

specifically developed to improve the ability of courts to resolve suits involving the criminal justice system. HERBERT B. NEWBERG, 485 NEWBERG ON CLASS ACTIONS § 25.18 (2d ed. 1985). Courts have broad discretion to certify any class that comes within the parameters of Federal Rule of Civil Procedure 23. *See Spence v. Glock, Ges.m.b.H.*, 227 F.3d 308, 310 (5th Cir. 2000). Plaintiffs seeking class certification must establish all of the elements of Rule 23(a), as well as at least one element of Rule 23(b). *See Sears Bolin v. Sears, Roebuck & Co.*, 231 F.3d 970, 975 (5th Cir. 2000). Each of the foregoing requirements is met in this case.

A. Numerosity

To satisfy Rule 23(a)(1), the “plaintiff[s] must ordinarily demonstrate some evidence or reasonable estimate of the number of purported class members.” *See James v. Dallas*, 254 F.3d 551, 570 (5th Cir. 2001) (internal quotations and citations omitted). The Plaintiff class in this case consists of all the youth who are presently confined at Columbia, as well as an unknown – and unknowable – number of children who will be held there in the future. Even if the class were limited to youth presently committed to Columbia, the number of potential plaintiffs would easily satisfy the Fifth Circuit’s standards for numerosity. *Cf., e.g., Jones v. Diamond*, 519 F.2d 1090, 1100 & n.18 (5th Cir. 1975) (class of 48 members), *disproved in part on other grounds, Gardner v. Westinghouse Broadcasting Co.*, 437 U.S. 478 (1978); *Jack v. American Linen Supply Co.*, 498 F.2d 122, 124 (5th Cir. 1974) (class of 51 members). But the inclusion of future Columbia residents renders it literally impossible to join all members of the class, another factor that weighs heavily in favor of certification. *Pederson v. Louisiana State Univ.*, 213 F.3d 858, 868 n.11 (5th Cir. 2000).

B. Commonality & Typicality

The next two elements of Rule 23(a) – commonality and typicality – “serve as guideposts for determining whether . . . maintenance of a class action is economical and whether the named plaintiff’s claim and the class claims are so interrelated that the interests of the class members will be fairly and adequately protected in their absence.” *Gen. Tele. Co. v. Falcon*, 457 U.S. 147, 157 n.13 (1982); *see also Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 626 n.20 (1997) (characterizing “adequacy-of-representation” as a third guidepost); *accord Steering Comm. v. Exxon Mobil Corp.*, 461 F.3d 598, 601 (5th Cir. 2006); *Feder v. Elec. Data Sys. Corp.*, 429 F.3d 125, 129 (5th Cir. 2005). Although in practice the commonality and typicality requirements “tend to merge,” the Fifth Circuit has provided some analytical guidance to courts to highlight the factors most relevant to each provision. *Falcon*, 457 U.S. at 626 n.20.

The court has held that “[t]he commonality test is met when there is at least one issue, the resolution of which will affect all or a significant number of the putative class members,” *Lightbourn v. El Paso*, 118 F.3d 421, 426 (5th Cir. 1997). In this case, common issues include the constitutionality of the Defendants’ policies, customs and practices with regard to protection from harm and the provision of adequate mental health and rehabilitative services. The named Plaintiffs and the absent class members are equally affected by the Defendants’ unconstitutional policies, customs and practices, and any relief ordered by this Court would impact them in the same way.

Typicality focuses on “whether the class representative’s claims have the same essential characteristics of those of the putative class.” *Stirman v. Exxon Corp.*, 280 F.3d 554, 562 (5th Cir. 2002). Like commonality, the typicality test is “not demanding,” *Lightbourn*, 118 F.3d at 426, and is easily satisfied in this case. If class certification was

denied, every child at Columbia would be forced to pursue an individual action to vindicate her rights under the U.S. Constitution. Each of those complaints would be virtually identical to the class complaint at issue here. *Cf. Mullen v. Treasure Chest Casino, LLC*, 186 F.3d 620, 625 (5th Cir. 1999) (holding that typicality requirement was met where “the Named Plaintiffs’ and the proposed class members’ legal and remedial theories appear[ed] to be exactly the same”).

