THE HONORABLE ROBERT J. BRYAN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JAMES HORTON, JAMES BARHART, JEROME PAYTON, J.B., through his next friend, LORANE WEST, and K.M., through his mother DEBBIE MOORE, on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

BOB WILLIAMS, in his official capacity as Superintendent of Green Hill School; JEAN SOLIZ, in her official capacity as Secretary of the Department of Social and Health Services; SID SIDOROWICZ, in his official capacity as Assistant Secretary of the Department of Social and Health Services for the Juvenile Rehabilitation Administration; and the Chehalis School District,

Defendants.

No. C94-5428 RJB

MEMORANDUM IN SUPPORT OF MOTION FOR CLASS CERTIFICATION

I. INTRODUCTION

Plaintiffs and the class they seek to represent are youth incarcerated at Green Hill School (GHS) in Chehalis, Washington. They have brought this action to redress the violation of their rights and to ask this Court to enjoin unconstitutional practices at GHS.

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This case was filed as a class action. By this motion, plaintiffs ask this Court to certify the class.

II. PROPOSED CLASS

Plaintiffs seek certification of one class: All juveniles currently, or in the future, incarcerated at GHS.

III. STATEMENT OF FACTS[1]

This lawsuit is brought by juveniles confined at GHS whose statutory and constitutional rights have been and, without relief from this court, will continue to be denied by defendants.[2] Plaintiffs have been denied educational, vocational and rehabilitational services at GHS, subjected to punishment without adequate due process and forced to live in conditions that are unsafe and unsanitary.

As shown below, there are questions of fact and law common to the class of plaintiffs, and the other prerequisites of class certification have been met.

IV. ARGUMENT

A. GENERAL PRINCIPLES APPLICABLE TO CLASS CERTIFICATION.

In order to be certified, a class action must meet the following four prerequisites of Fed. R. Civ. P. 23(a):

1. The class is so numerous that joinder of all members is impracticable;

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[1]/ The court must take plaintiffs' allegations as true, Blackie v. Barrack, 524 F.2d 891, 901 (9th Cir. 1975), cert. denied, 429 U.S. 816 (1976), and may not consider the merits of plaintiffs' action when determining class certification. Eisen v. Carlisle & Jacquelin, 417 U.S. 156 (1974). Plaintiffs' factual allegations are summarized in this section.

[2]/ The defendants are Bob Williams, the Superintendent at GHS, Jean Soliz, the Secretary of the Department of Social and Health Services, Sid Sidorowicz, Assistant Secretary of the Department of Social and Health Services for the Juvenile Rehabilitation Administration, and the Chehalis School District.

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2. There are questions of fact or law common to the class;

3. The claims of the representative parties are typical of the claims of the class; and

4. The representative parties will fairly and adequately protect the interests of the class.

Additionally, the class must meet the requirements of one of the three subsections of Fed. R. Civ. P. 23(b). Subsection (b)(2), pertinent here, requires that:

> The party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

See generally, H. Newberg, Newberg on Class Actions §§ 3.01-3.29 (2d ed. 1985); 334 (1972).

In general, Fed. R. Civ. P. 23 should be liberally construed to favor class maintenance. Neely v. United States, 546 F.2d 1059, 1071 (3rd Cir. 1976) ("'Rule 23, like other procedural rules, was written to further, not defeat, the ends of justice.'") (quoting Surowitz v. Hilton Hotels Corp., 383 U.S. 363, 373, 86 S.Ct. 845, 851 (1966)). Class actions are particularly appropriate where, as here, injunctive or declaratory relief is sought. Class actions avoid problems of mootness, inconsistent results from multiple proceedings, uncertainty as to scope of judgment, implementation of judgment, and ineffective representation in individual claims.

Furthermore, "[c]lass action status is particularly suitable in civil rights actions." 3B J. Moore, Federal Practice, §23.02 [2. - 6], at 23-43 (2d ed. 1987). "Rule 23(b)(2) was enacted in part for the specific purpose of assuring that the class action device would be available as a means of enforcing the civil rights statutes." Id. at 23-44. See also "Notes of Advisory Committee on Rules," 1966 Amendment, Rule 23(b)(2), 28 U.S.C.A., pp. 298-

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299. Therefore, Fed. R. Civ. P. 23(b)(2) is particularly suited to civil rights actions challenging institutional conditions and practices, for the rule is "an effective weapon for an across-the-board attack against systematic abuse." Jones v. Diamond, 519 F.2d 1090, 1100 (5th Cir. 1975).

