

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

FILED IN CLERK'S OFFICE
U.S.D.C. Atlanta

MAR 26 1993

LUTHER D. THOMAS, Clerk
By:  Deputy Clerk

JOHN DOE 1, by his next friend
MARY DOE 1; JOHN DOE 2 by his
next friend MARY DOE 2; JANE
ROE 1, by her next friend MARY
ROE 1; JANE ROE 2, by her next
friend MARY ROE 2; JANE ROE 3
by her next friend, MARY ROE 3,

Plaintiffs,

v.

GEORGE NAPPER, JR., in
his official capacity as
Commissioner of the Georgia
Department of Children and
Youth Services; JAMES PHILLIPS,
in his official capacity as
Director of the Marietta
Regional Youth Detention
Center; WERNER ROGERS, in his
official capacity as Georgia
State School Superintendent;
and the Georgia STATE BOARD OF
EDUCATION,

Defendants.

Doe v. Napper



JI-GA-001-001

CIVIL ACTION

FILE NO.

1 93-CV- 642

-JEC

COMPLAINT CLASS ACTION

I. PRELIMINARY STATEMENT

1.

This is a civil rights class action which challenges policies, practices, and conditions of confinement at the Marietta Regional Youth Detention Center (MRYDC) in Marietta, Georgia. Plaintiffs are juveniles who are confined at MRYDC and who have been subjected by Defendants, acting under color of state law, to cruel, unconscionable, and illegal conditions of confinement.

2.

Plaintiffs John Doe 1, John Doe 2, Jane Roe 1, Jane Roe 2, and Jane Roe 3 seek declaratory, injunctive, and other equitable relief on behalf of themselves and all other juveniles similarly situated who are, or who will be, confined at MRYDC and thereby subjected to the cruel, unconscionable, and illegal practices of Defendants.

3.

Plaintiffs challenge the overcrowding at the facility as well as the unsafe and unsanitary conditions of confinement including the lack of heat and adequate bathroom and sanitary accommodations. Plaintiffs also challenge the structural integrity of the MRYDC in which, among other things, manual locking mechanisms render the facility a firetrap. The conditions complained of are exacerbated by wholly inadequate staffing levels.

4.

Plaintiffs also challenge the inadequate medical and psychiatric services provided by the Defendants, as well as inadequate access to the courts, the lack of appropriate educational services, and the failure of the Defendants to provide appropriate alternatives to jail.

5.

The Department of Children and Youth Services Defendants have long been aware of the abysmal conditions of the MRYDC but have failed to remedy those conditions. They have been and remain

deliberately indifferent to the plight of the children who are entrusted to their care.

6.

Defendants also have failed to ensure that all children at the MRYDC receive the appropriate education to which they are entitled.

7.

Plaintiffs challenge the conditions of their confinement as violative of the Eighth and Fourteenth Amendments to the United States Constitution. Defendants' practices which limit and interfere with Plaintiffs' rights of access to the courts violate the First and Sixth Amendments to the United States Constitution.

8.

Plaintiffs also seek relief under the Juvenile Justice Act, which mandates that states provide for alternatives to jail in certain situations, and under the Education for the Handicapped Act, which requires that all children get a free and appropriate public education.

II. JURISDICTION AND VENUE

9.

Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1331, and 1343(3) and (4). Declaratory and injunctive relief is authorized under 28 U.S.C. §§ 2201 and 2202 and Federal Rules of Civil Procedure 57 and 65.

10.

Venue in this case is authorized by 28 U.S.C. § 1391(b) and (e).

III. PLAINTIFFS

11.

Plaintiff John Doe 1 is 16 years of age, a citizen of the United States and a resident of Conyers, Georgia. He is currently confined in the MRYDC and has been so confined since December 2, 1992. He brings this action by and through Mary Doe 1, his mother and next friend.

12.

Plaintiff John Doe 2 is 15 years of age, a citizen of the United States and a resident of Atlanta, Georgia. He is currently confined in the MRYDC and has been so confined since August 28, 1992. He brings this action by and through Mary Doe 2, his mother and next friend.

13.

Plaintiff Jane Roe 1 is 16 years of age, a citizen of the United States and a resident of Austell, Georgia. She is currently confined in the MRYDC and has been so confined since January 8, 1993. She brings this action by and through Mary Roe 1, her mother and next friend.

14.

Plaintiff Jane Roe 2 is 16 years of age, a citizen of the United States and a resident of Smyrna, Georgia. She is currently confined in the MRYDC and has been so confined since February 15, 1993. She brings this action by and through Mary Roe 2, her mother and next friend.

15.

Plaintiff Jane Roe 3 is 15 years of age, a citizen of the United States and a resident of Marietta, Georgia. She is currently confined in the MRYDC and has been so confined since December 10, 1992. Prior to her incarceration, she attended special education classes. She brings this action by and through Mary Roe 3, her mother and next friend.

IV. DEFENDANTS

16.

Defendant George Napper, Jr. is the Commissioner of the Georgia Department of Children and Youth Services. In that capacity he is the chief administrative officer of the Department and responsible for supervising, directing, accounting for, organizing, planning, administering, and executing the functions of the Department. As Commissioner, he oversees MRYDC and promulgates and administers regulations, policies, and rules affecting juveniles confined at MRYDC.

17.

Defendant James Phillips is the Director of MRYDC. As such, he is responsible for the day to day administration and management of MRYDC, for formulating, implementing, and approving policies and decisions affecting juveniles confined at MRYDC, and for training, directing, and supervising persons at MRYDC responsible for the care and custody of Plaintiffs.

18.

Defendant Werner Rogers is the State School Superintendent. As such, he is the executive officer of the State Board of Education. He is responsible for administering, implementing, and enforcing laws, rules, and regulations governing educational programs in Georgia, including those programs providing special education services to children in Georgia who have special educational needs.

19.

The State Board of Education is the state agency primarily responsible for the state supervision of public elementary and secondary schools. Its responsibilities include providing a free and appropriate education to all handicapped children in Georgia.

