

4 Summons Issued.  
(20 days in)

**FILED**

**MAY 28 1982**

**EYON MENDENHALL  
U. S. DISTRICT COURT  
E. DISTRICT OF MO.**

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MISSOURI

PARENTS ASSOCIATION OF THE  
ST. LOUIS STATE SCHOOL AND HOSPITAL, INC.  
10695 Bellefontaine Road  
St. Louis, Missouri

TOMMY CRESSEY, by his father, guardian, and  
next friend, FLOYD CRESSEY  
12640 Meadowdale Drive  
St. Louis, Missouri

BUDDY KONCZAKOWSKI, by his parent and next  
friend, VIRGINIA KONCZAKOWSKI,  
315 Brockleigh Street  
Florissant, Missouri

PHILIP GAMACHE, by his parent, guardian and  
next friend, MARY JANE GAMACHE,  
1735 Del Norte Street  
St. Louis, Missouri

LAURA RICHERT, by her parents, guardians, and  
next friends, CAROL RICHERT and ROGER RICHERT,  
4414 Rosedon Drive  
Bridgeton, Missouri

DAVID ANDREWS, by his parent and next friend,  
BERNARD ANDREWS,  
12129 Wesland Drive  
Maryland Heights, Missouri

PAT NORWOOD, by her stepmother, guardian and  
next friend, LOIS QUALLS,  
2143 Esther Street  
St. Louis, Missouri

DANNY REISENBECK, by his parent and next friend,  
WILLIAM REISENBECK  
3160 Leola Street  
St. Louis, Missouri

Plaintiffs,

v.

CHRISTOPHER S. BOND, Governor of the State  
of Missouri,

PAUL R. AHR, Director of the Missouri  
Department of Mental Health

LEVESTER CANNON, Director, Division of  
Mental Retardation-Developmental Disabilities,  
Missouri Department of Mental Health

JOSEPH W. KUNZ, Superintendent of the St. Louis  
State School and Hospital

Defendants.

Civil Action  
No.

**82-0852-C (13)**

COMPLAINT

COMPLAINT FOR DECLARATORY,  
INJUNCTIVE AND OTHER RELIEF

I. JURISDICTION AND VENUE

1. This is an action brought by an organization of parents and relatives of the mentally retarded and by mentally retarded individuals, citizens of the State of Missouri, to secure their rights under the United States Constitution and federal and state statutes. The action is filed in plaintiffs' names by their next best friends, pursuant to Rule 17, Federal Rules of Civil Procedure. Plaintiffs bring this suit on their own behalf and on behalf of a class of similarly situated mentally retarded persons. Plaintiffs seek injunctive, declaratory and other appropriate relief requiring that they be provided with adequate care and treatment, a humane and decent living environment, and protection against physical harm and attack.

2. This case arises under the Constitution and laws of the United States as well as the laws of Missouri. Plaintiffs' claims are predicated on the Due Process Clause of the Fourteenth Amendment; 42 U.S.C. section 1983, 1985, and 1986; section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794 (1980 Supp.); and sections 630.005 et seq. of the Revised Missouri Statutes, RSMo. 630.005 et seq. (Vernon's). This Court has jurisdiction of this matter under 28 U.S.C. sections 1331, 1343, 2201, 2202; 42 U.S.C. sections 1983, 1985, 1986, 1988, and principles of pendent jurisdiction. The amount in controversy exceeds ten thousand dollars (\$10,000.00), exclusive of interest and costs. Venue appropriately lies in this judicial district pursuant to 28 U.S.C. 1391(b).

3. Monetary damages are inadequate to compensate plaintiffs for the abridgement of their rights and to protect plaintiffs from further and continued abridgement of their rights. Additionally, the actions, policies, and procedures challenged in this suit have caused, and will continue to cause, substantial and irreparable injury to plaintiffs.

TOMMY CRESSEY

6. Plaintiff Tommy Cressey is a 23-year old resident of the St. Louis State School and Hospital. Floyd Cressey, his father and next friend, resides at 12640 Meadowdale Drive, St. Louis, Missouri.

7. Tommy is profoundly retarded. He is also epileptic and hyperactive, conditions for which he now receives medication. Tommy is almost completely helpless because of his handicap. He is unable to talk or read and cannot dress himself without assistance. Tommy is only partly toilet trained.

8. Tommy was first admitted to the St. Louis State School and Hospital in 1966 when he was 8 years old. Conditions at the institution at that time were so deplorable that Tommy was withdrawn by his parents only three weeks after admission. Tommy was confined to a single building housing over 60 retarded children attended by only a single staff aide. To maintain discipline, the aide tied many of the children to their beds. At the end of his short stay Tommy was emaciated, having lost nearly 20 or 30 pounds in only three weeks.

9. Tommy lived at home for the next two years while his parents searched for an acceptable placement. In 1968 arrangements were made to place Tommy in the "Jer-Lee" nursing home in St. Louis, a large facility with about 100 patients, including many mentally retarded persons.

10. At first the Jer-Lee home worked out satisfactorily for Tommy. Although the care provided Tommy was mainly custodial, the facility was at least clean and well-managed. As time went on, however, the owners of the Jer-Lee home experienced financial difficulties and conditions deteriorated rapidly. One day the facility filed for bankruptcy and all the residents, including Tommy, were abruptly shut out. Tommy's parents were given no notice that the

home was on the verge of closing down. Because of inadequate monitoring of the facility, the State Department of Mental Health was also caught by surprise.

