

FILED  
UNITED STATES DISTRICT COURT  
DISTRICT OF NEW MEXICO

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

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ALBUQUERQUE

WALTER STEPHEN JACKSON, by his parents  
and next friends, Walter and Helen Jackson,

STEVE NUNEZ, by his guardian and  
next friend, Mary Kathryn Reed,

RON FULLER, by his mother and  
next friend, Josephine Boughton,

MILDRED TSOSIE, by her next friend,  
Polly Arango,

MARY KATHERINE NOWAK, by her next friend,  
James W. Ellis, Esq.,

LILLIAN WILLMON, by her next friend,  
Arthur Grumblatt,

ANDRA MARTINEZ, by her next friend,  
Lance Chilton, M.D.,

CLINTON and SHAWN HEATH, by their mother  
and next friend, Belva Heath,

**CIV 87 - 0839 HB**

RICHARD STANFIELD, by his father and  
next friend, The Reverend Clyde Stanfield,

JOSEPH GONZALES, by his mother and  
next friend, Charlotte Gonzales,

SEAN MCHENRY, by his next friend,  
Paula Duvall,

ALFRED SHIRLEY, by his next friend,  
Frederick Hart, Esq.,

JAMES FRITCHE, by his next friend,  
Sally Dehon,

BETTY YOUNG, by her next friend,  
Mary Dudley, Ph.D.,

ROSEANN CROCKETT, by her next friend,  
Robert McNeill, Esq.,

CLASS ACTION COMPLAINT

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ANDRE ARMENTA, by his mother  
and next friend, Loretta Armenta,

KELLI VAN CUREN, by her parents and  
next friends, Ted and Sallie Van Curen,

LACEY WALKER, by her mother and  
next friend, Sandra Walker,

KIM LAUTENSCHLAGER, by her mother  
and next friend, Dale Lautenschlager, and

WILLIAM THOMAS, by his parents and  
next friends, James and Elizabeth Thomas,

on behalf of themselves and all others  
similarly situated,

and

SUPPORTERS OF DEVELOPMENTALLY DISABLED  
NEW MEXICANS, INC., on behalf of its members,

Plaintiffs,

v.

FORT STANTON HOSPITAL AND TRAINING SCHOOL,

LOS LUNAS HOSPITAL AND TRAINING SCHOOL,

NEW MEXICO HEALTH AND ENVIRONMENT DEPARTMENT,

LARRY GORDON, individually and in his official  
capacity as Secretary of the New Mexico Health  
and Environment Department,

CAROLYN KLINTWORTH, individually and in her official  
capacity as Acting Administrator, Los Lunas Hospital  
and Training School,

ERVIN ALDAZ, individually and in his official capacity  
as Administrator, Fort Stanton Hospital and Training  
School,

NEW MEXICO HUMAN SERVICES DEPARTMENT,

LOU GALLEGOS, individually and in his official capacity  
as Secretary of the New Mexico Human Services Department,

NEW MEXICO DEPARTMENT OF EDUCATION,

NEW MEXICO BOARD OF EDUCATION,

CATHERINE SMITH, LYNN MEDLIN, RUDY  
CASTELLANO, JOHN W. BASSETT, L. GRADY  
MAYFIELD, HERMAN WISENTEINER, MARIA CHAVEZ,  
MELVIN MARTINEZ, DAVID MCMANN, MILLIE POGNA,  
GERALD THOMAS, EMMALOU RODRIGUEZ, J. JAMES  
SANCHEZ, VIRGINIA TRUJILLO and GORDON KING,  
individually and in their official capacities  
as members of the New Mexico Board of Education,

ALAN MORGAN, individually and in his official  
capacity as the New Mexico Superintendent of  
Public Instruction,

ELIE GUTTIERREZ, individually and in his  
official capacity as Director of Special  
Education for the State of New Mexico,

LOS LUNAS PUBLIC SCHOOLS,

LOS LUNAS BOARD OF EDUCATION,

NEIL HARTIGAN, RICHARD LOVATO, DOTTIE  
SILVER, ISMAEL GURULE and LAUREL C.  
EDENBURN, individually and in their  
official capacities as members of the  
Los Lunas Board of Education,

CAPITAN PUBLIC SCHOOLS,

CAPITAN BOARD OF EDUCATION,

JAMES MCDANIEL, THOMAS  
TROST, PRESTON STONE, HOLLIS FOX and  
KENNETH COX, individually and in their  
official capacities as members of the  
Capitan Board of Education,

Defendants.

## CLASS ACTION COMPLAINT

### Introduction

1. This action is brought by the Supporters of Developmentally Disabled New Mexicans, Inc., and twenty-one individual retarded citizens of New Mexico, on behalf of themselves and all others similarly situated.

