UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA CENTRAL DIVISION

J.S.X. through his next friend D.S.X., **C.P.X.** through his next friend S.P.X., and **K.N.X.** through his next friend Rachel Antonuccio, for themselves and those similarly situated,

Plaintiffs,

v.

Jerry Foxhoven in his official capacity as Director of Iowa Department of Human Services; **Richard Shults** in his official capacity as Administrator of the Division of Mental Health and Disability Services; **Mark Day** in his official capacity as Superintendent of the Boys State Training School.

Defendants.

C/A No. 4:17-cv-00417

PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

ORAL ARGUMENT REQUESTED

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INTRODUCTION

This case is brought on behalf of boys aged 12 to 18 who are incarcerated at the Boys State Training School in Eldora, Iowa ("BSTS"). Plaintiffs allege that BSTS policies and practices expose these boys to serious risk of substantial harm by:

(1) failing to provide these children with minimally adequate mental health care;

(2) administering powerful and potent psychotropic medication to these children without adequate oversight or informed consent; and

(3) unlawfully and unnecessarily subjecting these children to solitary confinement and mechanical restraints without regard to their mental health disorders and needs.

Defendants' policies and practices violate the rights of these boys under the Fourteenth Amendment, the Eighth Amendment, the Americans with Disabilities Act, 42 U.S.C. § 12101, and the Rehabilitation Act, 29 U.S.C. § 794. For relief, Plaintiffs seek an injunction requiring Defendants to remedy these systemic defects to benefit the whole class; Plaintiffs do ***not*** seek money damages or individualized relief for any particular youth.

By this motion, Plaintiffs seek to certify a single class narrowly tailored to the claims: a class of all boys who are confined to BSTS since the filing of the Complaint,[1] now, or in the future, and who have a mental illness or emotional impairment as evidenced through either receiving psychotropic medications or having a diagnosis for a mental health disorder specified in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition ("DSM-V"), or the Fourth Edition in effect prior to 2013 ("DSM-IV"), as determined by a mental health professional.

In support of the motion, Plaintiffs have submitted substantial evidence, including the reports of three nationally known experts, documenting the class-wide policies and practices giving rise to the claims and creating a substantial risk of harm across the class.

[1] *J.S.X. et al. v. Foxhoven et al.*, Complaint, Dkt. No. 1 (S.D. Iowa Nov. 27, 2017).

The expert report of Dr. Pamela McPherson documents that "[t]he basic components of a functioning mental health system are not in place at [BSTS] and access to mental health care is utterly deficient."[2] Dr. McPherson reviewed substantial documentation, including the medical files of the named plaintiffs and 29 other potential class members, representing a sample of more than one-half of the boys confined to the school receiving psychotropic medication, and concluded that none of the children received the appropriate mental health care that they needed.[3] Dr. McPherson also concluded that:[4]

- BSTS provides "no meaningful oversight of the mental health program;"
- BSTS fails "to implement an effective screening and evaluation program;"
- BSTS fails "to complete appropriate treatment planning;"
- BSTS fails to "provide appropriate therapeutic services;"
- BSTS fails to provide "oversight of medication management regarding psychotropic drugs;"
- BSTS fails to adopt systems that "support required health care;" and
- BSTS permits the "improper use [of] solitary confinement and restraints as punishment for conduct that is symptomatic of mental illness."

Dr. McPherson found that "without significant changes to the School's policies and practices, any and all youth with serious mental illness or emotional impairments who are sent to the School in the future will be subjected to the same abhorrent conditions and lack of substantive mental health treatment and will continue to be placed at significant risk of harm."[5]

The expert report of Barry Krisberg, Ph.D. demonstrates that BSTS policies and practices with respect to solitary confinement and mechanical restraints are inconsistent with nationally-accepted standards, and result in the inappropriate and unnecessary use of harmful punishments that serve no legitimate BSTS purpose.[6] Dr. Krisberg also documents BSTS's particularly inappropriate use of a full-body mechanical restraint known as the "wrap" – which Dr. Krisberg

[2] *See* Expert Report of Dr. Pamela McPherson ("McPherson Report"), attached as Exhibit 1 at 36. All cited exhibits will be referenced hereinafter as "Exh. __" and are attached to the Declaration of Marissa C. Nardi Attaching Exhibits in Support of Plaintiffs' Motion for Class Certification, filed concurrently with the motion.
[3] *See* Exh. 1, McPherson Report at 30-36.
[4] Exh. 1, McPherson Report at 36.
[5] Exh. 1, McPherson Report at 36.
[6] *See* Exh. 3, Expert Report of Dr. Barry Krisberg ("Krisberg Report") at 6-8, 11-14.

describes as "akin to torture" – in which boys are strapped to a cot-like device at 14 points of contact and immobilized.[7] The report of Dr. Stuart Grassian confirms the tremendous psychological harm caused by BSTS's use of solitary confinement and mechanical restraints, particularly to class members who already suffer from mental health disorders.[8]

These expert reports and the supporting evidence confirm, as the Court already has observed, that this "is a case of great public importance."[9] The boys confined to BSTS with mental health needs are in tremendous need of relief. Under well-settled Supreme Court and Eighth Circuit authority, a class action under Rule 23 is the appropriate vehicle for the resolution of these claims. Whether the BSTS policies and practices described above violate the rights of putative class members presents common issues capable of class-wide resolution. Class-wide relief readily can be ordered that will benefit the class as a whole. All the requirements for class certification are satisfied.

I. Legal Standard for Class Certification

Rule 23 provides a two-part analysis for class certification. The party seeking class certification must show: (a) each 23(a) requirement of numerosity, commonality, typicality, and adequacy; and (b) one of the 23(b) requirements, such as injunctive relief under Rule 23(b)(2). *See* FED. R. CIV. P. 23; *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 345 (2011). Certification is warranted when the trial court conducts a "rigorous analysis" and finds that the Rule 23 prerequisites have been met. *Wal-Mart*, 564 U.S. at 351.[10]

Although the determination of class certification may "entail some overlap with the merits of the plaintiff's underlying claim,"[11] inquiries into the merits during this preliminary class certification phase are appropriate "only to the extent" that "they are relevant to

[7] Exh. 3, Krisberg Report at 13.
[8] *See* Exh. 4, Expert Report of Dr. Stuart Grassian ("Grassian Report") at 15-18.
[9] Dkt. No. 88, Order at 5.
[10] *See also Barfield v. Sho-Me Power Elec. Coop*., 11-cv-04321, 2013 WL 3872181, at *1 (W.D. Mo. July 25, 2013), *aff'd sub nom.* 852 F.3d 795 (8th Cir. 2017).
[11] *Postawko v. Missouri Dep't of Corr.*, 16-cv-04219, 2017 WL 3185155, at *4 (W.D. Mo. July 26, 2017) (citation omitted).

determining whether the Rule 23 prerequisites for class certification are satisfied." *Amgen Inc. v. Connecticut Ret. Plans and Tr. Funds*, 568 U.S. 455, 465-66 (2013) ("courts [have] no license to engage in free-ranging merits inquiries at the class certification stage"); *see Wal-Mart*, 564 U.S. at 351-52. "The Court's inquiry on a motion for class certification therefore is 'tentative,' 'preliminary,' and 'limited.'"[12]

"Rule 23 does not set forth a mere pleading standard," *Wal-Mart*, 564 U.S. at 350, however, "there is no rule that requires admissible evidence be submitted to support a class certification motion." *Postawko v. Missouri Dep't of Corr.*, 16-cv-04219, 2017 WL 3185155, at *4 (W.D. Mo. July 26, 2017). Rather, plaintiffs must "*be prepared to prove*" that there are "sufficiently numerous parties, common questions of law or fact, typicality of claims or defenses, and adequacy of representation, as required by Rule 23(a)." *Id.* (emphasis added) (citation omitted); *Parsons v. Ryan*, 754 F.3d 657, 676 (9th Cir. 2014) (party seeking certification need not "show at the class certification stage that they will *prevail* on the merits") (emphasis in original) (citation omitted).

A district court has broad discretion to decide whether class certification is appropriate, with the potential for reversal only upon a showing of abuse of discretion. *Prof'l Firefighters Ass'n of Omaha, Local 385 v. Zalewski*, 678 F.3d 640, 645 (8th Cir. 2012) (quoting *Rattray v. Woodbury Cty., Iowa*, 614 F.3d 831, 835 (8th Cir. 2010)).

II. The Evidence Supporting Class Certification

Even at this preliminary stage, where fact discovery is far from complete, there is ample evidence to show that under a rigorous analysis, the requirements of class certification have been met. Each Named Plaintiff is a member of the class, is in need of mental health services he does not receive, and has been subjected to solitary confinement and the mechanical restraints at issue. (*See infra* § A.) And there is substantial evidence of BSTS's class-wide policies and practices

[12] *M.B. v. Corsi*, 17-cv-04102, 2018 WL 3484048, at *8-9 (W.D. Mo. July 19, 2018) (quoting *In re Zurn Pex Plumbing Prod. Liab. Litig.*, 644 F.3d 604, 613 (8th Cir. 2011)).

that place all members of the putative class, including the Named Plaintiffs, at significant risk of substantial harm, creating common issues of fact and law. (*See infra* § B.)

