

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION

CIV-MORENO

CASE NO. 98-7137

VALERIE WARD; ARTHUR WILKINS;
JASON WALTERS; PETER MEDINA;
SARAH FOSTER; PAUL NELSON;
JACQUES JONES; and VIVIAN ROGERS
by and through their next friend and
court appointed attorney ad litem
DAVID S. BAZERMAN, ESQ.,

Plaintiffs,

vs.

EDWARD FEAVER, in his official
capacity as Secretary, Florida
Department of Children and Family
Services and JOHNNY BROWN, in his
official capacity as District Administrator,
District 10, Florida Department of Children
and Family Services.

Defendants.

MAGISTRATE
JOHNSON

CARLOS MERRIE
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FILED BY _____

COMPLAINT-CLASS ACTION

I. INTRODUCTORY STATEMENT

1. This is a class action brought by Plaintiffs, identified by pseudonyms, on behalf of all children who are now or will be involuntarily removed from the homes of their parents or legal guardians for their own safety and protection and placed in the custody of the Florida Department of Children and Family Services ("the Department"), District 10, which is responsible for the

provision of child protection services, including foster care in Broward, County Florida.

2. Defendants, by their failure to take the most basic actions to ensure the safety and well-being of children in their custody and their refusal to comply with their own standards, have subjected Plaintiffs and members of the class they seek to represent to serious physical, sexual and emotional abuse and neglect. Defendants have deliberately confined children in their custody in overcrowded foster and shelter care facilities, have failed to screen or evaluate children in their custody to ensure that they are safely and appropriately placed with other children who will not pose a threat of harm to them, have failed to monitor children in their custody, have allowed children to be truant thereby placing them at risk of harm, and have failed to protect or provide services to children who have left their placements whose whereabouts are known and who are on the streets.

3. As a result of Defendants' failure to provide Plaintiffs with reasonably safe placements in which they will not be harmed and care that is consistent with competent professional judgment, Plaintiffs, who are children who are or will be placed in the physical custody of District 10 as a result of neglect, abuse and abandonment, have been denied their substantive due process rights to physical safety and freedom from the infliction of unnecessary pain guaranteed to them by the Fourteenth Amendment to the Constitution of the United States. Further, as a result of Defendants' failure to provide Plaintiffs with the protections, services, and procedures mandated by the Florida Statutes and the Florida Administrative Code, the Defendants have deprived Plaintiffs of their liberty interest in personal safety guaranteed to them by the due process clause of the Fourteenth Amendment to the Constitution of the United States.

II. JURISDICTION

4. This Court has jurisdiction over this controversy under 28 U.S.C. § 1343(a)(3), as this action arises under 42 U.S.C. § 1983 to redress the deprivation under color of state law of rights, privileges and immunities secured by the Constitution and the laws of the several States. The rights sought to be redressed are guaranteed by the Fourteenth Amendment to the Constitution of the United States.

5. This Court also has jurisdiction under U.S.C. § 1331(a) as this is an action in which the matter in controversy arises under the Constitution and the laws of the United States.

6. This Court also has jurisdiction under 28 U.S.C. §§ 2201 and 2202, and Rules 57 and 65 of the Federal Rules of Civil Procedure, as this action seeks a judgment declaring the rights of Plaintiffs and injunctive and other equitable relief.

III. PLAINTIFFS

A. VALERIE WARD

7. Plaintiff, Valerie Ward, is a thirteen year old child who resides in Broward County, Florida. She has been in Defendants' custody since 1997. Plaintiff sues through her next friend and attorney ad litem, David S. Bazerman, Esq.

B. ARTHUR WILKINS

8. Plaintiff, Arthur Wilkins, is a nine year old child who resides in Broward County, Florida. He has been in Defendants' custody since 1995. Plaintiff sues through his next friend and attorney ad litem, David S. Bazerman, Esq.

C. JASON WALTERS

9. Plaintiff, Jason Walters, is an eight year old child who resides in Broward County, Florida. He has been in Defendants' custody since 1996. Plaintiff sues through his next friend and attorney ad litem David S. Bazerman, Esq.

