

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No.: 9:18-cv-80810-WPD**

H.C., a minor, by and through his parent and natural guardian, Jenny C.; M.F., a minor, by and through his parent and natural guardian, Asisa Rolle, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

RIC BRADSHAW, Palm Beach County Sheriff, in his official capacity; and SCHOOL BOARD OF PALM BEACH COUNTY,

Defendants.

**DEMAND FOR TRIAL
BY JURY**

**AMENDED CLASS-ACTION COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF¹**

PRELIMINARY STATEMENT

1. This class action civil rights lawsuit challenges the solitary confinement of children who are charged as adults, most of whom have not been convicted of any crime, at the Main Detention Center of the Palm Beach County Jail (“Palm Beach County Jail” or “the Jail”), operated

¹ Plaintiffs file this Amended Complaint pursuant to Federal Rule of Civil Procedure 15(a)(1)(B). The filing of this Amended Complaint renders moot Defendants’ motions to dismiss. *Caring People, Inc. v. Dunn*, 15-CV-81155-KAM, 2015 WL 12720331, at *1 (S.D. Fla. Nov. 4, 2015) (“In lieu of responding to the motion [to dismiss], Plaintiff filed an amended complaint. Because the amended complaint supersedes the initial complaint, Defendant Dunn’s motion to dismiss is moot.”) (citations omitted); *Quirindongo v. Fazio*, 10-60132-CIV, 2010 WL 11601237, at *3 (S.D. Fla. Apr. 23, 2010).

by the Palm Beach County Sheriff's Office ("Sheriff's Office") under the direction of Defendant Ric Bradshaw, Palm Beach County Sheriff.

2. While held in solitary confinement at the Jail, the Sheriff's Office subjects these children to substantial risk of serious harm despite being well aware of the physical and psychological harm solitary confinement has on these children, and choosing to do nothing about it.

3. Defendants, acting in concert, also routinely deny these incarcerated children educational services, including services needed to address their disabilities. The Florida Constitution mandates the provision of education (FLA. CONST., Art. IX, § 1(a)), and the Sheriff's Office and School Board are statutorily required to provide educational services to children incarcerated at the Jail. Accordingly, the Sheriff's Office and the School Board are legally mandated to provide access to education for these children, but have failed to do so.

4. These practices constitute serious violations of the children's constitutional rights, including their rights to be free from cruel and unusual punishment, as guaranteed by the Eighth and Fourteenth Amendments to the United States Constitution; their rights to procedural due process prior to any deprivation of their liberty or property interests as afforded by the Fourteenth Amendment; their rights to receive educational services and programming under the Individuals with Disabilities Education Act ("IDEA"); and their rights to be free from discrimination as provided by Section 504 of the Rehabilitation Act of 1973 ("Section 504"), and the Americans with Disabilities Act ("ADA").

5. Accordingly, Plaintiffs, on behalf of themselves, and those children similarly situated, pray for injunctive and declaratory relief and demand an end to these detrimental and toxic policies and practices. Without immediate intervention, these children will continue suffering

inhumane treatment, physical and psychological harm, and acute and long term mental health issues from the prolonged isolation.

JURISDICTION

6. This action arises under the United States Constitution's Eighth and Fourteenth Amendments' prohibition against Cruel and Unusual Punishment and the Fourteenth Amendment provision for procedural due process, and is brought pursuant to 42 U.S.C. § 1983, which authorizes actions to redress the deprivation, under color of state law, of rights, privileges and immunities secured to all Plaintiffs and Class Members by the laws of the United States. This action is also brought on behalf of certain Plaintiffs and Sub-Class members with a qualifying disability pursuant to the Americans with Disabilities Act (ADA), 42 U.S.C. § 12101 et seq., Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, and the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400-1482.

7. This Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1343, as well as any claims seeking declaratory, injunctive and monetary relief pursuant to 28 U.S.C. §§ 2201 and 2202, and Rules 57 and 65 of the Federal Rules of Civil Procedure. This Court has authority to award costs and attorneys' fees under 42 U.S.C. § 1988, 20 U.S.C. § 1415(i)(3), 42 U.S.C. § 12205, and 29 U.S.C. § 794a.

VENUE

8. Venue is proper in the Southern District of Florida pursuant to 28 U.S.C. § 1391(b)(1) and (b)(2). Defendants have their official residence in the Southern District of Florida. A substantial part of the events and omissions giving rise to the claims in this action occurred in this district.

PARTIES

I. The Named Plaintiffs

9. H.C. is a 16-year-old boy originally from Honduras currently detained in solitary confinement at the Palm Beach County Jail. H.C. is being held at the Jail prior to his trial status and has not been convicted of any crime related to his present incarceration. H.C. has continuously been held in solitary confinement since December 1, 2017, when he entered the Jail - more than seven months ago. H.C. received no procedural due process protections prior to his placement in solitary confinement, nor has he received any periodic review of his classification. H.C. is at substantial risk of serious harm to his physical and mental health because of the Sheriff's Office solitary confinement policies. He is also being excluded from receiving proper educational instruction and services compared to children in general population. He appears in this action through his mother and guardian, Jenny C.

10. M.F. is an African-American 17-year-old boy detained at the Palm Beach County Jail. M.F. is currently being held at the Jail prior to his trial status and has not been convicted of any crime related to his present incarceration. M.F. was continuously held in solitary confinement for approximately six months. M.F. has a disability as defined by the ADA and Section 504. M.F. never received any procedural due process protections prior to his placement in solitary confinement, nor did he receive any periodic review of his classification. M.F. was, and continues to be, at substantial risk of serious harm to his physical and mental health because of the Sheriff's Office solitary confinement policies. M.F. was also excluded from receiving proper educational instruction and services compared to children in general population while in solitary confinement. M.F. continues to be at risk of being denied an education, or to receive services or accommodations

because of his disability as a consequence of the Sheriff's Office solitary confinement policies. M.F. appears in this action through his mother and guardian, Asisa Rolle.

II. The Defendants

11. Ric Bradshaw is the Sheriff of Palm Beach County and head of the Palm Beach County Sheriff's Office. The Palm Beach County Sheriff's Office manages the Palm Beach County Jail, a county jail facility located in West Palm Beach, Florida, that houses both pre-trial and sentenced adult inmates, as well as direct-filed children (i.e., children charged for crimes as adults). The Palm Beach County Jail receives federal funding and is a public entity within the meaning of Title II of the ADA. Sheriff Bradshaw has final governing authority for Palm Beach County Jail and has supervisory authority for all unconstitutional policies and practices challenged by the Plaintiffs. Sheriff Bradshaw has ultimate responsibility for the promulgation and implementation of Sheriff's Office policies, procedures, and practices and for the management of the Palm Beach County Jail. As incarcerated children, Plaintiffs were under the custody and control of the Sheriff's Office. At all material times hereto, Sheriff Bradshaw was an employee or agent of the Sheriff's Office and at the relevant times described in this Complaint, was acting within the scope and course of his employment and was acting under color of state law. Sheriff Bradshaw is sued in his official capacity.

12. The School Board of Palm Beach County is a public entity governing the public schools of the Palm Beach County School District ("School District"), pursuant to Fla. Stat. § 1001.42 (2017). The Palm Beach County Jail is located in Palm Beach County, Florida, and the Palm Beach County School District is responsible for the operation, control and supervision of all free public schools in Palm Beach County, including being the educational provider for incarcerated individuals held at the Palm Beach County Jail. The School District is a recipient of

federal funds for its educational programs. The School District has ultimate responsibility for the promulgation and enforcement of all school district policies and procedures and is responsible for the overall management of educational services within Palm Beach County, including those required to be given to incarcerated children.

FACTS

Solitary Confinement of Children at the Palm Beach County Jail

13. Located in West Palm Beach, Florida, the Palm Beach County Jail is a 2,166-bed correctional facility that primarily houses pre-trial, un-sentenced adults, as well as direct-filed children facing adult charges. "Direct-filed" male children are housed pre-trial on the top floor of the Jail, separate from the adult prisoners, while female children are typically held in the medical unit. On information and belief, as of May 31, 2018, approximately 21 children are being held at the Jail on direct-file charges.

14. The children held in solitary confinement are placed inside small cells – approximately 6' x 12' - for 23 to 24 hours a day. They are often held in solitary confinement for weeks, several months, or in some instances, more than a year while their cases remain pending. The cell contains a combined toilet and sink, a stainless steel desk and bolted-down stool, a steel bed with a thin mattress, and an overhead fluorescent light. The cell is entered through a large metal door which swings out. The door has two small plexiglass windows, one situated toward the floor and one toward the top of the door, which are scratched to such an extent that they are impossible to see through. The door has a metal panel slot that can only be unlocked from outside of the cell, through which food trays are passed.

15. These children are permitted at most one hour, typically three days per week, of solitary recreation – time alone inside a caged basketball court, surrounded by concrete walls and

metal fencing. Moreover, these children are permitted to shower only three times per week, which often occurs *prior* to recreation. Consequently, the children end up being returned to confinement dirty, with no opportunity to shower again for days.

16. At issue in this case are Defendants' operating procedures and practices allowing prisoners (including children) to be locked in solitary confinement for administrative and disciplinary concerns. Disciplinary solitary confinement is imposed for rule violations, such as making noise or fighting, or engaging in other rule violations, whereas administrative solitary confinement is supposed to be used only when a prisoner "poses a serious threat to life, property, self, staff, or other inmates." *See* Palm Beach Sheriff's Office Operating Procedures #919.00. However, direct-filed children report that the Sheriff's Office confines them in isolation when there are co-defendants ("keep-aways") in the same unit. There is no limitation placed on such administrative solitary confinement decisions, and children are being held indefinitely.

17. In both situations, the Sheriff's Office provides no opportunity for the children to contest their placement in solitary prior to their confinement, nor are there any periodic reviews of their classification. Sheriff's Office operating procedures further require Defendants to take into consideration the physical, mental, social and educational maturity of the child prior to making classification decisions. Yet, children at the Jail are not interviewed, evaluated or assessed for any mental health or learning disabilities prior to or during their solitary confinement. On information and belief, the Sheriff's Office and School Board have a policy and custom of failing to comply with these minimum standards with regard to children in solitary confinement.

18. Moreover, children held in solitary confinement are required to be observed every 10 minutes, yet children report that no such observations are made. Rather, children are kept in their locked cells, a condition commonly referred to as "the Box" or "deadlock", with little to no

interaction with other people. Children report that Sheriff's Office correctional officers remain in their desk area, only to emerge for their required obligations, such as delivering trays of food. Children in solitary confinement describe hours of calling out to Jail staff for water, to use the telephone, or to have some human interaction, only to have their pleas ignored, or receive threats of intimidation or removal to the mental health unit.

19. These children have no meaningful social interaction, educational access, environmental stimulation, basic human contact, access to music or television, and practically no ability to hear or see outside of their cells. Children coping with mental health disabilities receive no contact from mental health professionals regarding their well-being. The only avenues of communication for children in confinement are to speak through vents in their cells or yell loudly enough for others to hear them through the cell walls and doors.

20. Yet, if these children, many of whom already suffer from mental health issues, react adversely to their confinement by yelling, banging on their metal cell doors, or attempting conversation with other children, they are punished with loss of privileges, such as phone calls to their parents, or a trip to the "psych ward", where children report that they are taken to the mental health unit, stripped naked, and made to wear a paper gown for hours or days inside a cold, locked cell.

21. Nearly every aspect of solitary confinement at the Jail is dehumanizing. When children are first brought to solitary confinement, they are strip-searched and their personal property is taken from them. The deputies handcuff the children held in solitary confinement almost every time they are outside of their cells.

22. Frequently, the children report having difficulty sleeping, and being unable to maintain a normal day-night sleep cycle. The impairment to sleep have left many of these children confused, agitated, and vulnerable to hallucinatory psychoses.

23. Compounding these detrimental effects is a complete failure to provide access to basic educational services and denying those children with disabilities access to special education supports and services, responsibilities shared by the Sheriff's Office and the School District. The duty to educate children at the Jail is a joint effort by the Sheriff's Office and the School Board and embodied in a cooperative agreement discussing the responsibilities of each party to ensure delivery of appropriate educational services. The agreement at issue, "Cooperative Agreement between The School Board of Palm Beach County, Florida and The Palm Beach County Sheriff's Office (Jail)" ("Education Agreement"), is dated July 1, 2016, and has been and continues to be in full force and effect through June 30, 2018.

24. On information and belief, no child in solitary confinement at the Palm Beach County Jail receives regular educational instruction comparable to their peers. The children in solitary confinement may receive, at most, packets of work shoved under a cell door or have brief moments to speak with a teacher standing outside of their locked door. These children cannot view educational instruction because the windows on their cell doors are scratched up to the point that it is nearly impossible to discern what is being written on the chalkboard, nor are they able to hear the teachers' lessons through the solid metal doors. Additionally, for children with disabilities, highly specialized instruction, accommodations, and appropriate related services are not offered or meaningfully available in solitary confinement.

25. On information and belief, the School Board and Sheriff's Office, though aware of the substandard access to educational services available to children in solitary confinement and its

obligation to provide quality educational services under federal and state law, has taken no measures to ensure substantial delivery of education to these children. In fact, the School Board and Sheriff's Office have moved some instruction to a separate classroom, outside of the central area of the wing with locked cells, entirely excluding the children in solitary confinement from instruction.