A. The Named Plaintiffs

C.P.X.: C.P.X. is a 17-year old boy who entered BSTS at 15 with diagnoses of attention deficit hyperactivity disorder ("ADHD") and oppositional defiant disorder ("ODD"), a history of obsessive compulsive disorder ("OCD") and depression symptoms, and reported suicidal ideation.[13] BSTS has prescribed C.P.X. with many psychotropic medications, such as Mirtazapine, Vyvanse, Guanfacine, Clonazepam, and Escitalopram.[14] These medications are provided, and frequently changed,[15] without documenting discussions[16] and without seeking prior parental consent.[17] C.P.X has been placed on suicide watch at BSTS at least six times[18] after self-harm or verbalizing thoughts of self-harm, without minimally adequate therapeutic intervention.[19] He does not receive appropriate treatment for his underlying mental health disorders.[20] Despite his disorders, C.P.X. is routinely subject to the full-body mechanical

[13] *See* Exh. 18, DHS013638, Psychiatric Progress Note re C.P.X. dated Sept. 6, 2016 (listing diagnoses); Exh. 19, DHS012839-41, MAYSI-2 Screening Report re C.P.X. dated July 11, 2016 (scoring 4 out of 5 on Traumatic Experiences); *see also* Exh. 21, DHS022232, Slide from BSTS PowerPoint (additionally listing C.P.X. as having "Autism Spectrum Disorder (Asperger's)").

[14] *See, e.g.*, Exh. 18 (listing psychotropic medications).

[15] Over a one-month period, for instance, C.P.X.'s psychotropic medications were changed on at least three different occasions. *See* Exh. 22, DHS014594, Nursing Daily Log Report re C.P.X. entry dated Aug. 1, 2016 (starting Vyvanse); Exh. 23, DHS014596, Nursing Daily Log Report re C.P.X. entry dated Aug. 9, 2016 (decreasing Mirtazapine); Exh. 24, DHS014618, Nursing Daily Log Report re C.P.X. entry dated Sept. 6, 2016 (discontinuing Mirtazapine and increasing Vyvanse).

[16] *See* Exh. 23, DHS014596, Nursing Daily Log Report re C.P.X. entry dated Aug. 9, 2016; Exh. 24, DHS014618, Nursing Daily Log Report re C.P.X. dated Sept. 6, 2016.

[17] CPX's mother is alerted to psychotropic changes only after the fact and has no consent role. *See, e.g.*, Exh. 25, DHS012905, Letter to Parent re C.P.X. dated Feb. 21, 2017 (increasing Vyvanse).

[18] *See, e.g.*, Exh. 26, DHS016559, Letter to Parent re C.P.X. dated Mar. 1, 2017 (concerning almost week-long suicide watch of C.P.X.); Exh. 27, DHS012827, Letter to Parent re C.P.X. backdated to Aug. 29, 2017 (discussing length of time on suicide watch and backdated to date that suicide watch began).

[19] *See, e.g.*, Exh. 28, DHS014610, Nursing Daily Log Report re C.P.X. entries dated Aug. 26, 2017 (C.P.X. threatened to kill himself if he spent the night in BSU and then proceeded to bang his head against the wall without therapeutic intervention).

[20] See Exh. 2, Sealed Appendix A to the McPherson Report. Dr. McPherson's Appendix A was filed under seal as Exhibit 2, and all other appendices to the McPherson Report are filed together with the McPherson Report as Exhibit 1.

restraint known as the "wrap."[21] A picture of C.P.X. restrained in the wrap is submitted as Exhibit 5.[22] He often screams and cries while in the wrap.[23] C.P.X. is also routinely subject to solitary confinement. Over the course of about 17 months, he was placed in solitary confinement at least 120 times, totaling over 800 hours for disciplinary infractions.[24] Many of his periods of solitary confinement extend beyond 24 hours.[25] For instance, two months after his admission when he was 15 years old, he was placed in solitary for 67 hours.[26] A photograph of C.P.X. in solitary confinement is attached as Exhibit 7.[27]

J.S.X.: J.S.X. is a 17 year old boy with diagnoses of ADHD, Child Onset Conduct Disorder, Cannabis Use Disorder, and Other Specified Anxiety Disorder.[28] J.S.X. was not taking any psychotropic medications upon his arrival at BSTS at the age of 15, [29] but after his admission, BSTS prescribed him several, such as the stimulant Adderall and the antipsychotic Quetiapine.[30] J.S.X had no history of suicide when he entered BSTS,[31] but after his admission, he

[21] *See, e.g.*, Exh. 29, DHS015132, Nursing Daily Log Report re C.P.X. entries dated Oct. 18, 2017 (placed in wrap after being punched by another student); *see also* Exh. 4, Grassian Report at 21 (describing the wrap).
[22] Exh. 5, Screenshot of Video of C.P.X. No. 609 produced by Defendants (showing C.P.X. in wrap restraint).
[23] *See, e.g.*, Exh. 30, DHS015142, Nursing Daily Log Report re C.P.X. first entry dated Oct. 19, 2017 (C.P.X. was left crying in the full wrap for over ten minutes despite expressing that he was in pain); Exh. 31, DHS015050, Nursing Daily Log Report re C.P.X. entry dated Aug. 29, 2017 (nurse reports hearing C.P.X. yelling down hallway while in wrap and saying that left arm hurt and was becoming numb in the wrap); *see also* Exh. 6, Screenshot of Video of C.P.X. No. 200 produced by Defendants (showing C.P.X. left on concrete platform in a seclusion room after restraint holding his shoulder and crying).
[24] These numbers can be derived from C.P.X.'s BSU Reports from July 2016 to December 2017 within Defendants' production of DHS012518-16607, which are too voluminous to be attached here.
[25] *See, e.g.*, Exh. 32, DHS015841-42, Communication Sheet BSU/CMH Staff re C.P.X. (73 hours); Exh. 33, DHS012974-77, STS Observation Record re C.P.X. (at least 28 hours); *see also* Exh. 10, C.P.X. Dep. Tr. 36:18-38:15 ("[Y]ou're [alone] in your [solitary] room [in CMH for] 23 hours a day if it's a weekend.").
[26] Exh. 34, DHS015946, Communication Sheet BSU/CMH Staff re C.P.X. (lists C.P.X.'s time of admission to and release from BSU).
[27] Exh. 7, Screenshot of Video of C.P.X. No. 201 produced by Defendants (showing C.P.X. in solitary confinement).
[28] *See* Exh. 35, DHS009259, Psychiatric Progress Note re J.S.X. dated Oct. 2017 (listing J.S.X.'s diagnoses and date of admission).
[29] *See* Exh. 36, DHS011054, Nursing Daily Log Report re J.S.X. dated Dec. 8, 2016 (nurse's initial intake of J.S.X. upon his arrival to the School indicating "no medications").
[30] *See* Exh. 35 (continuing to prescribe J.S.X. Adderall, continuing to prescribe morning dosage of Quetiapine, and doubling night dosage of Quetiapine).
[31] Exh. 37, DHS009452-53, Health/Mental Health Screening re J.S.X. dated Dec. 8, 2016 (no psychotropic medications or suicidal history on date of admission).

became suicidal and was placed on suicide watch at least four times.[32] J.S.X. does not receive adequate treatment for his mental health conditions.[33] J.S.X. was frequently subject to restraints, including the wrap.[34] For instance, after a suicidal gesture, BSTS placed him in the wrap instead of providing him with therapy or other psychological treatment, which caused him to scream, cry, and beg to be removed.[35] J.S.X. is also routinely subject to solitary confinement, where he often struggles with being alone,[36] screams, and self-harms[37] without therapeutic intervention or treatment. J.S.X. has been sent to solitary for verbal actions such as "inappropriate language"[38] or being disruptive in a classroom,[39] even though BSTS knows he has ADHD. J.S.X. has threatened suicide if he had to stay in solitary,[40] yet BSTS sent him to solitary confinement frequently and for extended periods of time.[41] During 2017, J.S.X. was placed in solitary

[32] *See, e.g.*, Exh. 38, DHS009446, Letter to Parents re J.S.X. dated Oct. 10, 2017 (on suicide watch for a full week but his parents were not notified until two weeks after removal from suicide watch); Exh. 39, DHS011611-13, Suicide Assessment Report re J.S.X. (J.S.X. tied pillowcase around his neck, expressed suicidal ideations, and was placed on suicide watch for about three days).
[33] *See* Exh. 2, Appendix A to the McPherson Report; *see also* Exh. 40, DHS011372, Student Grievance Form re J.S.X. dated Sept. 13, 2017 (J.S.X. stating "need medical help by a licensed therpist" [sic]).
[34] *See, e.g.*, Exh. 8, Screenshot of Video of J.S.X. No. 668 dated Nov. 2017 (J.S.X. confined alone and in a full wrap); Exh. 41, Screenshot of Video of J.S.X. No. 305 dated May 2017 (J.S.X. being placed in wrap).
[35] *See, e.g.*, Exh. 42, DHS011530, Restraint Observation Record re J.S.X. dated May 17, 2017 (after J.S.X. "wapp[ed] clothes around neck," BSTS placed him in bed wrap and listed its "justification" as "prevent suicidal actions"; J.S.X. "remain[ed] in bed wrap" for 13 minutes despite "screaming, crying, asking to be released" and "complaining of needing to 'pee'").
[36] Exh. 43, DHS010097, Contact Note with JCO re J.S.X. dated July 25, 2017 ("[J.S.X.] stated that he struggles being in his room [in CMH] alone and being bored.")
[37] Exh. 44, DHS011202, Nursing Daily Log Report re J.S.X. top entry dated Sept. 22, 2017 ("screaming for staff from his room [alone in CMH] …[and] stated that he was tired of being ignored and then took a small piece of plastic about the diameter of a dime and the thickness of a nickel and swallowed it").
[38] *See, e.g.*, Exh. 45, DHS011844, STS BSU Report re J.S.X.
[39] *See, e.g.*, Exh. 46, DHS009824-27 at DHS009825, Behavior Intervention Plan re J.S.X. dated Feb. 2017 (sent to solitary when he was disruptive in class if he did not complete a "compliance task").
[40] *See* Exh. 47, DHS011172, Nursing Daily Log Report re J.S.X. second entry dated June 22, 2017; Exh. 48, DHS009568, Letter to Parent re J.S.X. dated June 29, 2017; Exh. 49, DHS011591, Suicide Assessment Report re J.S.X. (BSTS placed J.S.X. in BSU, learned that J.S.X. threatened to kill himself if he had to stay in BSU, and nonetheless chose to keep J.S.X. in BSU for four days on suicide watch).
[41] *See* Exh. 45 (J.S.X. sent to BSU for 43.37 hours); Exh. 50, DHS011819, Communication Sheet BSU/CMH Staff re J.S.X. (sent to BSU for 24.6 hours); Exh. 51, DHS012123-24, STS BSU Report re J.S.X. (sent to BSU for 28.25 hours); Exh. 52, DHS011961-62, STS BSU Report re J.S.X. (sent to BSU for 24.33 hours); Exh. 53, DHS011969, STS BSU Report re J.S.X. (sent to BSU for 24.50).

