UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

RICHARD MESSIER, et al.	:	Civil No. 3:94CV01706 (EBB)
v.	:	
SOUTHBURY TRAINING SCHOOL, et al.	:	March 14, 1995

MOTION FOR CLASS CERTIFICATION

The plaintiffs request, pursuant to Rules 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure, that they be authorized to maintain this action on their own behalf and on behalf of all current residents of Southbury Training School ("STS"), those who may be placed there in the future, and persons who have been transferred from STS and remain under the custody and control of the Director of STS. In support of this motion the plaintiffs represent the following:

1. the joinder of all members is impracticable;

2. there are questions of law and fact common to the class including, inter alia

a) whether the acts and omissions of the defendants deprived the plaintiffs and members of the plaintiff class of their rights to freedom from harm and restraint, adequate shelter, clothing, medical care, training necessary to preserve basic self-

care skills and community placement when recommended by individual professional planning teams, secured by the Due Process Clause of the Fourteenth Amendment to the United States Constitution;

b) whether the use of Do Not Resuscitate Orders on classmembers without any process to determine whether the order is in their best interest denies them their right to life without Due Process in violation of the Fourteenth Amendment;

c) whether the acts and omissions of defendants deny plaintiffs and members of the plaintiff class their rights to nondiscriminatory program and placement decisions and to avoid unnecessarily separate services secured by 42 U.S.C. § 12132 and 29 U.S.C. § 794; and

d) whether STS residents in ICFMR-certified units have been deprived of active treatment in violation of 42 U.S.C. § 1396 et seq..

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

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

5. 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.

Plaintiffs have submitted a memorandum of law in support of their motion for class certification.

INDIVIDUAL PLAINTIFFS AND PLAINTIFF, PEOPLE FIRST OF CONNECTICUT, INC.,

By _____

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CERTIFICATION

This is to certify that a copy of the foregoing was mailed, postage prepaid, to the following on March 14, 1995:

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

I. INTRODUCTION

The complaint[1] in this case was filed October 6, 1994, by eight present or former residents of Southbury Training School ("STS") and three organizational plaintiffs (People First of Connecticut, ARC/Connecticut, and Western Connecticut Association for Human Rights) as a class action on behalf of all persons with disabilities residing at STS, those who may be placed at STS in the future, and persons who have been transferred from STS and remain under the custody and control of the Director of STS. Plaintiffs have brought this action to redress unlawful conditions at STS, alleging violations of the STS residents' rights secured by the Fourteenth Amendment Due Process Clause of the U.S. Constitution,

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[1]All references are to the Second Amended Complaint.

the Americans with Disabilities Act, the Rehabilitation Act and the Social Security Act. More specifically, plaintiffs allege, inter alia, that:

(1) The defendants are denying plaintiffs and members of the plaintiff class their constitutional rights secured by the Due Process Clause of the Fourteenth Amendment to the United States Constitution:

a) to an individually controlled and designed habilitation plan and program to help classmembers maintain self-care skills;

b) to a humane and decent existence;

c) to habilitation necessary to ensure that Southbury Training School residents are safe and free from unnecessary physical, mechanical and chemical restraint;

d) to adequate shelter, clothing, nutrition and medical care;

e) to have community placements that are safe, properly monitored and integrated in society;

f) to have all community placement decisions made on an individualized basis and implemented in accordance with the

recommendations of planning teams composed of friends and family and professionals who know the person with a disability best and an opportunity to be heard periodically on the appropriateness of placement plans prior to and after discharge or transfer from Southbury Training School;

g) to have community placements provided when planning teams composed of friends, family and professionals who know classmembers best develop self-determined support plans and determine that transfer to the community is necessary to protect classmembers' rights under the federal constitution and federal laws;

h) to have individual advocates assist classmembers in protecting their rights under state and federal law;

i) to have individual budgets to implement the decisions of properly composed planning teams;

j) to life, without due process of law, by developing and enforcing standards which permit community hospitals to write and implement DNR Orders on nonterminally ill classmembers without any process to ensure that the decision to withhold routine medical care is consistent with the best interests of the classmember;

(2) The defendants are violating plaintiffs' rights secured by the Americans with Disabilities Act, 42 U.S.C. 12132, and the Rehabilitation Act, 29 U.S.C. 794 by failing to provide residents of Southbury Training School the opportunity to receive state support in the community rather than in a segregated institution and by failing to provide the most severely handicapped residents of Southbury Training School with the same opportunity to benefit from programs and community living as are provided residents of STS with mild disabilities.

