

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

-----X
V.W., a minor, by and through his parent :
and natural guardian DERECK WILLIAMS; :
R.C., a minor, by and through his parent and :
natural guardian SANDRA CHAMBERS; :
C.I., a minor, by and through his parent and :
natural guardian VERTELL PENDARVIS; :
M.R., a minor, by and through his parent and :
natural guardian KAREN RAYMOND; :
F.K., a minor, by and through his parent and :
natural guardian KASHINDE :
KABAGWIRA; and J.P., a minor, by and :
through his parent and natural guardian :
ALISSA QUIÑONES; on behalf of :
themselves and all others similarly situated, :
Plaintiffs, :

v. :

EUGENE CONWAY, Onondaga County Sheriff, :
in his official capacity; ESTEBAN GONZALEZ, :
Chief Custody Deputy of the Onondaga County :
Justice Center, in his official capacity; KEVIN M. :
BRISSON, Assistant Chief Custody Deputy, in :
his official capacity; and SYRACUSE CITY :
SCHOOL DISTRICT, :
Defendants. :

16-CV-1150 (DNH) (DEP)

PLAINTIFFS' MEMORANDUM
OF LAW IN SUPPORT OF
MOTION FOR CLASS
CERTIFICATION

Mariko Hirose, Bar # 520250
Mariana Kovel*
Aimee Krause Stewart**
Aadhithi Padmanabhan*
Philip Desgranges
Christopher Dunn
NEW YORK CIVIL LIBERTIES
UNION FOUNDATION
125 Broad Street, 19th Floor
New York, NY 10004
Tel: (212) 607-3300
Fax: (212) 607-3318
mhirose@nyclu.org

Joshua T. Cotter
Samuel C. Young
Susan M. Young
LEGAL SERVICES OF CENTRAL
NEW YORK
221 S. Warren Street, 3rd Floor
Syracuse, NY 13202
Tel: (315) 703-6500
jcotter@lscny.org

*Not yet admitted to N.D.N.Y.

** Application for admission pro
hac vice pending

DATED: September 23, 2016

TABLE OF CONTENTS

PRELIMINARY STATEMENT1

STATEMENT OF FACTS.....2

 I. The Sheriff’s Office Has a Pervasive Policy and Practice of Punishing Juveniles with Solitary Confinement.....2

 II. The Sheriff’s Office’s Solitary Confinement Policies and Practices Uniformly Deprive Juveniles of Meaningful Contact with Other Individuals.....4

 III. The Sheriff’s Office’s Solitary Confinement Policies and Practices Inflict Similar Types of Serious Harm and Risks of Serious Harm on Juveniles.....6

 IV. The Sheriff’s Office Is Aware of the Substantial Risk of Serious Harm Posed to All Juveniles by Their Policies and Practices.....8

 V. The Sheriffs’ Office’s Policies and Practices Systematically Deprive Juveniles at the Justice Center of Mandated Education Services.....9

 VI. The Named Plaintiffs Have Each Been Subjected to Defendants’ Unlawful and Unconstitutional Policies and Practices.....10

SUMMARY OF MERITS CLAIMS.....11

ARGUMENT.....13

 I. PLAINTIFFS MEET THE REQUIREMENTS OF RULE 23(a).....14

 A. The Proposed Class Is Sufficiently Numerous.....14

 B. Questions of Law and Fact Are Common to the Proposed Class17

 C. The Claims of the Named Plaintiffs Are Typical of the Proposed Class.....21

 D. The Named Plaintiffs Will Fairly and Adequately Represent the Class.....23

 II. PLAINTIFFS MEET THE REQUIREMENTS OF RULE 23(B)(2)24

CONCLUSION25

TABLE OF AUTHORITIES

CASES

<i>Amgen Inc. v. Conn.Ret. Ret. Plans & Trust Funds</i> , 133 S. Ct. 1184 (2013).....	11
<i>Andre H. v. Ambach</i> , 104 F.R.D. 606 (S.D.N.Y. 1985)	20
<i>Baby Neal ex rel. Kanter v. Casey</i> , 43 F.3d 48 (3d Cir.1994).....	20
<i>Baffa v. Donaldson, Lufkin & Jenrette Secs. Corp.</i> , 222 F.3d 52 (2d Cir. 2000).....	24
<i>Butler v. Suffolk Cty.</i> , 289 F.R.D. 80 (E.D.N.Y. 2013).....	19, 22, 24
<i>Caiozzo v. Koreman</i> , 581 F.3d 63 (2d Cir. 2009).....	11
<i>Cent. States Se. & Sw. Areas Health and Welfare Fund v. Merck-Medco Managed Care</i> , 504 F.3d 229 (2d Cir. 2007).....	14
<i>Clarkson v. Coughlin</i> , 145 F.R.D. 339 (S.D.N.Y. 1993).....	14, 15
<i>Cutler v. Perales</i> , 128 F.R.D. 39 (S.D.N.Y. 1989).....	21
<i>Denney v. Deutsche Bank AG</i> , 443 F.3d 253 (2d Cir. 2006).....	23
<i>Eisen v. Carlisle & Jacquelin</i> , 391 F.2d 555 (2d Cir. 1968)	22
<i>Escalera v. N.Y.C. Hous. Auth.</i> , 425 F.2d 853 (2d Cir. 1970).....	18
<i>Farmer v. Brennan</i> , 511 U.S. 825 (1994).....	11
<i>G. F. v. Contra Costa Cty.</i> , No. 13-CV-03667, 2015 WL 4606078 (N.D. Cal. July 30, 2015)	20
<i>Gen. Tel. Co. of the Sw. v. Falcon</i> , 457 U.S. 157 (1982).....	17, 21
<i>Gerstein v. Pugh</i> , 420 U.S. 103 (1975)	16
<i>Handberry v. Thompson</i> , 446 F.3d 335 (2d Cir. 2006)	12
<i>Helling v. McKinney</i> , 509 U.S. 25 (1993)	12
<i>Hope v. Pelzer</i> , 536 U.S. 730 (2002).....	12

<i>In re Frontier Ins. Group, Inc., Sec. Litig.</i> , 172 F.R.D. 31 (E.D.N.Y. 1997).....	23
<i>Inmates of Attica Corr. Facility v. Rockefeller</i> , 453 F.2d 12 (2d Cir. 1971).....	19
<i>Jones v. Goord</i> , 190 F.R.D. 103 (S.D.N.Y. 1999).....	21
<i>Ligon v. City of New York</i> , 288 F.R.D. 72 (S.D.N.Y. 2013)	24
<i>Lollis v. N.Y. State Dep't of Soc. Servs.</i> , 322 F. Supp. 473 (S.D.N.Y. 1970).....	12
<i>Marisol A. v. Giuliani</i> , 126 F.3d 372 (2d Cir. 1997).....	passim
<i>Marriott v. Cty. of Montgomery</i> , 227 F.R.D. 159 (N.D.N.Y. 2005), <i>aff'd</i> , No. 05-1590-CV, 2005 WL 3117194 (2d Cir. Nov. 22, 2005).....	19, 21
<i>McGee v. Pallito</i> , No. 04-CV-00335, 2015 WL 5177770 (D. Vt. Sept. 4, 2015).....	18, 19, 24
<i>Morgan v. Sproat</i> , 432 F. Supp. 1130 (D. Miss. 1977)	12
<i>Nicholson v. Williams</i> , 205 F.R.D. 92 (E.D.N.Y. 2001)	19
<i>Parsons v. Ryan</i> , 754 F.3d 657 (9th Cir. 2014).....	19, 20
<i>Penn. Pub. Sch. Emps.' Ret. Sys. v. Morgan Stanley & Co., Inc.</i> , 772 F.3d 111 (2d Cir. 2014)	15
<i>Peoples v. Annucci</i> , --- F.Supp.3d ---, 2016 WL 1464613 (S.D.N.Y. Apr. 14, 2016)	24
<i>Phelps. V. Kapnolas</i> , 308 F.3d 180 (2d Cir. 2002).....	12
<i>Plaintiffs Class v. Credit Lyonnais Rouse Ltd.</i> (<i>In re Sumitomo Copper Litig.</i>), 262 F.3d 134 (2d Cir. 2001)	14
<i>Port Auth. Police Benevolent Ass'n v. Port Auth. of N.Y. and N.J.</i> , 698 F.2d 150 (2d Cir. 1983)	18
<i>R. A-G ex rel. R.B. v. Buffalo City Sch. Dist. Bd. Of Educ.</i> , No. 12-CV-960S, 2013 WL 3354424 (W.D.N.Y. July 3, 2013).....	20, 21
<i>R.A.G. ex rel. R.B. v. Buffalo City Sch. Dist. Bd. Of Educ.</i> , 569 F. App'x 41 (2d Cir. 2014) 20, 21.....	20, 21

