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## IN THE THIRD JUDICIAL DISTRICT COURT

## SALT LAKE COUNTY, STATE OF UTAH

LISA PARRENT, individually;  
 MATTHEW W., by his guardians  
 and next friends MELODY W. and  
 JAMES W.; ARC OF UTAH; on  
 behalf of themselves and all  
 others similarly situated,

Plaintiffs,

v.

D. MICHAEL STEWART, Executive  
 Director, Utah State  
 Department of Human Services;  
 FLORENCE STADSTAD, HUGH RUSH,  
 CLAUDIA MILES, RUTH ANDERSON,  
 TROY JUSTESEN, JOHN DOES 1 and  
 2, Members, Board of Services  
 for People with Disabilities;  
 ERIC ZAHARIA, Director, Division:  
 of Services for People with  
 Disabilities; MARY ELLEN  
 WILKINSON, Superintendent, Utah  
 State Developmental Center,

Defendants.

SECOND AMENDED CLASS  
 ACTION COMPLAINT

Case No. 890907653CV

Honorable Timothy R. Hansen

5/11/89

I. PRELIMINARY STATEMENT

1. This is a class action for declaratory and injunctive relief against officers of the Utah State Department of Human

Services, brought to ensure that all residents of the Utah State Developmental Center receive appropriate treatment and training in the least restrictive and most enabling environment, treatment designed to meet their individual needs and which is in their best interests as required by federal and state law.

2. Plaintiffs are residents of the Utah State Developmental Center. They reside there both by voluntary admission and involuntary commitment. They receive habilitation services and programming for behavioral problems, as well as necessary medical care. Plaintiffs are placed at the Utah State Developmental Center and receive services there from the Division of Services to People with Disabilities of the Department of Human Services, (hereinafter referred to as "Division").

3. The claims of the plaintiff class are based on the due process clause of the fourteenth amendment to the Constitution of the United States, Title XIX of the Social Security Act, and state law providing that Defendants plan for and create a system of residential facilities that would allow the plaintiff class to receive services that meet their individual needs and their best interests, and that those services be provided in the least restrictive and most enabling environment.

## II. JURISDICTION

4. This action arises under the constitutions and laws of the United States and the State of Utah. It seeks declaratory and injunctive relief, pursuant to 42 U.S.C. 1983 and applicable state law, to redress the deprivation, under color of state law, of rights secured to plaintiffs by federal and state law.

5. The jurisdiction and authority of this Court to enter declaratory and injunctive relief arise from Utah Code Annotated §78-3-4(1), Utah Code Annotated §78-33-1, and Rule 65A of the Utah Rules of Civil Procedure.

6. Monetary damages are inadequate. Plaintiffs have suffered and will continue to suffer irreparable harm from Defendants' actions, policies, and procedures and from the violations of law complained of herein; accordingly, declaratory and injunctive relief is necessary and appropriate.

7. The acts of all Defendants, except for the administrators of the Utah State Developmental Center, were performed in Salt Lake County, State of Utah. Each cause of action arises at least in part in this district. This district provides the most convenient forum for the litigation of these issues.

### III. PLAINTIFFS

8. Each of the individuals named below is a person with mental retardation, developmental disabilities, or significant behavioral problems, who is eligible for and in need of residential and habilitation<sup>1</sup> services from Defendants.

#### **PLAINTIFF MATTHEW W.**

9. Plaintiff Matthew W. is a sixteen year-old resident of the Utah State Developmental Center with borderline mental retardation. His parents, Melody and James W., bring this action on his behalf as his guardians.

10. Plaintiff Matthew W. has a seizure disorder in addition to his mental retardation. The medications which best control his seizures also exacerbate his inappropriate behaviors.

11. Plaintiff Matthew W. resided in his parents home until April of 1989. He was discharged from a small group home and placed in the Utah State Developmental Center because of disagreements between his parents and medical personnel concerning appropriate medications. He was placed at the Utah State Developmental Center because no other private residential provider agreed to accept him for residential placement.

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<sup>1</sup> Habilitation is the process by which the staff of a residential facility assists a person with mental retardation or developmental disabilities to acquire and maintain those life skills which will increase the individual's independence, productivity and integration into the community. Those skills enable the individual to cope more effectively with the demands of his or her own person or environment and to raise the level of his or her personal, physical, mental, social, and vocational efficiency.

12. Plaintiff Matthew W. is independent in all areas of self care and personal hygiene.

13. The High Risk Committee of the Division concluded that the Utah State Developmental Center is not an appropriate residential placement for Matthew W., but that no more appropriate, less restrictive community placement is available for him.

14. The type of residential placement where Matthew W. could be served most appropriately presently exists. However, Defendants have failed to develop an adequate number of such residential placements where Plaintiff Matthew W. and others with similar needs and abilities could be served in the least restrictive, most enabling environment.

