

UNITED STATES DISTRICT COURT DISTRICT OF DELAWARE

JOHN A., formerly confined at the Ferris School, MARY B., formerly confined at the Bridge House, PAUL C. and EDWARD D., currently confined at the Ferris School and HELEN E., currently confined at the New Castle County Detention Center, by and through their next friend, MAX S. BELL, JR., individually and on behalf of all others similarly situated,

Plaintiffs,

v.

MICHAEL N. CASTLE, Governor of the State of Delaware; CHARLES E. <u>HAYWARD</u>, Secretary of the Department of Services for Children, Youth and Their Families;) PATRICK McCARTHY, Director, Division of Youth Rehabilitative Services; GERTRUDE HOLLAND, Deputy Director, Division of Youth Rehabilitative Services; HENRY "SKIP" KEITH, Chief of Secure Care; RICHARD A. SHAW, Superintendent of Ferris School; and GWENDOLYN ANGALET, Director of the Division of Administrative and Support Services; all of the above in their official capacities,

Defendants.

C.A. No. 90-200-CMW

AMENDED COMPLAINT

PRELIMINARY STATEMENT

1. This class action seeks redress of numerous, continuing deprivations of constitutional rights of children who are now or in the future may be confined to the Ferris School and the New Castle County Detention Center in Wilmington, Delaware. Both these institutions are operated by the Department of Services for Children, Youth and Their Families of the State of Delaware, and

are intended to provide secure confinement of youth who have been charged with offenses or who have been committed to the custody of the State following adjudication. There are presently approximately 75 youth confined at the Ferris School and approximately 20-25 youth confined at the New Castle County Detention Center.

Plaintiffs challenge the conditions of their confinement at the Ferris School and the New Castle County Detention Center which endanger their physical and mental health and safety; deny them meaningful access to, and opportunities for, education, treatment and rehabilitation; and restrict their access to, and communication with, families, friends, community and the courts. For many plaintiffs, these institutions do not provide the least restrictive placement consistent with statutory goals rehabilitation and treatment. Further, defendants have subjected plaintiffs to overcrowding; life and fire safety hazards; unhealthy living conditions; inadequate medical, dental and mental health care; abusive punishment and disciplinary practices including isolation and other forms of physical and verbal abuse; improper classification: inadequate and inappropriate education, rehabilitation and treatment programs; lack of due process; unnecessary and improper restrictions on communication such as the mail, telephone, visits and access to courts; and denial of privacy and dignity. Plaintiffs are not provided adequate exercise to ensure the basic health needs of growing adolescents. These youth are incarcerated for inordinately long periods of time within a

toxic environment which is highly detrimental to their growth and development. As a result of these conditions, plaintiffs seek declaratory, injunctive and other equitable relief on behalf of themselves and all other youth confined at the Ferris School and the New Castle County Detention Center.

3. This action is brought to redress defendants' violations of federal constitutional and statutory rights. This action is brought pursuant to the Civil Rights Act, 42 U.S.C. \$1983, the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. \$\$1401 et seq. and its implementing regulations at 34 C.F.R. \$300 et seq., Section 504 of the Rehabilitation Act of 1973 (\$504), 29 U.S.C. \$794 and its implementing regulation at 34 C.F.R. \$104 et seq.; and the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution.

JURISDICTION

- 4. This Court has jurisdiction of this action under 28 U.S.C. \$1343(3) because this is an action to redress the deprivation, under color of state law, regulation, custom or usage, of rights secured by the Constitution of the United States; the Civil Rights Act, 42 U.S.C. \$1983; \$504 of the Rehabilitation Act, 29 U.S.C. \$794 and the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. \$1401, et seq.
- 5. This Court also has jurisdiction of this action under 28 U.S.C. \$1343(4) because this is an action to secure declaratory, injunctive and other equitable relief under acts of Congress providing for the protection of civil rights, specifically the

Civil Rights Act, 42 U.S.C. of §1983; §504 of the Rehabilitation Act, 29 U.S.C. §794; and the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1401, et seq.

- 6. This Court also has jurisdiction of this action under 28 U.S.C. §§ 2201 and 2202, and Rules 57 and 65 of the Federal Rules of Civil Procedure because this is an action seeking a judgment declaring the rights of plaintiffs, an injunction and other equitable relief based upon that declaratory judgment, under §1983.
- 7. This Court has further jurisdiction of this action under 28 U.S.C. §1331(a) because this a civil action arising under the Constitution and laws of the United States.

