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United States District Court, S.D. New York.

MARISOL A., by her next friend, Rev. Dr. James Alexander Forbes, Jr., et al., Plaintiffs,
v.
Rudolph W. GIULIANI, Mayor of the City of New York, et al., Defendants.

No. 95 Civ. 10533(RJW). | May 27, 1998.

Opinion

MEMORANDUM DECISION AND ORDER

WARD, J.

***1** City defendants move for an order, pursuant to Federal Rules of Civil Procedure 12(b)(1), 60(b)(4), or in the alternative, 56(b), dismissing plaintiffs' claims regarding the Pre–Placement Center and vacating the Interim Stipulation and Order Concerning Overnights at Pre–Placement. For the following reasons, City defendants' motion is denied.

BACKGROUND

On June 18, 1996, the Court denied Rudolph W. Giuliani, Marva Hammons, and Nicholas Scoppetta's (collectively referred to as "City defendants" or "defendants") motion to dismiss the Complaint for Declaratory and Injunctive Relief ("Complaint") *Marisol A. v. Giuliani,* 929 F.Supp. 662 (S.D.N.Y.1996), *aff'd,* 126 F.3d 372 (2d Cir.1997). The Complaint sets forth the legal framework of the claims, factual allegations regarding the named plaintiffs, and factual allegations regarding the systemic deficiencies of the Child Welfare Administration ("CWA"), now the Administration for Children's Services ("ACS"). Included in these areas of the Complaint are claims regarding the placement of youths by ACS.

Under the heading of "Legal Framework," plaintiffs include the Fourteenth Amendment of the United States Constitution (Compl.¶ 59), the Child Abuse Prevention and Treatment Act (Compl.¶ 65), and the New York State Social Services Law, Family Court Act and state regulations (Compl.¶ 72) as legal bases for suing defendants with respect to the placement of children within the custody of ACS. Plaintiffs further delineate in their answers to interrogatories how improper placements violate the rights of the plaintiff class within this legal framework.

Next in their Complaint, plaintiffs discuss specific allegations regarding the children who are the named plaintiffs. Among these children, there are several allegations of placement deficiencies. For example, Lawrence B., a child suffering from AIDS, was allegedly housed in numerous inappropriate placements which plaintiffs claim irreparably harmed him. He was initially placed in a diagnostic facility—one intended to be a temporary placement for ninety-day diagnoses—and remained there for seven months. Compl. ¶ 97. Next, rather than assign Lawrence B. to a facility designed to handle medical conditions such as his, CWA placed him in a private agency group home intended to prepare teens for independent living. CWA, allegedly, did not make the agency aware of Lawrence B.'s medical condition and when the agency informed CWA that it could not provide adequate medical supervision for Lawrence B., CWA did not transfer him to another placement. *Id.* ¶¶ 99–103. Additionally, plaintiffs claim that the facility Lawrence B. was placed in at the time the Complaint was filed could not provide the necessary psychological services that a young boy stricken with a terminal illness requires. *Id.* ¶ 104. Even after Lawrence B. made numerous trips to the hospital, CWA continued to insist that the private agency house him. *Id.* ¶¶ 103, 105.

***2** Plaintiffs also allege that the placements of Darren and David F. were inappropriate. These twins, who at the age of one were relinquished to CWA by their mother, were placed with their grandmother. Plaintiffs maintain that their grandmother

was an inappropriate placement as she was too old to care for the children, left them in front of a loud television set for hours at a time, and allowed their mother, a known drug addict, to move into the foster home. *Id.* ¶¶ 141–42. When placed in a new foster home, CWA did not provide the foster parent with adequate services to deal with the special needs of Darren and David F. *Id.* ¶¶ 143–45. Then, in contravention of a psychiatrist's recommendation that the agency not remove the children from a home setting and place them in a residential treatment center until a day treatment program was first tried, CWA placed Darren and David F. in a residential treatment center. *Id.* ¶¶ 146–47. Therefore, at the age of seven, these children were placed in a residential treatment center, which previously would not accept children under the age of twelve, and at the time the Complaint was filed were still residing there. *Id.* ¶ 148.

Another named plaintiff who alleges inappropriate placements is Steven I. Despite the fact that doctors who have evaluated Steven I. recommended long-term residential treatment in order to address his severe psychiatric needs, he was placed in a group home from which he ran away. *Id.* ¶¶ 178, 181. While still in the custody of CWA at the time the Complaint was filed, it is not clear that CWA was aware of Steven I.'s whereabouts after he ran away from the group home. *Id.* ¶ 184.