2. Plaintiffs bring this action to redress the unconstitutional and

illegal conditions imposed under color of state law on retarded persons in New Mexico, many of whom are incarcerated and segregated by the State in Fort Stanton Hospital and Training School and Los Lunas Hospital and Training School. In these isolated institutions, the State confines severely handicapped people, segregated from the community, for their entire lives. The State continues to support prejudice and bigotry against handicapped people at Fort Stanton and Los Lunas, which have become ghettos for severely handicapped New Mexicans.

3. Fort Stanton and Los Lunas are dangerous places to live. Plaintiffs have been and continue to be subjected to abuse, neglect, injury, and unnecessary physical and chemical restraints and to be denied adequate medical care, clothing, food and habilitative services.

4. By this action, Plaintiffs seek to declare and enforce the Constitutional and statutory rights of retarded persons to effective, meaningful and integrated services in small, family-like settings in the community.

#### **Jurisdiction**

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

6. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. Sections 1331 and 1343, 42 U.S.C. Section 1983 and 20 U.S.C. Section 1415. Appropriate declaratory relief is authorized pursuant to 28 U.S.C. Sections 2201 and 2202.

7. Monetary damages are inadequate. Plaintiffs have suffered and will continue to suffer irreparable harm from defendants' actions, policies and procedures and from the violations of the laws complained of herein; accordingly, declaratory and injunctive relief is necessary and appropriate.

**The Plaintiffs**

8. WALTER STEPHEN JACKSON is a twenty-six year old profoundly retarded man who has resided at Los Lunas since the age of six. Mr. Jackson has cerebral palsy and a seizure disorder that is controlled by medication. He cannot walk, needs some assistance in dressing, eating and bathing and is on a trip schedule for toileting.

9. Because of the various difficulties that Mr. Jackson's parents faced in caring for him at home, they needed an alternative to home care. The State Health and Environment Department only provides one alternative -- institutionalization -- and therefore, the Jacksons had no choice but to place him at Los Lunas.

10. Although Mr. Jackson demonstrates a capacity for both understanding and expressing language and can use a language board, he receives no speech therapy to assist him in developing his communication skills. Despite the fact that he has severe physical disabilities, he receives no physical therapy or occupational therapy to assist him in improving his daily living and self-care skills.

11. In 1985, Mr. Jackson and another resident were forced to drink a caustic oven cleaner solution by an attendant who mistook the unmarked bottle in which it was stored for one containing fruit juice. Both Mr. Jackson and the other resident received serious internal and external acid burns. An investigation of the incident revealed that caustic and poisonous substances are routinely stored in unmarked containers in refrigerators and unlocked cabinets accessible to residents. Despite this incident, open containers of cleanser and other dangerous substances have recently been found stored in an unlocked under-sink cabinet in a Los Lunas cottage.

12. Mr. Jackson's mother has discovered numerous unexplained bruises and

other injuries when she visits her son. On one occasion, she was called by an anonymous staff member and was told that an employee was regularly beating Mr. Jackson.

13. Individuals in the community who have physical and mental disabilities similar to Mr. Jackson's attend a vocational training program in Belen, near the institution. Los Lunas has denied Mr. Jackson the opportunity to attend this or any other similar program outside the institution and to learn work skills that could help him function in the community.

14. Mr. Jackson enjoys interaction with other adults but placement at Los Lunas deprives him of opportunities to develop skills and abilities that would enable him to participate in community life. He is also denied opportunities for normal social interactions and exchanges with individuals of his age and functioning level.

15. STEVE NUNEZ is a twenty-two year old retarded man. Since the age of six, he has resided at Los Lunas. Currently he lives in Building No. Two with fifteen other retarded residents. That building is frequently understaffed in the area of direct residential care.

16. Mr. Nunez grew up at Los Lunas but was never allowed to attend the local public schools with non-handicapped students. Instead, he was forced to remain in segregated educational programs at the institution. The segregated adult education programs he currently attends have inadequate resources to develop the skills he is capable of learning. Mr. Nunez is not consistently receiving the services identified in his Individualized Habilitation Plan as necessary to meet his needs.

17. Mr. Nunez is able to communicate by using a language board, has acquired several signs and is capable of differentiated vocalization. He would benefit greatly from speech therapy. However, Los Lunas currently

employs only one full-time speech therapist and two part-time temporary assistants for all 367 residents. The speech therapist has administrative responsibilities that limit her work with residents. Mr. Nunez does not receive any formal speech therapy.

18. Mr. Nunez is mobile, has reciprocal movement in his legs and, in the past, could walk with assistance. For the convenience of Los Lunas staff, however, he is most frequently placed in a wheelchair. He would benefit greatly from physical therapy to increase his range of motion and ambulation potential. Los Lunas employs only one physical therapist, two occupational therapists and one part-time occupational therapist. Mr. Nunez does not receive any physical or occupational therapy services.

19. Mr. Nunez requires frequent repositioning in his wheelchair to prevent muscle deterioration and skin breakdown. Because of inadequate staffing and gross inattention, he is not repositioned enough, and, as a result, he suffers from pelvic and hip deterioration that now cannot be corrected without surgery.