> When determining whether to certify a class the court should employ a presumption in favor of and not against the maintenance of the class action, for it is always subject to modification should later developments during the course of the trial so require.

Brown v. Brown, 6 Wn. App. 249, 257, 492 P.2d 581 (1971) (citing Esplin v. Hirschi, 402 F.2d 94, 99 (10th Cir. 1968)). As demonstrated below, the plaintiff class proposed in this action meets the requirements of Fed. R. Civ. P. 23(a).

B. THE REQUIREMENTS OF RULE 23(a) ARE MET HERE.

1. Numerosity - 23(a)(1).

Because "numerosity" is tied to the "impracticability" of joinder under specific circumstances, there is no set number that satisfies this requirement. "Impracticability" does not mean "impossibility;" it is sufficient to show that it is very difficult or inconvenient to join all members of the class. Harris v. Palm Springs Alpine Estates, Inc., 329 F.2d 909, 913-914 (9th Cir. 1964).

"[W]hile there are exceptions, numbers in excess of forty, particularly those exceeding one hundred or one thousand have sustained the requirement." 3B J. Moore, Federal Practice, § 23.05[1] at 23-144-145 (2d Ed. 1987) (footnotes omitted). See, e.g., Langley v. Coughlin, 715 F.Supp. 522, 553 (S.D.N.Y. 1989) (Subclass between thirty and fifty inmates and another of one hundred inmates "meet numerosity requirements."); Gay v. Waiters & Dairy Lunchmen's Union, 549 F.2d 1330 (9th Cir. 1977) (appellate court

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reversed as an abuse of discretion trial court's denial of certification of class numbered 184 in an employment discrimination lawsuit); Weinberger v. Thornton, 114 F.R.D. 599, 602 (S.D. Cal. 1986) (numerosity requirement satisfied where general knowledge and common sense indicate that, even if the exact number is unknown, class is large). Additionally, Fed. R. Civ. P. 23(a)(1) should be read liberally in the context of civil rights suits. See Ahrens v. Thomas, 570 F.2d 286, 288 (8th Cir. 1978); Jones v. Diamond, 519 F.2d at 1099-1100.

There are approximately 200 youth confined at GHS. The actual composition of the class is in constant flux as new residents are admitted to GHS as other current residents are released. In addition, juveniles who are still under the jurisdiction of the Juvenile Rehabilitation Administration but do not currently reside at GHS-- for example, those who are at a Group Home or another state juvenile facility -- may be returned or transferred to GHS at any time before the expiration of their sentence. This is a substantial number of juveniles, joinder of all of whom is impracticable. See, Mead v. Parker, 464 F.2d 1108 (9th Cir. 1972) and Walters v. Thompson, 615 F.Supp. 330 (N.D. Ill. 1985).

2. Common Questions of Law or Fact - 23(a)(2).

> This express provision seems unnecessary, since in addition to the prerequisites of subdivision (a), an action can be maintained as a class action under Rule 23 only if it also satisfies the requirements of at least one of the three types of class actions provided for by subdivision (b) and a finding that common questions exist is implicitly required by a finding under either subdivisions (b)(1), (b)(2), or (b)(3).

3B J. Moore, Federal Practice, § 23.06-1 at 23-157 (2d Ed. 1987) (footnotes omitted). Thus, the current trend of decisions appears to be that the commonality requirement is subsumed within the requirement of Fed. R. Civ. P. 23(b)(2). See Harris v. Pan American World Airways, Inc., 74 F.R.D. 24, 25 (N.D. Cal. 1977); Wofford v. Safeway Stores, Inc., 88 F.R.D. 460 (N.E. Cal. 1978).

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In the instant case, plaintiffs have pleaded causes of action for deprivations of constitutional rights common to all members of the class.[3] These deprivations of constitutional rights are carried on by the defendants and affect all members of the class. Additionally, the causes of action in this lawsuit have one factual base -- namely, defendants' policies and practices at GHS. Finally, as explained in section C, infra, a class action is appropriate because the type of remedial relief sought from this court is injunctive and declaratory. See, Mead v. Parker, 464 F.2d 1108 (9th Cir. 1972) and Walters v. Thompson, 615 F.Supp. 330 (N.D. Ill. 1985).

