

FILED
JUL 24 1980

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

CLERK, U. S. DIST. COURT
RICHMOND, VA.

WILLIAM DAVIS, on behalf of himself and all
other mentally retarded persons who are residents
of communities served by Southside Virginia
Training Center,

Plaintiff

v.

RICHARD BUCKLEY, in his capacity as Director of
the Southside Virginia Training Center

LEO KIRVEN, JR., in his capacity as Commissioner
of the State Department of Mental Health and
Mental Retardation

MERRITT W. FOSTER, JR., in his capacity as Chairman of
the State Mental Health and Mental Retardation
Board

JEAN L. HARRIS, in her capacity as Secretary of
Human Resources for the State of Virginia

WILLIAM LUKHARD, in his capacity as Commissioner
of Public Welfare for the State of Virginia

E. B. PENDLETON, in his capacity as Chairman of
the State Welfare Board for the State of Virginia

ALTAMONT DICKERSON, in his capacity as the Director
of the Department of Rehabilitative Services for
the State of Virginia

THOMAS HOGAN, in his capacity as Director of Public
Welfare for the City of Richmond, individually and
on behalf of all directors of public welfare for the
communities served by Southside Virginia Training
Center

WILLIAM F. HELLMUT, in his capacity as Chairman of
the Welfare Board for the City of Richmond, individually
and on behalf of all members of local welfare boards in
the communities served by Southside Virginia Training
Center

MARGARET FOLEY, in her capacity as Director of the
Richmond City Department of Mental Health and Mental
Retardation and as Executive Director of the Richmond
Community Services Board, individually and on behalf of
all directors of the local mental health and mental
retardation departments in the communities served by
Southside Virginia Training Center

KAREN KINCANNON, in her capacity as Chairman of the
Richmond Community Services Board, individually and
on behalf of all members of such boards in the communities
served by Southside Virginia Training Center

CITY OF RICHMOND, individually and on behalf of all
communities served by Southside Virginia Training Center

AMENDED
COMPLAINT

Civil Action No.
80-0569-R

PATRICIA HARRIS, in her capacity as Secretary of the)
United States Department of Health and Human)
Resources)
)
Defendants.)

PRELIMINARY STATEMENT

1. This is a class action challenging defendants' breach of their constitutional and statutory obligations to provide plaintiff and the class of mentally retarded persons which he represents with appropriate residential, treatment and habilitation services. Plaintiffs are capable of living in and entitled to live in an appropriate community placement, but are either detained at Southside Virginia Training Center or reside at inappropriate placements in the communities. They are not provided with appropriate care, social services, treatment or habilitation. The class consists of all mentally retarded individuals who are considered residents of the communities served by Southside Virginia Training Center, whether institutionalized thereat or residing in the community.

2. Plaintiffs seek declaratory and injunctive relief requiring defendants to a) provide them with appropriate placement in their community, b) provide them with appropriate social, education and habilitative programs in their communities and c) provide those confined with appropriate programming and habilitation while at Southside Virginia Training Center, to the extent such is possible. Plaintiff Davis also seeks damages against certain defendants for their discrimination against him on the basis of his physical handicap.

JURISDICTION

3. This action arises under the First, Fourth, Fifth, Eighth, Ninth and Fourteenth Amendments to the Constitution of the United States; the Rehabilitation Act of 1973, 29 USC §794; the Developmentally Disabled Assistance and Bill of Rights Act, 42 USC §6010; 42 USC §1983 and Virginia Code §37.1-65, §37.1-84.1 and §37.1-98(e).

4. This Court has jurisdiction over plaintiffs' constitutional and federal statutory claims pursuant to 28 USC §1331, §1343(3) and (4) and §1337. The amount in controversy exceeds \$10,000 exclusive of interest and costs. The declaratory and injunctive relief prayed for in this action is authorized

by 28 USC §2201 and §2202, and Rules 57 and 65 of the Federal Rules of Civil Procedure. This Court has pendant jurisdiction over plaintiffs' state claims.

PARTIES

Plaintiff

5. Plaintiff William Davis is a mentally retarded and physically handicapped citizen of the United States and a resident of Richmond, Virginia.

PLAINTIFFS' CLASS ALLEGATIONS

6. The named plaintiff seeks injunctive relief on behalf of himself and all mentally retarded residents of the communities in the catchment area of Southside Virginia Training Center, including those held at Southside Virginia Training Center.

7. The class is so numerous that joinder of all members is impracticable. There are questions of law and fact common to the class. These include but are not limited to the duties owed by defendants to plaintiffs under numerous federal and state laws and the degree to which programs in the institution and in the community satisfy these duties. Plaintiff's claims are typical of the class, and he will fairly and adequately protect the interests of the class.

8. The defendants have acted on grounds generally applicable to the class, making injunctive relief with respect to the class as a whole appropriate.

Defendants

9. Defendant Richard Buckley is the Director of the Southside Virginia Training Center. As such, he is responsible for the day to day functioning of the Southside Virginia Training Center and for the direction and implementation of policy at the Center.