<i>Redmond v. Bigelow</i> , No. 2:13-CV-393, 2014 WL 2765469 (D. Utah June 18, 2014).....	16
<i>Robidoux v. Celani</i> , 987 F.2d 931 (2d Cir. 1993).....	passim
<i>Roper v. Simmons</i> , 543 U.S. 551 (2005)	12
<i>Shepard v. Rhea</i> , No. 12-CV-7220, 2014 WL 5801415 (S.D.N.Y. Nov. 7, 2014)	24
<i>Wal-Mart Stores, Inc. v. Dukes</i> , 564 U.S. 338 (2011).....	18, 24
<i>Williams v. Conway</i> , 312 F.R.D. 248 (N.D.N.Y 2016).....	passim

STATUTES AND REGULATIONS

20 U.S.C. § 1400.....	13, 17
34 C.F.R. § 300.....	13
Fed. R. Civ. P. 23.....	passim
N.Y. Comp. Codes R. & Regs. Tit. 8 § 118.4	12
N.Y. Comp. Codes R. & Regs. Tit. 9 §§ 7070	12

MISCELLANEOUS

Statement of Interest of the United States of America, <i>G. F. v. Contra Costa Cty.</i> , No. 3:13-cv-3667, 2014 WL 6471703 (N.D. Cal. Feb. 13, 2014).....	13
---	----

PRELIMINARY STATEMENT

This civil rights action challenges the Onondaga County Sheriff's Office's policy and practice of using solitary confinement to punish 16- and 17-year-olds at the Onondaga County Justice Center. The Sheriff's Office routinely locks children, most of whom are being detained pre-trial and many of whom have mental illness, in small, stark cells by themselves for 23 hours or more a day for weeks and even months on end, depriving them of meaningful human interaction and prohibiting them from receiving educational services. These harrowing conditions are imposed on children for minor infractions like yelling, throwing juice, or standing on a basketball.

Solitary confinement can inflict serious harm on any juvenile—and is especially damaging to those with preexisting mental health conditions. Recognizing this, facilities around the country are turning away from punishing juveniles with solitary confinement. The Sheriff's Office, however, has ignored the mounting research that shows the dangers of solitary confinement for juveniles, has ignored repeated warnings about harm being inflicted on juveniles in its jail, and continues to use solitary confinement in violation of the Eighth and Fourteenth Amendments to the U.S. Constitution. In addition, the Sheriff's Office and the Syracuse City School District are disregarding their obligations to provide adequate education, much less special education services, to the juveniles in solitary confinement, in violation of the Fourteenth Amendment and the Individuals with Disabilities Education Act ("IDEA").

The named plaintiffs V.W., R.C., C.I., M.R., F.K., and J.P., each of whom is currently detained at the Justice Center, have moved to certify a class pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure of all 16- and 17-year-olds who are now or will be incarcerated at the Justice Center. Further, R.C. and F.K. seek to certify a subclass of juveniles incarcerated

at the Justice Center who are eligible for special education services under the IDEA. In support of that motion, they submit this memorandum and numerous declarations establishing the facts relevant to the motion.

Class certification under Rule 23(b)(2) is the proper and well-established means of efficiently addressing civil rights violations, especially in prisons, where, as here, declaratory and injunctive relief is necessary to protect detainees from unlawful and dangerous policies and practices. Accordingly, plaintiffs respectfully request that this Court grant their motion for class certification and certify a class and a subclass pursuant to Rule 23(b)(2).

STATEMENT OF FACTS¹

I. The Sheriff's Office Has a Policy and Practice of Punishing Juveniles with Solitary Confinement.

The Justice Center is a 671-bed correctional facility that is run by Eugene Conway, the Onondaga County Sheriff, along with Esteban Gonzalez, Chief Custody Deputy, and Kevin Brisson, Assistant Chief Custody Deputy (collectively, "Sheriff's Office"). Custody Dep't, Onondaga Cty. Sheriff's Office, <http://sheriff.ongov.net/custody/> (last visited Sept. 22, 2016), attached as Ex. 16 to Decl. of Joshua T. Cotter in Support of Pls.' Mot. for Class Cert. (Sept. 22, 2016) ("Cotter Decl."). Although primarily an adult facility, the Justice Center also holds 16- and 17-year-old boys and girls, most of whom are detained pre-trial and some of whom are awaiting sentencing or serving less than one-year of incarceration. *See* N.Y. State Comm'n on Corr, Daily Pop. Count Reporting Sys. for Onondaga Cty. Jail, attached as Ex. 17 to Cotter Decl. Juveniles at the jail are mostly housed in their own wing, and when they are not being disciplined they are allowed out of their cells for approximately 11 hours a day for recreation, showers,

¹ In support of this motion Plaintiffs have submitted the Declaration of Louis Kraus, M.D., Declaration of Michelle Shames, Declaration of Emily NaPier, and the Declaration of Josh Cotter, Esq., which attaches additional documentary evidence as well as the declarations of all six named plaintiffs. A more comprehensive statement of facts may be found in these submissions.

library use, GED classes, and vocational programming. Housing Section, Onondaga Cty. Sheriff's Office, <http://sheriff.ongov.net/custody/housing-section/> (last visited Sept. 21, 2016), attached as Ex. 18 to Cotter Decl.; Onondaga Cty. Sheriff's Office, Written Directive No. CUS-041: Educational and Vocational Programs ("Education Directive") (Dec. 4, 2015), attached as Ex. 25 to Cotter Decl.; Onondaga Cty. Sheriff's Office, Written Directive No. CUS-040: Inmate Labor and Industry Programs ("Programs Directive") (Sept. 1, 2010), attached as Ex. 26 to Cotter Decl.; Onondaga Cty. Sheriff's Office, Written Directive No. CUS-045: Religious Services ("Religious Directive") (Nov. 24, 2009), attached as Ex. 27 to Cotter Decl.; Onondaga Cty. Sheriff's Office, Written Directive No. CUS-021: Inmate Activities ("Activities Directive") (Sept. 16, 2009), attached as Ex. 28 to Cotter Decl.

The Sheriff's Office applies the same set of disciplinary policies to all of its detainees, including to all juveniles, whether they are pre-trial or post-conviction. *See* Inmate Handbook (Feb. 2016), <http://sheriff.ongov.net/wp-content/uploads/2016/06/Inmaterulebook2016.pdf>, attached as Ex. 19 to Cotter Decl.; Onondaga Cty. Sheriff's Office, Written Directive No. CUS-023: Inmate Discipline ("Discipline Directive") (Nov. 8, 2010), attached as Ex. 20 to Cotter Decl. These policies permit disciplinary isolation of juveniles for *any* rule violation or misbehavior. *Id.* Consistent with these policies, the Justice Center has in practice disciplined juveniles with solitary confinement for minor incidents including for spraying another juvenile with a water bottle, yelling out of a cell door, putting one's feet on the table while watching TV, or distracting a deputy during count. *Id.*; Decl. of V.W. ("V.W. Decl.") ¶¶ 14-15 (Sept. 13, 2016), attached as Ex. 1 to Cotter Decl.; Decl. of M.R. ¶¶ 21, 24 ("M.R. Decl.") (Sept. 13, 2016), attached as Ex. 7 to Cotter Decl.