PLAINTIFFS

- 8. At the time this litigation was originally filed, plaintiff John A. was incarcerated at the Ferris School and plaintiff Mary B. was incarcerated at the Bridge House. These plaintiffs were subjected to the unlawful policies, practices and conditions described in the original complaint. These plaintiffs are not confined presently in juvenile facilities operated by the defendants. Also, since the original complaint was filed, the Bridge House has been closed.
- 9. Paul C. and Edward D. are presently confined at the Ferris School and Helen E. is presently confined at the New Castle County Detention Center. These plaintiffs are currently, and will continue to be, subjected to the unlawful policies, practices and conditions described in this complaint unless the relief requested herein is granted. They bring this lawsuit under pseudonyms to

preserve their confidentiality and protect them from embarrassment and harassment.

10. These plaintiffs bring this action by and through their next friend, Max S. Bell, Jr., a citizen of Delaware and a concerned member of the community. He serves as President of the American Civil Liberties Union of Delaware.

DEFENDANTS

- 11. Michael N. Castle is the Governor of the State of Delaware, and as such, is ultimately responsible for the operation of the institutions at issue here.
- 12. Charles E. Hayward is the Secretary of the Department of Services for Children, Youth and Their Families (DSCYF). As chief executive officer of DSCYF, he is responsible for the care of youth confined at the Ferris School and the New Castle County Detention Center, pursuant to 29 Del.C. \$9000 et seq.
- 13. Patrick McCarthy is the Director and Gertrude Holland is the Deputy Director of the Division of Youth Rehabilitative Services of the DSCYF. As such, they supervise the overall operation of the Ferris School and the New Castle County Detention Center.
- 14. Henry "Skip" Keith is the Chief of Secure Care of the Division of Youth Rehabilitative Services of the DSCYF. He is responsible for the day-to-day operation of the Ferris School and the New Castle County Detention Center. He is also the Acting Superintendent of the New Castle County Detention Center. As such, he is responsible for the provision of care to plaintiffs at the

New Castle County Detention Center and for supervision of the New Castle County Detention Center staff.

- 15. Richard A. Shaw is the Superintendent of the Ferris School. He is responsible for the provision of care to plaintiffs at the Ferris School and for supervision of the Ferris School staff.
- 16. Gwendolyn Angalet is the Director of the Division of Administrative and Support Services of the DSCYF. As such, she supervises the provision of educational services to the children incarcerated at the Ferris School and the New Castle County Detention Center.
- 17. All defendants are sued in their official capacities. At all relevant times, defendants have acted under color of state law to deprive plaintiffs of their rights, privileges and immunities under the Constitution of the United States and applicable federal statutes.

CLASS ACTION ALLEGATIONS

- 18. The named plaintiffs bring this action on behalf of themselves and all others similarly situated pursuant to Rules 23(a) and (b)(2) of the Federal Rules of Civil Procedure. The class consists of all juveniles who are now or who in the future may be confined to the Ferris School and the New Castle County Detention Center.
- 19. The members of the class are so numerous that joinder of all members is impracticable. At the present time, approximately 100 children are confined in these institutions. Hundreds of

children are confined each year and there is constant turnover of the juveniles at these institutions.

- 20. The named plaintiffs, their next friend and their counsel will fairly and adequately protect the interests of the class. The plaintiffs are represented by counsel experienced in civil rights class action litigation.
- 21. The claims of the named plaintiffs are typical of the plaintiff class. The named plaintiffs, together, have been subjected to the conditions, policies, practices, acts and omissions complained of in this action.
- 22. The members of the plaintiff class are subject to the conditions, policies and practices of defendants described in this complaint during their confinement at these institutions, so that there are questions of law or fact common to members of the plaintiff class. The questions of law or fact common to all members of the plaintiff class include whether the conditions, practices, acts and omissions complained of occur, and whether these conditions violate rights guaranteed to plaintiffs by the United States Constitution and federal law.
- 23. By their policies and practices, defendants have acted, and continue to act, on grounds and in a manner generally applicable to the class, thereby making appropriate final injunctive and corresponding declaratory relief with respect to the class as a whole.