Plaintiffs also raise claims regarding systemic deficiencies in the placement of youths. In a Memorandum Decision and Order dated April 23, 1998, this Court certified subclasses, specifying which named plaintiffs represented each subclass. Claims regarding the appropriateness of placements are found in the Complaint under the heading "Out–of–Home Placements" and include:

> 239. When children are removed from the family setting, *they are placed on a "hit-or-miss" basis in whatever bed is available,* often with foster parents who have not been appropriately screened or trained. 240. Because defendants have not developed a sufficient range of different types of placements to meet the needs of children, *many children are placed inappropriately.* 241. Because of an insufficient number of adolescent placements, teenage foster children are either not taken into placement when necessary, or are pushed out of the foster care system and forced to live either on the streets or in *one temporary shelter facility* after another.

Id. (emphasis added).

During the discovery period, plaintiffs reviewed documents related to their placement claims. At that time, plaintiffs learned of the conditions at an ACS-operated facility at 7 Laight Street, New York, New York, where children are held while waiting for placements after business hours on weekdays, on holidays, and on weekends ("Pre–Placement" or "Pre–Placement Center"). Having determined that the conditions at the Pre–Placement facility were extremely harmful to children, plaintiffs sought immediate relief from the Court. In an application for a temporary restraining order, plaintiffs alleged that defendants were housing children at Pre–Placement, an unlicensed facility, without providing them with adequate beds, clothing, food, or heat. These allegations were repeated to the Court during hearings on May 13 and 14, 1997. *See* Transcripts of Hearings before Hon. Robert J. Ward, May 13, 1997, 2:15 p.m. & May 14, 1997, 10:00 a.m. As a result of these hearings, the Court signed an Amended Order to Show Cause and Temporary Restraining Order requiring defendants to obtain supplies, equipment, and staff for the Pre–Placement facility and barring defendants from keeping children overnight at Pre–Placement for more than one night during any thirty day period. *See* Amended Order to Show Cause, May 14, 1997.

***3** Before the Court ruled on plaintiffs' motion for a preliminary or permanent injunction, the parties entered into a stipulation concerning overnights at Pre–Placement that was "So Ordered" by the Court on July 16, 1997. *See* Interim Stipulation and Order Concerning Overnights at Pre–Placement ("Interim Stipulation and Order"). City defendants now move this Court to dismiss the Pre–Placement claims and to vacate the Interim Stipulation and Order. They argue that the Court lacks Article III jurisdiction to hear the Pre–Placement claims, and therefore also lacked the jurisdiction to "So Order" the Interim Stipulation and Order, on the basis that no named plaintiff has standing to raise such claims. Upon review of the Complaint, however, the Court finds that it has jurisdiction to hear claims involving Pre–Placement and any other placement within the purview of ACS. Accordingly, the Court denies city defendants' motion to dismiss the Pre–Placement claims and to vacate the Interim Order and Stipulation.

DISCUSSION

After examining the claims and the legal doctrine presented by plaintiffs in their Complaint, it is clear to the Court that there are named plaintiffs who have standing to assert claims regarding the Pre–Placement Center and that the Court has Article III

jurisdiction to hear such claims. *See Allen v. Wright,* 468 U.S. 737, 752, 104 S.Ct. 3315, 82 L.Ed.2d 556, *reh'g denied,* 468 U.S. 1250 (1984) ("the standing inquiry requires careful judicial examination of a complaint's allegations to ascertain whether the particular plaintiff is entitled to an adjudication of the particular claims asserted").