Risk of Harm of Solitary Confinement to Children

26. Defined by the National Commission on Correctional Health Care as “the housing of an adult or juvenile with minimal rare meaningful contact with other individuals,” solitary confinement is harmful to both adults and children. As children are still developing psychologically, neurologically, and socially, they are especially susceptible to psychological harm when they are isolated from others.

27. Evidence-based research universally agrees that children, like those housed in the Palm Beach County Jail in solitary confinement, suffer serious harm to their mental health. Children in solitary confinement have committed suicide, developed psychosis and post-traumatic stress disorders, and have experienced major depression, agitation, suicidal ideation, suicidal intent, self-mutilation, and suicidal behavior. Research into suicides at juvenile correctional facilities, for example, shows that the majority of children who commit suicide had a history of being placed in isolation. Depression, which is prevalent among children held in solitary, moreover, carries a 10% to 15% mortality rate. Thus, solitary confinement increases the risk of suicide substantially compared to the general population.

28. Children emerging from solitary confinement often develop long-term trust issues with adults, including paranoia, anger and hatred. Consequently, these children have difficulty forming therapeutic relationships necessary to address mental health concerns resulting from

solitary confinement. Medical research on adolescent brains further explains why children are more vulnerable to the risk of long-term harm. In the adolescent brain, the connections between the frontal lobe and the mid-brain have not fully developed. As a result, trauma to children can cause permanent changes in brain development and create a higher risk of developing pervasive psychiatric conditions like paranoia and anxiety. As solitary confinement is a significant traumatic experience for children, there is a high likelihood of causing permanent changes to their brains.

29. Furthermore, research shows that more than 60% of children within the criminal justice system suffer from pre-existing trauma or mental health issues. The likelihood of latent trauma in these children makes the risk of harm precipitated by solitary confinement even worse. Combining the children's past trauma, mental illnesses, and disabilities with solitary confinement results in exponentially detrimental outcomes.

30. Therefore, it is not at all surprising that the American Medical Association, the American Academy of Child and Adolescent Psychiatry, the National Commission on Correctional Health Care, and the National Council of Juvenile and Family Court Judges support the end of solitary confinement for youth and have each called on correctional facilities to halt the use of solitary confinement of children. International bodies, such as the World Health Organization and the United Nations, have recognized the harmful psychological effects of solitary confinement on children, and have even likened it to torture. Recent U.S. Supreme Court cases such as *Roper v. Simmons*, 543 U.S. 551 (2005) (declaring the death penalty for juveniles to be a violation of the Eighth Amendment's ban on cruel and unusual punishment), *Graham v. Florida*, 560 U.S. 48 (2010), and *Miller v. Alabama*, 132 S. Ct. 2455 (2012), have also focused attention on the relative immaturity of the adolescent brain. It is clear that this developing neuroscience on

the effects of solitary confinement on children has had profound impact on how the criminal justice system, and courts, view the treatment of children in the correctional setting.

31. In fact, the U.S. Department of Justice has ended the use of solitary confinement of children in all federal prisons following a 2012 report finding that “[n]owhere is the damaging impact of incarceration on vulnerable children more obvious than when it involves solitary confinement.” Similarly, many state and city officials are implementing bans on solitary confinement in adult jails and prisons. For example, the Onondaga County Justice Center in Syracuse, New York, pursuant to a 2017 settlement agreement, stopped the use of disciplinary isolation for children held in the facility. At Rikers Island, the second largest jail in the country, the City Corrections Commissioner and Mayor banned the use of solitary confinement for children in 2014. A number of other jurisdictions, including Hinds County Jail in Mississippi, Rutherford County in Tennessee, Los Angeles County, and the New York Department of Corrections, have also adopted reforms or entered into agreements abolishing solitary confinement of children.

32. Despite this national trend to eliminate solitary confinement of children, the Sheriff’s Office continues to utilize this archaic method to contain direct-filed children under its care.

Defendants are Fully Aware of the Risks of Solitary Confinement to Children and Have Deliberately Chosen to Ignore Those Risks

33. In August 2015, the Association of State Correctional Administrators (ASCA), in conjunction with the Liman Program of Yale Law School, published a report regarding solitary confinement, which addressed the national concern over solitary isolation and supported efforts to “limit or end extended isolation.”² Similarly, in April 2016, the National Commission on

² Liman Program & Ass’n of State Corr. Adm’rs, Time-In-Cell: The ASCA-Liman 2014 National Survey of Administrative Segregation in Prison, 15 (Aug. 2015), available at

Correctional Health Care (NCCHC) adopted a position statement that all juveniles should be excluded from solitary confinement of any duration because isolation is particularly harmful for juveniles. Defendants have ready access to these industry guidelines concerning solitary confinement and should consult these best practices as a matter of course.

34. Even more confounding is that confining children in solitary has been shown to be counterproductive to the safety and good order desired at the Palm Beach County Jail. Research shows that isolation increases misbehavior, agitation, and aggression in children, prompting many correctional facilities to replace the practice with positive behavior management strategies for children in their custody, which, in turn, has reduced rates of violence and misbehavior. These institutions, as a last resort, may use brief, temporary confinement - measured in hours and not days, months, or years - in conjunction with appropriate mental health facilitators, and only for situations in which imminent danger to the child or another person is present. To the contrary, the Sheriff's Office effectively ignores best practices in the management of children within a correctional setting, exposing these children to dehumanizing, unnecessary and often-times lengthy captivity in isolation.

35. Jail staff are required to document and report through the chain of command any prisoner who appears to them, or any staff member, to be in need of mental health interventions. However, the process of mental health intervention at the Jail is more regularly used as a threat for misbehavior, as it involves being taken to the mental health unit, stripped of all clothing and belongings, being forced to wear only a paper gown, and being housed in a cell near adults exhibiting extreme behaviors.

https://law.yale.edu/system/files/area/center/liman/document/asca-liman_administrativesegregationreport.pdf (last visited June 7, 2018).

36. On information and belief, children in solitary confinement at the Jail routinely try to bring attention to the conditions at the Jail, but such complaints have been routinely ignored. Staff at the Jail, moreover, discourage children from writing grievances, or otherwise fail to respond or turn in the children's grievances. Some also respond to grievances or other complaints by stating that nothing is going to change with their conditions of confinement, further undermining and foreclosing efforts to seek redress administratively. On information and belief, all grievance requests from the children in solitary to be removed from confinement and be given access to education have been denied by Defendants.

The Defendants' Disciplinary Confinement Policies and Practices Discriminate Against Children with Disabilities

37. Placing vulnerable prisoners, like children, and/or those with mental health issues, intellectual disabilities or brain injuries into solitary confinement is "the mental equivalent of putting an asthmatic in a place with little air to breathe." *Madrid v. Gomez*, 889 F. Supp 1146 (N.D. Cal. 1995).

38. Defendants regularly house children with disabilities in solitary confinement to a greater degree than children without disabilities. These children are disabled, and are qualified to participate in education and programming, but are denied benefits from these programs due to their solitary confinement. Defendants violate the ADA and Section 504 by housing children with disabilities in solitary confinement, failing to accommodate each child's particular vulnerabilities to the isolating conditions, denying them meaningful access to programs and services, and failing to identify and/or recognize behavior related to their disabilities.

39. At the Jail, children with mental health disabilities are disciplined for non-conforming and erratic behaviors related to their conditions, some of which could have been avoided if Defendants provided adequate mental health care or accommodations. For instance,

children diagnosed with Attention Deficit Hyperactivity Disorder may exhibit impulsive behavior, such as fighting with peers. Instead of designing a system with reasonable accommodations meant to positively reinforce preferred behavior or use mental health services to intervene and deescalate a situation, the Jail punishes these children with solitary confinement.

40. The isolating conditions these children are exposed to and the complete lack of any accommodations cause symptomatic behaviors to escalate, leading to disciplinary infractions. In response, these children are locked in isolation for longer periods of time, creating a never ending cycle of escalating mental health-related behavior and punishment for that behavior. Defendants' failure to make reasonable accommodations to their disciplinary policy and practice, discriminates against children with disabilities.

41. Each day in disciplinary confinement results in the loss of legally-required education and opportunities to participate in programming and services. Defendants' continued failure to integrate children with disabilities into the services, programs, and activities at the Jail constitutes a violation of the integration mandate of the ADA.

42. Accordingly, Defendants' policies and practices of solitary confinement of children with disabilities at the Jail directly violate the ADA and Section 504 of the Rehabilitation Act.

Children in Solitary Confinement at the Jail are Denied Access to Meaningful Educational Services

43. Under the Education Agreement, the Sheriff's Office is obligated to provide both a safe environment and the educational space for the provision of educational services to incarcerated children, so as to comply with all state and federal laws, such as the IDEA and Section 504 of the Rehabilitation Act. The Sheriff's Office must also plan activities which do not conflict with the School Board's provision of a minimum of 300 minutes of daily instruction, 250 days per calendar year. The School Board has the obligation under the Education Agreement to provide

the children at the Jail an education that meets state and federal laws, provide resource personnel for special education students and English Language Learner students, provide educational materials, maintain attendance records of students, and deliver an educational program for students 300 minutes each school day under the school calendar.

44. Collaboration between the Sheriff's Office and the School Board is also required under the Education Agreement, including communication to effectuate educational services, transition planning for youth leaving the Jail, and meeting requirements of the former No Child Left Behind (now Every Student Succeeds Act) federal education mandates. These requirements demonstrate the awareness and intent of both the Sheriff's Office and the School Board to deliver sufficient educational services to the children at the Jail. Despite that awareness, the Sheriff's Office and the School Board routinely deny meaningful access to educational programming to children held in solitary confinement.

45. On the contrary, children in solitary confinement are systematically denied access to education and special education. Children held in solitary confinement are locked in their cells for the duration of the school day. They cannot see through the windows in the cell doors. They cannot hear through the metal doors of their cells. They receive packets of work shoved under their doors. They have limited access to educational materials and books. They do not receive classroom instruction.

46. When children are informed that they will be subject to solitary confinement, Defendants do not evaluate the impact of the confinement on their schooling. Children placed in disciplinary confinement receive no notice that when accused of misbehavior, isolation will result in a complete denial of meaningful educational instruction, or that they will be cut off from their regular class work. Children placed in administrative confinement, furthermore, are also afforded

no procedural due process and are denied access to these education services for seemingly limitless amounts of time. Even when an infraction or confinement reason has nothing to do with school, children are removed from all education and related services and programming without any notice or opportunity to be heard.

47. State and local juvenile and adult correctional facilities are required to comply with the IDEA. Yet, children with IEPs in solitary confinement at the Jail are denied a free appropriate public education. Delivery of instruction cannot be met through a metal door where children cannot see or hear. A student with intellectual disabilities held in confinement cannot receive the required differentiated instruction while isolated in a cement cell. Minimal time with a teacher on the other side of the locked cell does not enable special education students to meet IEP goals. A student with a specific learning disability in solitary confinement cannot receive the highly specialized instruction required to meaningfully deliver educational programming.

48. The children who request additional support in school are largely ignored, minimally attended to, and given easier work if they ask too many questions. Because of these repeated failures to provide meaningful education, the children in solitary confinement do not demonstrate proficiency in academic or behavioral goals on their IEPs.

49. Moreover, Defendants deny due process to children with disabilities in solitary confinement by failing to determine whether a child's behavior is a manifestation of their disabilities. Under the IDEA, a child with disabilities is entitled to a manifestation determination if they will be excluded from school for 10 consecutive days or more, or if the child is subjected to series of disciplinary removals totaling more than 10 days in a school year. In that event, a meeting of the relevant members of the child's IEP team must be held, after inviting the child's parents to determine if behavior resulting in the discipline is a manifestation of the child's

disability. If so, the school must return the child to class, and develop appropriate supports to address the behavior. In the alternative, if the child's IEP is not being properly implemented, the removal from the educational setting will not be permitted. None of these procedural protections are provided to those children with disabilities who are housed in solitary confinement at the Jail.

50. Likewise, children with unidentified disabilities in solitary confinement are not evaluated and accommodated for these disabilities and children with existing disabilities are not re-evaluated to ensure delivery of appropriate educational services, as required by the IDEA.

51. Furthermore, children held in isolation at the Jail and protected under the ADA and Section 504 do not receive accommodations formulated to allow them access to educational curriculum. For example, a packet of worksheets slid under a metal cell door does not provide access for a student with Attention Deficit Hyperactivity Disorder who may need assignments to be broken down into smaller items. Likewise, a teacher standing outside of a locked door for a few minutes does not satisfy an accommodation such as checking for comprehension or encouragement to stay on task. Without these necessary accommodations, the children are denied rights under Section 504, requiring access to educational curriculum.

Defendants have a Pattern and Practice of Unlawful Deprivations in the Solitary Confinement of Children

52. The deplorable conditions of solitary confinement of children at the Jail are not isolated incidents. There is a clear thread, with unifying similarities, not only for children currently held in solitary confinement at the Jail, but also for those who previously had to endure the inhumane practices. All of these children were or are being held at the Jail in solitary confinement as pre-trial detainees; all of them have histories of abuse, trauma, or disabilities, and did not receive any mental health treatment or counseling; all of them experience some form of physical and/or mental harm because of the solitary confinement conditions; all were denied any due process

protections and none were given opportunities to engage in the education and programming offered to their peers; and all special education, highly specialized instruction, accommodations, and related services, were, as a matter of course, systematically denied to these children because of the solitary confinement policies implemented at the Jail.

