UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Division
Case No.:

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; T.M., by and through his parent and natural guardian, Jessica Joiner, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

RIC BRADSHAW, Palm Beach County Sheriff, in his individual and official capacity; MICHAEL GAUGER, Chief Deputy of the Palm Beach County Sheriff's Office, in his individual capacity; ALFONSO STARLING, Corrections Operation Major for the Palm Beach County Sheriff's Office, in his individual capacity; FRANK MILO, Corrections Security Major for the Palm Beach County Sheriff's Office, in his individual capacity; SCHOOL BOARD OF PALM BEACH COUNTY,

Defendants.

PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

COMES NOW Plaintiffs, a class of children who are charged as adults and held at the Palm Beach County Jail ("Jail"), on behalf of themselves and those similarly situated, by and through their attorneys, and pursuant to Federal Rule of Civil Procedure 65, respectfully move this Court for a preliminary injunction enjoining Defendants from holding children at the Jail in solitary confinement and from routinely denying these incarcerated children educational services, including services needed to address their disabilities.

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"). In support of this motion, Plaintiffs state as follows:

1. The grounds for this Motion are set forth in the accompanying Memorandum in support. For the reasons set forth in the Memorandum, Plaintiffs respectfully request that this Court grant the requested preliminary injunction.

2. Plaintiffs submit that all essential elements for the issuance of a preliminary injunction are present in this case: 1) a threat that Plaintiffs will suffer irreparable injury if the injunction is not granted; 2) a substantial likelihood or probability that Plaintiffs will prevail on the merits; 3) the threatened injury to Plaintiffs outweighs any threat of harm to the Defendants; and 4) granting the preliminary injunction will not disserve the public interest.

WHEREFORE, Plaintiffs respectfully request that this Court enter a preliminary injunction (1) directing Defendants to stop enforcing their policy and practice of solitary confinement of children in violation of the Eighth and Fourteenth Amendments; 2) provide due process protections to Plaintiffs, if and when, solitary confinement decisions are made; 3) provide appropriate education to children with disabilities held in solitary confinement in compliance with the IDEA; and 4) provide children with disabilities held in solitary confinement equal access to educational programming, services and activities as required under the ADA and Section 504 of the Rehabilitation Act. The Court should require no bond or at most a nominal bond under Fed. R. Civ. P. 65(c). It is well within the discretion of the Court to require "no security at all." *BellSouth Telecomm., Inc. v. MCIMetro Access Transmission Servs., LLC*, 425 F.3d 964, 971 (11th Cir. 2005). Plaintiffs have no ability to pay a bond under their current circumstances. That inability should be no bar to the relief requested.

Respectfully Submitted,

COHEN MILSTEIN SELLERS & TOLL, PLLC
2925 PGA Boulevard, Ste. 200
Palm Beach Gardens, FL 33410

/s/ Theodore J. Leopold
Theodore J. Leopold, Esq.
Florida Bar No. 705608
tleopold@cohenmilstein.com
Diana L. Martin. Esq.

Florida Bar No. 624489
dmartin@cohenmilstein.com
Telephone: 561-515-1400
Facsimile: 561-515-1401

LEGAL AID SOCIETY OF PALM BEACH CO., INC.
EDUCATION ADVOCACY PROJECT
423 Fern St., Ste. 200
West Palm Beach, FL 33401

__/s/ Melissa Duncan_____
Melissa Duncan, Esq.
Florida Bar No. 0796921
mduncan@legalaidpbc.org
Telephone: (561) 655-8944, ext. 243
Facsimile: (561) 655-5269

HUMAN RIGHTS DEFENSE CENTER
P.O. Box 1151
Lake Worth, FL 33460

_/s/ Sabarish P. Neelakanta____
Sabarish P. Neelakanta, Esq.
Florida Bar No. 26623
sneelakanta@hrdc-law.org

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Division
Case No.:

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; T.M., by and through his parent and natural guardian, Jessica Joiner, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

RIC BRADSHAW, Palm Beach County Sheriff, in his individual and official capacity; MICHAEL GAUGER, Chief Deputy of the Palm Beach County Sheriff's Office, in his individual capacity; ALFONSO STARLING, Corrections Operation Major for the Palm Beach County Sheriff's Office, in his individual capacity; FRANK MILO, Corrections Security Major for the Palm Beach County Sheriff's Office, in his individual capacity; SCHOOL BOARD OF PALM BEACH COUNTY

Defendants.

MEMORANDUM IN SUPPORT OF
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

I. INTRODUCTION[1]

The Plaintiffs are children held in solitary confinement for 23-24 hours a day at the Palm Beach County Jail ("Jail"), with little or no human interaction. It is Defendants' practice to leave these children in solitary confinement for weeks, months, and in some instances, more than a year while their cases are pending. Due to their age and the fact that many of these children suffer from

[1] Plaintiffs incorporate by reference the factual allegations made within their Class-Action Complaint for Injunctive and Declaratory Relief filed contemporaneously with the instant motion. These factual allegations are supported by declarations and other source material attached herewith as Exhibits A-O.

mental illness and learning disabilities, they are especially vulnerable to serious harm. Many of these children report experiencing visual and auditory hallucinations, suicidal ideation, and major depression. They receive no services for their mental health needs, and disabled children are denied accommodations or access to educational services. Equally troubling, these children are denied any due process protections prior to their placement in solitary confinement, and do not receive any periodic review of their classification. Defendants instead ignore the harm experienced by these children and pay no heed to the growing consensus among medical professionals confirming that children are especially vulnerable to the extraordinary psychological stresses associated with solitary confinement. In fact, over two dozen states and the federal government have, in recent years, either prohibited the practice completely or placed significant restrictions on its use. Many federal courts have also issued immediate injunctive relief to children held in solitary confinement conditions such as those at issue in this case.

Because of the serious and ongoing harm being imposed on these children due to their solitary confinement, and the denial of any due process protections, Plaintiffs demonstrate a substantial likelihood of success that Defendants' policies are tantamount to cruel and unusual punishment and violate procedural due process under the Eighth and Fourteenth Amendments. Defendants' denial of education to children with disabilities held in solitary confinement and their failure to make appropriate accommodations also demonstrate a substantial likelihood of success as to Plaintiffs' claims under the Individuals with Disabilities Act ("IDEA"), the Americans with Disabilities Act ("ADA"), and Section 504 of the Rehabilitation Act ("Section 504"). Having no adequate remedy at law, and because they will continue to suffer irreparable harm as to each of their claims, a preliminary injunction is necessary. Conversely, Defendants cannot show that they will suffer from irreparable harm should they stop confining children in solitary and by providing them with proper access to educational services. Importantly, the public interest weighs heavily in favor of granting a preliminary injunction to protect these children from the ongoing abuses.

