

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

G.H. et al,

Plaintiffs,

v.

CASE NO. 4:19cv431-RH-MJF

JOSEFINA TAMAYO et al.,

Defendants.

ORDER CERTIFYING A CLASS AND SUBCLASS

This case presents a challenge to the Florida Department of Juvenile Justice its policies governing solitary confinement of juvenile offenders. The two named plaintiffs are children who were committed to the Department and repeatedly placed in solitary confinement. They have moved to represent a class of children who are or will be placed in solitary confinement and to represent a subclass of such children who have disabilities as defined in the Americans with Disabilities Act. This order certifies the class and subclass.

I. The Parties

The plaintiff GH is a boy, age 15, who has been diagnosed with attention deficit hyperactivity disorder, mood disorder, and post-traumatic stress disorder.

The defendant RL is a girl, age 15, who has been diagnosed with bipolar disorder, post-traumatic stress disorder, major depressive disorder, conduct disorder, and intermittent explosive and shizoffective disorder. Both plaintiffs have been placed in detention centers and, while there, repeatedly placed in solitary confinement.

The plaintiffs assert staff0.00000912 0 612 792 reW* nBT/F1 14.04 Tf1 0 0 1 151.46 481.51 Tn

in confinement, the Department fails to take account of and thus fails to reasonably accommodate their disabilities.

The Department

Tel. Co. of Sw. v. Falcon

license to engage in free-

unknown *Hughes v. Judd*, No. 8:12-CV-568-T-23MAP, 2013WL 1821077, at *22 (M.D. Fla. Mar. 27, 2013).

To be sure, the plaintiffs have not proven that all or even any of these individuals were *unconstitutionally* placed in solitary confinement. But parties seeking class certification need not establish at the outset that they will ultimately prevail on the merits. It is enough that the plaintiffs have a substantial claim that ostensible policy, is to place children in

The plaintiffs challenge

The Department does not deny that most of these conditions are the same for all the proposed class members. But the Department says the challenged conditions are not unconstitutional in effect, that a class should not be certified because the plaintiffs will lose on the merits. For the assertion that the challenged conditions are not unconstitutional, the Department relies primarily on cases involving adult facilities, including some that were properly litigated as class actions.

One of the

injury as the class *Dukes*, 564 U.S. at 348-49 (quoting *E. Tex. Motor Freight Sys., Inc. v. Rodriguez*, 431 U.S. 395, 403 (1977)).

The plaintiffs have met this requirement. They were placed repeatedly in solitary confinement, and they have disabilities. Their claims and those of the class and subclass members arise from the same practices and seek the same remedies.

The defendants say _____ placed in solitary confinement for legitimate reasons and for short periods. But this again

_____ he plaintiffs challenge the process for placing individuals in solitary confinement and the conditions of confinement once there. The challenged process and conditions were the same for the plaintiffs as for the class members.

4. Adequacy of representation

The final Rule 23(a) requirement is that the named plaintiffs encompasses two separate inquiries: whether any substantial conflict of interest exists between the named plaintiffs and the class, and whether the named plaintiffs will adequately prosecute the action. *See, e.g., Valley Drug Co. v. Geneva Pharm., Inc.*, 350 F.3d 1181, 1189 (11th Cir. 2003).

C. Necessity

The Department says a class action can go forward only if necessary only if an individual action could not, as a practical matter, produce the requested relief. The assertion fails on both the law and the facts.

Rule 23 does not refer to necessity. Even so, class treatment adds a layer of complexity to any litigation. This order assumes that when class treatment would serve no purpose, a court can properly choose not to certify a class. *See, e.g., United Farmworkers of Fla. Hous. Project, Inc. v. City of Delray Beach*, 493 F.2d 799, 812 (5th Cir. 1974). This does not mean, though, that a class can be certified only if necessary.

Under Rule 23(b)(3), which is not involved in this case, a class can be certified only when other available methods for fairly

render Rule 23(b)(2) a dead letter. This is so because in every case otherwise appropriate for class certification under Rule 23(b)(2), the defendant could announce its willingness to abide any injunction that might later be entered, thus purportedly rendering

IV. Conclusion

For these reasons,

IT IS ORDERED:

1. The motion to certify a class and subclass, ECF Nos. 111 and 114, is granted.
2. A class is certified consisting of children who are or will be in solitary confinement in a Florida Department of Juvenile Justice detention facility.
3. A subclass is certified consisting of children who are or will be in solitary confinement in a Florida Department of Juvenile Justice detention facility who have disabilities as defined in the Americans with Disabilities Act.
4. The named plaintiffs GH and RL are class representatives.
5. _____ class counsel.

SO ORDERED on October 22, 2021.

s/Robert L. Hinkle _____