



JI-MD-001-001

IN THE UNITED STATE DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

MELVIN C. \*  
Maryland Correctional Institution \*  
Jessup \*  
Box 549 \*  
Jessup, Maryland 20794 \*

and \*

ARTHUR W. \*  
Patuxent Institution \*  
Box 700 \*  
Jessup, Maryland 20794 \*

and \*

BILLY D. \*  
Roxbury Correctional Institution \*  
18701 Roxbury Road \*  
Hagerstown, Maryland 21746 \*

and \*

SCOTT C., by and through his \*  
mother and next friend, DENISE P. \*  
Roxbury Correctional Institution \*  
18701 Roxbury Road \*  
Hagerstown, Maryland 21746 \*

ON BEHALF OF THEMSELVES AND ALL \*  
OTHERS SIMILARLY SITUATED \*

Plaintiffs \*

vs. \*

JOSEPH L. SCHILLING, in his \*  
official capacity as Maryland \*  
State Superintendent of Schools \*  
Maryland State Department of \*  
Education \*  
200 West Baltimore Street \*  
Baltimore, Maryland 21201 \*

and \*

RICHARD J. STEINKE, in his \*  
official capacity as Assistant \*  
State Superintendent, Division \*  
of Special Education \*  
Maryland State Department of \*  
Education \*

CASE NO.

200 West Baltimore Street	
Baltimore, Maryland 21201	*
and	*
JOHN LINTON, in his official	*
capacity as Director of	
Correctional Education of the	*
Maryland State Department of	
Education	*
Maryland State Department of	
Education	*
200 West Baltimore Street	
Baltimore, Maryland 21201	*
and	*
HELEN MILLER, Ed.D., in her	*
official capacity as a	
Correctional Special Education	*
Specialist with the Maryland	
State Department of Education	*
Maryland State Department of	
Education	*
200 West Baltimore Street	
Baltimore, Maryland 21201	*
and	*
HENRIETTA HESTICK, Ph.D.,	*
in her official capacity as a	
Correctional School Psychologist	*
with the Maryland State	
Department of Education	*
Maryland State Department of	
Education	*
200 West Baltimore Street	
Baltimore, Maryland 21201	*
and	*
BISHOP L. ROBINSON, in his	*
official capacity as Secretary	
of Public Safety and	*
Correctional Services	
Department of Public Safety and	*
Correctional Services	
Suite 310	*
6776 Reisterstown Road	
Baltimore, Maryland 21215	*
and	*

RICHARD LANHAM in his	*
official capacity as	
Commissioner of the Division of	*
Correction	
Department of Public Safety and	*
Correctional Services	
Suite 311	*
6776 Reisterstown Road	
Baltimore, Maryland 21215	*
and	*
HAROLD D. JENKINS, in his	*
official capacity as Educational	
Liaison, Division of Correction	*
Department of Public Safety and	
Correctional Services	*
Suite 311	
6776 Reisterstown Road	*
Baltimore, Maryland 21215	
	*
Defendants	

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## COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

### I. INTRODUCTORY STATEMENT

1. This is a civil rights class action challenging the failure of the Defendants to provide legally required special education and related services to youth confined at Maryland's ten adult correctional facilities and pre-release units, including the Maryland Correctional Training Center ("MCTC"), the Maryland Correctional Institution at Hagerstown ("MCI-H"), Roxbury Correctional Institution ("Roxbury"), Eastern Correctional Institution ("ECI"), Maryland Correctional Institution at Jessup ("MCI-J"), the Maryland House of Corrections ("MHC"), the Maryland Correctional Institution for Women ("MCI-W"), the Maryland State Penitentiary, the Maryland Correctional Adjustment Center, and

Patuxent Institution ("Patuxent") (hereinafter collectively referred to as "Maryland Adult Correctional Facilities" or "Maryland Adult Correctional System").

2. Under federal law, every disabled child up to the age of twenty-two (22) has the right to a free appropriate public education. That right is not extinguished by confinement in a Maryland Adult Correctional Facility. In fact, imprisonment in a Maryland Adult Correctional Facility only increases the urgency and importance of ensuring the delivery of that education. For many young disabled inmates, special education will mean the difference between a life marred by a cycle of failure and a life of productive employment.

3. Both the Maryland State Department of Education, Correctional Education Office ("MSDE"), and the Maryland Department of Public Safety and Correctional Services ("PSCS"), which jointly administer the legally required special education programs within Maryland's Adult Correctional Facilities, fail to implement federal special education laws by: (1) unlawfully failing to screen disabled or potentially disabled students for special education needs; (2) unlawfully operating special education programs without parental, or surrogate parental participation; (3) unlawfully failing to develop Individualized Education Plans ("IEP's"); (4) unlawfully failing to train personnel chiefly responsible for the screening, referral and implementation of special education within the Maryland Adult Correctional System; (5) unlawfully failing to have an administrative appeals process; (6) unlawfully failing to

provide related services to disabled youth legally entitled to such services; and (7) unlawfully operating under policies which, during the student assessment and classification process, exclude nearly seventy-five (75%) percent of eligible prisoners from special education and related services. Currently, there are over 1700 youth (i.e., those under age 22) confined in Maryland's Adult Correctional Facilities. At least four hundred (400) of these youth are in need of special education and related services and are legally entitled to them. Upon information and belief, less than eighty (80) youth are presently enrolled in special education programs.

