

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

SHELYNDRA BROWN, by her mother and next friend, **JESSE O'NEIL**; **RONALD ADSIDE**, by his father and next friend, **CLAUDE F. ADSIDE**; **HENRY SIMS** by his mother and next friend, **JEANETTE HARDIN**; **MERVYN MORELL**, by his father and next friend, **ISADRO MORELL**; **LYNDA FAYE JOHNSON**, by her guardian advocate and next friend, **SYLVIA SCOTT**; **KERRY MANGHAM**; and **THE ADVOCACY CENTER FOR PERSONS WITH DISABILITIES, INC.**;

Plaintiffs,


v.

LAWTON CHILES, in his official capacity as Governor of the State of Florida; **EDWARD FEAVER**, in his official capacity as Secretary, STATE OF FLORIDA, DEPARTMENT OF CHILDREN AND FAMILIES; **TAMARA ALLEN**, in her official capacity as Secretary, STATE OF FLORIDA, DEPARTMENT OF LABOR AND EMPLOYMENT SECURITY DIVISION OF VOCATIONAL REHABILITATION; **CHARLES KIMBER**, in his official capacity as Deputy Secretary for the DEPARTMENT OF CHILDREN AND FAMILIES; **MICHAEL MAYFIELD**, in his official capacity as Acting Superintendent, LANDMARK LEARNING CENTER; **TRACY CLEMMONS** in his official capacity as Superintendent, SUNLAND CENTER at MARIANNA; **MICHAEL MURPHY** in his official capacity as Superintendent, TACACHALE SUNLAND; **ROBERT MORIN** in his official capacity as Superintendent, GULF COAST CENTER; **ANITA BOCK**, in her official capacity as District Administrator for the Department of Children and Families in District XI; **JOHN AWAD** in his official capacity as District Administrator for the Department of Children and Families in District II; **ESTER TIBBS** in her official capacity as District Administrator for the Department of Children and Families in District III; **FRANCES GIBBONS** in his official capacity as District Administrator for the Department of Children and Families in District VIII; **DOUG COOK**, in his official capacity as Director of the Agency for Health Care Administration for the State of Florida; and **RICHARD T. LUTZ**, in his official capacity as Director of Florida Medicaid,

Defendants

98-673
CIV-HOEVELER

MAGISTRATE
JOHNSON

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CLASS ACTION COMPLAINT


1

PRELIMINARY STATEMENT

1. This action is brought by six persons who are confined to Florida's Developmental State Institutions for persons with developmental disabilities ("DSIs"). They bring this action on behalf of themselves and all individuals who currently are, or in the future will be confined to DSIs. This action is brought also by the Advocacy Center for Persons with Disabilities, Inc., in order to protect, and advocate for, those persons who are or in the future will be confined to DSIs.

2. The Department of Children and Families owns and operates four state institutions housing for persons with developmental disabilities: LANDMARK LEARNING CENTER ("LANDMARK"), SUNLAND CENTER AT MARIANNA ("MARIANNA"), TACACHALE SUNLAND ("TACACHALE"), AND GULF COAST CENTER ("GULF COAST"). Approximately 1439 individuals are confined and segregated in these state institutions.

3. Plaintiffs and class members have historically been and continue to be warehoused at these DSIs, receiving little or no habilitation. Plaintiffs and class members spend most of their time within the institution where they have little or no contact with persons without disabilities, other than staff. The living and environmental conditions are inhumane, unsafe, unsanitary and harmful. As a result of harmful conditions, many plaintiffs and class members are injured and some even die.

JURISDICTION

4. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 & 1343(3) and (4), and 42 U.S.C. § 1983. This Court is authorized to order the requested relief by these statutes and by 28 §§ 2201 and 2202.

5. This action arises under 42 U.S.C. § 12131, et seq., 29 U.S.C. § 794, and 42 U.S.C. § 1983.

VENUE

6. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b)(1) and (b)(2) because (i) all defendants reside in districts in Florida and defendants Michael Mayfield and Anita Bock reside in the Southern District of Florida and (ii) the cause of action arises within the Southern District of Florida as to Plaintiffs 1, 2, and 3.

PLAINTIFFS

7. SHELYNDRA BROWN, age 32, has been confined to LANDMARK for the past six years. She has been diagnosed with mild mental retardation and a seizure disorder, *inter alia*. In October, 1997, she was severely beaten at her segregated work program by another individual with a developmental disability. He pushed her from her wheelchair on the floor and struck her repeatedly on her face with a part of the wheelchair. Her jaw was shattered, and her arm was broken. She was sent to a local hospital to the intensive care unit. Before her confinement to Landmark, SHELYNDRA BROWN could ambulate; now she is no longer able to walk and must instead use a wheelchair for mobility. SHELYNDRA BROWN

lived at home with her mother until she was sixteen years old. Her mother wanted to keep her daughter at home, but did not receive from Defendants the supports and services which would enable her to do so. She receives Medicaid benefits. She brings this action by her mother and next friend Jesse O'Neill.

8. RONALD ADSIDE, age 42, has been confined to Landmark Learning Center for thirty-two years, since he was ten years old. He has been diagnosed with mental retardation and speech disorder, *inter alia*. DEFENDANTS have recommended that he be moved to a group home in the community, but they have not provided him with such a group home nor with necessary supports and services. He receives Medicaid benefits. He brings this action by his father, Claude Adside.

9. HENRY SIMS, age 39, has been confined to LANDMARK for twenty-eight years. He was eleven years old when state officials first confined him to LANDMARK. He has been diagnosed with mental retardation, deafness, blindness, a speech disorder, and congenital heart defect, *inter alia*. Defendants and their predecessors did not give his family supports and services to enable them to care for him at home. Defendants have recommended that HENRY SIMS be moved to a group home in the community, but defendants have not provided him with a group home nor with the necessary supports and services. He receives Medicaid benefits. He brings this action by his mother, Jeanette Hardin.

10. MERVYN MORELL, age 31, has been at GULF COAST since 1991. Until that time, he had lived with his family. Defendants

did not provide his family with adequate supports and services to maintain him at home nor did they otherwise meet his needs in the community. He was confined to GULF COAST because his family was not aware of any other options. MERVYN MORELL has been diagnosed with mental retardation, legal blindness and deafness. He has self-abusive behaviors, which have not been addressed. As a result of those behaviors, he has suffered serious and permanent harm to his face and body since he was confined to GULF COAST. He receives Medicaid benefits. He brings this action by his father, Isadro Morell.

11. LINDA FAYE JOHNSON, age 45, has been confined to TACACHALE SUNLAND since March 14, 1955, when she was two years old. Defendants failed to provide adequate supports and services in the community. She is a Medicaid recipient. She brings this action by her guardian advocate and her next friend, SYLVIA SCOTT.