3. Typicality - Rule 23(a)(3).

> [T]here appears to be little or no need for this clause, since all meanings attributable to it duplicate requirements prescribed in other provisions in Rule 23.

3B J. Moore, Federal Practice, § 23.06-2 at 23-168. See also Piva v. Xerox, 70 F.R.D. 378 (N.D. Cal. 1976). To satisfy this requirement the plaintiffs need only show that the class members' claims are based on the same legal or remedial theories; their individual factual patterns may contain some variations. Penn v. San Juan Hospital, Inc., 528 F.2d 1181, 1188-89 (10th Cir. 1975); Wehner v. Syntex Corp., 117 F.R.D. 641 (N.D. Cal. 1987). See also General Tel. Co. v. Falcon, 457 U.S. 147, 157 n.13, 102 S. Ct. 2364, 72 L. Ed. 2d 740 (1981).

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[3]/ Plaintiffs' claims are: (1) Defendants fail to provide adequate educational, treatment and rehabilitative services to youth at GHS in violation of the Fourteenth Amendment of the United States Constitution, the Individuals with Disabilities Education Act, and state law; (2) Defendants punish juveniles at GHS by spraying them with aerosol oleoresin capsicum, shackling them, and placing them in disciplinary cottages without affording them sufficient due process in violation of the Fourteenth Amendment of the United States Constitution, and (3) Defendants fail to protect Plaintiffs from harm while in state custody in violation of the Fourteenth Amendment of the United States Constitution.

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In the instant case, the claims of the representatives are sufficiently "typical". The claims of the named plaintiffs are all based on the defendants' policies and practices at GHS. Additionally, as explained in section B.2, above, the injunctive remedies sought by this lawsuit -- to prevent defendants violating the constitutional rights of juveniles confined at GHS--are necessarily applicable to the class as a whole. Thus, the typicality requirement for a class action is satisfied by the named representatives. See, Walters v. Thompson, 615 F.Supp. 330 (N.D. Ill. 1985).

4. Adequacy of Representation - Fed. R. Civ. P. 23(a)(4).

Adequacy of representation is a two part test: (i) Counsel for the representative parties are qualified, experienced, and generally able to conduct the litigation; and (ii) The suit is not collusive and there is no antagonism between the plaintiffs' interests and the remainder of the class. Lerwill v. Inflight Motion Pictures, Inc., 582 F.2d 507, 512 (9th Cir. 1978).

The affidavits of counsel representing the class members establish that the attorneys who represent the named plaintiffs are well qualified and have adequate resources to conduct the litigation. (Declarations of Patricia J. Arthur and Robert A. Stalker Jr. attached to this memorandum. See also, the application of David Lambert of the National Center For Youth Law to participate in this case as co-counsel, filed on August 17, 1994.) Additionally, the named plaintiffs do not have any antagonistic or conflicting interests with their respective unnamed class members, and there is no suggestion of collusion.

C. Fed. R. Civ. P. 23(b)(2) - FINAL INJUNCTIVE RELIEF IS APPROPRIATE.

Once the prerequisites to a class action under Fed. R. Civ. P. 23(a) have been satisfied, this Court must determine what type of class action is appropriate. We ask for

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certification under Rule 23(b)(2). The intent of Fed. R. Civ. P. 23(b)(2) is "to focus the court and attorney on an appraisal of the utility of shaping a class-wide equitable decree or declaratory judgment." 3B J. Moore, Federal Practice, § 23.40[2] at 23-263 (2d Ed. 1987). "The emphasis under (b)(2) is therefore upon the general application to the class of the alleged action or inaction of the defendant...." Id., § 23.40[1] at 23-258.

In this instance, the defendants have acted or refused to act on grounds generally applicable to the class. All grievances arise out of defendants' policies and practices and conditions at GHS. Final injunctive relief to the class as a whole is appropriate. See, Mead v. Parker, 464 F. 2d 1108 (9th Cir. 1972) and Walters v. Thompson, 615 F. supp. 330 (N.D. Ill. 1985).

V. CONCLUSION

The class proposed in this lawsuit meets the requirements set out in Fed. R. Civ. P. 23(a)(1)-(4) and 23(b)(2). Therefore this court should enter an order certifying that this lawsuit may be maintained as a class action.

DATED this 17th day of August, 1994.

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