20. Mr. Nunez' communication goals require that he interact and converse with non-handicapped persons. Interaction between residents and staff on a one-to-one basis is infrequent, however, and limited to random instruction and reprimand. He is allowed no non-handicapped friends at the institution. Because he is segregated, Mr. Nunez has little, if any, opportunity for conversation.

21. Mr. Nunez occasionally regurgitates his food. In the past, he had a program addressing this behavior which allowed him to maintain an appropriate weight and healthy nutritional status. Currently, no effective program is being implemented, and he has experienced serious weight loss as a result.

22. When permitted to wear normal clothes and provided access to a bath-

room, Mr. Nunez is able to toilet himself. For the convenience of staff, however, he has been required to wear diapers.

23. When his and other residents' demands and behavior have overwhelmed the overworked staff, Mr. Nunez has been strapped into his wheelchair and locked into a maintenance closet as punishment.

24. RON FULLER is a seventeen year old profoundly retarded and autistic adolescent who resides at Los Lunas. Mr. Fuller has spent most of his life at home with his family. Mr. Fuller's mother has sought appropriate care and treatment for her son in community facilities but has found that none exist in New Mexico. State officials counseled and encouraged Mrs. Boughton to commit her son to Los Lunas.

25. Mr. Fuller displays a number of behavior problems. He is agitated, paces, rocks, alternates between periods of inactivity and hyperactivity and has episodes of unconsolable crying and screaming. The ubiquitous idleness at Los Lunas exacerbates his autistic behaviors. Since his commitment to Los Lunas, his agitation has increased, and Los Lunas staff have recommended treatment with powerful psychotropic drugs. In December, 1986, Mr. Fuller was discovered strapped into a wheelchair and locked in a closet.

26. Mr. Fuller is excluded from the local public school and from interaction with non-handicapped children. He is required to attend the segregated program at the institution, and is assigned to a classroom which contains other students with behavioral disabilities only. The room is stark and devoid of any visual stimulation. All materials and supplies are stored in locked cabinets. Students are sometimes strapped with papoose restraints.

27. Mr. Fuller has a hearing loss in one ear. A hearing evaluation has shown that he could benefit from a hearing aid. Mrs. Boughton purchased an aid for him before he arrived at Los Lunas. At the institution, Mr.



Fuller's hearing aid is kept locked in a closet.

28. When living in the community, Mr. Fuller had been on a successful trip schedule for his toileting needs. He has regressed substantially since coming to Los Lunas.

29. Los Lunas has not provided any programming or plan of treatment to deal with Mr. Fuller's autism. Staff have abandoned all attempts at behavior programming and are pressuring his mother to consent to his sedation with Thorazine. Institutional staff have not been trained to deal appropriately with his needs and behavior and treat him not as a young adult but as a misbehaving, willful child.

30. MILDRED TSOSIE is a twenty-two year old Navajo who has resided at Los Lunas since she was eight. Ms. Tsosie has a seizure disorder and cerebral palsy. She requires extensive nursing care.

31. Ms. Tsosie's parents live in a remote area outside of Gallup and, in order to visit Ms. Tsosie, rely upon the Bureau of Indian Affairs for transportation. They are able to visit her at Los Lunas only once a year, and she has never been able to visit her home. Institution staff correspond but are unable to maintain telephone contact with Ms. Tsosie's family because they have no phone. As a result, in 1984, the New Mexico Association for Retarded Citizens assumed corporate guardianship of Ms. Tsosie and now has the legal authority to make all medical and other decisions on her behalf. Due to the remoteness and isolation of Los Lunas, Ms. Tsosie has lost the opportunity to have greater involvement with her family.

32. Ms. Tsosie was recently transferred from Bashein Building to Chavez West Building -- a "medical" unit at Los Lunas. She currently lives there with other severely handicapped men, women and children and has no opportunity to interact with non-handicapped peers. She spends most of her time in the cottage, lying in her crib, on the floor or a mat, or seated in a wheelchair.

33. Despite her severe disabilities, Ms. Tsosie can respond to her name and to a friendly voice, notices and responds to faces, enjoys music and likes spicy food. She recently had a permanent gastric tube inserted through her stomach for feeding. Her medical condition had deteriorated without explanation; in response, the institution's doctors determined that a gastrostomy was necessary.

34. MARY KATHERINE NOWAK is a thirty-one year old Los Lunas resident who has been institutionalized since the age of eight. She is currently living in Building No. Four, a part of the institution's "transitional" unit with a group of residents designated as appropriate for placement in a small family-like community setting.

35. Ms. Nowak was placed at the New Mexico State Hospital prior to being moved to Los Lunas. She has been forced to ingest powerful psychotropic drugs, including Haldol and Mellaril.