D. PETER MEDINA

10. Plaintiff, Peter Medina, is an eight year old child who resides in Broward County, Florida. He has been in Defendants' custody since 1997. Plaintiff sues through his next friend and attorney ad litem, David S. Bazerman, Esq.

E. SARAH FOSTER

11. Plaintiff, Sarah Foster, is a four year old child in Defendants' custody who resides in Broward County, Florida. She has been in Defendants' custody since 1996. Plaintiff sues through her next friend and attorney ad litem, David S. Bazerman, Esq.

F. PAUL NELSON

12. Plaintiff, Paul Nelson, is a seventeen year old child who resides in Broward County, Florida. He has been in Defendants' custody since 1994. Plaintiff sues through his next friend and attorney ad litem, David S. Bazerman, Esq.

G. JACQUES JONES

13. Plaintiff, Jacques Jones, is a one year old child who resides in Broward County, Florida. He has been in Defendants' custody since May of 1998. Plaintiff sues through his next friend and attorney ad litem, David S. Bazerman, Esq.

H. VIVIAN ROGERS

14. Plaintiff, Vivian Rogers, is a fifteen year old child who resides in Broward County, Florida. She has been in Defendants' custody since 1996. Plaintiff sues through her next friend and attorney ad litem, David S. Bazerman, Esq.

IV. DEFENDANTS

15. Defendant, EDWARD FEAVER, is Secretary of the Florida Department of Children and Family Services ("the Department"). He is responsible pursuant to § 20.19(2), Florida Statutes, for the general supervision and operation of the Department, including oversight of the operations of District 10. He is being sued in his official capacity.

16. Defendant, JOHNNY BROWN, is District Administrator, District 10, Florida Department of Children and Family Services. He is responsible for all programs providing services to all children in the custody of District 10. He is being sued in his official capacity.

V. CLASS ACTION ALLEGATIONS

17. Plaintiffs bring this action through their next friend on behalf of themselves and all others similarly situated pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure. The class consists of all children who are now or in the future will be in District 10 care or custody and placed in District 10 foster homes, shelters or other residential facilities contracted for by District 10.

18. The Plaintiff class is so numerous that joinder of all its members is impracticable. There are in excess of one thousand members.

19. The claims of the named Plaintiffs are typical of those of the class. Defendants have failed to protect Plaintiffs from harm, failed to provide Plaintiffs with care that is consistent with

competent professional judgment and failed to comply with the mandatory requirements of Florida Statutes and the Florida Administrative Code. Plaintiffs challenge Defendants' policies and practices which place all class members at risk, including: confining children in Defendants' custody in overcrowded, unsafe, and inadequately supervised and monitored foster homes and shelter facilities without adequately screening and evaluating children in the home to determine whether they present a danger to each other; failing to monitor children in these homes; allowing children to be truant and thereby placing them at risk of harm; and failing to protect children who have left their placements and whose whereabouts are known. As a result of Defendants' failure to provide reasonably safe placements and care consistent with competent professional judgment and their failure to comply with Florida law and the Florida Administrative Code, Plaintiffs have suffered harm and remain at substantial risk of suffering further harm.

20. There are questions of law and fact common to the class which include:

- a. All members of the class are or will be in Defendants' legal and physical custody;
- b. All members of the class are currently being denied or are at risk of being denied their constitutional right to safety, receipt of care consistent with competent professional judgment and the protections afforded to them under Florida law and the Florida Administrative Code as a result of Defendants' placement of them in overcrowded, unsupervised foster homes, shelters, and other residential facilities with other unscreened, foster children;
- c. Defendants have subjected all members of the class to imminent and substantial risk of harm due to the neglectful, abusive, violent, and/or dangerous conditions

in District 10's shelter and foster care systems;

d. Defendants have failed to monitor the care of all members of the class and to ensure by regular caseworker visitation that their placements are safe;

e. Defendants have subjected all class members to the substantial risk of truancy and its associated harms;

f. Defendants have subjected all members of the class to the risk of being allowed to remain on the street after they have left their placements and their location is known to Defendants thereby exposing them to the dangers of homelessness and a lack of supervision; and

g. Defendants have acted or refused to act on grounds generally applicable to the class, thereby making injunctive relief with respect to the class as a whole an appropriate remedy.