4. Plaintiffs bring this action for declaratory, injunctive, and other equitable relief on behalf of themselves and all other disabled youth confined in Maryland's Adult Correctional Facilities. It is brought to redress Defendants' violation 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 ("P.L. 94-142"), 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 ("Section 504"), 29 U.S.C. §794, and its implementing regulations 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.

## II. JURISDICTION

5. This Court has jurisdiction to consider the merits of this

action under 28 U.S.C. §1343(3), this being an action to redress the deprivation, under color of state law, of rights secured by the Constitution of the United States; The Civil Rights Act, 42 U.S.C. §1983; Section 504 of The Rehabilitation Act of 1973, 29 U.S.C. §794; and, The Individuals with Disabilities Education Act, 20 U.S.C. §§1401, et seq.

6. This Court also has jurisdiction over this action under 28 U.S.C. § 1343(4), this being 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, Section 504 and P.L. 94-142.

7. This Court also has jurisdiction over this action under 28 U.S.C. §1331, this being a civil action arising under the Constitution and laws of the United States.

8. Plaintiffs' request for a declaratory judgment is authorized by 28 U.S.C. §§2201 and 2202, which authorize this Court to "declare the rights and other legal relations of any interested party seeking such declaration."

### III. PLAINTIFFS

9. Melvin C. is nineteen (19) years old and a citizen of the United States. He was born on November 21, 1971. Since December 22, 1988, he has been confined in several Maryland Adult Correctional Facilities including MCTC, MCI-H, Baltimore City Correctional Center, MHC and MCI-J. Prior to his incarceration, he resided in Baltimore City, Maryland.

10. Arthur W. is eighteen (18) years old and a citizen of the

United States. He was born on July 5, 1972. Since September 24, 1988, he has been confined in Maryland's Adult Correctional System. He is currently confined at Patuxent which is located in Jessup, Maryland. Prior to his incarceration, he resided in Baltimore City, Maryland.

11. Billy D. is eighteen (18) and a citizen of the United States. He was born on April 17, 1972. Since December 13, 1988, he has been confined in Maryland's Adult Correctional System. He is currently confined at Roxbury which is located in Hagerstown, Maryland. Prior to his incarceration, he resided in Baltimore City, Maryland.

12. Scott C. is seventeen (17) and a citizen of the United States. He was born on July 18, 1973. Since September 18, 1989 he has been confined in Maryland's Adult Correctional System. He is currently confined at Roxbury which is located in Hagerstown, Maryland. Prior to his incarceration, he resided in Baltimore County, Maryland.

13. Plaintiff Scott C. brings this action by and through his mother and next friend, Denise P. At all times relevant, Denise P. has resided in Baltimore County, Maryland.

14. Plaintiffs bring this action anonymously in order to preserve the privacy to which they are legally entitled pursuant to provisions of the Buckley Amendments, Family Educational Rights and Privacy Act of 1974, 20 U.S.C. §1232g (1982 & Supp. V), and to protect them from possible humiliation.

#### IV. DEFENDANTS

15. Defendant Joseph L. Schilling is the Maryland State Superintendent of Schools. In that capacity, he has direct supervisory responsibility for the operation, management and administration of MSDE. He is ultimately responsible for assuring that disabled youth in the Maryland educational system, including disabled incarcerated youth, receive special education and related services mandated by federal law. He is sued in his official capacity.

16. Defendant Richard J. Steinke is the Maryland State Assistant Superintendent of Schools. In that capacity, he has direct supervisory responsibility for the operation, management and administration of MSDE. He is responsible for assuring that disabled youth in the Maryland educational system, including disabled incarcerated youth, receive special education and related services mandated by federal law. He is sued in his official capacity.

17. Defendant John Linton is the Director of Correctional Education for MSDE. As such, he is responsible for educational services, including special educational services, provided to inmates confined in institutions and facilities operated by PSCS. As Director, Defendant Linton is responsible for assuring that disabled youth confined in Maryland's Adult Correctional Facilities receive special education and related services as mandated by federal law. He is sued in his official capacity.

18. Defendant Helen Miller, Ed.D., is a Correctional Special



Education Specialist with MSDE. In that capacity, she has direct supervisory responsibility for the operation, management and administration of special education programs administered in Maryland's Adult Correctional Facilities. She is responsible for assuring that disabled youth confined in Maryland's Adult Correctional Facilities receive special education and related services in compliance with federal law. She is sued in her official capacity.

19. Defendant Henrietta Hestick, Ph.D., is a Correctional School Psychologist with MSDE. In that capacity, she evaluates and classifies for special educational eligibility, youth confined in Maryland's Adult Correctional Facilities who are suspected of having a disabling condition and thus in need of special education and related services. She is responsible for assuring that youth with special education disabling conditions receive special education and related services in compliance with federal law. She is sued in her official capacity.