11. Tommy, together with some of the other displaced residents, was placed temporarily at the Diagnostic Center in Hannibal. The staff at the Center immediately sought to place Tommy in another non-institutional community facility. However, Tommy's parents objected to the inadequate foster homes and group homes that they were shown, and Tommy was permitted to stay at the Diagnostic Center for approximately three years.

12. At the end of that time, arrangements were made to transfer Tommy to a new foster home in Festus, Missouri. Although skeptical about the suitability of this placement, Tommy's parents consented after receiving repeated assurances that the managers of the facility would be able to cope with Tommy. As it turned out, however, they could not. Tommy had to be withdrawn from the Festus home on the same day that he was transferred there. Tommy was subsequently readmitted to the St. Louis State School and Hospital and has been there ever since. Tommy's parents are concerned that defendants may again seek to place him in an inappropriate community facility.

BUDDY KONCZAKOWSKI

13. Plaintiff Buddy Konczakowski is a 29-year old mentally retarded adult. Virginia Konczakowski, his mother and next best friend, resides at 315 Brockleigh Street, Florissant, Missouri.

14. Buddy is a former resident of the St. Louis State School and Hospital. He is mildly to moderately retarded, toilet trained and partially verbal. Although Buddy functions at a higher level than many of the residents at the State School and Hospital, he nonetheless requires close supervision and attention.

15. Buddy was admitted to the St. Louis State School and Hospital 16 years ago, at age 13. Buddy resided at the institution continuously until last fall, when officials decided to transfer Buddy to a community-based residential home. Buddy's mother was told that the institution was under pressure to reduce the resident population by at least 60 persons by July 1982, and that Buddy had been selected as one of the residents to be discharged. Buddy's mother opposed this decision on the grounds that a transfer to a community home would be disruptive and potentially traumatic for Buddy.

16. In late October 1981, Buddy was transferred by the St. Louis State School and Hospital to the Life Skills community facility in St. Louis, a four-unit apartment building located on Olive Street. Buddy was placed in a unit with three other retarded boys. They were supervised by a visiting social worker during the day. At night Buddy and the other boys were unattended, although a house parent with overall responsibility lived downstairs.

17. For a brief period, Buddy seemed to adjust reasonably well to his new environment. In late December, however, his condition deteriorated rapidly. Buddy became seriously depressed and, eventually, suicidal. Buddy was taken to a private hospital in St. Louis for observation and treatment. The hospital initially tried to treat Buddy with anti-depressant drugs. After several weeks, the doctors resorted to the use of electro-shock therapy.

18. In all, Buddy received 10 electric shocks before his mood began to stabilize and he stopped his suicidal behavior. Buddy remained at the hospital for further observation for about two months. At the end of that time, Buddy's mother sought to have him readmitted to the

St. Louis State School and Hospital. However, the authorities there stated that Buddy could not return as a full-time resident because the institution remained under extreme pressure to move people out. Buddy's mother was told that she would either have to care for Buddy at home or consent to his placement in still another community-based facility.

19. Buddy is currently living at home with his mother. Although she is unable to care for Buddy herself, the Regional Center and the State School and Hospital have left her with no choice. If Buddy is transferred again to a community facility, he may suffer a further relapse with potentially devastating consequences. State officials are aware of this and yet refuse to permit Buddy's readmission to the St. Louis State School and Hospital.

PHILIP GAMACHE

20. Plaintiff Philip Gamache is a 20-year old resident of the St. Louis State School and Hospital. Mary Jane Gamache, his mother and next best friend, resides at 1735 Del Norte Street, St. Louis, Missouri.

21. Philip has been at the St. Louis State School and Hospital for approximately two years. He is profoundly retarded and has autistic tendencies. Philip is unable to provide even minimal care for himself. He cannot read or speak at all. He also needs assistance to use the bathroom and to dress or feed himself.

22. Philip lived at home until age 11. In 1973, after having attended a special education program on a day basis for several years, Philip was admitted to the Diagnostic Center in Hannibal, Missouri for testing and behavior modification. The Diagnostic Center placed Philip in the first of a series of community residential facilities. Each of these placements proved unsuccessful and Philip eventually had to be admitted to the St. Louis State School and Hospital.

23. Philip's first community placement was a small foster home in Monroe County, about 20 miles from Hannibal. The facility was an ordinary residential dwelling, housing several retarded children. The couple in charge of the home were unable to properly care for Philip. He developed behavioral problems and refused to sleep at night. Within six months, Philip's parents were told that he had to be withdrawn from the facility.

24. The State Department of Mental Health next arranged to place Philip in another foster home in Hannibal comparable in size to the first foster home. Although this facility was initially promising, the care and conditions deteriorated when the home was relocated to Bowling Green, Missouri.

On several occasions Philip came home for weekend visits with evidence that he had been physically abused, including bruises on his legs and a burn on his shoulder.

25. Philip was subsequently returned to the Diagnostic Center for further evaluation and testing. After about two years the Diagnostic Center again sought to place Philip in a small residential home. Philip's parents strongly opposed this decision, but were told that they had no choice in the matter. Philip's parents were assured that this time the community placement would be carefully screened in advance and that Philip would be closely monitored at the new facility. Nonetheless, this third community placement also proved unsuccessful. Within one week, Philip was forced to leave and was returned to the Diagnostic Center in Hannibal.