36. The most recent program plan written by Los Lunas staff for Ms. Nowak indicates that she will no longer be referred to any community programs, and her name has been removed from community program waiting lists. Although she was once eager to move to the community, Ms. Nowak has recently expressed a fear of leaving Los Lunas. Her psychologist has suggested that she is "institutionalized" as a result of her prolonged placement at Los Lunas. He and other staff have recommended "a program of desensitization....more visits off campus, more furloughs and more social experiences..." to help extinguish her "relocation phobia." Each day she remains at Los Lunas will increase her "institutionalization."

37. LILLIAN WILLMON is a sixty-seven year old, profoundly retarded woman who has lived at Los Lunas since 1939. Ms. Willmon was never permitted to attend school with nonhandicapped peers.

38. Although Ms. Willmon now must use a wheelchair for mobility and has regressed in her motor skills, she previously walked with the aid of a walker. She suffers from arthritis which has impaired her ability to walk and interferes with her movement. She receives no physical therapy or other treatment for this condition, however.

39. Ms. Willmon is well-liked, enjoys social interaction and attends a local church on a regular basis. She has never been considered for community-based, family-like residential living programs throughout her forty-eight years at the institution. The State offers almost no community placements to older persons with developmental disabilities.

40. ANDRA MARTINEZ is a thirty-four year old severely retarded resident of Los Lunas. She has resided at the institution since 1979, when she was transferred from the Las Vegas Medical Center.

41. Ms. Martinez is able to talk, although her speech is echolalic, perseverative and difficult to understand. Despite her need for frequent and on-going speech therapy, Los Lunas does not provide Ms. Martinez with therapy which could help her develop and improve her verbal abilities.

42. Ms. Martinez has been confined to state institutions most of her life and was never permitted to attend public school with nonhandicapped children. She is currently enrolled in the Los Lunas adult education program which she attends in the mornings during the school year.

43. Ms. Martinez exhibits some inappropriate behaviors which Los Lunas staff members attempted to treat with Haldol, a potent psychotropic drug. Although that drug has been discontinued, no plan or program to treat Ms. Martinez' behavior has been developed.

44. For several years, Ms. Martinez has been receiving birth control pills. The institution has been unable to provide an adequate reason for this prescription and provides no form of sexual education or counseling to Ms.

Martinez.

45. CLINTON and SHAWN HEATH, ages twenty-five and twenty-three, are brothers who have resided at Los Lunas since 1971. Both men are profoundly retarded, non-verbal and use wheelchairs for mobility. Mrs. Heath cared for both her sons at home as long as she was able. When the boys were young, they were placed briefly at a private facility in Albuquerque which serves children with developmental disabilities up to the age of twelve. Thereafter, with no other programs available to her which could provide appropriate care, Mrs. Heath was forced to place her sons at Los Lunas.

46. Although they were required by federal law to receive an education with nonhandicapped children, Clinton and Shawn were provided only the segregated educational program at Los Lunas. This program ended when they reached the age of twenty-one. By the time he graduated, Shawn was able to communicate with the aid of a language board. Because of the absence of any programming thereafter, within two years of graduation, Shawn's communication skills deteriorated; he has lost the ability to use a language board.

47. Although both men are enrolled in the institution's "adult education" program, they receive no speech therapy or communication training. The education program they do receive is not individualized and is conducted en masse with numerous residents using wheelchairs crowded into small classrooms.

48. Both Shawn and Clinton are myopic, and their mother has purchased both men several pairs of glasses. Shawn, in particular, is unable to see clearly more than a few feet in front of him without corrective lenses. Los Lunas staff members, however, do not permit the men to wear glasses. As a result of his uncorrected vision, Shawn is unable to concentrate and has a limited attention span.

49. Although both men are on a trip schedule for their toileting needs,

both are frequently placed in diapers in the residential program, for staff convenience. Shawn has been injured in falls from the toilet while left unattended by direct care staff in his building.

50. Mrs. Heath has received anonymous reports that an employee was beating her son Shawn on a regular basis.

51. Plaintiffs Jackson, Nunez, Fuller, Tsosie, Nowak, Willmon, Martinez and Heath experience on a daily basis the demoralizing and illegal conditions at Los Lunas as described in Paragraphs 134-207. Because defendants have failed to establish sufficient small, family-like living arrangements and services for people with retardation in the community and have limited their usage to people less severely handicapped than Plaintiffs, they have no alternative to confinement and segregation at Los Lunas.

52. RICHARD STANFIELD is a twenty-two year old man who has resided at Fort Stanton since 1983. Mr. Stanfield is articulate, charming, has a well-honed sense of humor, and can read and write. He is working at the senior high school level in some educational subjects such as mathematics and is interested in developing employment skills.

53. Mr. Stanfield functioned normally until age fifteen when a car accident left him with a serious brain injury. As a result, he has visual deficits, partial paralysis, balance problems and exhibits obsessive-compulsive behaviors, including chain-smoking and over-eating. He also has difficulty sleeping.

54. In the months following his commitment to the institution, Mr. Stanfield's teeth began to decay and fall out. Despite repeated requests from his father and from his court-appointed attorney, the institution failed to address his dental problems, claiming that he was failing to properly maintain his teeth. Eventually, the institution agreed to seek and provide dental treatment, but not before several teeth were lost, and extensive restoration

was necessary.