15. Matthew W.'s parents are members of the Arc of Utah.

16. Plaintiff the Arc of Utah is a nonprofit association of persons with mental retardation and their parents, families, and friends, serving as advocates for individuals with mental retardation. It is composed of nine local chapters throughout the State of Utah. The Arc of Utah is devoted solely to the interests of adults and children with mental retardation.

#### IV. CLASS ACTION FACTS

17. Plaintiffs bring this action on their own behalf and on behalf of all other similarly situated individuals pursuant to

Rule 23(a) and (b)(2) and (3) of the Utah Rules of Civil Procedure.

18. The Court previously certified as a class all residents of the Utah State Developmental Center. That class includes a subclass of individuals with additional disabling conditions beyond mild or moderate mental retardation, such as severe or profound retardation, behavioral or emotional impairments, mobility impairments, severe medical impairments, and severe physical impairments.

19. The plaintiff class is composed of all individuals who presently reside at the Utah State Developmental Center, whose right to adequate levels of individualized appropriate treatment, as guaranteed by state law and 42 U.S.C. 1396a (a)(13)(A), (a)(23), and 1396(d) is not met, and who could receive appropriate active treatment and other necessary services, or at the very least services equal to what they are now receiving, in a less restrictive environment. The class also includes a subclass of all residents who have additional impairments besides mild or moderate mental retardation, such as severe or profound mental retardation, medical, physical, emotional, or behavioral impairments, and who also could receive appropriate services in a less restrictive environment in the community.

20. The exact size of the class is unknown to the plaintiffs at this time, but is better known to Defendants. All plaintiffs and plaintiff class members could be served in less restrictive, more enabling small community residential facilities. The size of the plaintiff class is so numerous that joinder of all members is impracticable.

21. All the requirements of Rule 23 are met.

22. There are questions of law and fact common to the class: (1) whether the plaintiff class members have a right to adequate and appropriate training and treatment in the least restrictive, most enabling environment under state law; (2) whether the plaintiff class members have a right under state law to individualized treatment designed to meet their needs and which is in their best interests; (3) whether members of the plaintiff class have the right to adequate levels of active treatment and habilitation services while residents at the Utah State Developmental Center, consistent with state law, Title XIX of the Social Security Act, and the due process clauses of the fourteenth amendment to the Constitution of the United States and Article I, Section 7 of the Constitution of Utah; (4) whether Defendants have failed or refused to plan for and/or to establish an adequate array of services maximizing the opportunity for individuals of the plaintiff class to be served in the least

restrictive and most enabling environment and/or to be offered individualized programs that meet their needs and which are in their best interests; (5) whether Defendants are delivering adequate levels of active treatment to the plaintiff class; (6) whether the plaintiff class has suffered injury to its constitutionally protected liberty interest in minimally adequate treatment and freedom from harm, as guaranteed by the due process clause of the fourteenth amendment to the Constitution of the United States and Article I, Section 7 of the Constitution of Utah; (7) whether the plaintiff subclass has been denied access to services in the community because of additional disabling conditions, in violation of 504 of the Vocational Rehabilitation Act of 1973.

23. The claims of the named plaintiffs are typical of the claims of the class. Defendants have abridged the rights of the named plaintiffs and the plaintiff class members in the same manner and in violation of the same law.

24. Defendants have acted and refused to act on grounds generally applicable to the class. They have violated the rights of the plaintiff class in a systematic and class-wide manner.

25. Plaintiffs' attorneys have the legal resources and experience adequate to protect all members of the class. Plaintiffs' counsel, the Legal Center for People with



Disabilities, has been designated by state and federal law as the agency responsible for advocating and protecting the rights of persons with developmental disabilities. The named plaintiffs will adequately and fairly represent the interests of the class.

26. Separate actions by each plaintiff class member would create the risk of adjudications with respect to individual members of the class that as a practical matter would be dispositive of the interests of the other members not parties to the adjudications or would substantially impair or impede their ability to protect their interests.

27. Questions of law and fact common to the class predominate over any individual matters. A class action is a superior way of adjudicating this controversy.

#### V. DEFENDANTS

28. Defendant D. Michael Stewart is the Executive Director of the Utah State Department of Human Services ("the Department"). As such, he is responsible for the coordination of policies and program activities conducted through the divisions and offices of that department, including the Division of Services for People with Disabilities ("the Division"). He is responsible for the approval of all proposed budgets of each division and the coordination of policies and program activities

conducted by the boards, divisions, and offices within the Department.

29. Defendants Claudia Miles, Hugh Rush, Florence Stadstad, Troy Justesen, Ruth Anderson, and John Does 1 and 2, are members of the Board of Services for People With Disabilities. The Board is the advisory body of the Division. As such, its members have the power and responsibility to set policies for the Division, the Utah State Developmental Center, and other programs and facilities operated by or under contract with the Division.