confinement at least 100 times for over 800 hours.[42] In July 2018, J.S.X. was released from BSTS and court-ordered to live in Florida.[43]

K.N.X.: K.N.X. is a 16 year old who entered BSTS at 14 years old and has diagnoses of Childhood Onset Conduct Disorder and ADHD.[44] BSTS prescribed K.N.X. with several psychotropic medications, which he often declined to take.[45] K.N.X. entered BSTS with no depression and no suicidal ideation,[46] but after being confined to BSTS, he was placed on suicide watch several times.[47] He does not receive sufficient mental health treatment.[48] BSTS often placed K.N.X. in restraints, such as the wrap, and physically injured K.N.X. during restraints, such as by breaking his arm.[49] K.N.X. was subjected to solitary confinement frequently and for extended periods of time.[50] Over the course of 19 months, K.N.X. was in solitary confinement over 110 times, totaling over 1,400 hours.[51] BSTS admits that "his conduct disorder symptoms . . . as [well as] his ADHD" affect his behavior, "get him into … trouble," and may result in him being sent to BSU,[52] yet it provided no accommodation. K.N.X. was transferred from BSTS to a jail on or about July 20, 2018.[53]

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[42] These numbers can be derived from J.S.X.'s BSU Reports from January 2017 to July 2017 within Defendants' production of DHS0009191-12517, which are too voluminous to be attached here.
[43] *See* J.S.X. Juvenile Case, Modification Order (Muscatine Cty., Iowa June 2018).
[44] *See* Am. Compl. ¶¶ 39-40.
[45] *See* Exh. 54, DHS025855, Letter to Parent re K.N.X. dated July 2017 (restarting Vyvanse); Exh. 55, DHS025857, Letter to Parent re K.N.X. dated April 2017 (increasing Clonidine).
[46] *See* Exh. 56, DHS024920-22 at DHS024922, MAYSI-2 Screening Report re K.N.X. (no suicidal ideation, caution, or warning on date admitted to BSTS).
[47] *See, e.g.*, Exh. 57, DHS027579-83, STS Observation Record re K.N.X. (K.N.X. tied a sock around his neck and was placed on suicide watch for 35 hours).
[48] *See* Exh. 2, Appendix A to the McPherson Report.
[49] *See* Exh. 58, Screenshot of Video of K.N.X. No. 707 (photograph of K.N.X. in the wrap); Exh. 59, DHS025783-96, Hansen Family Hospital Records re K.N.X. (after K.N.X. covers his camera in his solitary cell, staff place him in clinches, and staff breaks K.N.X.'s bone); *see also* Exh. 9, Screenshot of Video of K.N.X. Dep. (K.N.X. in arm splint).
[50] *See, e.g.*, Exh. 11, K.N.X. Dep. Tr. 22:5-8 ("Q: When did you start feeling sad every day? A: When I was in my room for like eight months on end on isolation."); *see* Exh. 60 DHS027081, Communication Sheet BSU/CMH re K.N.X.; Exh. 61, DHS027071, Communication Sheet BSU/CMH re K.N.X.; Exh. 62, DHS027076, Communication Sheet BSU/CMH re K.N.X.
[51] These numbers can be derived from K.N.X.'s BSU Reports from September 2016 through March 2018 within Defendants' production of DHS024526-27945, which are too voluminous to be attached here.
[52] Exh. 63, DHS024731, Psychiatric Progress Note re K.N.X. dated Oct. 25, 2016.
[53] The Juvenile Court waived its jurisdiction over K.N.X. on July 20, 2018.

B. BSTS Policies And Practices Giving Rise To The Claims

a. BSTS Policies and Practices Regarding Mental Health

BSTS's systemic failure to provide members of the proposed class with minimally adequate mental health care is documented in the report of Dr. Pamela McPherson and confirmed by the supporting documents cited in her report. These systemic deficiencies are underscored by Dr. McPherson's detailed review of the medical files for the four original named plaintiffs[54] and 29 additional boys confined to BSTS as of May 6, 2018 who receive psychotropic medications to treat their mental health disorders.[55] From her review, Dr. McPherson concluded that "[a]ll 33 boys suffered from mental health disorders specified in the DSM-5, but BSTS failed to provide appropriate mental health treatment to all of them."[56] For each of the named plaintiffs and 29 other boys, Dr. McPherson noted that: "BSTS failed to conduct comprehensive mental health assessments, failed to complete mental health treatment plans, failed to provide necessary mental health treatment, and failed to provide appropriate medication oversight."[57] Dr. McPherson likewise concluded that "[n]one of the medical files documented target symptoms being addressed by necessary psychotherapy, or that any appropriate recognized psychotherapy had been performed."[58]

Dr. McPherson also concluded that BSTS "has not employed or otherwise engaged on a contract basis the necessary number of qualified, licensed mental health professionals trained in providing the therapy and other mental health services needed by the boys confined to the School."[59] BSTS's so-called youth "counselors," who have responsibility for "individual and

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[54] One of the four initial named plaintiffs, G.R.X., has since voluntarily dismissed himself as a named plaintiff. *See* Dkt Nos. 107-08 (unopposed motion and corresponding order).

[55] After Defendants objected to discovery concerning class members other than named plaintiffs, the parties compromised to limit pre-certification disclosure to the full medical files of a sample of 30 class members selected by Plaintiffs. *See* Dkt. No. 88. One of the 30 files requested was for the wrong student, and this student was not a class member, so Dr. McPherson had only 29 of the 30 files, in addition to the named plaintiff files, available for her review.

[56] Exh. 1, McPherson Report at 3.

[57] Exh. 1, McPherson Report at 3.

[58] Exh. 1, McPherson Report at 3.

[59] Exh. 1, McPherson Report at 3.

group counseling," are correctional officers who are not licensed to provide mental health services and have no qualifications to do so.[60] BSTS policy also provides that these untrained counselors are responsible for implementing the so-called "treatment plan" for boys at BSTS;[61] this policy, in the words of Dr. McPherson, "indicates a lack of understanding of the basic principles of mental health treatment planning," under which "[a] mental health treatment plan should be the responsibility of the licensed mental health providers."[62] Defendants, moreover, provide no licensed mental health oversight for these unqualified counselors,[63] contrary to national standards.[64]

BSTS also does not provide the putative class with appropriate individual psychotherapy, as required to meet the boys' mental health needs.[65] As Dr. McPherson explains, "[i]t is widely known in the fields of psychiatry and juvenile justice that youth with serious mental illness typically have extensive trauma histories, often with multiple treatment failures, and will require intensive therapy for healthy adolescent development."[66] Yet adequate psychotherapy is typically not provided by BSTS.[67] Here again, BSTS does not have a sufficient number of qualified therapists to provide appropriate individual psychotherapy to everyone who needs it.[68] The "counseling" allegedly provided by untrained counsellors is no substitute for psychotherapy by a qualified psychotherapist.[69]

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[60] *See* Exh. 64, DHS017841-44, Position Description Questionnaire for Youth Counselor (Youth Counselor position and Essential Job Functions lists no certification requirement yet the provision of so-called "counseling" as 40% of their role); Exh. 65, DHS017845-49, Position Description Questionnaire for Youth Counselor Supervisor (Youth Counselor Supervisor role has no certification requirement); Exh. 1, McPherson Report at 15 ("no therapy groups conducted by licensed therapists") (emphasis in original).
[61] Exh. 13, STSPOLICIES_0221-0224, at STSPOLICIES_0223, Policy 4C-02: Mental Health Screens, Appraisals, Evaluations and Plans at (IV)(D).
[62] Exh. 1, McPherson Report at 13.
[63] *See* Exh. 1, McPherson Report at 22.
[64] Exh. 1, McPherson Report at 21-22.
[65] *See* Exh. 1, McPherson Report at 16 (both "the quality and quantity of the individual therapy is lacking").
[66] Exh. 1, McPherson Report at 17.
[67] *See* Exh. 1, McPherson Report at 14-18.
[68] *See* Exh. 1, McPherson Report at 3, 17.
[69] *See* Exh. 1, McPherson Report at 16-17; *see also id.* at 3, 12, 15.