10. Defendant Leo E. Kirven, Jr., is the Commissioner of the State Department of Mental Health and Mental Retardation. As such, he is responsible for the overall operation and supervision of mental retardation programs and facilities in Virginia, including Southside Virginia Training Center.

11. Defendant Merritt W. Foster, Jr., is the Chairman of the State Mental Health and Mental Retardation Board. As such, he is charged with developing plans, and establishing rules and regulations, for programs administered by the State Department of Mental Health and Mental Retardation.

12. Defendant Jean L. Harris is the Secretary of Human Resources for the State of Virginia. As such, he is responsible for ensuring that the departments under her jurisdiction, including the Department of Mental Health and Mental Retardation of the State of Virginia, adequately perform their responsibilities to provide appropriate treatment to the plaintiff class.

13. Defendant William Lukhard is the Commissioner of Public Welfare for the State of Virginia. As such, he is responsible for the development and implementation of policy and programs by the Welfare Department and its local agencies.

14. Defendant E. B. Pendleton is the Chairman of the State Welfare Board. As such, he has responsibility for establishing rules and regulations for programs established and administered by the Welfare Department.

15. Defendant Altamont Dickerson is the Director of the Department of Rehabilitative Services. As such, he is responsible for establishing and administering programs to assist in the rehabilitation of mentally retarded persons.

16. Defendant Thomas Hogan is the Director of Public Welfare for the City of Richmond. As such, he is responsible for the direction and implementation of policy and the practices of the Richmond Department of Public Welfare.

17. Defendant William F. Hellmut is the chairman of the local welfare board of the City of Richmond. As such, he is charged with establishing rules and regulations for programs administered by the Richmond Department of Welfare.

18. Defendant Margaret Foley is the Director of the Richmond City Department of Mental Health and Mental Retardation and the Executive Director of the Richmond Community Services Board. As such she is responsible for the overall supervision and operation of mental retardation programs and facilities in the City of Richmond.

19. Defendant Karen Kincannon is the Chairman of the Richmond Community Services Board. As such, she is charged with the responsibilities of establishing rules and regulations for programs administered by the Richmond Department of Mental Health and Mental Retardation.

20. Defendant City of Richmond is an independent incorporated community of the State of Virginia. It is charged under the Code of Virginia

§37.1-194 et seq. with appropriating funds to establish community programs and residences for the mentally retarded.

21. Defendant Patricia Harris is the Secretary of the United States Department of Health and Human Services. As such she is charged with carrying out the obligation under 42 USC §6010(3)(a) that no residential facility for the mentally retarded receive federal funds unless it provides appropriate services.

DEFENDANT CLASS ALLEGATIONS

22. Defendants Hogan, Hellmut, Foley, Kincannon and the City of Richmond are also sued in their representative capacities on behalf of all communities and their officials charged with any duties and obligations with respect to mentally retarded persons in the defendant communities served by the Southside Virginia Training Center.

23. The class of defendants is so numerous that joinder is inappropriate. There are questions of law in fact common to the class. These include the duties owed by defendants to plaintiffs under various federal, state laws, and the degree to which programs of the communities and institutions satisfy these duties.

24. Defendant City of Richmond and its officials have acted in a fashion typical of that of the class defendants in failing to provide sufficient appropriate community placement and treatment. Moreover, the City of Richmond as the largest community in the area served by Southside Virginia Training Center should be able to properly, adequately and fairly represent the interests of the class.

FACTUAL ALLEGATIONS APPLICABLE TO THE CLASS

25. The Southside Virginia Training Center receives both state and federal funds for treatment of mentally retarded persons.

26. Each of the defendant localities receives or is eligible for receipt of federal and state funds for treatment and rehabilitation of mentally retarded persons.

27. None of the defendant communities has provided appropriate or adequate residential placement for persons from the communities now held at Southside Virginia Training Center.

28. None of the defendant communities has developed appropriate community educational, vocational habilitation or other appropriate

programs for residents now held at Southside Virginia Training Center.

29. None of the defendant communities have developed or established sufficient residential, educational, habilitation, vocational or other appropriate programs or social services for retarded persons living in the respective communities.

30. There are over 5,000 mentally retarded individuals who reside in the relevant geographical area. Of these, less than 100 receive appropriate residential services, habilitation and social services.

31. Of the more than 4,900 members of the plaintiff class who do not receive appropriate services, the majority are being cared for by their parents or relatives, who receive some public funds, but who do not receive assistance adequate to allow them to assure appropriate residential services, habilitation and social services.

32. Over 800 members of the plaintiff class have been "deinstitutionalized" within the past few years. Upon their release from a state training school, they have not been provided with appropriate residential, habilitation, treatment and social services. Instead, these plaintiffs have for the most part been "dumped" on the communities in which they reside because there are no appropriate services of any kind for them in the community.