II. ARGUMENT

Plaintiffs meet the requirements for injunctive relief[2] because they have a "clear or substantial" likelihood of success on the merits for each of their claims, make a "strong showing"

[2] To the extent the class is not certified at the time the Court rules on the motion for preliminary injunction, this court may provisionally certify a class to afford class-wide relief pursuant to a preliminary injunction. *See e.g.*, *Clean-Up '84 v. Heinrich*, 582 F. Supp. 125 (M.D.

of irreparable harm in the absence of preliminary relief, and the balance of equities tips in their favor. Additionally, this injunction is in the public interest. *Grizzle v. Kemp*, 634 F.3d 1314, 1320 (11th Cir. 2011). In balancing these factors, the court may employ a "sliding scale" by "balancing the hardships associated with the issuance or denial" of the injunction against "the degree of likelihood of success on the merits"; the greater the potential harm, the lower the likelihood of success needs to be. *Fla. Med. Ass'n v. U.S. Dep't of Health, Educ. & Welf.*, 601 F.2d 199, 203 n.2 (5th Cir. 1979). Accordingly, where the "'balance of equities weighs heavily in favor of granting the injunction, the movant[s] need only show a substantial case on the merits.'" *Gonzalez ex rel. Gonzalez v. Reno*, 2000 U.S. App. LEXIS 7025, 2000 WL 381901, at *1 (11th Cir. Apr. 19, 2000) (quoting *Ruiz v. Estelle*, 650 F.2d 555, 565 (5th Cir. June 26, 1981)).[3]

A. PLAINTIFFS ARE ENTITLED TO HEIGHTENED CONSTITUTIONAL PROTECTIONS

For more than half a century, the U.S. Supreme Court has repeatedly reaffirmed that "[c]hildren have a very special place in life which law should reflect." *May v. Anderson*, 345 U.S. 528, 536 (1953) (Frankfurter, J., concurring); *see also J.D.B. v. North Carolina*, 564 U.S. 261, 272 (2011) ("'[O]ur history is replete with laws and judicial recognition' that children cannot be viewed simply as miniature adults.") (quoting *Eddings v. Oklahoma*, 455 U.S. 104, 115-116 (1982)). The basic principle that children are different from adults is reflected in a diverse array of constitutional contexts, ranging from First Amendment protections, to the reasonableness of searches, to the protection against cruel and unusual punishment.[4] Accordingly, for children in

---

Fla. 1984) (certifying class "for narrow purpose of effectuating preliminary injunction.") *Harris v. Graddick*, 593 F. Supp. 128 (M.D. Ala. 1984) (provisionally certifying a defendant class in connection with issuing a preliminary injunction).

[3] Under the Prison Litigation Reform Act ("PLRA"), preliminary injunctive relief in any civil action with respect to prison conditions must be narrowly drawn, extend no further than necessary to correct the harm, and be the least intrusive means necessary to correct that harm. *See* 18 U.S.C. § 3626(a)(2)). In considering a request for injunctive relief, a court must give "substantial weight" to any adverse impact on public safety or the operation of a criminal justice system the relief might have. § 3626(a)(1)(A). As discussed *infra*, many federal courts have entered injunctive relief on behalf of children held in solitary confinement at county jails of similar or larger size than the Palm Beach County Jail, and procedural and substantive safeguards exist to fashion appropriate relief. Plaintiffs welcome a discussion on the contours of any injunctive relief ordered as well as determining how best to implement its provisions consistent with the PLRA.

[4] *See, e.g., Miller v. Alabama*, 132 S. Ct. 2455, 2464 (2012) ("[C]hildren are constitutionally different from adults for purposes of sentencing."); *J.D.B.*, 564 U.S. at 272 (explaining that children "'are more vulnerable or susceptible to . . . outside pressures than adults," and adopting a "reasonable child" standard for determining the scope of *Miranda* protections);

state custody, who have been involuntarily removed from the custody of their parents, have complex histories and needs, and are entirely dependent upon the state for their care, safety, and well–being, this principle takes on heightened importance.

B. Plaintiffs are Substantially Likely to Succeed on their Claims Under the Eighth and Fourteenth Amendment Prohibition against Cruel and Unusual Punishment

The Sheriff's Office must be enjoined from enforcing its solitary confinement policies against direct-filed children at the Jail because of the serious harm such conditions pose to children and the deliberate indifference by which the Sheriff's Office imposes this policy. Corrections' officials must ensure that prisoners are held in "humane" conditions. *Farmer v. Brennan*, 511 U.S. 825, 834 (1994). The Eighth Amendment "set[s] limits on the treatment and conditions that states may impose on prisoners." *Hamm v. DeKalb Cty.*, 774 F.2d 1567, 1571 (11th Cir. 1985). Whether conditions of confinement are cruel and unusual is judged under a "contemporary standard of decency" – that is, "the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337, 346-47. While solitary confinement under current precedent does not, by itself, constitute cruel and unusual punishment, "[c]onfinement…in an isolation cell is a form of punishment subject to scrutiny under Eighth Amendment standards." *Huton v. Finney*, 437 U.S. 678, 685 (1978).

Accordingly, Plaintiffs must satisfy a two-pronged inquiry[5] in order to establish that solitary confinement of children is constitutionally inadequate in violation of the prohibition

---

Graham v. Florida, 560 U.S. 48, 68-69 (2010) (recognizing that "developments in psychology and brain science continue to show fundamental differences between juveniles and adult minds," and holding that juveniles cannot be sentenced to life without parole); *Safford Unified Sch. Dist. No.1 v. Redding*, 557 U.S. 364, 379 (2009) (relying upon the unique vulnerability of adolescents, and their heightened expectation of privacy, to hold a suspicion-less strip search unconstitutional in the school context); *Roper v. Simmons,* 543 U.S. 551, 573-74 (2005) (holding that the death penalty cannot be imposed on juveniles in light of their vulnerabilities and differences with adults); *Ginsberg v. New York*, 390 U.S. 629, 638 (1968) (recognizing that exposure to obscenity may be harmful to minors even when it would not harm adults).

[5] Children held in solitary confinement at the Palm Beach County Jail are pre-trial detainees. In *Kingsley v. Hendrickson*, 135 S. Ct. 2466, 2473-74 (2015), the U.S. Supreme Court held that a pretrial detainee may prevail *on a § 1983 excessive force claim* if he or she shows that the force used was objectively unreasonable, regardless of whether an officer had a subjective intent to cause the detainee harm. In reaching this decision, the Court granted greater protection to pretrial detainees under the 14th Amendment's Due Process Clause than is given to convicted prisoners under the Eighth Amendment, which still requires proof of a subjective intent to cause

against cruel and unusual punishment. *Farmer v. Brennan*, 511 U.S. at 834; *Chandler v. Crosby*, 389 F.3d 1278, 1289 (11th Cir. 2004). First, the conditions to which the child is subjected must be objectively "serious,"—a denial of "the minimal civilized measure of life's necessities" or posing a "substantial risk of serious harm." *Farmer v. Brennan*, 511 U.S. at 834. Second, the jail official must be subjectively culpable—showing "'deliberate indifference to inmate health or safety.'" *Id.* A defendant is deliberately indifferent when he or she "knows of and disregards" a deprivation or "an excessive risk to inmate health or safety." *Id.* at 837. To disregard a deprivation or risk means to "fail[] to take reasonable measures to abate it." *Id.* at 847.