20. Defendant Bishop L. Robinson is the State Secretary of Public Safety and Correctional Services. In that capacity, he has direct supervisory responsibility for the operation, management and administration of PSCS, which is jointly responsible, together with MSDE, for assuring that disabled youth in Maryland's Adult Correctional System receive special education and related services in compliance with federal law. He is sued in his official capacity.

21. Defendant Richard Lanham is the Commissioner of the

Division of Correction, Maryland State Department of Public Safety and Correctional Services. In that capacity, he has direct supervisory responsibility for the operation, management and administration of the Division of Correction which is jointly responsible, together with MSDE, for assuring that disabled youth in Maryland's Adult Correctional System receive special education and related services in compliance with federal law. He is sued in his official capacity.

22. Defendant Harold D. Jenkins is the Educational Liaison for the Maryland Division of Correction. In that capacity, he has direct supervisory responsibility for the operation, management and administration of special education programs administered in Maryland's Adult Correctional Facilities. He is responsible for assuring that disabled youth confined in Maryland's Adult Correctional Facilities receive special education and related services in compliance with federal law. He is sued in his official capacity.

23. At all relevant times, the Defendants have acted, and continue to act, under color of state law.

#### V. CLASS ACTION

24. Plaintiffs bring this action on behalf of themselves and all other persons similarly situated. The class consists of all current and future inmates of Maryland's Adult Correctional System who are educationally disabled and are or will be eligible for special education and related services pursuant to federal law.

25. The class is so numerous that joinder of all members is

impracticable. The average daily population of inmates under the age of twenty-two (22) confined in Maryland's Adult Correctional Facilities is in excess of one thousand seven hundred (1,700). Upon information and belief, at least twenty-five (25%) percent of this population has a disabling condition and is entitled to special education and related services.

26. In addition, there are questions of law and fact common to members of the Plaintiff class regarding the Defendants' policies and practices. These include: (a) whether Defendants' failure to identify and assess the special education needs of all incarcerated disabled youth in a timely manner and in accordance with procedural safeguards, violates Plaintiffs' legal rights, (b) whether the Defendants' failure to provide incarcerated disabled youth with properly developed IEPs violates Plaintiffs' legal rights, (c) whether the Defendants' failure to include parents, guardians or surrogate parents, in the special education screening, assessment and monitoring process violates Plaintiffs' legal rights, (d) whether the Defendants' failure to train personnel chiefly responsible for the referral, assessment and implementation of special education in Maryland's Adult Correctional Facilities, violates Plaintiffs' legal rights, and, (e) whether Defendants' failure to provide related services to incarcerated disabled youth, violates Plaintiffs' legal rights. The claims of the named Plaintiffs are typical of the claims of the members of the Plaintiff class.

27. The named Plaintiffs and Plaintiffs' attorneys will

fairly and adequately represent the interest of the members of the class. Plaintiffs know of no conflict of interest among the class members. Plaintiffs are represented by counsel experienced in civil rights class action litigation.

28. By their policies and practices, the Defendants have acted and continued to act on grounds and in a manner generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole. The injuries suffered by the named Plaintiffs and the members of the Plaintiff class as a result of the policies and practices of the Defendants, are capable of repetition, yet may evade review, thereby making class relief appropriate.

#### **VI. FACTS RELEVANT TO THE INDIVIDUAL PLAINTIFFS**

##### **A. Melvin C.**

29. Plaintiff Melvin C. has been incarcerated in the Maryland Adult Correctional System since December 22, 1988. He has a three (3) year sentence and has been confined at various correctional facilities, including MCTC, MCI-H, Baltimore City Correctional Center, MHC, and MCI-J.

30. Melvin C. has three (3) disabling conditions that qualify him as eligible for special education: he is severely emotionally disturbed ("SED"), specific learning disabled ("SLD"), and has chronic and severe asthma, a qualifying health impairment that precludes him from attending regular education classes. These disabling conditions limit Melvin C.'s ability to learn in a

regular educational environment.

31. Melvin C. has a long history of placements in special education programs. While he was in elementary school in Baltimore City, Melvin C. was certified as eligible for special education. He was classified as SLD. An IEP describing his special education needs was developed. For the next several years, Melvin C. was continually identified as eligible for special education.

32. On or about February, 1982, through December, 1988, Melvin C. was confined in various facilities administered by the Maryland Department of Juvenile Services ("JSA"), including the Montrose School and the Charles H. Hickey, Jr. School (the "Hickey School"). At the JSA facilities, he was certified as eligible for special education, and IEP's were developed. At the Hickey School, in 1986, Melvin C., who was then fourteen (14) years old, was tested to determine his academic level. His grade level was 2.5 in reading and 3.2 in mathematics.

33. Melvin C.'s academic functioning is severely delayed. His severe learning problems interfere with his ability to benefit from an education. He has been classified as SLD since elementary school and, until his confinement in December, 1988, has been in special classes geared towards SED and SLD youth.