21. The named Plaintiffs will fairly represent and adequately protect the interests of members of the class as a whole. Plaintiffs are represented by the Youth Law Center, Colodny, Fass & Talenfeld, P.A., and Michael J. Dale. Plaintiffs' attorneys have extensive experience in class action litigation, including enforcement of the rights of abused, neglected, and abandoned children. The attorneys also have the resources and experience to properly prosecute this case.

VI. STATEMENT OF FACTS

A. District Ten Shelter and Foster Care Systems

22. Defendant Feaver is the Secretary of the Florida Department of Children and Family Services. Pursuant to § 20.19(2), Florida Statutes, the Department is charged with supervising the care of all children who, like Plaintiffs, are removed from their homes for their own

protection. The Department is further charged with operating a foster care system by contracting with and licensing families and agencies to provide substitute care services.

23. The Department is organized into 15 districts each of which is responsible for caring for dependent children and licensing and monitoring foster homes and shelter care facilities in a specific geographic catchment area. District 10 is the subdivision of the Department which administers the child protection and foster care system in Broward County, Florida. Defendant Brown is the District Administrator for District 10 and is responsible for all children in the custody of the Department who reside in that district.

24. Plaintiffs and the class they seek to represent are children who have been or will be removed from the homes of their parents or legal guardians and placed in Defendants' custody in District 10 as a result of allegations of child abuse, neglect or abandonment. Once removed from their homes, Plaintiffs are at imminent risk of further neglect, abuse and abandonment since they will be placed into District 10's shelter and foster care systems which Defendant Brown has admitted is in crisis.

25. Pursuant to § 39.001(1)(i) and (m), Ch. 98-403, § 18, formerly § 39.40(5), Florida Statutes (1997), Defendants are required to provide children in their custody with a safe environment where drugs and alcohol are not abused and where disruption to their education will be minimized to the extent possible.

26. Pursuant to § 39.001(1)(i), Ch. 98-403, § 18, formerly § 39.001(1)(d), Florida Statutes (1997), when a child is removed from his or her own family, the child shall receive care and discipline as near as possible equivalent to that which should have been given by the parents.

27. Pursuant to § 39.001(3)(c), Ch. 98-403, § 18, formerly § 39.00(1)(c), Florida Statute

(1997), Plaintiffs are entitled to a safe and nurturing environment which will preserve a sense of personal dignity and integrity.

28. Under the Florida Administrative Code the Plaintiffs are entitled to: visitation at least once a month by District 10 child counselors [Rule 65C-13.010(5)(g)]; specific school attendance services, specific health care services, transportation for health care and enrollment in school provided by shelter and foster parents [Rule 65C-13.010(1)(b)6 and (b)9]; information sharing with substitute care parents [Rule 65C-13.010(5)(b), (c), (d), (e) and (f)]; application of minimum standards for licensure of all providers of foster and shelter care and compliance with standards for capacity of foster homes [Rule 65C-13.011(2)(4)(9) and (11)]; the development and implementation of procedures for the prevention and management of sexual assaults in foster care, safeguards in the form of detailed and complete information which is to be provided to caregivers concerning issues of sexual assault and abuse, the development of a multipart plan to handle any special management issues identified in the child's history and assessment, and procedures employed when child on child sexual assault, seduction or exploitation is alleged in a foster or shelter care placement [65C-13.015(1)].

29. Contrary to the Florida Administrative Code and acceptable practice, Defendants place children in their custody into overcrowded shelter homes, foster homes, and residential facilities and as a result these children are at risk of harm because they cannot be adequately supervised, monitored and protected.

30. Currently, more than 400 children in Defendants' custody in District 10 are placed in foster and shelter homes that are overcrowded, that is these homes have more children living in them than their licenses permit. The number of overcapacity homes in District 10 has more than

doubled in the last year. Many other children are living in homes that technically meet licensing capacity, but are at risk of harm because they are improperly placed, without screening, into homes with other unscreened children who have problems which present a risk of harm.

