

Danny S. Wilde  
Michael H. Reese  
Michael R. O'Donnell  
Attorneys for Plaintiffs  
Protection & Advocacy System, Inc.  
2424 Pioneer Avenue, Suite 101  
Cheyenne, Wyoming 82001

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF WYOMING

ANNA MARIA WESTON, by her  
guardian Barbra Weston

DEBRA MALMBORG, by her  
next friend Kari Ellerbeck

EARL LADEBURG, by his  
next friend Doris Lowe

STEVEN ROMANJENKO, by his  
next friend Mike Romanjenko

JORDAN BRIAN HALL, by his  
next friends Brian Hall and  
Kaloni Hall

STEPHEN WAYNE HENDERSON, by his  
next friend Shirley Henderson

TIMOTHY DUANE KEOWN, by his  
guardians Duane Keown and  
Betty Pearson

Plaintiffs,

v.

WYOMING STATE TRAINING SCHOOL,

CIVIL ACTION NO. 90-

**C90-0004**

CLASS ACTION COMPLAINT

ROBERT CLABBY II in his official )  
 capacity as Superintendent of the )  
 Wyoming State Training School, )  
 )  
 WYOMING BOARD OF CHARITIES AND )  
 REFORM, )  
 )  
 MIKE SULLIVAN, KATHY KARPAN, )  
 JACK SIDI, STAN SMITH, and LYNN )  
 SIMONS, in their official )  
 capacities as members of the )  
 Wyoming Board of Charities and )  
 Reform, )  
 )  
 K. GARY SHERMAN, in his official )  
 capacity as Executive Secretary )  
 of the Wyoming Board of Charities )  
 and Reform, )  
 )  
 SHERRI LOVERCHECK, in her official )  
 capacity as Human Services )  
 Administrator of the Wyoming Board )  
 of Charities and Reform, )  
 )  
 WYOMING DEPARTMENT OF HEALTH AND )  
 SOCIAL SERVICES, )  
 )  
 KENNETH B. HEINLEIN, in his )  
 official capacity )  
 as Interim Director of the )  
 Wyoming Department of Health and )  
 Social Services, )  
 )  
 STEVEN E. ZIMMERMAN, in his )  
 official capacity as Administrator )  
 of the Division of Community )  
 Programs of the Wyoming )  
 Department of Health and Social )  
 Services, )  
 )  
 LYNN SIMONS, in her official )  
 capacities as Superintendent of )  
 Public Instruction and as )  
 Administrative Head and Chief )  
 Executive Officer of the )  
 Wyoming Department of Education, )

WYOMING STATE BOARD OF EDUCATION, )  
 )  
Defendants. )

**CLASS ACTION COMPLAINT**

**I. INTRODUCTION**

1. Plaintiffs brings this federal civil rights class action on behalf of the approximately three hundred ninety-five (395) people registered on the rolls at the State Training School, Lander, Wyoming, a public residential facility for persons with retardation, the currently indeterminate number of people with retardation now at risk of being placed at the State Training School in the future, and the currently indeterminate number of people with retardation who are being denied services in the State of Wyoming.

2. This action, brought pursuant to 42 U.S.C. Sec. 1983 and additional federal laws, is to redress the unconstitutional and illegal conditions imposed under color of state law on three hundred ninety-five (395) individuals with retardation on the rolls of the State Training School.

3. Plaintiffs seek to enjoin defendants from continuing to confine persons at the State Training School under inhumane conditions that violate their rights to adequate food, shelter, clothing, medical care, safe conditions, freedom from undue

restraint, training or habilitation, proper care, treatment, education, right to privacy, and protection from harm. Plaintiffs also seek an injunction requiring defendants to provide adequate and appropriate community services. These rights are guaranteed to the class members by Title XIX of the Social Security Act, the Education of the Handicapped Act, the Rehabilitation Act, the Developmental Disabilities Act and the United States Constitution and Federal Statutes.

4. Conditions at the State Training School including, but not limited to, understaffing, overcrowding, a deteriorating physical plant, and a pattern of physical, verbal, and psychological abuse, present a serious and continuing danger to the health, safety, and well-being of Training School residents as well as cause them significant physical and emotional injuries. Additionally, the residents are fully capable of living in the community with appropriate support services but remain confined at the State Training School unnecessarily and against professional opinion.

5. Plaintiffs' allegations are based on government reports, personal knowledge, and the results of investigations made by staff, volunteers, and professionals for Wyoming Protection & Advocacy System, Inc. The investigations required numerous visits to the State Training School, interviews with its officials, staff, and residents, and review of documents such as resident records, incident reports, inspection surveys, and outside evaluations.

## II. JURISDICTION AND VENUE

6. This action is brought to remedy violations of the Constitution and laws of the United States.

7. This Court has subject matter jurisdiction over this action brought under 42 U.S.C. Sec. 1983, 42 U.S.C. Secs. 1396, 1396a, 1396d, 20 U.S.C. Secs. 1400 through 1485 and 29 U.S.C. Sec. 794, pursuant to 28 U.S.C. Secs. 1331 and 1343 and all regulations promulgated thereunder. Declaratory relief is sought under 28 U.S.C. Secs. 2201 and 2202 and all regulations promulgated thereunder.