According to the Sheriff's Office's own data, between October 1, 2015 and August 31, 2016 it disciplined at least 86 individual 16- or 17-year-olds with solitary confinement. Decl. of Michelle Shames in Support of Pls.' Mot. for Class Cert. ("Shames Decl.") ¶ 7 (Sept. 22, 2016). During the same period, solitary confinement sanctions were imposed for at least 255 incidents of alleged rule-breaking by juveniles. *Id.* ¶ 9. For those 255 incidents, the Sheriff's Office imposed 2,698 days in solitary confinement upon 16- or 17-year-olds. *Id.* ¶ 8. Most juveniles are likely to be punished with disciplinary isolation during their time at the Justice Center because this punishment is imposed for the types of minor misbehavior that is ordinary for young people. For example, of the 18 juveniles held at the Justice Center on September 21, 2016, no fewer than 13 had been punished at least once with disciplinary isolation. *Id.* ¶ 16.

II. The Sheriff's Office's Solitary Confinement Policies and Practices Uniformly Deprive Juveniles of Meaningful Contact with Other Individuals.

The Sheriff's Office uses different phrases to describe solitary confinement in its policy documents, although all of these disciplinary policies impose the same experience of isolation that professional organizations in the field, including the organization that accredits the Justice Center, call solitary confinement. *See* Decl. of Dr. Louis J. Kraus ("Kraus Decl.") ¶ 27 (Sept. 19, 2016); Nat'l Comm'n on Corr. Health Care, Solitary Confinement (Isolation) (Apr. 10, 2016), attached to Kraus Decl. as Ex. E (defining solitary confinement as "the housing of an adult or juvenile with minimal to rare meaningful contact with other individuals"). When a "lock-in" sanction is imposed, a juvenile is sentenced to spend at least 23 hours a day in his or her own cell within the juvenile unit. *See, e.g.,* V.W. Decl. ¶ 5; Decl. of C.I. ("C.I. Decl.") ¶ 8 (Sept. 13, 2016), attached as Ex. 5 to Cotter Decl.; Decl. of F.K. ("F.K. Decl.") ¶ 5 (Sept. 13, 2016), attached as Ex. 9 to Cotter Decl.; Decl. of J.P. ("J.P. Decl.") ¶ 6 (Sept. 13, 2016), attached as Ex. 11 to Cotter Decl.; Decl. of A.M. ("A.M. Decl.") ¶ 4 (Sept. 13, 2016), attached as Ex. 13 to

Cotter Decl. When a “punitive segregation” sanction is imposed, a juvenile must serve at least 23 hours a day in a cell within the Segregation Housing Unit (“SHU” or the “Box”), which is also where adult inmates serve punitive isolation sanctions. *See* Inmate Handbook 13, 26-17. The Sheriff’s Office also uses the phrase “administrative segregation” to describe days spent in isolation—either in lock-in or the SHU—before a juvenile’s disciplinary hearing, which routinely occurs 15 business days (i.e. 3 weeks) after the juvenile is initially placed in isolation. Discipline Directive OCJC000028; Onondaga Cty. Sheriff’s Office, Written Directive No. CUS-050: Segregation Housing (Jan. 13, 2016), attached as Ex. 21 to Cotter Decl.; *see, e.g.*, V.W. Decl. ¶ 17; C.I. Decl. ¶ 6; M.R. Decl. ¶¶ 7-8; F.K. Decl. ¶¶ 4, 17-18; J.P. Decl. ¶¶ 14-15.

Whether they are in “lock-in,” “administrative segregation,” or “punitive segregation,” juveniles are subject to the same dehumanizing conditions: they are locked for 23 hours a day into a cell that is approximately 7’ or 8’ by 9’ or 10’, with minimal furnishings and virtually no contact with other people. Kraus Decl. ¶¶ 20, 22; Onondaga Cty. Sheriff’s Office, Written Directive No. CUS-027: Inmate Access to Telephones (Apr. 4, 2014), attached as Ex. 23 to Cotter Decl.; Onondaga Cty. Sheriff’s Office, Written Directive No. CUS-047: Inmate Visitation (Nov. 26, 2014), attached as Ex. 24 to Cotter Decl.; V.W. Decl. ¶ 5; Decl. of R.C. (“R.C. Decl.”) ¶ 5 (Sept. 13, 2016), attached as Ex. 3 to Cotter Decl.; C.I. Decl. ¶ 8; M.R. Decl. ¶ 10; F.K. Decl. ¶ 5; J.P. Decl. ¶ 6; A.M. Decl. ¶ 4. Recreation is limited to one hour out of their cells per day, although many juveniles do not even get that much. *See* Inmate Handbook 26-27; V.W. Decl. ¶ 6; Kraus Decl. ¶ 23.² The juveniles eat alone in their cells. *Id.* ¶ 22. They are prohibited from

² In the SHU, juveniles spend their one hour of recreation in a chain-linked indoor cage, only a little bigger than a SHU cell. Kraus Decl. ¶ 23; V.W. Decl. ¶ 6; R.C. Decl. ¶ 5; C.I. Decl. ¶¶ 9, 13; M.R. Decl. ¶¶ 11, 16; F.K. Decl. ¶ 5; J.P. Decl. ¶ 7; A.M. Decl. ¶ 5. There is nothing to do in the cage. *See, e.g.*, F.K. Decl. ¶ 10; A.M. Decl. ¶ 5. Because it makes them feel like a circus

attending the Justice Center's educational programming. *See* Onondaga Cty. Leg. Ways & Means Comm., 2016 Budget Review of Pub. Safety Comm. Dep'ts ("Leg. Meeting Minutes") 13-14 (Sept. 24, 2015), attached as Ex. 30 to Cotter Decl.; V.W. Decl. ¶ 7; R.C. Decl. ¶ 6; C.I. Decl. ¶ 11; M.R. Decl. ¶¶ 13-14; F.K. Decl. ¶¶ 7-8; J.P. Decl. ¶ 9; A.M. Decl. ¶ 6; *see also* Packets of Worksheets Provided to named plaintiffs ("Cell Packets") (July to Sept. 2016), attached as Ex. 29 to Cotter Decl. By rule they are not permitted to talk to each other through the doors or in passing; violation of that policy can result in more time in isolation. Inmate

• Handbook 26; Kraus Decl. ¶ 24; R.C. Decl. ¶ 5, 10; C.I. Decl. ¶¶ 10, 19-20; M.R. Decl. ¶¶ 12, 23; F.K. Decl. ¶ 6; J.P. ¶¶ 8, 14. Juveniles are also routinely housed next to adult inmates who harass and intimidate them. *See, e.g.*, V.W. Decl. ¶ 6; R.C. Decl. ¶¶ 5, 9; C.I. Decl. ¶¶ 9, 13; M.R. Decl. ¶ 11; F.K. Decl. ¶ 5; J.P. Decl. ¶ 7; A.M. Decl. ¶ 5; *see also* Kraus Decl. ¶¶ 26, 44. Mental health care for those in solitary confinement is inadequate: there is no mental health screening before placing the juveniles in solitary confinement and mental health services are generally limited to a worker stopping by occasionally to briefly ask the juveniles, through a locked door, whether they are suicidal through their locked doors. Kraus Decl., ¶¶ 14, 45-46; V.W. Decl. ¶ 9; R.C. Decl. ¶ 6-77; C.I. Decl. ¶ 12; M.R. Decl. ¶¶ 19-20.