1. ***The Sheriff's Office's Extensive and Unnecessary Use of Solitary Confinement Poses a Significant Risk of Serious Harm to Children***

Plaintiffs present substantial evidence that children in solitary confinement at the Palm Beach County Jail are at significant risk of serious harm. The Supreme Court has explained that this objective prong of the Eighth Amendment requires "a scientific and statistical inquiry into the seriousness of the potential harm" and its likelihood, as well as an assessment of whether that harm is sufficiently serious, which is measured by "whether society considers the risk . . . to be so grave that it violates contemporary standards of decency to expose *anyone* unwillingly to such a risk." *Helling v. McKinney*, 509 U.S. 25, 36 (1993) (emphasis in original).

In *Madrid v. Gomez*, U.S. District Court Judge Thelton Henderson wrote that isolation conditions in a prison's Special Housing Unit ("SHU") while not amounting to cruel and unusual punishment for all prisoners, were unconstitutional for those "at a particularly high risk for suffering very serious or severe injury to their mental health . . . ." 889 F.Supp. 1146, 1265 (N.D. Cal. 1995). Vulnerable prisoners included those with pre-existing mental illness, intellectual disabilities, and brain damage. Judge Henderson concluded that "[f]or these inmates, placing them in the SHU is the mental equivalent of putting an asthmatic in a place with little air to breathe."

Plaintiffs' expert clearly demonstrates the serious harm coming to children held in solitary confinement and underscores their particular vulnerabilities as compared to adults. That is,

---

harm before a violation will be found. To date, the Eleventh Circuit has not extended *Kingsley* beyond the excessive force context. However, Plaintiffs contend that the holding provides room that an objective standard should extend to other factual circumstances concerning pre-trial detainees, including solitary confinement. *See also Daniel v. Pineiro*, 849 F.3d 17, 30 (2nd Cir. 2017) (applying objective standard to conditions of confinement claims). Out of an abundance of caution, Plaintiffs apply the more demanding Eighth Amendment standard to the issues at bar.

children kept in isolation are more susceptible to harm because they are still developing socially, psychologically, and neurologically. *See Thomas v. Bryant*, 614 F.3d 1288, 1312 (11th Cir. 2010) ("[M]ental health needs are no less serious than physical needs for purposes of the Eighth Amendment." (quotation omitted)); *H.C. v. Jarrard*, 786 F.2d 1080, 1088 (11th Cir. 1986) (considering evidence that isolating juveniles can cause serious harm and finding that "juveniles are event more susceptible to mental anguish than adult convicts."). The prolonged exposure to solitary confinement can lead to long-term mental health conditions, cause permanent changes in brain development, and create a higher risk of permanent psychiatric aftereffects. Children in solitary confinement have committed suicide, developed psychosis and post-traumatic stress disorders, and experience major depression, agitation, self-mutilation, and suicidal ideation.

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 children and have each called on correctional facilities to halt the use of solitary confinement of children. These studies, by themselves, objectively demonstrate the substantial risk of serious harm coming to the children held in solitary confinement at the Jail.

a. *Many of the Children Held in Solitary Confinement at the Jail Have Mental Health Issues that are Exacerbated by the Long-Term Isolation*

Notably, a significant percentage of the children held in solitary confinement at the Palm Beach County Jail already suffer from some kind of mental illness or learning disability. Understandably, many of these children exhibit symptoms that directly correlate with the experience of solitary confinement. The children at the Jail report feeling anxious, depressed and impulsive, or that they are "going crazy" due to the extended period of time in isolation, and even cut themselves inside their cell requiring multiple stitches. Some say that they have "lost hope," and that the jail "messed them up," or report that they have begun speaking "unusually." Many are unable to sleep, lose touch with time and cannot distinguish between day and night, or complain about an inability to focus. Others report having auditory and visual hallucinations, including hearing voices, "watching" television shows on their cement wall, seeing pages of books "wiggle" and move independently, or a third arm growing from their body. In some cases, the effects of solitary confinement have had physical manifestations and many children complain of painful headaches, having significant fluctuations in weight, or feeling like it hurts to move. The children

also report receiving no mental health evaluations or access to their psychotropic medication, further exacerbating their mental health issues. Family members describe changes in the child's behavior including distrust of people, constant fear of being attacked, or heightened paranoia. These physical and mental manifestations speak directly to the harm being imposed on these children because of their solitary confinement. When coupled with the near universal agreement among mental health professionals that solitary confinement of children exposes them to serious harm, there is little doubt that Plaintiffs meet the objective standard that a substantial risk of serious harm exists.

b. *Federal Courts Have Found Solitary Confinement Policies Similar to Those Imposed by the Sheriff's Office as Tantamount to Cruel and Unusual Punishment Warranting Injunctive Relief*

Importantly, courts around the country have also repeatedly recognized the principle that solitary confinement of children, even for very short periods of time, poses a substantial risk of serious harm.[6] This is especially significant for children who, like many of the Plaintiffs, are coping with serious mental health issues. Moreover, federal courts have already long held that the Eighth Amendment prohibits placing adults with mental health conditions in solitary confinement because of their vulnerable status. *See Madrid*, 889 F. Supp. at 1265.[7] Similarly, children belong

---

[6] *See Lollis v. N.Y. State Dep't of Soc. Servs.*, 322 F. Supp. 473, 482-83 (S.D.N.Y. 1970) (finding the solitary confinement of two juveniles in a barren room for six days and two weeks respectively as punishment for fighting to be cruel and unusual punishment and issuing a preliminary injunction to stop their continued confinement based on the declarations of psychiatrists, psychologists and educators who were "unanimous in their condemnation" of the practice); *Morgan v. Sproat*, 432 F. Supp. 1130, 1138-40 (D. Miss. 1977) (relying on expert testimony of harm and evidence of a suicidal attempt and finding that confining delinquent teenage boys for an average of 11 days in a barren room, where they were prohibited from talking to others and were allowed out only during recreation and twice-daily showers, violated the Eighth Amendment); *Inmates of Boys' Training Sch. v. Affleck*, 346 F. Supp. 1354, 1360, 1366-67 (D.R.I. 1972) (finding that isolation of juveniles for 3 to 7 days "in a dark and stripped confinement cell with inadequate warmth and no human contact can only lead to [their] destruction" and amounted to cruel and unusual punishment); *Turner v. Palmer*, 84 F. Supp. 3d 880, 883 (S.D. Iowa 2015)(finding isolation cells for juveniles unconstitutional and cases cited therein).