Individual Allegations of Plaintiffs Currently Held at the Jail

I. Plaintiff H.C.

53. Sixteen-year-old H.C. lived with his mom, with whom he is very close. He enjoys reading and spending time outside. H.C. is an English Language Learner student who requires additional assistance from his teachers to be successful in school.

54. H.C. entered the Jail on December 1, 2017, at which time he was immediately placed in solitary confinement. When H.C. asked the deputies why he could not be with the other children in general population, he was told that he had keep-aways and would be held in solitary confinement.

55. H.C. was not given any notice or opportunity to be heard before being placed in solitary confinement. H.C. was not given notice that he would not be able to attend school with his peers as a result of the solitary confinement. He was not notified that he could appeal his solitary confinement status, nor was he given a copy of inmate rules from the Jail describing the grievance policy. He has been given no end date to his isolation, and instead is left to languish indefinitely in his cell.

56. Solitary confinement feels lifeless for H.C. He is depressed, feels extreme stress, and sadness as a result of solitary confinement. He finds himself sleeping throughout the day to attempt to manage the endless isolation.

57. H.C. tries to use his opportunities for recreation when he can, although he is alone inside a walled-in basketball court. He is given his daily meals on a tray through a slot in his cell door. H.C.'s calls to his mom are his only permitted social contact. H.C. is allowed brief showers, lasting no more than 15 minutes, on Mondays, Wednesdays, and Fridays.

58. It is difficult for H.C. to see through the windows in his cell as they are scratched to such an extent that it is impossible to view anything outside of his cell. H.C. can only hear voices on the outside of his cell if the speaker is projecting loudly.

59. If H.C. wants to drink water, he tries to offer his cup through the flap in his door, hoping a deputy will fill it with water from the drinking fountain. Otherwise, he is left with trying to drink the water from the sink adjoining the toilet in his cell, which H.C. says has an unusual smell and bad taste. Some deputies will fill his water cup, but others ignore his requests, telling him, "I'm not your mom."

60. For school, H.C. is given worksheets from teachers in the school under his cell door, but the papers are in English, and H.C. must wait for a teacher who can communicate with him to offer assistance. He does not understand most of what is being said even when he can hear a teacher.

61. H.C. is uncertain as to whether it is acceptable for Jail staff to hit children at the Jail. On one occasion, approximately three weeks ago, there was a fight on the unit. After breaking up the fight, the Jail staff came into H.C.'s cell, apparently because he was too close to his locked cell door during the fight. Multiple Jail staff entered his cell, grabbed H.C.'s arm and held it behind his back, shoved a knee into his neck, and punched him in the face, leaving a mark. H.C. witnessed a similar incident with another child also held in solitary confinement.

II. Plaintiff M.F.

62. Seventeen-year-old M.F. loves listening to, singing, and writing music. He misses being with his family. When he gets out of jail he hopes to go to college to become an architect.

63. M.F. is a pretrial detainee and will remain at the Jail until the resolution of his criminal case. M.F. has been held at the Jail since January 17, 2018. He was placed in solitary administrative confinement for six months due to keep away conditions with co-defendant children.

64. M.F. has been diagnosed with Attention Deficit Hyperactivity Disorder and Conduct Disorder. He is prescribed medication to deal with his mental health issues. The jail is aware of M.F.'s mental health needs, as he entered from the juvenile detention center and was placed directly in the mental health unit of the Jail.

65. M.F. reports that his experience in the mental health unit was traumatic. He was stripped of all clothing, possessions, and confined to a freezing cold cell for 24 hours a day. For the first 2 days of his stay in the mental health unit, M.F. was not even given a paper gown, but left naked with just a "suicide blanket." M.F. was not allowed access to educational programming, showers, recreation, phone calls, or visits while held in the mental health unit. M.F. stayed in the mental health unit at the Jail for 3 days before being moved to solitary administrative confinement, where he was confined for six months. However, despite receiving medication and counseling prior to his arrival at the Jail, he has not received medication or therapy, even while in confinement. He is an individual with a disability as defined by the ADA and Section 504.

66. In school prior to the Jail, M.F. obtained services through an IEP for a speech impairment, had a Behavior Intervention Plan, and received accommodations to address his individual educational needs. M.F.'s disabilities affect his ability to complete school work, pay

attention, follow directions, and make appropriate decisions. Since his arrival at the Jail, he has received no educational services, including those previously provided for through his IEP. He never received a notice or a hearing about prohibition from education classes as a condition of administrative confinement. M.F. previously earned his GED, but he is still entitled to educational services and related services through his IEP, though none have been provided. Defendants have held no IEP meeting with M.F. to explore the delivery of educational or related services.

67. In isolation, M.F. only received visits from his attorneys. He received his meals through a flap in the metal door of his cell. He could not lift himself up enough to see out of the top window in the door of his cell and both that window and the one close to the ground are scratched so badly that he was unable to see through either of them. Unless someone was speaking loudly and clearly on the other side of his door, he could not hear them properly.

68. M.F. also has an injured leg, for which a doctor outside of the Jail previously prescribed him the use of a leg brace with a metal rod. Upon entering the Jail, the nursing staff confirmed with the community doctor that the leg brace was needed. However, after approximately one month in solitary confinement, deputies searched his cell and took away the leg brace because of the metal rod. No replacement brace was offered and, although M.F.'s leg is not fully healed, he has been given no additional medical attention.

69. M.F. felt like he was "going crazy" in the Box. M.F. enjoys reading, but rarely received new books, so he re-read the same books over and over again. He started to talk to himself while in the Box. He passed the time in the Box by pacing or role playing – audibly acting out scenes from television or movies. M.F. only went out of his cell for recreation a few times in his six months in isolation. He was seldom offered recreation and he did not ask to go because he felt that the hours pass easier if he was not aware of the distinction between day and night. He began

having visual hallucinations and saw the words on the pages of his books “wiggle” and the pages move independently.

70. M.F. exhibited symptoms that directly correlated with his placement in solitary confinement and the accompanying social deprivation. M.F. was irritable, agitated, and anxious. He felt completely cut off from others and discouraged about his future. He had nothing to do in his cell. He could not sleep at night because he was not given his prescribed medication and because he heard banging from the cell next to him. M.F. was not been able to receive any meaningful therapy or counseling services in the Jail while in solitary confinement. No mental health workers came to his cell. Prior to placing him in isolation, no one from the Jail spoke with M.F. about his disabilities. M.F.’s mother received a letter from the Sheriff’s Office upon his entry into the Jail requesting consent for a mental health examination, which made M.F. and his mother believe that M.F. would soon begin receiving medication and counseling for his mental health conditions. However, that treatment did not occur.

71. M.F. filed a grievance requesting that he be freed from solitary confinement and that he be allowed to receive any educational programming or services. After several weeks of not receiving any response, M.F. filed another grievance asking for a status on his previous grievance request. The Sheriff’s office responded that they were not aware of any grievances that he filed, and stating that he is in solitary confinement because of the “keep separates” in the Jail. Despite the fact that Sheriff’s Office policy does not require grievances to be sent to a specific department within the Jail, the response also requested that M.F. write another grievance to classification concerning any housing changes. Nevertheless, shortly thereafter, M.F. wrote a grievance to classification, but has yet to receive any formal response. Rather, M.F. was told by a

deputy that he would not have any success in changing his housing status by filing the grievances because of the other co-defendant children housed in the Jail.

72. After six months in confinement, M.F. was eventually placed in the general population with the other children when a co-defendant was moved off his floor.

Individual Allegations of Children Previously Held in Solitary Confinement at the Jail

73. Plaintiffs are not the only children that Defendants have held in solitary confinement. Other examples of the Defendants' practices are set forth below.

I. T.M

74. T.M. is a 17-year-old boy who was at the Jail for approximately five months. T.M. has an IEP in school for specific learning disability and language impairment. T.M. has a qualifying disability under the ADA and Section 504.

75. T.M. received a disciplinary report after an altercation with another child. As the argument was escalating, a deputy was on duty nearby, but did not intervene until a physical fight occurred. Although the other child hit him first, the deputy on duty said that T.M. was the aggressor. T.M. received a disciplinary report and a consequence of 20 days in disciplinary solitary confinement. The other child did not receive any disciplinary report.

76. Disciplinary solitary confinement was difficult for T.M. He could not sleep while in solitary confinement. He could not see out of the scratched up windows in his cell. He could hear when people on the other side of his door spoke loudly. He talked to himself and imagined stories in his head to pass the time. He was not permitted to have any recreation or telephone calls. In disciplinary solitary confinement, T.M. was allowed to take showers on Mondays, Wednesdays, and Fridays, for no more than five minutes. That 15 minutes per week of shower time was the

only time T.M. would be out of his cell each week. During disciplinary solitary confinement, T.M. experienced complete isolation.

77. School offered no respite for T.M. while in solitary confinement. Teachers would slide worksheets on the side of his door, but he did not complete them. No changes were made to T.M.'s instruction as a result of his solitary confinement status.

78. T.M. was not visited by a medical or mental health professional while in solitary confinement. T.M. had spinal surgery for scoliosis in May 2018 and continues to experience pain. However, he received no medical treatment while at the Jail.

79. T.M. was "houseman" for two months prior to his disciplinary report. In order to achieve this position, he had to demonstrate a positive behavior record. Being houseman meant that T.M. had good behavior and was given additional responsibilities. His positive track record was not taken into account when T.M. was placed in disciplinary solitary confinement. He did not have the opportunity to challenge the confinement decision nor was he made aware of the opportunity to grieve the consequence.

II. J.E.

80. Sixteen-year-old J.E. likes basketball and reading. He misses spending time with his family. Prior to being incarcerated, J.E. lived with his mom in Lake Worth, Florida. When J.E. gets out of the Palm Beach County Jail, he wants to go to school and would like to be a welder when he grows up.

81. J.E. has been diagnosed with Attention Deficit Hyperactivity Disorder, Conduct Disorder, and Mood Disorder since he was about 12 years old. J.E. has a Section 504 Plan (which provides a blueprint of supports designed to remove barriers for students with disabilities, so that the student has equal access to educational curriculum) in school based on his disabilities, and

before being incarcerated at the Jail, he was in the 10th Grade at Lake Worth High School. He struggles to do well in reading and writing without extra support from his teachers, however, he has received no evaluation for special education services under the IDEA.

82. J.E.'s disabilities make it difficult for him to pay attention for extended periods of time, and make him feel anxious, depressed, and impulsive. He is an individual with a disability as defined by the ADA and Section 504.

83. J.E. is a pretrial detainee and has been at the Jail since January 17, 2018. He will be held at the Jail until his criminal case is resolved.

84. J.E. was placed in solitary confinement for six months as an administrative placement due to having co-defendant children who are also incarcerated.

85. In solitary confinement, J.E. was permitted to take brief, 10-15 minute showers on Mondays, Wednesdays, and Fridays. Opportunities to go to a walled-in basketball court for solitary recreation were sporadic. He did not have any visitors except from his attorneys and his probation officer. His only social contact in solitary confinement was through calls to his mom, but she was unable to speak to him as much as he would have liked because she could not talk while she was working.

86. In J.E.'s cell, there is a metal frame bed with a thin mattress, a single piece toilet and sink combination, and a stainless steel desk and stool that are bolted into the wall and floor. Meals are delivered through a locked, sliding box situated in the door. To drink water, J.E. must use the sink adjoining the toilet. The water is discolored if the taps are not run frequently and the water has an unusual, sewage-like odor. While he was in solitary confinement, some deputies would permit J.E. to place his cup through the sliding box in the door and fill it from the drinking fountain water used by the children who are not in solitary. Other times, deputies refused to get

J.E. drinking fountain water, stating, "I'm not your water boy." In solitary confinement, J.E. was required to be handcuffed each time he left his cell, including to showers, recreation, medical, and legal visits.

87. J.E. is completely under the control of the deputies at the Jail. For instance, J.E. is able to operate the light in his cell with a switch. However, on at least two occasions while he was in solitary confinement, a deputy responding at nighttime to noise on the wing, deliberately turned on brightly emanating emergency lights, and left them on so that the children were unable to sleep. Another time, while J.E. was in solitary confinement, he had been given pants to wear that deputies later decided were not the correct ones for him. Rather than exchange the pants for proper ones, they took his only pair, leaving him undressed for hours. In response to situations such as these, J.E. is curtly dismissed by deputies, who state, "You don't like it? Don't get yourself arrested."

88. J.E. had little to do in "the Box." Being locked in his cell for so long made him feel depressed, alone, and in his own words, "delusional". He paced the available 4'x10' area in his cell, saying that he often can't stop moving. He constantly felt that he did not have enough space. He lost approximately 20 pounds after entering solitary confinement at the Jail. He had recently begun to read, but did not receive many new books during his six months in the Box, so he was stuck re-reading the same books over and over again. The lack of stimulation became so bad that if he was not pacing, he just stared at the wall all day. J.E. hardly slept at night, and could get only a few hours of sleep before being woken up for the 3:00 a.m. breakfast service at the Jail. J.E. says that isolation, "does something to you. It's crazy."