III. The Sheriff's Office's Solitary Confinement Policies and Practices Inflict Similar Types of Serious Harm and Risks of Serious Harm on Juveniles.

The Sheriff's Office's policy and practice of solitary confinement is inflicting similar types of serious harm and risk of serious harm on juveniles at the Justice Center. Kraus Decl. ¶¶ 29-44 (relying on literature listed in Exhibit C). Because juveniles are still developing socially, psychologically, and neurologically, children as a group are especially susceptible to

animal or because they do not want to be harassed by an adult in a neighboring cage, juveniles will often forgo their one hour of recreation. *See, e.g.*, C.I. Decl. ¶ 13; M.R. Decl. ¶ 16.

psychological harm caused by isolation, including psychosis, post-traumatic stress disorders, major depression, anxiety, paranoia, and suicide. *Id.* ¶¶ 30-32. Solitary confinement is also likely to negatively impact the juveniles as a group, as well as the safety of the facility, by exacerbating the agitation and misbehavior that led to discipline in the first place. Kraus Decl. ¶¶ 55-56. Juveniles at the Justice Center who have spent time in solitary confinement, including the named plaintiffs, are regularly experiencing these types of harm: suicidal ideations, anxiety, post-traumatic symptoms, agitation, and other psychological phenomena that correlate with the experience of solitary confinement. Kraus Decl. ¶¶ 39-44.

These risks of harm are particularly high for juveniles with pre-existing mental health conditions, which, based on research, is likely between 50 to 70% of the juveniles. Kraus Decl. ¶¶ 35-37, 56; Bureau of Justice Statistics, *Mental Health Problems of Prison and Jail Inmates* (Dec. 14, 2006), <http://www.bjs.gov/content/pub/pdf/mhppji.pdf>, attached as Ex. 34 to Cotter Decl. Even the Sheriff's Office acknowledges that at least 35% of its inmates have a mental health condition. James T. Mulder, *Onondaga County Considering Less Costly Ways of Handling Surge of Mentally Ill Inmates*, Syracuse.com, Sept. 30, 2014, http://www.syracuse.com/news/index.ssf/2014/09/onondaga_county_considering_less_costly_ways_of_handling_surge_of_mentally-ill_i.html, attached as Ex. 33 to Cotter Decl. Medical professionals, including the American Medical Association, agree that juveniles with mental health conditions should not be placed in any kind of isolation for longer than *one hour* without a comprehensive evaluation from a physician. Kraus Decl. ¶ 37.

Major organizations of medical and correctional professionals recognize the risks of these harms and categorically oppose the use of solitary confinement as punishment for juveniles. *Id.* ¶¶ 37-38, 50-54. A growing number of jurisdictions and correctional systems around the

country also ban or strictly limit the use of solitary confinement for people under 18. *See, e.g.,* Natalie J. Kraner et al., Lowenstein Sandler LLP & Lowenstein Center for the Public Interest, *51-Jurisdiction Survey of Juvenile Solitary Confinement Rules in Juvenile Justice Systems* (Oct. 2015), attached as Ex. 39 to Cotter Decl.

IV. The Sheriff's Office Is Aware of the Substantial Risk of Serious Harm Posed to All Juveniles by Their Policies and Practices

The Sheriff's Office is aware of the substantial risk of serious harm posed by their policy and practice of placing juveniles in solitary confinement. At a September 24, 2015 County Legislature session, Defendant Gonzalez acknowledged that he was aware of studies showing the effects of isolation on juveniles. Leg. Meeting Minutes 13-14. Also in 2015, Joshua Cotter, counsel to plaintiffs in this matter, wrote to Gonzalez to notify him of the risks posed to juveniles subjected to solitary confinement. Letter from Joshua T. Cotter, Staff Attorney, Legal Services of Central New York, to Esteban Gonzalez, Chief Custody Deputy, Onondaga County Justice Center (Nov. 23, 2015), attached as Ex. 36 to Cotter Decl. Gonzalez acknowledged that "solitary confinement is against the law and inhumane" but contended that the Justice Center's use of isolation was not "solitary confinement." Letter from Esteban Gonzalez to Josh Cotter (Dec. 7, 2015), attached as Ex. 37 to Cotter Decl. Later that year, Legal Services of Central New York filed an Article 78 Petition alleging that the Justice Center policies subject juveniles to severe psychological harm. Verified Pet. & Compl. & Supporting Papers, *T.S. v. Conway* (Dec. 15, 2015), attached as Ex. 38 to Cotter Decl. Additionally, local advocates have met in person on multiple occasions with Sheriff Conway and Gonzalez to warn them about the dangers of disciplinary isolation for juveniles at the jail. Decl. of Emily NaPier ("NaPier Decl.") ¶ 4 (Sept. 22, 2016).

V. The Sheriffs' Office's Policies and Practices Systematically Deprive Juveniles at the Justice Center of Mandated Education Services

Education at the Justice Center is provided by the Syracuse City School District ("School District"), in accordance with the policies of the Sheriff's Office. *See generally* Education Directive. The U.S. Department of Justice estimates that between 30% and 50% of all incarcerated and detained juveniles are eligible for special education services. Robert B. Rutherford Jr. et al, U.S. Office of Juv. Justice & Delinquency Prevention, *Youth with Disabilities in the Correctional System: Prevalence Rates & Identification Issues* 7 (July 2002), <http://cecp.air.org/juvenilejustice/docs/Youth%20with%20Disabilities.pdf>, attached as Ex. 32 to Cotter Decl; *see also* Kraus Decl. ¶ 57. During the 2014-2015 school year,³ the most recent year for which plaintiffs have data, 58 juvenile detainees at the Justice Center had qualifying disabilities under the IDEA. N.Y. State Ed. Dep't Office of Student Support Servs., Education of Incarcerated Youth Program Plan for Onondaga County Justice Center ("Education Program Plan") (June 2015), attached as Ex. 31 to Cotter Decl.

When juveniles are in solitary confinement, however, the Sheriff's Office has a policy of automatically depriving the juveniles of classroom education. Leg. Meeting Minutes 13-14. Instead, the Sheriff's Office and the School District merely give every juvenile a "cell study" packet of newspaper clippings, crossword puzzles, and GED-related books. *See* V.W. Decl. ¶ 7; R.C. Decl. ¶ 7; C.I. Decl. ¶ 11; M.R. Decl. ¶ 14; F.K. Decl. ¶ 8; J.P. Decl. ¶ 9; *see generally* Cell Packets. The School District provides no instruction or follow-up about the packets, and the packets are not graded and are rarely even collected. V.W. Decl. ¶ 7; R.C. Decl. ¶ 7; C.I. Decl. ¶ 11; M.R. Decl. ¶ 14; F.K. Decl. ¶ 8; J.P. Decl. ¶ 9. These packets are not individually tailored

³ Juveniles were only housed in the Justice Center for a portion of that school year, so this provides a minimum annual estimate. NaPier Decl. ¶ 3.

to the juvenile's IEPs and do not provide meaningful education, much less special education. Kraus Decl. at ¶¶ 61-63. Further, the Sheriff's Office and School District do not provide juveniles with notice or a hearing that a given rule infraction would result in deprivation of education. Nor do they convene IDEA-mandated "manifestation determination review" meetings when a juvenile is removed from the classroom for more than 10 consecutive school days or more than 10 non-consecutive days in a school year based on a pattern of behavior, to determine whether a juvenile's misbehavior is a manifestation of his or her disability. F.K. Decl. ¶ 16; R.C. Decl. ¶ 7.