55. Fort Stanton fails to provide any programs to treat Mr. Stanfield's obsessive-compulsive behaviors. The enforced idleness at the facility exacerbates these behaviors.

56. Fort Stanton staff acknowledge that Mr. Stanfield's needs cannot be properly met at the institution. As someone who was previously functioning in the normal range of intelligence and behavior, he needs rehabilitative rather than habilitative services. Fort Stanton does not have the capacity to provide Mr. Stanfield with appropriate services.

57. JOE GONZALES is a forty-three year old resident of Fort Stanton. He lives in Sierra Building where he shares a room with three other handicapped persons on the second floor. The rooms in Sierra are institutional in appearance and ambiance. The walls are stark and undecorated. Mr. Gonzales is dressed in whatever institutional garments happen to be available, regardless of their fit, condition or appropriateness for the weather. On a recent visit with her son, Mrs. Gonzales found his sneakers, his only pair of shoes, in shreds.

58. Except for travel to and from his program area, and to meals, Mr. Gonzales rarely is permitted an opportunity to spend time outside or to spend time alone.

59. Mr. Gonzales has frequently been subjected to abuse. Recently, he was injured by another resident. After complaining of pain and an inability to move, he was transferred across the campus in a wheelchair. After waiting two hours for an examination, medical staff finally decided to move Mr. Gonzales to a local hospital where x-rays revealed that he had suffered a broken hip.

60. Mrs. Gonzales fears for her son's safety and well-being at Fort

Stanton. Because the State refuses to provide appropriate retardation services in the community, Mr. Gonzales is forced to stay at the institution.

61. SEAN MCHENRY is a profoundly retarded and autistic young adult who resides at Fort Stanton. He is one of seven children and was a victim of severe emotional and physical abuse as a young child. Social workers and psychologists believe that Sean was normal at birth but the severe abuse he suffered in both family and foster care settings has resulted in his retardation and autistic behaviors. Sean has been a ward of the State of New Mexico since parental rights to the McHenry children were terminated in 1980. He was placed in a number of residential treatment programs and community facilities throughout New Mexico until 1984, when he was segregated at Fort Stanton. For many years, Sean was in the custody of the State Human Services Department, which failed to place him in an appropriate foster family setting. His rights to an education and to appropriate services were abridged during this period, and no efforts were made by the State to assure him of those rights.

62. Fort Stanton staff have forced Sean to attend the institution's segregated education program and have denied him the opportunity to attend the local public schools with nonhandicapped students. The segregated school is housed in a large building which is divided into four smaller classrooms separated only by curtains. Most of the time, students are left in the classes with nothing to do. Students sit for hours with their heads down or simply staring into space. The idleness at Fort Stanton exacerbates his autistic behaviors. In school, Sean can most often be found rocking or seated in a corner of the room with his head down.

63. Sean does not receive adequate related educational services such as speech therapy or physical and occupational therapy. Fort Stanton employs only one speech therapist to serve all 140 residents. Sean is on a "waiting



list" for occupational therapy services because Fort Stanton has no occupational therapists on staff.

64. Sean's living area is completely institutional in ambiance and appearance. No efforts have been made to make his living area at Fort Stanton personal, intimate or friendly.

65. Sean needs habilitation services in small, community-based settings, including psychological support and counseling — services that are not even available at Fort Stanton. No effort has been made to address Sean's individual and specific needs for communication, socialization, psychological services, occupational or physical therapy in a comprehensive plan that could help to modify and ameliorate his behavior and increase his abilities.

66. ALFRED SHIRLEY is a thirty-five year old Native American who has resided at Fort Stanton since 1981, when he was transferred from a Gallup nursing home by the Bureau of Indian Affairs. Since his parents live on a reservation in Arizona, contact of any kind is extremely limited.

67. Mr. Shirley has a seizure disorder and wears a leg brace. Although able to walk with assistance, he is frequently placed in a wheelchair for the convenience of staff.

68. According to Fort Stanton records, Mr. Shirley is unable to communicate his needs and understands little that is said to him. One attendant has noted in his file that one of Mr. Shirley's frequent verbalizations, "aiyayaya," is probably a form of "Indian talk." Although Mr. Shirley may understand and perhaps be able to speak Navajo, he is provided no opportunity to communicate in that language with anyone at the institution. He receives only minimal instruction and training in basic skills of daily living. In spite of his need for assistance with communication and his difficulties with self-ambulation, he receives no speech, physical or occupa-



tional therapy.

69. Mr. Shirley's records document numerous injuries resulting from unexplained and uncharted incidents. He is frequently bruised or cut and almost constantly has black eyes.

70. Because Mr. Shirley is one of the few non-ambulatory residents at Fort Stanton, he is frequently isolated from his peers and has few opportunities to leave the institution grounds.