V. CLASS ACTION ALLEGATIONS

20.

The named Plaintiffs bring this action pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure and Local Rule 300 on behalf of themselves and all others similarly situated. The class consists of all juveniles who are now or in the future will be confined at MRYDC. All class members assert claims against Defendants Napper and Phillips.

21.

Plaintiff Jane Roe 3 represents a subclass of those who are entitled to services under the Education for the Handicapped Act who do not receive such services. Members of the subclass assert claims against all Defendants.

22.

The class and the subclass are so numerous that joinder of all members is impractical. On information and belief, the class consists of some 50 juveniles presently confined at MRYDC with others brought into the institution on a regular basis. On information and belief, the subclass is composed of some 30% of the class members. The records of the subclass members remain confidential.

23.

The representative parties will fairly and adequately protect the interests of the class and of the subclass. Their claims are not antagonistic to those of the class or of the subclass.

Additionally, Plaintiffs are represented by attorneys experienced in litigation concerning the laws involved herein and in class litigation.

24.

There are substantial questions of law and fact common to the members of the Plaintiff class and of the subclass. The practices of the Defendants present factual questions common to each member of the class and of the subclass. The constitutional and statutory challenges addressed herein present issues of law common to each member of the class and of the subclass.

25.

The claims of the named Plaintiffs are typical of those of the class and of the subclass and predominate over any questions affecting only individual members.

26.

Defendants have acted on grounds applicable to the class and to the subclass, thereby making appropriate final injunctive relief and corresponding declaratory relief with respect to the class and the subclass as a whole.

27.

The injuries suffered by the named Plaintiffs and the members of the Plaintiff class and subclass as a result of the policies and practices of the Defendants are capable of repetition, yet may evade review, thereby making class relief appropriate to the class and the subclass.

VI. CONSTITUTIONAL AND STATUTORY FRAMEWORK

A. UNITED STATES CONSTITUTION

28.

The First Amendment to the United States Constitution provides that Congress shall make no law abridging the freedom of speech or the right to petition the government for a redress of grievances.

29.

The Sixth Amendment to the United States Constitution provides that in all criminal prosecutions the accused shall be entitled to have the assistance of counsel for his defense.

30.

The Eighth Amendment to the United States Constitution prohibits the infliction of cruel and unusual punishments.

31.

The Fourteenth Amendment to the United States Constitution provides that no state shall deprive any person of life, liberty, or property, without due process of law. The Amendment further provides that Congress shall have the power to enforce, by appropriate legislation, the provisions of the Amendment.

B. THE CIVIL RIGHTS ACT

32.

42 U.S.C. § 1983 provides that:

Any person who, under color of any statute, ordinance, regulation, custom, or usage, of any state, ... subjects, or causes to be subjected, any citizen of the United States or other persons within the jurisdiction thereof to the deprivation of any rights, privileges, or

immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

C. JUVENILE JUSTICE ACT

33.

The Juvenile Justice Act, 42 U.S.C. § 5601 et seq., has among its purposes the diversion of juveniles from the traditional juvenile justice system and the provision of critically needed alternatives to institutionalization. 42 U.S.C. § 5602(b).

34.

As a condition of receiving federal funding under the Juvenile Justice Act, each state is required to submit and maintain a plan meeting certain requirements. Among them is the requirement that a state expend at least 75% of its grant funds:

for advanced techniques in developing, maintaining, and expanding services designed to prevent juvenile delinquency, to divert juveniles from the juvenile justice system, to provide community-based alternatives to secure confinement in detention facilities and secure correctional facilities, to encourage a diversity of alternatives within the juvenile justice system, to establish and adopt juvenile justice standards, and to provide programs for juveniles, including those processed in the criminal justice system, who have committed serious crimes, particularly programs which are designed to improve sentencing procedures, provide resources necessary for informed dispositions, provide for effective rehabilitation, and facilitate the coordination of services between the juvenile justice and criminal justice systems.

42 U.S.C. § 5633(a)(10).

35.

A further condition of federal funding is the requirement that juveniles who are charged with or who have committed offenses that would not be criminal if committed by an adult or offenses which do not constitute violations of valid court orders, or such non-offenders as dependent or neglected children, shall not be placed in secure detention facilities or secure correctional facilities.

42 U.S.C. § 5633(a)(12)(A).

D. EDUCATION OF THE HANDICAPPED ACT

36.

The Education of the Handicapped Act, 20 U.S.C. § 1400 et seq., is meant "to assure that all handicapped children have available to them, ... a free appropriate public education which emphasizes special education and related services designed to meet their unique needs" 20 U.S.C. § 1400(c).

37.

As a condition of federal financial assistance under the Act, each State is required to have in effect a policy that assures all handicapped children the right to a free appropriate public education. As part of its required plan, each state must provide special educational services including written assessment plans in a timely manner and must develop individual education plans as needed. 20 U.S.C. § 1412.

38.

The state educational agency shall be responsible for assuring that the requirements of the Act are carried out and that all educational programs for handicapped children within the state, including all such programs

administered by any other state or local agency, will be under the general supervision of the persons responsible for educational programs for handicapped children in the state educational agency and shall meet education standards of the state educational agency.

20 U.S.C. § 1412(6).

39.

The "state educational agency" is the State Board of Education or other agency or officer primarily responsible for the State supervision of public elementary and secondary schools. 20 U.S.C. § 1401(a)(7).

40.

A "local educational agency" is a board of education or other public authority legally constituted within a state as an administrative agency for its public elementary or secondary schools. 20 U.S.C. § 1401(a)(8).

41.

In Georgia, the State Board of Education has general supervision of the Department of Education. O.C.G.A. §§ 20-2-1; 20-2-11.

42.

In addition to the State Board of Education, county and area boards of education establish and maintain public schools within their limits and make rules to govern the schools within their districts. Ga. Const. Art. VIII, Section V. Para. 1; O.C.G.A. §§ 20-2-50; 20-2-59.