VI. The Named Plaintiffs Have Each Been Subjected to Defendants' Unlawful and Unconstitutional Policies and Practices

The six named plaintiffs are 16- and 17-year-olds without high school degrees who are held at the Justice Center and have been and are subject to the Justice Center's unlawful and unconstitutional policies. V.W. Decl. ¶¶ 1-3; R.C. Decl. ¶¶ 1, 3, M.R. Decl. ¶¶ 1, 3, 6; F.K. Decl. ¶¶ 1, 3, 14; C.I. Decl. ¶¶ 1, 3, 5; J.P. Decl. ¶¶ 1, 3, 9. All six of them are juveniles with pre-existing mental health conditions. V.W. Decl. ¶ 3; R.C. Decl. ¶ 6; C.I. Decl. ¶ 4; M.R. Decl. ¶ 4; F.K. Decl. ¶ 13; J.P. Decl. ¶ 4. All six named plaintiffs have been punished multiple times with solitary confinement. Shames Decl. ¶¶ 10-15. Whether they serve their punishment in the SHU or lock-in, the named plaintiffs spent around 23 hours in a small cell without meaningful human contact, environmental stimulation, and education or other programming. V.W. Decl. ¶¶ 5-12; R.C. Decl. ¶¶ 5-7; C.I. Decl. ¶¶ 8-16; M.R. Decl. ¶¶ 10-20; F.K. Decl. ¶¶ 5-11; J.P. Decl. ¶¶ 5-11. They were deprived of opportunities to attend classroom education without any notice that this sanction would result from the rule infraction that they were charged with or a hearing to determine if removing them from school was appropriate. V.W. Decl. ¶ 8; R.C. Decl. ¶ 7; F.K. Decl. ¶ 15. Instead, "education" was limited to cell packets, which were given to them with no

instruction and which were rarely collected and not graded. V.W. Decl. ¶ 7; R.C. Decl. ¶ 7; C.I. Decl. ¶ 11; M.R. Decl. ¶ 14; F.K. Decl. ¶ 8; J.P. Decl. ¶ 9. All six are exhibiting similar types of serious harm correlated to solitary confinement—such as suicidal ideations, hopelessness, stress, sadness, agitation, irritability, and restlessness—and they are not getting adequate mental health treatment or services. Kraus Decl. ¶¶ 39-42; V.W. Decl. ¶ 12; R.C. Decl. ¶ 10; C.I. Decl. ¶ 16; M.R. Decl. ¶¶ 16, 18-20; F.K. Decl. ¶ 11; J.P. Decl. ¶¶ 10-11.

Additionally, R.C. and F.K. have qualifying disabilities under the IDEA that make them eligible for special education services and had IEPs at their schools. R.C. Decl. ¶ 6; F.K. Decl. ¶ 14-15. In solitary confinement, however, they are not given individualized education tailored to their IEPs. R.C. Decl. ¶ 7; F.K. Decl. ¶ 14,-15. They have also not been afforded a manifestation determination review of whether their misbehavior was related to their disability. R.C. Decl. ¶ 7; F.K. Decl. ¶ 14-15.

SUMMARY OF MERITS CLAIMS

Class certification is determined by the requirements of Rule 23 and not by an analysis of the merits of the underlying suit. *See Amgen Inc. v. Conn. Ret. Plans & Trust Funds*, 133 S. Ct. 1184, 1191 (2013). Nevertheless, plaintiffs briefly describe the claims that they bring in this action in order to provide context for this motion.

First, the Sheriff's Office violates the Eighth and Fourteenth Amendments by maintaining policies and the practice of punishing juveniles with solitary confinement, even though they knew of the profound risk of harm that solitary poses. *Cf. Farmer v. Brennan*, 511 U.S. 825, 834, 837-38 (1994) (holding that a defendant acts with deliberate indifference in violation of the Eighth Amendment when he disregards a risk of harm of which he is aware and which causes injury); *Caiozzo v. Koreman*, 581 F.3d 63, 69-71 (2d Cir. 2009) (holding that the *Farmer*

deliberate indifference standard also applies to Fourteenth Amendment violations); *see also Helling v. McKinney*, 509 U.S. 25, 33 (1993) (holding that plaintiff exposed to environmental smoke stated a claim for deliberate indifference to an unreasonable risk of serious harm). Disciplinary isolation has long been recognized as inhumane for minors, and states and municipalities, professional organizations, and international bodies have condemned its use. *See Morgan v. Sproat*, 432 F. Supp. 1130, 1139-40 (D. Miss. 1977) (holding that confining children with discipline problems in “intensive treatment unit” violated Eighth Amendment and right to rehabilitation); *Lollis v. N.Y. State Dep’t of Soc. Servs.*, 322 F. Supp. 473, 480-82 (S.D.N.Y. 1970) (holding that isolating a child in a “strip cell” for two weeks violated Eighth Amendment); *cf. Roper v. Simmons*, 543 U.S. 551, 563-67, 574-77 (2005) (looking to such sources to conclude that death penalty is a disproportionate punishment for juveniles). There is no penological justification for punishing juveniles with solitary confinement, as doing so is counterproductive to the safety and security of the facility. Kraus Decl. ¶¶ 55-56. As the Supreme Court and Second Circuit have recognized, punitive treatment that inflicts pain “without penological justification” is “unnecessary and wanton,” in violation of the Constitution. *Hope v. Pelzer*, 536 U.S. 730, 737-38 (2002); *Phelps v. Kapnolas*, 308 F.3d 180 (2d Cir. 2002).

Second, the Sheriff’s Office and School District are denying the juveniles their property interest in their educational instruction in violation of the Due Process Clause of the Fourteenth Amendment. As the Second Circuit established, New York law entitles juveniles without high school diplomas to a minimum of fifteen hours per week of instruction, which cannot be denied without proper notice and opportunity to be heard on the deprivation of educational services. *Handberry v. Thompson*, 446 F.3d 335, 355 (2d Cir. 2006); N.Y. Comp. Codes R. & Regs. tit. 8, § 118.4; *id.* tit. 9 §§ 7070.6-7070.7.

Third, the Sheriff's Office and the School District violate the IDEA by failing to provide a free appropriate public education ("FAPE") tailored with special education and relate services that meet the needs of juveniles in solitary confinement at the Justice Center who have qualifying disabilities. 20 U.S.C. § 1400(d)(1)(a); 34 C.F.R. § 300.2(b)(1). Defendants also fail to conduct a manifestation determination review when a student is removed from the classroom for more than 10 consecutive days or a series of more than 10 days in a school year based on a pattern of behavior to ensure that his or her behavior was not a manifestation of a disability. 20 U.S.C. § 1415(k); 34 C.F.R. § 356; *see also* Statement of Interest of the United States of America, *G.F. v. Contra Costa Cty.*, No. 3:13-cv-3667, 2014 WL 6471703, at *11 (N.D. Cal. Feb. 13, 2014), attached as Ex. 35 to Cotter Decl.

ARGUMENT

The Court should certify this class and subclass because they meet the requirements of Rule 23: namely, they, satisfy all four factors of Rule 23(a) and at least one of the three options under Rule 23(b). Plaintiffs move to seek certification of the following class:

All 16- and 17-year-olds who are now or will be incarcerated at the Onondaga County Justice Center.

Plaintiffs also seek certification of an "IDEA Subclass" consisting of:

All 16- and 17-year-olds with disabilities, as defined by the Individuals with Disabilities Education Act, who are now or will be incarcerated at the Onondaga County Justice Center, who are in need of special education and related services.

See Pls.' Mot. for Class Cert.