Article III of the Constitution limits the "judicial power" to the resolution of "cases" and "controversies". Art. III § 2; *see Allen v. Wright,* 468 U.S. at 750. This limitation on federal court jurisdiction is enforced through various doctrines, including that of standing, which is the "threshold question in every federal case." *See Warth v. Seldin,* 422 U.S. 490, 498, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975); *see also Sosna v. Iowa,* 419 U.S. 393, 398, 95 S.Ct. 553, 42 L.Ed.2d 532 (1975). Standing is unique in that it "focuses on the party seeking to get his complaint before a federal court and not on the issues he wishes to have adjudicated." *Simon v. Eastern Ky. Welfare Rights Org.,* 426 U.S. 26, 37–38, 96 S.Ct. 1917, 48 L.Ed.2d 450 (1976) (quoting *Flast v. Cohen,* 392 U.S. 83, 99, 88 S.Ct. 1942, 20 L.Ed.2d 947 (1968)). To ascertain whether a plaintiff has standing, the Court must determine if standing existed on the date the suit was commenced. *See County of Riverside v. McLaughlin,* 500 U.S. 44, 50–52, 111 S.Ct. 1661, 114 L.Ed.2d 49 (1991); *Mayer v. Wing,* 922 F.Supp. 902, 906 (S.D.N.Y.1996). If plaintiffs met the standing requirements at the time the Complaint was filed, standing exists. *See id.* Standing requires that a plaintiff "allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." *Allen v. Wright,* 468 U.S. at 751 (citation omitted) (holding that parents of black public school children did not have standing to bring class action alleging that the Internal Revenue Service did not fulfill its obligation of denying tax-exempt status to racially discriminatory private schools where there was no direct evidence of injury to their children).

***4** The standing requirements must always be met, even in the context of a class action. *See Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.,* 454 U.S. 464, 471, 475–76, 102 S.Ct. 752, 70 L.Ed.2d 700 (1982) ("[t]hose who do not possess Art[icle] III standing may not litigate as suitors in the courts of the United States"); *Sosna v. Iowa,* 419 U.S. at 398 (holding that parties cannot by stipulation invoke Article III judicial power). "That a suit may be a class action, ... adds nothing to the question of standing, for even named plaintiffs who represent a class must allege and show that they personally have been injured, not that injury has been suffered by other, unidentified members of the class to which they belong and which they purport to represent." *Lewis v. Casey,* 518 U.S. 343, 357 (1996) (citations and internal quotations omitted); *see also Simon v. Eastern Ky. Welfare Rights Org.,* 426 U.S. at 40, n. 20; *Warth v. Seldin,* 422 U.S. at 502. Therefore, "if none of the named plaintiffs purporting to represent a class establishes the requisite of a case or controversy with the defendants, none may seek relief on behalf of himself or any other member of the class." *O'Shea v. Littleton,* 414 U.S. 488, 495, 94 S.Ct. 669, 38 L.Ed.2d 674 (1974) (citations omitted) (named plaintiffs must allege direct personal injury and thereby have a personal stake in the action); *see also Village of Arlington Heights v. Metropolitan Hous. Dev. Corp.,* 429 U.S. 252, 264, n. 9, 97 S.Ct. 555, 50 L.Ed.2d 450 (1977).

In *Comer v. Cisneros,* the Second Circuit detailed the requirements of standing:

> Courts have divided the question of standing into a two-tiered inquiry which includes (1) three constitutional minima and (2) prudential considerations which may limit judicial review in some circumstances. (citation omitted). The three constitutional minima are that: (1) the litigant suffered a personal injury or threat of injury; (2) the injury fairly can be traced to the action challenged; and (3) the injury is likely to be redressed by the requested relief.

37 F.3d 775, 787 (2d Cir.1994) (citing *Northeastern Fla. Chapter of the Associated Gen. Contractors of Am. v. City of Jacksonville,* 508 U.S. 656, 661–64, 113 S.Ct. 2297, 124 L.Ed.2d 586 (1993); *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.,* 454 U.S. at 472; *AMSAT Cable Ltd. v. Cablevision of Conn. Ltd. Partnership,* 6 F.3d 867, 873 (2d Cir.1993); *Heldman v. Sobol,* 962 F.2d 148, 154 (2d Cir.1992); *Lamont v. Woods,* 948 F.2d 825, 829 (2d Cir.1991)); *see also Allen v. Wright,* 468 U.S. at 752; *County of Riverside v. McLaughlin,* 500 U.S. at 51; *Loper v. New York City Police Dep't,* 802 F.Supp. 1029, 1035 (S.D.N.Y.1992), *aff'd,* 999 F.2d 699 (2d Cir.1993).

As defendants do not argue lack of standing based on prudential considerations, the Court will focus on the three constitutional minima. Primarily, defendants argue that plaintiffs have failed to satisfy the first and second constitutional minima: that plaintiffs suffered personal injury or threat of injury and that this injury can be traced to defendants' conduct.