(3) The defendants are violating the rights of some two hundred residents of Southbury Training School to active treatment as required by 42 U.S.C. 1396 et seq. by a) failing to provide training and habilitation services to all residents regardless of the nature or severity of his or her disability; b) failing to provide the professional services to residents including physical therapy, occupational therapy, medical services and psychological services; c) failing to develop adequate activities for residents; d) failing to provide individual treatment plans; e) failing to evaluate the appropriateness of continued placement at STS; f) failing to develop meaningful discharge plans.

Plaintiffs seek classwide declaratory and injunctive relief which would:

(1) Enjoin defendants from admitting persons to Southbury Training School or transferring persons from STS unless such transfer is to an integrated community home with supports developed through a person-centered planning process by a team comprised of the classmember, his friends, family and professionals who know him best;

(2) Enjoin defendants to identify through a person-centered planning process a written plan for each classmember which describes the individualized programs, supports and supervision necessary to protect each classmember and to meet his/her individualized needs and how those services will be provided;

(3) Enjoin the defendants to identify in a written plan the community homes necessary to protect classmembers' rights under the United States Constitution and federal laws and to remediate the environmental and program deficiencies identified in the complaint and to provide community supports through individualized person-centered planning processes;

(4) Enjoin the defendants to make available independent

advocates for each plaintiff and member of the plaintiff class to assist them in securing their rights;

(5) Enjoin the defendants to provide plans, support services and community living opportunities to classmembers, regardless of the severity or nature of their disabilities;

(6) Enjoin the defendants to prohibit the use of Do Not Resuscitate Orders on classmembers until procedures are developed and followed which assure protection of rights secured to classmembers by the federal Constitution and laws.

II. ARGUMENT

Rule 23(a) of the Federal Rules of Civil Procedure establishes four prerequisites to the maintenance of a class action suit:

> (a) **Prerequisites to a Class Action.** One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims and defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

In addition, Rule 23(b)(2) imposes an additional applicable

requirement:

> 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;

A. Plaintiffs' Class Satisfies the Numerosity Requirement.

Plaintiffs in this case seek to represent a class consisting of all persons who are now at STS, those who may be placed at STS in the future, and persons who have been transferred from STS and remain under the custody and control of the Director of STS. At present, according to Presentation on Governor's Proposed Budget for FY 96-97 dated February 27, 1995, there are 871 persons residing at STS.[2]

There is no set number of members that is required to meet the numerosity requirement. The federal rules merely require a determination that the class is so numerous as to make joinder of

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[2]In view of the fact that there have been no new placements at STS and the ongoing concerns about the appropriateness of new placements at STS, it would be, at best, speculative to estimate the number of persons who may be placed at STS in the future. Nevertheless, plans for the construction of additional facilities at STS are being considered by the Connecticut legislature. Thus, there remains a possibility of new placements at STS in the future.

