

FILED
U.S. DISTRICT COURT
DISTRICT OF NEBRASKA

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

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OFFICE OF THE CLERK

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE STATE OF NEBRASKA;
DAVE HEINEMAN, Governor of the State of
Nebraska, in his official capacity only;
CHRISTINE PETERSON, Chief
Executive Officer, Nebraska Department
of Health and Human Services, in her official
capacity only; JOHN WYVILL, Director,
Division of Developmental Disabilities,
Nebraska Department of Health and Human
Services, in his official capacity only;
RON STEGEMANN, Chief Executive Officer,
Beatrice State Developmental Center, in his
official capacity only,

Defendants.

CIVIL ACTION NO. 8:08cv271

COMPLAINT

PLAINTIFF, THE UNITED STATES OF AMERICA ("Plaintiff"), by its undersigned attorneys, hereby alleges upon information and belief:

1. The Attorney General files this Complaint on behalf of the United States of America pursuant to the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997, to enjoin the named Defendants from depriving individuals housed at the Beatrice State Developmental Center ("BSDC") of rights, privileges, or immunities secured or protected by the Constitution and laws of the United States.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1345.

3. The United States is authorized to initiate this action pursuant to 42 U.S.C. § 1997a.

4. The Attorney General has certified that all pre-filing requirements specified in 42 U.S.C. § 1997b have been met. The Certificate of the Attorney General is appended to this Complaint and is incorporated herein.

5. Venue in this district is proper pursuant to 28 U.S.C. § 1391.

DEFENDANTS

6. Defendant State of Nebraska ("State") owns and operates BSDC, a facility housing individuals with mental retardation or other developmental disabilities, and as such, has responsibility for the protections, services, and supports provided to BSDC residents.

7. Defendant Dave Heineman is the Governor of the State of Nebraska, and, in this capacity, heads the Executive Branch of the State's government and, among other duties, reviews and approves budget requests submitted by Executive Branch agencies regarding BSDC. He selects and appoints the Chief Executive Officer of the State of Nebraska's Department of Health and Human Services, which is responsible for the operation of BSDC. Governor Heineman is sued in his official capacity only.

8. Defendant Christine Peterson is the Chief Executive Officer of the State of Nebraska's Department of Health and Human Services, and, in this capacity, through its Division of Developmental Disabilities, exercises administrative control of, and responsibility for, BSDC. Ms. Peterson is an officer of the Executive Branch of the State of Nebraska, and is sued in her official capacity only.

9. Defendant John Wyvill is the Director of the Division of Developmental Disabilities, a part of the State of Nebraska's Department of Health and Human Services, and, in this capacity, exercises administrative control of, and responsibility for, BSDC. Mr. Wyvill is an officer of the Executive Branch of the State of Nebraska, and is sued in his official capacity only.

10. Defendant Ron Stegemann is the Chief Executive Officer of BSDC, and is responsible for the administration and day-to-day operations at BSDC. Mr. Stegemann is an officer of the Executive Branch of the State of Nebraska, and is sued in his official capacity only.

11. Defendants are legally responsible, in whole or in part, for the operation of and conditions at BSDC, and for the health and safety of the BSDC residents.

12. Defendants are governmental authorities or agents thereof with responsibility for the administration of BSDC within the meaning of 42 U.S.C. § 1997a.

13. At all relevant times, Defendants have acted or failed to act, as alleged herein, under color of state law.

FACTUAL ALLEGATIONS

14. BSDC is an institution within the meaning of 42 U.S.C. § 1997(1).

15. Individuals are confined to, or reside at, BSDC because they have been determined by Defendants to have mental retardation or other developmental disabilities requiring protections, supports, and services.

16. Defendants are obligated to operate BSDC in a manner that does not infringe upon the federal rights, as protected by the Fourteenth Amendment to the Constitution of the United States and by other federal law, of BSDC residents.

17. The protections, supports, and services at BSDC substantially depart from generally accepted professional standards of care, thereby exposing the individuals residing there to significant risk of harm, and in some cases, to actual harm.

18. The protections, supports, and services substantially depart from generally accepted professional standards of care in the following specific respects, among others:

- a. the provision of reasonably safe conditions, including protection from abuse, neglect, and other harm, so as to ensure the reasonable safety and personal security of the BSDC residents;
- b. the provision of that level of training, including behavioral, habilitation, and skills training and other related programs and activities, necessary to protect the BSDC residents' liberty interests, including their right to training sufficient to ensure their safety and freedom from undue or unreasonable restraint;
- c. the provision of adequate psychiatric services to BSDC residents with mental illness;
- d. the provision of adequate health care to BSDC residents, including adequate general and specialty medical and nursing services;
- e. the provision of adequate nutritional and physical management to BSDC residents; and
- f. the provision of adequate therapeutic services, including physical therapy, occupational therapy, speech therapy, and other forms of therapy.

19. Defendants are obligated to provide services, programs, and activities to BSDC residents consistent with the Americans with Disabilities Act of 1990 (“ADA”), and the regulations promulgated pursuant thereto. 42 U.S.C. § 12101 et seq., 28 C.F.R. Part 35.