The need for regular ongoing psychotherapy is particularly pronounced for boys who receive psychotropic medications, but here again, the boys do not receive the services they need. Under well-established medical standards described by Dr. McPherson, the "primary treatment modality" for high needs youth with DSM diagnoses is psychotherapy, and psychotropic medications serve merely to "augment" ongoing psychotherapeutic treatment.[70] Unfortunately, at BSTS, psychotropic medication is the primary treatment – and, typically the only treatment – provided to boys experiencing these disorders, and necessary psychotherapy is not provided.[71] And while BSTS makes widespread use of these dangerous psychotropic medications,[72] there is no full-time licensed mental health professional at BSTS charged with overseeing any informed consent process or the prescription of psychotropic medications, which further increases the risk of harm to the putative class.[73]

Defendants' policies and practices are also deficient with respect to boys experiencing mental health crises, such as boys expressing ideations of suicide and on suicide watch, or who have been placed in restraints. Dr. McPherson explains that BSTS does not have sufficient qualified onsite personnel to provide adequate mental health crises services. As a result, when boys are in crises, BSTS fails to "conduct any crisis assessment," fails to "identify and treat mental illness that likely contributed to the crisis," and fails to document any "safety plan or need for follow-up."[74] BSTS also fails to document any consideration of whether "a higher level of care" or "referral to a licensed mental health or medical professional" is necessary.[75]

Dr. McPherson also concludes that initial mental health screening and evaluations provided by BSTS are inadequate, and that BSTS's policies and procedures with respect to mental health screenings and evaluations are "inconsistent with widely accepted standards of

[70] *See* Exh. 1, McPherson Report at 12, 33.
[71] *See* Exh. 1, McPherson Report at 12, 33.
[72] Courts have found that "[t]hese [psychotropic] drugs leave the children vulnerable to various serious adverse effects, including hallucinations, self-harm and suicidal thoughts, and such life-shortening illnesses . . . , and therefore should be administered only when necessary." *M.B.*, 2018 WL 3484048, at *1.
[73] *See* Exh. 1, McPherson Report at 21-22, 34.
[74] Exh. 1, McPherson Report at 21.
[75] Exh. 1, McPherson Report at 21.

practice, including the National Commission on Correctional Health Care's (NCCHC) *Standards for Mental Health Services in Correctional Facilities.*"[76] BSTS's policies and practices omit mandatory inquiries from its screening, allow an impermissible delay between screening and mental health evaluation, and do not provide for periodic re-screenings necessary to detect emerging mental illness.[77]

As a result of these policies and practices, Dr. McPherson concludes that "[t]he mental health system at the School does not meet the minimally required components for a functioning mental health care system" and "fails to meet the mental health needs of the youth incarcerated there."[78] Dr. McPherson also concludes that "for the entire time that a youth diagnosed with mental illness is incarcerated at the School, he will be at significant risk of harm because no system is in place that is capable of addressing such needs."[79]

b. **BSTS Policies and Practices Regarding Solitary Confinement and Mechanical Restraints**

BSTS has a widespread policy and practice of subjecting children with mental illnesses to solitary confinement and fixed mechanical restraints, as documented in the reports of experts Dr. Grassian and Dr. Krisberg, and considerable documentary evidence and deposition testimony. As Dr. Krisberg explains, Corbett-Miller Hall, a section of BSTS where solitary confinement occurs, "projects the feeling of punishment, strict control, and harsh treatment of youth" with 24 "repulsive"[80] solitary cells for children in isolation,[81] housing a "Behavioral Stabilization Unit" ("BSU") that "confines the juvenile in conditions that are actually harsher and more severe than those typically seen in solitary confinement in adult prisons,"[82] an "isolation" room with no

[76] *See* Exh. 1, McPherson Report at 10.
[77] *See* Exh. 1, McPherson Report at 11.
[78] Exh. 1, McPherson Report at 2.
[79] Exh. 1, McPherson Report at 2.
[80] Exh. 3, Krisberg Report at 13.
[81] *See* Exh. 66, DHS022804, Blueprint for Corbett-Miller Hall dated Oct. 1, 1998; *see, e.g.*, Exh. 3, Krisberg Report at Appendix G (photographs of one solitary cell in CMH).
[82] Exh. 4, Grassian Report at 19-20; Exh. 12, Transcript of 30(b)(6) Deposition of Corporate Representative Mr. Brett Lawrence ("Lawrence Tr.") at 80:12-81:12 (stating students reside in solitary cells in CMH and BSU).

windows,[83] and a "restraint" room where children are forced to be tied down with mechanical restraints, such as the wrap.[84] Dr. Krisberg determined that BSTS's policies and practices regarding the solitary confinement and fixed mechanical restraints "depart substantially from accepted professional standards, are not reasonably related to facility discipline and security, and cause substantial harm to the youth."[85]

The evidence demonstrates that BSTS "employs solitary confinement extensively."[86] It is so commonplace that Dr. Krisberg determined that "*all [BSTS] residents are at risk of placement in solitary confinement at any given time*"[87] – which Dr. Grassian noted could last "for many hours at a time, even days, weeks, or months."[88] Each of the Named Plaintiffs, for instance, has multiple BSU admissions, and multiple episodes of restraint.[89] Defendants' records produced in response to a public records request[90] also show that BSTS is routinely using solitary confinement with appalling frequency and duration. For instance, about two-thirds of boys at BSTS as of May 6, 2018 have been placed in solitary confinement at least once.[91] Over a six-month period from January 2017 to June 2017, youth were admitted into BSU 1,241 separate times for a total of over 9,422.94 hours,[92] which averages approximately 7.6 hours per admit.

In policy and in practice, BSTS routinely sends children to solitary confinement as punishment for completely benign verbal conduct unrelated to safety, such as "profanity" or "lying," and for "fairly adolescent behavior," such as "horseplay" or "arm-wrestling."[93] Other

[83] *See* Exh. 66, DHS022804, Blueprint of Corbett-Miller dated Oct. 1, 1998 (blueprint for CMH showing an isolation room without windows).
[84] Exh. 12, Lawrence Tr. 91:5-17, 293:13-17 (stating there is a room dedicated to the wrap restraint); Exh. 11, K.N.X. Dep. Tr. 65:13-65:24 (K.N.X describing his experiences in the restraint room with the wrap).
[85] Exh. 3, Krisberg Report at 1.
[86] Exh. 4, Grassian Report at 5.
[87] Exh. 3, Krisberg Report at 14 (emphases added).
[88] Exh. 4, Grassian Report at 20; *see, e.g.*, Exh. 11, K.N.X. Tr. 22:5-8 ("Q. When did you start feeling sad every day? A. When I was in my room for like eight months on end on isolation."); *see also* Exh. 12, Lawrence Tr. 82:17-83:9 (stating that a boy could be in CMH for more than six months).
[89] *See* Exh. 4, Grassian Report at 21-22.
[90] *See* Iowa Public Records Law, Iowa Code §22.1 et seq.
[91] *See generally* BSU Reports produced by Defendants on May 24, 2018.
[92] Exh. 67, PLTFGRX0001511-16, Public Records Request for BSTS Data dated Aug. 7, 2017.
[93] Exh. 3, Krisberg Report at 12 n.35 (citing Exh. 68 PLTFGRX0001049-59, at PLTFGRX0001056, Policy 5B-04: Behavioral Stabilization Unit (BSU)).

elements of BSTS's formal policies suggest that engaging in serious behavior problems or "non-productive behaviors," which one would expect children with mental illnesses to experience, can result in the placement of a youth in solitary confinement for 24 hours or more.[94] BSTS's policies allow for boys to remain in solitary confinement even if they do not present an imminent risk of harm to self or others, which Dr. Krisberg states "leads to increased agitation and frustration among the incarcerated youth."[95] Dr. McPherson notes that "the policies are silent regarding any review of the youth's mental health record to determine whether existing mental health needs contraindicate the placement or require accommodation."[96] In fact, BSTS outrageously *punishes* – rather than provides psychological treatment to – students when they self-harm.[97]

Dr. Krisberg explains that not only is solitary confinement an "ineffective disciplinary technique" "counter to the juvenile justice system's goal of rehabilitation," but "*[s]olitary confinement of youth with mental health disorders or emotional impairments . . . is especially counterproductive.*"[98] It "has been found to lead to symptoms of paranoia, anxiety, and depression."[99] Also, as Dr. Grassian illustrates, children with mental health problems are "*exquisitely vulnerable to psychiatric and behavioral decompensation* when housed in solitary confinement" and "especially likely to become even more behaviorally out of control, leading to more and more time in solitary"[100] and exacerbated symptoms of mental illness.

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[94] *See* Exh. 14, STSPOLICIES_0993-1003, at STSPOLICIES_0997, Exh. 68; Exh. 66 (same); Exh. 3, Krisberg Report at 13.
[95] Exh. 3, Krisberg Report at 13.
[96] Exh. 1, McPherson Report at 26; *see* Exh. 14, STSPOLICIES_0993–1003, Exh. 68 (fails to outline considerations given to mental health when placing boy in solitary confinement); Exh. 67 (same); *See* Exh. 12, Lawrence Tr. 130:13-20 (admitting that BSTS has no policy requiring staff to consult mental health professional before placing a youth in BSU for behaviors which may be connected to mental health issues).
[97] *See* Exh. 2, Appendix A to McPherson Report; Exh. 1, McPherson Report at 28, 35-36 (discussing self-harming youth restrained in violation of standards).
[98] Exh. 3, Krisberg Report at 5 (emphases added).
[99] Exh. 3, Krisberg Report at 5.
[100] Exh. 4, Grassian Report at 17 (emphasis added).