30. Defendant Eric Zaharia is the Director of the Division. As director, he is responsible for the development and execution of all programs and services it offers. The Division is empowered to establish rules and regulations governing the admission and discharge of individuals from the Utah State Developmental Center and to employ all necessary medical and other professional personnel to assist in establishing treatment and training at that institution. As Director, Defendant Zaharia is responsible for the supervision, care, and treatment of all individuals with mental retardation placed in the Division's care.

31. Defendant Mary Ellen Wilkinson is the administrator of the Utah State Developmental Center. As such, she has the authority to prescribe and enforce the duties of all staff at the

Utah State Developmental Center, to make any expenditures with the approval of the Division necessary to perform her duty, and to manage the Utah State Developmental Center and administer the Division's rules governing that institution.

32. The acts of Defendants complained of herein were done under color of state law.

#### **VI. STATEMENT OF FACTS**

##### **A. The State's Purposes and the State's Obligations.**

33. The State of Utah supports and protects the liberty and dignity of people with developmental disabilities through statutes and rules which have the purpose of enhancing the opportunity for the individual to exercise his or her rights, providing them the opportunity to make independent decisions to the fullest extent possible and to live in an environment that approximates that of society at large, with a life-style similar to persons without disabilities.

34. For individuals with developmental disabilities, a person's rate of growth and quality of function depends, to a great extent, on environment, training, and the range in quality of learning experiences provided them. Every person learns acceptable behavior and normal patterns of life through experience. Critical to this experience are such factors as living in a home similar to others, and engaging in routines and

activities which are appropriate to a person's age and which occur in natural settings.

35. This State's system of services to people with mental retardation or other developmental disabilities has as a goal to protect their rights to normalized living. This goal is best met through a comprehensive system of community habilitation services designed to strengthen and maintain natural settings.

36. The Division has the authority and duty to plan, develop, and manage an array of programs for disabled persons throughout the State. Those programs include day treatment and residential services. U.C.A. §62A-5-102(1), §103(1). The Division has the authority to supervise the programs and the facilities it operates. U.C.A. §62A-5-103(3). It has the responsibility to establish standards and rules for the administration and operation of those programs. U.C.A. §62A-5-103(7) (1992).

37. Defendants have established a continuum of residential facilities serving individuals with mental retardation or developmental disabilities. Those facilities range from the Utah State Developmental Center at the most-restrictive end of the continuum to supervised apartments and apartment follow along at the least-restrictive end of the continuum.

38. Current theory indicates that the residential environments which are most conducive to the progress and enhanced quality of life for most people with disabilities are facilities housing no more than six people.

39. It is the State's intent that persons with mental retardation and developmental disabilities be provided with a residential environment and surrounding that, as closely as possible, resembles small community-based, home-like settings, to allow them the opportunity to exercise their full rights and responsibilities as citizens. U.C.A. §26-21-13.5 (1992).

40. Individuals with mental retardation and developmental disabilities best learn cognitive, social and functional skills when taught in the environment in which they are expected to use those skills. To the greatest degree possible, all programming for teaching such skills should take place in the least restrictive, most-normal environment.

41. For the purposes of the Budgetary Procedures Act (U.C.A. §63-38-1, et seq.), monies appropriated for all programs of the Division are considered a single appropriation.

42. Defendants must ensure, within the single appropriation authorized by the Legislature for the Division, that the services offered to plaintiff class members are provided in the least restrictive and most enabling environment. U.C.A. §62A-5-

102(2) (1992). Section 102(2) further mandates, along with Defendants' duty to develop an array of services, that Defendants plan and create an adequate system of less restrictive alternatives such that the right to services in the least restrictive, most enabling environment can be appropriately and adequately implemented.

43. Defendants have the duty to transfer any individual resident of the Utah State Developmental Center to any other facility or program operated by or under contract with the Division when that program or facility meets the needs of that individual and if transfer would be in that individual's best interest. U.C.A. §62A-5-206(5) (1992).

44. The budget for the Utah State Developmental Center for the fiscal year 1989 was estimated at Twenty-four Million Five Hundred Sixty-three Thousand Three Hundred Twenty-nine Dollars (\$24,563,329.00). The estimated budget for the fiscal year 1989 for all other residential services available to individuals with mental retardation and developmental disabilities totaled Eighteen Million Eight Hundred Fifty-nine Thousand Twenty Dollars (\$18,859,020.00). These residential services included intermediate care facilities for the mentally retarded, group homes and supervised apartments. The number of individuals residing at the Utah State Developmental Center during the fiscal

year 1989 was approximately 503. In that same year the number of individuals residing in other intermediate care facilities for the mentally retarded, group homes or supervised apartments totaled approximately 1,227. The total estimated budget for the fiscal year 1989 for day treatment services, transportation, and supported employment services provided for those residents of other intermediate care facilities for the mentally retarded, group homes, and supervised apartments totaled approximately Four Million One Hundred Ninety-eight Thousand Six Hundred Dollars (\$4,198,600.00). In other words, fifty-two percent of the monies expended to provide services to individuals in residential placements goes to serving those residents of the Utah State Developmental Center. That group comprises twenty-nine percent of all those individuals receiving services in residential placements.