FACTUAL ALLEGATIONS

- A. Physical Environment
- 24. The Ferris School is located in suburban Wilmington, Delaware. Living units consist of four maximum security areas (Max), and one separate minimum security area known as Mowlds Cottage. The maximum security area, where the large majority of the all-male population is housed, is designed in a highly restrictive style intended to assure the security of staff rather than the humane treatment of those who must live there. Children spend endless hours behind thick glass walls, or locked in cells with heavy steel doors. Approximately 75 young men are presently incarcerated at the Ferris School.
- 25. The New Castle County Detention Center is located on the same grounds as the Ferris School; it occupies a wing of the maximum security building. The living units are two hallways with cells spanning the length. There is a day room, a classroom and several administrative offices. Children use the same dining hall, gym and infirmary as youth at Ferris. The New Castle County Detention Center houses non-adjudicated boys, and girls both before and after adjudication. Approximately 20-25 youth are incarcerated at the New Castle County Detention Center.

B. <u>Living Conditions</u>

- Defendants have failed to provide living units which meet minimal fire safety standards. Dangerous conditions abound, including malfunctioning smoke detectors, exposed wires and sockets, furniture and mattresses throughout the facilities without available certifications on flammability or approval ratings and no sprinkler system. Fire emergency and evacuation procedures are completely inadequate. No one is in charge of managing emergency operations. Secondary exit routes are unmarked and the location of keys for them uncertain. Each room is individually locked without an automatic, gang lock release mechanism and there is no lock maintenance program or schedule to prevent and detect lock malfunctions. There are no tools to open the windows in the Max building and the keys are located in another building. evacuation and procedures are not posted in the units. Fires occur on a regular basis and children often remain in their rooms until completely smoke-filled.
- 27. The living units of Ferris are filthy. Most of the cleaning chores are left to the youngsters who are not only untrained in hygienic methods, but are also denied adequate materials and equipment with which to clean. Isolation cells are grossly dirty and reeking of urine. Mowlds Cottage is crowded and dirty. Body lice are a common problem. Mattresses are torn, vents are clogged, clothes are strewn on the floor, shower rooms are moldy, and dust and debris are apparent throughout the living units.

- 28. Defendants have failed to implement even minimal maintenance and repair procedures. The entire institution is in a state of disrepair, including broken lights, windows, screens, plumbing and washing machines and dryers.
- 29. Pest control is handled through a contract with an outside company which treats the entire facility every other week. The need for such frequent pest control indicates substandard housekeeping. Further, staff do not know whether the company is licensed or what chemicals are used; the application of chemical pesticides may impose serious health risks to the youth.
- 30. In the near past, with no assurance that it will not recur, children were often required to sleep three to a room designed for one. The rooms measure approximately 55 to 70 square feet. Currently, many rooms are double-occupied. Children often sleep on thin mattresses on the floor. Even in the isolation rooms, three or four children have been held in one room and some have had to sleep on the floor.
- 31. Defendants have failed to provide appropriate, clean clothing to children. In the near past, with no assurance that the practice will not recur, children in Max wore shapeless, ragged sweat suits 24 hours per day, in a style reminiscent of World War II POW camps. The children in the various units were required to wear suits of a particular color, labelling them as members of that group and denying any sense of individuality. Defendants have failed to provide adequate, clean underwear. All underwear is communal, and children are forced to compete for clean underwear

delivered to the unit. If a child fails in grabbing enough underwear he must then go without. Clothing that is provided is inadequately laundered. Supposedly clean laundry has been observed lying in heaps on the floors of the living units.

- 32. Defendants have failed to provide adequate towels, blankets, sheets or pillowcases. The shortage of towels is so severe that children must often dry off after showers with their sweat suits or sheets. Sheets are not properly laundered. Blankets are torn and tattered. Mattresses are not sanitized between use by different children.
- 33. Ventilation is extremely poor, and areas of the units are often uncomfortably hot or stuffy. The vents in the rooms are clogged with dirt and dysfunctional. The bathroom in Mowlds Cottage has no ventilation at all and has mold growing on the ceiling.
- 34. The rooms are cold in the winter. Many windows are broken and heating vents are blocked. The youth need extra blankets to stay warm but there are not enough to go around so they sleep in their clothes and shoes.
- 35. Lighting is inadequate throughout to conduct close work such as reading or writing.
- 36. Defendants have failed to provide any modicum of personal privacy to youth. Days are spent in close communal contact, with no regard for the basic necessity of personal dignity.
- 37. In the near past, with no assurance it will not recur, youth complained that they did not receive sufficient food, and

often went to bed hungry. It was common that food was denied as punishment. Some youth are visibly underweight and appear to be ill-nourished. Many children stated that they had lost significant amounts of weight during their incarceration.