8. Venue is proper in this district pursuant to 28 U.S.C. Sec. 1391 (b).

## III. PARTIES

9. Plaintiff Anna Maria Weston is a resident of the State Training School, where she has lived for approximately three (3) years. Through her guardian, Barbra Weston, her mother, she brings this action on her own behalf and on behalf of other persons similarly situated.

10. Plaintiff Debra Malmberg is a resident of the State Training School, where she has lived for approximately thirty-three (33) years. Through her next friend, Kari Ellerbeck, her sister, she brings this action on her own behalf and on behalf of other persons similarly situated.

11. Plaintiff Earl Ladeburg is a resident of the State Training School, where he has lived for more than twenty-seven (27) years. Through his next friend, Doris Lowe, his sister, he brings this action on his own behalf and on behalf of other persons similarly situated.

12. Plaintiff Steven Romanjenko is a resident of the State Training School, where he has lived for approximately twenty-three (23) years. Through his next friend, Mike Romanjenko, his brother, he brings this action on his own behalf and on behalf of other persons similarly situated.

13. Plaintiff Jordan Bryan Hall is a resident of the State Training School, where he has lived for approximately one (1) year. Through his next friends, Bryan and Kaloni Hall, his parents, he brings this action on his own behalf and on behalf of other persons similarly situated.

14. Plaintiff Stephen Wayne Henderson was a resident of the State Training School, first admitted on June 9, 1969 when he was eleven (11) years old, and later discharged from the State Training School on March 2, 1981. Through his next friend, Shirley Henderson, his mother, he brings this action on his own behalf and on behalf of other persons similarly situated. Plaintiff Stephen Henderson is a citizen of the State of Wyoming denied the opportunity for habilitation at either the Training School or

community programs in the State.

15. Plaintiff Timothy Duane Keown is a resident of the State Training School, where he has lived for approximately three (3) years. Timothy is nineteen (19) years of age and is consequently of school age. Through his guardians, Duane Keown and Betty Pearson, his guardians, he brings this action on his own behalf and on behalf of other persons similarly situated.

16. Defendant State Training School is a state-owned and operated institution in which approximately three hundred ninety-five (395) individuals with retardation are enrolled in an institutional setting.

17. Defendant Robert Clabby II is Superintendent of the Wyoming State Training School and is directly responsible for the operation of the Wyoming State Training School and for the protection, care and treatment of its residents.

18. Defendant Board of Charities and Reform (BCR) is charged with the general supervision, control and custody of all State of Wyoming charitable, reformatory and penal institutions, including the Wyoming State Training School, and the Board is also charged with directing the general management of all state institutions.

19. Defendants Mike Sullivan, Kathy Karpan, Stan Smith, Jack Sidi, and Lynn Simons, by virtue of their offices as Governor, Secretary of State, State Treasurer, State Auditor and State

Superintendent of Public Instruction, respectively, constitute the Board of Charities and Reform and therefore are responsible for general supervision of the Wyoming State Training School.

20. Defendant K. Gary Sherman, Executive Secretary of the Board of Charities and Reform, is responsible for the general management of all state institutions, including the Wyoming State Training School.

21. Defendant Sherri Lovercheck, Human Services Administrator of the Board of Charities and Reform, is responsible for coordinating and directing the administration of the Wyoming State Training School.

22. Defendant Department of Health and Social Services is charged with executing the functions of the State of Wyoming pertaining to community programs to provide prevention of, and treatment for individuals affected by developmental disabilities.

23. Defendant Kenneth B. Heinlein, the interim Director of the Department of Health and Social Services is responsible for the general management and supervision of the Department.

24. Defendant Steven E. Zimmerman, the administrator of the Division of Community Programs within the Department of Health and Social Services is responsible for administering, providing or establishing standards and community programs for persons afflicted with mental illness or developmental disabilities.



25. Lynn Simons is Superintendent of Public Instruction and, as such, is responsible for supervision of the State Department of Education and is responsible for implementing Federal and State programs for handicapped children.

26. The Wyoming State Board of Education is responsible for establishing policies and standards for the education of handicapped children.

#### IV. CLASS ACTION ALLEGATIONS

27. Plaintiffs bring this action pursuant to Federal Rule of Civil Procedure 23(b)(2) on behalf of a class ("the class members") consisting of all persons with retardation who reside at the State Training School as of the date of the filing of this Complaint, those individuals who are at risk of being admitted to the State Training School in the future and those being denied services in Wyoming.

28. The class members have been denied federally protected rights as a result of the actions, policies, and practices of defendants. Named individual plaintiffs seek for themselves, and for all the class members, declaratory and injunctive relief to terminate defendants' illegal actions, policies, and practices.

29. This matter is properly maintainable as a class action pursuant to Federal Rule of Civil Procedure 23(b)(2) in that:

a. The class members are so numerous as to make joinder

of all of them impracticable. As of December 8, 1989, there were approximately three hundred ninety-five (395) persons registered on the rolls of the State Training School, an indeterminate number of class members at risk of being admitted there in the future, and an indeterminate number of class members being denied services in Wyoming.

b. The claims of plaintiffs are typical of those of the class members.

c. Plaintiffs will fairly and adequately protect the interests of the class members. They are represented by counsel competent and experienced in class, constitutional and disabilities litigation.