26. The constant shuttling of Philip from one unstable community environment to another led to a deterioration in his condition. Philip became depressed. He also resumed self-abusive behavior that had been brought under control in prior years. Despite these problems, the Department of Mental Health attempted to place Philip in still another community residential facility. This time, however, Philip's parents refused and arrangements were made to admit Philip to the St. Louis State School and Hospital. Philip's parents continue to be concerned that he will again be placed in an inappropriate community setting.

LAURA RICHERT

27. Plaintiff Laura Richert is a resident of the St. Louis State School and Hospital. Carol and Roger Richert, her parents and next best friends, reside at 4414 Rosedon Drive, Bridgeton, Missouri.

28. Laura is 22 years old. She is profoundly retarded and autistic. Laura cannot read at all and has only limited verbal ability. She is given to radical changes in weight and mood and is currently receiving antidepressant drugs to stabilize her behavior. Laura also has a tendency to abuse herself, typically by scratching her arms until they bleed.

29. At age 9, Laura was admitted to the first of a series of residential facilities for the mentally retarded, both public and private. The first was the Regional Center in Kirksville, Missouri, where Laura stayed for approximately three months. The second was a large private institutional facility in Louisiana where Laura resided until about 1971.

30. Laura was subsequently placed in the Emmaus Home in St. Charles, Missouri, another large residential facility for the mentally retarded. Laura had to leave this facility after about two years because it did not provide the educational services to which she became entitled under state law. Also, Laura was regarded as a disciplinary problem. On several occasions she slipped away from the residential buildings and wandered off the grounds of the home.

31. Laura was next transferred to the privately owned Laurel Haven residential facility for the mentally retarded in Ballwin, Missouri. There Laura began to develop serious problems. She became self-abusive and withdrawn. Laura also became seriously underweight, at one point weighing as little as 89 pounds. Finally, the Regional Center in St. Louis made arrangements to have Laura admitted to the St. Louis State School and Hospital.

32. Laura's admission to the State School and Hospital has at least brought a respite from the constant shuttling from one community-based facility to another. However, Laura still fails to receive the degree of supervision needed to improve her condition and to provide adequate protection from physical abuse. Because of staff shortages, Laura is frequently left unattended for long periods of time. On such occasions she abuses herself and is subject to physical attack by other residents. Laura's parents have observed bruises on Laura's body, including bitemarks along the backs of her legs.

33. Laura's parents believe that the deficiencies at the State School and Hospital can be cured and that the facility is an appropriate placement for her. They are concerned that she will be transferred to a community facility that is inappropriate to care for her basic needs.

DAVID ANDREWS

34. Plaintiff David Andrews is 20 years old and a resident of the St. Louis State School and Hospital. David has been living at the institution since 1979. Bernard Andrews, his father and next best friend, resides at 12129 Wesland Drive, Maryland Heights, Missouri.

35. David is profoundly retarded and hyperactive. He has no verbal ability at all and is only partially toilet trained. David needs constant attention and supervision. Without assistance, he cannot feed or dress himself. He also engages in self-abusive behavior.

36. In 1973 David's parents arranged to have him placed at Laurel Haven, a large, privately owned residential facility in Ballwin, Missouri. Laurel Haven housed nearly 100 mentally retarded persons, most of them less handicapped than David. David was a serious disciplinary problem. On a number of occasions he attempted to run away, and he finally had to be confined to the infirmary where he was guarded on a regular basis. After about 5 years, David's parents were asked to withdraw him for further evaluation. David was subsequently placed in the St. Louis State School and Hospital.

37. The shortage of properly trained personnel at the State School and Hospital has exposed David to serious physical harm. On one occasion he suffered serious burns because of the negligence of an institution staff aide. Nevertheless, David's parents believe that, with some improvement, the State School and Hospital would be a satisfactory placement for him. They are concerned that the transfer to an inadequate community facility would cause him harm and further deterioration.

PAT NORWOOD

38. Plaintiff Pat Norwood is a 25-year old mentally retarded woman and resident of the St. Louis State School and Hospital. Lois Qualls, her stepmother and next best friend, resides at 2143 Esther Street, St. Louis, Missouri.

39. Pat is moderately retarded. She is unable to read and has only limited verbal ability. Pat walks with a limp as a result of childhood polio. She is also given to wild and sudden fluctuations in mood. Much of the time Pat is very passive and withdrawn. Then, without notice, she can become wild and uncontrollable.

40. Pat lived at home with her family until she was 17. During those years she attended a number of special schools on a day basis. At home she needed constant supervision and protection to assure that she did not run away or hurt herself. At age 17 Pat suffered a nervous breakdown and was hospitalized for a period of three months. Her condition deteriorated rapidly and her parents found that they could no longer care for her by themselves. Reluctantly, they made arrangements to admit Pat to the St. Louis State School and Hospital.

41. At the institution Pat has suffered from neglect and physical harm. On one occasion, Pat was assaulted and raped by three male retarded residents. The incident occurred because Pat had been left unattended outside of her living unit. She was discovered lying face down on the ground and unconscious. On another occasion, Pat attempted to run away from the institution and became caught on a chain-link fence that partially surrounds the grounds of the State School and Hospital. Pat hung helplessly on the fence for many hours until she was spotted by a passing motorist who notified the institution.

42. Despite these deficiencies, Laura's parents are concerned that she will be transferred to an even less adequate community facility which will worsen her situation.

DANNY REISENBECK

43. Plaintiff Danny Reisenbeck is currently a resident of the St. Louis State School and Hospital. William Reisenbeck, his father and next best friend, resides at 3160 Leola Street, St. Louis, Missouri.