C. Physical and Verbal Abuse

- 38. Children at Ferris have been held for long periods of time in isolation cells, sometimes as punishment, sometimes simply for administrative convenience. Children have been held in isolation rooms for periods of two weeks, with only brief periods of time outside the cells. One youth currently in isolation has been there for three months. Since the original complaint was filed, the defendants have adopted new guidelines on the use of isolation. In spite of these guidelines, staff continue to resort to the use of isolation as punishment for the most minor infractions. Less dangerous interventions are rarely attempted prior to the use of isolation. Sometimes three or four boys have been held in one "quiet room". Water in toilets and sinks are controlled by staff, and have been turned off while children were held in these rooms.
- 39. Another popular punishment is the use of "early bed", a form of isolation, as a response to misbehavior. Staff often engage in mass punishment, in which an entire unit of children has been locked down in their cells, some as early as 5:00 p.m. in the afternoon. Shoes and pants are taken away from the children when they are locked in their rooms. Food has often been denied to children locked in their rooms.

- 40. Staff aggressively verbally abuse these children. Profanity is rampant, but children are not allowed to respond to these barrages by staff. Children are often cruelly teased, intimidated, baited and berated by certain staff.
- 41. Children have been physically assaulted and roughed up by staff. Children are sometimes encouraged to fight with each other. Physical mistreatment has occurred under the guise of moving a child into isolation.
- 42. At the time of the original complaint, mechanical restraints, particularly handcuffs and leather straps, and mace were improperly used. Children were handcuffed and strapped to bunks and staff threatened to use mace against youth. Currently, despite guidelines that were developed since the initiation of this lawsuit, staff continue to use restraints on children inside the facility and leave them in shackles in their rooms.

D. Medical, Dental and Psychiatric Care

- 43. Defendants fail to provide adequate medical, dental and psychiatric care to the youth at Ferris and the New Castle County Detention Center.
- 44. The initial screening for acute health needs on admission to the institution is ineffective. Screening is performed by youth care staff rather than health professional staff. The youth care staff receive no specific training regarding health screening, there are no written protocols or guidelines for them to follow, and no regular review or supervision of the performance or results of initial screening.

- admission 45. The health evaluations are incomplete. Tuberculosis testing is ineffective as the skin test results have not been read or recorded in the medical records. In addition, the less effective multiple puncture method (Tine R) is used rather than the intradermal Mantoux test recommended for control of tuberculosis in correctional institutions. Tests for sexually transmitted diseases known to be epidemic among youth are not performed routinely for all youth. Screening for hearing deficits is ineffective as there are no consistent standards applied interpretation of the hearing screening test.
- 46. There is no effective system for assuring follow-up of medical problems which are identified, resulting in incomplete evaluation and treatment.
- 47. Health service staff fail to administer medications around the clock when such dosage schedule is clinically indicated, resulting in adequate or incomplete treatment of infections.
- 48. Continuity of care for youth with ongoing or chronic health problems is inadequate. Medical summaries are not used when youth are transferred or released. When youth return to the institutions from the mental hospital no discharge summary is received. Records of past care are not routinely obtained. Specialty consultants do not regularly provide written notes describing their evaluation and recommendations.
- 49. Adequate specialty consultation services are not provided for youth who clearly would benefit from evaluation and treatment

of acute and chronic health problems. The lack of referrals for youth with serious orthopedic conditions is particularly egregious.

- 50. There is no organized quality assurance program to monitor, analyze and improve health services.
- Defendants employ inappropriate and harmful practices. Although nursing staff assess all youth who request health services and decide which youth may see the physician, there is no routine review or evaluation by the physicians of this vital component of There is no infirmary capacity for close the health services. injured youth who observation of i11 or do not hospitalization by health staff. Youth care staff in the housing units are not able to provide adequate supervision of such youth in the housing units. Frequent turnover among nurses hired from a registry results in inadequate staff development for proper care of chronically ill youth or health education for youth by health staff. The health needs of youth are not included in their individual rehabilitation programs.
- 52. Medical records are incomplete, lacking problems lists, written plans for management of each identified problem and parental consent for treatment. Records are also poorly organized due to lack of health evaluations in the medical records. Medical staff cannot assure needed follow-up or participate in an organized treatment plan for disturbed youth.
- 53. Various practices of the defendants prevent youth from receiving necessary medical care. Youth have complained that medical treatment is denied them because staff are unavailable to