BSTS also has a chilling yet widespread practice of using mechanical restraints, such as shackles and "the fixed full-body mechanical restraint, or 'Wrap,'"[101] on the putative class. Dr. Grassian describes the wrap as a "fourteen-point restraint system that crushes both body and spirit,"[102] and Dr. Krisberg describes it as "akin to torture."[103] In the first seven months of 2017 alone, BSTS used the restraint wrap 107 different times for a total of about 83 hours.[104]

The wrap is "very tight and painful, and the band across the chest [i]s so tight that they could hardly breathe" yet profusely sweat.[105] The wrap is also extremely anxiety-provoking.[106] Nonetheless, BSTS's policies and practices show that restraints are employed without concurrent supervision by a medical doctor, psychiatrist, or licensed psychologist.[107] Without any attention to their psychological well-being, the boys "are often subjected to [a] fixed mechanical restraint after being subject to solitary confinement," which Dr. Krisberg finds "particularly egregious."[108]

BSTS's policies regarding discipline, including the use of solitary confinement and restraints do not require that personnel take the youth's mental illness or disability into account prior to subjecting him to these harmful practices.[109] Specifically, in practice, personnel do not account for or differentiate according to a youth's mental health issues in determining whether to place or keep a youth in the BSU and for how long,[110] or in determining whether to use the wrap

[101] Exh. 3, Krisberg Report at 13.
[102] Exh. 4, Grassian Report at 7.
[103] Exh. 3, Krisberg Report at 13; *see also J.S.X. et al. v. Foxhoven et al.*, Amended Complaint ("Am. Compl."), Dkt No. 33, ¶ 169 (S.D. Iowa Feb. 16, 2018) (photograph of the wrap).
[104] *See* Exh. 69, PLTFGRX0001507-10, Public Records Request for BSTS Data dated Aug. 7, 2017.
[105] Exh. 4, Grassian Report at 21.
[106] *See, e.g.*, Exh. 11, K.N.X. Dep. Tr. at 65:18-24 ("They put you on it and they got straps on [the wrap] and they strap you in. And like it sucks pretty much. It's like hot. It hurts. I mean, it's hard to breathe in it. And like I get like claustrophobic in it because I can't move. So I start to freak out and stuff . . . .); *see also supra* § (a); Exh. 10, C.P.X. Dep. Tr. at 36:18-38:15 ("the bed wrap, it's not right how they do it").
[107] *See* Exh. 1, McPherson Report at 26; Exh. 15, STSPOLICIES_1803-812, Policy 2A-12: Security Restraints, Exh. 70 (same); Exh. 12 Lawrence Tr. 259:14-260:4 (mental health professionals are not involved in restraint authorizations), 266:20-25 (there is "no policy or practice requiring a mental health professional to perform an assessment on a student that's in the way"), 281:6-14 (mental health review does not occur until after use of wrap).
[108] *See* Exh. 3, Krisberg Report at 13.
[109] *See, e.g.*, Exh. 15; Exh. 68 (same).
[110] *See* Exh. 12, Lawrence Tr. at 224:22-225:12; *see also* Exh. 35 (J.S.X. "back in . . . (CMH) due to poor behavior, but it is unclear how much of that might be ADHD or how much of it might be oppositional or conduct disorder"); Exh. 63 (describing K.N.X.'s BSU admissions and the "box," BSTS states that "[i]t seems like his conduct disorder symptoms get him into as much or more trouble as his ADHD").

or another restraint on a youth and for how long.[111] When these youth are released from solitary confinement without accommodations, they have often fallen behind in their education[112] and any other programming, and their mental health has often deteriorated even further.

These alarming practices have a profound impact on the health, wellbeing, and safety of the putative class, who already have psychological disorders. Unsurprisingly, the children regularly experience emotional distress during and after solitary confinement, which "will inevitably increase the inmate's sense of powerlessness, fear, [and] paranoia…."[113] They also regularly experience emotional distress during and after mechanical restraints, which "can traumatize (or re-traumatize) a youth."[114] Dr. Grassian reported that solitary confinement leads to a "surge of cortisol – of fear, anxiety, and agitation" that can "literally shrivel areas of the brain . . . involved in memory [and] spatial orientation," "stunt emotional and cognitive growth," and "impair the development of psychosocial maturity."[115] Dr. Krisberg reported that fixed mechanical restraints are also "potentially dangerous to incarcerated youth," because they "can cause injuries, asphyxiation, and cardiac arrest."[116] Boys with "mental health conditions face even higher risks when subjected to these restraints."[117]

ARGUMENT

Based on the evidentiary showing here, there can be no legitimate dispute that Plaintiffs have satisfied all the requirements for class certification.

I. Plaintiffs Meet the Rule 23(a) Requirements

A. Plaintiffs Satisfy the Numerosity Requirement

The proposed class is "so numerous that joinder of all members is impracticable." FED. R. CIV. P. 23(a)(1). Factors relevant to the numerosity analysis include the size of the proposed

[111] Exh. 12, Lawrence Tr. at 292:12-23.
[112] *See, e.g.*, Exh. 71, DHS010570-75, at DHS010573, J.S.X.'s Individualized Education Program dated Feb. 6, 2017 ("[he] has not been in my class much due to being in BSU").
[113] Exh. 4, Grassian Report at 7.
[114] Exh. 3, Krisberg Report at 6.
[115] Exh. 4, Grassian Report at 14-15 (citations omitted).
[116] Exh. 3, Krisberg Report at 6.
[117] Exh. 3, Krisberg Report at 6 (citations omitted).

class, the nature of the action, and "any other factor relevant to the practicability of join[der]." *Paxton v. Union Nat'l Bank*, 688 F.2d 552, 559-60 (8th Cir. 1982) (citation omitted). The analysis "imposes no absolute limitations," and instead entails "examination of the specific facts of each case." *Bublitz v. E.I. du Pont de Nemours & Co.*, 202 F.R.D. 251, 255 (S.D. Iowa 2001) (quoting *Gen. Tel. Co. of the Nw. v. EEOC*, 446 U.S. 318, 330 (1980)). "Satisfying the numerosity requirement does not require the impossibility of joinder, but only that the plaintiff would suffer litigational hardship or inconvenience if joinder is required." *Vernon Gries v. Std. Ready Mix Concrete, L.L.C.*, 07-cv-4013, 2009 WL 427281, at *4 (N.D. Iowa Feb. 20, 2009) (citing *Arkansas Educ. Ass'n v. Bd. of Educ. of Portland, Arkansas Sch. Dist.*, 446 F.2d 763, 765 (8th Cir. 1971)).

First, the large class size makes joinder impracticable. There is no doubt that there are many students at BSTS who receive psychotropic medications or who have been diagnosed with mental health disorders under DSM-IV or DSM-V, evidencing a need for mental health treatment. Specifically, BSTS admitted that there are 102 students at BSTS as of May 6, 2018,[118] and *at least* 55 of those students are class members, because approximately 55 students received psychotropic medications from BSTS.[119] Dr. McPherson reviewed the files for a sample of 29 of those students and found that all 29 of them had DSM-V diagnoses, as did the Named Plaintiffs.[120] Most, if not all, of the remaining students receiving psychotropic medications whose files were not included in the sample likely have similar diagnoses.[121] Thus, there were *at least* 55 members of the Class who specifically received psychotropic medications and were also currently enrolled at BSTS on the specific date of May 6, 2018.

At certain dates and times, there are *even more than 100* BSTS children receiving psychotropic medications. For instance, Defendants admit that approximately 66 percent of

[118] Letter from Gretchen Kraemer to Timothy Farrell dated May 24, 2018 (stating number of students enrolled as of May 6, 2018 and enclosing, inter alia, MARs files listing the students' psychotropic medications).
[119] Exh. 1, McPherson Report at 3.
[120] Exh. 1, McPherson Report at 3.
[121] *See* Exh. 4, Grassian Report at 15.

students placed at BSTS between November 1, 2016 and April 30, 2017 received psychotropic medications, which amounts to approximately 114 BSTS students receiving psychotropic medications over the course of that time period.[122]

Although there are no rigid rules on the size of a proposed class,[123] courts have routinely found numerosity for classes smaller than this class. *See, e.g.*, *Arkansas Educ. Ass'n.*, 446 F.2d at 765-66 (20 putative class members sufficiently numerous); *Richter v. Bowen*, 669 F. Supp. 275, 281 n.4 (N.D. Iowa 1987) (noting "rule of thumb" that class over 40 is sufficiently numerous) (citation omitted); *In re Wholesale Grocery Prods. Antitrust Litig.*, 09-MD-2090, 2016 WL 4697338, at *20 (D. Minn. Sep. 7, 2016) (noting that "[t]he Eighth Circuit has affirmed the certification of classes with as few as 20 members") (citing *Arkansas. Educ. Ass'n*, 446 F.2d at 765-66); *Cruz v. TMI Hosp., Inc.*, 14-cv-1128, 2015 WL 6671334, at *6-7 (D. Minn. Oct. 30, 2015) (finding that a class of 40 to 67 individuals met the numerosity requirement); *Bradford v. AGCO Corp.*, 187 F.R.D. 600, 604 (W.D. Mo. 1999) (finding that a class of 20 to 65 members from a single state is sufficiently numerous); *Lockwood Motors, Inc. v. Gen. Motors Corp.*, 162 F.R.D. 569, 574 (D. Minn. 1995) (noting that 40 class members presumes an impracticable joinder) (citing 1 Herbert B. Newberg & Alba Conte, Newberg on Class Actions § 3.05 at 3-25 (3d ed. 1992)); *Paxton*, 688 F.2d at 561 (citing with approval the decision in *Cypress v. Newport News Gen. & Nonsectarian Hosp. Ass'n*, 375 F.2d 648, 653 (4th Cir. 1967), which certified a class of eighteen members).[124]

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[122] Exh. 17, PLTFGRX0001266-67, Email from A. McCoy to N. Kirstein entitled "BSTS Demographic Request" dated June 29, 2017 ("[t]otal number of [BSTS] residents served between Nov. 1, 2016 to April 30, 2017 [is] 174").

[123] "The cases are legion suggesting that there is no absolute number which will satisfy the numerosity requirement." *Jenson v. Eveleth Taconite Co.*, 139 F.R.D. 657, 664 (D. Minn. 1991) (citations omitted).