44. Danny is 21 years old. He was diagnosed as retarded when he was nine months old, after a series of seizures that caused substantial brain damage. Danny is profoundly retarded with a mental age of a four-year old child. He is epileptic and hyperactive, both conditions for which he receives regular medication. Danny is unable to read and has only limited verbal ability. His hyperactive condition sometimes results in extreme self-destructive behavior.

45. Until he was admitted to the State School and Hospital at age 12, Danny attended a succession of schools and institutions for the mentally retarded. When Danny was four years old, he was enrolled in a special pre-school in the St. Louis area for retarded children. Because of his disruptive behavior, however, he lasted there only about two weeks. Danny was next placed with the St. Louis Association for Retarded Children, where he stayed for approximately two years.

46. Subsequently, Danny was placed in a series of facilities for the retarded, both public and private. Danny was enrolled on a day basis at the Good Shepard School in St. Louis and the New Hope Facility for retarded children. From January to September 1973, he lived at the Diagnostic Center in Hannibal, Missouri, and from September 1973 to April 1975, he resided at the Laurel Haven facility in Ballwin, Missouri. Because of behavioral problems, Danny eventually had to be withdrawn from each of these schools and institutions.

47. Danny lived at home for brief intervals as his parents searched for suitable placements. These were extremely difficult times. Neighbors complained about Danny's appearance and behavior and he was subjected to ridicule from neighborhood children. Danny's parents were afraid to let him out of their sight for even a few hours. On one occasion he broke through the window of his second-story room and jumped off the ledge to the ground.

48. Danny was admitted to the St. Louis State School and Hospital in 1973. Danny's commitment at least ended the constant and debilitating movement from one residential facility to another. However, Danny has not received adequate care and protection at the institution. On one occasion shortly after his admission, Danny had to be taken to a hospital for treatment of a broken arm. His parents were later advised that the injury was caused by an institution staff aide who had beaten Danny with a broom handle. On numerous other occasions Danny's parents have found scars and bruises on his body.

49. While Danny's parents are concerned about these problems, they nevertheless think that the State School and Hospital is an appropriate placement for him and fear that he will be placed in an inadequate community facility where he will be mistreated.

### III. CLASS ACTION

50. Plaintiffs the Parents Association, Tommy Cressey, Buddy Konczakowski, Philip Gamache, Laura Richert, David Andrews, Pat Norwood and Danny Reisenbeck bring this action on their own behalf and on behalf of all mentally retarded persons who are currently residing at the St. Louis State School and Hospital, who may need to be admitted to the St. Louis State School and Hospital in the future, or who have been residents of the St. Louis State School and Hospital at any time since 1973.

51. Plaintiffs seek for themselves and members of the class declaratory, injunctive and other appropriate relief requiring defendants to provide them with adequate care and treatment and protection against physical abuse in a decent and humane living environment with facilities and services that are adequate to plaintiffs' needs. Specifically, plaintiffs seek relief prohibiting continued reductions in funding and staffing levels for the St. Louis State School and Hospital. Plaintiffs also seek relief prohibiting their transfer to, and placement in, non-institutional, community-based facilities that fail to provide the quality and level of care offered by full-service institutions certified as intermediate care facilities for the mentally retarded. Further, plaintiffs seek relief requiring defendants to provide improved care and treatment to those members of the plaintiff class and other retarded persons who are currently residents of such community-based facilities.

52. This is a proper class action under rule 23(a) and 23(b)(1) and (2) of the Federal Rules of Civil Procedure. The class is so numerous as to make joinder of all members impracticable. There are substantial questions of law and fact common to the entire class, and the claims of the plaintiffs are typical of the class and predominate over any questions affecting only individual class members. The named plaintiffs will adequately and fairly represent the interests of the class. In addition, a class action is superior to any other available method for the fair and efficient adjudication of this controversy.

53. The questions of law and fact common to the entire class and to the claims of each plaintiff include:

(a) Have the defendants failed to place plaintiffs and the members of the plaintiff class in humane and safe living environments that are suitable and appropriate to their mental and physical conditions and provide realistic personal security, including protection from assaults or other harms?

(b) Have the defendants failed to provide plaintiffs and members of the plaintiff class with such individual treatment as is appropriate to their mental conditions?

#### IV. DEFENDANTS

##### CHRISTOPHER S. BOND

54. Defendant Christopher S. Bond is Governor of the State of Missouri. Defendant Bond oversees and is responsible for the activities, policies, and practices of all executive departments and agencies in the state, including the Missouri Department of Mental Health. In addition, defendant Bond, as governor of the State of Missouri, is responsible for the development and submission to the state legislature of the annual budget for the expenditures of all state agencies and departments, including the State Department of Mental Health.

PAUL R. AHR

55. Defendant Paul R. Ahr is the Director of the Missouri Department of Mental Health and in that capacity is responsible for all the functions of the Department, including the operation of the Department's Division of Mental Retardation-Developmental Disabilities. Defendant Ahr is responsible for the operation of all state facilities and programs for the care and treatment of the mentally retarded. These include the state's five institutional intermediate care facilities, including the St. Louis State School and Hospital, as well as eleven Regional Centers located throughout the state. The facilities and programs under defendant Ahr's supervision also include numerous non-institutional and privately owned residential facilities, including nursing homes, group homes and foster homes, that provide services for the state's mentally retarded residents under contract with the Department of Mental Health.