12. KERRY MANGHAM, age 28, has been confined to MARIANNA since October, 1987. Defendants confined him to Marianna after he had been confined at St. Vincent's Hospital psychiatric unit in Jacksonville. Defendants failed to fund a home with adequate services so that he could remain in the community. He is a legally competent adult and has continually expressed his desire to live in an apartment of his own in the community of Marianna. Defendants have failed to provide him with the necessary services and supports to live in the community. He receives Medicaid benefits. He brings this action in his own capacity.

13. The Advocacy Center for Persons With Disabilities, Inc. ("Advocacy Center") provides protection and advocacy services to people with developmental disabilities pursuant to the Developmental Disabilities Act, 42 U.S.C. § 6042, and to people with mental illness pursuant to 42 U.S.C. § 10801, *et seq.* In order to fulfill its responsibility to protect and advocate for persons with developmental and mental disabilities, the Advocacy Center has authority to pursue legal remedies.

DEFENDANTS

14. Defendant LAWTON CHILES is the Governor of the State of Florida and of the United States of America. Under Art. IV, Sections 1 & 6, Fla. Const., he is the state's chief executive officer. CHILES has the responsibility to ensure that the agencies of the Executive Branch of the State, including the Department for Children and Families (DCF) and the Agency for Health Care Administration (AHCA), act in full compliance with the Constitution and the laws of the United States. The Governor is sued in his official capacity.

15. Defendant EDWARD FEAVER is Secretary of DCF. Under Fla. Stat. Section 20.19(c)(1987), he has administrative responsibility for and control of the administration of all services for people with developmental disabilities who are residents of the State of Florida, including people with developmental disabilities who are confined to the DSIs. He is sued in his official capacity.

16. Defendant CHARLES KIMBER has administrative responsibility for and control of the administration of all services to people with developmental disabilities who are residents of the State of Florida, including people with developmental disabilities who are confined to the DSIs and for integrating persons with developmental disabilities into the community in the most integrative settings pursuant to state and federal law. He is sued in his official capacity.

17. Defendant TAMARA ALLEN is the Secretary for the Department of Labor and Employment Security, Division of Vocational Rehabilitation. TAMARA ALLEN has the responsibility for prioritizing services to persons with the most severe disabilities, such as persons who are at DSIs. She is sued in her official capacity.

18. Defendant MICHAEL MAYFIELD is Acting Superintendent of LANDMARK. As such, he has day-to-day responsibility for and control of the operations of LANDMARK. He is sued in his official capacity.

19. Defendant MICHAEL MURPHY is Superintendent of TACACHALE. As such, he has day-to-day responsibility for and control of the operations of TACACHALE. He is sued in his official capacity.

20. Defendant TRACY CLEMMONS is Superintendent of MARIANNA. As such, he has day-to-day responsibility for and control of the operations of MARIANNA. He is sued in his official capacity.

21. Defendant ROBERT MORIN is Superintendent of GULF COAST. As such, he has day-to-day responsibility for and control of the operations of GULF COAST. He is sued in his official capacity.

22. Defendant ANITA BOCK is the District Administrator for the DCF in District XI, in which LANDMARK is located. She is sued in her official capacity.

23. Defendant JOHN AWAD is the District Administrator for the DCF in District II, in which Marianna is located. He is sued in his official capacity.

24. Defendant ESTER TIBBS is the District Administrator for the DCF in District III, in which Tacachale is located. She is sued in his official capacity.

25. Defendant FRANCES GIBBONS is the District Administrator for the DCF in District VIII, in which Gulf Coast is located. She is sued in her official capacity.

26. Defendant DOUG COOK is the Director of the Agency for Health Care Administration. He is sued here in his official capacity. He is responsible for administering the Florida Medicaid program so that it complies with federal law.

27. Defendant RICHARD T. LUTZ is the Director of the Division of Medicaid of AHCA. He is sued here in his official capacity. He is responsible for the overall operation of Medicaid and is required to ensure that it complies with federal law.

28. All defendants have at all relevant times acted under color of state law and knew of or should have known of the policies, practices, acts and conditions alleged.

CLASS ACTION ALLEGATIONS

29. Individual plaintiffs bring this action as a class action pursuant to Fed. R. Civ. P. 23.

30. The class is defined as all persons who on or after January 1, 1998 have resided, are residing or will reside at the DSIs, including all persons who have been transferred from DSIs to other settings, such as intermediate care facilities, group homes or skilled nursing facilities but remain defendants' responsibility; and all persons at risk of being sent to DSIs.

31. The class consists of more than 1439 individuals. The class is so numerous as to make joinder of all class members impracticable. Further, it is impossible to ascertain the future members of the class.

32. Questions of law and fact common to the class include, but are not limited to, whether the defendants have deprived them of:

- a. their right to be free from abuse and neglect;
- b. their right to humane treatment, including but not limited to, a safe and sanitary physical environment, adequate care, treatment, personal dignity, nutrition, language and communication services, adequate behavior management programs, and medical care;

- c. their right to adequate habilitation and training to prevent regression, to maximize their individual independence and to reach their full potential;
- d. their right to effective developmental services in the most integrated community setting appropriate to their needs;
- e. their right to adequate vocational training and opportunities for employment;

33. Named plaintiffs' claims are typical of the class they seek to represent in that they are all residents of DSIs who have suffered and are currently suffering from one or more of the violations of rights enumerated in this complaint.

34. Named plaintiffs will fairly and adequately protect and represent the interests of the class members and are capable of pursuing this action.

35. Plaintiffs bring this action under Fed. R. Civ. P. 23(b)(2) because the defendants have acted and are acting on grounds generally applicable to all members of the class, making appropriate declaratory and injunctive relief concerning the class as a whole.

STATEMENT OF FACTS

HISTORICAL BACKGROUND

36. In 1919, the Florida Legislature established its first institution for individuals with developmental disabilities, the Florida Farm Colony for the Epileptic and Feeble-Minded, located

in Alachua County. One of the avowed purposes of the statute was "that these unfortunates may be prevented from reproducing their kind, and the various communities and the State at Large relieved from the heavy economic and moral losses arising by reason of their existence." 1919 Fla. Laws Ch. 7887.

37. The Florida Farm Colony was built in 1921. Today, it is known as TACACHALE, aka, Sunland Training Center at Gainesville. Tacachale is the largest of Florida's four public institutions for people with developmental disabilities. Tacachale is segregated and isolated; it is on the other side of the railroad tracks from the town.