43.

The State School Superintendent is charged with enforcing the rules and regulations of the State Board of Education. The Superintendent is the executive officer of the State Board of Education. O.C.G.A. §§ 20-2-34, 20-2-241.

44.

Local school superintendents constitute the medium of communication between the State School Superintendent and local school officers and serve as executive officers of local boards of education. Local superintendents are required to enforce all regulations and rules of the State School Superintendent and of the local boards. O.C.G.A. § 20-2-109.

E. GEORGIA DEPARTMENT OF CHILDREN AND YOUTH SERVICES

45.

The Georgia Department of Children and Youth Services provides for the "supervision, detention, and rehabilitation of juvenile delinquents committed to the state's custody." The Department is required to develop a comprehensive continuum of service options and implement services such that each child and the child's family can have a personal relationship with professional staff. O.C.G.A. § 49-4A-3(b).

46.

When given legal custody over a child or youth for detention in a youth development center, the Department has the duty to

protect, train, feed, clothe, shelter, educate, and provide medical, hospital, psychiatric, surgical, and dental care to that child. O.C.G.A. § 49-4A-7(b).

47.

The Georgia Department of Children and Youth Services functions as a special school district within the State with the Commissioner of the Department designated as the Superintendent of schools for the district. The schools are required to comply with the rules and regulations of the State Board of Education. Educational services and programs in the special school district are to be funded "so that youth served therein shall receive the same quality and content of educational services as provided to youth in school districts within the state." O.C.G.A. § 49-4A-12(c)(1).

VII. FACTUAL ALLEGATIONS -

BACKGROUND OF THE MRYDC

48.

The MRYDC was built by Cobb County in 1956 to house 41 children from Cobb and Douglas Counties. Designed to hold 28 males and 13 females, it has the dubious distinction of being the oldest regional youth detention center in the state. Unfortunately, the conditions and overcrowding concerns at the Center have not translated into an increased concentration in staffing, safety, or budget allocations. The MRYDC became a state owned institution in

1975, and is presently under the care and control of the Department of Children and Youth Services.

OVERCROWDING

49.

Years of overcrowding have taken their toll on the MRYDC. Although at full capacity the facility is designed to hold only 28 boys and 13 girls, the total traditionally far exceeds that number. Upon information and belief, it is not unusual for the MRYDC to hold up to 60 children. The fact that a population of 60 detainees appears to exceed design capacity by 19 is misleading. The true dimensions of the overcrowding problem become apparent when the number of boys detained is compared to the Center's design capacity for 28 males.

50.

As the detention rate for boys is traditionally higher than the rate for girls, the overcrowding concerns in the boys' wing are frequently much more acute than those plaguing the girls' wing. Boys are regularly crowded into unsupervisable, unheated cells without adequate bedding. Children being held on nonviolent offenses are in constant contact with violent offenders.

51.

The boys at the MRYDC must do everything in shifts because the institution is too small to allow them to eat or attend school at the same time. While one group of boys is being rushed through a

meal, the second group is frequently locked down, waiting to take their hurried meal in the unheated gymnasium.

We always have to eat very quickly because there are so many people who have to eat AS SOON as we get our food they are telling us to hurry up because they have to get everyone else in there to eat. Some kids don't get to finish their meal because they don't have enough time.

(Affidavit of John Doe 1 at paragraph 14, attached hereto as exhibit 1.)

52.

The old gym the children eat in also serves as a school room. Classes are divided by convenience rather than age or ability. While one group of boys attends school, the other group is either locked down or watching television. Boys who are not participating in the G.E.D. program spend very little time in class. "We only spend about two hours a day in the class room. The teachers do not check our work to make sure we are doing anything Sometimes I go up to ask the teacher to check my work to see if I got a problem right." (Affidavit of John Doe 1 at paragraph 6, attached hereto as exhibit 1.) The lack of classroom space and teaching staff makes it virtually impossible to offer the majority of the children anything resembling a normal education.

53.

While time spent inside the cells is a significant factor in the life of every child at the MRYDC, many of the boys in the older wing spend a sizable amount of every day confined to their cells. They must wait for others to eat or attend school before they get

their turn. Frequent staff shortages also add significantly to the time that all the children are locked down. The inability to provide adequate supervision leaves the staff with little option other than locking the children down.

54.

On January 21, 1993, Defendant Napper, pledged that the population at the MRYDC would be monitored on a daily basis in order to ensure that the Center does not exceed its capacity. (Letter from Defendant Napper, attached hereto as exhibit 2.) Unfortunately, since that time, the MRYDC has been routinely running at an over capacity level. Moreover, as is commonly the case with the MRYDC, the census does not adequately reflect the overcrowding issues in that the population has been predominantly male and the overcrowding is therefore concentrated in the boys' wing.

LENGTH OF STAY AND LACK OF ALTERNATIVE RESOURCES

55.

Although the MRYDC is a pretrial detention center, many of the children confined there are post-commitment children. Because it is a pretrial detention facility, children should only be detained there a short time, in the area of fifteen days. In actuality, children are confined to the MRYDC for extended periods of time because there is nothing immediately available for them in the state system. The dismal array of alternative placement options forces the MRYDC to function as a warehouse for children. The

shocking degree of overcrowding is a threat to the health, safety and welfare of even the children who have to endure only short term stays.

56.

Unfortunately, many children are forced to spend a significant amount of time in this institution. On February 11, 1993, the census for the MRYDC shows that there were 53 children at the Center. Of the 53 children detained, at least seven had been there for an excess of 100 days, with some of the children quickly approaching the 200 day mark. Five of the children had stayed at the MRYDC between fifty and one hundred days, and six children had been there between thirty and fifty days. (February 11, 1993 Census, attached hereto as exhibit 3.)

57.