30. There are substantial questions of law and fact common to the class members, and those questions predominate over questions affecting individual class members. Among these are defendants' violation of the class members' constitutional and statutory rights to appropriate care, treatment, education, right to privacy, safe conditions, protection from harm, community services, and freedom from discrimination on the basis of handicap.

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

32. The prosecution of separate actions by individual class

members would create a risk of varying adjudications that would establish incompatible standards of conduct for the defendants in this action, would create a risk that adjudications with respect to individual class members would not be dispositive of the interest of other class members who were not parties, and/or would substantially impede their ability to protect their interests.

#### V. FACTUAL BACKGROUND

33. The State Training School, located in Lander, Fremont County, Wyoming, is a public institution operated by BCR for persons with retardation. The State Training School has approximately three hundred ninety-five (395) residents on its rolls. In addition to retardation, many of the residents also have physical handicaps including, among others, seizure disorders, and visual and mobility impairments.

34. The State Training School was established by an Act of the Wyoming Legislature in 1907, with numerous statutory revisions and name changes subsequent to 1907.

35. The State Training School's major purpose has evolved from that enunciated in the creation of the Training School in 1907: "an institution" is created "for the custody, care, education, proper treatment, and discipline of feeble-minded and epileptic persons, under the name and style of the 'Wyoming Home of the Feeble-Minded and Epileptic'". 1907 Wyo. Session Laws 188-89, Ch. 104 Sec. 1.

The institution was created for "all feeble-minded and epileptic persons over the age of six years, who are legal residents of the State of Wyoming." Id, at 190, Section 9. The Training School Act of 1981 established a new purpose which was to provide for the diagnosis, evaluation, training, custody and care of individuals with retardation.

36. Although the statutory purpose of the State Training School has evolved, the Training School remains an institution in which the residents are denied habilitative services.

37. Persons with retardation do not learn as rapidly as do others and often require special education and training to acquire skills for full participation in community activities. The functions affected by retardation may include decision-making, self-care, language development, and communication.

38. Persons generally are placed at the State Training School through court commitments, most often because their families are unable to care for them in their natural homes, and no community alternatives are available. Persons are generally placed at the State Training School because they require training and not because they present a danger to others.

39. The State Training School Act of 1981 specifies that a person with retardation is not to be admitted to the Training School if services are available in the community.

40. Members of the class have been and are being denied their right to habilitation at the State Training School or placement in a community setting.

41. Persons with retardation learn through habilitation, a process of education and training through which individuals improve their abilities to function in society. Habilitation is the professionally accepted treatment for retardation. Every person with retardation is capable of learning new skills given proper individualized habilitation.

42. Because habilitation is preparation for community living, it is ordinarily provided in settings and under conditions that reflect life in the community.

43. Habilitation is provided to persons with retardation by individual teaching pursuant to an individualized habilitation plan, which is designed to improve the person's abilities in specified areas using specified techniques. Individualization of the habilitation process is necessary because each person acquires skills in his or her own way at his or her own pace.

44. Defendants have applied for a portion of the State Training School to be certified in order to receive federal funds for the operation of part of the institution as an intermediate care facility for the mentally retarded ("ICF/MR") under Title XIX of the Social Security Act, 42 U.S.C. Sec. 1396 et seq. and the rules

promulgated thereunder, including 42 CFR Parts 442 and 483.

45. As an ICF/MR, the State Training School must comply with federal regulations that require it to ensure the health, safety, and well-being of its residents. An ICF/MR also is required to provide continuous active treatment and habilitation to its residents.

46. ICF/MR's are facilities which are supported, in part, by federal funds appropriated under Title XIX of the Social Security Act, 42 U.S.C. Sec. 1396(a) et seq. These funds are provided to facilities or those portions of facilities which meet specified minimum professional standards. Even if the State Training School receives certification or partial certification as an ICF/MR, it does not meet minimally acceptable constitutional and professional standards for its operation or the care and treatment of its residents.

47. Because defendants have failed to take action sufficient to restore protection, care and habilitation, the State Training School has failed in its primary mission--the habilitation of its residents--as well as in its duty to protect its residents. The State Training School cannot succeed without the intervention of this Court.

#### VI. HARMFUL CONDITIONS

48. The physical setting at the State Training School does not

permit privacy, individuality or freedom of association to plaintiffs. Residents in several living units live in barracks-style dormitory living which affords little privacy. Bedroom square footages are inadequate; common areas serve multi-purpose functions (living room, activity rooms, dining rooms) and are almost always adjacent to bathrooms, raising serious sanitation issues. Many units are in poor physical condition and safety hazards are apparent.

49. Toilet facilities are inadequate. Bathrooms frequently lack walls, partitions or curtains between toilets or doors on stalls. Toilet paper and toilet seats are missing in many cases.

50. These conditions deprive plaintiffs of their dignity, an identity and also fail to help them develop the self-respect, consideration for others, and understanding of proper relationships necessary to functioning in the community.