31. Contrary to the Florida Administrative Code and acceptable practice, Defendants do not adequately screen or evaluate children in foster care to ensure that their needs can be met in the homes in which they are placed, that they will be safe from harm by other children in their homes and that other children in their homes will not be harmed by them. As a result, children in the custody of District 10 have been subjected to physical, emotional and sexual abuse by other children with serious emotional and behavioral problems which were or should have been known to Defendants.

32. Contrary to the Florida Administrative Code and acceptable practice, the Defendants do not appropriately screen substitute care applicants to ensure that they are competent to care for children in Defendants' custody, particularly for those children with special needs.

33. Contrary to the Florida Administrative Code and acceptable practice, Defendants place children in their custody in homes without providing the foster parents with necessary background information about the children and the District 10 support needed to adequately care for them and protect them from harm. As a result, children are frequently placed in inappropriate homes with foster parents who cannot protect them.

34. Contrary to the Florida Administrative Code and acceptable practice, Defendants fail to visit and monitor the care of children in District 10's custody at least one time per month and in many cases for months at a time. Recently, District 10 determined that in 34 percent of the cases evaluated the children had not been visited by their caseworker in the past month and that

24 percent had not been visited within the past two months.

35. Even when caseworkers do visit children they often lack the experience and familiarity with the case necessary to adequately determine whether the child's needs are being met and the child's safety can be assured.

36. District 10's foster care counselors have caseloads between two and eight times the recommended national standards. Many of these cases require the provision of services to many children with complex therapeutic, educational and medical needs. Recently, District 10 experienced an 80 percent yearly turnover rate of caseworker and supervisory staff, as a result many children had no caseworker or had an overburdened caseworker assigned to them, creating a serious lack of continuity in the care provided to them.

37. Due to the lack of caseworker visitation and excessive turnover of staff, Defendants are unaware of the condition, status and needs of children in their custody, and are, as a result, unable to protect children in their custody from the infliction of unnecessary harm.

38. Defendants allow children to be persistently truant from school with the result that many are exposed to the risks of drugs and alcohol abuse, delinquency, sexual activity and the associated risks of contracting sexually transmitted diseases and becoming pregnant.

39. Most recently, the Defendants have reported that more than 80 children in the custody of District 10 are missing. Many of these missing children, in an effort to escape the problems they face in District 10's foster care system, have run from their placements and become homeless and the victims of violent crimes and sexual assaults. In many cases Defendants fail to pick up runaway children whose whereabouts are known or who have contacted the Department and asked to be returned to their foster care placements. Once returned to care,

Defendants cannot provide these runaway children with appropriate homes and meaningful case management services which will encourage them to remain in their placements.

40. Defendants' failure to provide children in their custody with reasonably safe placements, care that is consistent with competent professional judgment, and the protections afforded to them by Florida Statutes and the Florida Administrative Code has caused these children to suffer harm which is often more severe than that which caused them to be removed from the custody of their parents and or custodians and which will leave them with long-lasting physical and emotional wounds more serious than the injuries caused by their families.

B. Plaintiffs

(1) Valerie Ward

41. Plaintiff, Valerie Ward, was adjudicated dependent and placed in the legal and physical custody of District 10's foster care system in 1997, when she was 11 years old. A primary reason for her removal was her mother's inability to adequately supervise her and protect her from endangering herself by leaving home and roaming the streets at night.

42. Despite knowing that without constant supervision Valerie would endanger herself, Defendants placed her in a foster home that was licensed for five children, but which, in fact was over capacity with eight children. While in this home Valerie's foster parent left her unsupervised in the front yard with another child known to have behavioral problems.

43. While left unsupervised, Valerie was lured away from her foster home by this child and taken to another home where she was repeatedly gang-raped by four or five men. The other foster child participated in the assault and told Valerie she would beat her up if she told anyone what happened to her. Valerie was then left in the home with one of the men who raped her

because he wanted to keep her all night.

44. After Valerie was gang-raped, she was placed in another foster home where she was again able to leave the home and roamed the streets alone.