45. In January of 1990, the Legislative Fiscal Analyst for the Utah State Legislature estimated that during the state fiscal year 1990 (July 1, 1989 to June 30, 1990) One Million Three Hundred Eighty-four Thousand Three Hundred Dollars (\$1,384,300.00) authorized for community residential services for that fiscal year would not be spent. At the same time, he estimated that One Million Four Hundred Three Thousand Two

Hundred Dollars (\$1,403,200.00) authorized for community day treatment services would not be spent.

46. In January of 1990, the Legislative Fiscal Analyst for the Utah State Legislature estimated that during the state fiscal year 1990 Defendants would spend approximately Three Million Four Hundred Seventeen Thousand One Hundred Dollars (\$3,417,100.00) more for the Utah State Developmental Center than was authorized by the Legislature.

47. In his testimony before the 1990 General Session of the Utah State Legislature, the Legislative Fiscal Analyst testified that of the Two Million One Hundred Forty-six Thousand Two Hundred Dollars (\$2,146,200.00) authorized for outmovement of residents of the Utah State Developmental Center into community residential facilities, an estimated One Million Two Hundred Thousand Dollars (\$1,200,000.00) of that amount would not be spent in placing residents in the community. Those monies not spent on outmovement would remain in the Utah State Developmental Center budget. Given these assumptions, over-spending at the Utah State Developmental Center during the fiscal year 1990 was estimated at Four Million Six Hundred Seventeen Thousand One Hundred Dollars (\$4,617,100.00).

48. In January of 1990, the Legislative Fiscal Analyst reported that the estimated underspending in community



residential and day treatment programs would be due to revisions in the estimate of collections that will be received from Medicaid.

49. Plaintiffs believe, and therefore allege, that during fiscal year 1990 Defendants have compensated for any shortfall in Medicaid reimbursement collections by reducing spending for community programs from those figures anticipated and authorized by the Legislature, but have made no corresponding reduction in spending at the Utah State Developmental Center to similarly compensate for Medicaid reimbursement shortfalls. Thus, Defendants prioritize services at the Utah State Developmental Center.

50. In testimony before the 1990 General Session of the Utah State Legislature, the Legislative Fiscal Analyst stated that underspending of residential and day services during fiscal year 1990 would result in at least one hundred forty-three (143) fewer individuals being served in the community than anticipated.

51. During the fiscal year 1989, programs for community residential services of the Division were underspent by One Million Four Hundred Sixty-nine Thousand Six Hundred Dollars (\$1,469,600.00). During the same fiscal year, Division programs for day services were underspent by Three Hundred Twenty-two Thousand Three Hundred Dollars (\$322,300.00). For that same

fiscal year, One Million Six Hundred Forty-seven Thousand Dollars (\$1,647,000.00) was authorized for outmovement from the Utah State Developmental Center, to transfer residents there into the community. None of those outmovement monies were spent. During that same fiscal year, the budget for the Utah State Developmental Center was overspent by Two Million Three Hundred Eighty-two Thousand Two Hundred Dollars (\$2,382,200.00).

52. During fiscal year 1988, the budget for residential services of the Division was underspent by Two Million Nine Hundred Twenty-two Thousand One Hundred Dollars (\$2,922,100.00). The budget for the Division's day services program was underspent by Five Hundred Seventy-eight Thousand Two Hundred (\$578,200.00). During that same fiscal year, the budget for the Utah State Developmental Center was overspent by approximately Five Hundred Fifteen Thousand Four Hundred Dollars (\$515,400.00).

53. Appropriations by the Utah State Legislature cannot be applied to costs or services for which the appropriation was not made. U.C.A. §67-3-4 (1992).

54. Pursuant to Utah Code Annotated §63-38-3(2)(b), Defendants may use monies authorized for one purpose or function, such as for services at the Utah State Developmental Center, for another purpose or function, such as community residential services.

55. Within the meaning of Utah Code Annotated §63-38-3(3), there are no restrictions on the transfer of funds from one purpose to another, as described in the previous paragraph, in the single Division appropriation for the current fiscal year. There similarly have been no such restrictions during the three previous fiscal years.

56. Defendants have created and maintained budgets and policies that prioritize services in the most restrictive environment.

**B. Requirements of Care at the Utah State Developmental Center.**

57. The Utah State Developmental Center provides habilitative services and programming for behavior problems, and services to residents with complicated medical or psychiatric problems.