Cobb County has not received funding for programs that would provide alternatives to warehousing children in the MRYDC. The need for adequate community based programs was recently underscored in a report to the Governor. The Report cites the National Council on Crime and Delinquency (NCCD) as emphasizing the overwhelming importance of treatment programs that would serve as alternatives to incarceration. (NCCD Report to the Governor, attached hereto as exhibit 4 at pp 5-6.) As there is little available in the way of alternatives, the children remain inside the MRYDC, a facility that can do no more than contain them, and one that provides no hope of treatment.

SLEEPING ON THE FLOOR

58.

Many of the cinder block cells have no cots, and the children's thin mattresses are placed directly on the floor. In the majority of the boys' cells, there are neither desks nor storage space for books or possessions. The boys at MRYDC, and some of the girls, have nowhere to study or sit in their cells. In spite of these substandard accommodations, the children are locked down a good deal of the time.

59.

In many of the cells, available space is dominated by the mattresses on the floor. The Cobb County Grand Jury, sworn in for the September/October 1986 term, noted the Director, Mr. James Phillips, planned to have beds built to replace the mattresses. (September/October 1986 Grand Jury Presentment, attached hereto as exhibit 5 at 38.) Unfortunately, two years after Mr. Phillips discussed eliminating the problem, several of the 1988 Grand Juries and a 1989 Grand Jury noted that there were still children sleeping on the floor. (March/April 1989 Grand Jury Presentment, July/August 1988 Grand Jury Presentment, and November/December 1988 Grand Jury Presentment, attached hereto as exhibit 25 at 14, exhibit 26 at 13 and exhibit 27 at 10, respectively.)

60.

Fully six years after the 1986 promise to address the shortage of beds, the 1992 September/October Cobb County Grand Jury stated

that it was, "... appalled at the squalidness of the place." (September/October 1992 Grand Jury Presentment, attached hereto as exhibit 6 at 9.) The Grand Jury went on to report that, "It's overcrowded, with two and three youths sleeping in rooms that do not meet humane criteria for one. Some children sleep on the concrete floor on thin foam pads." (Id. at 9.) It is indicative of the historical lack of resources at the MRYDC that serious shortcomings are noted on inspection tours year after year. A boy who has been at the Center for months described his mattress on the floor as follows:

My roommate had to pee on the floor and my mattress smells like urine....I felt some lumps in my mattress not long after I got here. I put my hand into a slit in the mattress to see what the hard ball was. It was an old pair of underwear that someone had a bowel movement in. I called one of the staff members because I did not want to touch it. They took the underwear out and threw it away but they did not give me a new mattress.

(Affidavit of Affiant One, attached hereto as exhibit 7 at paragraphs 7 and 8.)

STAFFING

61.

Overcrowding concerns coupled with chronic staff shortages and inadequate facilities result in a longstanding inability to provide adequate supervision at the MRYDC. The lack of supervision poses a significant safety concern. There are several gangs inside the MRYDC and the staff shortages make the children more vulnerable to the danger involved in gang activities. Some children are threatened, molested and harassed by other detainees, and

frequently, there is no supervisor available to bring these activities to an immediate halt. A girl confined to the MRYDC since December 10, 1992, described the danger as follows:

I saw a girl get beat up by two other girls here. It was apparently part of the girl's initiation into the gang, Folk Nation. The kids use staples to carve the gang symbols onto their arms, breasts, and ankles. I have heard kids plot against other kids, here and outside.

(Affidavit of Jane Roe 3, attached hereto as exhibit 8 at paragraph 10.)

62.

Although the entire institution is seriously understaffed, the staffing level is at its lowest point during the midnight shift. Frequently, there are only two staff members on duty. Should there be a fire or other emergency, these two staff members must deal with the entire institution on their own. The Cobb County Grand Jury empaneled for the July/August 1985 term, stated that the Center needed, at a minimum, four additional youth workers. (July/August 1985 Grand Jury Presentment, attached hereto as exhibit 9 at 11.) When discussing the problems stemming from the under-staffing issue with the workers, the Grand Jury members were shocked by staffers' repeated reference to the MRYDC as a warehouse for children. (Id. at 11.) Grand Juries in 1986 and 1987 also registered their concern about the obvious under-staffing and both groups indicated that the staff on the Center's midnight shift should be increased. (November/December 1986 Grand Jury

Presentment, attached hereto as exhibit 10 at p. 26, and September/October 1987 Grand Jury Presentment, attached hereto as exhibit 11 at p. 35.) The concerns of the Grand Juries went unheeded, however, and in January 1993, the second of two fires occurring within the space of a year broke out during the midnight shift. There were only two staff members on duty, and on information and belief, over 50 children had to be evacuated.

63.

On January 7, 1993, the fire alarm went off at about 4:00 a.m. The two staff members had to open each cell door individually in order to let the children out. It was at least 15 minutes from the time the fire alarm started to ring until the last boys were let out of their cells. Never having had a fire drill, the children had no idea what would happen or whether someone would come to let them out.

64.

The girls were taken out of their cells by Ms. Smith, a staff member. Ms. Smith attempted to let the girls out of the outside door in the day room, but her key jammed, and she was unable to get the door open. She then led the girls into the gym to let them out the kitchen door. Because she did not have the key to the outside door, she had to leave the girls waiting while she went back up to the front of the building, passing through several sets of locked doors on her way. Five minutes went by and Ms. Smith returned to

let the girls out of the building. They stood outside in a fenced area for approximately thirty minutes before they were allowed back inside.

65.

There were no fire drills at the MRYDC prior to the January 7, 1993 fire. The fire drills did not start until approximately March 4, 1993. Although there have been no known fires since January, the institution remains overcrowded and all the cells and doors must be unlocked individually. Staff members still do not carry keys to outside doors as a precaution against escape should they be overpowered, a constant concern in an institution plagued with overcrowding. Locks at the MRYDC, like everything else, are old and the staff still has problems with them on occasion. The threat of fire remains as a serious concern at this point.

66.