56. The Department of Mental Health is required under state law to assure the provision of certain rights and entitlements to all mentally retarded persons under Missouri's care. These include the right and entitlement to (RSMo. section 630.115):

- (a) Humane care and treatment;
- (b) To the extent resources are available, medical care and treatment in accordance with the highest standards accepted in medical practice;
- (c) Safe and sanitary housing;
- (d) Prompt evaluation and care, treatment, habilitation or rehabilitation about which the mentally retarded person is informed insofar as he is capable of understanding;

- (e) Treatment with dignity as a human being;
- (f) A nourishing, well-balanced and varied diet; and
- (g) Freedom from verbal and physical abuse.

57. The Department of Mental Health is responsible for the establishment of placement programs for all persons in the state "affected by ... mental retardation." RSMo. section 630.605. Such programs may provide for placement of mentally retarded persons in institutional intermediate care facilities owned and maintained by the state, such as the St. Louis State School and Hospital, or may provide for placement in a non-institutional residential facility licensed by the state and operating under contract with the Department of Mental Health. In placing mentally retarded persons in such non-institutional community-based facilities, the Department of Mental Health is charged with taking into account (RSMo. section 630.615):

The ability to provide to the patient or resident that individual degree of care and treatment which is required for that patient or resident and which is of comparable quality to the existing care and treatment based upon investigation of the alternative place and its program of care and treatment.

58. The Department of Mental Health, and Defendant Ahr as its director, are required to develop and promulgate standards governing the care and treatment of mentally retarded persons placed by the Department in non-institutional residential facilities. RSMo. section 630.655. Among other things, such standards must provide for (a) the care, treatment, habilitation, or rehabilitation of retarded residents; (b) adequate physical plant facilities, including fire safety, housekeeping and maintenance standards;

(c) safety precautions; and (d) adequate staff. The Department of Mental Health is required to license all non-institutional residential facilities for compliance with these standards. RSMo. section 630.715. The Department is further directed to conduct periodic inspections of all such licensed facilities to assure continued compliance with the Department's care and treatment standards. RSMo. section 630.730.

LEVESTER CANNON

59. Defendant Levester Cannon is director of the Division of Mental Retardation-Development Disabilities of the Missouri Department of Mental Health. In this capacity defendant Cannon has the same overall responsibility as defendant Ahr for administration of the state's programs, services and facilities for the mentally retarded. Defendant Cannon also has direct responsibility for the operation of the state's eleven Regional Centers, including the St. Louis Regional Center. The Regional Centers have responsibility under state law for decisions regarding the placement of mentally retarded persons in intermediate care facilities and noninstitutional community residential facilities. Persons admitted to the St. Louis State School and Hospital are screened and evaluated for such placement by the St. Louis Regional Center. Residents of the St. Louis State School and Hospital who are discharged from the institution are referred to the St. Louis Regional Center for placement in community-based noninstitutional facilities. The Regional Centers are also responsible for the licensing of all community residential facilities, and for the regulation and monitoring of the care and treatment provided by such facilities.

JOSEPH W. KUNZ

60. Defendant Joseph W. Kunz is the Superintendent of the St. Louis State School and Hospital. In this capacity defendant Kunz has "charge, control and management" of all aspects of the institution's activities. RSMo. section 630.040(1). Defendant Kunz is responsible for the hiring and training of the staff of the St. Louis State School and Hospital. He is also responsible for the quality of care and treatment that such staff provide the residents of the institution. As Superintendent, defendant Kunz is responsible for the expenditure of state funds allocated to the institution and for the adoption of criteria for decisions regarding the admission and readmission of mentally retarded persons to the institution, and for decisions regarding the transfer or discharge of residents to noninstitutional residential facilities operating under contract with the State Department of Mental Health.

V. FACTUAL ALLEGATIONS

THE ST. LOUIS STATE SCHOOL AND HOSPITAL

61. The St. Louis State School and Hospital is a state-owned and operated intermediate care residential facility for the mentally retarded. Opened in 1924, the St. Louis State School and Hospital was operated by the city of St. Louis until 1948, when the properties and program responsibilities were turned over to the state. The institution serves mentally retarded state residents from St. Louis City, St. Charles, Franklin, Jefferson, and St. Louis counties. The St. Louis State

School and Hospital is located on a five hundred acre property off Bellefontaine Road in north St. Louis County.

62. The St. Louis State School and Hospital is one of five full-service institutional facilities for the mentally retarded operated by the state of Missouri. The others are the Higginsville State School and Hospital, the Marshall State School and Hospital, the Nevada State School and Hospital and the St. Louis Developmental Disabilities Treatment Center. These institutions provide services for the mentally retarded in conjunction with eleven state-operated Regional Centers located throughout the state. The Regional Centers provide diagnostic and evaluation services prior to placement in an institution or community residential facility. The Regional Center affiliated with the St. Louis State School and Hospital is the St. Louis Regional Center, located at 2500 Hampton Street, St. Louis, Missouri. All persons admitted to the St. Louis State School and Hospital are screened by the Regional Center to determine the appropriateness of institutional placement. The Regional Center is also responsible for the placement in private residential facilities of all mentally retarded persons discharged from the St. Louis State School and Hospital.

63. Upon information and belief, full-time mentally retarded residents of the St. Louis State School currently number approximately 460. The vast majority of these residents are adults. Upon information and belief, only about 2% of the residents at the St. Louis State School and Hospital are below 18 years of age; 8% range in age

from 18 to 20; 71% range in age from 21 to 35; 18% range in age from 36 to 55; and only 1% of the residents are 56 years old or older. As of January 1982, the average age of residents at the St. Louis State School and Hospital was 29.