58. The Utah State Developmental Center is an Intermediate Care Facility for the Mentally Retarded for the purposes of regulations governing the Medicaid program.

59. The Utah State Developmental Center receives Medicaid funding for the care of the plaintiff class.

60. Defendants are required to provide active treatment to all residents of the Utah State Developmental Center.

61. As defined by the regulations promulgated under the Medicaid provisions of the Social Security Act, 42 C.F.R.

§483.440(a), active treatment is a continuous, aggressive, consistent program of specialized and generic training, treatment, health services, and related services, the goal of which is the acquisition of behaviors necessary to function with as much self determination and independence as possible and the prevention or deceleration of regression or loss of current optimal functional status.

62. Residents of the Utah State Developmental Center have been both voluntarily and involuntarily committed. A majority of the individuals voluntarily committed to the Utah State Developmental Center have personally made no informed decision to reside and receive treatment there. Most voluntary admittees are placed at the Utah State Developmental Center by guardians or Defendants.

63. An individual can be involuntarily committed to a facility for mental retardation only if the facility can provide the training and treatment adequate and appropriate for that individual's condition and needs, as required by Utah Code Annotated §62A-5-312(11)(d).

64. Involuntarily committed residents of the Utah State Developmental Center have a liberty interest in services adequate to avoid deterioration of skills and the use of restraints. They

have the right to receive services that professionals conclude are appropriate.

65. In addition to the general provisions of Utah Code Annotated §62A-5-102(2) referred to above, members of the plaintiff class who are involuntarily committed to the Utah State Developmental Center have a state statutory right to receive services in the least restrictive, most appropriate environment. This holds true at the time of commitment and throughout their period of residency as directed by Utah Code Annotated §62A-5-312(11)(c) and §62A-5-206(5). Defendants' duty to plan and develop an array of services requires them to develop an adequate and appropriate system of less restrictive service alternatives such that the rights of involuntarily committed individuals can be appropriately and adequately implemented.

66. Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, prohibits discrimination on the basis of disability by any agency receiving federal financial assistance.

67. Plaintiffs and the plaintiff class members all qualify as "individuals with handicaps" for purposes of Section 504.

68. Defendants are recipients of federal financial assistance within the meaning of Section 504.

**C. Plaintiffs' Current Plight.**

69. The plaintiff class members have mental retardation, are developmentally disabled, or engage in inappropriate behaviors that require correction through professional treatment. The plaintiff class is in need of services provided by the Division and is eligible to receive medical, habilitation, and prevocational assistance under the Medicaid provisions of the Social Security Act.

70. In the fall of 1985 federal surveyors from the Health Care Financing Administration, United States Department of Health and Human Services, and state surveyors from the Division of Health Care Financing, Utah State Department of Health, inspected the Utah State Developmental Center. They found significant deficiencies in the delivery of active treatment to the residents there. Those deficiencies included the failure to individualize program plans, the failure to follow developed individualized program plans, the failure to keep adequate data on the progress of individuals on their individualized program plans, the failure to make individualized plans sufficiently specific as to needs and goals to result in consistent aggressive training to develop necessary skills, and the failure to monitor and revise program plans when necessary.

71. Based upon the above-stated deficiencies, the Health Care Financing Administration proposed to decertify the Utah State Developmental Center for the purposes of receipt of Medicaid funds unless the deficiencies found were corrected. The Division developed a plan of corrections in early 1986 designed to meet active treatment standards within a four-year period.

72. Subsequent surveys by both state and federal inspectors of Health Care Financing Administration and the Division of Health Care Financing have documented numerous continuing deficiencies in the delivery of adequate active treatment.

73. A full survey of the Utah State Developmental Center was conducted in September of 1989 by surveyors of the State Survey Team of the Division of Health Care Financing, Utah State Department of Health. The survey team found that the Utah State Developmental Center fell below minimally adequate standards in the delivery of active treatment and in staffing. The system for delivering active treatment was inadequate at every phase. Assessments identifying strengths, deficits, and needed training were insufficient. Interdisciplinary evaluation of programming needs, with the goal of developing skills to allow the individual to function more independently in the least restrictive environment, was either fragmented, inadequate, or nonexistent. Individualized programs to develop skills which would allow the

resident to function more independently in the least restrictive environment were not consistently or adequately developed. Such individualized programs actually developed were not appropriately implemented due to a lack of staff training or integration across settings, such as between residential and workshop settings. Finally, programs were not revised when the individual failed to make progress or when the individual met all the goals incorporated into the program.

74. The failure to provide adequate active treatment results in inadequate habilitation services, the primary objective of programming at the Utah State Developmental Center.