all members impracticable. A class consisting of at least 871 members is clearly sufficient to satisfy this requirement. See Korn v. Franchard Corp., 456 F.2d 1206, 1209 (2nd Cir. 1972) (class consisting of 212 members sufficient); Connecticut Traumatic Brain Injury Association (CTBIA) v. Hogan, Civil No. H-90-97 (PCD) Slip Op. at 3-4 (D.Conn., July 6, 1990) (Exhibit A) (110-150 persons with mental retardation and/or brain injury sufficient); National Super Spuds v. New York Mercantile Exchange, 77 F.R.D. 361, 367 (S.D.N.Y. 1977) (500 to 1000 members sufficient). It is highly unlikely that individual claimants would institute separate suits for declaratory and injunctive relief in the event class certification is denied. See CTBIA v. Hogan, Slip Op. at 2-3 (citing, Jordan v. County of Los Angeles, 669 F.2d 1311, 1319 (9th Cir. 1982), vacated on other grounds, 459 U.S. 810 (1982) and, Armstead v. Pingree, 629 F. Supp. 273, 279 (M.D. Fla. 1986)). Moreover, the proposed class members are institutionalized individuals with mental retardation, which "is precisely the type of group which class treatment was designed to protect." See Armstead, 629 F. Supp. at 279. Under these circumstances "the difficulty or inconvenience of joining all members makes class

litigation desirable." Koster v. Perales, 108 F.R.D 46, 49 (E.D.N.Y. 1985) (citing, Northwestern National Bank of Minneapolis v. Fox & Co., 102 F.R.D. 507, 511 (S.D.N.Y. 1984)).

The inclusion of future members of a class is routine in a civil rights action such as this one seeking injunctive relief against conduct that is likely to cause future injuries similar to those suffered by the named plaintiffs. 1 Newberg on Class Actions, 3.07 (3rd Ed. 1992). As a result, in civil rights cases, the membership of the class is usually "incapable of specific enumeration." Powell v. Ward, 487 F. Supp. 917, 922 (S.D.N.Y. 1980) (citing, Robertson v. National Basketball Association, 389 F. Supp. 867, 897 (S.D.N.Y. 1975) and Advisory Note to Rule 23). In such circumstances, "a class action may proceed upon estimates as to the size of the proposed class." Jane B. v. New York City Dep't. of Social Servs., 117 F.R.D. 64, 70 (S.D.N.Y. 1987) (citing, In re Alcoholic Beverages Litigation, 95 F.R.D. 321, 324 (E.D.N.Y. 1982). "[C]lass certification including future members is appropriate." Powell v. Ward, 487 F. Supp. at 922 (citing, Gerstein v. Pugh, 420 U.S. 103, 110-11 n. 11 95 S.Ct. 854, 861 n. 11, 43 L.Ed. 2d 54 (1974)).

B. Class Certification Is Appropriate Because There Are Questions of Law and Fact Common to the Entire Class.

The requirements of joinder impracticality of Rule 23(a)(1) and the commonality requirement of Rule 23(a)(2) are correlative tests. "Thus, a class action is proper only when there is a group of persons who share a common issue and are so numerous that joinder of them all would be impracticable." 1 Newberg 3.10.

"There is no requirement that the factual basis for the claims of all members of a proposed class be identical." Koster v. Perales, 108 F.R.D. at 52; Wilder v. Bernstein, 499 F. Supp. 980, 992 (S.D.N.Y. 1980); Abramovitz v. Ahern, 96 F.R.D. 208, 216 (D.Conn. 1982). Nor is there any requirement of absolute identity between the legal theories supporting claims by class members. CTBIA v. Hogan, Slip. op. at 5 ("Rule 23(a)(2) does not require that there are questions of law and fact common to the class but rather only requires that there be either legal issue[s] or factual issue[s] common to the class." Citing, Pottinger v. City of Miami, 720 F. Supp. 955, 958 (S.D.Fla. 1989) (emphasis in original)); Cf. Gold Strike Stamp Company v. Christensen, 436 F.2d 791, 796 (10th Cir. 1970)

("... where the question of basic liability can be established

readily by common issues, then it is apparent that the case is appropriate for class action."); Abramovitz, 96 F.R.D. at 216 ("The fact that some individual questions of law and fact also must be decided will not necessarily defeat a request for class certification."). Rather, in actions such as this one, it is sufficient that the claims for declaratory and injunctive relief as to which the plaintiffs seek class certification:

> "challenge several institutional practices and policies regarding the provision of ... care to all .... Those practices and policies apply with equal force to, and affect similarly, all [residents] within the facility. Moreover the complaint details several instances of institution-wide inadequacies .... These matters are common to all [residents]."