Specifically, Rule 23(a) requires that: (1) the class is so numerous that joinder of all members is impracticable, (2) questions of law and fact are 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. Rule 23(b)(2) is satisfied by a showing that defendants have “acted or refused to act on grounds that apply generally to the class so that final injunctive or corresponding declaratory relief is appropriate respecting the class as a whole” Fed. R. Civ. P. 23(b)(2). District courts must give these requirements “liberal rather than restrictive construction,” *Marisol A. v. Giuliani*, 126 F.3d 372, 377 (2d Cir. 1997), and are afforded broad discretion in certifying a class because of their ability “to alter or modify the class, create subclasses, and decertify the class whenever warranted.” *Plaintiffs Class v. Credit Lyonnais Rouse Ltd. (In re Sumitomo Copper Litig.)*, 262 F.3d 134, 139 (2d Cir. 2001) (citing Fed. R. Civ. P. 23(c)(4)(B)).

Courts in this circuit recognize that class actions are particularly appropriate in prisoner litigation because “[p]risoners . . . come and go from institutions for a variety of reasons [and n]evertheless the underlying claims tend to remain.” *Clarkson v. Coughlin*, 145 F.R.D. 339, 346 (S.D.N.Y. 1993) (internal quotation marks and citation omitted). Indeed, the Northern District recently certified a class of detainees with hearing impairment at the Justice Center, finding that the class action device is especially suited for prisoner litigation. *See Williams v. Conway*, 312 F.R.D. 248, 251-2 (N.D.N.Y. 2016).

I. PLAINTIFFS MEET THE REQUIREMENTS OF RULE 23(a)

A. The Proposed Class Is Sufficiently Numerous.

Plaintiffs’ proposed class satisfies the requirement that the class be “so numerous that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). This requirement “does not mandate that joinder of all parties be impossible—only that the difficulty or inconvenience of joining all members of the class make use of the class action appropriate.” *Cent. States Se. & Sw. Areas Health & Welfare Fund v. Merck-Medco Managed Care*, 504 F.3d 229, 244-45 (2d Cir. 2007). A class of 40 members is presumptively numerous, but the Second Circuit also

considers several other contextual factors: “(i) judicial economy, (ii) geographic dispersion, (iii) the financial resources of class members, (iv) their ability to sue separately, and (v) requests for injunctive relief that would involve future class members.” *Penn. Pub. Sch. Emps.’ Ret. Sys. v. Morgan Stanley & Co.*, 772 F.3d 111, 120 (2d Cir. 2014) (citing *Robidoux v. Celani*, 987 F.2d 931, 936 (2d Cir. 1993)).

Based on the numbers alone, plaintiffs meet the numerosity requirement for both the class and the sub-class. The Justice Center does not publicize the total number of 16- and 17-year-olds incarcerated there during each year, but data made available to the plaintiffs establish that at least 86 different 16- and 17-year-olds were placed in solitary confinement there between October 1, 2015 and August 31, 2016. Shames Decl. ¶ 7. Because this number reflects only the juveniles placed in solitary confinement, the total number of juveniles at the Justice Center—the proposed class—would presumably be larger, likely over 100 people per year.⁴ A proposed class of this size plainly satisfies the numerosity requirement, and the lack of a precise number is immaterial. *See Robidoux* 987 F.2d at 935 (holding that plaintiffs need not define the exact size of the class or the identity of its members to obtain class certification, and instead may “show some evidence of or reasonably estimate the number of class members” (internal citations omitted)); *Clarkson*, 145 F.R.D. at 347 (holding that “lack of knowledge of the exact number of persons affected is not a bar to class certification where the defendants alone have access to such data” (internal quotation marks and citation omitted)).

The IDEA Subclass would also meet the numerosity requirement, as New York State Education Department records show that in the 2014-2015 school year the Justice Center held 58

⁴ It is worth noting that a sizeable proportion of juveniles who are held at the Justice Center are sanctioned with solitary confinement during the course of their detention. *See* Shames Decl. ¶ 16 (no fewer than 13 out of the 18 juveniles incarcerated on September 21, 2016 had been sanctioned at least once with solitary confinement).

juveniles with a qualifying disability under the IDEA, a number that undercounts the expected annual number, as the Justice Center only held the juveniles for a portion of the 2014-2015 school year. Education Program Plan at 1; NaPier Decl. ¶ 3. Based on this, plaintiffs expect at least 70 juveniles to be a part of the IDEA sub-class in a given year. *See* Rutherford et al., *supra*, at 7. These numbers are sufficient to meet the numerosity requirement. *See also Williams*, 312 F.R.D. at 251 (holding that a class of people with hearing impairments detained at the Justice Center had established numerosity based on an estimate that approximately 70 people had fallen within the class definition in the previous five years).

In addition to the numbers, plaintiffs make compelling showings of several contextual factors. The class definition includes future pre-trial detainees at the Justice Center; because these class members will be constantly revolving in and out of custody, the joinder of each juvenile as a plaintiff would be virtually impossible. *See Gerstein v. Pugh*, 420 U.S. 103, 110, n.11 (1975) (noting that the transient nature of pretrial detention makes it difficult for “any given individual [to] have his constitutional claim decided”); *Williams*, 312 F.R.D. at 252 (noting that a class action is particularly well-suited for a class at the Justice Center because of the fluid composition). The class members plainly have limited financial resources and limited ability to sue independently. *See Redmond v. Bigelow*, No. 2:13-CV-393, 2014 WL 2765469, at *3 (D. Utah June 18, 2014) (finding that mere fact that class members were prisoners made it difficult to join individual claims, and certifying class). Even if some could bring their own case, class certification would promote judicial economy by avoiding multiple suits that would raise the same issues and seek the same injunctive relief—enjoining the Sheriff’s Office and the Syracuse City School District from placing children in solitary confinement and depriving them of their

education. *See Gen. Tel. Co. of the Sw. v. Falcon*, 457 U.S. 147, 155 (1982); *Robidoux* 987 F.2d at 935-36.

B. Questions of Law and Fact Are Common to the Proposed Class

The second requirement of Rule 23(a) is that the case presents “questions of law or fact common to the class.” Fed. R. Civ. P. 23(a)(2). The common contentions of law and fact to be resolved here include:

- a) Whether the Sheriff’s Office’s policy and practice of placing 16- and 17-year-olds in solitary confinement expose juveniles at the Justice Center to a substantial risk of serious harm in violation of the Eighth and Fourteenth Amendments;
- b) Whether the Sheriff’s Office acted with deliberate indifference to a substantial risk of serious harm when they subjected 16- and 17-year olds at the Justice Center to solitary confinement, in violation of the Eighth and Fourteenth Amendments.
- c) Whether the Defendants’ denial of all educational services to 16- and 17-year olds who were placed in solitary confinement denied the class members of their property interest in receiving education without due process, in violation of the Fourteenth Amendment of the United States Constitution.

As for the IDEA Subclass, the common questions of law and fact include:

- a) Whether Defendants’ policy and practice of using cell packets in lieu of classroom instruction is a systemic denial of individualized special educational services to class members who are placed in solitary confinement in violation of the Individual with Disabilities Education Act, 20 U.S.C. §1400 *et seq.* (IDEA);
- b) Whether Defendants’ failure to convene a manifestation determination meeting after a student with a disability is placed in disciplinary isolation and misses school for more

than 10 consecutive school days, or for more than 10 total days in a school year for a pattern of behavior, violates the students' rights under the IDEA.

Plaintiffs seek injunctive relief on each of these common questions of law and fact. *See* Compl.

The Supreme Court held in *Wal-Mart Stores, Inc. v. Dukes* that to satisfy the commonality requirement, class claims “must depend upon a common contention . . . of such a nature that it is capable of classwide resolution—which means that the determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.” 564 U.S. 338, 350 (2011). The commonality requirement is satisfied when defendants apply a common course of prohibited conduct to the plaintiff class. *See Escalera v. N.Y.C. Hous. Auth.*, 425 F.2d 853, 867 (2d Cir. 1970). Rule 23(a)(2) does not require that every single question of law or fact applicable to the class members be the same. *See Port Auth. Police Benevolent Ass’n v. Port Auth. of N.Y. & N.J.*, 698 F.2d 150, 153-54 (2d Cir. 1983) (finding denial of class certification improper where proposed class sought review of policy or practice of denying promotion to employees who criticized defendant employer, not review of promotions themselves); *accord Wal-Mart*, 564 U.S. 359 (“[e]ven a single [common] question will do” (internal citation and quotation marks omitted)).

