISP level. This is especially true for the transfer of decision-making responsibility to the ISP team.

These case review findings are bolstered by further data analysis conducted in this case. Among all children placed in PRTFs who received a MAT recommendation for a less restrictive setting, 72% were subsequently discharged to less restrictive settings. Ex. 10, Wagner Report at 23. Of the 72%, only 27% were discharged to that less restrictive setting within 45 days (which was the maximum limit set by DHR policy prior to 2022), and 60% were discharged within 90 days (the new maximum limit, which went into effect after the end of the period for which data was available). *Id.* at 24-25. The average length of time before a child was discharged to a less restrictive placement after receiving a MAT recommendation indicating they should do so was 104 days. *Id.* at 25.

Each of these aforementioned systemic failures contributes to children with disabilities in foster care being unnecessarily segregated in institutions and experiencing delays when they are

ready for discharge. Because all children in foster care with mental health impairments9 Q 0. (th)-20 re W

Civ. P. 23(b)(2). And in fact, the Court has held that the Rule 23 prerequisites are satisfied where the plaintiff's claim is typical of the claims of the class, which is what Plaintiffs seek here. *Braggs v. Dunn*, 317 F.R.D. 634, 667 (M.D. Ala. 2016) (quoting *Baby Neal ex rel. Kanter v. Casey*, 43 F.3d 48, 59 (3d Cir. 1994)).

Certification is warranted when the court finds that the Rule 23 prerequisites have been satisfied. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 351 (2011). To

class members to initiate those lawsuits, and judicial economy. *Walco Invs., Inc. v. Thenen*, 168 F.R.D. 315, 324 (S.D. Fla. 1996). Vj g"ohwk "pcwtg"qh"c"r rlpwh"ercuu". . . counsels in favor of egtwhecvkqp"qh"cm'r tgugpv"cpf "hwwtg"ercuu"o go dgtu0"

Factual differences among the class members do not defeat commonality where the plaintiffs have been subjected to the same illegal policies. *Coleman ex rel. Bunn v. D.C.*, 306 F.R.D. 68, 82 (D.D.C. 2015)

J. The result in this case, unnecessary placement in and untimely discharge from intensive residential facilities, or the risk of such unnecessary placements and untimely discharges. Like in *Braggs*, the challenged policies and practices are applicable to placement in intensive residential facilities. The alleged injuries to the proposed class members all result from the same systemic policies, practices, and procedures. And these injuries give rise to identical claims under the ADA and Section 504, the resolution of which depends on the answers to common questions of law and fact. The common questions of law and fact among the Plaintiffs and the class include:

Does DHR discriminate against

Does DHR administer a system that fails to conduct appropriate case planning for children in foster care with disabilities, resulting in inappropriate placements in intensive settings and/or untimely discharges from intensive settings?

These common questions of law and fact are capable of classwide resolution because they relate to the same legal issues, which apply to all members of the class. Because Plaintiffs allege that these concrete policies, practices, and procedures that drive unnecessary institutional placements or the risk of such placements for all children with mental impairments in DHR custody, answers to these common questions will drive the resolution

their mental health ¶ 6 Ex. 13, Simpatico Report at 18-19. This failure leads to unnecessary institutional placement or risk thereof. *See id.* at 20.

FJ Tø"cuuguo gpv"r qkku"cpf "r tceveku"fg go qpwtcvg" FJ Tø"u{ uvgo k"hcwtg"vq"gpwtg" that children in its custody are placed in the least restrictive, appropriate setting for their mental and behavioral health needs, in violation of their rights under the ADA and Section 504, which is common to all children in the putative class. Therefore, whether DHR fails to require a comprehensive assessment to ensure that children are only placed in intensive settings when necessary presents a common question or issue of fact, the resolution of which will determine FJ Tø"hcwtg"vq"r tqwtg"cpf "b ckvckp"cp"cf gs wcvg"cttc { "qh'eqo o wpkv{-based placements

b. a Sufficient Array of Appropriately-Supported Community-Based Placements

FJ Tø"hcwtg"vq"r tqwtg"cpf "b ckvckp"cp"cf gs wcvg"cttc { "qh'eqo o wpkv{-based placements for children with disabilities in its custody is a second concrete practice that drives class-wide violations of the ADA and Section 504. To prevent the unnecessary institutionalization of children with mental health impairments, state foster care agencies like DHR must make available an array of community-based placements that can accommodate these children. Ex. 16, Armstrong Report at 1, 4-7. As stated above, however, as a matter of practice, DHR does not ensure that there are enough TFC placements available for children with mental or behavioral health disabilities. *See supra* p. 8-10.