Dean v. Coughlin, 107 F.R.D. 331, 333-34 (S.D.N.Y. 1985).

This case satisfies the commonality requirement of Rule 23(a)(2) since the putative class members present similar factual situations which give rise to common legal issues. The plaintiffs challenge STS policies and practices involving all present and future residents of that institution and persons in the custody of the Director of STS. STS policies and practices concerning the environment, training and habilitation services, professional services, support services, planning, programming, supervision,

medical procedures and community living opportunities apply with equal force to, and affect similarly all residents of STS, and persons in the custody of the Director of STS. The alleged inadequacies in staffing, facilities, policies and procedures at STS are systemic, and are of common concern to all STS residents. Although putative class members may not have identical habilitative or rehabilitative needs or treatment histories, the common facts alleged in the Complaint give rise to common legal issues under the Due Process and Equal Protection clauses of the Fourteenth Amendment, as well as federal statutory law. See Armstead, 629 F. Supp. at 280 ("The conditions at NEFSH and defendants' policies regarding treatment of those residents who suffer, in varying degrees, from mental retardation are examples of the factual questions linking the subclasses."); Santiago v. City of Philadelphia, 72 F.R.D. 619, 624 (E.D.Pa. 1976).

C. The Claims of the Representative Parties Are Typical of the Claims of the Class.

The typicality requirements of Rule 23(a)(3) focus on whether the named plaintiffs' claims and the class claims "are so interrelated that the interests of the class members will be fairly

and adequately protected in their absence." General Telephone Co. v. Falcon, 457 U.S. 147, 157-58 n.13 (1982). The typicality requirement demands no showing of complete identity between the legal claims of a representative and each member, but only "... a showing of sufficient interrelationship between the claims of the representative and those of the class so that adjudication of the individual claims will necessarily involve the decision of common questions affecting the class." 1 Newberg 3.17). Similarly, individual, factual discrepancies between class members and representatives do not defeat typicality. See CTBIA v. Hogan, Slip. op. at 7 ("There may be factual distinctions, but their claims arise from the same allegedly illegal policies and practices and are based on legal theories claimed for the entire class." Citing, Jane B., 117 F.R.D. at 70); Koster v. Perales, 108 F.R.D. at 51-2; Dean v. Coughlin, 107 F.R.D. at 334. "All that is required for this original certification is a nexus between the claims of the representatives and those of the other members of the class." CTBIA v. Hogan, Slip. op. at 7 (citing, Roby v. St. Louis Southwestern Railway Co., 775 F.2d 959, 962 (8th Cir. 1985); Harrison v. Simon, 91 F.R.D. 423, 430 (E.D.Pa. 1981)).

In this case, the nexus between the class members and class representatives is plain in all of the representatives' claims. As is indicated in the Complaint and above:

> "... plaintiffs claim systemic behavior and harm. The claims of the class representatives are typical: each has been subjected to some or all of the general, institution-wide deprivations alleged on behalf of the class."

Dean v. Coughlin, 107 F.R.D. at 334. See also Hassine v. Jeffes, 846 F.2d 169, 178 (3rd Cir. 1988) (complainants' assertion that conditions existed, and that they were subject to them, was sufficient to require classwide adjudication of claims). There are substantial questions of law and fact common to the entire class, and claims of the plaintiffs are typical of the class and predominate over any questions affecting individual members. Cf. Santiago, 72 F.R.D. at 625 (Same legal theories applied to named plaintiffs and future residents. This was supported by allegations that class representatives and members suffered the same types of injuries as a result of the policies and practices of the institution. There was a "close nexus" between factual questions raised by the representatives and members pertaining to the administration of and conditions at the institution). Moreover, as

was the case in CTBIA v. Hogan:

> "Because plaintiffs allege violations of law common to all members of the class, courts may, despite factual differences, certify the class for purposes of determining liability. Then, if conflicts over relief are apparent, or if discovery reveals that ... plaintiffs have adverse or distinct interests, the class can be split into subclasses at that time. Halderman v. Pennhurst State Sch. & Hospital, 612 F.2d 84, 109 (3rd Cir. 1979), rev'd on other grounds, 451 U.S. 1 (1980); Jacobi v. Bache & Co., 16 F.R.D. 71, 72-73 (S.D.N.Y. 1972). In fact "[i]t is often proper ... for a district court to view a class action liberally in the early stages of litigation, since the class can always be modified or subdivided as issues are refined for trial."