Courts after the *Wal-Mart* decision often analyze commonality by looking to whether there is a common *answer* to the questions raised by the case. *Wal-Mart*, 564 U.S. at 350. Thus, in *McGee v. Pallito*, the District of Vermont held that the plaintiffs had shown commonality because they raised two common issues: “(1) the extent to which [d]efendants’ policy of constant illumination disrupts inmates’ circadian rhythms, sleep, and melatonin production, and (2) whether those conditions pose a reasonable risk of serious damage to health,” both of which questions were “capable of classwide resolution.” No. 04-CV-00335, 2015 WL 5177770, at *5

(D. Vt. Sept. 4, 2015); *see also* *Parsons v. Ryan*, 754 F.3d 657, 676 (9th Cir. 2014) (“[T]he commonality requirement can be satisfied by proof of the existence of systemic policies and practices that allegedly expose inmates to a substantial risk of harm.” (collecting cases)); *Butler v. Suffolk Cty.*, 289 F.R.D. 80, 98 (E.D.N.Y. 2013) (“Whether the County was aware of and deliberately indifferent to the conditions at the [jail] is a common question subject to class-wide resolution.”).

In the context of prisons and jails, there are common questions of law and fact where “inmates have a common interest in preventing the recurrence of the objectionable conduct” *Inmates of Attica Corr. Facility v. Rockefeller*, 453 F.2d 12, 24 (2d Cir. 1971); *see also* *Nicholson v. Williams*, 205 F.R.D. 92, 98 (E.D.N.Y. 2001) (“[t]here is an assumption of commonality where plaintiffs seek certification of an injunctive class under Rule 23(b)(2) to right alleged constitutional wrongs”). In *Marriott v. Cty. of Montgomery*, this Court found commonality where a class of pre-trial detainees challenged a county jail’s official procedure of strip-searching inmates who were held on minor offenses. 227 F.R.D. 159, 172 (N.D.N.Y. 2005), *aff’d*, No. 05-1590-CV, 2005 WL 3117194 (2d Cir. Nov. 22, 2005). Similarly, another court in this District recently held that a class of hearing-impaired plaintiffs at the Justice Center had shown commonality where their grievances shared “‘a common question of law or fact’ and ‘[arise] from the same course of events.’” *Williams*, 312 F.R.D. at 253 (quoting *Marisol A. v. Giuliani*, 126 F.3d 372, 376 (2d Cir. 1997)).

Plaintiffs challenge policies and practices of the Justice Center that place all juveniles in the jail at substantial risk of similar types of serious harm and seek class-wide injunctive and declaratory relief. As discussed in detail above, the main class of juveniles is subjected to the same unconstitutional policy and practice of being placed in disciplinary isolation for 23 hours a

day, including for minor infractions of the facility rules. Inmate Handbook 4-15. Once placed in solitary confinement, all juveniles are either confined to the special housing unit (SHU) or their own cells (lock-in). *Id.* at 13-15; *see also* Kraus Decl. ¶ 18. In both placements they are only allowed out of their small cell for one hour a day and cannot talk to peers. Kraus Decl. ¶¶ 22, 24. In both placements they are denied access to all rehabilitative, social, and educational programming. Kraus Decl. ¶ 23-25, 61; *see also* Leg. Meeting Minutes 13-14; Cell Packets. These policies and practices of disciplinary isolation at the Justice Center subject juveniles to the same substantial risk of serious harm to their social, psychological and emotional development. Kraus ¶¶ 29-48. Commonality is therefore met for the putative class of juveniles. *See Parsons*, 754 F.3d at 681 (finding that policies and practices at issue were “the ‘glue’ that holds together the putative class...either each of the policies and practices is unlawful as to every inmate or it is not.”).

The IDEA Subclass also meets the Rule 23(a)(2) commonality requirement. In *R. A-G ex rel. R.B. v. Buffalo City Sch. Dist. Bd. of Educ.*, the Western District of New York found commonality within a class of schoolchildren in Buffalo because the plaintiffs’ IDEA claims were “systemic, not individual” and requested “declaratory and injunctive relief against a defendant engaging in a common course of conduct toward them. . . .” No. 12-CV-960S, 2013 WL 3354424, at *10 (W.D.N.Y. July 3, 2013), *aff’d sub nom. R.A.G. ex rel. R.B. v. Buffalo City Sch. Dist. Bd. of Educ.*, 569 F. App’x 41 (2d Cir. 2014) (quoting *Baby Neal ex rel. Kanter v. Casey*, 43 F.3d 48, 57 (3d Cir. 1994)); *see also Andre H.*, 104 F.R.D.606, 611-12 (S.D.N.Y. 1985) (holding commonality is met where the plaintiffs challenge the policy and practices of a facility alleged to deny all students with disabilities a FAPE); *G. F. v. Contra Costa Cty.*, No. 13-CV-03667, 2015 WL 4606078, at *10 (N.D. Cal. July 30, 2015) (finding commonality satisfied

where plaintiffs challenged the facility's policy and practice of using disciplinary isolation on students with disabilities).

Here, Defendants are violating the rights of the IDEA Subclass because for all juveniles placed into solitary confinement, they engage in a practice of (1) only providing photocopied cell packets to students with disabilities with no instruction or assistance, thereby failing to provide a FAPE that conforms to the children's IEPs, and (2) universally failing to convene a manifestation determination meeting after the student has been in disciplinary isolation for more than ten school days. Kraus Decl. ¶¶ 60-63; R.C. Decl. ¶ 6-7; F.K. Decl. ¶¶ 13-15; Decl. of Sandra Chambers ("Chambers Decl.") ¶¶ 3, 5 (Sept. 13, 2016), attached as Ex. 4 to Cotter Decl.; Decl. of Kashinde Kabagwira ("Kabagwira Decl.") ¶ 4, (Sept. 13, 2016), attached as Ex. 11 to Cotter Decl. Because the IDEA Subclass is challenging systemic failures to comply with the IDEA, commonality is met and Rule 23(a)(2) is satisfied. *Cf. R. A-G ex rel. R.B.*, 2013 WL 3354424 at * 10 (finding commonality requirement met because single policy is equally applicable to all members of the class). The Second Circuit recently upheld the certification of a class of IDEA plaintiffs in Buffalo who, like plaintiffs here, were challenging "a policy that is applied uniformly to all students that qualify for supplemental services under the IDEA." *R.A.G. ex rel. R.B. v. Buffalo City Sch. Dist. Bd. of Educ.*, 569 F. App'x 41, 42 (2d Cir. 2014).

C. The Claims of the Named Plaintiffs Are Typical of the Proposed Class

Rule 23 also requires that the claims of the proposed class representative be typical of the class members they seek to represent. Fed. R. Civ. P. 23(a)(3). Analysis of the commonality and typicality requirements tends to merge. *Gen. Tel. Co. of the Sw.*, 457 U.S. at 157 n.13 (1982). The typicality requirement is satisfied where, as here, each class member's claim arises from the same course of events and the class members raise similar legal challenges to the defendants' conduct. *Robidoux*, 987 F. 2d at 936; *see also Marriott*, 227 F.R.D. at 172

(typicality is met where each named plaintiff was harmed under the same policy at a jail).

“When it is alleged that the same unlawful conduct was directed at or affected [class members] the typicality requirement is usually met irrespective of minor variations in the fact patterns underlying the individual claims.” *Robidoux*, 987 F.2d at 936-37. Nor will inclusion of future class members seeking injunctive relief defeat typicality. *Butler*, 289 F.R.D. at 99.