take them to the doctor. Youth care staff rather than health professional staff decide who will receive medical evaluation after an incident or injury. Children have been placed in isolation for fighting and denied medical treatment for injuries they have sustained. Children complain that they are routinely refused medical attention for sports injuries or injuries sustained in fights. Youth who are locked down in disciplinary segregation have been denied access to routine health services. There is no routine daily evaluation of segregated youth by health staff. The criminal charges are routinely recorded in the medical record. Security issues may influence the physician's decision to refer an individual for specialty evaluation.

- 54. The defendants' use of unnecessary and dangerous force against youth causes incalculable harm to their health. Defendants also fail to adequately supervise youth to prevent assaults against them by others. These practices breach the defendants' constitutional duty to care for the health of the youth and to prevent harm to them.
- 55. Dental services are inadequate for the needs of the population. The dentist's schedule of eight hours per week is not sufficient to provide the urgent care, initial evaluations, restorative and preventive care needed by the youth. Dental records are deficient, lacking documentation of complete oral and dental exams, written plans of treatment and failing to clearly distinguish old dental work from new. There is no effective system for assuring follow-up of dental problems which are identified,

resulting in incomplete treatment of significant dental problems. The full range of restorative procedures are not offered to youth, resulting in unnecessary extractions.

- 56. Psychiatric services for youth are inadequate. Children experience unreasonable delays when they request to see the psychiatrist. Psychotropic medications are used for unproven purposes with an appropriate diagnosis and without a comprehensive treatment plan. Specific consent for use of psychotropic medication is not obtained from the parent or guardian prior to initiating treatment with psychotropic medications. Adjustments to the dose of potentially harmful medications are made without adequate laboratory or clinical monitoring. Lithium is used to treat a significant number of youth for a wide variety of diagnoses or conditions. This is a significant deviation from usual practices in juvenile facilities in the United States.
- 57. All of these deficiencies in health services constitute deliberate indifference the medical, dental and psychiatric needs of the plaintiffs and result in harm to them.
 - D. Mental Health Care, Programming and Treatment
- 58. Defendants do not meet the mental health needs of children at Ferris and the New Castle County Detention Center. Children are basically warehoused at the Ferris School and New Castle County Detention Center.
- 59. Youth are not provided with assessments of their individual strengths or needs. The records consist of general problem statements. Where a psychological evaluation has been

done, the findings have not been incorporated into an overall assessment. Likewise, service plans are not individualized, but rather a general checklist of similar services for everyone.

The defendants also do not reassess the service plans even though it is documented that many youth are not improving. Most youth are unable to state their treatment goals and do not view the institutions as treatment programs. There is no connection between treatment at the institutions and post-discharge services.

- 60. Basic counseling services at Ferris are inadequate because of understaffing. The two psychologists are unable to cover all the counseling needs of the youth. Further, the impact that the counseling services can have is undermined because unit staff are not treatment oriented. There is no mental health program for youth at the New Castle County Detention Center.
- 61. Many children are in dire need of drug and alcohol services, sex offender counseling, and programs on managing violence and anger. Often these needs have contributed to their incarceration. The few programs defendants have provided fail to adequately meet these needs.
- 62. There is no organized suicide prevention program. There have been a number of suicide attempts at the two institutions which have been mishandled. Children who have threatened or attempted suicide are not provided adequate psychological treatment. They are often placed in isolation cells. Youth care staff are not given adequate suicide prevention training.

- 63. The quiet rooms are not visited daily by health care staff, increasing the risk of suicide or of beatings of youth by staff. The unsupervised, unregulated use of room confinement in the housing units also increases the risk of suicides.
- Center spend many hours in idleness. School is over by 3 p.m. after which there is no regularly scheduled program for the children. Indoor recreation programs are limited to basketball and wrestling. Many do not participate in these sports. Indoor recreation for youth in the Detention Center is often delayed because of scheduling conflicts with Ferris. At the time of the original complaint, Ferris boys with "mandatory" sentences were not allowed to go outside. Currently, most youth complain of having gone for months without a single venture outside the building. There are no music, art, crafts, hobbies or other productive recreational programs. Children spend most of their days jammed into the day rooms watching television.
 - 65. Many children are inappropriately placed at the Ferris School--many are too young, too small, are minor offenders or are psychologically ill-equipped to be housed in a maximum security prison. No effort is made to appropriately treat these children.
 - 66. Children at the New Castle County Detention Center are often held for many months with little or no programming or activities while awaiting resolution of their cases. Adjudicated girls at the Detention Center do not receive appropriate treatment, but are instead managed in the same manner as detained children.