[124] *See also Boswell v. Panera Bread Co.*, 311 F.R.D. 515, 527 (E.D. Mo. 2015), *aff'd*, 879 F.3d 296 (8th Cir. 2018) (indicating that a class of 40 individuals could be sufficient); *Afro Am. Patrolmen's League v. Duck*, 503 F.2d 294, 298 (6th Cir. 1974) (class of 35 current class members plus unknown number of future class members sufficient); *Bublitz*, 202 F.R.D. at 256 (holding that class of 17 was sufficient to meet numerosity requirement); *Gaspar v. Linvatec Corp.*, 167 F.R.D. 51, 56 (N.D. Ill. 1996) (holding that proposed class of 18 satisfied the numerosity requirement); *Grant v. Sullivan*, 131 F.R.D. 436, 446 (M.D. Pa. 1990) (noting that "[t]his Court may certify a class even if it is composed of as few as 14 members") (citing *Manning v. Princeton Consumer Discount Co., Inc.*, 390 F. Supp. 320, 324 (E.D. Pa. 1974) *aff'd*, 533 F.2d 102 (3d Cir. 1976), *cert denied*, 429 U.S. 865 (1976)); *Bruce v. Christian*, 113 F.R.D. 554, 557 (S.D.N.Y. 1986) (numerosity found even though plaintiffs could identify only 16

Second, the proposed class is sufficiently numerous and joinder is impracticable because of the fluid nature of the proposed class. Courts have routinely found joinder impracticable where, as here, the class is an inmate population that is "fluid" in nature and includes future members who are currently unidentifiable. *Postawko*, 2017 WL 3185155, at *6 (W.D. Mo. 2017) (certifying class and finding that the "fluid nature" of inmate class supported a finding of numerosity) (citing *Phillips v. Joint Legis. Comm.*, 637 F.2d 1014, 1022 (5th Cir. 1981) (joinder of unknown persons "certainly impracticable")).[125] In fact, "future class members of the putative class are necessarily unidentifiable," "because the proposed class includes both present and future children in the [] custody of [Defendants] who are or will be prescribed or administered psychotropic medications." *M.B.*, 2018 WL 3484048, at *5 (citation omitted).

This fluid proposed class consists of prior, present, and *future* children with mental illnesses or emotional impairments temporarily placed in the custody of BSTS. Children are placed at BSTS for an indeterminate period of time as the result of a juvenile delinquency proceeding, often with no set date for exit. The average length of stay for children at BSTS is only approximately 8 to 10 months depending on the year.[126] Unsurprisingly, children commonly come and go from BSTS at unpredictable intervals and spurred by unpredictable events, such as completing their unpredictable period of incarceration, becoming transferred at Defendants' discretion,[127] discharged,[128] or re-entering BSTS at an unknown future time.[129] This fluidity makes it not just impracticable but also *impossible* to identify future members of the

class members in action brought by present and future tenants of housing authority where numerous individuals would be affected in the future).

[125] *See also Braggs v. Dunn*, 317 F.R.D. 634, 653 (M.D. Ala. 2016) ("fluid nature of a plaintiff class—as in the prison-litigation context—counsels in favor of certification of all present and future members") (internal citations omitted).

[126] *See* Plaintiffs' Stmnt. of Material Facts, Dkt. Nos. 35-1, 35-3 at 8, 11, 14 (average length of stay 8.5 months in 2015, 8 months in 2016, and 10 months in 2017).

[127] Iowa Code § 233A.14 (allowing the BSTS administrator to transfer the students to other institutions).

[128] For instance, Named Plaintiff J.S.X. was suddenly discharged from BSTS in July 2018 while Plaintiffs were preparing the instant brief. *See* J.S.X. Juvenile Case, Modification Order (Muscatine County, IA June 2018).

[129] *See, e.g.*, Exh. 72, DHS024550-52, Order re K.N.X. dated Aug. 28, 2017 (re-entry of K.N.X.); Exh. 73 PLTFGRX0001637, Student Facesheet (re-entry of other student); *see also* Exh. 16, STSPOLICIES_0967-69, 5A-01: Criteria for Admission (admission criteria policies do not prohibit re-entry).

class. *See Hirschfeld v. Stone*, 193 F.R.D. 175, 182 (S.D.N.Y. 2000) (numerosity where "unable to enumerate the exact number of individuals in the potential class because of the fluid nature of the class; people are constantly being admitted to and discharged from the [psychiatric] facility," making joinder impracticable). Additionally, the Class is fluid and sufficiently numerous not just because of the fluid nature of their residency in BSTS, but also because class membership is tied to mental health, which can change over time. *See id.*[130] By way of example, a boy who enters BSTS without a DSM-IV or V diagnosis or psychotropic prescription in hand may later receive one hours, days, weeks, or months after beginning his confinement at BSTS.[131]

Third, where, as here, the class seeks only declaratory and injunctive relief, including on the behalf of future, currently unidentifiable class members, courts have found that numerosity requirements are more relaxed. *See Disability Law Ctr. v. Utah*, 15-cv-00645, 2016 WL 5396681, at *3 (D. Utah Sep. 27, 2016) ("[P]roof of 'absolute numbers' is not required when the class proponent seeks injunctive or declaratory relief."); *Reid v. Donelan*, 297 F.R.D. 185, 189 (D. Mass. 2014) (explaining numerosity threshold may be relaxed "when a party seeks only declaratory or injunctive relief, since the inclusion of future members increases the impracticability of joinder") (citation omitted).

B. Plaintiffs Satisfy the Commonality Requirement

The commonality requirement of Rule 23 is satisfied, because Plaintiffs' claims involve a "common contention" that is "capable of classwide resolution." *Wal-Mart*, 564 U.S. at 350; *see* FED. R. CIV. P. Rule 23(a)(2). This means that the eventual "determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Id.* The commonality inquiry focuses on "the *capacity* of a classwide proceeding to generate common answers apt to drive the resolution of the litigation." *Id.* at 351 (quoting Richard A. Nagareda, Class Certification in the Age of Aggregate Proof, 84 N.Y.U. L. REV. 97, 132 (2009))

[130] *See also Hughes v. Judd*, 12-cv-568-T-23MAP, 2013 WL 1821077, at *22 (M.D. Fla. Mar. 27, 2013), *rep. and rec. adopted as mod.*, 2013WL1810806 (M.D. Fla. Apr. 30, 2018) (allowing national research that 65 percent of juveniles in detention settings suffer from mental illness as evidence of fluidity and numerosity).
[131] *See, e.g.*, Exh. 36, DHS011054, Nursing Daily Log Report re J.S.X. entry dated Dec. 8, 2016 (J.S.X. was not taking psychotropics until BSTS prescribed them to him post-admission).

(emphasis added); *see Braggs v. Dunn*, 317 F.R.D. 634, 655 (M.D. Ala. 2016) (emphases added) (quoting *Wal-Mart*, 564 U.S. at 350).

Plaintiffs here need only demonstrate the existence of "a *single* common question." *Wal-Mart*, 564 U.S. at 359 (emphasis added); *Parsons*, 754 F.3d at 675 (same); *Huyer v. Wells Fargo & Co.*, 295 F.R.D. 332, 337 (S.D. Iowa 2013) (same); *Postawko*, 2017 WL 3185155, at *6 (same) (citations omitted); *Braggs*, 317 F.R.D. at 655 (same). Commonality "does not require that every question of law or fact be common to every member of the class." *Paxton*, 688 F.2d at 561; *Postawko*, 2017 WL 3185155, at *6 (same) (citations omitted); *Downing v. Goldman Phipps PLLC*, 13-cv-00206, 2015 WL 4255342, at *4 (E.D. Mo. July 14, 2015) (same).[132] Common issues also need not predominate, because this is an injunctive litigation under Rule 23(b)(2). *See Postawko*, 2017 WL 3185155, at *12 (W.D. Mo. July 26, 2017) (discussing how "a Rule 23(b)(2) class is not required to satisfy the additional predominance and superiority requirements of Rule 23(b)(3)") (citing *Ebert v. General Mills, Inc.*, 823 F.3d 472, 480 (8th Cir. 2016)).

In many cases, common questions arise from class-wide policies and practices, which serve as "the 'glue' that holds together the putative class." *Postawko*, 2017 WL 3185155, at *7 (citing *Parsons*, 754 F.3d at 678); *see Braggs*, 317 F.R.D. at 655 (quoting *Wal-Mart*, 564 U.S. at 352); *Brown v. Precythe*, 17-cv-04082, 2018 WL 3118185, at *6 (W.D. Mo. June 25, 2018) ("common questions of law and fact regarding Defendants' policies, practices, and customs"); *M.B.*, 2018 WL 3484048, at *6 ("common question of law [of] whether the[] policies and practices subject the children in [Defendants'] care . . . to an unreasonable risk of harm in violation of their substantive due process rights"); *Ellis v. Costco Wholesale Corp.*, 285 F.R.D. 492, 510 (N.D. Cal. 2012) (finding commonality where "Plaintiffs have provided 'significant proof' that Defendant operates under a general policy") (citation omitted). Commonality is

[132] *See DeBoer v. Mellon Mortg. Co.*, 64 F.3d 1171, 1174 (8th Cir. 1995) (commonality is "not required on every question raised in a class action"); *Portz v. St. Cloud State Univ.*, 16-cv-1115, 2018 WL 1050405, at *10 (D. Minn. Feb. 26, 2018) (same); *Karsjens v. Jesson*, 283 F.R.D. 514, 518 (D. Minn. 2012) (commonality may be satisfied "where the question of law linking the class members is substantially related to the resolution of the litigation even though the individuals are not identically situated") (quoting *Paxton*, 688 F.2d at 561)).

satisfied where the defendants' policies or practices result in a "substantial risk of serious harm" to all members of the class. *Id.*, at *7 (citations omitted); *see Postawko*, 2017 WL 3185155, at *8 (citing *Parsons*, 754 F.3d at 679); *Braggs*, 317 F.R.D. at 655; *Brown*, 2018 WL 3118185, at *6.