51. Individuals with retardation continue to be institutionalized at the State Training School because defendants have failed to provide alternative services for them in their communities. When a crisis occurs in the family of an individual with retardation, inadequate services are available to support the family or to assist in care and treatment.

52. Although the living conditions are unconstitutionally deficient and dangerous at the State Training School, individuals

with retardation and their families are forced to rely upon the institution, with all of its strictures, as the only setting available to them.

53. The State Training School is unable to protect its residents from harm. Residents experience unusually and unacceptably high rates of injuries. Not only does neglect by staff result in a high rate of unnecessary accidents, but often injuries are inflicted as a result of abuse by other residents, staff members, or self-abuse. At any time, many of the residents are observed to have visible abrasions, cuts, bruises, or other injuries.

54. On November 6, 7 and 8, 1989, P&A staff and consultants visited the State Training School. On each unit they observed residents engaged in self-abusive behavior without staff intervention. On one unit, no staff were present in the day room where residents were located.

55. The treatment of Plaintiff Earl Ladeburg provides an example of the problems that plague the State Training School. Earl Ladeburg is now thirty-eight (38) years old and was admitted to the State Training School in 1962 at age eleven (11).

56. Since his admission to the State Training School, Earl Ladeburg has been permitted to engage in self-injurious behavior



while under the purported supervision of the State Training School staff.

a) Earl Ladeburg is a resident of 100 Meadowview, commonly known as Rothwell Cottage. This unit is basically a behavior unit for residents who display behavior problems.

b) Rothwell Cottage has stark living and sleeping areas, with only functional furniture to add color to an otherwise drab environment. The sleeping room is a large tiled room that has half-walls to divide sleeping units into a series of cubicles.

c) The population of this unit exceed the maximum population defined safe for the unit.

d) Among several needs identified in the 1989 evaluation reports include the need for Earl Ladeburg to be placed in a more home-like environment.

e) Earl Ladeburg is a head-banger and an appropriate behavior modification program is totally absent.

f) He has suffered numerous bites, scratches, bruises and other injuries while living there.

g) He is forced to spend most of his time each day sitting on the floor or in a chair, with the other residents in a large room. He fails to receive the appropriate habilitative services he needs, such as training in self-care skills. He is permitted little interaction with people who are not retarded.

h) Rothwell Cottage does not provide a normal environment for habilitation, but an institutionalized one. The living area bears no resemblance to a normal living room. It is large and impersonal. It contains no comfortable furniture, but rather a row of seats lined up like those one would find in a bus station.

i) Rothwell Cottage provides a stark example of understaffing with few aides to supervise, feed and provide habilitation to the residents.

j) There is a television, but it is mounted in glass enclosed platform, so the residents are not able to turn it on or off when they want to or to select the program they desire or to learn to do so.

k) The sleeping areas bears no resemblance to a normal bedroom. It is a huge room that has been partitioned into areas that resemble showers. The residents are provided little, if any, privacy.

l) The food is institutional in look and taste: overly starchy and unappetizing, with little variety.

57. The Plaintiffs and the members of the class suffer from regression of skills previously possessed, denial of critically needed food, shelter, medical care and safe conditions, denial of minimally adequate training and habilitation, denial of the right

to a free and appropriate education as guaranteed under Federal and State Law, and loss of life, liberty and property without due process of law.

58. The cumulative results of the conditions occurring at the State Training School are many and harmful. The most common injury to residents at the State Training School is described as regression. Residents of the State Training School have regressed in their basic life skills such as the ability to feed, bathe, dress or toilet oneself, or to walk and talk.

59. The physical setting at the State Training School has fostered behavioral problems. Some residents live with the threat of physical assault by other residents. Many residents engage in various forms of self-abuse. Head-banging, rocking and other self-abusive behaviors are common at the State Training School. Inadequate staffing and nonexistent programming make it impossible to prevent such behaviors or to even protect residents from one another.

60. Training is virtually nonexistent. Plaintiffs are not provided with necessary habilitative services, stimulation, and attention necessary to prevent deterioration of and injury to their physical condition, psychological well-being and personal development. Staff-to-resident ratios and the gross scale of institutional living operate to discourage personal, intimate,

primary relationships like those enjoyed in normal living situations.

61. Many residents are receiving inadequate or no speech, physical or occupational therapy. For younger residents the inadequacy of therapy causes more disturbing problems in that therapeutic interventions at young ages can prevent more disabling conditions later in life.

62. Many residents are receiving little planned eating assistance. Appropriate eating assistance that is designed for the particular individual so as to provide appropriate foods, in the appropriate amounts and in a manner which the individual can safely digest is required. Due to understaffing, staff providing eating assistance would naturally look for ways to reduce the time involved in providing eating assistance, thus providing an immediate health danger to the residents of the State Training School.

63. Individual Program Plans ("IPP's") are required by the provisions of the Training School Act, but most plans are outdated and many are nonexistent. If plans exist, they exist chiefly on paper only. Even where plans exist, active treatment is absent. In most units, there are simply too few staff to interact on a one-to-one level with residents. Custodial care appears to be the prevailing staff activity which is more reflective of inadequate

staffing, not the quality of the staff at the State Training School.