34. Melvin C. also has severe asthma. When Melvin C. was first confined in the Maryland Adult Correctional System, he was placed in a regular education class. When the teacher and students began to smoke outside of the classroom, Melvin C. suffered a severe asthmatic attack. He was forced to miss four (4) days of

classes. Because of this absence, he was expelled from school. From the time that he was expelled from school until January 31, 1991, Melvin C. was not given any educational training in Maryland's Adult Correctional System. Since January 31, 1991, he has received only two (2) hours per week of regular education.

35. Melvin C.'s asthma is a severe physical impairment which interferes with his ability to benefit from an education in a regular classroom setting.

36. Since his confinement, Melvin C. has also been suicidal. On or about December 25, 1988, Melvin C. attempted suicide by swallowing glass. Since that time, he has attempted suicide, or made serious suicidal gestures, on at least five (5) other occasions, with the last occasion being on or about April 26, 1990. His severe emotional disturbance interferes with his ability to benefit from an education in a regular classroom environment.

37. Despite these multiple educational disabilities, the Defendants have failed to provide Melvin C. any special education and related services designed to meet his unique needs. The Defendants have not developed an IEP for Melvin C.; upon information and belief, no Admission-Review-Dismissal ("ARD") Planning Conference for Melvin C. has been scheduled or held; the Defendants have not notified Melvin C.'s mother about an ARD Planning Conference, nor has she attended any such conference.

38. Since Melvin C.'s incarceration in Maryland's Adult Correctional System, neither Melvin C., nor his mother, nor a parent surrogate, have been informed about the rights of disabled

youth to procedural safeguards and a free appropriate public education.

39. As a result of his severe emotional and physical problems, Melvin C. has been confined in administrative or disciplinary segregation (collectively "segregation") for the majority of his time served in Maryland's Adult Correctional Facilities.

40. Upon information and belief, while confined in segregation Melvin C. has informed the Defendants of his right to special education and related services pursuant to federal law, and has requested that the Defendants assess him for special education need, or alternatively, place him in a special educational program. Despite these requests for assessment and/or placement, the Defendants have continually denied Melvin C.'s right to special education. In fact, on at least one occasion Melvin C. was told that MSDE and PSCS do not provide special education to prisoners confined in segregation.

41. Melvin C. is disabled within the meaning of P.L. 94-142 and Section 504. Since his confinement, Defendants have denied Melvin C. a free appropriate education as mandated by federal law and the due process and equal protection clauses of the fourteenth amendment to the United States Constitution.

B. Arthur W.

42. Plaintiff Arthur W. has been incarcerated in Maryland's Adult Correctional System since September 24, 1988. He has a forty (40) year sentence and has been confined at various adult

correctional facilities, including MCTC, MCI-H and Patuxent.

43. Arthur W. has two disabling conditions that qualify him as eligible for special education: severe emotional disturbance and specific learning disability.

44. Prior to his incarceration, Arthur W. had a long history of placements in special education programs. While he was in elementary school in Baltimore City, Arthur W. was certified as eligible for special education. He was classified as SLD. An IEP describing his special education needs was developed. For the next several years, Arthur W. was continually identified as eligible for special education. Arthur W. last attended public school at the Joseph C. Briscoe School ("Briscoe") which is located in Baltimore, Maryland. Briscoe is a special education school.

45. Arthur W. was also confined in various JSA facilities, including the Hickey School. At these facilities, he was certified as eligible for special education and IEP's were developed.

46. Arthur W.'s academic functioning is severely delayed. His severe learning problems interfere with his ability to benefit from an education. He has been classified as learning disabled since elementary school and, until his confinement in September, 1988, has participated in special education classes geared towards SED and SLD youth. Upon information and belief, Arthur W. was last given academic testing in January, 1990. At that time, his reading level was 6.7 and his mathematics level was 5.3.

47. In an evaluation conducted by Fred S. Berlin, M.D., Ph.D., Associate Professor, The Johns Hopkins University School of



Medicine, on or about March 25, 1988, it was observed that "the best type of psychiatric facility, in terms of the evaluation recommended for this young man, would be one which specializes in the assessment and treatment of emotionally disturbed youth."

48. Despite Arthur W.'s educational disabilities, the Defendants have failed to provide Arthur W. any special education and related services designed to meet his unique needs. The Defendants have not developed an IEP for Arthur W.; upon information and belief, no ARD Planning Conference for Arthur W. has been scheduled and held; and Defendants have not notified Arthur W.'s mother about an ARD Planning Conference, nor has she attended any such conference.

49. Upon information and belief, Arthur W. was denied all access to education in the Maryland Adult Correctional Facilities until or about January 14, 1991, and then he was merely placed into a regular education program.

50. Since Arthur W.'s incarceration in the Maryland Adult Correctional System, neither Arthur W., nor his mother, nor a parent surrogate, have been informed about the rights of disabled youth to procedural safeguards and a free appropriate public education.

51. Arthur W. is disabled within the meaning of the P.L. 94-142 and Section 504. The Defendants have denied Arthur W. a free appropriate education as mandated by federal law, and the due process and equal protection clauses of the fourteenth amendment to the United States Constitution.