71. JAMES FRITCHE is a thirty-three year old resident of Fort Stanton who has lived at the institution for twenty years. In addition to severe retardation, Mr. Fritche has cerebral palsy and a clubfoot.

72. Mr. Fritche is a charming and engaging young man. The institution's psychologist has described Mr. Fritche as a loner and "socially isolated." However, he exhibits delight when he has visitors and readily communicates a willingness and eagerness to interact and learn. He smiles easily and enjoys playing ball outside when afforded the opportunity.

73. Although Fort Stanton claims that Mr. Fritche is unable to communicate and could not benefit from speech therapy or communication training, he was able to learn three signs in only one thirty-minute session with a special educator from the University of New Mexico.

74. Mr. Fritche is a resident of Eddy Building at Fort Stanton -- the residence for all men at the institution labeled by the staff as "low-functioning." The atmosphere is institutional. The dayroom contains only plastic chairs lined up in a row in front of a television mounted high on the ceiling. Residents occupy a bedroom with three other men and are not allowed to choose their roommates. Bedrooms are sparsely furnished with minimal, if any, decoration. Each resident's personal possessions are stored in plastic milk crates and kept in locked cabinets.

75. BETTY YOUNG is a thirty year old Fort Stanton resident who has been

incarcerated at the institution since 1980. Ms. Young, who is non-verbal and hearing impaired, was transferred to Fort Stanton from Los Lunas seven years ago.

76. Ms. Young's records indicate that she used and understood at least twenty-five signs while at Los Lunas. At Fort Stanton she receives no speech therapy or communication training in sign language and her ability to use sign language, as a result, has deteriorated.

77. Since arriving at the institution, Ms. Young has experienced a weight gain of at least thirty pounds, a gain that Fort Stanton staff have been unable to control or explain. She receives Ortho-novum, a contraceptive, and Thorazine, a potent psychotropic drug, to control what the institution terms her aggression and hyperactive behavior. Both medications can stimulate appetite. The need for birth control pills is unexplained.

78. Ms. Young resides in a building for women which is generally poorly lit and frequently smells of urine. Residents spend much of their "free" time sitting or wandering aimlessly in a large dayroom.

79. Until 1973, Ms. Young lived in the community with a foster family. Although she is on the waiting list for a community program in Albuquerque and demonstrates basic community functioning skills, Fort Stanton asserts that her placement at the institution is necessary.

80. Plaintiffs Stanfield, Gonzales, McHenry, Shirley, Fritche and Young experience on a daily basis the illegal conditions at Fort Stanton as described in Paragraphs 134-207. Because defendants have failed to establish sufficient community living arrangements and services for people with retardation, and have limited their use to people less severely handicapped than Plaintiffs, they have no alternative to confinement and segregation at Fort Stanton.

81. ROSEANN CROCKETT is a thirty-three year old woman who, until the

spring of 1986, resided at Fort Stanton. She is now living at a nursing home in Roswell after a medication error left her bed-ridden and catatonic.

82. From August, 1985, to March, 1986, a psychotropic drug known as Prolixin, a phenothiazine derivative, was administered to Ms. Crockett in increasing dosages. Ms. Crockett's medical records throughout that time stated that she was allergic to phenothiazines.

83. Although Ms. Crockett exhibited symptoms of an adverse reaction to Prolixin for some time, it was not until March 9, 1986, that a crisis occurred, and she was admitted to a local hospital. In a March 10, 1986, evaluation she was found to be "in a semi-catatonic state, non-responsive to verbal stimuli and mildly responsive to physical stimuli only."

The examining physician also noted that "she is normally able to ambulate and speak, however, she is more [sic] of a catatonic state at the present and does not speak, cannot ambulate and cannot respond." Following her admission to St. Mary's Hospital in Roswell, Roseann was examined by a neurologist who described her diagnosis as "phenothiazine hypersensitivity."

84. Roseann now lies alone in a back room of the Roswell Nursing Center, unable to walk or communicate. She is not permitted to participate in the programming at the center which serves only older residents. She is rarely, if ever, moved from her room and the Center provides no programming directed towards Ms. Crockett's needs. At thirty-three, Ms. Crockett is the youngest resident at the Center. The nursing staff, accustomed to caring for the elderly, are unfamiliar with Ms. Crockett's special needs. She is often in pain and cries out; little relief is available to her.

85. Because defendants have failed to establish sufficient community living arrangements and services for retarded people, and have limited their usage to people less severely handicapped than Ms. Crockett, she has been given no alternative to confinement and segregation in Roswell. The State

has placed her in a private nursing home and refused to provide her with habilitation services.

86. ANDRE ARMENTA is a sixteen year old severely mentally and physically disabled man who resides at home with his parents, Ray and Loretta Armenta, in Albuquerque. Andre was born with Sturge-Weber syndrome, a vascular abnormality which has affected his physical and mental development. He is partially deaf and blind and suffers from frequent seizures that often leave him unable to swallow and occasionally cause respiratory arrest.

