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W. J. FURSTENAU, CLERK  
UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA  
BY \_\_\_\_\_ DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

NATHALIA GRISWOLD, et al.,  
Plaintiffs,  
vs  
JIM RILEY, et al.,  
Defendants.

No. CIV 77-144 PHX - CAM

ORDER

This Court having received and considered defendants' motion to dismiss or alternatively to abstain, filed May 13, 1977, all responsive memoranda, and oral argument presented July 11, 1977, and the matter having been taken under advisement by the Court, finds that the motion to dismiss must be denied.

The pivotal question at issue is whether the confinement of the residents at the Arizona Training Program in Coolidge, Arizona should be characterized as voluntary or involuntary. Both parties agree that if the confinement is involuntary, the State would be obligated to provide a constitutional minimum level of services. The State maintains that the plaintiffs are voluntary admittees, not civilly committed against their will, and free to leave upon request, and there is thus no constitutional right to any particular level of treatment, requiring dismissal of plaintiffs' suit for failure to state a constitutional claim.

1           The Court is bound, as the moving party is, to  
2 accept the factual allegations of the complaint as true for the  
3 purposes of the motion to dismiss. Cooper v. Pate, 378 U.S.  
4 546 (1964). The facts alleged reflect that the plaintiffs  
5 are severely disabled individuals who, because of their  
6 retardation and self-abusive behavior, require supervision  
7 and varying degrees of assistance in such basic needs as  
8 toileting, dressing, and feeding. Quite apart from whatever  
9 level of services may be provided these residents of the  
10 Arizona Training Center, it is clear that they are not capable  
11 of surviving safely alone without harm to themselves or others,  
12 and they are likewise unable to determine the course of their  
13 own lives.

14           This Court is therefore compelled to find that the  
15 plaintiffs' continued residence at the Arizona Training Center  
16 can not be characterized as voluntary, both because plaintiffs  
17 themselves lack the capacity to decide upon an alternative  
18 course of action or treatment, and because if they or a next  
19 friend or guardian were able to make a decision about plain-  
20 tiffs' continued residence at the Arizona Training Center,  
21 there is little, if any, choice or alternative programs or  
22 services for these plaintiffs. Neither the State's offer to  
23 discharge any of the residents upon request, nor the other  
24 procedures for discharge under A.R.S. § 36-566 render plain-  
25 tiffs' continued residence voluntary, since both the Director,  
26 under A.R.S. § 36-566A, or an appointed guardian or legal  
27 custodian would have to determine the best interest of the  
28 resident in deciding whether to seek release. Lacking funds,  
29 funded alternatives, or family members willing or able to  
30 accept the responsibility for the care of the residents,  
31 leaves those residents or their guardians with a "Catch-22"  
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1 decision which cannot improve their condition or their treat-  
2 ment.

3 Even were the defendants correct in the character-  
4 ization of plaintiffs' residence as voluntary, defendants'  
5 position that the State has no constitutional duty to provide  
6 services to its citizens (New York Association for Retarded  
7 Children v. Rockefeller, 357 F.Supp. 752, 761 [E.D.N.Y. 1973])  
8 does not support the conclusion that once having undertaken to  
9 provide certain services, the State may then determine the  
10 level and quality of those services to be provided, or which  
11 they wish to fund, without regard to minimal mental health  
12 standards, the mental or physical health of the residents, or  
13 other consideration of the constitutional rights of the  
14 residents of the Program, simply because the State character-  
15 izes the residence as voluntary.

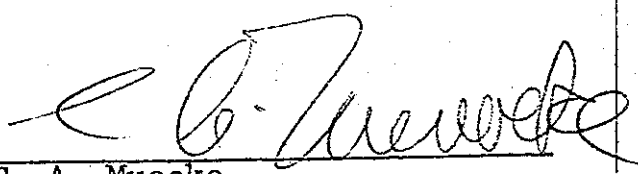
16 This court does not reach the question of what level  
17 of services must be provided, nor is the Court ruling that  
18 the State is constitutionally bound to guarantee the maximum  
19 possible habilitation for each recipient of such services.  
20 This Court merely finds that the allegations of the complaint,  
21 taken as true, would establish that the continued residence  
22 of plaintiffs at the Arizona Training Program is not in  
23 reality "voluntary", and that even if voluntary, the facts  
24 allege physical harm and deterioration which taken as true  
25 for purposes of this motion state a constitutional claim.

26 With respect to plaintiffs' exhaustion of remedies,  
27 the Court is unclear about the nature, extent, and avail-  
28 ability of administrative or other remedies, and will thus  
29 reserve ruling on that issue. Both plaintiffs and defendants  
30 have been requested to make appropriate demand on whatever  
31 agencies may have jurisdiction for inquiry into the condi-  
32 tions complained of at the Program. The Court will likewise

1 reserve ruling on the issue of abstention, pending clari-  
2 fication of other remedies which may be available to plain-  
3 tiffs.

4 IT IS THEREFORE ORDERED that defendants' motion to  
5 dismiss is denied.

6 DATED: July 14, 1977.

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9 C. A. Muecke  
10 United States District Judge  
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