- 67. The defendants have not implemented a program for youth committed for seven days. These youth are sent to Ferris and warehoused in the intake unit for seven days, receiving no specialized programming at all.
- 68. The hostile and punitive environment at the two institutions undermines treatment. Youth are constantly treated with a lack of respect and anger, and they respond in turn with disrespect and anger. Most staff do not believe youth will change their delinquent behavior. This pervasive attitude undermines treatment and ignores the reality that most youth will return home.

E. Classification, Due Process, Grievance System

- 69. The classification system at Ferris does not work. Children are classified according to offense category often without regard for separation of the weak from the strong or the age of the youth. The classification system serves to undermine the youths' self-esteem and dignity.
- 70. Despite the adoption of a disciplinary policy since the filing of the original complaint, children are denied due process protections in disciplinary actions. Youth care workers ignore the policies and arbitrarily impose sanctions, usually room confinement, at will. Groups of children are punished for an individual's infraction. Most room confinements are not recorded in the logs. When provided at all, disciplinary hearings are not held in a timely manner.
- 71. The defendants' practice of ignoring the disciplinary policy is exacerbated by their failure to implement a grievance

system that they claim to have adopted since the filing of the original complaint.

F. Education

- 72. For most delinquent children, success in school and vocational programs is an essential part of rehabilitation. A school program needs to be designed to meet the widely varying academic and vocational training needs of youth and should be an integrated part of a total treatment program. Yet defendants fail to provide children with adequate education services. Children do not receive educational opportunities equivalent to those available in the community and adequate to meet their special needs.
- 73. Defendants confine a substantial number of children who are eligible for and require special education services. Defendants fail to identify, assess or evaluate children adequately to determine whether they have special educational needs. Even when children are identified as needing special education, the defendants fail to develop appropriate individualized education programs (IEP's). IEP's developed for children prior to coming to the two institutions are not followed. The defendants also fail to ensure parental involvement or the appointment of surrogate parents for these children.
- 74. The special education services defendants provide eligible children do not comply with federal law. The educational program is essentially the same for everyone without regard to special needs or skill levels. Defendants fail to employ sufficient numbers of adequately trained, certified special

education teachers to provide special education services to children who need them. The curriculum, teaching materials and educational equipment are inadequate. Teachers frequently resort to copying pages out of the workbooks to supply their students because there are not enough to go around.

- 75. Defendants fail to provide adequate related services, including speech therapy, physical therapy and psychological therapy to handicapped children who need such services to benefit from their education. Many special education children are identified as needing counseling in their IEP's but receive only "guidance" counseling, rather than the required ongoing and regularly scheduled therapy.
- 76. Youth miss school regularly due to disturbances on the units. Even when a disturbance involves only a small number of youth, the entire unit, and on some occasions the entire facility, is locked down and school is cancelled. Children are also put on lock-down for refusing to go to school, an irrational and self-defeating punishment. Children on lock-down are rarely provided school materials or homework; the materials and homework that are provided can be completed in a few minutes. No one takes responsibility for instructing the youth on lock-down or collecting their work. Often there is no documentation of children who miss school because of lock-downs. The school principal must visit the units to find out why students are not in school.

G. Communication

77. Children at Ferris and the New Castle County Detention Center are denied the ability to maintain contact with their family and friends. Visiting is severely limited. Access to the telephone is managed by youth care workers on a random and arbitrary basis and calls are often cancelled for administrative reasons. No provision is made to assure the right to counsel and the courts. A child incarcerated at Ferris or the New Castle County Detention Center is effectively cut off from the outside world.

NO ADEOUATE REMEDY AT LAW

78. As a proximate result of the defendants' policies, practices, acts, and omissions complained of and the conditions and circumstances described above to which plaintiffs are subjected, plaintiffs have suffered, do suffer, 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.