38. Until the 1970s, children with developmental disabilities were considered "uneducable." Many were completely excluded from the public school system. For parents, the only alternative to caring for their children 24 hours a day, 365 days a year, was to confine their children in DSIs.

39. Many individuals have spent most of their lives at DSIs, because state officials confined them during the time of institutional segregation of individuals with developmental disabilities. Although today state law prohibits individuals under age 18 from being confined to DSIs, state officials confined many named plaintiffs and class members to state institutions since they were young children. Many have grown to adulthood and even old age confined to institutions because they have never been provided with adequate supports and services in the community. For example, Plaintiff Lynda Faye Johnson was

confined to Tacachale at age 2 in 1955; she has spent almost her whole life at Tacachale. Plaintiff Ronald Adside, now age 42, was confined to Landmark in 1965 when it first opened; he was ten at the time, and has never had an opportunity to live in the community. Henry Sims, now age 38, was confined to LANDMARK in 1970, at age 11; for the past twenty-seven years he has been confined there, and has not had any opportunity to live in the community.

THE DSI PROGRAM

40. Since 1976, defendants have received federal funds to operate the DSIs through a federally-funded program under Title XIX of the Social Security Act (Medicaid) called Intermediate Care Facilities for the Mentally Retarded (ICF/MR), now known as Intermediate Care Facilities for the Developmentally Disabled (ICF/DD). In Florida, the federal government pays for approximately 55% of the cost of ICF/DD beds while the State of Florida pays the remaining 45%.

41. Today, the four DSIs have a total population of 1439 individuals whose programs were licensed as ICF/DDs and 137 individuals whose programs are not licensed as ICF/DDs. Tacachale is the largest DSI, with 523 individuals, 468 in ICF/DD programs and 55 in non-ICF/DD programs. Marianna has 340 individuals, with 260 in ICF/DD programs and 80 in non-ICF/DD programs. Gulf Coast has 328 individuals, who are all in ICF/DD programs. Landmark has 240 individuals, with 238 in ICF/DD programs and 2 in non-ICF/DD programs.

**PLAINTIFFS SUFFER HARM FROM CONFINEMENT
TO SEGREGATED INSTITUTIONS**

42. The DSIs are self-contained institutions. Day programs, recreational activities, social activities, educational activities and most medical care are provided in the same institution where people with developmental disabilities sleep and eat. Many people with developmental disabilities never leave the institution at all.

43. Defendants disregard plaintiffs' individual preferences. Plaintiffs are required to conform to an institutional schedule, which sets the time for them to wake, to shower, to eat, and to sleep. Plaintiffs are limited to congregate group activities.

44. Plaintiffs are denied privacy. Many bedrooms serve four or more people with developmental disabilities without any doors or walls to provide privacy. The bathrooms are designed to serve large groups of people with developmental disabilities.

**PLAINTIFFS ARE HARMED BY DENIAL OF NECESSARY
SUPPORTS AND SERVICES**

45. Defendants provide plaintiffs with very little in the way of active treatment. Typically, people with developmental disabilities have nothing to do for most of their waking hours. This idleness causes significant behavior problems to develop. Many incidents of abuse and self-abuse occur when individuals are idle.

46. A report by experts retained by Defendants' observed that at Gulf Coast, the staff use "relatively weak, positive teaching strategies to deal with severe behavior challenges in settings that often promote and maintain challenging behavior." The behavior plans were "very weak with respect to modifying environments, changing living arrangements, daytime program placements, etc. to better meet the wishes and needs of individuals. The most blatant example was in the area of day programs. . . many of the individuals seem to spend their days involved in 'activity traps' that they are not [sic] neither functional or interesting to them."

47. Staff who are on duty commonly ignore individuals with developmental disabilities. They watch television, read magazines, and play cards or talk with other staff, leaving the people with developmental disabilities unattended and vulnerable to abuse and self-abuse.

48. Plaintiffs are denied habilitation, which is the teaching and training process required by persons with developmental disabilities so that they can reach their potential in physical, social and mental growth.

49. Virtually all persons with severe disabilities have the capability, with proper education and training, to learn some basic self-care skills: to participate in feeding, toileting, mobility, and other bodily needs. Nearly all people with developmental disabilities could, with reasonable, individualized

instruction and adaptations, participate more in their self-help functions.

50. Active treatment is the formal process of training, treatment and care that must be delivered to each Medicaid-eligible resident of an ICF-DD. Active treatment is a professionally designed, consistently and aggressively implemented program of training, treatment and other services to enable each ICF/DD resident to function with the greatest self-determination and independence. 42 U.S.C. S 1396d(d); 42 C.F.R. S 483.440. Section 393.063(1) defines active treatment as "the provision of services by an interdisciplinary team necessary to maximize a client's individual independence or to prevent regression or loss of functional status."

51. Active treatment requires the development and implementation of an individualized program of intervention that is based upon and accountable to a comprehensive assessment of the individual needs of the resident and an individual habilitation plan (IHP).

52. Assessments for people with developmental disabilities are grossly inadequate.

53. Plans and programs remain the same from one year to another. They are not revised and updated in light of the person's changing needs.

54. In order to develop a proper habilitation plan, a person with a disability needs to participate, or to have a guardian, family member, advocate or friend assist them by

participating in the development of their habilitation plan. Many class members who need assistance to participate in their habilitation plan do not have guardians, family members, advocates or friends to assist them.

55. The number of professional staff who work at the institutions is inadequate. Most of the professional staff work Monday to Friday on the day shift, with little in the way of professional coverage on evenings, nights and week-ends.

56. The professional staff who are employed at the institutions do not adequately monitor the delivery of the programs they develop for class members. There is no effective method to ensure quality and consistency of performance among direct care staff.

57. Direct care staff at the institutions are not adequately trained to carry out individual program plans and often do not know the content of those plans. They do not understand the needs of individuals with developmental disabilities nor the techniques needed to teach them functional skills. They do not know how to collect meaningful progress data.

58. Employees bath, groom and dress residents with little knowledge of implementing training programs. Staff often do not use any of the residents' Individual Habilitation Plan programs.

59. Accurate and meaningful data that can show progress, regression, or lack of change are not kept.

60. The institutions lack the capability to deliver active treatment because the basic components of active treatment -- adequate professional staff, functioning interdisciplinary teams, adequate assessments, professionally-designed IHPs, and direct care staff trained and supervised in the delivery of each resident's plan -- do not exist.

61. Staff at the institutions fail to implement active treatment programs for people with developmental disabilities, especially those with severe disabilities and challenging behaviors.

62. Training programs at the DSIs depart substantially from professional judgment, standards and practice. They are inappropriate to the learning needs of persons with severe intellectual deficits. Training programs do not teach functional skills. People with developmental disabilities are denied the opportunity to learn the skills for activities of daily living, such as tooth-brushing, cooking and dressing.