Staff shortages also cut into the children's outdoor recreation. There are days when the weather is good but the children are not allowed to go outside into the fenced recreation area because there is no one available to supervise them. The cost of inadequate supervision became painfully apparent in 1987. In an attempt to escape over the fence surrounding the area used for outdoor recreation, a child was injured and became a paraplegic.

67.

One child at the MRYDC since December 2, 1992, described the recreation available as follows:

... we don't get to go out as much as we want to because a lot of times there is not enough staff to watch us. When that happens we just have to stay inside. Every once in a while we spend most of the day being locked down because there are not enough staff members to handle everyone.

(Affidavit of John Doe 1, attached hereto as exhibit 1 at paragraph 15.) Of course, the fact that the children are locked down in numbers exceeding the design capacity of their cells considerably speeds the deterioration rate of the already substandard facility.

LACK OF SUPERVISION IN CELLS

68.

The cells the children are confined to are a threat to their welfare, not only because some of the children have to sleep on the floor, but also because the cells are constructed in such a way that it is almost impossible to monitor activity within the cells. While the children are in the cells, the steel doors are locked. The great majority of these doors have only one small window. In order to monitor the children in these cells, a staff member has to go up to the door and look in.

69.

The cells without beds are even more difficult to monitor because the children are actually down on the floor and the small window is near the top of the door. In describing an assault that he had witnessed, one child recalled, "I saw a boy here get hurt by

another boy who used a piece of lead that he got by taking apart a metal bed frame." (Affidavit of John Doe 2, attached hereto as exhibit 12 at paragraph 10). The fact that the children are not classified adds to an already volatile situation.

PLUMBING

70.

Most of the cells have no plumbing. Once a child is locked down, the only way he or she can gain access to a toilet or water is by attempting to alert a staff member by pounding on his or her cell door and yelling. This experience is humiliating, and frequently, fruitless as longtime acute staff shortages result in exceedingly thin staff coverage.

71.

Children report that they are forced to go to the bathroom in their cells as their requests, especially at night, are either ignored or, take so long to be answered that they have no other option. A boy described his experiences as follows,

If you need to go to the bathroom at night, you have to bang on the door and yell until the staff member comes to let you out and let you use the bathroom. There are usually only two staff members on duty at night and sometimes only one. Many times when I've asked to be taken to the bathroom, staff have said, "I'm busy," or "you should have stayed at home.".... We often end up relieving ourselves in the heat vents in our cells. I have had to go to the bathroom many times in my cell because a staff member would not take me to the restroom.

(Affidavit of Affiant Two, attached hereto as exhibit 13 at paragraph 9.)

72.

The bathrooms that are available to the children are badly maintained, unsanitary, and at least partially nonfunctional. The Cobb County Grand Jury empaneled for the January/February 1988 term noted that the toilet and shower facilities were inadequate for the number of detainees. (January/February 1988 Grand Jury Presentment, attached hereto as exhibit 14 at 10.)

73.

Almost three years later, the 1991 January/February Cobb County Grand Jury registered with concern that the shower facilities for both sexes were leaking, damp, mildewed, and out of repair. The Grand Jury report stated that all 40 boys at the facility were forced to use one shower. The Grand Jury also remarked that faucet handles were missing, several sinks were not functional, all of the showers were unclean, and the boys' bathroom was permeated with the smell of urine. (January/February 1991 Grand Jury Presentment, attached hereto as exhibit 15 at 18.)

74.

The Cobb County Grand Jury selected and sworn for the September/October 1992 term, found that the facility had managed little or no improvement. The Grand Jury stated that its members

were, "... appalled at the squalidness of the place. It's dirty. It smells. Shower walls are literally rotting away a child must wait on a staff person to unlock the door and then be escorted to and from the rest room." (September/October 1992 Grand Jury Presentment, attached hereto as exhibit 6 at 9.)

75.

As late as January 1993, all of the boys at the MRYDC were still sharing only one unsanitary shower. One boy described the ordeal that constitutes daily hygiene at the MRYDC stating:

I think there are around 45 people who use the shower in our wing. We have to line up when it is time to take showers and go into the bathroom three at a time. We go in to the shower one at a time and get wet, then we step out and let the next guy get in. We get out of the shower all wet and get lathered up while we are standing in the bathroom. It is cold and the bathroom here does not smell very good, but that is the only way to take a shower here. Finally, we go back under the shower and rinse off. A staff member gives us a towel and we go back to our cells after we dry off.

(Affidavit of Affiant One, attached hereto as exhibit 7 at paragraph 8.) Every boy at the MRYDC had to shower in that bathroom that smelled of urine, had one functional sink, and only two functional toilets.

76.

The MRYDC recently has made some minor plumbing repairs. A second shower head has been connected in the boys' bathroom. Unfortunately, reconnecting the shower has served to exacerbate the

leak in the basement school room under the bathroom. Instead of a slow trickle, the water is now puddling over the ceiling tiles. When the ceiling gives way, the damp electrical wiring will be exposed to the classroom below.

77.

The girls also had a second shower repaired, making two showers available. Unfortunately, the two sinks in the girls' bathroom do not work properly; one has only cold water and the hot water in the other sink is brown. The girls use water from the bathtub when they want to wash their hands.

78.

The very limited plumbing repairs have not adequately addressed the problems that plague the Center; in some cases with the renewed leaking problems, they have compounded the maintenance dilemmas. Obviously, even the partial repairs do nothing to address the fact that many of the children are forced to spend a significant amount of time in cells that have no plumbing.

VENTILATION AND HEATING

79.

Unfortunately, the majority of the cells have almost no functional ventilation. Cells designed to hold one child now frequently hold two. Grand Juries have repeatedly noted that there is a problem with ventilation throughout the entire facility. As far back as 1984, Grand Juries mentioned that the lack of

ventilation contributed to an offensive odor in the boys' dorm. (May/June 1984 Grand Jury Presentment, Penal Committee Report, attached hereto as exhibit 16 at 3.)

80.