64. The estimated 460 residents of the St. Louis State School and Hospital are the most seriously disabled of all mentally retarded persons in the geographic area served by the institution. Upon information and belief, 44% of the residents of the St. Louis State School and Hospital are diagnosed as "profoundly" retarded. Such persons have IQ scores below 20 and generally cannot aspire to a mental age of more than 2 to 2 1/2 years. The average life expectancy for a profoundly retarded individual is 40. Profoundly retarded persons rarely, if ever, develop intelligible speech, and up to 40% of all profoundly retarded individuals are bedridden or semi-ambulatory.

65. Upon information and belief, nearly 40% of the residents of the St. Louis State School and Hospital are "severely" retarded. Such persons are only slightly less disabled than profoundly retarded individuals. The severely retarded have IQ scores between 20 and 35. They generally have a mental age below 3 1/2 to 4 years and are able to develop only the bare rudiments of speech. Many severely and profoundly retarded persons are unable to control their urination or bowel movements; highly aggressive behavior is very common; and such habits as pica (eating of dirt and other objects) and coprophagy, (eating of feces) are often observed.

66. Many of the St. Louis State School and Hospital residents, including many of those who are not profoundly or severely retarded, suffer from seriously disabling physical handicaps and behavioral problems. Upon information and belief, approximately 20% of all residents have severe hearing or visual handicaps, or both; 60% have little or no verbal ability, either as a consequence of their retardation or because of a specific speech disorder; 26% have a gross motor disfunction; and 38% have a major convulsive disorder.

67. The care and treatment of these persons, while minimally adequate in many respects, now threatens to fall below Constitutional and statutory standards as defendants' institute major cutbacks in funding for the St. Louis State School and Hospital. Despite rising costs and increased demand for the services of the institution, the state budget for fiscal year 1982 reduces funding for the St. Louis State School and Hospital by over 10%. Additionally, Defendant Bond has stated that he will recommend still further cuts in the state budget for the St. Louis State School and Hospital and other state-run institutions for the mentally retarded during 1983 and future years.

68. The impact of the budget cuts is already being felt. Staffing levels have been reduced in all areas. The ratio of staff to mentally retarded residents has been permitted to fall below generally recognized minimum standards, particularly with respect to "direct care" staff. Upon information and belief, the St. Louis State School and Hospital currently provides less than 80% of the direct care staff required by such standards.

69. Educational, recreational and habilitation programs have been curtailed. Fewer than 10% of the residents at the St. Louis State School and Hospital are eligible to participate in the limited educational

program of the Special School District facility at the institution. The programs available to other residents, including occupational training, speech therapy, and organized recreational activities, have been cut back sharply due to funding and staff shortages.

70. Buildings at the institution are not being properly maintained and necessary capital improvements have been cancelled or postponed. A therapeutic pool, built at significant expense several years ago, has been closed by defendants, thereby depriving plaintiffs of an essential habilitative activity. Certain of the residential cottages fail to comply with applicable health, safety and fire regulations. Many residents have been moved haphazardly from one dwelling unit to another, solely to accommodate a program of an outside vendor of community-based residential services. Mentally retarded residents are permitted to smoke in their living quarters, thereby posing a serious safety hazard. Toilet and bathing facilities are inadequate and in disrepair. In some wards, defendants have permitted potty chairs to be located in the midst of sleeping or living areas, causing a stench of urine to permeate such areas.

71. Medical services have been permitted to deteriorate. In some instances serious injuries and illnesses have gone undetected and untreated for days. Medication is sometimes administered in the wrong dosage, at irregular intervals, and from pharmaceutical supplies that bear out-of-date markings. Medically indicated diets for retarded persons with special health needs are sometimes not prescribed. In several recent cases, inadequate services and procedures have caused deterioration in the medical condition of mentally retarded residents.

72. Defendants have failed to protect plaintiffs from physical harm caused by self-abuse and by assaults from other mentally retarded residents. Such behavior is occurring with increasing frequency due to shortages of qualified staff and inadequate supervision of residents. Physical injuries to plaintiffs include bite wounds, lacerations of all types, concussions, and broken ribs and limbs. Plaintiffs have received burns from live cigarettes. Mentally retarded residents are also victims of rapes and other sexual assaults.

73. Under the guise of "normalizing" residents, or providing "less restrictive" care, defendants have failed to adequately supervise the activities of plaintiffs. Retarded residents are frequently left unattended for long periods of time or are given "passes" that permit them to roam freely on or off the State School and Hospital grounds. Defendants have consistently and repeatedly over-estimated the capabilities of plaintiffs, particularly those plaintiffs who are severely or profoundly retarded and multiply handicapped. In so doing, defendants have subjected plaintiffs to needless physical and psychological abuse and deterioration in their condition.

#### COMMUNITY-BASED RESIDENTIAL FACILITIES

74. In recent years defendants have embarked on a program of "deinstitutionalizing" the care of mentally retarded persons in Missouri. Residents of the St. Louis State School and Hospital, including severely and profoundly retarded persons, are being forced out of the institution on a wholesale basis for placement in various

non-institutional residential facilities. At the same time, persons needing institutional care are being denied admission to the St. Louis State School and Hospital and are being forced into community facilities.

75. This program is now accelerating as part of an effort to cut costs by drastically reducing the level and quality of services for the mentally retarded. New admissions to the St. Louis State School and Hospital have all but come to a halt. Defendants have stated that they will reduce the number of residents at the State School and Hospital to 400 by July 1982, and that additional substantial reductions will be made during the balance of 1982 and in future years. Upon information and belief, defendants' ultimate objective is to close down the St. Louis State School and Hospital and to move all, or substantially all, of its residents into community-based facilities.