45. Defendants placed Valerie in a psychiatric hospital and then another residential facility without providing these placements with information related to the sexual assault and which was critical to Valerie's care.

46. Valerie remains at substantial risk of further harm and deterioration since she remains judicially committed to Defendants' foster care system and subject to placement in one of its foster care facilities.

(2) Arthur Wilkins

47. Plaintiff, Arthur Wilkins, is a nine year old child who has been in the custody of District 10 foster care since 1995.

48. Defendants placed Arthur in a foster home where he shared a bedroom with a foster child who was also a victim of sexual abuse, and in August 1998, Arthur was subjected to nonconsensual sexual activity perpetrated by the foster child with whom he shared his bedroom.

49. For two weeks after learning of the incident, Defendants took no action to remove Arthur from this home or to separate him from the other child. No caseworker has visited Arthur since this incident, and Arthur has only seen his caseworker once in the past eleven months.

50. Arthur remains at substantial risk of further harm and deterioration since he remains judicially committed to Defendants' foster care system and subject to placement in one of its foster care facilities.

(3) Jason Walters

51. Plaintiff, Jason Walters, is an eight year old child who has been in the custody of Defendants since 1996.

52. From February 23, 1997, through February 11, 1998, Defendants only visited Jason once. This visit occurred when he was moved to a new foster home, licensed for only four children, where he lived with ten other foster children.

53. The Department was aware that Jason was experiencing anxiety due to failed adoptive placements, was diagnosed with Attention Deficit Hyperactivity Disorder, was in therapy, and his Guardian Ad Litem had expressed concerns about his emotional stability.

54. In February 1998, Jason reported to his foster parent that he had been forced to perform oral sex on another boy in the home. At the time of the sexual assault, there were at least ten other foster children residing in the home, the foster parent was out of the home, and all of the children were being supervised by the foster parent's daughter who was also caring for her own three children at the time.

55. Jason continues to reside in the same overcrowded home in which he was sexually assaulted as one of seven foster children.

56. Jason remains at substantial risk of further harm and deterioration since he remains judicially committed to Defendants' foster care system and subject to placement in one of its foster care facilities.

(4) Peter Medina

57. Plaintiff, Peter Medina, is an eight year old child, who was placed into the custody of District 10 foster care on January 30, 1997.

58. Despite knowing that Peter was a vulnerable child with serious emotional problems and that there were concerns about his foster parents, District 10 allowed him to remain under the care of inappropriate foster parents in an overcrowded foster home with other unscreened foster children.

59. In June 1997, while in the same foster home, Peter was forced to perform oral sex on another foster child.

60. Peter continues to reside in the same overcrowded foster home in which he was sexually assaulted.

61. Peter remains at substantial risk of further harm and deterioration since he remains judicially committed to Defendant's foster care system and subject to placement in one of its foster care facilities.

(5) Sarah Foster

62. Plaintiff, Sarah Foster, is a five year old child who has been in the custody of Defendants since January 1996.

63. At that time Sarah was placed with two siblings in a foster home, known by Defendants to be overcrowded with an older male foster child who had a history of committing violent and dangerous acts.

64. While alone with Sarah, the older foster child beat her on the head with a ceramic towel holder. As a result, Plaintiff suffered a concussion and she was hospitalized.

65. Sarah remains at imminent risk of further harm and deterioration since she remains judicially committed to Defendants' foster care system and subject to placement in one of its foster care facilities.

(6) Paul Nelson

66. Plaintiff, Paul Nelson, is a seventeen year old child who has been in the custody of Defendants since 1994.

67. District 10 placed Paul in an overcrowded foster home with a foster parent who was unable and/or unwilling to provide Plaintiff with an appropriate home environment.

68. Paul was diagnosed with conditions which would indicate a need for special education services. Despite his special education needs, Paul was not enrolled in school and subsequently missed almost an entire year of school.

69. Paul remains at substantial risk of further harm and deterioration since he remains judicially committed to Defendant's foster care system and subject to placement in one of its foster care facilities.