89. J.E. had begun having visual and auditory hallucinations in solitary confinement. He heard screaming at night and would stare at the blank wall in his cell and "watch" a full television show. Other children held at the Jail have covertly communicated with him, telling J.E.

that if he banged on the door to get attention, he would be sent to the psych unit, where children have their clothing taken from them, are given a paper gown, and locked in a very cold mental health unit cell. Fearing reprisal, J.E. experienced frequent headaches and burning sensations in his throat at night, but did not tell anyone about them. No health care professional went to visit J.E. or talked to him about his physical or mental well-being.

90. J.E. exhibited symptoms that directly correlated with his placement in solitary confinement. J.E. felt stressed, anxious, angry, and hopeless. He rarely received visitors. No one from the Jail's mental health staff has ever checked on him while he was in isolation, despite the fact that he previously received counseling in the community. J.E.'s mother called the Jail to describe his disabilities and how they would worsen in confinement, but there was no change in his status or care.

91. In solitary confinement, J.E. could not meaningfully attend education classes or programming. He had no notice or hearing regarding the termination of typical education classes as a condition of administrative confinement. He sporadically received packets of worksheets, slid to him under the door, for his education. J.E. could not see any class occurring outside of his cell as the small windows on his cell door is entirely scratched. J.E. could not hear the instruction very well as he had to stand and listen through the cracks around the door frame, and teachers who hold class on the bottom floor many meters away from the solitary confinement cells, do not speak at a volume loud enough to be heard through the door. Teachers did not help him with the worksheets, and he could not complete them on his own. J.E. tried to ask for help but he felt that because there were too many children in the unit, and teachers did not have time to spend helping him. In solitary confinement, J.E. felt forgotten by the teachers. Despite the clear deficiencies in instruction,

Defendants have made no attempts to alter their practices or work to ensure that educational services are properly delivered to children in solitary.

92. J.E. filed grievances while incarcerated at the Jail requesting that he be removed from solitary confinement and expressing his desire to participate in educational programming. After filing an initial grievance, J.E. received a response from the Sheriff's Office stating that he was in administrative confinement and that they would look into adjusting his placement. Weeks later, after having not received any further response, J.E. filed an appeal of his previous grievance to the division commander concerning his request for removal from confinement and access to education. This time, the Sheriff's Office responded by asking that he "stop filing frivolous grievances". J.E. appealed once again, wanting to know what is happening with his request, or to discuss a solution. The Sheriff's Office responded that because he has three "keep separates," he "will remain in administrative confinement" until such time that his co-defendant children are no longer in the Jail.

93. After six months in solitary confinement, J.E. was permitted to join the other children in general population after one of his co-defendants was released from Jail.

II. W.G.

94. W.G. is an African-American 16-year-old boy who was held at the Palm Beach County Jail in solitary confinement for approximately 10 months prior to his trial and before any conviction of a crime, beginning when he was 14 years old. W.G. is under the legal custody of his grandmother and supervision of the Department of Children and Families after being removed from the custody of his biological parents. When he grows up, he wants to work in landscaping or have a pressure cleaning business.

95. W.G. has been diagnosed with Attention Deficit Hyperactivity Disorder. He has an IEP for an intellectual disability, criteria for which includes an IQ below 70, and Specific Learning Disability. He has a difficult time focusing in school and requires specialized instruction to learn. He is on a differentiated curriculum in school due to his disability. W.G. qualifies as an individual with a disability under the ADA and Section 504.

96. W.G. was charged as an adult and moved to the Jail on January 9, 2017, when he was 14 years old. At first, W.G. was placed in general population with the other children on the 12th floor. After about two weeks, W.G. got into a fight with other children and received a disciplinary report. He was told that he would receive a 20-day disciplinary solitary confinement sentence as a result of his rule infraction. However, despite receiving no further disciplinary reports, W.G. was held in solitary confinement for the next *ten months*, until his move from the Jail on October 27, 2017.

97. When initially placed in confinement, W.G. asked deputies that he be able to get out of the Box, but was told that he had to stay away from children on both wings of the 12th floor as a result of his fight. W.G. was never told that he could write a grievance but rather was led to believe that he would be held in confinement indefinitely, with no possibility of recourse. He did not write a formal grievance and did not know how to use the grievance process. Eventually, W.G. lost hope and stopped asking to get out. No one from the Jail inquired as to W.G.'s intellectual or mental health disabilities prior to or during his placement in the Box. No one from the Jail ever offered additional assistance due to his intellectual or mental health disabilities.

98. The Box provided no physical or social stimulation for W.G. He gained weight in solitary confinement due to lack of exercise. In fact, after leaving the Box, his body "hurt to move" as it had been inactive for such a long time. During his 10 months in solitary confinement, W.G.

only had visits from his attorney and his Department of Children and Families case manager. Any time he left his cell, W.G. was handcuffed. W.G. adapted his sleep schedule as do many children in isolation, sleeping during the day and being awake at night. W.G. tried to utilize his opportunities for recreation, but was often denied the privilege because other children were utilizing the recreation space, and he was not allowed to have any interaction with them.

99. W.G. wanted to read to “keep from going crazy” in confinement, but he is not a strong reader and new books were not regularly offered. W.G. wanted to write songs to occupy his time, but he found that he could not focus enough to do so.

100. W.G. began experiencing headaches, as well as back pain from a previous automobile accident. He made a sick call and was given “red pills” from the Jail medical staff, which were charged to his canteen funds. The pills did not help relieve any pain or stress. W.G. felt that he needed glasses to see while in confinement, but he never had any vision screening.

101. W.G.’s interactions with Jail staff exacerbated the overwhelmingly negative conditions of confinement. When coupled with the limitations of his disabilities, W.G. would easily become irritable and frustrated. He would yell for the deputies on duty, in a desperate attempt to engage in some social interaction. W.G. would repeatedly try to talk to Jail staff, by asking to use the phone, for water, and for soap, but the deputies would ignore him. He would beat on his door to get attention, only to be threatened by deputies to a fight. Deputies also routinely threatened to take away W.G.’s showers, phone calls, and attorney visits. Some deputies would even refuse to let W.G. out of the Box for recreation. Other times, deputies would “toss” his cell during searches, deliberately tearing up or throwing away W.G.’s possessions. Deputies would bang on the door to wake him up and if he didn’t get out of bed in five minutes, he would have a 24-hour lockdown in his cell, without any privileges. To drink water while in deadlock,

W.G. would have to ask the deputies to bring him water with a cup sent through the food flap of the door. Some deputies would refuse, leaving drinking water from the sink as the only option. The sink, adjoining the toilet, would often have discolored, odorous water, which W.G. would try to run until it became clear in order to drink it.

102. W.G. reports that children on the 12th floor are well aware that the mental health unit is a place where inmates are sent, stripped of their clothing and belongings, given a paper gown, and forced into a locked, cold cell. Although he never went to the mental health unit, W.G. heard deputies make threats to children in confinement who were loud or disruptive, such as deputies saying, “What’s that? You’re going to kill yourself?” so the deputies could retaliate by sending the children to the mental health unit.

103. For educational instruction, W.G. would need to stand the entire time in order to try to see through the badly scratched window in his door or hear through the cracks around the door frame. Due to his back injuries, standing is painful for W.G. He explained this issue to the teachers, but no accommodations were made, nor were any alternatives to delivering the education curriculum devised. His only option remained standing and trying to see and hear through the metal door of his cell. W.G. was given some work for school under his door. He could not access his educational services and struggled working independently with reading and math. He cannot read big words. He would yell through the door if he had a question, and some of the school staff would respond, but then leave quickly as they had to give attention to others. W.G. participated in one IEP meeting on May 25, 2017, but his attendance was perfunctory, lasting only 10 minutes. Eventually, W.G. gave up on trying to observe school or engage school staff from the confines of his Box and would stay asleep instead. After his release from the Jail, at an IEP meeting on November 28, 2017, the support facilitator who worked with W.G. at the Jail acknowledged in

conference notes that there were several accommodations that W.G. was unable to receive while in confinement at the Jail.

104. W.G.'s family has noticed a difference in him, which they attribute to his solitary confinement. They report that he does not feel comfortable with his peers, and is constantly concerned with aggressive or negative attacks from them. With W.G.'s young age and his history of confinement, should he ever return to the Jail as a child, he would likely go right back to the Box.

III. Jeziah Guagno

105. Jeziah Guagno ("Jeziah") is a biracial 18-year-old male who entered the Jail as a 16-year-old child and was placed in solitary confinement at the Jail. When Jeziah turned 18, he was moved to the adult side of the Jail, where he remained in solitary confinement. In total, he was held in solitary confinement for approximately 21 months.

106. Jeziah enjoys reading and would like to be a mechanic or city employee when he returns to the community. He misses playing sports, especially football, going to the library, and helping to take care of his younger siblings.

107. Jeziah has been diagnosed with Posttraumatic Stress Disorder, Conduct Disorder, and Attention Deficit Hyperactivity Disorder. In school, he has an IEP for an Emotional Behavioral Disability. His childhood was overshadowed by abuse and instability in his home placements, and he was adjudicated dependent and placed under the custody and supervision of the Department of Children and Families. He has been prescribed psychotropic medication for his disability and participated in counseling in the community and through school. Jeziah qualifies as an individual with a disability under the ADA and Section 504.

108. Jeziah was charged as an adult at age 16 and was held in confinement on the 12th floor, for approximately 17 months. Upon turning 18 years old in December 2017, Jeziah continued to be held in solitary confinement on one of the adult floors of the Jail until his move from the Jail, approximately four months later.

109. When Jeziah was first placed at the Jail from March to July 2016, he was 16 years old. He received a disciplinary report after a fight with another youth, and spent about three months in solitary confinement. During that time, he was exercising his telephone privilege, which usually would have been 15 minutes on the phone. However, before his phone call was to end, a deputy unplugged the phone. As the telephone was his only social interaction while in isolation, he was upset when that time ended early. He flooded his cell with water from the toilet.

110. The deputies on duty told him to “cuff up”, where he had to put his hands behind his back to be handcuffed. While handcuffed, he was pushed against a wall, and a deputy hit him while his back was turned. He resisted and fell to the floor. The deputies stomped on him and his face was slammed against the cement floor, breaking his two front teeth. His chin was split open, which later required sutures. He was taken to the mental health unit, where he had his clothes taken from him, given a paper gown, and was locked in another cell overnight without receiving any medical attention.

111. The following day, Jeziah was taken to the medical unit of the Jail. He was given gauze to keep in his mouth to soak up the blood. A few days later Jeziah was taken out of the Jail to have surgery to remove the remnants of his front teeth which were impacted in his gums. He was given ill-fitting dentures that clipped on to his other teeth and returned to solitary confinement. The incident report described the assault by the deputies as a slip and fall. When Jeziah tried to file a grievance about the use of force and ensuing injuries, he was told that the time to make a

claim had expired. Jeziah was told by Jail staff that one of the deputies who hurt him was reassigned, along with the sergeant who was on duty, but Jeziah has witnessed that the other two deputies who were involved in the assault are still on assignment at the Jail.

112. At one point, Jeziah was released from the Jail to his father, but two weeks later, in August 2016, Jeziah returned to the Jail. Based on the disciplinary report from his previous stay at the Jail, Jeziah was immediately placed in solitary confinement upon his return. This time, he was placed in administrative solitary confinement and was told that classification would review his isolation each week. However, he remained in solitary confinement for the next 16 months and received no information about any review of his isolation during that time.

113. Jeziah continued to be a target for the deputies while in confinement. For instance, about two weeks after his return to the Jail, a deputy accused Jeziah of failing to return his food tray. Despite Jeziah's assertions that he had returned the food tray, the deputy entered his cell and pepper sprayed him. When the tray was not found in his cell and Jeziah argued that the deputy should not be coming into his cell alone, Jeziah was moved to the other wing on the 12th floor.

114. Also, Jeziah still had his denture clips, but found them to be loose and uncomfortable. He took them out when he would sleep, but did not have a special container for them, so he used a covered cup, filled with water, in which to keep them. On or about October 2017, while his denture clips were in his room, but not in his mouth, deputies "tossed" Jeziah's cell and threw away his denture piece. The incident was not documented so Jeziah could not have them replaced. A deputy involved in the original incident where his teeth were slammed on the floor simply looked at him and laughed when the dentures were thrown away.

115. While Jeziah was in confinement, another Palm Beach Sheriff's Office staff member told Jeziah that she would have other inmates assault him when he got out of confinement.

Jeziah called the PREA (Prison Rape Elimination Act) hotline, but received no follow up in response. In December 2017, weeks before his 18th birthday, Jeziah was released from solitary confinement. He was in constant fear of receiving a disciplinary report and being returned to the Box. Jeziah was indeed assaulted by another prisoner approximately one week after his placement with the other children in general population. As a result of that incident, Jeziah received a disciplinary report and was returned to solitary confinement.