63. Many people with developmental disabilities are capable of going to the store, choosing and purchasing their food, cooking and serving meals and caring for their own living units, but they have no opportunity to do so. Instead, meals are served in an assembly-line process designed to feed large groups of people with developmental disabilities. People with developmental disabilities do not participate in preparing and cooking the meals. Meals are not used to teach appropriate

social skills. Meals are often delivered cold and in an untimely manner.

64. Most people with developmental disabilities are not provided with adequate individualized adaptations to enable them to do things for themselves.

65. Many individuals who use mobility devices do not have individualized customization to meet their needs. Without customization, the individuals are placed at risk for injuries and contractures.

66. Defendants' failure to provide adequate physical and occupational therapies and related services results in a number of fractures/injuries to plaintiffs.

67. Nutritional management is of critical importance to people with developmental disabilities. DSI staff are not trained to feed persons with severe disabilities properly. Consequently, they fail to position people with developmental disabilities properly during meals, use appropriate feeding techniques, or effectively monitor people with developmental disabilities at meal time.

68. Communication services are a vital component of active treatment. If people with severe developmental disabilities are not provided with adequate intervention to address their speech and language needs, they will regress. The ability to communicate is essential for people with severe disabilities to have any control over their lives and to explain their medical

problems and needs. Increased ability to communicate may reduce frustrations that result in challenging behaviors.

69. People with developmental disabilities do not receive the speech therapy they need to improve or maintain their ability to understand others and communicate their needs. Staff make little use of sign language although many people with developmental disabilities could benefit from learning and using sign language.

70. Defendants fail to remove communication barriers to enable class members to participate in public services, programs and activities.

71. Adaptive equipment, including augmentative communication devices, and other devices to enable people with developmental disabilities to communicate, is seldom provided to individuals at the DSIs, and even when it is provided, it is seldom used.

72. The quality of life of persons there is unacceptable because there is no opportunity for learning, progress, participation in valued life activities, daily life style choices, privacy, safety, dignity and hope for improvement.

73. The consequences of defendants' failure to provide active treatment or to implement professional recommendations for finding adequate homes elsewhere, are devastating to class members. Their basic needs are neglected, their time is wasted, their bodies become constricted, and their behavior develops problems or deteriorates. They lose basic skills such as the

ability to speak and to walk. They are deprived of the opportunity to live in a decent home and to build relationships with persons who do not have disabilities. Their human potential is wasted.

74. At best, staff provide bare custodial care. More often, they fail to provide the attention necessary to safeguard people with developmental disabilities from deterioration, atrophy, physical injury and abuse.

PLAINTIFFS ARE HARMED BY ABUSE AND NEGLECT

75. Plaintiffs' class suffers many incidents of abuse and neglect at the DSIs. The rate of injury at DSIs and GULF COAST is appallingly high and many injuries are unexplained. For example, the fracture rate at GULF COAST has ranged from more than three times to more than five times the national average. Some individuals had as many as six fractures in a four year period. More than 57% of the fractures during 1996 were from unknown causes.

76. In large institutional settings such as DSIs, people with developmental disabilities with maladaptive behavior will hurt other people with developmental disabilities.

77. Reasonable professional attempts to prevent injury are not made. Staff fail to intervene when people with developmental disabilities injure themselves or others.

78. Staff have not been trained in behavior management of individuals with mental retardation. The responsibility for day-to-day care of people with developmental disabilities is

given to therapy aides who have no formal education or training in providing care to individuals with developmental disabilities.

79. Lack of trained staff and nonimplementation of programs contribute significantly to the high rate of injury.

80. DSI staff are not trained in the detection and reporting of abuse.

81. Tolerance of staff abuse of people with developmental disabilities is widespread. Staff do not report abuse because they have learned that reporting abuse would serve no purpose.

82. The administrations at the DSIs do not seek independent investigations of abuse. To the contrary, the administration routinely discounts and refuses to accept the results of outside investigations. The administrations manifest deliberate indifference to abuse and neglect.

DEFENDANTS USE UNNECESSARY RESTRAINTS

83. In the absence of adequate programming to teach positive behavior, people with developmental disabilities at DSIs are subjected to unnecessary restraints, both physical and chemical.

84. Medication for control of behavior is used at DSIs outside of and not in conjunction with the individual program plan in violation of ICF/DD standards.

85. People with developmental disabilities are often restrained when the demands of individual people with developmental disabilities become inconvenient for staff.

MEDICAL CARE IS INADEQUATE

86. Many people with developmental disabilities at DSIs do not receive adequate, timely medical or dental care. Their health problems often go unrecognized and untreated, resulting in unnecessary deaths, illnesses, disabilities, and suffering.

87. Medical staffing at the DSIs is not adequate to provide medical care that is consistent with professional standards. The level of primary medical care, and of specialized consultation and care. is seriously deficient.

88. Doctors, nurses and other staff at LANDMARK, MARIANNA, TACACHALE, and GULF COAST have little, if any, training in providing care to individuals with developmental disabilities.

89. Medical records and charts maintained for people with developmental disabilities are frequently inadequate and incomplete. Charting of persons with developmental disabilities' behavior, condition and progress on a daily basis is haphazard at best.

90. Because persons with developmental disabilities' physical conditions are not routinely monitored, medical treatment often does not begin until after a resident's condition has seriously deteriorated.

91. Long range planning for managing persons with chronic mental conditions is inadequate. The institutions fail to conduct basic and routine procedures for monitoring the course of chronic medical conditions and diseases.

92. DSIs do not provide adequate preventative health and dental care.

93. Poor medical care has resulted in injury and even death in some cases. For example, at LANDMARK, in 1995, L. D., age 32, died from internal blood loss as a result of a broken thigh bone. The injury was untreated for eleven hours, and L. D. died waiting for an X ray on a hospital gurney. The injury which caused his death -- the broken thigh bone -- was unexplained.

94. Individuals have been injured and even died as a result of poor emergency care. For example, at Marianna, A.C. choked on marshmallow candy. Resuscitation efforts by Marianna's medical staff were unsuccessful. The mortality review indicates that she was intubated in the wrong place, the esophagus, when the air tube should have been inserted in her wind pipe.

95. At GULF COAST, S, age 31, who had a severe seizure disorder, was found dead. The autopsy stated that she died from respiratory and heart failure(s). At the time of her death, her Dilantin (seizure medication) level was very low, which may have lead to a grand mal seizure.

96. Medical staff repeatedly fail to order necessary medical tests and document life-threatening illness and unexplained injuries. Important medical symptoms are ignored. Sometimes staff simply attribute medical complaints to personality problems of patients rather than investigating symptoms.