76. By placing ever increasing numbers of mentally retarded persons in community residential facilities, and by shifting scarce financial resources from institutional care to community-based care, defendants have committed themselves to a policy of providing inadequate care and services to plaintiffs. The types of community residential facilities in which plaintiffs have been placed are inherently unable to provide the basic services that mentally retarded persons need to prevent deterioration in their condition. This is particularly true with respect to severely, profoundly and multiply handicapped retarded persons, who account for the vast majority of the residents remaining at the St. Louis State School and Hospital, and who defendants now propose to transfer to community-based facilities.

77. A substantial number of St. Louis State School and Hospital residents who have been transferred from the institution have been placed by defendants in privately owned and operated nursing homes. These plaintiffs fail to receive adequate habilitation services, educational programs, occupational therapy, or other specialized training. The nursing homes to which plaintiffs have been transferred, generally located in congested urban areas, provide only custodial care with little or no opportunity for recreation or other organized activity of therapeutic value. Plaintiffs confined by defendants to such facilities have been consigned to an idle existence of wandering aimlessly through empty hallways, watching television, or lying quietly on their beds.

78. The boarding homes, foster homes and group homes in which defendants are placing mentally retarded persons are no better. These community-based facilities are more restrictive than the institutions they are designed to replace. The hostility of surrounding neighborhoods effectively confines mentally retarded residents to their cramped urban dwellings. Moreover, the small size of most such residences precludes the provision of specialized services that can only be provided on an institutional scale. Foster homes, boarding homes and group homes do not provide on-site medical staff or organized education programs and other habilitation services even remotely comparable to those provided at the State School and Hospital. At best, these facilities provide only room and board. Those residents who are not sufficiently high-functioning to travel to jobs,

workshops or other centrally located programs are simply confined to their living quarters to sit quietly by themselves or watch television.

79. The community facilities to which plaintiffs are being transferred operate under contracts with the State Department of Mental Health. Upon information and belief, the facilities are privately owned and most are operated on a for-profit basis by corporations or by married couples seeking an additional source of income. Because of these arrangements, the interests of the owners and operators of community-based facilities are often adverse to the interests of the retarded persons assigned to their care. To maximize profits under the contracts with the state, community facilities have an incentive to cut corners on the more costly and taxing services that many retarded individuals require.

80. The community facilities in which plaintiffs are being placed fail to provide qualified staff in adequate numbers. In most cases the staff of these facilities receive no special training. They are not subject to public oversight or to any meaningful system of controls or accountability. The community facilities also suffer from enormous staff turnover. Upon information and belief, the duration of employment for most staff at such facilities is less than one year. Community residential facilities are less desirable places of employment than large institutions because they provide no privacy for staff members, pay substantially lower salaries, and offer no opportunities for career advancement. The constant introduction of new and untrained employees

produces an unstable environment in which plaintiffs' development is impaired.

81. The shortage of qualified personnel at community residential facilities has exposed plaintiffs to a pattern of neglect and abuse. Plaintiffs are frequently left unattended for long periods of time. Plaintiffs have run away from the residences, abused themselves, and become involved in violent fights and sexual assaults with other retarded residents. Upon information and belief, a young female resident of a community home recently died from severe burns received when a staff aide left her unattended to take a bath. On numerous other occasions plaintiffs have suffered serious injuries, including concussions and fractured arms and legs. Moreover, corporal punishment is frequently resorted to as a convenient means of regulating the behavior of mentally retarded residents, and as a substitute for proper care and treatment.

82. By their increased use of community-based facilities, defendants have deprived plaintiffs of a stable and secure living environment, free of the debilitating effects of dislocation and disruption. As more and more plaintiffs are moved out of the St. Louis State School and Hospital and into ill-equipped community facilities, the failure rate of these placements has risen dramatically. In case after case, mentally retarded persons transferred from the institution and placed in community homes have had to be removed from such homes due to behavioral and adjustment problems. Plaintiffs who are discharged from the St. Louis State School and Hospital for placement in the community are rarely, if ever, located on a permanent basis in a community facility. Instead, they are shunted from one facility to another, sometimes lasting no more than several days in particular group or foster homes.

This instability will only worsen as defendants begin to discharge from the St. Louis State School and Hospital significant numbers of the most seriously disabled mentally retarded persons.

83. Defendants' failure to adequately regulate and monitor community-based facilities has contributed to the instability of these facilities. As privately owned businesses, community residential facilities frequently encounter financial difficulties causing sharp curtailment in services or abrupt closings. Many plaintiffs placed in nursing homes, group homes, and other residential facilities have been precipitously displaced, usually with no notice to their families, because the facilities have simply gone out of business. The psychological damage caused plaintiffs by this type of disruption in care has been devastating in many instances.

84. In selecting residents of the St. Louis State School and Hospital for transfer to community facilities, defendants have failed to take into account the best interests of such residents. Defendants have a strong incentive to select for discharge and transfer those residents of the St. Louis State School and Hospital who are not eligible for Medicaid assistance. Under Title XIX of the Social Security Administration Act, the St. Louis State School and Hospital receives substantial funds from the federal government, but only on behalf of those institution residents who are Medicaid-eligible. Defendants also have a strong incentive to select for discharge and transfer to community facilities those residents of the St. Louis State School and Hospital who are 18 years old or older and have no legal guardians. Under state law defendants have considerable discretion in decisions

concerning the placement of these individuals, but that discretion is more circumscribed with respect to plaintiffs who are minors or adults for whom legal guardians have been appointed. Upon information and belief, in reducing the resident population of the St. Louis State School and Hospital, defendants are selecting for discharge and placement in community facilities those plaintiffs who are not Medicaid-eligible and/or those plaintiffs who are 18 years of age or older and without court-appointed legal guardians.