C. Billy D.

52. Plaintiff Billy D. has been incarcerated in Maryland's Adult Correctional System since December 13, 1988. He has a seven (7) year sentence and is confined at Roxbury.

53. Billy D. has at least one disabling conditions that qualifies him as eligible for special education: severe emotional disturbance.

54. Prior to his incarceration, Billy D. had a long history of placements in special education programs. In 1980, when Billy D. was eight (8) years old, he was certified as eligible for special education by the Pimlico Elementary School, which is located in Baltimore City. He was classified as SED. An IEP describing his special education needs was developed. For the next several years, Billy D. was continually identified as eligible for special education. Billy D. last attended public school at the Garrison Middle School ("Garrison"), which is located in Baltimore City. At the time of his arrest he was attending Garrison and was in a special education program.

55. Billy D. was also confined in various JSA facilities, including the Maryland Youth Resident Center, the Montrose School and the Hickey School. On information and belief, at these facilities, he was certified as eligible for special education and IEP's were developed.

56. Billy D.'s academic functioning is severely delayed. His severe emotional problems interfere with his ability to benefit from an education. Upon information and belief, Billy D. was given

academic testing in 1990. At that time, his reading level was 4.1 and his mathematics level was 6.6.

57. Despite Billy D.'s educational disabilities, the Defendants have failed to provide Billy D. any special education and related services designed to meet his unique needs. Upon information and belief, in May, 1990 Billy D. was referred for special education assessment to the ARD Planning Conference. Although the assessment was completed and special education programing was recommended for Billy D., the ARD Committee determined that Billy D. is ineligible for special education and related services.

58. Upon information and belief, Billy D. spoke with the Principal of Roxbury to find out why the ARD Committee determined that he was ineligible for special education and related services. The Principal explained the reasons to Billy D. but failed to take any further action and failed to inform him of any other means to appeal the decision of the ARD Committee.

59. Upon information and belief, Billy D. also spoke with the special education teacher at Roxbury to find out why the ARD Committee determined that he was ineligible for special education and related services. The special education teacher explained the reasons to Billy D. but failed to take any further action. The special education teacher also expressly told Billy D. that the ARD Committee would not allow him to be retested for special education eligibility.

60. Upon information and belief, the Defendants have not

developed an IEP for Billy D.; the Defendants have not notified Billy D.'s mother about the ARD Planning Conference, nor has she attended any such conference.

61. Since Billy D.'s incarceration in the Maryland Adult Correctional System, neither his mother, nor a parent surrogate, have been informed about the rights of disabled youth to procedural safeguards and a free appropriate public education.

62. Upon information and belief, Billy D. was placed in a regular educational program. On or about October, 1990, Billy D. was confined in segregation and since that date the Defendants have not allowed him to attend school.

63. Billy D. is disabled within the meaning of the P.L. 94-142 and Section 504. The Defendants have denied Billy D. a free appropriate education as mandated by federal law, and the due process and equal protection clauses of the fourteenth amendment to the United States Constitution.

D. Scott C.

64. Plaintiff Scott C. has been incarcerated in Maryland's Adult Correctional System since September 18, 1989. He has a thirty (30) year sentence and has been confined at various correctional facilities, including Patuxent, MCTC, MCI-H and Roxbury.

65. Scott C. has at least one disabling condition that qualifies him as eligible for special education: severe emotional disturbance.

66. Prior to his incarceration, Scott C. had a long history

of placements in special education programs. While he was in elementary school (2nd grade) in Baltimore County Scott C. was certified as eligible for special education. Upon information and belief, he was classified as SED and was placed in a special education program. An IEP describing his special education needs was developed. For the next several years, Scott C. was continually identified as eligible for special education. Scott C.'s last school of attendance was the Woodlawn Middle School. At the time of his arrest he had an existing and then current IEP. He was classified as severely emotionally disturbed.

67. Scott C.'s academic functioning is severely delayed and his severe emotional problems continue to interfere with his ability to benefit from an education. Upon information and belief, the last known academic test administered to Scott C. in the Maryland Adult Correctional Facilities was the Test of Adult Basic Education on August 27, 1990. At that time, his reading level was 5.3 and his mathematics level was 4.4.

68. Upon information and belief, while incarcerated Scott C.'s severe emotional disturbance has continued to interfere with his ability to benefit from an education in a regular classroom environment. Scott C. was enrolled in an Adult Basic Education -- i.e. regular education -- class, beginning about July 2, 1990. Upon information and belief, on or before January 8, 1991, Scott C. told his teacher that the class was "too hard" and "went too fast." In response, Scott C. was removed from the class and has not attended class since.

69. Upon information and belief, Scott C. has inquired as to the possibility of placement in an easier class, or a class that is suited to his unique needs. The Defendants have not responded to this inquiry.

70. Despite Scott C.'s educational disabilities, the Defendants have failed to provide him any special education and related services designed to meet his unique needs. Upon information and belief, the Defendants have not developed an IEP for Scott C.; no ARD Planning Conference for Scott C. has been scheduled or held; the Defendants have not notified Scott C.'s mother, Denise P., about an ARD Planning Conference, nor has she attended any such conference.