***5** The first question the Court will address is whether any of the named plaintiffs raise claims showing personal injury or the threat of such injury. This question must be answered in the affirmative. There are named plaintiffs who allege that they have suffered "concrete and particularized" injuries that are "real and immediate" and not merely "conjectural or hypothetical." *See City of Los Angeles v. Lyons,* 461 U.S. 95, 101–02, 103 S.Ct. 1660, 75 L.Ed.2d 675 (1983); *Lujan v. Defenders of*

Wildlife, 504 U.S. at 560; *Allen v. Wright,* 468 U.S. at 755–56; *Warth v. Seldin,* 422 U.S. at 507–08; *O'Shea v. Littleton,* 414 U.S. at 494. Four named plaintiffs, Lawrence B., Darren and David F., and Steven I., all allege injury resulting from inappropriate placements. They claim that they were harmed in placements in many ways, including suffering physical and psychological deterioration.[1] *See supra* pp. 2–4.

The second constitutional minimum required for standing is that the injury or threat of injury be traceable to defendants' actions or inactions. *See e.g., Allen v. Wright,* 468 U.S. at 756–57. The harm alleged by plaintiffs is clearly traceable to ACS. In the case of Lawrence B., plaintiffs' allegations link irreparable harm with his placements by ACS, which included a temporary facility where he remained for seven months. Darren and David F. were allegedly placed in a series of inappropriate placements by ACS including the home of their grandmother, who could not adequately care for them, a foster care situation where they were not provided adequate services, and a residential treatment center which previously did not accept such young children and which was recommended against in a psychiatric evaluation. Plaintiffs allege that these inappropriate placements by ACS have led to irreparable harm. Steven I. also alleges harm caused by ACS inappropriately placing him in a group home when his condition called for a residential treatment center capable of dealing with his severe psychiatric needs.

Defendants, however, argue that none of the claims of the named plaintiffs are causally linked to the Pre–Placement Center.

It is necessary to first examine the Complaint to determine if plaintiffs asserted claims regarding Pre–Placement. Defendants argue that Pre–Placement does not appear in the Complaint and therefore is not at issue in this litigation. This is erroneous as the Complaint articulates claims relating to facilities that house children. Since children sleep at the Pre–Placement Center, often for consecutive nights, Pre–Placement claims are encompassed in the Complaint as a placement concern. While defendants claim that Pre–Placement is not a placement, this Court disagrees.

The Court recognizes that the Pre–Placement Center was not established as a placement, but essentially it has become a placement. Originally, the Pre–Placement Center was designed to facilitate the transfer of children after the office of Placement Services closed for the evening. Therefore, after 6:00 p.m. on weekdays, on the weekends, and on holidays, children removed from their homes by case workers or the police, children picked up on the street by the police, children remanded to the custody of ACS by Family Court, and children who walk in off the street, are brought to the Pre–Placement Center. The original purpose of Pre–Placement was to gather intake information from the caseworkers or children, funnel this information to the Emergency Center Services which matches children to placements, and then, later in the evening, provide transportation for the children to their placement. If Pre–Placement operated in this fashion, the Court would agree with city defendants that Pre–Placement is not a placement.

***6** Pre–Placement, however, has become much more than a short stopover for children needing ACS placement services after regular business hours. Children began spending the night at the Pre–Placement Center and currently, many children spend multiple nights at Pre–Placement. The Pre–Placement Center now serves as a temporary placement provided by ACS. As such, it is clearly within the ambit of placement claims raised by plaintiffs in the Complaint.

As discussed above, the Complaint outlines the "Legal Framework" regarding placement claims and discusses specific allegations of inappropriate placements of named plaintiffs. *See supra* pp. 2–4. Under the heading "Out–of–Home Placements" in the Complaint, allegations that include the Pre–Placement Center can also be found. For example, the Complaint discusses situations where children are "placed on a 'hit-or-miss' basis in whatever bed is available." Compl. ¶ 239. Plaintiffs allege that "many children are placed inappropriately," which is one of the issues surrounding plaintiffs' concerns with the Pre–Placement Center. *Id.* ¶ 240. Finally, the Complaint raises claims regarding "temporary shelter facilit[ies]" which clearly includes problems arising at the Pre–Placement Center. *Id.* ¶ 241.