BEHAVIOR MANAGEMENT PROGRAMS ARE NOT ADEQUATE

97. Many individuals are confined to DSIs because of behavior problems. Behavior management is an important component

of habilitation and active treatment. However, the DSIs have few if any programs to deal with individuals with severe behavioral problems. Physical and chemical restraints frequently are used as a substitute for appropriate behavior management techniques. Medication is often prescribed without a therapeutic goal. As a result, the behavior problems of individuals with developmental disabilities escalate.

98. Documentation of persons with developmental disabilities' behavior is inaccurate, unreliable, inconsistent and incomplete. The inadequacy of behavioral record-keeping deprives professional staff of the information necessary to make safe and appropriate professional decisions regarding training.

99. Direct care and other staff have not been trained to implement the behavior programs of the people with developmental disabilities they supervise.

100. The inability of the staff to deal with continual behavior problems results in more frequent accidents and injuries to persons with developmental disabilities.

101. The behavior management practices are inadequate to prevent or reduce the incidence of abuse and injury to individuals with developmental disabilities, or to ensure freedom from undue restraint.

**VOCATIONAL TRAINING AND OPPORTUNITIES FOR
EMPLOYMENT ARE NOT ADEQUATE**

102. People with severe and profound mental retardation and challenging behaviors can participate in productive work. They can work at real jobs in real workplaces.

103. With individualized and systemic instruction and practice, most persons with developmental disabilities at DSIs have the capability to learn and maintain vocational skills.

104. The opportunity to use and practice vocational skills in real work settings enables persons with severe disabilities to earn wages and decrease their dependence on public support, and also provides the benefits of participating in the community in a valued role -- worker -- and developing relationships with co-workers, friends and other persons without disabilities. The opportunity to work in real job settings allows for modeling and learning appropriate work habits and social behaviors from peers without disabilities -- something that is not possible at DSIs.

105. Many people with developmental disabilities at DSIs do leave their cottages for two hours of "pre-vocational" or "work" activities. These programs do not provide any training in skills that can be used in real jobs.

106. The Division of Vocational Rehabilitation (DVR) is charged with serving individuals with the most severe disabilities. Individuals confined to DSIs have most severe disabilities. Nonetheless, DVR does not provide any meaningful vocational services to individuals who are confined to DSIs even though such services are clearly needed.

107. DVR does not do any outreach to individuals who are confined to DSIs. DVR staff does not regularly visit DSIs or inform individuals, guardians and families about their vocational services to DSIs available from DVR. DVR does not make any accommodations or take any other action to assist individuals who are confined to DSIs with applying for assistance from DVR.

MANY PERSONS REGRESS AT DSIS

108. As a result of the conditions at LANDMARK, MARIANNA, TACACHALE, and GULF COAST, many persons with developmental disabilities have significantly regressed.

ARCHITECTURAL BARRIERS HAVE NOT BEEN REMOVED

109. There are many architectural barriers at DSIs that deny class members the opportunity to participate equally in public services, programs, and activities.

ATTORNEYS FEES

110. Plaintiffs have been obliged to retain counsel who filed this action. Plaintiffs therefore are entitled to attorneys fees under 42 U.S.C. §§ 1983 and 12205.

CLAIMS

COUNT I: AMERICANS WITH DISABILITIES ACT

111. On July 12, 1990, Congress enacted the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*, (ADA), establishing the most important civil rights for persons with disabilities in our nation's history.

112. Congress stated in its findings that, "historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem." 42 U.S.C. § 12101(a)(2).

113. Congress found that "discrimination against individuals with disabilities persists in . . . institutionalization . . . and access to public services." 42 U.S.C. § 12101(a)(3).

114. Congress found that "individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion . . . , segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities." 42 U.S.C. § 12101(a)(5).

115. Congress further found that:

individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society.

42 U.S.C. § 12101(a)(7).

116. A major purpose of the ADA is to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities, and to provide clear, strong, consistent and enforceable standards

addressing discrimination against individuals with disabilities.
42 U.S.C. § 12101(b)1&2.

117. The defendants themselves recognize that persons with developmental disabilities benefit greatly from living in the most typical and integrated setting possible, where they have opportunities to practice daily living skills in typical environments and to exercise choice and judgment.

118. Since at least 1985, Florida state law has provided that, for new facilities, an ICF/MR shall have a capacity of no more than 120 people. More recently, a Florida state law was enacted to prohibit the licensure and operation of any ICF/DD which houses more than six persons with developmental disabilities. The DSIs would not be licensed under present law.

119. Research and experience have conclusively demonstrated that people with developmental disabilities are substantially better off in integrated community settings than in large institutional settings like the DSIs.

120. The question of whether people with retardation and developmental disabilities are substantially better off in family-scale, integrated settings rather than large congregate settings (settings of more than 15 individuals) is no longer an issue for scholars and professionals in the field. There is strong consensus among scholars who have studied the relation between the size and quality of care that family-scale residences are substantially better than institutions for people with developmental disabilities in every way.

121. DCF has applied for and received a waiver from the Health Care Financing Administration of the United States Department of Health and Human Services. The waiver provides the same federal match -- 55 cents for every 45 cents -- that defendants receive for services at DSIs. Effective use of the Federal Medicaid Waiver Program would enable Florida to provide integrated services to persons currently residing at DSIs at no greater expense to the state treasury.

122. Defendants do not plan for services based on the identified needs of individuals. People are sent to DSIs not because the service meets their individual needs but because institutional beds are available while services in the community are not available.

123. DVR does not provide any meaningful vocational services to individuals who are confined to DSIs even though such services are clearly needed.

124. Each plaintiff and each class member is "a qualified individual with a disability" within the meaning of 42 U.S.C. § 12131(2).

125. Defendants operate public entities and are therefore subject to Title II of the ADA, 42 U.S.C. §§ 12161-12165.

126. Defendants have violated the rights of plaintiffs secured by Title II of the Americans With Disabilities Act of 1990, 42 U.S.C. §§ 12161-12165 and regulations promulgated pursuant thereto, at 28 C.F.R. Part 35 by:

a. Denying plaintiffs and class members the opportunity to participate in, and the benefits of, public services and programs that are as effective and meaningful as those delivered to other citizens and that are delivered in less separate, more integrated settings; and

b. Failing to make reasonable accommodations and modifications in policies, practices and procedures to enable class members to participate in integrated public services and programs; and

c. Failing to make reasonable accommodations and modifications in policies, practices and procedures to enable class members to participate in vocational rehabilitation programs in the community, including failing to provide outreach to individuals confined to DSIs about services available from DVR; failing to assist individuals confined to DSIs in applying for services from DVR; failing to do appropriate assessments regarding individuals confined to DSIs, and failing to provide meaningful vocational rehabilitation services to individuals confined to DSIs;

d. Imposing eligibility criteria that unnecessarily exclude certain classes of individuals with disabilities and to prevent class members from fully and equally enjoying public services, programs, and activities; and

e. Failing to administer public services, program and activities from class members in the most integrated setting appropriate to their individual needs; and

f. Failing to furnish appropriate auxiliary aids and services to enable class members and equal opportunity to participate in, and enjoy the benefits of, public services, programs and activities; and

g. Failing to remove architectural and communication barriers to enable class members to participate in public services, programs and activities;

h. Segregating people with developmental disabilities at LANDMARK, GULF COAST, TACACHALE, and MARIANNA; and

i. Aiding and perpetuating discrimination against class members in public services.