20. Persons residing at BSDC are “qualified individual[s] with a disability” under the ADA, 42 U.S.C. §§ 12101, 12131.

21. The State of Nebraska and the State of Nebraska Department of Health and Human Services are “public entities” under Title II of the ADA, 42 U.S.C. § 12131.

22. Defendants have failed to meet the requirements of the ADA by excluding BSDC residents, by reason of their disability, from participation in, or by denying them the benefits of, the services, programs, or activities in the most integrated setting appropriate to their needs.

23. Defendants have failed and are continuing to fail to ensure that BSDC residents are adequately evaluated for placement in the most integrated setting; that those individual residents whom professionals determine should be placed in community programs are placed in such programs, when appropriate; and that the BSDC residents are served in the most integrated setting appropriate to each resident’s individual needs.

VIOLATIONS ALLEGED

24. The United States incorporates by reference the allegations set forth in Paragraphs 1 through 23, as if fully set forth herein.

25. The acts and omissions alleged in Paragraphs 17 and 18 constitute a pattern or practice and infringe upon the BSDC residents’ legal rights and substantive liberty interests and constitute resistance to their full enjoyment of their rights, privileges, or immunities secured or

protected by the Fourteenth Amendment to the Constitution of the United States and by other federal law, and deprive the BSDC residents of such rights, privileges, or immunities.

26. The acts and omissions alleged in Paragraphs 22 and 23 violate the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq., and the regulations promulgated thereto, 28 C.F.R. Part 35, by excluding the BSDC residents, by reason of their disability, from participation in, or by denying them the benefits of, the services, programs, or activities, or by subjecting them to discrimination, and by failing to administer services, programs, or activities in the most integrated setting appropriate to their needs.

27. Unless restrained by this Court, Defendants will continue to engage in the acts and omissions set forth in Paragraphs 17, 18, 22, and 23, that deprive BSDC residents of rights, privileges, or immunities secured or protected by the Constitution and laws of the United States.

PRAYER FOR RELIEF

28. The Attorney General is authorized under 42 U.S.C. § 1997 to seek equitable relief.

WHEREFORE, the United States of America respectfully requests that this Court:

- a. Permanently enjoin Defendants, their officers, agents, employees, subordinates, successors in office, and all those acting in concert or participation with them from continuing the acts and omissions set forth above in Paragraphs 17, 18, 22, and 23, and require Defendants to take such actions as will bring Defendants into compliance with federal law and ensure that adequate protections, supports, and services are afforded to BSDC residents; and

- b. Grant such other and further equitable relief as the Court may deem just and proper.

Respectfully submitted,

UNITED STATES OF AMERICA, Plaintiff

A handwritten signature in black ink, appearing to read "M. B. Mukasey", is written over a horizontal line.

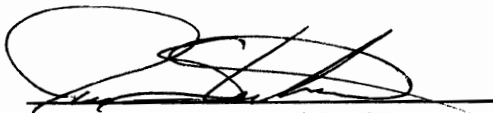
MICHAEL B. MUKASEY
Attorney General of the United States

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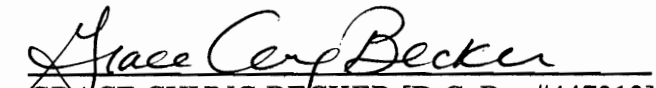
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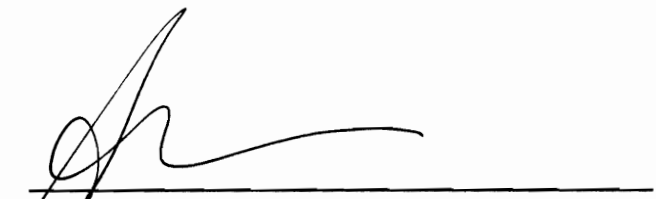
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CERTIFICATE OF THE ATTORNEY GENERAL

I, Michael B. Mukasey, Attorney General of the United States, certify that with regard to the foregoing Complaint, United States v. Nebraska, et al., I have complied with all subsections of 42 U.S.C. § 1997b(a)(1). I certify as well that I have complied with all subsections of 42 U.S.C. § 1997b(a)(2). I further certify, pursuant to 42 U.S.C. § 1997b(a)(3), my belief that this action by the United States is of general public importance and will materially further the vindication of rights, privileges, or immunities secured or protected by the Constitution and laws of the United States.

In addition, I certify that I have the "reasonable cause to believe," set forth in 42 U.S.C. § 1997a, to initiate this action, and that all statutory prerequisites to the initiation of this suit have been met.

Pursuant to 42 U.S.C. § 1997a(c), I have personally signed the foregoing Complaint. Pursuant to 42 U.S.C. § 1997b(b), I am personally signing this Certificate.

Signed this 26th day of June, 2008, at Washington, D.C.



MICHAEL B. MUKASEY
Attorney General of the United States

42 U.S.C. § 1997

General Information

Court	United States District Court for the District of Nebraska; United States District Court for the District of Nebraska
Nature of Suit	Civil Rights - Disabilities - Other[446]
Docket Number	8:08-cv-00271
Status	Closed