71. Since Scott C.'s incarceration in Maryland's Adult Correctional System, neither Scott C. nor his mother, Denise P., have been informed about the rights of disabled youth to procedural safeguards and a free appropriate public education.

72. Scott C. is disabled within the meaning of P.L. 94-142 and Section 504. Since his confinement, Defendants have denied Scott C. a free appropriate education as mandated by federal law and the due process and equal protection clauses of the fourteenth amendment to the United States Constitution.

#### **VII. FACTS RELEVANT TO THE CLASS**

73. The Maryland State Department of Public Safety and Correctional Services operates ten (10) adult institutions and eight (8) pre-release centers throughout Maryland. Youth are committed to the custody of PSCS either: (1) before the age of

eighteen (18), by the determination of a juvenile court that "waiver" into the adult system is warranted or as a result of automatic waivers; or, (2) upon reaching the age of eighteen (18), by Maryland District and Circuit Courts in Baltimore City and the counties of Maryland. All of the facilities operated by PSCS are "state correctional facilities" as that term is used in 34 C.F.R. §300.2.

74. P.L. 94-142 designates a state's educational agency as the agency that administers special educational programs for disabled youth. MSDE 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.

75. The purpose of P.L. 94-142 is "to assure that all disabled children have available to them...a free appropriate public education which emphasizes special education and related services designed to meet their unique needs to assure that the rights of disabled children and their parents or guardian are protected." 20 U.S.C. §1400(c).

76. P.L. 94-142 requires that each State provide a free appropriate public education for all disabled children between the ages of three (3) and twenty-one (21), unless this requirement is inconsistent with State law or practice.

77. Upon information and belief, the State of Maryland, through both MSDE and PSCS, receives federal funds under P.L. 94-142, including funds to provide special education and related services to inmates through the age of twenty-one (21).

78. MSDE and PSCS jointly administer and are responsible for the implementation of P.L. 94-142 in Maryland's Adult Correctional Facilities.

79. As part of MSDE and PSCS's established procedure within Maryland's Adult Correctional Facilities, all prisoners are initially evaluated to determine their educational abilities at an intake facility ("Maryland Adult Correctional Intake Facility"). Eligible prisoners are given the Test of Adult Basic Education, which is group administered, and determines academic performance in mathematics and reading. It does not determine special education needs. Upon information and belief, only prisoners who are under twenty-one (21) years of age and score below a seventh grade academic level are "tagged" at this time for further testing, even though P.L. 94-142 requires that all disabled students under twenty-two (22) years of age (hereafter "Age Eligible Disabled Students") be provided special education and related services. Following this assessment, inmates are sent to their "home institution."

80. Upon information and belief, at the home institution, "tagged" prisoners are divided into two groups: those with short prison sentences and those with "significant" sentences. Prisoners with short sentences are "screened out" of the special education process. On information and belief, these youth are excluded from placement under the provisions of P.L. 94-142 in furtherance of Defendants' policy of excluding youth from special education.

81. Upon information and belief, MSDE and PSCS continue to



evaluate "tagged" youth with "significant" sentences (hereafter "student" or "prisoner"). At this time, however, these tagged prisoners are neither placed in special education or related services programs nor referred for special education assessment. Rather, as part of the screening process, they are merely given priority for placement in available regular education programs. Often, however, regular educational space is not available, and students who would otherwise be eligible for special education or related services programs are not placed in any educational program for long periods of time. This time lapse violates federal law.

82. Upon information and belief, students placed in regular educational programs within the prison are not taught by certified special educational teachers.

83. Upon information and belief, after tagged students have been in the regular educational program for some time, the regular education teacher evaluates each student to determine whether the student seems to have a disabling condition. Upon information and belief, a regular education teacher's determination that the student does not have a disabling condition -- that is a condition that indicates a need or potential need for special education and related services -- is conclusive, even though Defendants know or should know that such a determination requires specialized training and certification.

84. Students identified as possibly having a disabling condition are scheduled to attend an ARD Planning Conference. Upon information and belief, MSDE and PSCS fail to provide training and

instruction on the requirements and procedures of P.L. 94-142, to the members of the ARD Committee, even though federal law requires that every member of the evaluation and monitoring team -- i.e. the ARD Committee -- receive such training and instructions.

85. Upon information and belief, MSDE and PSCS send a form letter to the student's parent or guardian informing the student's parent or guardian that an ARD Planning Conference is scheduled. In applying this policy and practice, however, MSDE and PSCS violate federal law in at least two respects: (1) MSDE and PSCS send the letter only to the parents of students under the age of eighteen (18), even though MSDE and PSCS are required to include the parents of all Age Eligible Disabled or potentially Disabled Students; and (2) parents who are contacted are not given any alternative dates or times for attending the ARD Planning Conference if the Conference is inconvenient for their schedule, even though federal law requires that the ARD Planning Conference be held at a mutually convenient time. On information and belief, all or almost all ARD Planning Conferences are held during regular business hours, even though the Defendants know that many of the parents live and work more than one hundred (100) miles from the respective prisons, or are unable to take off from work.