COUNT II: SECTION 504 OF THE REHABILITATION ACT

127. Defendants receive federal funds and are therefore subject to the requirements of Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794.

128. Plaintiffs meet the definition of having a "handicap" within the meaning of 29 U.S.C. § 706(7) and are otherwise qualified individuals under Section 504.

129. Defendants have violated the rights of plaintiffs secured by §§ 100 and 504 of the rehabilitation Act of 1973, as amended, 29 U.S.C. §§ 720 and 794, and regulations promulgated pursuant thereto, 45 C.F.R. parts 84 and 1361, by:

a. Denying plaintiffs and class members the benefits of federally assisted services and programs; and

b. Failing to provide plaintiffs and the class federally assisted services that are as effective and meaningful as those delivered to other persons and that are delivered in less separate, more integrated settings; and

c. Failing to make reasonable accommodations and modifications in policies, practices and procedures to enable class members to participate in vocational rehabilitation programs in the community, including failing to provide outreach to individuals confined to DSIs about services available from DVR; failing to assist individuals confined to DSIs in applying for services from DVR; failing to do appropriate assessments regarding individuals confined to DSIs, and failing to provide meaningful vocational rehabilitation services to individuals confined to DSIs;

d. Denying plaintiffs and the class the benefits of federally assisted training, habilitation and other programs on the basis of the severity of their intellectual or other disabilities; and

e. Segregating people with developmental disabilities at LANDMARK, GULF COAST, TACACHALE, and MARIANNA; and

f. Providing federally assisted services to persons with severe intellectual disabilities and for people with physical or behavioral disabilities only in segregated settings; and

g. Aiding and perpetuating discrimination against named plaintiffs and class members in federally-funded programs.

130. Defendants' practices, policies and procedures described above, violate the rights of plaintiffs and class members that are secured by Section 504 by discriminating against these individuals solely on the basis of disability.

COUNT III: REHABILITATION ACT AND 42 U.S.C. § 1983

131. The Rehabilitation Act of 1973, 29 U.S.C. § 720, et al., and 42 U.S.C. § 1983, require that defendant DVR provide vocational rehabilitation services to individuals with the most severe disabilities.

132. Plaintiffs and class members have disabilities as determined pursuant to title II or title XVI of the Social Security Act.

133. Plaintiffs have physical or mental impairments which result in a substantial impediment to employment.

134. Plaintiffs have a severe physical or mental impairment which seriously limits one or more functional capacities in terms of an employment outcome under 29 U.S.C. § 706(15)(A)(i).

135. Plaintiffs and class members are individuals with most severe disabilities under 29 U.S.C. § 722(a)(2) and 706(15)(A)(i).

136. Defendant Allen violates the requirements of 29 U.S.C. § 720, et al., by

a. failing to provide outreach to individuals confined to DSIs about services available from DVR;

b. failing to assist individuals confined to DSIs in applying for services from DVR;

c. failing to do appropriate assessments regarding individuals confined to DSIs,

d. failing to provide meaningful vocational rehabilitation services to individuals confined to DSIs.

COUNT IV: SOCIAL SECURITY ACT

137. Plaintiffs and class members receive Medicaid benefits.

138. Defendants have violated the rights of plaintiffs secured by Title XIX of the Social Security Act, 42 U.S.C. §§ 1396, 1396(a), and 1396d(d), the regulations promulgated pursuant thereto, 42 C.F.R. § 435.1009; part 483, subpart D; and part 456, subparts E, F, and I, and by 42 U.S.C. § 1983, by

a. Failing to exercise adequate operating direction over the institutions as required by 42 C.F.R. § 483.410(a)(1); and

b. Failing adequately to document plaintiffs' and class members' health care, active treatment, and other information as required by 42 C.F.R. §§ 483.410(c)(1) and 483.440(c)(5)(iv); and

c. Failing to allow and encourage plaintiffs and the class to exercise their rights as citizens, as required by 42 C.F.R. § 483.420(a)(3); and

d. Failure to enable plaintiffs and the class to communicate, associate and meet privately with persons of their choice, and to participate in social, religious and community

group activities, as required by 42 C.F.R. § 483.420(a)(9) and (11); and

e. Failing to enable plaintiffs and the class to retain and use appropriate personal possessions and clothing, as required by 42 C.F.R. § 483.420(a)(12); and

f. Failing to promote participation of plaintiffs' and class members' parents and legal guardians in the process of providing active treatment to plaintiffs and class members, as required by 42 C.F.R. § 483.420(c)(1); and

g. Failing to implement procedures that prohibit physical, verbal, sexual and psychological abuse or punishment, as required by 42 C.F.R. § 483.420(d)(1); and

h. Failing to provide an active treatment program that is integrated, coordinated and monitored by a qualified professional for persons with developmental disabilities, as required by 42 C.F.R. § 483.430(a); and

i. Failing to provide sufficient professional staff and adequate professional program services to implement the active treatment program defined by each plaintiff and class member's individuals program plan, as required by 42 C.F.R. § 483.430(b); and

j. Failing to provide appropriately qualified, trained and competent staff in numbers that are sufficient to assist and supervise plaintiffs and the class in carrying out their individual program plans, as required by 42 C.F.R. 483.430(c), (d) and (e); and

k. Failing to provide plaintiffs and class members with a continuous, aggressively and consistently implemented program of active treatment, consisting of needed interventions and services in sufficient number and frequency to enable plaintiffs to attain as much self-determination, independence and optimal functional status as possible, as required by 42 C.F.R. § 483.440(a); and

l. Failing to provide plaintiffs and the class with adequate post-discharge plans, as required by 42 C.F.R. § 483.440(b); and

m. Failing to provide plaintiffs and the class with accurate, comprehensive functional assessments identifying their developmental strengths, their developmental and behavioral needs, and their need for services, without regard to the need for availability of services, as required by 42 C.F.R. § 483.440(c)(3); and