116. While he was in confinement as a child, deputies regularly provoked him and triggered him to react by threatening and taunting him. Corrections officers repeatedly knocked on Jeziah's cell door during the night to keep him from falling asleep. While in solitary confinement, Jeziah had his recreation and access to drinking water from the fountain taken away by deputies. Deputies threatened Jeziah at least 10 times with a trip to the "psych cell," the mental health unit where he would have no clothes, a paper gown, and be locked in a cold cell if he didn't be quiet. He had instances where all of his personal items, including drawings, paperwork, sweaters, socks, undergarments, and the sheets off of his bed would be taken from him for hours at a time as punishment for banging on his door or talking to other children.

117. In confinement, Jeziah felt total isolation. While on the 12th floor of the Jail, he would spend 23-24 hours per day alone. He would repeatedly ask the deputies what time it was in order to engage in some social interaction. He would get to a point of such extreme frustration that he would act out. After he had been in isolation for 11 months, Jeziah began to draw pictures or rip them from books or newspapers and paste them to the wall of his cell with toothpaste, trying to find something to do.

118. Jeziah estimates that he lost approximately 20 pounds while in confinement. His sleep patterns became completely irregular. Even after moving to the adult floors of the Jail, Jeziah

had multiple days of insomnia. He has become extremely anxious and constantly feels pent up with energy. He has not received any of his prescribed medication for his mental health conditions since coming to the Jail more than one and a half years ago. He had been receiving counseling from the school district as a related service through his IEP, but that stopped completely in June 2017 without any prior written notice from the school district. After approximately four or five months in solitary confinement, Jeziah requested a sick call and told the Jail doctor that he was depressed and needed medication. The doctor told him that he would get in touch with Jeziah's guardian, his grandmother, but Jeziah never heard anything after that.

119. Jeziah also reached the point during his solitary confinement that he harmed himself, cutting his fingers on a metal piece in his cell, so that he had an excuse to be taken out of his cell. He required 12 stitches from his injury. He did not receive any mental health treatment from the Jail despite this incident, and his history of mental illness, disability, or presenting behaviors.

120. Jeziah filed multiple grievances regarding his confinement. His grievances would be ignored, returned as not able to be processed, or returned without a reason as to why he was still held in isolation. At one point, after Jeziah had been in isolation for more than a year, a Captain at the Jail talked to him and said he would review his status and let him out of the Box, but this change never occurred. Jeziah continued to file grievances, but some deputies refused to accept the grievances and other deputies would tell him to turn it in to the deputy on the next shift. Other times he would be told by Jail staff that his grievances got lost. Jeziah felt overwhelmingly frustrated and angry about continuing to be held in solitary confinement, exacerbating the symptoms of his disability that were compounded by almost a year and a half of isolation. His

release from solitary confinement eventually happened three months after the conversation with the Jail Captain in December 2017, the month Jeziah turned 18 years old.

121. The lack of access to educational programming, especially services required by his IEP, caused frustration for Jeziah when he was in the Box. At an IEP meeting, he explained to school staff that it was difficult to see and hear any of the class instruction while he was in the Box, but his concerns were not recorded in conference notes nor addressed by school staff. Jeziah could not see out of the scratched plexiglass window of his cell, felt that he could not keep up with what was happening in the class, was told to work on his own with papers slid under his door, failed to receive the help needed to understand the work, and attempted to listen to school through the gaps in the sides and bottom of the cell door. Jeziah was routinely told by school staff that they would come by after they were done teaching, but he would usually receive no more than a minute or two of attention, which was wholly insufficient to be considered a free, appropriate public education.

122. When he received educational services outside of the Box, Jeziah recalls that his grades were better, he could sit near a teacher, and that he received instructional support throughout the school day. When he was placed in solitary confinement, Jeziah received no notice that his educational services would be removed as a condition of his isolation. Eventually, Jeziah found no reason at all to wake up when educational services took place on the other side of his cell door because he was unable to hear lessons that were presented. After Jeziah's move to the adult floors, an IEP meeting was held on February 13, 2018, and the conference notes state that, "Under the circumstances of confinement he has not been able to gain regular access to school, which has negatively impacted his academic success." Despite this knowledge on the part of Defendants, no attempts have been made to improve the method of instruction for children in solitary confinement.

IV. Brice Daniels

123. Brice Daniels (“Brice”) is an African-American 18-year-old male who was held at the Palm Beach County Jail in solitary confinement prior to trial or conviction, beginning when he was 16 years old.

124. Brice spent more than 11 months in solitary confinement at the Jail. He entered the Jail on December 5, 2016, at 16 years old, and after about two weeks was placed in administrative confinement due to keep-away conditions with other children. He was released from solitary confinement in November 2017, one month before his 18th birthday, when his keep-aways left the Jail.

125. Brice is diagnosed with Attention Deficit Hyperactivity Disorder and bipolar disorder and has an IEP in school. He was prescribed psychotropic medication in the community and discussed his diagnoses and medication with classification at the Jail. However, he was never visited by a psychiatrist or therapist from the Jail while in solitary confinement. Brice is an individual with a disability under the ADA and Section 504.

126. Brice internalized much of the isolation that he experienced in his nearly one year in solitary confinement. The idea that he was enclosed behind four walls was one that he tried to avoid thinking about, for fear of “going crazy”. At first, Brice would exercise his limited opportunities to go outside of his cell to the walled in basketball court for solitary recreation. He wouldn’t move around, but would sit outside on the cement ground, close his eyes, try to listen for birds calling around him, and just breathe. After about six months in solitary confinement, he refused to go outside at all because the presence of air and life outside, juxtaposed with his stale and lifeless confinement, was too difficult to process.

127. Brice passed the time by doing anything he could within solitary confinement – he kicked his door, threw things in his cell, talked to himself, sang, and danced. One time, he was being too loud in his cell and was sent to the mental health unit for two days because of a false allegation that he was going to kill himself. The trip to the mental health unit involved losing the privilege of having clothes, being given a paper gown, and being locked in a cold cell without phone calls, showers, or recreation.

128. Educational instruction was nearly impossible for Brice to participate in while in the Box. Brice would have to stand at the door for the duration of the instruction. He would receive worksheets under the door. He would call to teachers but receive no response. Defendants were aware of the difficulties in attending educational programs while in solitary confinement, but made no attempts to deliver instruction in another manner. Brice did not receive a free appropriate public education or any evaluations to ensure delivery of appropriate educational services during his almost one year in solitary confinement.

129. Brice filed multiple grievances regarding his confinement status. One time he received no response. The second time he received his grievance back with a signature but without an answer as to when he could be released. To the third grievance that Brice wrote, Defendants responded that he had too many keep-aways to be released from confinement. Brice received no additional disciplinary reports during his more than 11 months in confinement, but was held without access to the offered educational programming, social interaction, and mental stimulation he so desperately needed.

V. Jeff Omelus

130. Jeff Omelus is a Haitian-American 18-year-old male who was held at the Palm Beach County Jail in solitary confinement prior to trial or conviction for 146 days while he was 17 years old.

131. Jeff has a close relationship with his father. His mother lives in Haiti and he does not speak with her frequently. He enjoys riding dirt bikes and playing basketball. He would like to be a small engine mechanic.

132. Jeff entered the Jail in August 2017. Jeff was in solitary confinement at the Jail for approximately five months. He was initially placed in confinement after a disciplinary report, from about September 26, 2017, to October 11, 2017. He was later moved to general population for a couple of weeks and then re-entered solitary confinement at the end of October, 2017. J.O was kept in solitary confinement until his move from the Jail on February 28, 2018. When not imprisoned, Jeff spoke often to the guidance counselors at all of his schools in the community, but was not offered these services in the Jail, even after his documented crisis stabilization unit interventions in the Jail.

133. Jeff's experiences in solitary confinement mirror many of the experiences of the other children. He was permitted only a brief shower on Mondays, Wednesdays, and Fridays, and maybe an additional day if he had a court hearing. He was offered recreation inconsistently and his opportunity for recreation depended on the scheduling of all of the other children in solitary confinement. Jeff gained about 20 pounds in the Box due to his inability to move. Jeff found sleep difficult in the Box. He looked forward to his time to speak to his father on the phone, which was his only social connection. He had to drink water out of the sink adjoining the toilet, which was discolored, had a bad odor, and tasted different than "normal" drinking water. Sometimes

deputies would provide water in a cup through the food flap of the locked, metal door, but others would refuse, saying, "I'm not your water boy." Jeff also experienced threats from Jail deputies. For instance, when trying to control Jeff's actions, one deputy stated, "Didn't you hear what happened to J--?", referring to Jeziah and the assault by deputies causing him to lose his front teeth. Another time, someone urinated under the door of Jeff's cell. He asked deputies repeatedly for a mop to clean his cell, but was ignored. When he finally gave up and washed the urine with water from his sink, he was accused of trying to flood the room and received a disciplinary report along with ten days without recreation. In solitary confinement, Jeff became despondent and hopeless.

134. Jeff was sent to the mental health unit at the Jail on two occasions. The first time, Jeff was in general population with the other children on the 12th floor. He was on the bed in his cell, reading a book, when children on the other sides of his cell were banging on the doors of their cells. A deputy came to Jeff's cell and accused him of making noise. When Jeff denied making the noise, the deputy falsely accused Jeff of saying he was going to kill himself. Two deputies came into his cell, put their knees in his back and hit him so they could handcuff him with his arms behind his back. He was taken to South 3A, the mental health unit on the 3rd floor of the Jail. His outer garments and undergarments were ripped off of him by deputies using a hook. Jeff felt so violated – being a child in handcuffs having his clothes ripped off of his body by grown men with batons and pepper spray – he likens it to a sexual assault. He was given only a paper gown which was thin, ripped easily, and was completely open in the back. Then he was confined to a cold, locked cell. As a result of the incident, Jeff was given a disciplinary report and 10 days disciplinary confinement.

135. The second time that Jeff was sent to the mental health unit was in December 2017. While in solitary confinement, Jeff stood on his desk to speak to another youth in the neighboring cell through a crack in the wall. A deputy told Jeff to get off of the desk, but Jeff did not immediately comply. As a result, the deputy called the sergeant and accused Jeff of trying to kill himself by jumping off of the desk. He experienced the same process as the first time: handcuffed, dragged to the “psych ward,” clothes ripped from his body, and left in a cold, locked cell. The mental health unit cells have a glass wall on the front so the inmates can be observed at all times. Because children in the mental health unit are placed with adults in surrounding cells, they are supposed to have a partition placed in front of the glass wall of their cells to shield them from the view of the adults, especially given their unclothed state. However, Jeff was left for the entire stay without a partition to protect him from the view of the adult prisoners around him. He remained in the mental health unit for the entire weekend. When he returned to the 12th floor, he was once again in solitary confinement. He was not evaluated by any mental health or educational professional.

136. Jeff was not able to participate meaningfully in educational instruction while in solitary confinement. He did not receive any notice or hearing that he would not be able to participate in the typical educational programming while in solitary confinement. In his cell, Jeff would receive packets of work instead of actual class participation. No one would follow up to ensure that he understood or completed his packets of work. Jeff tried to stand by the cell door to see what was happening during educational instruction, but the window was scratched so badly that he could not see through it. Also, Jeff had a pole and stairs in front of his cell, further obscuring his ability to see the classroom board. Jeff would call out loudly from his cell to teachers for help, but they would rarely respond. Some teachers would come to his door for a few minutes, but then

would need to return to teaching the rest of the children in general population. Some teachers would refuse to come to the cell door at all. Jeff told the education staff that he could not see or hear the instruction, but no attempts were made by Defendants to change the method of instruction and accommodate the children in solitary confinement.

137. Jeff began having visual and auditory hallucinations in solitary confinement. He saw a third arm coming from his body and began hearing voices, especially at night. Jeff reports that his father would drive to the parking lot of the Jail each night and flash his headlights so Jeff could see them, which would be the only reprieve he had from the constant sense of loneliness.

138. Initially, when Jeff inquired of deputies about filing a grievance about his solitary confinement status, deputies told him it was useless to write grievances. Then, once he began writing formal grievances, he never heard back. He tried again to file a grievance with a different deputy, but again received no response. He asked a deputy what was happening with his grievances and the deputy responded that Jeff had keep-aways and they would not let him out. Jeff even spoke to the Sergeant, but was told that there was no possibility of getting out.

139. The lasting effects from solitary confinement are plainly evident to Jeff and those around him. Although his visual hallucinations have stopped, he continues to hear voices. The voices are both male and female. Other children and adults that interact with Jeff now say that the Jail “messed him up.” He is told that he speaks unusually. His gait is abnormal, with a wide-legged wobble that was not present before entering the Box. He feels himself snap at others for no reason. His sleep patterns have not returned to normal and he doesn’t sleep at night. He does not trust anyone around him. His heightened paranoia about others means that he must have a seat at the back of the room in class because he feels he needs to keep watch on those around him.

These changes to Jeff's physical and mental health exemplify the long-term negative impact of solitary confinement.

140. Though no longer held at the Jail, the experiences of these former child detainees illustrate the toxic system of solitary confinement at the Jail, and deprivations of due process, access to education and services, and detrimental isolation accompanying that harm.

CLASS ALLEGATIONS

141. Plaintiffs bring the First, Second and Third Causes of Action pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure, seeking declaratory and injunctive relief on behalf of a class of all present and future children (*i.e.* children under the age of eighteen and charged as adults) who are now or will be incarcerated in solitary confinement at the Palm Beach County Jail. All class members face a substantial risk of serious harm as a result of the Defendants' segregation management policies and practices and denial of constitutionally protected due process prior to placement in solitary.