A lack of appropriately matched TFC placements can drive institutionalization in several ways: 1) children are placed immediately in intensive residential placements after a rejected referral to a TFC placement or a failure to appropriately refer a child; 2) children who are already in intensive residential placements remain there past their discharge date because no TFC placements are available for the child to move to a less restrictive placement; and 3) children who

necessary presents a common question or issue of fact, the resolution of which will determine

FJ Tø'hcdkk\ 'k'tgrvqp"v'j g'gpvtg'ercu'k'c"ulpi ng'utqng0

c. Administration of a System that Fails to Conduct Appropriate Case Planning

Deficient case planning for children in foster care with mental and behavioral health impairments is a third systemic practice that drives class-wide violations of the ADA and Section 504. In *Jonathan R.*

measurable plan for their discharge to a less restrictive setting when appropriate. Ex. 15, Joyner Report at 21.

FJ Tø"RUR"r qnleku"cpf "r tcevelegu"fgo qpwtcvg"cu{ urgo le"hc kwtg"d{ "FJ T"vq"gpwtg"vj cv" children in its custody are placed in the least restrictive, appropriate setting for their mental and behavioral health needs, in violation of their rights under the ADA and Section 504, which is

to ensure that Plaintiffs have access to such placements by failing to substantively assess their needs, failing to conduct appropriate service planning, and failing to maintain a sufficient array of well

experienced or are at imminent risk of experiencing discrimination . . . on the basis of their
f kucdkkkuö" f wg"vq"vj g"õuco g"vprcy hwn'eqpf wexö"qh"õf ghpfp cpv"u{ uvgö k"hc"nt g"vq"eqo r n{ "y kj "
vj g"ucwwqt { "o cpf cvgu"qh"vj g"CF C"cpf "Ugevkp"726ö="Steward v. Janek, 315 F.R.D. 472, 489-90
(W.D. Tex. 2016) (finding typicality where plaintiffs and the class were experiencing or at risk of
institutionalization); see also Yates v. Collier, 868 F.3d 354, 363 (5th Cir. 2017) (certifying a class

classes of children in foster care, including cases under the ADA and

Defendant, through its policies and practices, has acted and refused to act on grounds generally applicable to each putative class member. The injunctive relief that Plaintiffs seek aims to prevent unnecessary placement and overstaying of children in intensive placements and exposed many more to the risk of such unnecessary placements and untimely discharges. This relief includes:

Dated: March 8, 2024

Respectfully Submitted,

CHILDREN'S RIGHTS

/s/ Lindsey S. Frye

Lindsey S. Frye (admitted *pro hac vice*)

NC Bar No. 47752

Samantha M. Bartosz (admitted *pro hac vice*)

IL Bar No. 6194058

Katrina Braun (admitted *pro hac vice*)

NC Bar No. 53396

Valerie Achille (admitted *pro hac vice*)

NY Bar No. 5988548

Micaela Ann Heery-Hyatt (admitted *pro hac vice*)

NY Bar No. 5742218

Jessica Zou (admitted *pro hac vice*)

NY Bar No. 5922091

88 Pine Street, Suite 800

New York, New York 10005

(212) 683-2210

(212) 683-4015 (fax)

lfrye@childrensrights.org

sbartosz@childrensrights.org

kbraun@childrensrights.org

vachille@childrensrights.org

mheeryhyatt@childrensrights.org

jzou@childrensrights.org

ALABAMA DISABILITIES ADVOCACY PROGRAM

Andrea J. Mixson

Ala. Bar No. ASB 2155-R79M

Larry Canada

Ala. Bar No. ASB 3153-N73L

2008 12th Street

Tuscaloosa, AL 35401

(205) 348-4928

amixson@adap.ua.edu

lcanada@adap.ua.edu

SOUTHERN POVERTY LAW CENTER

Michael Tafelski

Ala. Bar No. ASB 4400A33A

Claire Sherburne
Ala. Bar No. ASB 1121A61H
Sophia Mire Hill (admitted *pro hac vice*)
La. Bar No. 36912
400 Washington Ave.
Montgomery, AL 36104
(888) 414-7752
michael.tafelski@splcenter.org
claire.sherburne@splcenter.org
sophia.mire@splcenter.org

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I certify that I have on this day filed the foregoing document with the clerk of the court and electronically served the following persons:

Felicia M. Brooks
Jonathan S. Schlenker
Joshua L. Lane
Office of the Attorney General