In 1987, although the MRYDC was under significantly more strain as a result of increased age and long term overcrowding, the ventilation problems still had not been addressed. This fact did not escape the Grand Jury. It noted that the ventilation system was inadequate. In addition to the obvious air quality issues, it was the Grand Jury's conclusion that the heating system also was affected. (January/February 1987 Grand Jury Presentment, attached hereto as exhibit 17 at 42.)

81.

A boy confined in cells thirteen and fourteen described the conditions that were causing Grand Juries so much concern as follows: "I was in cell 13 for about a month and it was really cold there was mildew on all the walls and the ceiling and water dripped down the walls. The one heat vent was uncovered and blew cold air." (Affidavit of John Doe Two, attached hereto as exhibit 12 at paragraph 6.)

82.

Obviously, the lack of adequate ventilation results not only in poor air quality, it also seems to have the effect of creating conditions conducive to the growth of fungus. A report done by the

Cobb County Health Department on November 19, 1992 (attached hereto as exhibit 18), confirmed the ventilation deficiencies stating that one cell was measured at an 85% humidity level, noting further that the cell had a musty odor and mildew growing on the walls and ceiling. According to the health department, relative humidity should be maintained at 20-60% in order to provide a healthy comfortable atmosphere. (Id. at 3.)

83.

A boy who has been confined to the MRYDC since December 23, 1992, sleeping on a thin mattress on the floor in his cell, described the problems as follows:

We have one window in our cell which is sealed shut. There is also one vent that blows cold air I have to sleep with my mattress shoved as close to the door as I can get it because otherwise it will get wet from the water that sweats off the walls at night. One night around December 30, 1992, the water on the walls got so bad we used our sheets to wipe the walls down. When we were done our sheets were soaked and we gave them to the staff It has been about eight days now since we gave up our sheets and we have not been given any replacements Our cell has mildew on the walls and ceiling. There are a few cells even worse than mine.

(Affidavit of Affiant One, attached hereto as exhibit 7 at paragraph 5.) Although the walls at the MRYDC now receive frequent coats of paint, it is still possible to see the mildew bleeding through in many areas of the facility.

84.

In spite of the fact that much of the MRYDC was without heat for the winter of 1992-93, the entire antiquated heating system

remains virtually unchanged. There has been some duct work done in areas that have gone without even minimal maintenance for years. Unfortunately, these minor repairs do not come close to addressing the heating and ventilation problems that have plagued the MRYDC for years.

NO CLASSIFICATION

85.

The overcrowding in the facility frequently makes it impossible to classify the children according to security risk. When the lack of classification is coupled with the fact that children are locked down in cells that cannot be effectively monitored by the staff, the risk to the detainees is unmistakable.

MEDICAL SERVICES

86.

The MRYDC has no full time medical services coordinator, and children with medical problems must rely on staff to relay them to the doctor or nurse who visits the facility. The shortage of staff and absence of quick access to trained medical personnel puts the children at risk. A boy who has been at the MRYDC since August 1992, suffered from a twisted testicle and tried to tell the staff starting at around 9:45 a.m.:

I was in a lot of pain. The doctor was not there that day. He only comes every other Wednesday. It was not until 7:45 p.m. that the Sheriff took me to the hospital. The doctor at the hospital said that my condition required medical attention within 8 hours and if the

staff at the Detention Center had waited any longer to bring me to the hospital, I could have lost my testicle.

(Affidavit of John Doe Two, attached hereto as exhibit 12 at paragraph 4.)

87.

The absence of medical treatment affects the girls as well as the boys. A girl confined to the MRYDC with a confirmed history of high blood pressure asked for medical assistance after missing a period:

When I told Gail Tatum who works here that I missed my period, she told me that she can't take me to a doctor until I have missed two periods. I don't know if I am pregnant or not. Last week I had a stomach ache and when I told Ms. Tatum about it, she told me that it was just my ovaries.

(Affidavit of Jane Roe 2, attached hereto as exhibit 19 at paragraph 5.)

88.

Children requiring psychiatric assistance have even less chance of getting help than those suffering from medical problems. In spite of the fact that Grand Juries have repeatedly noted an unquestionable need to make health care more readily accessible to the children at the MRYDC, resources available to the children have not increased. Even under the best circumstances, it is not difficult to predict that children confined to a youth detention center would require some manner of psychiatric assistance. When MRYDC detainees attempt to commit suicide, if they are not sent to

a state mental institution, they receive no professional psychiatric care whatsoever.

89.

A girl who has been in and out of the MRYDC several times discussed her experiences in an affidavit:

When I was here in August 1992, I cut my wrist with a piece of metal in the room and no doctor was called. My wrist was taped up by Mr. Clark and Ms. Jean Hickman, two non-medical staff members. I was moved to a maximum security cell. I was not examined by any mental health professional.

(Affidavit of Affiant Three, attached hereto as exhibit 20 at paragraph 4.)

90.

There are also children confined in the MRYDC who have either been child molesters, or the victims of molestation, and yet these children are subjected to prolonged stays in this overcrowded, understaffed institution with no professional mental health assistance.

EDUCATIONAL DEFICIENCIES

91.

There is no uniform system of assessing children's educational abilities and grade levels at the MRYDC. Some children have not been given any assessment at all. (Affidavit of Jane Roe 1, attached hereto as exhibit 21 at paragraph 4; affidavit of Affiant 4, attached hereto as exhibit 22 at paragraph 4.) Other children have been assessed by Mr. Jake Smith anywhere from their second day

to as long as 2 months after arriving at the MRYDC. The content of the educational assessment tests is reported to be anywhere from 10 to 40 math problems, involving addition, subtraction, multiplication, and division. Some children report that they were also given lists of words to read. None of the children interviewed received any feedback on their performance on the tests.

92.

The children at the MRYDC spend varying hours in school depending on whose class they are in. The girls, who are taught by Mr. Minnix, are in school anywhere from four hours and 15 minutes to five hours a day. Some children who are in the G.E.D. class are in school over six hours a day, while others are in class one and one half to three hours per day. When teachers do not report to work, the children do not have school.