142. A sub-class of all current and future children with disabilities, as defined by the Individuals with Disabilities Education Act, who are or will be held in solitary confinement at the Palm Beach County Jail and are in need of special education and related services ("IDEA Subclass"), bring the Fourth Cause of Action pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure, seeking declaratory and injunctive relief.

143. A subclass of all current and future children with psychiatric and/or intellectual disabilities, as defined by the Americans with Disabilities Act and Section 504 of the Rehabilitation Act, who are or will be held in solitary confinement at the Palm Beach County Jail ("ADA and 504 Subclass"), bring the Fifth and Sixth Causes of Action, seeking, declaratory and injunctive relief.

144. All four requirements of rule 23(a) are satisfied:

a. Numerosity: Joinder of all class members is impracticable because of the size of the class and the characteristics of the class members. At any given time, all of the children incarcerated at the Palm Beach County Jail are at a significant risk of unconstitutional placement in solitary confinement, unlawful denial of educational services, and unlawful discrimination because of disability-related misbehavior. Every month, additional class members cycle in and out of the Palm Beach County Jail. Many of these children are unable to file lawsuits on their own because of their youth, special education needs, disabilities, lack of financial resources, and length of time they will be incarcerated.

b. Commonality: There are questions of law and fact common to all members of the class, including, but not limited to whether the Defendants' policies and practices of placing children in solitary confinement have resulted in and will continue to result in a violation of the class members' Eighth and Fourteenth Amendment rights, whether Defendants' practice of locking children with mental health and/or intellectual disabilities in isolation based on their disabilities violates the ADA and Section 504 of the Rehabilitation Act, whether the Defendants have unlawfully denied educational services in violation of the class members' Fourteenth Amendment rights and whether the Defendants have violated the IDEA subclass members' rights under the IDEA.

c. Typicality: The claims of the named Plaintiffs are typical of those of the class. All named Plaintiffs are currently or previously have been incarcerated at the Palm Beach County Jail in solitary confinement. Each named Plaintiff has been subjected to the challenged policies and practices.

d. Adequacy of Representation: The named Plaintiffs, their representatives, and class counsel will fairly and adequately represent the interests of the class. The named Plaintiffs and their representatives have no interests in this matter that are antagonistic to other class members. Class counsel have many years of experience in civil and prisoner rights litigation and class actions.

145. Class-wide declaratory and injunctive relief are appropriate under rule 23(b)(2) because the Defendants have acted or refused to act on grounds generally applicable to the class as a whole.

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

Fourteenth Amendment - Cruel and Unusual Conditions, 42 U.S.C. § 1983) (Against Defendant Sheriff Ric Bradshaw)

146. Plaintiffs incorporate by reference paragraphs 9-11, 13-36, 43-46, 52-141, and 144-145 above as if specifically alleged herein.

147. The Defendant Sheriff is a person under 42 U.S.C. § 1983.

148. The Defendant Sheriff's actions or inactions have violated and continue to violate the named Plaintiffs' rights under the Fourteenth Amendment of the United States Constitution and have violated, continue to violate, or are at a substantial risk of violating the Fourteenth Amendment rights of the putative class members. By the policies and practices described herein, the Defendant Sheriff has deprived and continues to deprive Plaintiffs and class members of the minimal civilized measure of life's necessities, and have violated their basic human dignity and their right to be free from cruel and unusual conditions under the Fourteenth Amendment to the United States Constitution. Each Plaintiff and putative class member is subject to a real and

immediate threat of violation of their rights under the Fourteenth Amendment due to the Defendant Sheriff's policies and practices regarding the use of solitary confinement.

149. The Defendant Sheriff has a policy, pattern, or practice of routine use of solitary confinement of children at the Palm Beach County Jail. This custom or practice is the moving force behind the constitutional violation. As described above, this practice of solitary confinement subjects Plaintiffs to, among other harmful conditions: 23-24 hours per day in a single cell—for days, weeks or months at a time—locked behind a solid metal door, with minimal furniture other than a low bed and a combination toilet/sink; lack of access to educational programming while in solitary confinement; lack of access to programs and services related to their learning or mental health disabilities; and lack of access to meaningful exercise and social interaction. This solitary confinement creates a substantial risk of serious emotional, psychological, and physical harm to Plaintiffs. The putative class members have been subjected to the above conditions of solitary confinement at the Palm Beach County Jail or are subject to a real and immediate threat of being subject to such conditions.

150. Prolonged exposure to these deprivations of basic human needs has inflicted permanent psychological and physical injury on Plaintiffs, and the putative claims members have either suffered such injuries or are subject to a real and immediate threat of suffering such injuries. In addition to Plaintiffs' current psychological and physical pain, the likelihood that Plaintiffs will remain in solitary confinement for the foreseeable future subjects Plaintiffs to a significant risk of debilitating and permanent mental illness and physical harm, and the putative class members are subject to a real and immediate threat of suffering the harms caused by prolonged solitary confinement. The Defendant Sheriff's continuation of juvenile solitary confinement for many months or years under the debilitating and extreme conditions strips the children of their basic

dignity and humanity in violation of contemporary standards of human decency and constitutes cruel and unusual conditions prohibited by the Fourteenth Amendment to the United States Constitution. The Sheriff has and continues to implement these unconstitutional policies and practices, which are the proximate cause of the Plaintiffs' and the class members' ongoing deprivation of, or substantial threat to, rights secured under the Fourteenth Amendment.

151. The Defendant Sheriff's use solitary confinement against children with deliberate indifference, in that they are or should be aware of the substantial risk of serious harm to the Plaintiffs caused by excessive use of solitary confinement but continue to subject Plaintiffs to such confinement and have failed to take reasonable steps to prevent the harm.

152. The Defendant Sheriff has acted or failed to act and is continuing to act or fail to act, including through his agents, officials, employees, and all persons acting in concert, under color of state law.

153. Plaintiffs have no adequate remedy at law to address the harms described herein. Plaintiffs are entitled to declaratory and injunctive relief for violations of 42 U.S.C. § 1983, as well as costs and attorneys' fees pursuant to 42 U.S.C. § 1988. The relief sought by Plaintiffs is necessary to prevent continued and further injury. Unless enjoined by the Court, the Defendant Sheriff will continue to subject the Plaintiffs and other Class members to a substantial risk of serious harm, in violation of their Fourteenth Amendment rights.

SECOND CAUSE OF ACTION

Eighth Amendment - Cruel and Unusual Punishment, 42 U.S.C. § 1983 (Against Defendant Sheriff Ric Bradshaw)

154. Plaintiffs incorporate by reference paragraphs 9-11, 13-36, 43-46, 52-141, and 144-145 above as if specifically alleged herein.

155. The Defendant Sheriff is a person under 42 U.S.C. § 1983.

156. The Defendant Sheriff's actions or inactions have violated and continue to violate the named Plaintiffs' rights under the Eighth Amendment to the United States Constitution, and have violated, continue to violate, or are at a substantial risk of violating the Eight Amendment rights of the putative class members. By the policies and practices described herein, the Defendant Sheriff has deprived and continues to deprive Plaintiffs and class members of their right to be free from cruel and unusual punishment under the Eight Amendment to the United States Constitution. Each Plaintiff and putative class member is subject to a real and immediate threat of violation of their rights under the Eight Amendment due to the Defendant Sheriff's policies and practices regarding the use of solitary confinement.

157. The Defendant Sheriff has a policy, pattern, or practice of routine use of solitary confinement of children at the Palm Beach County Jail. This custom or practice is the moving force behind the constitutional violation. As described above, this practice of solitary confinement subjects Plaintiffs to, among other harmful conditions: 23-24 hours per day in a single cell—for days, weeks or months at a time—locked behind a solid metal door, with minimal furniture other than a low bed and a combination toilet/sink; lack of access to educational programming while in solitary confinement; lack of access to programs and services related to their learning or mental health disabilities; and lack of access to meaningful exercise and social interaction. This solitary confinement creates a substantial risk of serious emotional, psychological, and physical harm to Plaintiffs. The putative class members have been subjected to the above conditions of solitary confinement at the Palm Beach County Jail or are subject to a real and immediate threat of being subject to such conditions.

158. As a result of the Defendant Sheriff's policy and practice of solitary confinement described herein, Plaintiffs have been subjected to cruel and unusual punishment in violation of the Eighth Amendment, and the putative class members have either been subjected to cruel and unusual punishment or are subject to a real and immediate threat of suffering such punishment. In addition to Plaintiffs' current psychological and physical pain, the likelihood that Plaintiffs will remain in solitary confinement for the foreseeable future subjects Plaintiffs to a significant risk of debilitating and permanent mental illness and physical harm, and the putative class members are subject to a real and immediate threat of suffering the harms caused by prolonged solitary confinement. The Defendant Sheriff's continuation of juvenile solitary confinement for many months or years under the debilitating and extreme conditions strips the children of their basic dignity and humanity in violation of contemporary standards of human decency and constitutes cruel and unusual punishment prohibited by the Eighth Amendment to the United States Constitution. The Sheriff has and continues to implement these unconstitutional policies and practices, which are the proximate cause of the Plaintiffs' and the class members' ongoing deprivation of, or substantial threat to, rights secured under the Eighth Amendment.

159. The Defendant Sheriff uses solitary confinement against children with deliberate indifference, in that he is or should be aware of the substantial risk of serious harm to the Plaintiffs caused by excessive use of solitary confinement but continues to subject Plaintiffs to such confinement and has failed to take reasonable steps to prevent the harm.

160. The Defendant Sheriff has acted or failed to act and is continuing to act or fail to act, including through his agents, officials, employees, and all persons acting in concert, under color of state law.

161. Plaintiffs have no adequate remedy at law to address the harms described herein. Plaintiffs are entitled to declaratory and injunctive relief for violations of 42 U.S.C. § 1983, as well as costs and attorneys' fees pursuant to 42 U.S.C. § 1988. The relief sought by Plaintiffs is necessary to prevent continued and further injury. Unless enjoined by the Court, the Defendant Sheriff will continue to subject the Plaintiffs and other Class members to a substantial risk of serious harm, in violation of their Eighth Amendment rights.

THIRD CAUSE OF ACTION

Fourteenth Amendment – Procedural Due Process, 42 U.S.C. § 1983 (Against Defendant Sheriff Ric Bradshaw)

162. Plaintiffs incorporate by reference paragraphs 9-11, 13-36, 43-46, 52-141, and 144-145 above as if specifically alleged herein.

163. The Defendant Sheriff is a person under 42 U.S.C. § 1983.

164. The Defendant Sheriff's policy and practice of placing children in solitary confinement subjects Plaintiffs and the putative class members to a significant deprivation of their liberty interests without any procedural safeguards. This custom or practice is the moving force behind the constitutional violation.

165. The conditions and the duration of the Defendant Sheriff's placement of Plaintiffs and putative class members in solitary confinement is a deprivation of a liberty interest that constitutes an atypical and significant hardship as compared with the ordinary incidents of jail life because of the harsh and isolated conditions and the lengthy duration of confinement in those conditions. The children in solitary confinement, as compared to other individuals in the Jail, have significantly less or no access to social interaction, environmental stimulation, programs and activities, physical exercise, and personal property. They are also subjected to, as compared to

other individuals in the jail, significantly more oppressive security measures, including cell searches and restraints.

166. Because prolonged placement in solitary confinement constitutes a significant and atypical hardship, the Defendant Sheriff has deprived Plaintiffs and class members of their liberty interest. Defendants have deprived Plaintiffs and the putative class members of these interests without providing them due process of law, in violation of the Fourteenth Amendment to the United States Constitution. Such failures to provide due process include denying Plaintiffs and putative class members (1) a hearing with advance written notice before initial placement in solitary confinement, (2) the opportunity to present witnesses and documentary evidence, (3) written reasons for the decision, (4) counsel-substitute for disabled individuals or in a case with complex issues, or (5) meaningful and timely periodic review of their continued long-term and indefinite detention in solitary confinement and meaningful notice of what they must do to earn release. Each Plaintiff and putative class member is subject to a real and immediate threat of violation of their due process rights under the Fourteenth Amendment due to the Defendant Sheriff's policies and practices regarding the use of solitary confinement.

167. The costs to the Defendant Sheriff of providing such procedural safeguards would be minimal, and any such costs are outweighed by the great risk of erroneous deprivation of liberty that exists under Defendant's current policies and practices.

168. The policies and practices complained of herein have been and continue to be implemented by the Defendant Sheriff and its agents, officials, employees, and all persons acting in concert under color of state law, in their official capacity.

169. Plaintiffs have no adequate remedy at law to address the harms described herein. Plaintiffs are entitled to declaratory and injunctive relief for violations of 42 U.S.C. § 1983, as well

as costs and attorneys' fees pursuant to 42 U.S.C. § 1988. The relief sought by Plaintiffs is necessary to prevent continued and further injury. Unless enjoined by the Court, the Defendant Sheriff will continue to subject the Plaintiffs and other Class members to a substantial risk of serious harm, in violation of their Fourteenth Amendment rights.

FOURTH CAUSE OF ACTION

Fourteenth Amendment – Procedural Due Process, 42 U.S.C. § 1983 (Against Both Defendants)

170. Plaintiffs incorporate by reference paragraphs 9-12, 13-36, 43-46, 52-141, and 144-145 above as if specifically alleged herein.