64. In those units in which persons with more severe and profound retardation live, staffing is even more inadequate. These people, whose handicaps prevent them from exercising the most basic self-care skills, need more attention from staff than the more mildly handicapped residents do; in fact, they receive less.

65. The Individual Program Plans that are developed for residents do not provide adequate, appropriate, active programming. Programs listed in resident's individual plans are not actually delivered or implemented, but exist on paper only. IPP's are poorly integrated, and many residents do not have IPP's at all.

66. Programs to deal with resident's behavioral problems are absent. Staff are not trained to understand the causes of residents' aggressive or self-abusive behavior nor to intervene and modify it.

67. Those members of the class who are of school age have been excluded from the opportunity to attend public school with children who are not handicapped. They're provided a separate but unequal educational opportunity within the confines of the Training School. The education at the institution does not provide appropriate levels of related services such as physical therapy, speech therapy, occupational therapy or psychological services.

68. Insofar as programs and services exist at the Training School, they're directed primarily to mildly and moderately handicapped residents, and not to residents with severe and profound retardation and multiple handicaps. Programs, therapies and services for the more severely retarded residents of the Training School are almost nonexistent.

69. The Training School is in the midst of seeking certification for a portion of the facility for what is known as Intermediate Care Facilities for the Mentally Retarded (ICF/MR). The 1988 Session of the Legislature authorized the Training School to pursue certification under ICF/MR standards for 32 beds. This has compounded the problems at the Training School since it is apparent that staff and other resources are being reallocated from dangerously understaffed units to the unit working for ICF/MR certification.

70. As a stark example of the understaffing and of the reallocation of staff occurring at the Training School, the school has only one physical therapist and three physical therapy aides. The physical therapist is required to concentrate his time on the physical therapy needs of those approximately thirty (30) residents who live in the proposed ICF/MR unit, depriving the remaining approximately three hundred forty (340) residents of sorely needed physical therapy services. The persons with the greatest physical

therapy needs do not reside in the proposed ICF/MR unit. This problem is reflected in the fact that many members of the class are receiving no physical therapy services at all.

71. Even if one physical therapist was spreading his time evenly across the Training School, there remains a huge deficit in physical therapy and support services.

72. The physical therapy aides have no clear guidelines or direction on their functions; even with three (3) physical therapy aides there is a significant lack of staffing.

73. The ratio of physical therapists to the population at the Training School does not meet required standards for provision of those services.

74. The lack of physical therapy and related services mean that physical deformities will continue to develop which results in the loss of function or compromise the individuals' health.

75. For the Training School as a whole to meet ICF/MR physical plant requirements, certification would require millions of dollars in renovations. Even if all this were done and the facility became ICF/MR, the facility would still not be the least restrictive, most normalized setting for people with retardation.

76. Even if certification is obtained, certification does not guarantee that the Constitutional rights of the Plaintiffs will be protected, or that the institution will not still be deficient.

77. The adopted standards of care by the Board of Charities and Reform for the entire Training School are the ICF/MR standards, and the Training School does not even meet its own standards of active treatment.

78. The behavior of individuals with retardation may differ from that of other persons, and those differences can be diminished substantially. By segregating individuals with retardation from the rest of the community and congregating them together, the Training School reifies, compounds and aggravates these deviating behaviors, which ultimately yield total devaluation of the individuals.

79. Staff at institutions such as the Training School view and relate to residents primarily in large, massed numbers, in warehouse numbers. Because of population density and because of the institutionalized appearance of residents, staff are deprived of the ability to perceive and relate to residents as human beings.

80. Individuals with retardation, like other persons, vary in their needs, wishes, and abilities, and at different points of life different activities and environments are appropriate to each person. Large institutions classify residents once, and in the gross, based on a few salient characteristics, with little opportunity for re-evaluation or challenge. The large, total institution deprives plaintiffs of their individuality, of the



possibility of habilitation, and of living freely.

81. The Training School, segregated and isolated from the community of Lander and the rest of society, deprives residents of the opportunity to interact with non-handicapped people in non-custodial relationships and in normal community settings. Plaintiffs are denied the experiences of observing how other people behave and interact and of learning to carry out age-appropriate and acceptable behavior and of experiencing the dignity and freedom of living in the community as normally as they may.

82. Persons with retardation grow and gain skills and overcome institution-imposed regression when provided with opportunities to learn and practice basic skills in small, well-structured, supervised community settings.

83. Professional knowledge, research and the experience of states across the country confirm that individuals with retardation, subject to destructive environments such as the Training School, progress and gain skills when provided community services.

84. "Normalization" is a fundamental, widely-accepted principle in the habilitation of individuals with retardation. It is based on the recognition of individuals with retardation as full human beings with rights to liberty and self-actualization and on the practical experience and observation that individuals with

retardation can best achieve these goals in life patterns that are integrated with and similar to those followed by other persons. The normalization principle has been accepted as a guiding principle for programs serving individuals with retardation by retardation professionals, including the American Association on Mental Retardation, the President's Committee on Mental Retardation, and the Association for Persons with Severe Handicaps; by consumers, including the Association for Retarded Citizens of the United States; and by the defendants themselves.