Defendants next contend that since none of the named plaintiffs have remained overnight at the Pre–Placement Center, no named plaintiff has standing to assert claims with regard to the Pre–Placement Center. At the time the Interim Stipulation and Order was entered, defendants are correct that no named plaintiff had spent the night at the Pre–Placement Center. The Court, however, concludes that a named plaintiff need not have remained overnight at this particular placement for plaintiffs to have standing to challenge the Pre–Placement Center.[2]

The Court recognizes that an injury of one kind claimed by a named plaintiff does not give that named plaintiff, by virtue of that injury, standing to litigate injuries of a different kind suffered by other class members. *See Blum v. Yaretsky,* 457 U.S. 991, 999, 102 S.Ct. 2777, 73 L.Ed.2d 534 (1982). While a named plaintiff must suffer injury that is causally linked to the defendants, there is no requirement that harm to the named plaintiff be identical to that of each member of the class. As this Court stated in *Wilder v. Bernstein,* "[t]here is no requirement that the factual basis for the claims of all members of a

purported class be identical." 645 F.Supp. 1292, 1312 (S.D.N.Y.1986), *aff'd,* 848 F.2d 1338 (2d Cir.1988) (citation omitted).

In *Selzer v. Board of Educ.,* the court held that the fact that the named plaintiffs "suffered the same general injury suffered by all the class members, ... [was] sufficient to confer standing on them to represent all members of the class." 112 F.R.D. 176, 183 (S.D.N.Y.1986). The court in *Selzer v. Board of Educ.* granted class certification to women challenging the procedures for filling high school supervisory and administrative positions in New York City. While the class consisted of women qualified to apply for the positions of principal, assistant principal in any subject or administrative area, or any supervisory or administrative position, none of the named plaintiffs were qualified at the time of certification for the position of principal. *Id.* at 177, 182–83. The court held, however, that as the named plaintiffs had the same interests as those qualified to be principals, and the positions they applied for could give them the requisite experience necessary to apply for the positions of principal in the future, they had standing to represent the claims. *Id.* at 183.

***7** Likewise, the named plaintiffs in the case at bar have standing to represent claims regarding similar placements and placements where they could eventually be assigned. First, there are named plaintiffs who have suffered the same harm from being inappropriately placed by ACS as that suffered by children staying at the Pre–Placement Center. For example, Lawrence B. remained in a temporary placement, designed as a placement not to last more than ninety days, for seven months. He experienced the same type of harm, causally linked to the same defendants, and requested the same type of relief for his inadequate placement as is sought on behalf of plaintiffs who have remained at the Pre–Placement Center. Second, as Pre–Placement provides temporary shelter for some children removed from their homes and children who go AWOL from their placements, there were named plaintiffs, at the time the Complaint was filed, who clearly faced the threat of spending nights at the Pre–Placement Center. For instance, Steven I., who at the time the Complaint was filed was in the custody of ACS but had gone AWOL from his placement, faced the threat of being brought to Pre–Placement by the police if he was found after 6:00 p.m. during the week, on a weekend, or on a holiday.

The Court is not persuaded that in order to have standing plaintiffs must have a named plaintiff in each and every placement that they allege is harmful. Such a requirement would obliterate the purpose of a class action. For example, plaintiffs need not have a named plaintiff in every foster home in New York City, nor do they need to have a named plaintiff placed with every agency which contracts with the City to provide foster and congregate care services. Because the named plaintiffs allege harm resulting from inappropriate placements maintained by ACS, and the Pre–Placement Center is such a placement, the second constitutional minimum required for standing is met.[3]

This case is distinguishable from class actions where courts have refused to find standing. For instance, in *Blum v. Yaretsky,* the Supreme Court did not find that the named plaintiffs, who were being transferred from higher level care nursing homes to lower level care nursing homes, could represent class members who were transferred from lower care facilities to higher care facilities. 457 U.S. at 1001–02. The conditions under which these transfers were made were significantly different as was the contemplated harm. Persons being moved to lower care units risked greater physical and psychological problems than those moved to higher care facilities. The Medicaid of those moved to lower care units was decreased as opposed to those moved to higher care facilities where Medicaid was increased. Further, unlike persons who refused to move to a higher care facility, those who refused to move to a lower level care facility jeopardized their Medicaid benefits. *Id.*

In 1996, the Supreme Court again decided a standing issue in the class action context. *Lewis v. Casey.* 518 U.S. 343 (1996). Defining standing, the Supreme Court noted that the mere "status of being subject to a governmental institution that was not organized or managed properly" is not enough to prove actual or imminent harm. *Id.* at 350. The Court, by example, illustrated a lack of standing:

> ***8** If ... a healthy inmate who had suffered no deprivation of needed medical treatment were able to claim violation of his constitutional right to medical care, ... simply on the ground that the prison medical facilities were inadequate, the essential distinction between judge and executive would have disappeared: it would have become the function of the courts to assure adequate medical care in prisons.

