

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

WILLIAM DAVIS

Plaintiff,

v.

RICHARD BUCKLEY, in his capacity as Director
of the Southside Virginia Training Center

LEO KIRVEN, JR., in his capacity as Commissioner
of the State Department of Mental Health and
Mental Retardation

JEAN L. HARRIS, in her capacity as Secretary of
Human Resources for the State of Virginia

WILLIAM LUKHARD, in his capacity as Commissioner
of Public Welfare for the State of Virginia

THOMAS HOGAN, in his capacity as Director of
Public Welfare for the City of Richmond

MARGARET FOLEY, in her capacity as Director of
Richmond City Department of Mental Health and
Mental Retardation

CITY OF RICHMOND

and

PATRICIA HARRIS, in her capacity as Secretary of the
United States Department of Health and Human Services)

Defendants.

FILED

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CLERK, U. S. DIST. COURT
RICHMOND, VA.

COMPLAINT

Civil Action No 80-0569-R

PRELIMINARY STATEMENT

1. This action challenges defendants' breach of their Constitutional and statutory obligations to provide plaintiff, who is a mentally retarded citizen of the United States and resident of Virginia, with appropriate treatment and habilitation and to release him from his present involuntary confinement at the Southside Virginia Training Center. Plaintiff who is capable of living in a community placement in the City of Richmond and is a resident of the City of Richmond, is being detained at Southside Virginia Training Center against his will, and is receiving no appropriate treatment, care or habilitation while being held there. He has been unnecessarily and improperly institutionalized for the vast majority of his life, in spite of the fact that he has yet to receive any proper treatment or program at a state institution.

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CLERK, U. S. DIST. COURT
RICHMOND, VA.

2. Plaintiff seeks declaratory and injunctive relief requiring defendants to:

- a. provide him with an appropriate residence in the City of Richmond;
- b. provide him with appropriate social and education and habilitation programs in the City of Richmond; and
- c. provide him with appropriate programming and habilitation while he is confined in Southside Training Center, to the extent that such is possible.

Plaintiff also seeks damages and declaratory and injunctive relief for defendants' discrimination against him on the basis of his physical handicap.

JURISDICTION

3. This action arises under the First, Fourth, Fifth, Eighth, Ninth, and Fourteenth Amendments to the Constitution of the United States; the Rehabilitation Act of 1973, 29 USC §794; the Developmentally Disabled Assistance and Bill of Rights Act, 42 USC §6010; 42 USC §1382(a) and the regulations promulgated pursuant thereto; 42 USC §1382(d) (b) (D) 42 USC §1396(a) (26) the regulations promulgated thereunder; 42 USC §1983; and Virginia Code §22.1-10 et seq. , §37.1-65, §37.1-84.1 and §37.1-98(a).

4. This Court has jurisdiction over plaintiff's constitutional and federal statutory claims pursuant to 28 USC §1331, §1343(3) and (4) and §1337. The amount in controversy exceeds \$10,000 exclusive of interest and costs. The declaratory and injunctive relief prayed for in this action is authorized by 28 USC §2201 and §2202, and Rules 57 and 65 of the Federal Rules of Civil Procedure. This Court has pendant jurisdiction over plaintiff's state claims.

PARTIES

Plaintiff

5. Plaintiff William Davis is a mentally retarded and physically handicapped citizen of the United States and a resident of Richmond, Virginia.

Defendants

6. Defendant Jean L. Harris is the Secretary of Human Resources for the State of Virginia. As such, she has responsibility for ensuring that the departments under her jurisdiction, including the Department of Mental Health and Mental Retardation of the State of Virginia, adequately perform their responsibilities to provide appropriate treatment to plaintiff.

7. Defendant Leo E. Kirven, Jr., is the Commissioner of the State Department of Mental Health and Mental Retardation. As such, he is responsible for the overall operation and supervision of mental retardation programs and facilities in Virginia, including Southside Virginia Training Center.

8. Defendant Richard Buckley is the Director of the Southside Virginia Training Center. As such, he is responsible for the day to day functioning of the Southside Virginia Training Center and for the direction and implementation of policy at the Center.

9. Defendant William Lukhard is the Commissioner of Public Welfare for the State of Virginia. As such, he is responsible for the development and implementation of policy and programs by the Welfare Department and its local agencies.

10. Defendant Thomas Hogan is the Director of Public Welfare for the City of Richmond. As such, he is responsible for the direction and implementation of policy and the practices of the Richmond Department of Public Welfare.

11. Defendant Margaret Foley is the Director of the Richmond City Department of Mental Health and Mental Retardation. As such she is responsible for the overall supervision and operation of mental retardation programs and facilities in the City of Richmond.

12. Defendant City of Richmond is an independent incorporated community of the State of Virginia. It is charged under the Code of Virginia §37.1-194 et seq. with appropriating funds to establish community residences for the mentally retarded.