85. The normalization principle requires that individuals with retardation be treated alike and permitted experiences like other persons of the same age in their own community to the greatest possible extent. Their similarity to normal persons is to be emphasized and their deviant aspects de-emphasized and diminished through appropriate habilitative programming. They are to be enabled to live in a culturally normative community setting, in typical housing, to communicate and socialize in age-and culturally-appropriate ways, and to utilize community resources as other citizens do. Normalization requires that habilitation occur in the setting in which acquired skills will be utilized and that habilitation be attained by the use of generic services in the community.

86. Plaintiffs and members of their class are human beings

who have feelings, needs, and motivations like all other people. They have, to varying degrees, the potential for growth, development, and achievement of self-care and self-support. They are capable of benefiting from treatment and habilitative services to maximize their potential and to satisfy their social, emotional and economic needs.

87. Experience throughout the country demonstrates that these needs can be met and a normalized, free and equal life in the community assured to individuals with retardation. Experience shows that a normalized life in the community can be assured to individuals with retardation while satisfactorily guaranteeing to family members and guardians the continued care and security of the person, after the family member or guardian's death, after the person has reached majority, and when, before age eighteen, circumstances require that the person reside apart from the family. Experience also shows that a normalized life, outside the institution, can be assured while satisfactorily guaranteeing to present employees at the institution job security and employment in community services.

88. Services in the community to support a normalized life for individuals with retardation can be secured at a cost no greater than the current per capita annual expenditure at the Training School; it is likely that it can be provided for less.

Moreover, the cost of providing such services in the community is enormously less than the cost of providing the services in the institution that are necessary to actually meet the needs of individuals with retardation.

89. Learning (and much else) by individuals with retardation requires the example of other non-handicapped people and in real-world environments where what is learned is done. As for all people, but relatively more so for individuals with retardation (it is one of their "differences"), learning by individuals with retardation during all of life proceeds in significant part by imitation and example and in the concrete, rather than by generalization from one context into another. Learning by individuals with retardation flourishes in properly structured and integrated environments; in isolation it is destroyed.

90. As members of the community, individuals with retardation of all ranges of ability can and do maintain not only steady but productive jobs. Individuals with retardation can and do significantly care for themselves, keep clean and even pleasing rooms, and respect the rights of others. Individuals with retardation do make good neighbors, to their own benefit and their neighbors'. The abysmally ignorant stereotypes to the contrary do not withstand the facts or a correct understanding of what difference retardation makes. Individuals with retardation need

assistance, as do all persons, often relatively more, but that does not mean exclusion from the community, rather participation in it.

"It must be recognized that the vast majority of developmentally disabled persons and the vast majority of persons institutionalized should not be in these institutions at all. Efforts to assure proper treatment, education, and habilitation services in large institutions should not deflect attention from the fact that most of these institutions themselves are anachronisms, and that rapid steps should be taken to phase them out. Many of their size, their isolation, their impersonality, are unsuitable for treatment, education, and habilitation programs." S. Rep. No. 94-160, 94th Cong., 1st sess. 32-33 (1975).

91. As early as May, 1979, in a study of the Training School by Developmental Disabilities Protection & Advocacy System, Inc. pursuant to Public Law 94-103, the Developmental Disabilities Assistance and Bill of Rights Act of 1975, it was recognized that problems existed at the Training School. In this particular study, prompted by eleven alleged incidents of abuse to residents of the Training School, the Study recommended:

- a. "Individual Habilitation Plans (I.H.P.'s) must be developed for each resident with optional provisions which are current and relevant."
- b. "Each resident has a right to an habilitation program which will maximize his human abilities and potential."

The recommendations of this study have never been adopted by the Training School.

#### VII. LACK OF ADEQUATE STAFF

92. The State Training School is understaffed in both professional and direct-care staff and has experienced massive employee turnover and frequent leadership changes, including three (3) superintendents in the past ten (10) years.

93. The direct-care staffing at the Training School is far below contemporary staffing standards.

94. Although the staff shortages at the Training School have existed and have been well-documented in government studies and budget requests for many years, defendants have failed to correct this serious deficiency.

95. The lack of adequate and trained staff has resulted in residents not receiving prescribed habilitation services and, in many cases, regressing in their skills.

96. The lack of sufficient direct-care staff limits the staff to doing little more than attempting to meet the immediate physical needs of the resident. As a result, their habilitation programs regularly are sacrificed.

97. There are inadequate numbers of professional specialists to provide essential services, such as occupational and physical

therapy, speech therapy, and habilitation, all treatments that are required by residents.

98. Resident do not receive sufficient individual attention to benefit from their programs. Staff are unable to implement training programs.

99. Residents are often left on their own devices to alleviate boredom, resulting in aggressive and assaultive behavior. Persons sit, stand or lie around all day, very often exhibiting self-stimulating behavior.

100. Staff cannot provide consistent behavioral intervention or behavioral programming. In many cases, the programs actually re-enforce the inappropriate behavior.