171. Defendants are persons under 42 U.S.C. § 1983.

172. Defendants, acting in concert, have a policy and practice of subjecting Plaintiffs and the putative class members to a significant deprivation of their property interests without any procedural safeguards. This custom or practice is the moving force behind the constitutional violation.

173. Plaintiffs and the putative class members have a protected property interest in education. The Sheriff's Office and School Board are contractually and legally obligated to provide education to all children held at the Jail.

174. Defendants' policy and practice of distributing worksheets under a cell door, providing no assistance in completing the work, denying children in solitary the ability to see the educational instruction being given, and sometimes holding class in a separate room and excluding the children in solitary confinement entirely, fails to provide meaningful access to education. Accordingly, solitary confinement with the accompanying denial of access to education, deprives the children of their property interest.

175. Because Defendants have deprived Plaintiffs and the putative class members of these interests without providing them due process of law, in violation of the Fourteenth Amendment to the United States Constitution. Such failures to provide due process include denying Plaintiffs and putative class members (1) a hearing with advance written notice before initial placement in solitary confinement, (2) the opportunity to present witnesses and documentary evidence, (3) written reasons for the decision, (4) counsel-substitute for disabled individuals or in a case with complex issues, or (5) meaningful and timely periodic review of their continued denial of educational services while in solitary confinement and meaningful notice of what they must do to receive proper education. Each Plaintiff and putative class member is subject to a real and immediate threat of violation of their due process rights under the Fourteenth Amendment due to the Defendants' policies and practices regarding the denial of education to children held in solitary confinement.

176. The costs to Defendants of providing procedural safeguards would be minimal, and any such costs are outweighed by the great risk of erroneous deprivation of education that exists under Defendants' current policies and practices.

177. The policies and practices complained of herein have been and continue to be implemented by Defendants and their agents, officials, employees, and all persons acting in concert under color of state law, in their official capacity.

178. Plaintiffs have no adequate remedy at law to address the harms described herein. Plaintiffs are entitled to declaratory and injunctive relief for violations of 42 U.S.C. § 1983, as well as costs and attorneys' fees pursuant to 42 U.S.C. § 1988. The relief sought by Plaintiffs is necessary to prevent continued and further injury. Unless enjoined by the Court, Defendants will

continue to subject the Plaintiffs and other Class members to a substantial risk of serious harm, in violation of their Fourteenth Amendment rights.

FIFTH CAUSE OF ACTION

***Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 et. seq.
(Against Both Defendants)***

179. Plaintiffs incorporate by reference paragraphs 10-12, 13-36, 43-46, 47-50, 52, 62-129, 140, 142, and 144-145 above as if specifically alleged herein.

180. Plaintiff M.F. brings this action on behalf of himself and the subclass of all current and future children with disabilities, as defined by the Individuals with Disabilities Education Act, who are or will be held in solitary confinement at the Palm Beach County Jail and are in need of special education and related services (“IDEA Subclass”), 20 USC §§ 1400 et seq.

181. Many of these children are identified or should be identified for special education and related services under IDEA. Therefore, the members of the putative IDEA Subclass qualify as children with disabilities for the purposes of IDEA, as does Plaintiff M.F.

182. The Defendants’ actions or inactions have violated and continue to violate the rights of M.F. to receive a free appropriate education under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400(d)(1)(a), and have violated, continue to violate, or are at a substantial risk of violating the right the putative IDEA subclass members have to a FAPE.

183. IDEA defines a child with a disability as a child “with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance . . . , orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities” “who, by reason thereof, needs special education and related services.” 20 U.S.C. § 1401(3).

184. The School Board of Palm Beach County is a public agency because it is a “political subdivision[] of the State that [is] responsible for providing education to children with disabilities” (34 C.F.R. § 300.33) and because it is a local education agency (“LEA”) which is defined as a “public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State.” 20 U.S.C. § 1401(19); 34 C.F.R. § 300.328(a). As a result, the School Board has the duty to provide a FAPE to all students with disabilities, including those who have been suspended or expelled from school. 20 U.S.C. §§ 1412(a)(1), 1413(a). This duty extends to school-eligible persons with disabilities who are incarcerated in juvenile and adult correctional facilities. 34 C.F.R. § 300.2(b)(iv).

185. The Palm Beach County Sheriff’s Office is a public agency because it runs a correctional facility “involved in the education of children with disabilities” (34 C.F.R. § 300.2(b)), and it is a “political subdivision[] of the State that [is] responsible for providing education to children with disabilities.” 34 C.F.R. § 300.33. State and local juvenile and adult correctional facilities are required to comply with the IDEA. 34 C.F.R. § 300.2(b)(1). As such, the Sheriff’s Office has the same duties as the School Board. 34 C.F.R. § 300.2(b). Yet, children with IEPs in solitary confinement at the Jail are denied a free appropriate public education. 34 C.F.R. § 300.101(a).

186. IDEA requires Defendants to meet certain obligations including, but not limited to:

- a. Providing a free appropriate public education to all students with disabilities (20 U.S.C. § 1400(d)(1)(a));
- b. Identifying, locating and evaluating all children with known or suspected “disabilities . . . who are in need of special education and related services” (20 U.S.C. §

1412(a)(1)(A)) and having in effect policies and procedures to ensure this happens (34 C.F.R. § 300.111(a));

c. Upon identification, conducting a full and individual initial evaluation before the initial provision of special education and related services to a child with a disability in all areas of suspected disability and thereafter a re-evaluation every three years (20 U.S.C. § 1414(a)(1)(A), (2)(B)) or whenever educational or related services need, including improved academic achievement and functional performance, if the child warrants a reevaluation (34 C.F.R. § 300.303(a));

d. Developing and implementing an appropriate Individualized Education Program (IEP) for each child with a disability, defined as a written statement; that is developed, reviewed, and revised in accordance with 20 U.S.C. § 1414(d), which must include, but is not limited to including:

i. a statement of the child's present levels of academic achievement and functional performance (20 U.S.C. § 1414(d)(1)(A)(i));

ii. a statement of measurable annual goals, including academic and functional goals (20 U.S.C. § 1414(d)(1)(A)(ii));

iii. a description of the measurement of the annual goals and the reporting of these goals (20 U.S.C. § 1414(d)(1)(A)(III));

iv. for children over 16 years of age, annually updated appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills (20 U.S.C. § 1414(d)(1)(A)(VIII)(aa)); and

- v. in the case of a child whose behavior impedes the child's learning or that of others, consideration of the use of positive behavioral interventions and supports, and other strategies, to address that behavior (20 USC § 1414(d)(3)(B)(i)).
- e. Holding an IEP team meeting at least annually (20 U.S.C. § 1414(d)(4)(A)(i));
- f. When students with an IEP enter a new school setting, providing “comparable” services to their previous IEP for the next 30 days at which point, either adopting the prior IEP or developing, adopting and implementing a new IEP (20 U.S.C. § 1414(d)(2)(C); 34 C.F.R. § 300.323(e));
- g. If behavior leads to removal from school for more than 10 days or to removal for less than 10 days but is based on behavior that constitutes a pattern, continuing to provide educational services so as to enable the child to continue to participate in the general education curriculum (34 C.F.R. § 300.530(d));
- h. If behavior leads to removal from school for more than 10 days or to removal for less than 10 days but is based on behavior that constitutes a pattern, convening an immediate IEP meeting to determine if the behavior is a manifestation of the student’s disability (20 USC § 1415(k); 34 C.F.R. § 300.530(e); 34 C.F.R. § 300.536(a)(2));
- i. If the behavior is a manifestation of disability, (1) conducting a functional behavior/analysis assessment and implement a behavioral intervention

plan; or (2) reviewing and modifying existing behavioral intervention plan; and (3) returning student to placement from which he or she was removed, unless it involved weapons, drug possession, or serious bodily injury (at which time student would be placed in an interim alternative educational setting for not more than 45 school days) (20 USC § 1415(k); 34 C.F.R. § 300.530(f)&(g));

j. If, on the other hand, the behavior was not a manifestation of disability, providing FAPE and services to the student no later than the 11th cumulative day of removal (20 U.S.C. § 1415(k)(1)(C); 34 C.F.R. § 300.530(c)); and

k. Implementing procedural safeguards for children with disabilities, consisting, at a minimum, of notice to parents or guardians of their procedural rights regarding the identification, evaluation, or education placement of their child or the provision of a FAPE to their child, and the right to present complaints and to an impartial due process hearing on such complaints (20 U.S.C. §§ 1412(a)(6), 1415).

187. By failing to identify, evaluate, recommend, and then provide a FAPE (including appropriate IEPs, special education, and related services to eligible students in solitary confinement), and by failing to provide procedural safeguards specified in the statute implementing the IDEA (including manifestation determinations) to students in solitary confinement, Defendants have impeded students' rights to a free appropriate public education, have significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to their students, and/or have

deprived students of educational benefits. Each member of the putative IDEA subclass is subject to a real and immediate threat of their rights to a FAPE being violated by Defendants' policies and practice.

188. As a result, Defendants have violated and continue to violate rights secured by 20 U.S.C. §§ 1400 et seq., and its implementing regulations at 34 C.F.R. §§ 300 et seq.

189. Because Defendants' discriminatory and wrongful conduct is ongoing, and Plaintiffs and the IDEA subclass members have no adequate remedy at law, declaratory and injunctive relief are appropriate remedies, as well as reasonable attorneys' fees and costs incurred in bringing this action under 20 U.S.C. § 1415(i)(3). Plaintiffs and the IDEA subclass members would be unable to obtain these remedies in an administrative action. Further, as a direct result of Defendants' actions, the members of the IDEA subclass are suffering irreparable harm, including lost education opportunities. Therefore, speedy and immediate relief is appropriate.

SIXTH CAUSE OF ACTION

Title II of the Americans with Disabilities Act (Against both Defendants)

190. Plaintiffs incorporate by reference paragraphs 10-46, 51-52, 62-129, 140, and 143-145 above as if specifically alleged herein.

191. Plaintiff M.F. bring this action on behalf of himself and the subclass of all current and future children with disabilities, as defined by the Americans with Disabilities Act and Section 504 of the Rehabilitation Act, who are or will be held in solitary confinement at the Palm Beach County Jail ("ADA and 504 Subclass").

192. Plaintiffs M.F. and the ADA and 504 Subclass seek declaratory and injunctive relief remedying these ongoing and systemic violations.

193. Title II of the ADA states, in pertinent part:

[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or subjected to discrimination by any such entity. 42 U.S.C. § 12132.

194. Defendants were, at all times relevant to this action, and are currently “public entities” within the meaning of Title II of the ADA and provided and provide a “program, service or activity” including educational and rehabilitative programs, services and activities in the Palm Beach County Jail.

195. Plaintiffs M.F. and the members of the ADA and 504 Subclass were, at all times relevant to this action, and are currently “qualified individuals with disabilities” within the meaning of Title II of the ADA. They have impairments that substantially limit a major life activity, and they were and/or are all housed at the Palm Beach County Jail qualified—with or without reasonable accommodation—to participate in the programs, services, and activities in the Palm Beach County Jail.

196. Congress directed the Department of Justice (“DOJ”) to write regulations implementing Title II’s prohibition against discrimination. 42 U.S.C. § 12134. Pursuant to this mandate, the DOJ has issued regulations defining the forms of discrimination prohibited by Title II of the ADA. 28 C.F.R. § 35.101 et. seq.

197. In providing any aid, benefit, or service, a public entity “may not ... [d]eny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit or service,” “[a]fford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others,” “[p]rovide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity ... as that provided to others,” or “[o]therwise limit a qualified

individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others[.]” 28 C.F.R. § 35.130(b)(1)(i), (ii), (iii), and (vii).

198. A public entity “shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability[.]” 28 C.F.R. § 35.130(b)(7) (emphasis added).

199. Nor may a public entity (1) “impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any service, program, or activity, unless such criteria can be shown to be necessary[.]” 28 C.F.R. § 35.130(b)(8); or (2) “utilize criteria or methods of administration ... that have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability ... or the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the public entity’s program with respect to individuals with disabilities[.]” 28 C.F.R. § 35.130(b)(3)(i)(ii).

200. A public entity is also prohibited from aiding and perpetuating discrimination against persons with disabilities in the programs, services, or activities it provides. 28 C.F.R. § 35.130(b)(1)(v).