(7) Jacques Jones

70. Plaintiff, Jacques Jones, is a one year old child who has been in the custody of Defendants since May of 1998.

71. During the five months that he has been in custody, Defendants have been unable to locate a permanent placement for him and he has resided in ten different foster homes despite the fact that he has no special needs.

72. Jacques remains at substantial risk of further harm and deterioration since he remains judicially committed to Defendant's foster care system and subject to placement in one of its foster care facilities.

(8) Vivian Rogers

73. Plaintiff, Vivian Rogers, is a fifteen year old child who has been in Defendants' custody since 1995. Since that time Vivian has lived in several different foster care placements.

74. In 1998, Vivian left her foster care placement, and on her own and without Departmental supervision, moved into a home that was not licensed by Defendants as a foster home.

75. Despite knowing of her whereabouts, Defendants decided to leave her in this home until it was alleged that she was having sexual relations with another child who resided with her. Defendants then allowed Vivian to reside in another home without supervision that was not licensed by District 10 as a foster home.

76. Vivian remains at substantial risk of further harm and deterioration since she remains judicially committed to Defendant's foster care system and subject to placement in one of its foster care facilities.

VII. NO ADEQUATE REMEDY AT LAW

77. As a proximate result of Defendants' policies, practices, acts and omissions and the conditions and circumstances described above to which the Plaintiffs are subjected, the Plaintiffs have suffered, are suffering and will continue to suffer immediate and irreparable injury. Plaintiffs have no plain, adequate, or complete remedy at law to redress the wrongs described. Plaintiffs will continue to be irreparably injured by the policies, practices, acts and omissions of the Defendants unless this Court grants the injunctive relief which Plaintiffs seek.

VIII. ATTORNEYS' FEES

78. Plaintiffs are entitled to attorneys' fees pursuant to 42 U.S.C. § 1988.

IX. LEGAL CLAIMS

79. For Plaintiffs' claims enumerated below, they repeat and reallege paragraphs 1 through 78 above, as if fully set forth herein as to each and every statement of claim, and further allege:

A. FIRST CLAIM FOR RELIEF

SUBSTANTIVE DUE PROCESS

80. Defendants' policies, practices, acts and omissions in operating District 10's shelter and foster care programs constitute a failure to provide Plaintiffs with reasonably safe placements and protection from harm while in state custody in violation of the due process clause of the Fourteenth Amendment to the Constitution of The United States.

81. Defendants' policies, practices, acts and omissions in operating District 10's shelter and foster care programs constitute a failure to provide Plaintiffs with care that is consistent with competent professional judgment in violation of the due process clause of the Fourteenth Amendment to the Constitution of The United States.

B. SECOND CLAIM FOR RELIEF

PROCEDURAL DUE PROCESS

82. Defendants' policies, practices, acts and omissions in operating District 10's shelter and foster care programs, in contravention of the Florida statutory and regulatory scheme which mandates that officials follow guidelines and take affirmative actions to ensure the welfare and well-being of children in foster care, deprives Plaintiffs of their liberty interest in personal safety in violation of the due process clause of the Fourteenth Amendment to the Constitution of the United States.

XI. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Honorable Court:

1. Assert jurisdiction over this action.
2. Order that Plaintiffs may maintain this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure.
3. Declare unconstitutional and unlawful Defendants' failure to provide for Plaintiffs' safety and freedom from harm and failure to provide care to Plaintiffs that is consistent with competent professional judgment and failure to comply with Florida's statutory and regulatory scheme pursuant to 28 U.S.C. §§ 2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure.
4. Preliminarily and permanently enjoin Defendants from subjecting members of Plaintiff class to conditions that violate their right to be free from harm and otherwise violate rights guaranteed to them by the Fourteenth Amendment to the Constitution of the United States.
5. Appoint a court monitor or special master to ensure that Defendants protect the substantive and procedural due process rights of the Plaintiffs and the class they represent.
6. Award Plaintiffs their costs pursuant to 28 U.S.C. § 1920 and reasonable attorneys' fees pursuant to 42 U.S.C. § 1988.

7. Grant such other and further relief as the Court deems just, necessary and proper.

DATED: October ____, 1998.

Respectfully submitted,

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