Applying these standards, courts routinely certify the class where individuals in state custody challenge state practices that allegedly result in insufficient medical care. All members of the class are subject to the practice, so the inquiry into whether the practice creates a substantial risk of serious harm across the class is a common question. *See, e.g.*, *Parsons*, 754 F.3d at 678 (affirming certification of class of state prisoners subject to same "policies and practices that govern the overall conditions of health care services and confinement"); *M.B.*, 2018 WL 348048, at *10 (commonality among class of children in foster care who are or will be on psychotropic medications and are all subject to same policies and practices for administration, monitoring, and oversight of medications); *Postawko*, 2017 WL 3185155, at *16 (commonality where class of inmates with medical diagnosis all subject to same prison medical treatment policies); *Hoffer v. Jones*, 323 F.R.D. 694, 700 (N.D. Fla. 2017) (same); *Braggs*, 317 F.R.D. at 673-74 (certifying class of state prisoners challenging provision of mental health treatment services); *Dockery v. Fisher*, 253 F. Supp. 3d 832, 854-55 (S.D. Miss. 2015) (commonality upon challenge to physical conditions of prison and "quality of health and mental health care"); *Decoteau v. Raemisch*, 304 F.R.D. 683, 691 (D. Colo. 2014) (commonality among inmates at state penitentiary challenging prison policy concerning administrative segregation); *Karsjens*, 283 F.R.D. at 518-19 (commonality where civilly committed individuals "allege the same injuries – generally, the lack of treatment [and] inadequate conditions of confinement . . .").

Courts also routinely find commonality in cases brought by youth challenging the conditions of confinement in facilities like BSTS. *See, e.g.*, *A.T. v. Harder*, 298 F. Supp. 3d 391, 408 (N.D.N.Y. 2018) (certifying class of juveniles subject to solitary confinement at detention facility); *V.W. v. Conway*, 236 F. Supp. 3d 554, 574 (N.D.N.Y. 2017) (same); *S.H. v. Taft*, 04-cv-1206, 2007 WL 1989753, at *3 (S.D. Ohio July 9, 2007) (certifying a class of committed youth

alleging "excessive use of force, excessive use of isolation and seclusion, excessive discipline, violation of privacy, inadequate medical treatment, inadequate healthcare, inadequate educational services, inadequate programming, inadequately trained prison personnel, failure to protect from harm and failure to provide an adequate grievance system"). Courts likewise uphold class certification in cases brought by adult prisoners challenging the conditions of confinement. *See Ashker v. Governor of State of Cal.*, 09-cv-05796, 2014 WL 2465191, at *9 (N.D. Cal. June 2, 2014) (certifying two classes of prisoners at state facility challenging conditions and length of stay in segregated housing); *Henderson v. Thomas*, 289 F.R.D. 506, 512 (M.D. Ala. 2012) (certifying class of HIV-positive state prisoners challenging housing segregation policies).

Where, as here, all members of the class are subject to the *risk* of harm, class certification is appropriate even if different class members experience different harms, or even if some class members experience no harm at all. *See DeBoer*, 64 F.3d at 1174; *M.B.*, 2018 WL 3484048, at *7. When policies and practices "uniformly subject members of the putative class to a *substantial risk of serious harm*," *M.B.*, 2018 WL 384048, at *7 (emphasis in original) (citation omitted), commonality is satisfied even if the "presently existing risk may ultimately result in different future harm for different [class members] ranging from no harm at all to death." *Postawko*, 2017 WL 3185155, at *8 (quoting *Parsons*, 754 F.3d at 679). Plaintiffs need not wait until the moment that they do suffer actual injury before bringing a constitutional claim seeking injunctive relief, as a substantial risk of harm is sufficient. *See, e.g.*, *Parsons*, 754 F.3d at 676 (injunctive relief for prisoners due to risk of future harm upon unsafe conditions "firmly established in our constitutional law"); *see also Helling v. McKinney*, 509 U.S. 25, 33 (1993) ("a remedy for unsafe conditions need not await a tragic event").

Here, as in the cases cited above, there are numerous common questions of fact and law that justify class certification. (*See supra* § Evidence (B) (discussing class-wide policies and practices).) Common questions of fact include whether Defendants' policies and practices subject the Class to a serious risk of substantial harm by failing to provide adequate mental health care, administering dangerous psychotropic medications without adequate oversight or

informed consent, and unnecessarily inflicting solitary confinement and mechanical restraints. Common questions of law include whether these policies and practices violate the rights of class members under the United States Constitution and applicable federal statutes.

C. Plaintiffs Meet the Typicality Requirement

The claims of the Named Plaintiffs are typical of the claims of the putative class members. FED. R. CIV. P. 23(a)(3). Rule 23(a)(3) requires that all members of the class have "the same *or similar* grievances" as the named plaintiffs. *Alpern v. UtiliCorp United, Inc.*, 84 F.3d 1525, 1540 (8th Cir. 1996) (emphasis added). This requirement is "fairly easily met so long as other class members have claims similar to the named plaintiffs." *DeBoer*, 64 F.3d at 1174 (8th Cir. 1995); *Barfield*, 2013 WL 3872181, at *2; *Braggs*, 317 F.R.D. at 664 (typicality where named plaintiffs and class exposed to the same risk of harm).

Typicality is generally satisfied when the claims or defenses of the named plaintiffs and the putative class members "arise[] from the same event or course of conduct as the class claims, and give[] rise to the same legal or remedial theory." *Postawko*, 2017 WL 3185155, at *10 (quoting *Alpern*, 84 F.3d at 1540); *see also Paxton*, 688 F.2d at 561-62; *Karsjens*, 283 F.R.D. at 519. In such cases, the "presence of factual variations is normally not sufficient to preclude class action treatment." *Donaldson v. Pillsbury Co.*, 554 F.2d 825, 831 (8th Cir. 1977) (internal citations omitted); *see Alpern*, 84 F.3d at 1540. In practice, "commonality and typicality tend to merge." *Karsjens*, 283 F.R.D. at 519 (citing *Wal-Mart*, 564 U.S. at 350, n. 5). This Court has concluded that "a finding of one generally compels the other." *Huyer*, 295 F.R.D. at 339.

Here, Named Plaintiffs' claims stem from the same course of conduct as the class claims and implicate the same legal theories and remedies. *See Postawko*, 2017 WL 3185155, at *10.[133] Each of the Named Plaintiffs and each of the putative class members has suffered from the same harms and ongoing risks of harm as a result of Defendant's pervasive, insufficient, and unlawful practices and policies.[134] In fact, the Court already found in the instant litigation that "regardless

[133] *Compare supra* § Evidence (A) with *supra* § Evidence (B).
[134] *See* Am. Compl. ¶¶ 21, 35, 47, 63.

of which Plaintiffs serve as class representatives, there will be a constant class of persons at the School suffering the alleged constitutional deprivations," Dkt. No. 104, because Defendants' policies and practices extend to the entire class. Thus, "Plaintiffs' claims stem from the same legal theory and seek the same legal remedy[,] [t]herefore, Plaintiffs satisfy Rule 23(a)(3)." *Karsjens*, 283 F.R.D. at 519.

Named Plaintiffs J.S.X. and K.N.X. did reside in BSTS at the litigation's start, and have since been discharged or transferred from BSTS in the weeks prior to filing this motion, but the claims they are asserting remain typical of the claims asserted by the class. This Court already has ruled that a named plaintiff who had been discharged from BSTS could nevertheless continue to as a class representative, finding that "at the outset of this case, it would have been difficult to determine which Plaintiffs' claims, if any, would survive through the litigation of the issue of class certification. Such a determination would require a high degree of predictive abilities—*even bordering on clairvoyance*—on the part of Plaintiffs." Dkt. No. 104 (emphases added).[135] "If being transferred from a facility were enough to prevent a plaintiff from representing a class, [D]efendants would only need to transfer all of the named Plaintiffs out of the facility in question to defeat an action." *Christina A. v. Bloomberg*, 197 F.R.D. 664, 670 n.5 (D.S.D. 2000).

D. <u>Plaintiffs and Their Counsel Will Adequately Represent the Class</u>

The Class representatives and counsel satisfy Rule 23(a)(4), because they "will fairly and adequately protect the interests of the class" that Plaintiffs seek to certify. FED. R. CIV. P. 23(a)(4). "The adequacy requirement is met where: 1) the representatives and their attorneys are able and willing to prosecute the action competently and vigorously; and 2) each representative's interests are sufficiently similar to those of the class that it is unlikely that their goals and viewpoints will diverge." *Barfield*, 2013 WL 3872181, at *3 (internal citations omitted). The

[135] The Court denied Defendants' motion for partial summary judgment dismissing the claims asserted by former named plaintiff G.R.X. on the ground that he no longer was confined to BSTS. Shortly after the Court issued that ruling, however, G.R.X.'s next friend determined that it was no longer in G.R.X.'s best interest to continue his role in this litigation. *See* Dkt. No. 107.

purpose of this requirement is to "uncover conflicts of interest between named parties and the class they seek to represent." *Brown*, 2018 WL 3118185, at *7.

The first prong is satisfied, because all the representatives and their counsel have already and will continue to prosecute this action vigorously and competently on behalf of the class. Every Next Friend is not only familiar with this litigation and the underlying issues but is also committed to pursuing this litigation diligently to improve the care of children in Defendants' custody, and, therefore, is a suitable representative.[136] Plaintiffs' counsel are also experienced litigators with a strong history of successfully representing individuals, such as children and individuals with disabilities, in complex litigations, such as class actions. (*See infra* § III.)