201. Defendants have violated the rights Plaintiffs M.F. and the members of the ADA and 504 Subclass secured by Title II of the ADA and its implementing regulations.

a. When Plaintiffs M.F. and members of the ADA and 504 Subclass are locked in solitary confinement, Defendants exclude them from participating in and deny them the benefits of Defendants’ educational and rehabilitative programs, services, and activities.

b. Solitary confinement has a disproportionate burden on Plaintiffs M.F. and members of the ADA and 504 Subclass by reason of their disabilities that results in further

solitary confinement and further denial of educational and rehabilitative programs, services, and activities than their non-disabled peers. As such, when Plaintiffs M.F. and members of the ADA and 504 Subclass are locked in solitary confinement, Defendants exclude them from participation in and deny them the benefits of Defendants' educational and rehabilitative programs, services, and activities.

c. The denial of education and rehabilitative services during solitary confinement leaves Plaintiffs M.F. and the ADA and 504 Subclass members further behind in their education and rehabilitation than their non-disabled peers because, by reason of their disabilities, disabled children require additional assistance to access the general education curriculum and rehabilitative programs. Consequently, when Plaintiffs M.F. and members of the ADA and 504 Subclass are locked in solitary confinement, Defendants deny them equal opportunity to benefit from Defendants' educational and rehabilitative programs, services, and activities and/or provide them with a benefit that is not as effective in affording equal opportunity as the benefits offered to their non-disabled peers.

d. Defendants also fail to make reasonable modifications to their policies, practices, and procedures even though such modifications are necessary to avoid discriminating against Plaintiffs M.F. and the members of the ADA and 504 Subclass by, *inter alia*, not identifying and tracking those who require reasonable accommodations, not inquiring into whether behaviors leading to disciplinary measures are disability-related, not modifying school disciplinary policies and practices to ensure that school officials have responsibility for discipline during school hours, and not modifying solitary confinement policies and practices to prevent disproportionately burdening those with disabilities.

202. Defendants have adopted and implemented policies and practices with regard to solitary confinement that have a disparate impact on children with disabilities. Specifically, Defendants by their policies and practices impose and apply eligibility criteria—i.e., requirements that children not be in solitary confinement in order to receive educational and rehabilitative services—that screen out or tend to screen out the those with disabilities under the ADA or section 504 from fully and equally enjoying, by reason of their disabilities, any of Defendants’ educational and rehabilitative programs, services or activities.

203. By denying educational and rehabilitative programs, services, and activities while children with disabilities are locked in solitary confinement and by using solitary confinement for children with disabilities, Defendants utilize methods of administration that have the effect of subjecting Plaintiffs M.F. and members of the ADA and 504 Subclass to discrimination by reason of their disabilities. These methods of administration also have the purpose and effect of defeating or substantially impairing accomplishments of the objectives of Defendants’ educational and rehabilitative programs, services, and activities with respect to Plaintiffs M.F. and members of the ADA and 504 Subclass.

204. Defendants also aid and perpetuate discrimination against persons with disabilities in Defendants’ programs, services or activities by, *inter alia*, maintaining policies and practices that allow for discrimination by each Defendant and that permit the discrimination of the other co-Defendants to continue unchecked.

205. Defendants deny Plaintiffs M.F. and members of the ADA and 504 subclass “meaningful access” to education by violating the relevant regulations.

206. Pursuant to 28 C.F.R. § 35.130(b)(ii), a public entity may not “[a]fford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others. . .”

207. Defendants fail to provide children with disabilities the special education and related services they require, by reason of their disabilities, to equally access education in Palm Beach County Jail.

208. Pursuant to 28 C.F.R. § 35.130(b)(iii), a public entity may not “[p]rovide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others. . .”

209. Defendants fail to provide disabled children with educational services that they require that are as effective in affording children with disabilities equal opportunity to obtain the same result, to gain the same benefit, and to reach the same level of achievement as provided to others.

210. Because Defendants’ discriminatory and wrongful conduct is ongoing, and Plaintiffs have no adequate remedy at law, declaratory and injunctive relief are appropriate remedies. And, pursuant to 42 U.S.C. § 12133, Plaintiffs are entitled to reasonable attorneys’ fees and costs incurred in bringing this action under 42 U.S.C. § 12205. Plaintiffs and the ADA and 504 subclass members would be unable to obtain these remedies in an administrative action. Further, as a direct result of Defendants’ actions, Plaintiffs M.F and the members of the ADA and 504 Subclass are suffering irreparable harm, including lost education opportunities. Therefore, speedy and immediate relief is appropriate.

SEVENTH CAUSE OF ACTION

**Section 504 of the Rehabilitation Act, 29 U.S.C. § 794 et seq.
(Against both Defendants)**

211. Plaintiffs incorporate by reference paragraphs 10-46, 51-52, 62-129, 140, and 143-145 above as if specifically alleged herein.

212. Plaintiff M.F. bring this action on behalf of himself and the subclass of all current and future children with disabilities, as defined by the Americans with Disabilities Act and Section 504 of the Rehabilitation Act, who are or will be held in solitary confinement at the Palm Beach County Jail (“ADA and 504 Subclass”).

213. The Defendants’ actions or inactions have violated and continue to violate the rights of Plaintiff M.F. under Section 504 of the Rehabilitation Act of 1973, and have violated, continue to violate, or are at a substantial risk of violating the rights of the ADA and 504 subclass members under the Act. Plaintiffs M.F. and the members of the ADA and 504 Subclass seek declaratory and injunctive relief remedying these ongoing and systemic violations.

214. Section 504 provides, in pertinent part:

No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance[.] 29 U.S.C. § 794(a).

215. Each Defendant was, at all times relevant to this action, and is currently a recipient of federal financial assistance within the meaning of Section 504 of the Rehabilitation Act and provided and provides a “program or activity” where “program or activity” is described as “all the operations of” the recipient which includes the educational and rehabilitative programs and activities in the Palm Beach County Jail. 29 U.S.C. § 794(b).

216. Plaintiffs M.F. and the members of the ADA and 504 Subclass were, at all times relevant to this action, and are currently “otherwise qualified individuals with disabilities” within the meaning of Section 504 as they all have impairments that substantially limit a major life activity, and they were and/or are all housed at the Palm Beach County Jail qualified—with or without reasonable accommodation—to participate in the programs, services, and activities of the Jail.

217. The Department of Justice is charged under Executive Order 12250 with coordinating the implementation of Section 504 of the Rehabilitation Act of 1973. 28 CFR § 41.1.

218. In providing any aid, benefit, or service, a recipient of federal financial assistance “may not ... [d]eny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit or service,” “[a]fford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others,” “[p]rovide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity ... as that provided to others,” or “[o]therwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others[.]” 45 C.F.R. § 84.4(b)(i), (ii), (iii), and (vii).

219. A recipient of federal financial assistance shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability.

220. Nor may a recipient of federal financial assistance “utilize criteria or methods of administration (i) that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap and/or (ii) that have the purpose or effect of defeating or

substantially impairing accomplishment of the objectives of the recipient's program or activity with respect to handicapped persons..." 45 C.F.R. § 84.4(b)(4)(i), (ii).

221. A recipient of federal financial assistance is also prohibited from aiding and perpetuating discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap. 45 C.F.R. § 84.4(b)(v).

222. Defendants have violated the rights of the ADA and 504 Subclass secured by Section 504 and its implementing regulations.

a. When Plaintiffs M.F. and members of the ADA and 504 Subclass are locked in solitary confinement, Defendants exclude them from participating in and deny them the benefits of Defendants' educational and rehabilitative programs, services, and activities.

b. Solitary confinement has a disproportionate burden on Plaintiffs M.F. and the members of the ADA and 504 Subclass by reason of their disabilities that results in further solitary confinement and further denial of educational and rehabilitative programs, services, and activities than their non-disabled peers. As such, when Plaintiffs M.F. and members of the ADA and 504 Subclass are locked in solitary confinement, Defendants exclude them from participation in and deny them the benefits of Defendants' educational and rehabilitative programs, services, and activities.

c. The denial of education and rehabilitative services during solitary confinement leaves Plaintiffs M.F. and the ADA and 504 Subclass members further behind in their education and rehabilitation than their non-disabled peers because, by reason of their disabilities, disabled children require additional assistance to access the general education curriculum and rehabilitative programs. Consequently, when Plaintiffs M.F. and

members of the ADA and 504 Subclass are locked in solitary confinement, Defendants deny them equal opportunity to benefit from Defendants' educational and rehabilitative programs, services, and activities and/or provide them with a benefit that is not as effective in affording equal opportunity as the benefits offered to their non-disabled peers.

d. Defendants also fail to make reasonable modifications to their policies, practices, and procedures even though such modifications are necessary to avoid discriminating against Plaintiffs M.F. and the members of the ADA and 504 Subclass by, *inter alia*, not identifying and tracking those who require reasonable accommodations, not inquiring into whether behaviors leading to disciplinary measures are disability-related, not modifying school disciplinary policies and practices to ensure that school officials have responsibility for discipline during school hours, and not modifying solitary confinement policies and practices to prevent disproportionately burdening those with disabilities.

223. Defendants have adopted and implemented policies and practices with regard to solitary confinement that have a disparate impact on children with disabilities. Specifically, Defendants by their policies and practices impose and apply eligibility criteria—i.e., requirements that children not be in solitary confinement in order to receive educational and rehabilitative services—that screen out or tend to screen out those with disabilities under the ADA or section 504 from fully and equally enjoying, by reason of their disabilities, any of Defendants' educational and rehabilitative programs, services or activities.

224. By denying educational and rehabilitative programs, services, and activities while children with disabilities are locked in solitary confinement and by using solitary confinement for children with disabilities, Defendants utilize methods of administration that have the effect of subjecting Plaintiffs M.F. and members of the ADA and 504 Subclass to discrimination by reason

of their disabilities. These methods of administration also have the purpose and effect of defeating or substantially impairing accomplishments of the objectives of Defendants' educational and rehabilitative programs, services, and activities with respect to Plaintiffs M.F. and members of the ADA and 504 Subclass.

225. Defendants also aid and perpetuate discrimination against persons with disabilities in Defendants' programs, services or activities by, *inter alia*, maintaining policies and practices that allow for discrimination and that permit the discrimination of each co-Defendant to continue unchecked.

226. Defendants deny Plaintiffs M.F. and members of the ADA and 504 subclass "meaningful access" to education by violating the relevant regulations.

227. Pursuant to 45 C.F.R. § 84.4(b)(ii), a public entity may not "[a]fford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others. . ."

228. However, Defendants fail to provide children with disabilities the special education and related services they require—solely by reason of their disabilities—to equally access education in the Palm Beach County Jail.

229. Pursuant to 45 C.F.R. § 84.4(b)(iii), a public entity may not "[p]rovide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others. . ."

230. Defendants fail to provide disabled children with educational services that they require—by reason of their disabilities—that are as effective in affording children with disabilities

equal opportunity to obtain the same result, to gain the same benefit, and to reach the same level of achievement as provided to others.

231. Moreover, when Plaintiffs M.F. and members of the ADA and 504 subclass are in school, Defendants deny them FAPE as secured by Section 504's regulations by *inter alia*:

a. Failing to provide a free appropriate public education to each qualified handicapped person who is in Defendants' jurisdiction (45 C.F.R. § 84.33(a));

b. Failing to provide special education and related aids and services that are designed to meet individual educational needs of handicapped persons as adequately as the needs of non-handicapped persons are met (45 C.F.R. § 84.33(b)).

232. Because Defendants' discriminatory conduct is ongoing, and Plaintiffs have no adequate remedy at law, declaratory relief and injunctive relief are appropriate remedies. And, pursuant to 29 U.S.C. § 794a, Plaintiffs are entitled to reasonable attorneys' fees and costs incurred in bringing this action. Plaintiffs and the ADA and 504 subclass members would be unable to obtain these remedies in an administrative action. Further, as a direct result of Defendants' actions, Plaintiffs M.F. and members of the ADA and 504 Subclass are suffering irreparable harm, including lost educational opportunities. Therefore, speedy and immediate relief is appropriate.

REQUESTS FOR RELIEF

WHEREFORE, the Plaintiffs respectfully request that this Court:

- a. Issue an order certifying this action to proceed as a class action pursuant to Rules 23(a) and (b)(2) of the Federal Rules of Civil Procedure and appointing the undersigned as class counsel pursuant to Rule 23(g) of the Federal Rules of Civil Procedure;
- b. Declare that Defendants' acts and omissions violated the named Plaintiffs' and class members' rights under the Cruel and Unusual Punishment clause of the Eighth and Fourteenth Amendments;

- c. Declare that Defendants' acts and omissions violated the named Plaintiffs' and class members' rights under the Procedural Due Process clause of the Fourteenth Amendment;
- d. Declare that Defendants' acts and omissions violated Plaintiff M.F. and the IDEA Subclass members' rights under the IDEA, 20 U.S.C. §§ 1400-1482;
- e. Declare that Defendants' acts and omissions violated Plaintiff M.F. and the ADA and Section 504 Subclass members' rights under Title II of the ADA, 42 U.S.C. §§ 12101-12213;
- f. Declare that Defendants' acts and omissions violated Plaintiff M.F. and the ADA and Section 504 Subclass members' rights under Section 504 of the Rehabilitation Act, 29 U.S.C. § 794;
- g. Enter all necessary and appropriate injunctive relief (including, but not limited to, policies, procedures, training, supervision, and monitoring) to end the ongoing violations of the U.S. Constitution and federal law;
- h. Award the Plaintiffs reasonable attorneys' fees and costs under 42 U.S.C. § 1988, 42 U.S.C. § 12205, and 42 U.S.C. § 1415;
- i. Award compensatory education for educational benefits denied; and
- j. Grant any other relief that the Court deems necessary and proper.

Dated: August 2, 2018.

Respectfully submitted,

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FEDERAL RULE OF CIVIL PROCEDURE 11 CERTIFICATION

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a non-frivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

/s/ Sabarish Neelakanta, Esq.
By: Sabarish Neelakanta, Esq.

By Electronic Mail

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