[7] *See also e.g.*, *Cmty. Legal Aid Soc'y. v. Coupe*, No. 15-CV-688 (GMS), 2016 WL 1055741, at *4 (D. Del. Mar. 16, 2016) (holding that plaintiff stated an Eighth Amendment claim by alleging that defendants placed individuals with serious mental illness in solitary confinement); *Ind. Protection & Advocacy Servs. Comm'n v. Comm'r,* 1:08-cv-01317, 2012 WL 6738517, at *23 (S.D. Ind., Dec. 31, 2012) (holding that the practice of placing prisoners with serious mental illness in segregation without providing them adequate mental health treatment violated the Eighth

to a vulnerable population, and the fact that many are suffering from mental health issues makes their susceptibility to serious harm even more pronounced. Accordingly, because of the growing consensus that solitary confinement of children should end, federal district courts around the country have repeatedly found the practice unconstitutional altogether, or have entered injunctive relief on behalf of the children leading to an end to the practice entirely.[8] In other cases, parties have come to settlements banning the practice of solitary confinement of children, or engendering significant changes to these policies.[9]

Amendment); *Jones 'El v. Berge,* 164 F. Supp. 2d 1096, 1117 (W.D. Wis. 2001) (granting injunctive relief to prisoners with serious mental illness housed in a supermax prison where they were in almost complete isolation); *Ruiz v. Johnson,* 37 F. Supp. 2d 855, 915 (S.D. Tex. 1999) (holding unconstitutional the solitary confinement of mentally-ill prisoners), *rev'd on other grounds*, 243 F.3d 941 (5th Cir.2001), *adhered to on remand*, 154 F. Supp. 2d 975 (S.D. Tex. 2001); *Coleman v. Wilson*, 912 F. Supp. 1282, 1320-21 (E.D. Cal. 1995) ("[D]efendants' present policies and practices with respect to housing of [prisoners with serious mental disorders] in administrative segregation and in segregated housing units violate the Eighth Amendment rights of class members."); *Casey v. Lewis*, 834 F. Supp. 1477, 1549-50 (D. Ariz. 1993) (finding an Eighth Amendment violation when "[d]espite their knowledge of the harm to seriously mentally ill inmates, ADOC routinely assigns or transfers seriously mentally ill inmates to [segregation units]"); *Langley v. Coughlin*, 715 F. Supp. 522, 540 (S.D.N.Y. 1989) (holding that prison officials' failure to screen out from SHU "those individuals who, by virtue of their mental condition, are likely to be severely and adversely affected by placement there" plausibly rises to cruel and unusual punishment).

[8] *See e.g.*, *A.T. v. Harder*, 2018 U.S. Dist. LEXIS 57318 (N.D.N.Y., April 4, 2018) (certifying class and granting injunctive relief because of substantial likelihood that the solitary confinement of juveniles at a county jail violates the Eighth and Fourteenth Amendments, as well as the IDEA, the ADA, and Section 504 of the Rehabilitation Act); *V.W. v. Eugene Conway*, 236 F. Supp. 3d 554 (N.D.N.Y. 2017) (certifying class and granting injunctive relief against county jail because of substantial likelihood that the solitary confinement of juveniles violates the Eighth and Fourteenth Amendments, as well as the IDEA), settled by *V.W. v. Conway*, 2017 U.S. Dist. LEXIS 138047 (N.D.N.Y., Aug. 28, 2017); *Doe v. Hommrich, et al.*, No. 3:16-cv-00799, Preliminary Injunction Memorandum & Order, ECF No. 114 (M.D. Tenn. March 22, 2017) (certifying class and entering preliminary injunction preventing further isolation of juveniles in solitary confinement because of substantial likelihood that such a practice violates the Eighth Amendment's prohibitions against inhumane treatment of detainees).

[9] *See e.g.*, *C.S. v. King County*, No. 2:17-cv-1560 (W.D. Wash., May 1, 2018) (forthcoming class settlement concerning county jail's solitary confinement of children in violation of the Eighth and Fourteenth Amendments, as well as the IDEA); *J.J. v. Litscher*, No. 3:17-cv-47 (W.D. Wis., May 8, 2018) (forthcoming class settlement of solitary confinement policies at juvenile correctional facilities for, *inter alia*, violations of the Eighth and Fourteenth Amendments after agreeing to injunctive relief and granting of class certification); *Doe v. Grays Harbor County*, No. 3:17-cv-5186 (W.D. Wash., Jan. 25, 2018) (approving settlement on juvenile claims for violations under the Eighth and Fourteenth Amendments mandating changes to juvenile detention facility

Accordingly, the clear authority both legally and professionally weighs substantially in favor of success on the Plaintiffs' claim that solitary confinement exposes them to serious harm. The individual experiences detailed by the Plaintiffs further confirm the physical and psychological harm such isolation has on their well-being. Plaintiffs, therefore, more than meet the threshold objective standard under the Eighth and Fourteenth Amendments.

2. *The Sheriff's Office is Deliberately Indifferent to the Risk of Serious Harm to Children*

Defendants' failure to modify or eliminate their policies concerning solitary confinement of children at the Palm Beach County Jail show deliberate indifference to the risk of serious harm coming to those children. Defendants are well aware of the physical and psychological harm solitary confinement has on these children, but choose to do nothing about it.

a. *The Sheriff's Office is Aware that Solitary Confinement Policies Can Inflict Serious Harm on Prisoners Generally, but Chooses to Ignore the Risks that Such Policies Can Have on the Well-Being of Children*

The Sheriff's Office does not consider the impact of its solitary confinement policies on children, despite knowing that such policies can be extremely harmful. In the case of disciplinary solitary confinement, Defendants wholly ignore its own rules requiring a "pre-hearing segregation" determination that the children are a risk to themselves or others requiring placement in solitary confinement. Children are not afforded an opportunity to rebut any finding concerning rule violations and are often held in solitary confinement well beyond the 30-day maximum penalty permitted under the Sheriff's Office own written policy. Additionally, Sheriff's Office policy requires that such confinement only be used as a last resort and should be proportionate to the offense committed. Yet, children at the Jail report being held in disciplinary solitary confinement for several months. Defendants therefore make no effort, and in fact, turn a blind eye to the serious harm being imposed on these children. Importantly, the Sheriff's Office policy at issue makes no distinction between adults and children as to the length of time that can be served in solitary confinement. At the very least, the fact that certain policy considerations about due

---

policies concerning solitary confinement); *G.F., et al. v. Contra Costa Cnty.*, 2015 U.S. Dist. LEXIS 159597 *7 (N.D. Cal. 2015) (approving class settlement against juvenile facility for violations of the IDEA, ADA, and Section 504 of the Rehabilitation Act, and ending solitary confinement "for discipline, punishment, administrative convenience, retaliation, staffing shortages or reasons other than a temporary response to behavior that threatens immediate harm to the youth or others.").

process, length of confinement, and proportionality seem to have guided the drafting of Sheriff's Office solitary confinement policy suggests that it was aware that isolation poses serious harm to the well-being of prisoners, let alone a child prisoner. Despite this awareness, Sheriff's Office practice is to confine children to solitary for indefinite periods of time, and failing to even make periodic reviews of the children's classification. This disregard for the harm solitary confinement policies have on children at the Jail, and the lack of any effort to understand the extent of the harm through periodic reviews or other mental health evaluations, is strong evidence of deliberate indifference to the children's well-being.