86. When inmates' parents are either "unavailable" or "inaccessible," upon information and belief, MSDE and PSCS will appoint parent surrogates, but only if the inmate is under the age of eighteen (18), even though federal law requires that parent surrogates be appointed for all Age Eligible Disabled or

potentially Disabled Students whose parents are either "unavailable" or "inaccessible." Upon information and belief, in the rare instances where a parent surrogate is appointed for the disabled or potentially disabled student, MSDE and PSCS fail to provide any training and instruction in special education to the parent surrogate in violation of federal law.

87. Upon information and belief, MSDE and PSCS's policies and practices with respect to parents and parent surrogates effectively exclude them from participation in special education referral, assessment and monitoring, even though federal law requires that the parent, guardian or parent surrogate participate in all evaluation and monitoring conferences for all students who qualify as eligible or potentially eligible for special education and related services under P.L. 94-142.

88. Upon information and belief, Defendants operate under policies and practices that routinely fail to provide students and their parents, guardians or parent surrogates with written summaries of ARD Planning Conferences, even though the Defendants know or should know that such practices and policies violate federal law.

89. Upon information and belief, Defendants fail to inform students, including students excluded from participation in special education programs, and their parents, guardians or parent surrogates of the legally guaranteed right to special education, including the right to an administrative appeal and due process hearing, even though such notice is legally required.

90. Upon information and belief, following the ARD Planning Conference, specific special education testing is conducted. The student is also assigned to another regular education classroom, if available, for further observation.

91. Upon information and belief, a second ARD Planning Conference ("second ARD") is convened to review the results of the tests and classroom observation. The second ARD determines whether the student needs special education and related services.

92. Upon information and belief, during the second ARD, MSDE and PSCS knowingly employ assessment criteria for special education eligibility that, as a matter of policy and practice, excludes all or virtually all SED youth, including youth who were eligible for special education and related services as SED before they were incarcerated. On information and belief, MSDE and PSCS currently provide services to few SLD youth who are legally entitled to special education and related services; on information and belief, MSDE and PSCS also currently provide services to few, if any, mentally retarded students, who are legally entitled to special education and related services. Contrary to Defendants' determinations of eligibility, these students - SED, SLD and mentally retarded - compose a vast majority (approximately 75%) of any eligible special education prisoner population. Thus, Defendants routinely fail to identify and assess close to seventy-five (75%) percent of all youth who are eligible for special education and related services, and are legally entitled to such services, in direct contravention of the requirements of P.L. 94-

142 and its implementing regulations. These "missed" students often are not even placed in a regular educational program.

93. Upon information and belief, Defendants fail to assess students needs and implement student IEP's in a timely manner, fail to include in IEP's short-term instructional objectives and fail to utilize existing and current IEP's in implementing special education programs, thus denying Plaintiffs and the class they represent the legally guaranteed right to an appropriate education.

94. Upon information and belief, Defendants deliberately allow regular education teachers to instruct special education students in classes that mandate the expertise of trained special education instructors.

95. Upon information and belief, the identification, referral and assessment process from the student's arrival at a Maryland Adult Correctional Intake Facility, until the student is placed into a special education program, routinely takes up to a year, even though this time lapse is excessive and violates Plaintiffs' rights under federal law, including the right to have the IEP implemented in a timely fashion:

96. Upon information and belief, there has never been an administrative appeal or due process hearing conducted in Maryland's Adult Correctional Facilities for a prisoner contesting any issue regarding special education eligibility or services, even though students have requested such an appeal or hearing, and an administrative appeal or due process hearing is required by federal law.

97. Upon information and belief, the Defendants do not provide for an independent assessment or evaluation, even though the student, or their parent(s) have requested such an assessment, and the assessment is required by federal law.

98. Upon information and belief, when IEP's are developed and students are placed in special education classes, Defendants routinely fail to monitor student progress by conducting follow-up ARD Planning Conferences in a timely fashion as required by P.L. 94-142 and its implement of regulations.

99. Defendants know or should have known that their actions, omissions, policies and practices fail to comply with the requirements of federal law.

100. In this action, exhaustion of administrative remedies is not required because: (1) the Defendants have failed to provide required special education services; (2) the Defendants have abridged the procedural rights of special education eligible prisoners and their parents; (3) the Defendants have adhered to policies or practices which are contrary to law; (4) it is improbable that adequate relief can be obtained through an administrative process; (5) an emergency situation requiring immediate action exists; and, (6) it would otherwise be futile or inadequate to use the administrative due process procedures.

#### **VIII. LEGAL CLAIMS**

##### **FIRST CAUSE OF ACTION**

101. Plaintiffs reallege and incorporate by reference all facts set forth in Paragraphs 1 through 100, and further allege:

102. Defendants' policies, practices, acts, and omissions complained of herein, and in particular, Defendants' failure to properly identify, refer and assess special educational needs by employing criteria which intentionally exclude students who are severely emotionally disturbed, specific learning disabled, and mentally retarded, deprive Plaintiffs and the class they represent of rights guaranteed to them by P.L. 94-142, Section 504, and the due process and equal protection clauses of the fourteenth amendment to the United States Constitution.