13. Defendant Patricia Harris is the Secretary of the United States Department of Health and Human Services. As such she is charged with carrying out the obligation under 42 USC §6010 (3) (a) that no facility for the mentally retarded service federal funds unless it provides appropriate services.

FACTS

14. Plaintiff William Davis is 40 years old.

15. Plaintiff is moderately mentally retarded and, because of paraparesis, walks with orthopedic shoes and a walker.

16. Plaintiff was admitted to Lynchburg Training School on September 16, 1953.

17. Plaintiff was transferred from Lynchburg to Southside Virginia Training Center on March 19, 1980.

18. All of the time that plaintiff has been in Lynchburg and Southside Virginia Training Center, such placement has been inappropriate for him.

19. Plaintiff is not, and has not since his admission to Lynchburg, received appropriate treatment, care or habilitation.

20. Plaintiff's confinement in Lynchburg and Southside Virginia Training Center without appropriate treatment and care has caused substantial impairment in his ability to function and to learn and has caused him grave suffering, pain, and hardship.

21. Plaintiff is in need of community placement within the City of Richmond. He is in need of appropriate habilitation services and treatment to accompany that community placement.

22. Although defendants' acknowledge that plaintiff is in need of community placement and treatment, and that he has been in need of such placement and treatment for a substantial time, defendants have failed, and continue to fail, to provide him with community placement and appropriate treatment in the community.

23. While confinement at Southside Virginia Training Center and the programs available to plaintiff at Southside Virginia Training Center are all inappropriate to his needs, the program which most approaches being appropriate to his needs is the vocational training program. Plaintiff has been and is being excluded from that program because he is handicapped and needs to walk with a walker and that program is inaccessible to handicapped individuals.

24. While plaintiff is said to be receiving several types of programming while he is at Southside Virginia Training Center, plaintiff in fact is receiving no appropriate programming and nothing that can honestly be referred to as "treatment" of any kind.

CLAIMS FOR RELIEF

25. Defendants Jean Harris', Kirven's and Buckley's isolation and segregation of plaintiff by confining him to Southside Virginia Training Center without offering him anything approaching appropriate treatment or habilitation is an unwarranted restriction on plaintiff's liberty. This restriction, isolation, and segregation of plaintiff constitutes cruel and

unusual punishment, in violation of the Eighth and Fourteenth Amendments to the United States Constitution, 42 USC §1983 and 42 USC §6010(2).

Second Claim

26. By isolating and segregating plaintiff from interaction with any but other mentally retarded citizens, by housing only mentally retarded citizens in Southside Virginia Training Center, by segregating plaintiff from other handicapped and nonhandicapped individuals within the community and by denying plaintiff access to services and opportunities, including recreational facilities and transportation facilities, available to others in the community who are not mentally retarded, defendants Jean Harris, Kirven, and Buckley have violated and continue to violate plaintiff's right to be free from discrimination on the basis of his handicap, as guaranteed by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, 29 USC §794, and 42 USC §1983.

Third Claim

27. By denying plaintiff access to the only program at Southside Virginia Training Center which even approaches a suitable program for plaintiff because of plaintiff's physical handicap, defendants Jean Harris, Kirven and Buckley have violated and continue to violate plaintiff's right to be free from discrimination on the basis of his handicap as guaranteed by 29 USC §794 and 42 USC §1983.

Fourth Claim

28. Defendants' confinement of plaintiff in Southside Virginia Training Center and the failure of all defendants to provide housing for and to treat and properly care for plaintiff in a community setting violates plaintiff's right to be provided treatment in the least restrictive alternative as guaranteed by 42 USC §6010(2) and Virginia Code §37.1-84.1(6).

Fifth Claim

29. All defendants' failure to provide appropriate treatment, social services, and habilitation which is appropriate to plaintiff's needs violates plaintiff's right to appropriate treatment as guaranteed by 42 USC §6010(1) and (3).

RELIEF REQUESTED

WHEREFORE, plaintiff respectfully requests that this Court assume jurisdiction over this matter and grant the following relief:

1. declare that defendants' actions and failures or refusals to act have violated and continue to violate plaintiff's constitutional and statutory rights as alleged;

2. enjoin defendants from failing to provide plaintiff with appropriate community placement and appropriate social services, rehabilitation services, and treatment and habqlitation services in the least restrictive alternative;

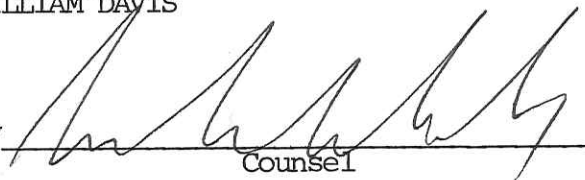
3. Award compensatory damages to plaintiff against defendants Jean Harris, Kirven and Buckley jointly and severly in the amount of \$20,000; and

4. Award plaintiff attorney's fees, costs and such other relief as may be necessary to fully effectuate plaintiff's rights in this matter. ...

Respectfully submitted

WILLIAM DAVIS

By



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