In civil rights cases involving unconstitutional prison conditions, the possibility that proposed class representatives may have been confined in non-identical conditions or suffered different physical injuries is immaterial to satisfying the typicality requirement. *See, e.g., Marriott*, 227 F.R.D. at 172; *Jones v. Goord*, 190 F.R.D. 103, 112 (S.D.N.Y. 1999) (certifying class of state prisoners and noting that “typicality does not require identity”). “[V]iewed in the most practical way typicality is present when all members of the putative class would benefit by the success of the named plaintiff.” *Cutler v. Perales*, 128 F.R.D. 39, 45 (S.D.N.Y. 1989) (citing *Eisen v. Carlisle & Jacquelin*, 391 F.2d 555, 562 (2d Cir. 1968)).

The typicality requirement is met in the present case because the named plaintiffs and putative class members all challenge the same unconstitutional policies and practices that place them at a substantial risk of serious harm and deny them education with no due process. *See* V.W. Decl. ¶¶ 5-17; R.C. Decl. ¶¶ 5-11; C.I. Decl. ¶¶ 5-16, 20-21; M.R. Decl. ¶¶ 6-24; F.K. Decl. ¶¶ 4-19; J.P. Decl. ¶¶ 6-16; A.M. Decl. ¶ 3-10. Their injuries are also typical of injuries to 16- and 17-year olds subjected to the solitary confinement conditions. *See* Kraus Decl. ¶¶ 39-44. Additionally, the claims of the proposed IDEA Subclass representatives arise from Defendants’ systemic failure to provide a FAPE to individuals with disabilities who are placed in isolation and systemic failure to convene manifestation determination meetings. *See* R.C. Decl. ¶¶ 6-7; F.K. Decl. ¶¶ 13-15. Plaintiffs have established typicality by demonstrating both that their

claims are typical of those held by all members of the main class and the subclass and that members of the main class and subclass will benefit if the named plaintiffs succeed on their claims.

D. The Named Plaintiffs Will Fairly and Adequately Represent the Class

The adequacy requirement under Rule 23(a)(4) “is twofold: the proposed class representative must have an interest in vigorously pursuing the claims of the class, and must have no interests antagonistic to the interests of other class members.” *Denney v. Deutsche Bank AG*, 443 F.3d 253, 268 (2d Cir. 2006). “Courts that have denied class certification based on the inadequate qualifications of plaintiffs have done so only in flagrant cases, where the putative class representatives display an alarming unfamiliarity with the suit.” *In re Frontier Ins. Group, Inc., Sec. Litig.*, 172 F.R.D. 31, 47 (E.D.N.Y. 1997) (internal quotation marks and citation omitted).

Here, all the representatives of the class and subclass have been subjected to the same challenged policies and practices. *See Marisol A.*, 126 F.3d at 378 (holding that seeking broad relief to improve all services is in the interest of all class members). The named plaintiffs have no foreseeable conflicts of interest with other class members and have articulated that they want to end the Defendants’ unlawful policies. V.W. Decl. ¶¶ 18-19; R.C. Decl. ¶¶ 12-13; C.I. Decl. ¶¶ 25-26; M.R. Decl. ¶¶ 25-26; F.K. Decl. ¶¶ 20-21; J.P. Decl. ¶¶ 17-18. Their parents echo this commitment. *See* Decl. of Dereck Williams (“Williams Decl.”) ¶ 4 (Sept. 12, 2016) attached as Ex. 2 to Cotter Decl.; Decl. of Vertell Pendarvis (“Pendarvis Decl.”) ¶ 4 (Sept. 13, 2016), attached as Ex. 6 to Cotter Decl.; Decl. of Karen Raymond (“Raymond Decl.”) ¶¶ 6-7 (Sept. 14, 2016), attached as Ex. 8 to Cotter Decl.; Kabagwira Decl. ¶ 5; Decl. of Alissa Quiñones (“Quiñones Decl.”) ¶ 7, (Sept. 14, 2016), attached as Ex. 12 to Cotter Decl.

Finally, class counsel must be “qualified, experienced and able to conduct the litigation.” *Baffa v. Donaldson, Lufkin & Jenrette Secs. Corp.*, 222 F.3d 52, 60 (2d Cir. 2000). Plaintiffs’ attorneys meet this standard. Legal Services of Central New York and the New York Civil Liberties Union both have extensive experience in class action litigation and have previously represented classes of plaintiffs seeking systemic reform in federal court class action lawsuits. *See Peoples v. Annucci*, --- F. Supp. 3d ---, 2016 WL 1464613, at *11 (S.D.N.Y. Apr. 14, 2016); *Williams*, 312 F.R.D. at 254; *Butler*, 289 F.R.D. at 100; *Ligon v. City of New York*, 288 F.R.D. 72, 84 (S.D.N.Y. 2013); *see also* Decl. of Christopher Dunn (Sept. 22, 2016), attached as Ex. 14 to Cotter Decl.; Decl. of Samuel Young (Sept. 15, 2016), attached as Ex. 15 to Cotter Decl.

II. PLAINTIFFS MEET THE REQUIREMENTS OF RULE 23(B)(2)

Class certification under 23(b)(2) is proper where allegations “stem from central and systemic failures.” *Marisol A.*, 126 F.3d at 378. Furthermore, “[c]ivil rights cases seeking broad declaratory or injunctive relief for a large and amorphous class . . . fall squarely into the category of [Rule] 23(b)(2) actions.” *Id.* (internal quotation marks omitted); *see also Shepard v. Rhea*, No. 12-CV-7220, 2014 WL 5801415, at *6 (S.D.N.Y. Nov. 7, 2014) (“Civil-rights actions are particularly appropriate for certification under Rule 23(b)(2).”).

The proposed class and subclass both meet the Rule 23(b)(2) requirement that “the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole” Fed. R. Civ. Pro. 23(b)(2). “Rule 23(b)(2) applies only when a single injunction or declaratory judgment would provide relief to each member of the class.” *Wal-Mart*, 564 U.S. at 360. Thus, the District of Vermont certified a 23(b)(2) class of prisoners because “the benefit of the [proposed] injunction inures to the entire class.” *McGee*, 2015 WL 5177770 at * 4 (*discussing Wal-Mart*, 564 U.S. at 359.).

Here, each class and subclass member is at risk of having their constitutional and statutory rights violated by the policies and practices of Defendants. Juveniles at the Justice Center are at a substantial risk of serious harm because of Defendants' central and systemic failure to preserve their civil rights. Should this Court grant injunctive relief, it would provide a universally applicable remedy benefitting the class as a whole by curing Defendants' civil rights violations.

CONCLUSION

Because plaintiffs have satisfied the requirements of Rule 23(a) and Rule 23(b)(2), plaintiffs respectfully request this Court to grant this Motion for Class Certification.

Dated: September 23, 2016
Syracuse, New York

Respectfully submitted,

/s/

Mariko Hirose
Mariana Kovel*
Aimee Krause Stewart**
Aadhithi Padmanabhan**
Philip Desgranges
Christopher Dunn
NEW YORK CIVIL LIBERTIES
UNION FOUNDATION
125 Broad Street, 19th Floor
New York, NY 10004
Tel: (212) 607-3300
Fax: (212) 607-3318
mhirose@nyclu.org

Joshua T. Cotter
Samuel C. Young
Susan M. Young
LEGAL SERVICES OF CENTRAL
NEW YORK
221 S. Warren Street, 3rd Floor
Syracuse, NY 13202
Tel: (315) 703-6500
jcotter@lscny.org

*Application for admission to N.D.N.Y. submitted

** Not admitted in N.D.N.Y

Attorneys for Plaintiffs