Similarly, for those children placed in administrative solitary confinement, they also face indefinite confinement with no opportunity for a segregation hearing or periodic review. Particularly troubling is the fact that these administratively held children presumably have not broken any rules, but are nevertheless subject to solitary confinement for no other reason than having co-defendants. Again, because the Sheriff's Office is aware that solitary confinement policies should only be implemented in limited circumstances, and even then, only for a short duration, it is quite worrisome that they elect to ignore this prohibition as it relates to children who have co-defendants. Given that Defendants choose to ignore these policy underpinnings shows complete disregard for the serious harm that can and does ensue.

b. ***The Sheriff's Office Uses Solitary Confinement as a Management Tool by Exploiting the Children's Vulnerabilities and Fear of Long-Term Isolation***

Defendants seemingly use solitary confinement as a management tool without regard for the effect it may have on the physical and mental well-being of the children. For example, Jail staff turn bright emergency lights on in the solitary confinement cells to keep the children up as a form of punishment. Children in isolation are often denied recreation, phone calls, or are made to drink foul smelling water from a sink, whereas children in general population have free access to a clean water fountain. Many are threatened with removal to a mental health cell where they are stripped naked and forced to wear a paper gown. Others are verbally accosted and told that that there is no hope of leaving solitary confinement. These children have filed multiple grievances asking to leave solitary confinement, and stating their desire for educational services. These grievances, however, go largely ignored, or the children are told that such efforts are futile, or frivolous.

Furthermore, the Sheriff's Office has specific knowledge that many of these children suffer from mental illness when they enter the jail, but elect to ignore this fact when placing them in solitary confinement. These children are not given any mental health evaluations prior to placement in solitary confinement. These children report that the Sheriff's Office makes no follow-up assessments while in solitary confinement despite an explicit policy requiring 10 minute checks of the children held in solitary confinement.

Family members have also contacted Jail staff expressing concern over the solitary confinement of the children and the lack of care for their mental illness, only to be ignored. For one child in solitary confinement, a mother called the Jail when communication with her son ceased, only to be told that he would call her in approximately three weeks, and no other information would be provided. In another situation, the mother of a child who had been held in solitary confinement for over five months presented testimony to the judge presiding over his criminal case concerning the ill- effects solitary confinement has had on her child. This information prompted the judge to enter an order requesting the Sheriff's Office to review the child's housing classification. Neither the child nor the parent subsequently received any update or assurance of any changes to his classification, and the child remained in solitary confinement for an additional three weeks, only to be let out after his co-defendant was released from the Jail. This same child was accused of filing frivolous grievances during his solitary confinement asking to be let out of isolation and to have access to education. Accordingly, even though the Sheriff's Office was aware of the harm coming to these children, it made no effort to correct the abuses.

Additionally, the mounting consensus even within the corrections community is that the solitary confinement of children (either disciplinary or administrative) is not "borne of penological necessity" and "is not reasonably calculated to maintain safety and security, but rather represents conscious disregard of the substantial risks posed" on the children. *See V.W.*, 236 F. Supp. at 584. Accordingly, there is both direct evidence that Defendants were aware of the risks of serious harm coming to these children, as well as a strong circumstantial showing that the Defendants were indifferent to the same. *See Farmer*, 511 U.S. at 842 (subjective knowledge may be "demonstrate[ed] in the usual ways, including inference from circumstantial evidence, and . . . from the very fact that the risk was obvious" (citation omitted)). Plaintiffs, therefore, easily satisfy both the objective and subjective prongs predicting a strong likelihood of success on the merits as to the Eighth and Fourteenth Amendments.

C. Plaintiffs are Substantially Likely to Succeed on their Claims Under the Fourteenth Amendment for Denial of Procedural Due Process When Placed in Solitary Confinement

To make out a denial of procedural due process claim under §1983, a plaintiff must establish three elements: (1) a deprivation of a constitutionally protected liberty or property interest; (2) state action; and (3) constitutionally inadequate process. *Grayden v. Rhodes*, 345 F.3d 1225, 1232 (11th Cir. 2003). Here, there is no dispute that Defendants are state actors. Accordingly, the children must show that they have been deprived their liberty or property interests and afforded inadequate due process. An essential principle of due process is that a deprivation of life, liberty, or property "be preceded by notice and opportunity for hearing appropriate to the nature of the case." *Cleveland Bd. Of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985)). "The formality and procedural requisites for the hearing can vary depending upon the importance of the interests involved and the nature of the subsequent proceedings, but an opportunity to be heard remains the Due Process Clause's root requirement." *Boddie v. Connecticut*, 401 U.S. 371, 378-79 (1971).

1. *Children are Deprived of their Liberty Interest Without Constitutionally Adequate Due Process When Placed in Solitary Confinement at the Jail*

The Supreme Court has held that although a prisoner's "rights may be diminished by the needs and exigencies of the institutional environment, [he] is not wholly stripped of constitutional protections when he is imprisoned for crime." *Wolff v. McDonnell*, 418 U.S. 539, 555 (1974). In *Sandin v. Conner*, 515 U.S. 472 (1995) and *Wilkinson v. Austin*, 545 U.S. 209 (2004), the Supreme Court held that inmates had a state-created liberty interest in avoiding conditions of confinement that impose an "atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." As conditions of solitary confinement are sufficiently worse than conditions of detainees in the general population at the Jail, the placement of children in solitary confinement creates a protected liberty interest in remaining with the general population.

In *Hewitt v. Helms*, the Supreme Court described, albeit in *dicta*, what process is due from prison officials making segregation determinations when a liberty interest is at stake. 459 U.S. 460 (1983). When the initial confinement decision is contemplated or made, whether for institutional safety reasons or to separate the prisoner pending an investigation, the prisoner must "receive some notice of the charges against him and an opportunity to present his views," whether at a hearing or in writing. *Id.* at 476. "[W]ithin a reasonable time" after the confinement begins, prison officials must then conduct an "informal, nonadversary evidentiary review" of whether the

confinement is justified. *Id.* This review may "turn[] largely on purely subjective evaluations and on predictions of future behavior." *Id.* at 474.

Once a prisoner is confined in segregation involving atypical and significant hardship, there must be "some sort of periodic review of the confinement." *Magluta v. Samples*, 375 F.3d 1269, 1279 n.7 (11th Cir. 2004) (quoting *Hewitt*, 459 U.S. at 477 n.9). "This review will not necessarily require that prison officials permit the submission of any additional evidence or statements." *Hewitt*, 459 U.S. at 477 n.9. Moreover, the review is flexible and may be based on "a wide range of administrative considerations," including, but not limited to, observations of the inmate in administrative segregation, "general knowledge of prison conditions", misconduct charges, ongoing tensions in the prison, and any ongoing investigations. *Id.* Many of these matters may not be subject to "proof in any highly structured manner." *Id.*

Nevertheless, "administrative segregation may not be used as a pretext for indefinite confinement of an inmate." *Id.* Not only must there be "some sort of periodic review," but the periodic review "must be meaningful; it cannot be a sham or a pretext." *Toevs v. Reid*, 685 F.3d 903, 912 (10th Cir. 2012); *Kelly v. Brewer*, 525 F.2d 394, 400 (8th Cir. 1975) ("[W]here an inmate is held in segregation for a prolonged or indefinite period of time due process requires that his situation be reviewed periodically in a meaningful way and by relevant standards to determine whether he should be retained in segregation or returned to population."); *cf. Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)) ("The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." (quotation marks omitted)). Reviewing officials must be guided by whether confinement in administrative segregation remains necessary in light of current facts and valid administrative justifications. *Proctor v. LeClaire*, 846 F.3d 597, 611 (2nd Cir. 2017) ("[R]eviewing officials must evaluate whether the justification for [administrative segregation] exists at the time of the review or will exist in the future, and consider new relevant evidence as it becomes available."); *see Hewitt*, 459 U.S. at 477 n.9 (describing the periodic-review decision as "whether a prisoner *remains* a security risk" (emphasis added)).