87. Before Andre's first birthday, his medical bills amounted to over \$160,000. The family's insurance has not covered the costs of medication, consultation with physicians, home child care and oxygen.

88. Despite the serious financial problems Andre's disabilities have caused, the Armentas continue to keep Andre at home because of their firm belief that the love and care he receives from his family has contributed to his mental and physical development. Andre attends public school when his medical condition permits and participates as fully as possible in all aspects of family and community life.

89. In 1984, Andre became eligible for the State's Medically Fragile Children's Program, and he and his family now receive eighty hours per month of in-home nursing care. The program has given his family additional support and freedom, and temporarily relieved a part of the financial burden of Andre's care. However, the program only serves children under eighteen. In two years, the support the Armentas receive will be discontinued and they will again be forced to either pay for additional services themselves or go without. No services, programs or facilities exist for adults with severe mental and physical handicaps that can provide the same or similar quality of care that Andre has been receiving at home.

90. KELLI VAN CUREN is a seven year old child who lives with her family in Los Lunas. She is moderately retarded and has physical disabilities as a result of a medical error that allowed toxins to build up in her blood and damage her brain after she was born.

91. Soon after Kelli's birth, her parents were told that she would never walk. Today she not only walks, but runs and rides a tricycle.

92. Kelli is a healthy, active member of her family who contributes a great deal to the lives of her parents, sisters and brother as well as her friends and the community where she lives. She attends a regular public school six hours a day and rides there on the school bus. At home, she helps around the house, sets the table, washes dishes, feeds the chickens and gathers eggs. She can put on her own coat and partially dress herself. Her communication is limited to two to three words, but she communicates actively through the use of numerous signs.

93. On family outings, Kelli interacts with many other members of the community and has become very social. She loves animals, enjoys riding horses, and cares for her own pet.

94. Kelli currently receives speech and physical therapy services through her school. Speech, physical and occupational therapy services are available through the public school system in New Mexico to persons with developmental disabilities until the age of twenty-one. Without continued services, Kelli will regress and lose many of her skills.

95. At age twenty-one, Kelli will face long waiting lists for employment services and residential placement if she wishes to live away from her family. Should her condition worsen or her family become unable to care for her, the only alternative currently available for Kelli is institutionalization at Los Lunas.

96. LACEY WALKER is five and one-half years old. Profoundly retarded

and blind, she has lived all of her life at home with her parents in Farmington. Lacey also has cerebral palsy, a seizure disorder and severe respiratory problems.

97. In addition to other complications at birth, Lacey suffered complete renal failure and a cerebral hemorrhage at the age of five weeks. A local doctor advised the Walkers to let her die. Instead, Mr. and Mrs. Walker spent much of the next two years seeking care and treatment for their daughter in Utah. Three years ago, they returned to New Mexico and sought services for Lacey from the State. Mrs. Walker toured Los Lunas but found the conditions and quality of care unacceptable. She was told that staff ratios in the building where Lacey would be placed were one staff member to every ten children; on weekends the ratio increased to 1:20. Children, she was told, were bathed every other day. She found the residents there languishing, without the most minimal programming necessary to meet their needs.

98. In 1985, Lacey was approved for the state's Medically Fragile Children's Program, which provided the Walkers with in-home nursing care for Lacey five hours a day, four days per week, Medicaid benefits enabling them to purchase drugs, diapers and formula and insurance against catastrophic medical expenses. In the year preceding her acceptance into the Medically Fragile Program, Lacey was hospitalized three to four times per year at a cost to the Walkers of \$10,000 per week.

99. In 1986, Lacey was dropped from the Medically Fragile program. Her condition had improved and was no longer "life-threatening." Although she and her family were still in need of around the clock care and assistance, the Walkers' benefits were severely curtailed. Lacey now receives limited assistance from the State in the form of minimal in-home care and some

Medicaid benefits.

100. The strain of caring for Lacey has affected the entire Walker family. Lacey is often up all night and until recently cried constantly. The Walker's acceptance into the Medically Fragile program was a tremendous relief to them and their recent termination from that program a heavy blow. Her family believes that Lacey is alive today because of the love and affection she receives at home. They recognize that if they should for any reason become unable to care for her, she risks institutionalization at Los Lunas or Fort Stanton since they are the only alternatives available to people like Lacey. Professionals have suggested that the Walkers move elsewhere to obtain better services for Lacey. The Walkers believe that their home and Lacey's is in New Mexico and believe that she, like other citizens, has a right to optimum quality care within the supportive environment of her family and friends.

101. KIM LAUTENSCHLAGER is an eight year old profoundly mentally and physically handicapped child living in Los Alamos. Kim is non-verbal, cannot walk or feed herself and has no self-help or self care skills. She also has a seizure disorder and is vulnerable to colds, viruses and other infections.

102. Kim lives near her parents in a companion home with a volunteer family willing and able to take on the responsibility and difficulties involved with her care. The companion home arrangement is purely voluntary and Kim's companion parents accept no money for Kim's care. Kim spends the weekends, vacations and holidays at home with her family.