33. Over 1,500 members of the plaintiff class live in residential facilities, including adult homes, foster homes, nursing homes and institutions which receive state and/or federal funds but which fail to provide appropriate treatment, care and habilitation.

INDIVIDUAL PLAINTIFF ALLEGATIONS

34. Plaintiff William Davis is 40 years old.

35. Plaintiff is moderately mentally retarded and, because of paraparesis, walks with orthopedic shoes and a walker.

36. Plaintiff was admitted to Lynchburg Training School on September 16, 1953.

37. Plaintiff was transferred from Lynchburg to Southside Virginia Training Center on March 19, 1980.

38. All of the time that plaintiff has been in Lynchburg and Southside Virginia Training Center, such placement has been inappropriate for him.

39. Plaintiff is not receiving, and has not received since his admission to Lynchburg, appropriate treatment, care or habilitation.

40. Plaintiff's confinement in Lynchburg and Southside Virginia Training Center without appropriate treatment and care has caused substantial impairment in his ability to function and to learn and has caused him grave suffering, pain and hardship.

41. Plaintiff is in need of community placement within the City of Richmond. He is in need of appropriate habilitation services and treatment to accompany that community placement.

42. Although defendants acknowledge that plaintiff is in need of community placement and treatment, and that he has been in need of such placement and treatment for a substantial time, defendants have failed, and continue to fail, to provide him with community placement and appropriate treatment in the community.

43. While confinement at Southside Virginia Training Center and the programs available to plaintiff at Southside Virginia Training Center are all inappropriate to his needs, the program which most approaches being appropriate to his needs is the vocational training program. Plaintiff has been and is being excluded from that program because he is handicapped and needs to walk with a walker and that program is inaccessible to handicapped individuals.

44. While plaintiff is said to be receiving several types of programming while he is at Southside Virginia Training Center, plaintiff in fact is receiving no appropriate programming and nothing that can honestly be referred to as "treatment" of any kind.

CLAIMS FOR RELIEF

First Claim

45. All defendants' failure to provide appropriate residential placement and treatment, social services, and habilitation which is appropriate to the needs of the plaintiff class violates the rights of plaintiff and his class to appropriate treatment as guaranteed by 42 USC §6010(1)(2) and (3) and Virginia Code §37.1-84 and §37.1-98(e).

Second Claim

46. Defendants' confinement of those members of the plaintiff class who are in institutions and the failure of all defendants to provide housing for and to properly care for those plaintiffs in a community setting violates

plaintiffs' right to be provided treatment in the least restrictive alternative as guaranteed by 42 USC §6010(2) and Virginia Code §37.1-84.1(6).

Third Claim

47. By isolating and segregating plaintiff and those members of the plaintiff class who are in institutions from interaction with any but other mentally retarded citizens, by housing only mentally retarded citizens in Southside Virginia Training Center, by segregating those plaintiffs from other handicapped and nonhandicapped individuals within the community and by denying plaintiffs access to services and opportunities, including recreational facilities and transportation facilities, available to others in the community who are not mentally retarded, defendants Jean Harris, Kirven, and Buckley have violated and continue to violate plaintiffs' right to be free from discrimination on the basis of his handicap, as guaranteed by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, 29 USC §794, and 42 USC §1983.

Fourth Claim

48. Defendants Jean Harris', Kirven's and Buckley's isolation and segregation of plaintiff and that part of the plaintiff class which is held in Southside Virginia Training Center by confining them to Southside Virginia Training Center without offering them anything approaching appropriate treatment or habilitation is an unwarranted restriction on plaintiffs' liberty. This restriction, isolation, and segregation of plaintiffs constitutes cruel and unusual punishment, in violation of the Eighth and Fourteenth Amendments to the United States Constitution, 42 USC §1983 and 42 USC §6010(2).

Fifth Claim

49. By denying plaintiff access to the only program at Southside Virginia Training Center which even approaches a suitable program for plaintiff because of plaintiff's physical handicap, defendants Jean Harris, Kirven and Buckley have violated and continue to violate plaintiff's right to be free from discrimination on the basis of his handicap as guaranteed by 29 USC §794 and 42 USC §1983.

RELIEF REQUESTED

WHEREFORE, plaintiff respectfully requests that this Court assume jurisdiction over this matter and grant the following relief:

1. Determine this action to be properly brought as a class action;
2. Declare that the defendants' actions and failures or refusals to act have violated and continue to violate the constitutional and statutory rights of plaintiff and the class as alleged.
3. Enjoin defendants from failing to provide the class with appropriate community placement and appropriate social services, rehabilitation services, and treatment and habilitation services in the community;
4. Award compensatory damages to plaintiff William Davis against defendants Jean Harris, Kirven and Buckley jointly and severally in the amount of \$20,000; and
5. Award plaintiffs' attorney fees, costs and such other relief as may be necessary to fully effectuate plaintiffs' rights in this matter.

Respectfully submitted

WILLIAM DAVIS

By 

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