Here, no procedural protections were implemented prior to or during the children's solitary confinement at the Jail. Even though the Sheriff's Office policy requires a pre-segregation hearing to determine whether the placement of a child in solitary confinement is warranted, in practice, Defendants ignore this mandate and routinely confine children to solitary confinement without any due process protections. Children are not able to protest their solitary confinement at any

hearing or present evidence contravening any penological justification for the confinement. There is no meaningful periodic review of the children's classification while in solitary confinement and many of the children are held indefinitely, regardless of whether the confinement was based on disciplinary rule violations or administrative confinement because of having co-defendant children in the same unit. This complete failure to provide even the most minimum of procedural safeguards when dealing with a vulnerable population of children, is strong evidence that the Sheriff's Office systematically neglects its Fourteenth Amendment due process obligations.

2. *Children are Deprived of their Property Interest in Education and Programs Without Constitutionally Adequate Due Process When Placed in Solitary Confinement at the Jail*

Children at the Jail, as students in the Palm Beach County School District and covered by state and federal law, are entitled to due process protections regarding access to educational services and programs. Ch. 1000-13, Fla. Stat. (2017) ("Fla. K-20 Education Code"); *Goss v. Lopez,* 419 U.S. 565 (1975); *Pa. Dep't of Corrections v. Yeskey,* 524 U.S. 206, 210 (1998); 34 C.F.R. §§ 300.101-102, § 300.324 (d)(1)(i). Solitary confinement, with the accompanying denial of access to education, programs, and services without due process deprives the children held in solitary confinement of their property interest to educational programs and services.[10]

Children are not given notice or hearing to challenge their confinement and subsequent denial of education. Moreover, distributing worksheets under a cell door, providing no assistance in completing the work, having no ability to see or hear the educational instruction being given, and sometimes holding class in a separate room thereby excluding the children in solitary confinement entirely, fails to provide meaningful access to education. Accordingly, the Sheriff's Office clearly fails to afford procedural due process protections when when placing them in solitary confinement at the Jail in violation of the Fourteenth Amendment.

D. PLAINTIFFS ARE SUBSTANTIALLY LIKELY TO SUCCEED ON THEIR CLAIMS UNDER THE IDEA FOR DENIAL OF EDUCATION SERVICES

---

[10] In *Board of Regents v. Roth*, the U.S. Supreme Court held that a property interest protected by the Fourteenth Amendment are defined by independent sources such as state statutes which entitled citizens to certain benefits. 408 U.S. 564, 576-77 (1972). In *Perry v. Sinderman*, the Supreme Court expanded its notion of property by holding that informal practices or customs (in addition to state law) may be sufficient to create a "legitimate claim of entitlement" to a benefit and looked to both written and implied terms contract terms for the existence and extent of property interests. 408 U.S. 593, 601-2 (1972). Here, "[t]he Florida Constitution guarantees a free public school education to all children residing within its borders." *Methelus v. Sch. Bd. Of Collier Cty., Florida*, 2017 WL 1037867, at *3 (M.D. Fla. Mar. 17, 2017) (citing FLA. CONST. ART. IX, § 1(a)); *see also Scavella v. Sch. Bd. Of Dade Cty.*, 363 So.2d 1095, 1098 (Fla. 1978) ("The clear implication is that all Florida residents have the right to attend [] public school system for free).

The purpose of the IDEA is "to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living..." 20 U.S.C. §1400(d). The Act offers states federal funds for a commitment to provide all "children with disabilities" individually tailored special education, also known as a "free appropriate public education" or "FAPE." 20 U.S.C. §§ 1400(d)(1)(A), 1412(a)(1)(A).[11] While FAPE was historically interpreted as access to education or a "basic floor of educational opportunity", (*Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. at 200-202), in *Endrew F. v. Douglas County School District Re-1,* 137 S. Ct. 988 (2017)), a distinction was added to the FAPE standard of more than "merely *de minimis*" educational benefit, emphasizing that substantive requirements under the IDEA necessitate an IEP that is "reasonably calculated to enable a child to make progress appropriate in light of his circumstances." *Id.* at 1001-2.

The Sheriff's Office and School District share in the responsibility to ensure that children within the Jail are afforded FAPE under the IDEA. *See* 20 U.S.C. § 1412(a); 34 C.F.R. § 300.2(b)(1)(iv), § 300.324. In order to achieve FAPE, the IDEA provides several procedural and substantive protections to qualifying children, including an Individual Education Program ("IEP"), Manifestation Determination, and the Child Find Requirement. The IEP is a substantive goal of IDEA that documents "the child's current 'levels of academic achievement'", specifies "measurable annual goals", and "lists the 'special education and related services' to be provided so that" the child may "advance appropriately toward [those] goals." 20 U.S.C. §§ 1414(d)(1)(A)(i)(I), (II), (IV)(aa)).

For the children in solitary confinement at the Jail, the Defendants have violated the requirements of the IEP. IEP team meetings either did not occur or did not meaningfully address the individual needs of the children in confinement. 34 C.F.R. § 300.324(b). Specialized instruction by highly specialized teachers according to the IEP does not occur while children are contained in their individual, locked cells for the duration of the school day. 34 C.F.R. § 300.320(4). For instance, T.M., who has an IEP for a specific learning disability and language

[11] The IDEA applies to both a Local Education Agency ("LEA") like a school district, as well as a correctional facility like the Palm Beach County jail. 34 C.F.R. §§ 300.2(b)(1)(ii)-(iii). There are some limits of the IDEA for students *convicted* of a crime and placed in an adult correctional facility, but those circumstances do not apply to the pre-trial detainee Plaintiff children. 34 C.F.R. § 300.324(d).

impairment, is not able to receive specialized instruction through a locked cell door. Likewise, W.G., who has an intellectual disability and receives specialized instruction for students with intellectual disabilities, was not given his individualized instruction while he was in solitary confinement, according to logs kept of these services. The logs simply state that he "refused" services, but fail to mention that he could not actually leave the confines of his cell to participate. Later, at an IEP on November 28, 2018, when he left the Jail, the conference notes reflect that the teacher working with W.G. at the Jail "stated that there were several accom[modations]" that the child "was not able to receive because he was in administrative confinement while at the County Jail". Similarly, Jeziah Guagno qualified for a related service of counseling under his IEP, but while he did not receive that service for seven months of his solitary confinement on the juvenile floor of the Jail. The result of these failures to comply with the IDEA is that the children in solitary confinement did not make progress toward attaining their IEP goals. 34 C.F.R. § 300.320(4)(i). The children in confinement were not involved in the general education curriculum and did not participate in extracurricular and other nonacademic activities. 34 C.F.R. § 300.320(4)(ii). The children in solitary confinement at the Jail were not educated in the general curriculum setting and did not participate with other disabled and non-disabled children. 34 C.F.R. § 300.320(4)(iii). The children in solitary confinement, being locked behind solid doors, are deprived of the opportunity to see, hear, and participate in the educational process, are denied benefit of their IEPs, are denied FAPE, and meet the standards to succeed under their claims of the IDEA.