#### SECOND CAUSE OF ACTION

103. Plaintiffs reallege and incorporate by reference all facts set forth in Paragraphs 1 through 102, and further allege:

104. Defendants' policies, practices, acts, and omissions complained of herein, fail to provide Plaintiffs with the legally required procedural safeguards during the screening, assessment and monitoring stages of special education in Maryland Adult Correctional Facilities. In particular, Defendants:

- a. fail to develop Individualized Education Plans in a timely manner;
- b. fail to ensure that all Individualized Education Plans are complied with, by periodically reviewing student progress;
- c. fail to include in the Individualized Education Plans short-term instructional objectives;
- d. fail to utilize existing and current Individualized Education Plans in implementing special education

programs;

- e. fail to conduct the initial Admission-Review-Dismissal Conference for inmates in a timely fashion;
- f. fail to conduct subsequent and periodic Admission-Review-Dismissal Planning Conferences in a timely fashion;
- g. fail to provide students and their parents, guardians or parent surrogates with written summaries of the Admission-Review-Dismissal minutes;
- h. fail to provide training and instruction for all members of Admission-Review-Dismissal Committee;
- i. fail to provide training for personnel employed by MSDE and PSCS who make referrals for special education assessment including regular education teachers, classification counselors and corrections officers;
- j. fail to provide students with the proper amount of special education, as determined in the Admission-Review-Dismissal Planning Conference and set forth in the Individualized Education Plan;
- k. fail to inform students of the statutorily guaranteed right to special education, including the right to an administrative appeal and due process hearing;
- l. fail to provide a meaningful and distinct procedure for administrative appeals and due process hearings; and,
- m. fail to provide for an independent assessment of special education eligibility.

Defendants' policies, practices, acts, and omissions complained of



herein, deprive the Plaintiffs and the class they represent of rights guaranteed to them by P.L. 94-142, Section 504, and the due process and equal protection clauses of the fourteenth amendment to the United States Constitution.

### THIRD CAUSE OF ACTION

105. Plaintiffs reallege and incorporate by reference all facts set forth in Paragraphs 1 through 104, and further allege:

106. Defendants' policies, practices, acts, and omissions complained of herein, fail to provide Plaintiffs with legally required procedural safeguards by excluding parents, guardians and parent surrogates from the screening, referral, assessment and monitoring stages of special education in Maryland Adult Correctional Facilities. In particular, Defendants:

- a. fail to contact parents and guardians for Admission-Review-Dismissal Planning Conferences during the special education screening, referral, assessment and monitoring process;
- b. fail to notify parents, guardians or parent surrogates of the statutorily guaranteed right to special education, including the right to an administrative appeal and due process hearing;
- c. fail to appoint parent surrogates in those instances where a natural parent or guardian is unavailable or inaccessible; and
- d. fail to maintain legally qualified parent surrogates in Maryland Adult Correctional Facilities by failing to

provide training and instruction for parent surrogates. Defendants' policies, practices, acts and omissions complained of herein, deprive Plaintiffs and the class they represent of rights guaranteed to them by P.L. 94-142, Section 504, and the due process and equal protection clauses of the fourteenth amendment to the United States Constitution.

PRAYER FOR RELIEF

107. WHEREFORE, Plaintiffs pray that this Court:

- a. assume jurisdiction over this action;
- b. permit Plaintiffs to proceed anonymously;
- c. certify this action as a class action pursuant to Rules 23(a) and (b)(2) of the Federal Rules of Civil Procedure;
- d. issue a declaratory judgment declaring that Defendants' actions, omissions, policies and practices violate rights guaranteed to Plaintiffs and the members of their class by P.L. 94-142, Section 504 and the due process and equal protection clauses of the fourteenth amendment to the United States Constitution;
- e. issues a preliminary and permanent injunction requiring that Defendants:
  1. identify, evaluate and assess the special educational needs of all disabled incarcerated youth according to the criteria mandated by federal law;
  2. provide disabled youth in Maryland's Adult Correctional Facilities with special education and related services in accordance with properly developed Individualized Education Plans, and develop appropriate Individualized Education Plans in a timely manner and in accordance with procedural

safeguards;

3. include parent, guardian or parent surrogate participation in special education planning;

f. order the Defendants to develop and implement a remedial plan that ends the unlawful policies, practices, acts and omissions complained of herein, and to submit this plan to the Court and to the attorneys for Plaintiffs for their review;

g. appoint a Special Master to review and insure implementation of the plan submitted by the Defendants and to protect the rights of Plaintiffs during the pendency of this action;

h. retain jurisdiction over this action until implementation of this Court's decree has been completed;

i. award Plaintiffs attorneys fees and costs of this proceeding, pursuant to 42 U.S.C. § 1988, 29 U.S.C. § 794(a) and 20 U.S.C. § 1415;

j. issue such other and further relief as this Court may deem just and proper.

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