85. Those residents of the St. Louis State School and Hospital selected by defendants for discharge and transfer to community-based facilities are not given adequate preparation for placement. Defendants fail to give adequate assurance of readmission to the St. Louis State School and Hospital for those plaintiffs who, because of maladjustment or other problems, are not placed successfully in community facilities. Defendants also fail to provide adequate follow-up services to facilitate plaintiffs' transition from institutional care to community-based care and to assure the suitability and appropriateness of individual community placements.

86. Defendants have failed to promulgate standards which adequately regulate the care and services provided to plaintiffs in community-based residential facilities, and have failed to enforce those regulations that have been promulgated. Although plaintiffs may only be transferred to community facilities that have qualified for state operating licenses, defendants have issued such licenses routinely to community facilities in the areas served by the St. Louis State School and Hospital, irrespective of whether such facilities comply with reasonable care and treatment standards. Further, facilities that have received licenses are not adequately

monitored by defendants to assure continued compliance with defendants' care and treatment standards. Upon information and belief, many of the community residential facilities to which plaintiffs have been transferred have never been subject to follow-up on-site inspection by defendants.

VI. CAUSES OF ACTION

COUNT I: Fourteenth Amendment Claim

87. The aforesaid acts and omissions of defendants have deprived plaintiffs of their rights under the Fourteenth Amendment to:

- (a) placement in a decent, humane and secure living environment;
- (b) adequate care and treatment, including necessary medical and habilitation services; and
- (c) protection against physical assault and abuse.

COUNT II: Rehabilitation Act Claim

88. The aforesaid acts and omissions of defendants have violated plaintiffs' rights under section 504 of the Rehabilitation Act, 29 U.S.C. 794 (1980 Supp.), by discriminating against those members of the plaintiff class who are, have been, or may in the future be placed in inadequate community-based residential facilities, and by depriving such persons of the federally-assisted care and treatment programs made available at the St. Louis State School and Hospital.

COUNT III: State Law Claims

89. The aforesaid acts and omissions of defendants deprive plaintiffs of their rights under state statute, RSMo. 630.005 et seq. These include, but are not limited to, the right to:

- (a) humane care and treatment;
- (b) to the extent resources are available, medical care and treatment in accordance with the highest standards accepted in medical practice;
- (c) safe and sanitary housing;
- (d) prompt evaluation and care, treatment, habilitation or rehabilitation about which the mentally retarded person is informed insofar as he is capable of understanding;
- (e) treatment with dignity as a human being;
- (f) a nourishing and well-balanced and varied diet; and
- (g) freedom from verbal and physical abuse.

VII. RELIEF

WHEREFORE, plaintiffs respectfully request that this Court:

90. Appoint the Parents Association or designated members as guardians ad litem for all adult residents of the St. Louis State School and Hospital who have no legal guardians, and for minors who are residents of the institution and have no parents or legal guardians, and empower such guardians ad litem to exercise such residents' rights under state law during the pendency of this litigation.

91. Preliminarily enjoin defendants from continuing to transfer residents of the St. Louis State School and Hospital to community-based residential facilities pending this Court's determination of the lawfulness of the care, conditions, and treatment provided by such community facilities.

92. Enter a final judgment and order certifying the class of individuals that plaintiffs represent to include all persons who currently reside at the St. Louis State School and Hospital, all persons who have resided at the St. Louis State School and Hospital at any time since 1973, and all persons who may in the future require admission to the St. Louis State School and Hospital.

93. Permanently enjoin defendants from implementing further reductions in the staff levels and funding for the St. Louis State School and Hospital.

94. Declare unconstitutional and unlawful under federal and state law the conditions, care and treatment that defendants are providing plaintiffs in the community-based residential facilities in which plaintiffs have been placed and are currently being placed.

95. Permanently enjoin defendants from the continued use of any community-based facilities failing to provide plaintiffs with a decent and humane living environment, adequate care and treatment, and adequate protection against physical harm and abuse.

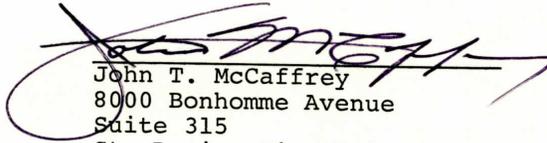
96. Permanently enjoin defendants from transferring profoundly retarded, severely retarded, and otherwise seriously disabled residents of the St. Louis State School and Hospital to community-based residential facilities that do not provide care and services, including habilitation and medical services, at the same level as such services are provided by institutional intermediate care facilities complying in all respects with applicable Constitutional and statutory requirements.

97. Award plaintiffs reasonable attorneys fees.
98. Grant such other relief as the Court deems just and appropriate.

Respectfully submitted,



Joel I. Klein  
Peter E. Scheer  
Onk, Klein & Farr  
2550 M Street, N.W.  
Suite 250  
Washington, D.C. 20037  
(202)775-0184



John T. McCaffrey  
8000 Bonhomme Avenue  
Suite 315  
St. Louis, Missouri 63105  
(314)862-4144

Counsel for Plaintiffs