Additionally, the IDEA requires that a procedural process of a "manifestation determination review" be performed in disciplinary exclusions from school of more than ten days to determine whether a student's conduct was either: (1) caused by or related to his disability, or (2) resulted from a failure to implement the child's individualized education program, which is required by the IDEA for children with disabilities. 20 U.S.C. § 1415(k)(1)(E). Defendants are aware that children in solitary confinement at the Jail are denied educational access for more than ten days, creating a change of placement under IDEA and requiring procedural protections, but fail to provide them. No manifestation determination was held for any of the students with existing IEPs in solitary confinement at the Jail. For instance, at an IEP meeting at the Jail for Jeziah Guagno on February 13, 2018, the discussion notes state that "Confinement issues were discussed. Under the circumstances of confinement he has not been able to gain regular access to school, which has negatively impacted his academic success." Representatives from both the School

District and the Sheriff's Office were invited to attend the IEP meeting. This documented concern of being prevented from regular school attendance not only warrants procedural due process in the form of a manifestation hearing, it also demonstrates that substantive violations of IDEA occurred as FAPE is not available to a student in confinement, because there is indeed no regular access to school. As such, the Plaintiffs are substantially likely to succeed under this claim.

The Defendants also have an obligation to identify, locate, and evaluate "[a]ll children with disabilities . . . who are in need of special education and related services." 20 U.S.C. §1412(a)(3)(A); 34 C.F.R. § 300.111. The "child find" obligation is triggered where a school has reason to suspect the child has a disability and special education or related services may be necessary to address that disability. *See* 20 U.S.C. §1415(k)(5). This child find obligation is present even if the student already qualifies for special education services for a different disability. If a school district has notice that a child has displayed symptoms of a covered disability, it must assess that child in all areas of that disability using thorough and reliable procedures. *See Timothy O. v. Paso Robles Unified School Dist.*, 822 F.3d 1105 (9th Cir. 2016)(holding that notice may come in the form of expressed parental concerns about a child's symptoms, expressed opinions by informed professionals, or even by other less formal indicators, such as the child's behavior in or out of the classroom, and that such notice automatically triggers mandatory statutory procedures: the school district must conduct an assessment for all areas of the suspected disability using the comprehensive and reliable methods that the IDEA requires).

The School District has the benefit of access to a full history of academic and behavioral records of the children at the Jail who previously attended school in the Palm Beach County public school system.[12] However, despite the availability of prior trauma, academic, and behavioral records, coupled with children in solitary confinement exhibiting behavior indicative of the necessity of evaluations, none were conducted. For instance, M.F. has mental health diagnoses requiring him to be prescribed psychotropic medication. In his six months in solitary confinement, he received no mental health counseling or treatment or evaluation from the school district for an additional disability, despite being sent to the mental health unit at the Jail an having active auditory and visual hallucination. Similarly, Brice Daniels has a documented mental health

[12] Florida law requires creation and maintenance of student records by school districts, including attendance and a permanent cumulative file. *See* § 1003.23 and § 1003.25, Florida Statutes (2018).

condition for which he was treated in the community. However, Brice Daniels never received an evaluation for special education services while at the Jail, though he exhibiting behaviors such as banging and kicking on the door, talking to himself, and being sent to the mental health unit for suicidal ideations. Likewise, Jeff Omelus did not receive an evaluation for educational services despite his past educational history and even though he was actively having visual and auditory hallucinations, was sent to the mental health unit on two occasions, and his presenting conditions made it so he eventually gave up trying to engage school staff to access his education. Moreover, an education re-evaluation was requested for W.G. in May 2017, while he was at the Jail. However, it was not until W.G. had been released from the Jail, at an IEP meeting on November 28, 2017, that the team reviewed the request for an evaluation and began the process. This pattern of ignoring the evaluation needs of children who have a current or suspected disability under the IDEA demonstrates that the Plaintiffs are substantially likely to succeed under this claim.

E. PLAINTIFFS ARE SUBSTANTIALLY LIKELY TO SUCCEED ON THEIR CLAIMS UNDER TITLE II OF THE ADA AND SECTION 504 OF THE REHABILITATION ACT

Title II of the ADA requires that state and local public entities may not, on the basis of disability, deny children the opportunity to participate in or benefit from the service, program, or activity provided by the entity. 28 C.F.R. § 35.130(b)(1)(i). Section 504 similarly requires non-discriminatory access to federally funded programs and activities for children with disabilities. 29 U.S.C. § 794. The Defendants receive federal funding and are public entities, thus requiring them to comply with the obligations created by these two anti-discrimination federal statutes. Courts have consistently found that the substantive portions of the ADA are coextensive with those of Section 504 and have analyzed the claims as one. *See e.g. Bennett v. Dominguez*, 196 Fed. App'x 785, 791 (11th Cir. 2006); *Iverson v. City of Boston*, 452 F.3d 94, 97 (1st Cir. 2006); *Gorman v. Bartch*, 152 F.3d 907, 912 (8th Cir. 1998).

The Defendants have violated both the ADA and Section 504 in denying education and programs to children in solitary confinement with qualifying disabilities under these laws. These laws require that public entities make reasonable modifications to their policies, practices, or procedures to avoid discrimination on the basis of disability, unless they can demonstrate that the alterations would fundamentally alter the program or create an undue financial or administrative burden. 28 C.F.R. § 35.130(b)(7). The ADA Amendments Act expanded the definition of disability under both Title II of the ADA and Section 504 to broaden the availability of protections

and ensure that the determination of a disability did not require an extensive analysis. 42 U.S.C. § 12102. Therefore, even if a child in the Jail was not explicitly covered by the IDEA, that child could still qualify as an individual with a disability under Section 504 or Title II of the ADA.

Plaintiffs are substantially likely to succeed under both the ADA and Rehabilitation Act claims because they are: 1) disabled within the meaning of the statutes, 2) "qualified" to participate in the relevant program, and 3) excluded from, not allowed to benefit from, or subjected to discrimination in the program because of their disability.