75. Many members of the plaintiff class are not receiving adequate levels of active treatment. As a result, they face deterioration of their skills. They are subject to chemical and manual restraints because of inappropriate behaviors that are not properly modified by individualized treatment.

76. The majority of residents of the Utah State Developmental Center have other disabling conditions in addition to limitations in cognitive abilities. Those additional disabling conditions include behavioral and emotional impairments, severe and profound cognitive and adaptive skills limitations, mobility impairments, severe medical impairments, and severe physical impairments.



77. Individuals with one or more additional disabling conditions, as described in the previous paragraph, who receive residential services from Defendants reside to a disproportionate degree at the Utah State Developmental Center.

78. Those plaintiff class members with one or more additional disabling conditions, as described in the previous two paragraphs, could receive the services Defendants provide them now in a less restrictive, more normal community setting.

79. The less restrictive, normalized community residential placements established by Defendants have gone first and foremost to mentally retarded individuals without the additional disabling conditions described in the previous paragraph.

80. Defendants have failed to ensure that residential providers and those providing services to people with mental retardation or developmental disabilities in the community accommodate people with varying types or severities of their disabilities.

81. Due to these failures by Defendants, members of the plaintiff class with additional disabling conditions or severe or profound retardation are more likely to be institutionalized and less likely to receive community residential placements than other people with mental retardation or developmental disabilities.

82. The Utah State Developmental Center has been the first and only access to services for many individuals with mental retardation or developmental disabilities when it should be the last resort for services to those same individuals.

83. All residents at the Utah State Developmental Center could be served in a less restrictive environment in the community, in a more normal environment. Those individuals are not so served because Defendants have failed to plan for and create an adequate system of residential facilities where individuals can be served in the most normal environment.

84. Defendants do not fulfill their duty with respect to the provision of adequate treatment to the plaintiff class in the least restrictive environment.

85. Defendants inappropriately serve the plaintiff class in an institution where much of what they are taught are skills for living in an institution, and not in the community. This policy encourages long-term institutionalization and results in an increased use of restraints, denying the plaintiff class members the opportunity to develop to their full potential.

86. Defendants must evaluate yearly the service and program needs of each resident of the Utah State Developmental Center.

87. Part of the evaluation described in the previous paragraph is a determination of the environment in which those

necessary services, programs and supports can best be delivered, which is least restrictive, most enabling and consistent with the philosophy and mission statement of the Division.

88. Defendants must place individuals consistent with the conclusions of those evaluations described in the previous paragraph, and the decision of the interdisciplinary team.

89. Defendants have failed to ensure that said evaluations are professionally competent, consistent with statute and division policy.

90. Defendants have failed to comprehensively identify the service needs of the residents of the Utah State Developmental Center, and to take all necessary and appropriate actions to ensure that systems are developed and said residents are served consistent with appropriate professional judgment, state statute and division policy.

#### VII. CLAIMS FOR RELIEF

**First Cause of Action: Social Security Act claims/active treatment.**

91. Paragraphs 1 through 90 are incorporated herein by reference.

92. Defendants receive and use Medicaid funds for the provision of habilitation services to the plaintiff class.

93. As recipients of Medicaid funding, Defendants are required to provide the plaintiff class with adequate active

treatment, as mandated by 42 U.S.C. 6023(a) and 42 C.F.R. 483.440.

94. Defendants have failed and refused to deliver to the plaintiff class adequate levels of active treatment that meet the requirements of the Medicaid provisions of the Social Security Act.

**Third Cause of Action: Social Security Act - Least Restrictive Environment.**

95. Paragraphs 1 through 94 are incorporated herein by reference.

96. The regulations promulgated under the Medicaid provisions of the Social Security Act establish a goal of community integration of treatment for individuals with mental retardation. This goal is the essence of service in the least restrictive environment.

97. The Defendants' failure to provide services to plaintiff class members in the least restrictive environment violates the Medicaid provisions of the Social Security Act, 42 U.S.C. 1396d(d).

**Fourth Cause of Action: Provision of Habilitation.**

98. Paragraphs 1 through 97 are incorporated herein by reference.

99. Defendants are obligated under the due process clause of the fourteenth amendment to the Constitution of the United

States and Article I, Section 7 of the Constitution of Utah to provide minimally adequate habilitation to members of the plaintiff class. That treatment must meet a level at least equal to what medical experts have determined to be necessary for the individual plaintiff.

100. The Defendants have failed and refused to provide adequate habilitation services to the plaintiff class.

**Fifth Cause of Action: Protection from Harm.**

101. Paragraphs 1 through 100 are incorporated herein by reference.

102. Defendants are obligated under the due process clause of the fourteenth amendment to the Constitution of the United States to ensure class members protection from harm, when that harm results from the failure to deliver services necessary to avoid such harm.