Id. Unlike the hypothetical plaintiffs presented by the Supreme Court in *Lewis v. Casey,* the named plaintiffs in the instant case have alleged deprivation. While the named plaintiffs have not slept in every bed provided by ACS, the Supreme Court does not require identical factual allegations for there to be standing. It surely does not follow from the Supreme Court's example of a lack of standing that to find standing there must be a named plaintiff suffering from each and every medical condition that the prison medical facility handles. Such a requirement would eradicate the purpose of efficiency that a class action provides.

The third constitutional minimum required of standing is that "the injury is likely to be redressed by the requested relief." *Comer v. Cisneros,* 37 F.3d at 787. When the Complaint was filed, named plaintiffs Lawrence B., Darren and David F., and Steven I., alleged that they were suffering harm as a result of being inappropriately placed by ACS. *See supra* pp. 2–4. Courts have declined to find standing where, by the time the Complaint has been filed, the injury has already occurred and is unlikely to recur. *See O'Shea v. Littleton,* 414 U.S. at 495–96 ("[p]ast exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief ... if unaccompanied by any continuing, present adverse effects"); *Schroedel v. New York Univ. Med. Ctr.,* 885 F.Supp. 594, 599–600 (S.D.N.Y.1995) (standing not found in case seeking injunctive relief when past patient of hospital could not show likelihood that she would again need services of hospital). In this case, however, all of the named plaintiffs alleging harm from inappropriate placements were still being harmed at the time the Complaint was filed. These named plaintiffs, who were being harmed as a result of inappropriate placements at the time the Complaint was filed, represent a class of persons seeking injunctive relief to remedy this harm. The Court finds that the equitable relief sought by plaintiffs is likely to remedy the alleged harm,[4] and therefore plaintiffs have met all of the standing requirements.

CONCLUSION

For the foregoing reasons, City defendants' motion to dismiss plaintiffs' claims regarding the Pre–Placement Center and vacate the Interim Stipulation and Order Concerning Overnights at Pre–Placement is denied.

It is so ordered.

Footnotes

1 Imminent harm also exists that named plaintiffs will continue to be placed in inappropriate placements by ACS, including potential overnight stays at the Pre–Placement Center.

2 In a Memorandum Decision dated May 22, 1998, the Court granted the intervention of named plaintiff Danielle J. This named plaintiff has spent multiple overnights at the Pre–Placement Center. The Court finds that Pre–Placement claims are raised by plaintiffs in the Complaint and that Danielle J. is an adequate representative of such claims. While the presence of Danielle J. is not necessary to maintain claims regarding the Pre–Placement Center, her status as a named plaintiff clearly operates to preclude the dismissal of Pre–Placement claims. Therefore, the only question remaining is whether to vacate the Interim Stipulation and Order. The Court finds, however, that since plaintiffs always had standing with regard to these claims, no grounds exist for vacating the Interim Stipulation and Order.

3 The Court certified the class on July 3, 1996, certified subclasses on April 23, 1998, and intervened Danielle J. on May 22, 1998. Throughout this certification process, the Court thoroughly examined the class, subclasses, and named plaintiffs to ensure that they met the requirements of Federal Rules of Civil Procedure 23(a) and as such, the Court refuses to revisit the issue of whether the named plaintiffs' claims with regard to placement are common and typical of the class. As the named plaintiffs clearly meet Rule 23(a) requisites, and placement claims, which include the Pre–Placement Center, are raised, the Court finds that the named plaintiffs are appropriate representatives with regard to Pre–Placement issues.

4 This ruling does not conflict with the Supreme Court's holding in *City of Los Angeles v. Lyons.* 461 U.S. 95, 103 S.Ct. 1660, 75 L.Ed.2d 675 (1983). There the Supreme Court found that a plaintiff, who suffered injury but had virtually no likelihood of repeated injury, did not meet the requisite needed for equitable relief. *Id.* at 105. In *Lyons,* the plaintiff was injured by police officers when they placed him in a choke hold. The plaintiff was released by the police before filing suit, and the Supreme Court found that repetition of the choke hold on the plaintiff was so unlikely that the plaintiff did not have standing to seek injunctive relief. *Id.* at 105–10. Unlike the case at bar, *Lyons* was not a class action and the injury was not likely to recur to the individual plaintiff. Here, the named plaintiffs represent a class, where the remedy of equitable relief is usually most viable, and at the time the Complaint was filed, the named plaintiffs were still alleging harm from inappropriate placements.