n. Failing to provide plaintiffs and the class with adequate individual program plans setting forth the specific objectives necessary to meet the individual's needs, as required by 42 C.F.R. § 483.440(c)(4); and

o. Failing to ensure that class members' individual program plans identify the mechanical supports needed to achieve proper body position, balance or alignment and specify the reason for each support, the situations in which it is to be applied, and a schedule for its use, as required by 42 C.F.R. § 483.440(c)(6)(iv); and

p. Failing to ensure that class members' individual program plans include opportunities for choice and self-management, as required by 42 C.F.R. § 483.440(c)(6)(vi); and

q. Failing to ensure that each plaintiff's and class member's individual program plan is implemented by all staff who work with that person, as required by 42 C.F.R. § 483.440(d)(3); and

r. Failing to ensure that each plaintiff's and class member's comprehensive functional assessment is reviewed as least annually by the interdisciplinary team for relevancy and updated as need, and that person's individual program plan be revised, as appropriate, s required by 42 C.F.R. § 483.440(f)(2); and

s. Failing to ensure that interventions for managing challenging behavior of plaintiffs and class members are employed with sufficient safeguards and supervision to protect their safety, welfare and civil and human rights, as required by 42 C.F.R. § 483.450(b)(2); and

t. Failing to incorporate the use of systematic interventions to manage inappropriate behavior into class members' individual program plans, as required by 42 C.F.R. § 483.450(b)(4); and

u. Failing to assure that drugs for control of inappropriate behavior are approved by the interdisciplinary team and used only as an integral part of an individual program plan

that is directed specifically toward the reduction of and eventual elimination of the behaviors for which the drugs are employed, as required by 42 C.F.R. § 483.450(e)(2); and

v. Failing to provide medical services necessary to maintain an optimum level of health of each individual and prevent disability, as required by 42 C.F.R. § 483.460(b); and

w. Failing to assure that health services are integrated into the class member's individual program plan, as required by 42 C.F.R. § 483.460(b); and

x. Failing to assure that class members have an adequate living environment, as required by 42 C.F.R. § 483.470; and

y. Failing to assure adequate food, nutrition, and meal services, as required by 42 C.F.R. 483.480; and

z. Failing to maintain the compliance of DSIs, with the conditions of participation for intermediate care facilities for persons with developmental disabilities; and

aa. Failing to determine whether services available at LANDMARK, GULF COAST, TACACHALE, and MARIANNA, are adequate to meet their health, rehabilitative and social needs and to promote their maximum physical, mental, and psychosocial functions, as required by 42 C.F.R. § 456.609(a); and

ab. Failing to determine whether it is necessary and desirable for plaintiffs and class members to remain at LANDMARK, GULF COAST, TACACHALE, and MARIANNA, as required by 42 C.F.R. § 456.609(b); and

ac. Failing to review the appropriateness of plaintiffs' and class members' continued segregation at LANDMARK, GULF COAST, TACACHALE, and MARIANNA, and failing to determine the feasibility of meeting their needs through alternative noninstitutional services, as required by 42 C.F.R. § 456.609(c); and

ad. Failing to ensure adequate utilization review and discharge planning; and

ae. Failing properly to evaluate each plaintiff's need for admission prior to movement to LANDMARK, GULF COAST, TACACHALE, and MARIANNA.

**COUNT V: DUE PROCESS CLAUSE OF THE
UNITED STATES CONSTITUTION AND 42 U.S.C. § 1983**

139. Defendants have violated the rights of plaintiffs secured by the Due Process Clause of the United States Constitution, and by 42 U.S.C. § 1983, by:

a. Subjecting plaintiffs and the class to harm and injury, including abuse, injuries from accidents and neglect, regression, physical deterioration, deprivation of social relationships, and the harms arising from segregation and confinement; and

b. Failing to provide adequate shelter, clothing, food and health care; and

c. Imposing unnecessary restraints, physical and chemical; and

d. Failing to provide minimally adequate habilitation and training; and

e. Failing to give consideration to the habilitative living situations and other needs and rights of each individual class member, treating him or her in accordance with his or her own situation; and

f. Conclusively presuming that class members cannot benefit from particular services or cannot live in non-institutional settings; and

g. Denying the class members an adequate opportunity to be heard on the appropriateness of their habilitative plan, programs and environment; and

h. Failing to provide a friend-advocate to assist each class member to exercise his or her rights enumerated above; and;

i. Failing, in the actions and inactions set forth above, to exercise true professional judgment.

**COUNT VI: EQUAL PROTECTION CLAUSE OF THE
UNITED STATES CONSTITUTION AND 42 U.S.C. § 1983**

140. Defendants have violated the rights of plaintiffs and the class secured by the Equal Protection Clause of the Fourteenth Amendment and 42 U.S.C. § 1983 by establishing, encouraging and otherwise sanctioning in *de jure* fashion enactments, programs, policies and practices that have excluded, separated and segregated persons with developmental disabilities without any rational basis.

RELIEF

WHEREFORE, plaintiffs respectfully request that this Court:

1. Declare that defendants' actions and inactions, as described herein, violate plaintiffs' rights under the Americans with Disabilities Act and implementing federal regulations; the Rehabilitation Act of 1973 and implementing federal regulations; Title XIX of the Social Security Act and implementing federal regulations; the Due Process Clause of the Fourteenth Amendment to the United States Constitution; and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

2. After hearing, preliminarily and permanent enjoin the defendants:

a. to provide each plaintiff and each member of the plaintiff class with effective developmental services in an integrated community setting with the necessary support services to meet the individual's needs;

b. to make available the necessary alternative residential facilities, home services and vocational and day services in the community;

c. to cease admitting persons to LANDMARK, MARIANNA, TACACHALE, and GULF COAST or from transferring present people with developmental disabilities at LANDMARK, MARIANNA, TACACHALE, and GULF COAST from LANDMARK, MARIANNA, TACACHALE, and GULF COAST unless such transfer is to the

most integrated community setting appropriate to their needs, and appropriate developmental services are provided;

d. to request, train and assign sufficient numbers of case managers and qualified mental retardation professionals to develop written individualized habilitation and discharge plans for each plaintiff and members of the plaintiff class and to provide an individualized habilitation program for each;

e. to establish a system to prevent abuse and neglect of people with developmental disabilities at LANDMARK, MARIANNA, TACACHALE, and GULF COAST, to thoroughly and promptly investigate allegations of abuse and neglect and to establish appropriate disciplinary consequences for abuse and neglect of people with developmental disabilities by staff;

f. to develop and implement a professionally designed, consistently and aggressively implemented program of training, treatment, and other services to each person at LANDMARK, MARIANNA, TACACHALE, and GULF COAST to enable him or her to function with the greatest self-determination and independence possible;

g. to provide a safe environment for each class member at LANDMARK, MARIANNA, TACACHALE, and GULF COAST;

h. to make available a friend-advocate to each plaintiff and member of the plaintiff class to assist each

in securing the substantive and procedural protections
aforesaid;

i. to make available with dispatch the necessary
alternative of a small home in the community with adequate home
services, vocational and day services in the community,
including:

(1) an effective, independent, conflict-free
system of case management and service coordination for class
members; and

(2) identification of the support and services
needed by class members by a process of person-centered planning;
and

(3) service plans based on need rather than
availability of services reflecting the value of supporting the
person with relationships, productive work, participation in
community life, and personal decision-making; and

(4) a system of personal advocacy and self-
advocacy to assist class members in asserting their rights; and

(5) an effective, systematic resource
development capability, including but not limited to, a program
to ensure the availability of appropriate community residential
services; appropriate medical, dental, psychiatric, therapeutic,
and behavioral support services; appropriate community-integrated
employment services and other day activities in community-
integrated employment services and other day activities in
community-integrated settings; and

(6) an effective quality assurance system in the community capable of detecting and remedying problems in class members' programs in a systemic and coordinated fashion; and effective, mutually supportive management information systems of reporting, oversight and communication of information are organized and operational; and

(7) effective performance contracting systems.

j. to provide class members and their families with an opportunity to be heard by a neutral decision-maker on the substance of their program and future home;

k. to submit to plaintiffs and to the Court for its approval a plan for implementation of the aforesaid.

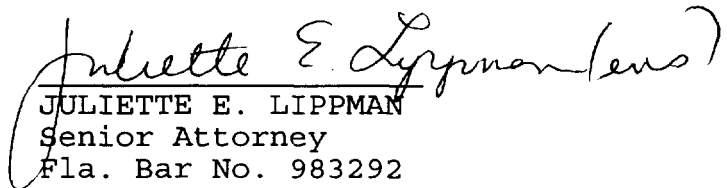
3. Award plaintiffs their costs and attorneys' fees; and

4. Grant such other relief as is appropriate.

Respectfully submitted,

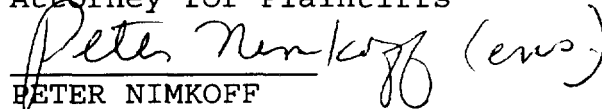


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CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I (a) PLAINTIFFS Shelyndra Brown, by her mother and next friend, Jesse O'neil; Ronald Adside, by his father and next friend, Claude F. Adside; Henry Sims by his mother and friend, Jeanette Hardin; ****please see attachment****

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF **DADE** (EXCEPT IN U.S. PLAINTIFF CASES)

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Ellen Saideman, Juliette Lippman
The Advocacy Center
****please see attachment****

(d) CIRCLE COUNTY WHERE ACTION AROSE:

DADE, MONROE, BROWARD, PALM BEACH, MARTIN, ST. LUCIE, INDIAN RIVER, OKEECHOBEE, HIGHLANDS

II. BASIS OF JURISDICTION

(PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Case Only)

- Citizen of This State ☐ 1
Citizen of Another State ☐ 2
Citizen or Subject of a Foreign Country ☐ 3
- PTF DEF
☐ 1 ☐ 1
☐ 2 ☐ 2
☐ 3 ☐ 3

(PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- Incorporated or Principal Place of Business in This State
Incorporated or Principal Place of Business in Another State
Foreign Nation

IV. CAUSE OF ACTION

DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY. **42 USC § 12101, et seq; 29 USC § 794, 29 USC § 720 et seq, 42 USC § 1396 et seq, Due process and equal protection clause of the fourteenth amendment; and 42 USC § 1983. Plaintiffs seek declaratory and**
****please see attachment 1****

IVa. days estimated (for both sides) to try entire case

V. NATURE OF SUIT

(PLACE AN X IN ONE BOX ONLY)

A CONTACT	A TORTS	B FORFEITURE PENALTY	A BANKRUPTCY	A OTHER STATUS
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl Veterans) B <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits B <input type="checkbox"/> 160 Stockholder's Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL PROPERTY <input type="checkbox"/> 362 Personal Injury Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personnel Injury Product Liability <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending B <input type="checkbox"/> 380 Other Personnel Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Rags <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other A LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor Management Relations B <input type="checkbox"/> 730 Labor Management Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Ret. Inc. Security Act B	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 A PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark B SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSD Title XVI <input type="checkbox"/> 865 RSI (405(g)) A FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609	<input type="checkbox"/> 400 States Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc B <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12USC3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions * * A or B
A REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure B <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	A CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input checked="" type="checkbox"/> 440 Other Civil Rights	B PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> 530 General * <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other * <input type="checkbox"/> 550 Civil Rights * A or B		

VI. ORIGIN

(PLACE AN X IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
☐ 2 Removed From State Court
☐ 3 Remanded from Appellate Court
☐ 4 Rehef
☐ 5 Transferred from another district (Specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED

IN COMPLAINT

VIII. RELATED CASE(S) IF ANY

DATE

(See Instructions):

CLASS ACTION

DEMAND \$

JURY DEMAND:

YES
NO

JUDGE **Ferguson**

DOCKET NUMBER **96-6619-CIV**

SIGNATURE OF ATTORNEY OF RECORD

UNITED STATES DISTRICT COURT

SF 1-2

REV. 9/94

FOR OFFICE USE ONLY: Receipt No

Date Paid:

Amount:

M/tp:

513333

03-24-98

\$150.00

ATTACHMENT

I(a) PLAINTIFFS

Mervyn Morell, by his father and next friend, Isadro Morell; Lynda Faye Johnson, by her guardian advocate and next friend Sylvia Scott; Kerry Magham, and The Advocacy Center For Persons With Disabilities, Inc.

DEFENDANTS

official capacity, Tracey Clemons, in his official capacity, Michael Murphy, in his official capacity, Robert Morin, in his official capacity, Anita Bock, in her official capacity, John Awad, in his official capacity, Ester Tibbs in her official capacity, Francis Gibbons, in his official capacity.

(c) Attorneys for Plaintiffs

2901 Stirling Road / Suite 206, Ft. Lauderdale, FL 33312
954-967-1493 and Peter Nimkoff, The Advocacy Center
2671 Executive Center, Circle West / Suite 100, Tallahassee
Florida 32301-5092 / 850-488-9071

IV. Cause of Action

injunctive relief for defendants' violations of 42 USC § 12101 et al, by confining them to state developmental institutions and denying them services in integrated settings among other things.