101. Staff are not trained adequately to handle residents' inappropriate behavior properly. For example, staff indiscriminately provide treats -- positive reinforcement -- to residents regardless of the behavior in which they are engaged at the time. If a resident who is exhibiting inappropriate behavior is given a reward, that behavior is reinforced and will continue indefinitely.

#### VIII. FAILURE TO PROVIDE HABILITATION

102. Defendants have failed to provide appropriate habilitation for State Training School residents; without such habilitation, the residents are confined without purpose and will

lose rather than gain skills. The residents not only are unable to learn skills that will assist them on their return to the community, but they also lose the skills they possessed upon entering the State Training School because of a lack of practice and reinforcement.

103. Defendants have failed to develop and implement adequate individual program plans; these plans form the basis for habilitation at the facility.

104. Individual habilitation plans omit training objectives for residents. These objectives are an integral part of an adequate habilitation plan, as they identify the skill to be acquired and the teaching techniques to be employed.

105. Other plans identify inappropriate behaviors, but fail to specify the intervention method to be used to teach residents more appropriate behaviors.

106. Residents are permitted to engage in behaviors that are or should be identified for reduction or elimination in their habilitation plans.

107. Even where the defendants have developed a habilitation program for residents, they have not ensured that such programs are implemented, often leaving residents with no actual program.

108. On November 6, 7 and 8, 1989, P&A professionals observed virtually no training activities at the Training School.



109. Groups of residents have been observed seated in a day room in front of a television set for extended periods of time in the guise of habilitation; on other occasions, staff have been observed watching television while residents wander unattended.

110. Due to the lack of behavioral strategies, aggressive and assaultive behaviors are commonplace.

#### IX. NEED FOR COMMUNITY PLACEMENTS AND SERVICES

111. There are class members at risk of placement at the State Training School who are in need of services in community settings. Due to inadequate utilization reviews, insufficient discharge planning, and the failure of defendants to provide adequate community-based alternatives to the State Training School, class members remain institutionalized or at risk of institutionalization to their detriment.

#### X. LIVING CONDITIONS

112. The State Training School is located near Lander, Wyoming, a town of approximately 9,000 people. The town is remote and nearly inaccessible by public transportation, which limits the ability of families and friends to maintain frequent contacts with residents. The hardship is greater for persons with limited means, but in all cases the relative isolation of the State Training School accelerates the decline of affectionate

relationships, stripping family supports from the institutionalized individual, both emotional and material, that are normally available in the community.

113. The State Training School provides insufficient space in the living and program areas. Many individuals sleep in bedrooms with partial walls that afford little privacy. Many residents are confined to small communal dayrooms in which they spend most of their awake hours.

114. The environment of many units at the Training School are particularly well-suited to developing behavioral problems. Lane and Rothwell Cottages provide examples of such an unsuitable environment. Privacy is impossible; noise is common throughout the day and night; toileting is a public rather than a private experience.

115. By the very nature of the environment at several of the units at the School, inappropriate behaviors are fostered, and behavioral strategies to reduce inappropriate behaviors and build appropriate behavior are virtually nonexistent.

116. Residents are denied adequate opportunities for exercise.

117. Many doors at the State Training School are kept locked unnecessarily.

118. At all times relevant to this complaint, defendants have had knowledge of conditions at the State Training School, both from

staff, personal observations, and from reports by others, but have taken insufficient or inappropriate action to remedy the situation and defendants have made public statements that the conditions do not exist. Defendants have also made public statements that the conditions do exist.

119. Representatives of Plaintiffs and others have met with defendants and advised them of the conditions at the State Training School, of the repeated abuse of the residents, and of the need for community placement. Defendants have not denied the allegations but have ignored any recommendations.

120. Plaintiffs lack an adequate remedy at law.

## XI. CLAIMS

### COUNT I -- VIOLATION OF CONSTITUTIONAL RIGHTS

#### (UNITED STATES CONSTITUTION)

121. Paragraphs 1 - 120 of this complaint are realleged within this paragraph as if fully set forth herein.

122. The Defendants have and continue to deprive the Plaintiffs and the class of their constitutional rights under the United States Constitution and their rights protected under the laws of the United States, in violation of 42 U.S.C. Sec. 1983, in the following not necessarily inclusive regards:

a. Denial of life, liberty and property without due process of law;

- b. denial of equal protection under the law;
- c. denial of freedom of expression and association;
- d. denial of the rights of privacy, dignity and family integrity;
- e. denial of substantive due process rights including, but not necessarily limited to the following:
  - i. denial of adequate food;
  - ii. denial of adequate shelter;
  - iii. denial of adequate clothing;
  - iv. denial of adequate medical care;
  - v. denial of safe conditions;
  - vi. denial of freedom from bodily restraint;
  - vii. denial of minimally adequate training or habilitation;
- f. denial of state created liberty rights in violation of the due process clause of the Fourteenth Amendment of the United States Constitution;
- g. denial of a free and appropriate education;
- h. denial of appropriate placement in a community setting;

**COUNT II -- REHABILITATION ACT**

123. Paragraphs 1 - 120 of this complaint are realleged within this paragraph as if fully set forth herein.

124. Defendants have and continue to violate the rights of plaintiffs and the class secured by Sections 100 and 504 of the Rehabilitation Act of 1973, 29 U.S.C. Secs. 720 and 794, and the rules and regulations promulgated pursuant thereto, including 45 CFR Part 84, 34 CFR Part 100 and 34 CFR 1361 in the following not necessarily inclusive regards:

- a. Denial of adequate food;
- b. denial of adequate shelter;
- c. denial of adequate clothing;
- e. denial of safe conditions;
- f. denial of freedom from bodily restraint;
- g. denial of minimally adequate training;
- h. denial of rehabilitative services;
- i. excluding from participation, denying benefits of, or otherwise subjecting the plaintiffs to discrimination under programs and activities receiving or otherwise benefitting from Federal financial assistance.