93.

There appears to be no standard curriculum at the MRYDC since the course work varies widely between the classes. In some boys' classes, there are only two sets of workbooks, math and reading comprehension, and not enough books for the entire class. The teacher does not give instruction or correct assignments unless a student specifically requests him to do so. "School here is more like study hall." (Affidavit of Affiant One, attached hereto as

exhibit 7 at paragraph 11.) There is no effort to divide children into learning groups according to their age or grade level.

94.

In sum, Defendants fail to provide Plaintiffs with an adequate education comparable to that available to Plaintiffs in the community.

95.

Additionally, there is no special education program or related services available for youths who were receiving such services prior to their incarceration. - The Defendants fail to adequately assess children to determine whether they have special educational needs and how such special needs can be met. Defendants fail to develop appropriate individualized education programs for children who need special education. Defendants fail to provide appropriate related services, including speech therapy, physical therapy and psychological services, to handicapped children who need such services to benefit from their education.

96.

Since December 10, 1992, Jane Roe 3 has been confined at MRYDC. She has a history of placement in special education programs. At the beginning of seventh grade, Jane Roe 3 was certified as eligible for special education by the Cobb County School District. She was classified as having oppositional behavior disorder. Attention deficit disorder also was suspected.

An Individualized Education Program (IEP) describing her special educational needs was developed. For the next several years, Jane Roe 3 was continually identified as eligible for special education. In the fall of 1992, she was confined in the Roosevelt Outdoor Therapeutic Program, and on September 10, 1992, a new IEP was developed. Jane Roe 3 also was classified as seriously emotionally disturbed (SED). (Affidavit of Mary Roe 3, attached hereto as exhibit 24 at paragraph 3.)

97.

Jane Roe 3's emotional problems interfere with her ability to benefit from an education. She is handicapped within the meaning of the EHA.

98.

Since her confinement at MRYDC, the Defendants have failed to provide Jane Roe 3 with any special education and related services designed to meet her needs. Jane Roe 3's mother delivered her most recent IEP to the MRYDC in January 1993. MRYDC has not implemented this IEP or any other educational plans for Jane Roe 3 from any of her prior schools of attendance. (Affidavit of Mary Roe 3, attached hereto as exhibit 24 at paragraph 4.) As a result, Jane Roe 3 has not had continuity in her special educational program.

99.

Since Jane Roe 3 has been at MRYDC, neither she nor her mother have been informed about the rights of handicapped children to procedural safeguards and a free appropriate public education.

100.

Defendants know or should know that their actions, omissions, policies and practices fail to comply with the requirements of federal law. On information and belief, the Georgia Department of Children and Youth Services has an interagency agreement with the Georgia Department of Education to provide special education and related services to individuals with exceptional needs as mandated by federal and state law. The Georgia Department of Children and Youth Services is a "local education agency" as that term is used in 20 U.S.C. § 1401(8) and a "public agency" as that term is used in 34 C.F.R. §§ 300.2 and 300.11.

101.

Exhaustion of any administrative remedies would be futile in this matter. Plaintiffs allege that Defendants routinely fail to provide required procedural safeguards in a timely manner, and fail to provide any special education programs or related services at MRYDC.

ACCESS TO COURTS

102.

The MRYDC has no law library and does not make arrangements for the children detained there to gain access to an attorney. These children have no way to gain access to the courts in search of judicial relief for issues arising from their confinement at the MRYDC. Children frequently have no access to the telephones so

they are unable to contact attorneys to discuss their Juvenile Court cases. The children at the MRYDC are never told that they can speak to an attorney about the conditions of confinement. They have no idea that there is anything they can do about what happens to them while they are in the institution.

OUTSIDE CONTACT

103.

Children at the MRYDC are not allowed access to visitors when they are locked down for violations of MRYDC rules. Children who are allowed to receive visitors are frequently subjected to strip searches by the staff. The boys are strip searched in view of other children in the boys' dormitory.

DISCIPLINE

104.

According to the rules issued to most of the children when they are admitted to the MRYDC (attached hereto as exhibit 23), children who violate a minor rule may be confined to their cell for one hour. The violation of major rules carries a penalty of being confined to the cell for 24 hours or longer. This form of punishment is referred to by staff and children as indefinite.

105.

When children are put on indefinite, they are confined to their cells 24 hours a day. They are allowed to leave only to use the restroom. They are not allowed to attend classes, they cannot

see other children, and initially, they have no idea how long their isolation and confinement will last.

106.

There is nothing in the rules informing the children that they have the right to a grievance hearing when they are punished. On information and belief, the common practice at the MRYDC is to allow the children to discuss the charges brought against them only after they have been confined to their cell on indefinite status for 72 hours.

107.

In addition to being locked down on indefinite status, children also are occasionally handcuffed hand and foot to their cots as a disciplinary measure. When the children are put into four point restraints, the staff member takes the child's mattress away leaving the child handcuffed to the metal frame of the bed.

When I was here in May, Ms. Francis placed me face down on my bed and handcuffed my hands and ankles to my bed. The handcuffs were so tight that my hands and feet started turning purple. Finally, Ms. Thompson loosened the handcuffs a little. I was in restraints for about one and half hours.

(Affidavit of Jane Roe 1, attached hereto as exhibit 21 at paragraph 11.)

108.

Some children have been subjected to "hogtying" as a disciplinary measure. This procedure entails tying the child's hands and feet together and leaving the child trussed up for an

indefinite period of time, sometimes lying only on the metal bed frame after the mattress has been taken away.

109.

Children who act out and attempt to commit suicide are occasionally put on indefinite as a punitive measure rather than receiving psychiatric counseling.

FEDERAL FUNDING

110.

The State of Georgia is the recipient of federal financial assistance under the Education for the Handicapped Act.

111.

The State of Georgia is the recipient of federal financial assistance under the Juvenile Justice Act.