<u>CLAIMS</u>

79. For plaintiffs' claims enumerated below, they repeat and reallege paragraphs 1 through 78 above, as if fully set forth herein, in each and every statement of claim, and further allege the claims set forth in paragraphs 80 through 83 below.

FIRST CLAIM

80. Defendants' policies, practices, acts, and omissions violate plaintiffs' right to due process of law guaranteed by the Fourteenth Amendment to the United States Constitution.

SECOND CLAIM

81. Defendants' policies, practices, acts, and omissions complained of herein deprive plaintiffs of the right to treatment in the least restrictive setting and under the least restrictive conditions guaranteed by the Fourteenth Amendment to the United States Constitution.

THIRD CLAIM

82. Defendants' policies, practices, acts, and omissions complained of herein deprive plaintiffs of the right to access to the courts and to their families, guaranteed by the First Amendment to the United States Constitution.

FOURTH CLAIM

83. Defendants' policies, practices, acts, and omissions complained of, and in particular, defendants' failure to provide handicapped and disabled students with a free and appropriate public education, deprive plaintiffs of rights guaranteed them by the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. \$\$1401 et seg. and by \$504 of the Rehabilitation Act, 29 U.S.C. \$794.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray that this Court:

A. Assume jurisdiction of this action;

- B. Issue an order allowing this action to proceed as a class action pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure;
- C. Issue a declaratory judgment pursuant to 28 U.S.C. \$\$ 2201 and 2202, and Fed.R.Civ.P., Rule 57, that the policies, practices, acts, and omissions complained of:
- (1) subject plaintiffs to denial of the due process of law guaranteed by the Fourteenth Amendment to the United States Constitution;
- (2) violate plaintiffs' rights to receive treatment in the least restrictive setting and under the least restrictive conditions guaranteed by the Fourteenth Amendment to the United States Constitution; and
- (3) deprive plaintiffs of the right to a free, appropriate public education under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§1401 and §504 of the Rehabilitation Act, 29 U.S.C. §§ 794 et seq.
- D. Issue preliminary and permanent injunctions sufficient to rectify the unconstitutional acts and omissions and statutory violations alleged in this Complaint as follows:
- (1) Enjoining defendants, their agents, employees, successors in office, and assigns, from engaging in the unconstitutional and unlawful practices, acts, and omissions described herein, including, but not limited to:

- (a) confining children in these institutions under conditions that are overcrowded, unhealthful, unsanitary, and life-endangering;
- (b) failing to adequately protect children's physical, mental, and emotional health;
- (c) failing to protect children from physical and verbal abuse while confined at these institutions;
- (d) failing to protect children from the improper use of mechanical restraints;
- (e) failing to provide children with adequate medical, dental, and psychiatric care;
- (f) failing to provide children with adequate education, including special education and related services;
- (g) failing to provide children with adequate programming, care, and treatment;
- (h) using isolation as a method of discipline for children;
- (i) failing to provide children with due process protections prior to imposing discipline; and
- (j) failing to provide adequate food and clothing.
- (2) Directing defendants to provide and use appropriate community-based alternatives to incarceration of juveniles;
- E. Order defendants to develop and implement a comprehensive plan for correction of the unlawful policies,

practices, acts, and omissions complained of in this Complaint, and to submit this plan to the Court and to attorneys for plaintiffs for review;

- F. Order defendants to submit to the Court and to plaintiffs for approval all Request for Proposals (RFP's) for any private management of the Ferris School and the New Castle County Detention Center the defendants may seek.
- G. Appoint a Special Master to review and ensure implementation of the plan and any (RFP's) submitted by defendants;
- H. Retain jurisdiction over this action until such time as the Court is satisfied that the unlawful policies, practices, acts, and omissions complained of no longer exist and will not recur;
- I. Award to plaintiffs and the class reasonable attorneys' fees and costs in this act, pursuant to 42 U.S.C. §1988, 19 U.S.C. §794a(2)(6), and Pub.L. No. 94-142;
- J. Award such other and further relief as this Court may deem necessary.

ROSENTHAL, MONHAIT & GROSS, P.A.

By:

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CERTIFICATE OF SERVICE

I, Jeffrey S. Goddess, hereby certify that on January 10, 1992 I caused two copies of the Amended Complaint to be hand delivered to:

Gregg E. Wilson, Esquire Ann Woolfolk, Esquire Deputy Attorneys General Department of Justice 820 N. French Street Wilmington, DE 19801

JEFFREY S. GODDESS