**COUNT III -- SOCIAL SECURITY ACT**

125. Paragraphs 1 - 120 of this complaint are realleged within this paragraph as if fully set forth herein.

126. Defendants have and continue to violate the provisions of Title XIX of the Social Security Act, 42 U.S.C. Sec. 1396 et seq. and the rules and regulations promulgated thereunder,

including 42 CFR Parts 442 and 483, in the following not necessarily inclusive regards:

- a. Failure to provide professional services;
- b. failure to provide training and habilitation services regardless of age, degree of retardation, or accompanying disabilities or handicaps;
- c. insufficient and insufficiently trained staff;
- d. failure to maintain the State Training School in accordance with applicable standards.

**COUNT IV -- DEVELOPMENTAL DISABILITIES ACT**

127. Paragraphs 1 - 120 of this complaint are realleged within this paragraph as if fully set forth herein.

128. Defendants have and continue to violate the rights of plaintiffs and the class secured by the Developmental Disabilities Act, 42 U.S.C. Sec. 6000 et seq., and rules and regulations promulgated pursuant thereto, and, including 45 CFR 1385 through 1388, in the following not necessarily inclusive regards:

- a. denial of appropriate treatment;
- b. denial of appropriate services;
- c. denial of appropriate habilitation;
- d. denial of adequate food;
- e. denial of appropriate and sufficient medical and dental services;

f. denial of freedom from physical and chemical restraint;

g. denial of safe conditions;

**COUNT V -- EDUCATION OF THE HANDICAPPED ACT**

129. Paragraphs 1 - 120 of this complaint are realleged within this paragraph as if fully set forth herein.

130. The defendants have and continue to deprive the Plaintiffs and the class of rights secured by the Education of the Handicapped Act, 20 U.S.C. Secs. 1400 through 1485 and the rules and regulations promulgated thereto, including 34 CFR Part 300.

**DEMAND FOR RELIEF**

**WHEREFORE**, Plaintiffs ask this Honorable Court:

1. To assume jurisdiction over this action;
2. To certify this action as a class action;
3. To declare that defendants have violated the rights of the class members under the United States Constitution by failing to provide adequate food, shelter, clothing, medical care, safety, and training; subjecting the residents to undue restraints, and failing to provide a program of community services for those class members who are ready for community placement and services;
4. To declare that defendants' operation of the State Training School violates and continues to violate the Rehabilitation Act;

5. To declare that defendants' operation of the State Training School violates and continues to violate the Social Security Act;

6. To declare that defendants' operation of the State Training School violates and continues to violate the Developmental Disabilities Act;

7. To declare that defendants' operation of the State Training School violates and continues to violate the Education of the Handicapped Act;

8. To enter preliminary and permanent injunctions requiring:

a. that defendants operate the State Training School in accordance with the standards set forth by the Title XIX ICF/MR regulations, 42 C.F.R. Parts 442 and 483 et seq.;

b. that defendants provide adequate treatment to the State Training School residents, including the development and implementation of individualized habilitation programs and the provisions of adequate services, including but not necessarily limited to: physical occupational and speech therapy, medical, psychological, nursing, and dental services;

c. that defendants ensure that the State Training School residents are protected from harm;

d. that defendants provide community services;

e. that defendants discontinue their segregation of and

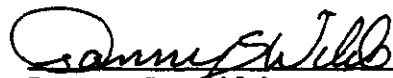


discrimination against State Training School residents on the basis of handicap; and,

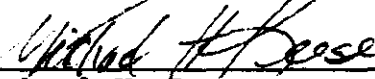
9. To grant such additional relief as this Court deems appropriate, including damages, costs, and reasonable attorneys' fees.

DATED THIS 3 day of January, 1990.

Respectfully submitted,



Danny S. Wilde  
Attorney for Plaintiffs  
General Counsel  
Protection & Advocacy System, Inc.  
2424 Pioneer Avenue, Suite 101  
Cheyenne, Wyoming 82001  
(307) 632-3496



Michael H. Reese  
Attorney for Plaintiffs  
Wiederspahn, Lummis & Liepas, P.C.  
Carey Avenue, Suite 704  
Cheyenne, Wyoming 82001  
(307) 638-6417



Michael R. O'Donnell  
Attorney for Plaintiffs  
Michael R. O'Donnell, P.C.  
P.O. Box 1025  
Cheyenne, Wyoming 82003  
(307) 632-0536