VII. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF - DUE PROCESS

112.

By subjecting Plaintiffs to the conditions of confinement, individually and in their totality, described in this Complaint, Defendants deprive the named Plaintiffs and the Plaintiff class of their right to due process of law guaranteed by the Fourteenth Amendment to the United States Constitution.

SECOND CLAIM FOR RELIEF - CRUEL AND UNUSUAL PUNISHMENT

113.

By subjecting Plaintiffs to the conditions of confinement, individually and in their totality, described in this Complaint, Defendants deprive the named Plaintiffs and the Plaintiff class of their right to be free from cruel and unusual punishment guaranteed by the Eighth and Fourteenth Amendments to the United States Constitution.

THIRD CLAIM FOR RELIEF - FREEDOM OF SPEECH AND ASSOCIATION

114.

By subjecting Plaintiffs to the conditions of confinement, individually and in their totality, described in this Complaint, Defendants deprive the named Plaintiffs and the Plaintiff class of their right to freedom of speech and association guaranteed by the First and Fourteenth Amendments to the United States Constitution.

FOURTH CLAIM FOR RELIEF - ACCESS TO THE COURTS

115.

By subjecting Plaintiffs to the conditions of confinement, individually and in their totality, described in this Complaint, Defendants deprive the named Plaintiffs and the Plaintiff class of access to the courts guaranteed by the First, Sixth, and Fourteenth Amendments to the United States Constitution.

FIFTH CLAIM FOR RELIEF - RIGHT TO TREATMENT

116.

By failing to provide Plaintiffs with suitable treatment and rehabilitation, Defendants deprive the named Plaintiffs and the Plaintiff class of the right to treatment guaranteed by the Eighth and Fourteenth Amendments to the United States Constitution.

SIXTH CLAIM FOR RELIEF - LEAST RESTRICTIVE ALTERNATIVES

117.

By failing to place Plaintiffs in the least restrictive setting necessary, Defendants violate the named Plaintiffs' and the Plaintiff class' right to placement in the least restrictive alternative that will effectuate the purpose of their confinement guaranteed by the Due Process clause of the Fourteenth Amendment and by the First Amendment to the United States Constitution.

SEVENTH CLAIM FOR RELIEF - CIVIL RIGHTS

118.

By subjecting Plaintiffs to the conditions of confinement, individually and in their totality, described in this Complaint, Defendants deprive the named Plaintiffs and the Plaintiff class, under color of state law, of rights to which they are entitled, in violation of 42 U.S.C. § 1983.

EIGHTH CLAIM FOR RELIEF - ALTERNATIVES TO INCARCERATION

119.

By failing to provide for alternatives to incarceration in appropriate cases, Defendants violate the rights of the named Plaintiffs and the Plaintiff class under 42 U.S.C. § 1983 as guaranteed by the Juvenile Justice Act, 42 U.S.C. § 5601 et seq.

NINTH CLAIM FOR RELIEF - RIGHT TO EDUCATION

120.

By failing to identify and evaluate Plaintiffs who are handicapped and in need of special education services and by failing to provide those services Defendants violate the rights of Plaintiff Jane Roe 3 and the Plaintiff subclass guaranteed by the Education for the Handicapped Act, 20 U.S.C. § 1401 et seq.

RESERVATION OF RIGHTS

121.

Plaintiffs reserve for litigation in the state courts of Georgia, their claims under the Act creating the Georgia Department of Children and Youth Services, O.C.G.A. § 49-4A-1 et seq. Plaintiffs' claims for injunctive and declaratory relief under that Act are precluded from this action under Pennhurst State School & Hospital v. Halderman, 465 U.S. 89, 104 S.Ct. 911, 79 L.Ed. 2d 67 (1984).

NO ADEQUATE REMEDY AT LAW

122.

As a proximate result of Defendants' policies, practices, acts, and omissions complained of herein, 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 adequate remedy at law to redress the wrongs described in this Complaint. Plaintiffs will continue to be irreparably injured unless this Court grants the injunctive relief which Plaintiffs seek.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court grant the following relief:

- a) Assume jurisdiction of this case;
- b) Certify this action as a class action pursuant to Rules 23(a) and (b)(2) of the Federal Rules of Civil Procedure and Local Rule 300;
- c) Issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure that, by subjecting Plaintiffs to conditions of confinement described herein, the Department of Children and Youth Services Defendants have violated the rights of the named Plaintiffs and the Plaintiff class guaranteed by the First, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution; the Civil Rights

Act, 42 U.S.C. § 1983; and the Juvenile Justice Act, 42 U.S.C. § 5601 et seq.;

d) Issue a declaratory judgment that by failing to identify and evaluate Plaintiffs who are handicapped and in need of special education services, and by failing to provide those services, the Defendants have violated the rights of Jane Roe 3 and the Plaintiff subclass as guaranteed by the Education for the Handicapped Act, 20 U.S.C. § 1401 et seq.;

e) Issue preliminary and permanent injunctions enjoining the Defendants, their agents, their employees, and successors in office from engaging in the unconstitutional and unlawful acts and practices complained of herein;

e) Award Plaintiffs the costs of this proceeding;

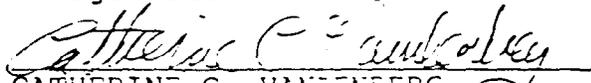
f) Award Plaintiffs attorneys' fees under 42 U.S.C. § 1988; and 20 U.S.C. § 1415(e)(4); and

g) Such other and further relief as this Court deems just and proper.

Respectfully submitted,

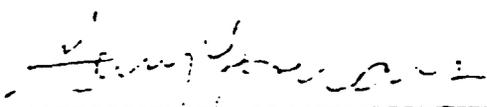


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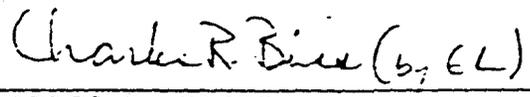
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