The second prong is satisfied, because the interests of the Named Plaintiffs and their counsel do not diverge from those of the proposed class; their interests are aligned. Plaintiffs' "claims arise out of the same common course of conduct and are based upon the same legal theories as the class members' claim," so their "interests are aligned with those of the class." *Postawko*, 2017 WL 3185155, at *12 (adequacy satisfied) (citing *Wal-Mart*, 564 U.S. at 349 n.5). The Named Plaintiffs' claims, like those of the proposed class, arise out of deficiencies in Defendants' oversight and administration of psychotropic medication to the children in their custody, and present identical legal theories to the claims of the putative class members. The Named Plaintiffs and the Class are all individuals with mental or emotional impairments, all have been residents of BSTS, all were subject to the unlawful policies of BSTS, all were harmed by BSTS's practices, and all have peers currently in BSTS with disabilities subject to BSTS's harmful and unlawful practices.

"Additionally, Plaintiff[s'] claims are not antagonistic to those of the class; rather, in addressing the generally constitutionality of Defendant[s'] lack of a procedure [and existing policies or procedures] . . . , Plaintiff[s'] claims can only be helpful to other present or future actors." *Lane v. Lombardi*, 12-cv-4219, 2012 WL 5462932, at *3 (W.D. Mo. Nov. 8, 2012).

[136] The Court has already agreed that at least Next Friend Rachel Antonuccio is an appropriate representative of the Named Plaintiffs. Order Denying Mot. for Protective Order, Dkt. No. 80 ("an appropriate next friend for K.N.X."); *see also* Decl. of Rachel Antonuccio, Dkt. No. 68-2.

Third, the Named Plaintiffs seek injunctive relief to address structural problems they all faced in Defendants' provision of mental health, management of psychotropic medications, and inhumane policies of solitary confinement and restraints at BSTS, which extend to all proposed class members as current or future residents of BSTS. *See Marisol A. v. Giuliani*, 126 F.3d 372, 378 (2d Cir. 1997) (holding that the interests of the class members were identical where the plaintiffs sought broad structural relief). Therefore, Plaintiffs meet the adequacy requirement.

II. Plaintiffs Satisfy the Rule 23(b)(2) Requirement

For numerous reasons, the Class satisfies the Rule 23(b)(2) requirement that "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." FED. R. CIV. P. 23(b)(2); *DeBoer*, 64 F.3d at 1175.

First, this Class should automatically satisfy Rule 23(b)(2), because of the injunctive relief it seeks. "If the Rule 23(a) prerequisites have been met and injunctive or declaratory relief has been requested, the action should be allowed to proceed under subdivision (b)(2)." *Id.*; *see also M.B.*, 2018 WL 34048, at *10 ("Because 'a single injunction or declaratory judgment would provide relief to each member of the class,' Rule 23(b)(2) is satisfied.") (quoting *Wal-Mart*, 564 U.S. at 360).

Second, the Class brings this litigation to vindicate its civil rights. Rule 23(b)(2) itself was designed to "foster institutional reform by facilitating suits that challenge widespread rights violations of people who are unable to vindicate their own rights." *Leiting-Hall v. Winterer*, 14-cv-3155, 2015 WL 1470459, at *7-8 (D. Neb. Mar. 31, 2015) (quoting *Baby Neal v. Casey*, 43 F.3d 48, 59 (3d Cir. 1994)). Since Rule 23(b)(2) is meant to allow plaintiffs to bring lawsuits vindicating civil rights, it "must be read liberally in the context of civil rights suits." *Coley v. Clinton*, 635 F.2d 1364, 1378 (8th Cir. 1980) (citations omitted).[137] Indeed, the Eighth Circuit

[137] *See M.B.*, 2018 WL 3484048, at *9 (same).

advised courts to "guard against the temptation to assume that the certification of a . . . 23(b)(2) class action is purely discretionary." *Coley*, 635 F.2d at 1378 (citation omitted).

Third, the Class meets Rule 23(b)(2), because it is subject to the very practice or policy that the lawsuit challenges. When the Class is "subject to the very practice or policy of the defendant that is being challenged in the lawsuit," courts in the Eighth Circuit have certified Rule 23(b)(2) classes. *Leiting-Hall*, 2015 WL 1470459, at *8 (quoting *Huyer*, 95 F.R.D. at 345).[138] Moreover, courts also properly certified classes composed, in part, of those who *may* in the *future* be subject to harm by the practice or policy.[139]

Finally, the proposed class meets the requirements of Rule 23(b)(2), because it seeks prospective injunctive and declaratory relief that will benefit the class as a whole. *See Leiting-Hall*, 2015 WL 1470459, at *8 (citing *Baby Neal*, 43 F.3d at 59). Plaintiffs seek class-wide relief to abate the looming risk described at length in these papers.

The specific relief requested is not individualized and would, instead, apply to the entire class, thereby requiring no consideration of differential treatment or individualized circumstances. Specifically, Plaintiffs conceived of *uniform* declaratory and injunctive relief; Plaintiffs seek a declaration that Defendants' course of conduct is unconstitutional and unlawful, and Plaintiffs seek injunctive relief "to enjoin Defendants from subjecting Plaintiffs to policies and practices that violate their constitutional and federal statutory rights" by ensuring BSTS's provision of adequate mental health care and oversight of psychotropics through systemic reforms and enjoining BSTS's practices of solitary confinement and mechanical restraints.[140] Since the claims and relief apply generally to the class as a whole, Rule 23(b)(2) is satisfied.

III. The Court Should Appoint Plaintiffs' Counsel as Class Counsel

Plaintiffs' attorneys should be appointed class counsel, because they are well-suited to "fairly and adequately represent the interests of the class" under Rule 23(g). FED. R. CIV. P.

[138] *See also Ireland v. Anderson*, 13-cv-3, 2016 WL 7324104, at *18 (D.N.D. Aug. 29, 2016), *rep. and rec. adopted*, 2017 WL 1067751 (D.N.D. Mar. 21, 2017); *Postawko*, 2017 WL 3185155, at *16.
[139] *See, e.g.*, *M.B.*, 2018 WL 3484048, at *5; *Caroline C. v. Johnson*, 174 F.R.D. 452, 461 (D. Neb. 1996).
[140] *See* Am. Compl. Prayer for Relief ¶¶ c (declaratory relief), d(i)-(iv) (injunctive relief).

23(g). In appointing class counsel, courts consider: (a) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (b) the work counsel has done in identifying or investigating potential claims in the action; (c) counsel's knowledge of the applicable law; and (d) the resources that counsel will commit to representing the class. *See* FED. R. CIV. P. 23(g)(1)(A); *Sellars v. CRST Expedited, Inc.*, 321 F.R.D. 578, 606 (N.D. Iowa 2017). "In the absence of proof to the contrary, courts presume that class counsel is competent and sufficiently experienced to vigorously prosecute the class action."[141]

Counsel has decades of experience conducting complex, class action litigation.[142] Counsel also has extensive legal and subject matter expertise related to these claims, having handled numerous federal civil rights lawsuits, constitutional claims, ADA claims, and other claims on behalf of children with disabilities. Plaintiffs' attorneys include Children's Rights and Disability Rights Iowa, which are two non-profit legal advocacy organizations recognized for their wealth of experience representing groups similar to this class and bringing claims similar to these claims. Disability Rights Iowa has expertise and significant experience representing individuals with disabilities in litigations that often involve ADA claims, and Children's Rights has expertise and significant experience representing classes of children in juvenile justice and child welfare systems in federal class action litigations that often involve constitutional claims. *See* Exh. 74 at ¶¶ 1-2; Exh. 73 at ¶¶ 1, 3-4. Plaintiffs are also represented by Ropes & Gray LLP, an international law firm with significant experience conducting complex federal class action litigation and a robust civil rights pro-bono practice. *See* Exh. 75 at ¶¶ 4-6.

Before filing this lawsuit, Counsel collectively spent several years conducting a thorough investigation into the issues and claims surrounding BSTS's pervasive treatment of children with significant mental and emotional impairments. *See, e.g.*, Exh. 74 ¶ 4. Counsel has, for instance,

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[141] *Roberts v. Source for Pub. Data*, 08-cv-04167, 2009 WL 3837502, at *5 (W.D. Mo. Nov. 17, 2009) (quoting *White v. Martin*, 02-cv-4154, 2002 WL 32596017, at *10 (W.D. Mo. Oct. 3, 2002)); *see Lane*, 2012 WL 5462932, at *3 (adequacy satisfied).

[142] *See* Exh. 74, Decl. of H. Frischer In Support of Plaintiffs' Motion for Class Certification ("CR Decl."); Exh. 75, Decl. of Jane Hudson in Support of Plaintiffs' Motion for Class Certification ("DRI Decl."); Exh. 76, Decl. of Nicholas M. Berg in Support of Plaintiffs' Motion for Class Certification ("Ropes Decl.").

conducted numerous investigatory visits and reviewed hundreds of pages of relevant information from its Public Records Requests. Counsel is fully prepared to continue to dedicate the necessary resources, such as finances and staff, to see this action to completion.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court: (1) certify a Plaintiff Class of all boys confined to BSTS since the filing of the Complaint, now, or in the future, who have received psychotropic medications or a diagnosis for a mental health disorder specified in DSM-V or DSM-IV, as determined by a mental health professional; (2) appoint C.P.X., K.N.X., and J.S.X. as class representatives; and (3) appoint attorneys from Children's Rights, Disability Rights Iowa, and Ropes & Gray LLP as class counsel.

DATED: August 3, 2018

Respectfully Submitted,

CHILDREN'S RIGHTS, INC.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was filed electronically with the Clerk of Court on August 3, 2018, to be served by operation of the Court's electronic filing system upon all parties.

/s/ Marissa C. Nardi

Marissa C. Nardi