103. Defendants' failure and refusal to provide adequate active treatment and habilitation services to plaintiff class members violates the due process clause of the fourteenth amendment to the Constitution of the United States protection of the right to be free from harm.

**Sixth Cause of Action: The Vocational Rehabilitation Act of 1973.**

104. Paragraphs 1 through 103 are incorporated herein by reference.

105. Each Plaintiff and plaintiff class member could be served in a less restrictive residential placement in the community.

106. Defendants have excluded many of the plaintiffs and plaintiff class members from community residential services solely on the basis of the type or severity of their disability.

107. Defendants participate in various federal programs including those developed under the Social Security Act and the Developmental Disabilities Act. Through such they receive federal financial assistance.

108. Defendants have violated the rights of plaintiffs and the plaintiff class members secured by 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794. The violations include, but are not limited to:

a. Denying plaintiffs and class members who are otherwise qualified the opportunity to participate in federally funded residential services solely on the basis of the severity or type of their disabilities;

b. Failing to provide otherwise qualified plaintiffs and class members federally funded residential services that are effective and meaningful, delivered in the most integrated settings appropriate to their needs;

c. Segregating otherwise qualified plaintiffs and class members with severe or profound mental retardation, behavioral, emotional and physical impairments, and special medical needs in institutions solely on the basis of their disability;

d. Failing to provide adequate home-like community residential options that are accessible for otherwise-qualified plaintiffs and plaintiff class members with physical impairments;

e. Denying community services to otherwise-qualified plaintiffs and plaintiff class members solely on the basis of the severity or type of their impairments;

f. Failing to ensure that residential providers and those providing services to people with mental retardation or developmental disabilities in the community accommodate people without regard to the type or severity of their impairments.

**Seventh Cause of Action: State Law Claim/State Right to Services  
in Least Restrictive Environment for  
Involuntarily Committed Residents.**

109. Paragraphs 1 through 108 are incorporated herein by reference.

110. Certain members of the plaintiff class have been involuntarily committed to the Utah State Developmental Center.

111. Those individuals involuntarily committed to the Utah State Developmental Center can be committed there only when that

facility is the least restrictive environment in which services can reasonably be given.

112. Pursuant to Utah Code Annotated §62A-5-103(1), Defendants have the duty to plan, develop, and manage an appropriate array of residential services.

113. Involuntary commitment of those plaintiff class members is only appropriate when the Utah State Developmental Center can provide the level of treatment, care, habilitation, or rehabilitation that is adequate and appropriate to their condition or needs.

114. Defendants have failed to develop an adequate number of less restrictive community residential services such that individuals involuntarily committed to the Utah State Developmental Center could be served in a less restrictive environment.

**Eighth Cause of Action: State law claims/minimally adequate services in the least restrictive most enabling environment, within appropriations.**

115. Paragraphs 1 through 114 are incorporated herein by reference.

116. Pursuant to Utah Code Annotated §62A-5-102(2), the Division is required to use the monies appropriated to it under the Division's single appropriation to deliver services to



Plaintiffs and the plaintiff class in the least restrictive, most enabling environment.

117. The Division receives a single appropriation from the Legislature each year. That single appropriation includes both funds for the Utah State Developmental Center and for community residential programs.

118. By the authority of Utah Code Annotated §63-38-3(2), Defendants may transfer monies authorized for one purpose under the Division's single appropriation to another purpose, with the Governor's approval.

119. Defendants have the authority to spend monies designated for services at the Utah State Developmental Center for other programs operated by the Division, including community residential programs.

120. In the past, Defendants have routinely underspent for community residential programs, and have concurrently overspent for the Utah State Developmental Center.

121. Defendants have failed to seek transfers of monies from more restrictive to less restrictive programs when that would be necessary to provide services to individuals in the least restrictive environment.

122. Defendants have sought the transfer of monies, and transferred monies from less restrictive community programs to

more restrictive programs, including the Utah State Developmental Center.

123. State law requires that available funds and monies from Title XIX of the Social Security Act be maximized to deliver services in the least restrictive environment.

124. Defendants compensate for undercollection of Medicaid reimbursements by underfunding community programs, but make no similar cuts in the Utah State Developmental Center budget.

125. Defendants have violated the provisions of the Section 102(2) by refusing to use those monies appropriated to the Division to develop an adequate system of small community residential facilities such that the Plaintiff and plaintiff class members could be served in the least restrictive, most enabling environment.

126. Defendants have violated Section 102(2) by prioritizing available state funding under the Division's single appropriation and Title XIX funds to maximize services in the most restrictive, least enabling environment.

**Ninth Cause of Action: Failure to Plan For Less Restrictive, More Enabling Services.**

127. Paragraphs 1 through 126 are incorporated herein by reference.

128. Over an extended period of time Defendants have failed to place Plaintiffs and plaintiff class members in less

restrictive, more enabling environments in which to receive services because of the absence of such facilities.