As to the first prong, Plaintiffs qualify as disabled if they have physical or mental impairments that substantially limit one or more of the major life activities. 28 C.F.R. § 35.108(1). Included among the impairments are learning disabilities, speech disorders, and mental health conditions, such as those experienced by children routinely held in solitary confinement at the Jail. Major life activities include learning, reading, concentrating, communicating, and sleeping, among others. 28 C.F.R. § 35.108(c). Substantial, lasting limitations on these major life activities are experienced by Plaintiffs and other children held in solitary confinement at the Jail.

For the second prong, the Plaintiffs must be qualified to participate in the programs, with or without reasonable modifications to a public entity's rules, policies, or practices, removal of architecture or structural barriers, and provision of auxiliary aids and services. 42 U.S.C. § 12131(2). Plaintiff children at the Jail meet essential eligibility requirements to participate in the educational, social, enrichment, and religious programs that occur for the rest of the children there.

The third prong of discrimination under Section 504 and the ADA is evidenced by the Plaintiffs' inability to participate in the services offered to the other children in the Jail because of their disabilities. 28 C.F.R. § 35.130(b)(1). When the children in the Jail are sent to solitary confinement based on behaviors attributable to, or related to, their disabilities, they are barred from participating in programs. For instance, T.M., W.G. and Jeziah Guagno each had rule infractions related to their underlying disabilities causing them to be kept in solitary confinement. The disabilities of these children should have been accommodated with reasonable modifications to the Defendants' policies and practices, such as implementing positive behavioral interventions instead of isolation and exclusion from programs. Under the approach required by Section 504 and the ADA, Plaintiffs are substantially likely to succeed on their claims.

F. PLAINTIFFS SATISFY THE REMAINING ELEMENTS FOR A PRELIMINARY INJUNCTION

Plaintiffs clearly demonstrate that they will suffer irreparable harm absent injunctive relief, that no adequate remedy at law exists, that the balance of equites weighs in their favor, and that the public interest is served by granting the instant motion.

1. ***Plaintiffs will Suffer Irreparable Harm If the Court Does Not Grant a Preliminary Injunction, and There is No Adequate Remedy at Law***

The irreparable harm suffered by plaintiffs, as a result of their unconstitutional conditions of confinement, justifies the issuance of a preliminary injunction. "Irreparable injury" is distinguishable from mere injury, in that irreparable injury cannot be adequately compensated through the award of money. *United States v. Jefferson County*, 720 F.2d 1511, 1520 (11th Cir. 1983). In the context of Eighth Amendment cruel and unusual punishment, courts have consistently held that "[t]he existence of a continuing constitutional violation constitutes proof of an irreparable harm." *Laube v. Haley*, 234 F.Supp.2d 1227, 1251 (M.D. Ala. 2002) (quoting *Preston v. Thompson*, 589 F.2d 300, 303 n. 3 (7th Cir. 1998)); *see also Maynor v. Morgan County*, 147 F.Supp.2d 1185, 1189 (N.D.Ala.2001) ("[Plaintiffs] will suffer irreparable harm by virtue of Defendants' ongoing serious violations of their federal constitutional rights.").

2. ***The Balance of Equities and Public Interest Favors Injunctive Relief***

The balance of equities and public interest are also decidedly in plaintiffs' favor. Any interest that the Defendants have is outweighed by the ongoing irreparable harm plaintiffs are suffering as a result of Defendants' constitutional and statutory violations. The public interest favors injunctive relief here because all Plaintiffs seek to vindicate their rights under the Eighth and Fourteenth Amendments' prohibition against cruel and unusual punishment, and Plaintiffs sub-class members demand statutorily mandated public education under the IDEA, and to be free from discrimination because of their qualifying disabilities under the ADA and Section 504 of the Rehabilitation Act. The public interest is always served when constitutional rights are vindicated. *See, e.g.*, *League of Women Voters of Fla. v. Browning*, 863 F. Supp. 2d 1155, 1167 (N.D. Fla. 2012) ("The vindication of constitutional rights and the enforcement of a federal statute serve the public interest almost by definition."); *Scott v. Roberts*, 612 F.3d 1279, 1297 (11th Cir. 2010) (injunctions that target unconstitutional laws or conduct do not harm the state but serve the public interest); *KH Outdoor, LLC v. Trussville, City Of*, 458 F.3d 1261, 1272 (11th Cir. 2006) (injunctions targeting unconstitutional policies or conduct are "plainly [] not adverse to the public interest").

3. No Bond Should be Issued

The Court should require no bond or at most a nominal bond under Fed. R. Civ. P. 65(c). It is well within the discretion of the Court to require "no security at all." *BellSouth Telecomm., Inc. v. MCIMetro Access Transmission Servs., LLC*, 425 F.3d 964, 971 (11th Cir. 2005). Plaintiffs have no ability to pay a bond under their current circumstances. That inability should be no bar to the relief requested.

CONCLUSION

For the foregoing reasons, this Court should issue a preliminary injunction (1) directing Defendants to stop enforcing their policy and practice of solitary confinement of children in violation of the Eighth and Fourteenth Amendments; 2) provide due process protections to Plaintiffs, if and when, confinement decisions are made; 3) provide appropriate education to children with disabilities held in solitary confinement in compliance with the IDEA; and 4) provide children with disabilities held in solitary confinement equal access to educational programming, services and activities as required under the ADA and Section 504 of the Rehabilitation Act. The Court should require no bond or at most a nominal bond under Fed. R. Civ. P. 65(c).

Dated: June 21, 2018.

Respectfully submitted,

COHEN MILSTEIN SELLERS & TOLL, PLLC
2925 PGA Boulevard, Ste. 200
Palm Beach Gardens, FL 33410

/s/ Theodore J. Leopold
Theodore J. Leopold, Esq.
Florida Bar No. 705608
tleopold@cohenmilstein.com
Diana L. Martin. Esq.
Florida Bar No. 624489
dmartin@cohenmilstein.com
Telephone: 561-515-1400
Facsimile: 561-515-1401

LEGAL AID SOCIETY OF PALM BEACH CO., INC.
EDUCATION ADVOCACY PROJECT
423 Fern St., Ste. 200
West Palm Beach, FL 33401

/s/ Melissa Duncan
Melissa Duncan, Esq.

Florida Bar No. 0796921
mduncan@legalaidpbc.org
Telephone: (561) 655-8944, ext. 243
Facsimile: (561) 655-5269

HUMAN RIGHTS DEFENSE CENTER
1028 N. Federal Highway
Lake Worth, FL 33460

/s/ Sabarish P. Neelakanta
Sabarish P. Neelakanta, Esq.
Florida Bar No. 26623
sneelakanta@hrdc-law.org

Attorneys for Plaintiffs

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/ Melissa Duncan
By: Melissa Duncan, Esq.

By Electronic Mail

Lisa Rubin, Esq.
Palm Beach County Sheriff's Office
rubinl@pbso.org

Julie Ann Rico, Esq.
General Counsel, Palm Beach County School District
Julieann.rico@palmbeachschools.org

Attorneys for the Defendants