Slip op., at 6.

D. The Representative Parties Will Fairly and Adequately Protect the Interests of the Class.

The prerequisites for satisfying Rule 23(a)(4) are as follows:

> ... an essential concomitant of adequate representation is that the party's attorney be qualified, experienced and generally able to conduct the proposed litigation. Additionally, it is necessary to eliminate so far as possible the likelihood that the litigants are involved in a collusive suit or that plaintiff has interests antagonistic to those of the remainder of the class.

Eisen v. Carlisle & Jaqueline, 391 F.2d 555, 562 (2nd Cir. 1968).

With regard to the qualifications, experience, and abilities of counsel, from 1975 to the present Attorney David Shaw has acted as lead counsel, or played a central role, in many class action and

civil rights lawsuits brought to enforce the federal constitutional and statutory rights of Connecticut citizens with disabilities. (See Exhibit B). Attorney Frank Laski also has an extensive record in litigating cases brought to enforce the rights of persons with disabilities secured by state and federal law. (See Exhibit C).

Through this and other litigation Attorneys Shaw and Laski have developed expertise in litigating civil rights cases for disabled citizens through the federal trial and appellate courts. Plaintiffs' counsel have established themselves as competent and vigorous advocates of persons with disabilities, and particularly for persons with mental retardation in institutional settings, and can be expected to pursue such interests in the future.

There has been a suggestion by the intervenor applicants that the proposed class representatives have interests in conflict with class members, and that they may act collusively with the defendants in this case. In their Memorandum of Law in Support of Motion to Intervene, the Home and School Association of Southbury Training School, The Southbury Training School Foundation Inc., several residents and their guardians (Southbury Group) asserted that "defendants espouse some of the same social policies advocated

by plaintiffs in favor of closing STS and placing all STS residents in community settings." (Memorandum, at p. 12)

This type of general assertion is insufficient to overcome the adequacy of representation, particularly when the policy issue intervenors posit as non-adversarial and conflicting is not properly before the Court. Plaintiffs' complaint does not seek closure of STS. Even if the complaint did ask for such relief, it would be beyond the power of this court to grant it.[3] Rather, the

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[3] In Richard C. v. Snider, C.A. No. 89-2038 (N.D. Pa. 6/22/93) (attached), an organization of parents and guardians, similar to intervenor applicants have challenged the closure of a Pennsylvania facility for the mentally retarded (Western Center), Judge Standish wrote:

> The Court has no authority to direct [defendants] to deliver its services to any particular facility. The state has the power to relocate its residents for its own administrative needs or unilaterally to close any of it institutions for economic or other reasons. Id., Slip Op. at pp. 19-20.

Accord Lelsz v. Kavanaugh, 783 F. Supp. 286, 291, 298 (N.D.Tex. 1991). More recently Judge Wolf, in Massachusetts, denied intervention to a group that raised interests similar to Southbury interests here. The Court's reasoning applies here:

> The Association's submission expresses its intention to argue the value of a centralized institution such as Dever as opposed to community-based placements for certain individuals and the importance of Dever remaining open. ... However, the relative value of Dever as compared to increased use of

(continued...)