129. Defendants have never attempted to develop a plan under which sufficient less restrictive, more enabling placements would exist for residents of the Utah State Developmental Center.

130. The absence of less restrictive, more enabling residential placements for Plaintiffs and plaintiff class members has resulted from Defendants' failure to adequately plan for and create an array of services which would include those less restrictive, more enabling environments, in violation of Utah Code Annotated §62A-5-102(2).

131. Defendants have violated Section 102(2) by their failure to plan for, develop, and seek appropriations to fund an adequate system of small community residential facilities such that Plaintiffs and the plaintiff class members could be served in the least restrictive, most enabling environment.

**Tenth Cause of Action: Failure to Deliver Services Based on Individual Need.**

132. Paragraphs 1 through 131 are incorporated herein by reference.

133. Defendants have the authority and duty to evaluate the treatment needs and interests of each resident of the Utah State Developmental Center, in accordance with Utah Code Annotated §62A-5-206(5).



in which those treatment needs and best interests could be met, in violation of Sections 103(3) and 206(5).

**Twelfth Cause of Action: Placement In the Least Restrictive Environment Consistent with Individual Evaluation.**

139. Paragraphs 1 through 138 are incorporated herein by reference.

140. By the recent amendment of Utah Code Annotated §62A-5-201(4), defendants now must evaluate the individual needs of each resident of the Utah State Developmental Center consistent with the least restrictive, most enabling environment mandate of Utah Code Annotated §62A-5-102(2), and the mission statement and principles adopted by the Division.

141. According to those recent amendments to Utah Code Annotated §62A-5-201(4), the individual evaluations described in the previous paragraph must include input from parents and guardians concerning the most appropriate placement for each resident.

142. After determining the placement which is most appropriate for each resident, least restrictive, and consistent with the philosophy and mission of the Division, the defendants shall place each individual consistent with their individual evaluation and recommendations.

143. Consistent with the new mandate described in the previous paragraphs of this cause of action, Defendants have a corresponding duty to determine the service systems which must be developed to implement the above-described mandate, and to take all steps necessary to develop those systems.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

1. Grant declaratory judgment that Plaintiffs and plaintiff class members' rights have been violated as stated in this complaint and as may hereafter occur and be shown.

2. Grant declaratory judgment finding that Defendants must individually evaluate the service and programmatic needs of each plaintiff and plaintiff class member, consistent with the statutory mandate of Utah Code Annotated §62A-5-102(2) and Division philosophy and policy, and determine the least restrictive, most enabling environment in which those service and program needs can be met, and which is in the individual's best interest; that Defendants must take the recommendations from the individual evaluations of each resident, plan for and create adequate systems such that those recommendations can be implemented, and that each plaintiff and plaintiff class member be placed consistent with his or her individual evaluation.

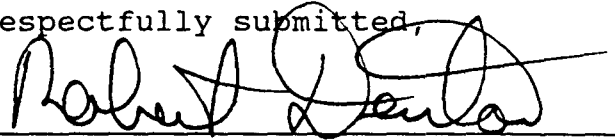
3. Grant a preliminary and final injunction requiring Defendants to cease all violations of the law as alleged above, appoint a special master to evaluate all residents of the Utah State Developmental Center to determine whether they can be served in a less restrictive environment, and order Defendants to design and construct an array of residential facilities which will allow them to serve Plaintiffs and the plaintiff class members in the least restrictive environment, most enabling consistent with their individual needs and best interests.

4. Award Plaintiffs and plaintiff class members their attorneys' fees and costs.

5. Grant such other and further relief to the Plaintiff and plaintiff class members class as the Court deems just and equitable in the premises, including, but not limited to, appointing a Special Master or other official to monitor and implement any injunction granted by the Court.

DATED this 11<sup>th</sup> day of May, 1993.

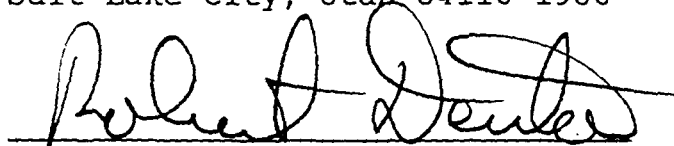
Respectfully submitted,

  
Robert B. Denton  
Mary A. Rudolph  
Attorneys for Plaintiffs and the  
Plaintiff Class

Mailing Certificate

I hereby certify that I caused to be mailed, postage prepaid, first class mail, a true and correct copy of the foregoing Second Amended Class Action Complaint, in Case No. 890907653, this 11<sup>th</sup> day of May, 1993, to the following:

Linda Luinstra  
Craig G. Barlow  
Assistant Attorneys General  
P.O. Box 1980  
120 North 200 West, Fourth Floor  
Salt Lake City, Utah 84110-1980

  
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