C. Adequacy of Representation

There is no question that the named Plaintiffs and their counsel will fairly and adequately protect the interests of the class. *See* FED. R. CIV. P. 23(a)(4); *Stirman*, 280 F.3d at 563 (holding that Rule 23(a)(4) requires consideration of “[1] the zeal and competence of the representative[s]’ counsel and . . . [2] the willingness and ability of the representative[s] to take an active role in and control the litigation and to protect the interests of absentees”); *accord Berger v. Compaq Computer Corp.*, 257 F.3d 475, 479 (5th Cir. 2001); *accord Feder*, 429 F.3d at 129-130. First, Plaintiffs are represented by attorneys with ample experience in class actions and civil rights litigation – both in general and with respect to adult and juvenile prison cases in particular. *See* Ex. 1 (Bedi Decl). Counsel are capable of pursuing the case vigorously on behalf of the class. *Id.* Second, with respect to the named Plaintiffs, courts faced with child representatives have not attempted to hold these young litigants to adult standards, focusing instead on the engagement level of the children’s next friends. *Cf. Horton v. Goose Creek Indep. Schl. Dist.* 690 F.2d 470, 484 (5th Cir. 1982). The next friends in this case have clearly demonstrated their commitment to protect not only their own children’s rights, but also the rights of the absent class members.

D. Injunctive and Declaratory Relief

Plaintiffs also satisfy Rule 23(b)(2). Defendants' actions have been taken "on grounds generally applicable to the class, thereby making appropriate final injunctive or corresponding declaratory relief with respect to the class as a whole." FED. R. CIV. P. 23(b)(2). Because this subsection is particularly applicable to suits by prisoners, NEWBERG § 25.18, it is clear that the Plaintiff class satisfies this element of Rule 23.

For all the above reasons, the Plaintiffs request that their motion for class certification be granted.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served by hand delivery on:

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550 High Street
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This 16th day of July, 2007.



Sheila A. Bedi

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**

J.A., et al.)	
)	
Plaintiffs,)	
)	
v.)	CASE NO. 3:07CV394 DJP.JCS
)	
GOVERNOR HALEY BARBOUR, et al.,)	
)	
Defendants.)	

PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

Pursuant to Rule 23(b) of the Federal Rule of Civil Procedure, the Plaintiffs move this Honorable Court to issue an order certifying named Plaintiffs J.A., R.B. and L.R. to represent a class composed of all children who are currently or will in the future be confined at Columbia Training School. This proposed class seeks only declaratory and permanent injunctive relief.

Under the Federal Rules of Civil Procedure, one or more named plaintiffs may bring suit as representative parties on behalf of a class

[O]nly if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

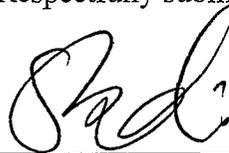
Fed. R. Civ. P. 23(a). Each requirement is met here. First, Columbia Training School has the capacity to house more than one hundred children on any given day. Because the length of each child's commitment varies, the facility's population changes on a weekly – if not daily – basis. Recently, Columbia Training School's population has fluctuated between thirty to sixty girls but

the facility has the capacity to house over 100 children on any given day. The class also includes future, unknown members who cannot be joined. Second, this action involves questions of law and fact that are common to all class members. Third, because the challenged policies and practices apply with equal force to all class members, the claims of the named Plaintiffs are typical of the class. Finally, the named Plaintiffs will fairly and adequately represent the interests of the class. The named Plaintiffs have a personal interest in the subject matter of the lawsuit, and their counsel is experienced in class action litigation and is prepared to pursue the case vigorously on behalf of the class.

Because the putative class satisfies every element of Rule 23(a), and because the Defendants have acted and refuse to act on grounds generally applicable to the class as a whole, class certification is proper under Rule 23(b)(2).

For the reasons stated above and explained in the memorandum of law accompanying this filing, Plaintiffs request that their motion for class certification be granted.

Respectfully submitted,



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PROPOSED ORDER

BEFORE THIS COURT is Plaintiffs' Motion for Class Certification. Having considered the pleadings, memorandum of law, and supporting evidence, this Court finds that the motion is well taken and should be GRANTED.

Accordingly, the Court hereby CERTIFIES that Plaintiffs J.A., R.B. and L.R. will fairly and adequately represent the interests of the class and ORDERS that this matter proceed as a class action on behalf of all children who are currently or will in the future be confined at Columbia Training School.

SO ORDERED, this the ____ day of July, 2007.

UNITED STATES DISTRICT COURT JUDGE