court's role is to ensure that placements, like other treatment decisions, are being made pursuant to professional judgment, Youngberg v. Romeo, 457 U.S. 307, 315-319 (1982); and the nondiscrimination mandates of the Americans with Disabilities Act 42 U.S.C. 12132 and Rehabilitation Act 29 U.S.C. 794 and the requirements of the Social Security Act 42 U.S.C. 1396 et seq.. The Intervenor applicants have not alleged that the program or placement decisions of the STS interdisciplinary teams are inadequate. Even if they had made this allegation, there are extensive state-law procedures already in place for resolving a dispute over interdisciplinary team decisions. The relief plaintiffs have requested specifically contemplates a planning process for each resident of STS by a team comprised of the resident, his guardians, family and professionals who know him best. The plan would describe "the individualized programs,

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[3](...continued)
community-based facilities is a question who resolution is committed to the democratically accountable political branches of the Commonwealth of Massachusetts government as long as they act in accordance with law. This court does not understand that it has been asked by plaintiffs to decide this policy question and, in any event, does not intend to do so.

Healey v. Weld, C.A. No. 94-11804-MLW (11/23/94) (attached).

supports and supervision necessary to protect each classmember and to meet his/her individualized needs and how and when these services will be provided." (Complaint p. 29, para. 3). Any parent, guardian or resident who disagrees with the recommendations of his/her planning team has a right to a hearing. At that hearing the burden is on the state to show by "clear and convincing evidence" that the placement recommendations are in the STS resident's best interest.[4]

The Southbury Group has made no showing that plaintiffs will not vigorously represent the interests of all residents, but simply expresses a difference of opinion with some of the plaintiff parent organizations on the issue of whether STS should remain open -- a difference of opinion that has no relevance to this litigation. As to unconstitutional conditions, the Southbury Group complained not that plaintiffs are inadequate, but that they are overly adversarial saying "plaintiffs have grossly exaggerated the deficiencies of the case provided at STS" (Memorandum, at 12). In

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[4]This standard appears in Administrative Directive # 15. This provision was negotiated by plaintiffs and was ultimately approved by the Intervenor Applicants when they approved the C.A.R.C. v. Thorne Consent Decree. A copy of Administrative Directive # 15 is attached as Exhibit D.

their answer, the Southbury Group adopts a defendant's posture denying, demurring and diminishing the allegations of unconstitutional conditions set forth in plaintiffs complaint. Although the Southbury group has displayed at length its policy disagreements with the plaintiffs and defendants, it did not come close to demonstrating inadequacy of representation.[5] If any substantial conflict over a material issue should arise in the course of this litigation, there will be ample opportunity for the court to address it at that time. See CTBIA v. Hogan, Slip op. at 6.

Moreover, the Southbury Group chooses to ignore the record of rigorous representation in opposition to plaintiffs in related litigation, C.A.R.C. v. Thorne (the Mansfield case). The highly adversarial nature of the pre-trial and trial phase of the Mansfield case and the decades of litigation during the implementation stage belie any suggestion of collusion hinted at by Southbury Intervenors. Cf. In re Agent Orange Product Liability Litigation, 996 F.2d 1425, 1436 (2nd Cir. 1993) ("By all accounts,

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[5]The Home and School Association agreed to and signed the Consent Decree negotiated by the attorneys for the class in C.A.R.C. v. Thorne.

the negotiations were arm's-length and adversarial ....").

The named plaintiffs do not have interests divergent from the rest of the residents at STS. See Dean v. Coughlin, 107 F.R.D. at 334; Wilder v. Bernstein, 499 F. Supp. at 993 ("The fact that some members of the class may be personally satisfied with the existing system and may prefer to leave the violation of their rights unremedied is simply not dispositive to a determination under Rule 23(a)."). Since, in this case, the commonality and typicality requirements are satisfied, the vigorous prosecution of claims by the named plaintiffs is ensured. There is no substantial reason to doubt that the named plaintiffs will adequately represent the interests of residents of STS on their claims relating to unconstitutional conditions and statutory violations.

E. The Requirements of Rule 23(b)(2) are Satisfied in That Defendants Have 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.

Having satisfied the requirements of Rule 23(a), plaintiffs must also satisfy one of the provisions of Rule 23(b). "[I]t is well established that civil rights actions are the paradigmatic 23(b)(2) class suits, for they seek classwide structural relief

that would clearly rebound equally to the benefit of each class member." Marcera v. Chinlund, 595 F.2d 1231, 1240 (2nd Cir. 1979), vacated on other grounds sub nom, Lombard v. Marcera, 442 U.S. 915 (1979). See also Coley v. Clinton, 635 F.2d 1364, 1378 (8th Cir. 1980) (Rule 23(b)(2) held to be "an especially appropriate vehicle for civil rights actions" seeking prison or hospital reform. This principle limits a district court's discretion to refuse to certify a class); Dean v. Coughlin, 107 F.R.D. at 335; Ram v. Blum, 533 F. Supp. 933, 938 (S.D.N.Y. 1982); Santiago, 72 F.R.D. at 625-26 (subsection "liberally applied in the area of civil rights, including suits challenging conditions and practices at various detention facilities").

Although the plaintiffs need not prove the necessity of class certification, see Nelson v. Regan, 560 F. Supp. 1101, 1105 (D.Conn. 1983), aff'd, 731 F.2d 105 (2nd Cir. 1984), cert. denied, 469 U.S. 853 (1984), Rule 23(b)(2) class certification may be inappropriate where a class action designation is "largely a formality." Galvan v. Levine, 490 F.2d 1255, 1261 (2nd Cir. 1973), cert. denied, 417 U.S. 936 (1974). In this case, certification of the class is justified because plaintiffs seek to mandate certain

actions by the defendants. See Jane B., 117 F.R.D. at 72 ("Certification of the class is necessary to guarantee that mandatory relief runs to the benefit of all members of the class."); Koster v. Perales, 108 F.R.D. at 55. The mandatory relief requested by plaintiff class includes court orders: (1) requiring defendants to identify a written plan for each classmember to meet his/her individualized needs; (2) requiring the defendants to identify in a written plan the community homes necessary to protect classmembers' rights and to remediate the environmental and program deficiencies identified in this complaint; (3) requiring the defendants to make available independent advocates for each member of the plaintiff class; and (4) requiring the defendants to provide support services, habilitative programs and decent care to all classmembers. Under these circumstances, class certification is both necessary and appropriate to ensure that relief runs equally to all members of the class.

Additional factors also make 23(b)(2) certification appropriate including: (a) the need to facilitate the enforcement of a favorable judgment, Westcott v. Califano, 460 F. Supp. 737, 746 (D. Mass. 1978); Koster v. Perales, 108 F.R.D. at 54-55;

(b) judicial economy, Alton v. Coughlin, 109 F.R.D. 609, 612 (S.D.N.Y. 1986); Wilder v. Bernstein, 499 F. Supp. at 994; (c) there is no commitment by defendants that prospective relief would be uniformly applied, Dionne v. Bouley, 757 F.2d 1344, 1356 (1st Cir. 1985); Wilder v. Bernstein, 499 F. Supp. at 994; and (d) class certification does not impose any significant burden on the court. Dionne v. Bouley, 757 F.2d at 1356.

In sum, this is a proper class action under Rules 23(a) and 23(b)(2)[6] of the Federal Rules of Civil Procedure.

III. CONCLUSION

For the reasons discussed above, it is respectfully requested that this Court certify this case as a class action and designate plaintiffs as representatives of a class of persons that includes all persons residing at Southbury Training School, all persons who may be placed at or transferred to Southbury Training School at

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[6] Although a class action is superior to any other available method for the fair and efficient adjudication of the controversy, the "superior method" criterion is not applicable to matters sought to be certified under Rule 23(b)(2) See Penland v. Warren County Jail, 797 F.2d 332, 334-35 (6th Cir. 1986). Also, because the plaintiff class requests to be certified under Rule 23(b)(2) the mandatory notice provision of Rule 23(c)(2) does not apply. See Frost v. Weinberger, 515 F.2d 57, 65 (2nd Cir. 1975), cert. denied, 424 U.S. 958 (1976).

some future date and all persons who have been transferred out of STS yet remain under the Director's custody and control.

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