103. During the week, Kim receives home visits from therapists who provide stimulation and feedings and help to supplement her extensive care requirements. She receives physical therapy once a month.

104. Mrs. Lautenschlager has sought alternative placements for Kim. At



one time, the Lautenschlagers requested that the companion family be designated as foster parents by the State so that they would be eligible for financial support. The State insisted, however, that the Lautenschlagers first terminate their parental rights to Kim, which they were unwilling to do. Mrs. Lautenschlager has also sought the State's assistance without success to provide small, family-like, integrated homes for profoundly handicapped children like Kim in the Los Alamos area.

105. Although she could place her daughter in an institution, Mrs. Lautenschlager believes strongly that the only appropriate place for Kim is a family. Like parents of other profoundly handicapped children living in the community, the Lautenschlagers fear that Kim risks institutionalization should they or their companion family become unable to care for her.

106. BILL THOMAS is a thirty-four year old severely retarded life-long resident of Roswell. His handicap was diagnosed soon after birth. At the age of six, doctors advised his parents to place their son at Los Lunas. They refused, and Bill has been at home ever since.

107. Mr. Thomas never attended public school, since no programming was provided when he was of school age for individuals with handicaps of his severity. He never received any related services such as physical, occupational or speech therapy to assist him in coping more effectively with the demands of daily life. Nevertheless, Mr. Thomas can feed himself, is toilet-trained, can follow simple commands, assists in dressing, and can put on, take off and put away his coat. He enjoys the outdoors and has many friends and acquaintances in the community. Five days a week Mr. Thomas attends a day program in the community. He rides a van to and from the program.

108. Mr. Thomas' parents would like their son to eventually move to a small, family-like home so that when they are no longer able to care for him,



the separation will not result in his institutionalization. The state has failed to provide the Thomases a placement option in a small, family-like integrated setting.

109. Plaintiffs Armenta, Van Curen, Walker, Lautenschlager and Thomas are at risk of being segregated and confined at Los Lunas or Fort Stanton, since New Mexico provides inadequate alternatives. Defendants have failed to establish sufficient living arrangements and services in the community for people with retardation, and have limited their usage to people less severely handicapped than these Plaintiffs.

110. The Supporters of Developmentally Disabled New Mexicans, Inc. (SDDNM) is a nonprofit corporation existing under the laws of the State of New Mexico. Members of SDDNM include retarded persons, parents, other relatives, guardians, and next friends of people segregated at Fort Stanton and Los Lunas and of persons in jeopardy of being segregated there by the State, as well as retarded people presently segregated or in jeopardy of being segregated there.

111. SDDNM was formed in the face of the official exclusion of retarded New Mexicans from a wide array of public services e.g., educational, vocational, and recreational programs provided to all other state citizens in the community. It expends its resources to provide retarded people the opportunity to receive those services, which are as essential to retarded people as they are to all others, and to enforce the duties of defendants to provide meaningful and integrated services in small, family-like settings in the community for the retarded citizens of New Mexico. SDDNM seeks to make New Mexico officials aware of the competencies of those who are retarded, and to replace confining and defeating stereotypes with respect and appreciation.

#### Class Action Allegations

112. Plaintiffs bring this action pursuant to Fed. R. Civ. P. 23(a) and (b)(1) (A) or (B), or 23(b)(2), on their own behalf and on behalf of all other

persons who are now, or who may be in the future segregated by the State at Fort Stanton or at Los Lunas.

113. The members of the class include all persons who are now at Fort Stanton or Los Lunas or may be transferred there in the future and persons residing at home who, because appropriate community services to assist their families are unavailable, are in jeopardy of being sent to Fort Stanton or Los Lunas. The class also includes persons who have been transferred to skilled nursing facilities, intermediate care facilities, homes for the aged, and similar facilities, yet remain defendants' responsibility and who, because of defendants' failure to provide alternatives in small, family-like settings in the community, may be forced to return to Fort Stanton or Los Lunas. Plaintiffs seek for themselves and the members of the class declaratory and injunctive relief which requires defendants to create the quantity and type of community living arrangements and other community services necessary for the habilitation of all plaintiffs and class members in integrated community settings.

114. The members of the class have all been denied rights under federal law as a result of the actions, inactions, policies and practices of defendants. Plaintiffs seek declaratory and injunctive relief for themselves and for all members of the class to eliminate those actions, policies and practices and to require defendants to establish standards and procedures that do not arbitrarily deny to plaintiffs and the class their rights guaranteed by federal law.

115. This is a proper class action pursuant to Fed. R. Civ. P. 23 because:

(a) the class is so numerous as to make joinder of all members impracticable;

(b) there are substantial questions of law and fact common to the entire class;

(c) the claims of the plaintiffs are typical of the class;

(d) the plaintiffs' attorneys have legal resources and experience adequate to protect all members of the class and the named plaintiffs will adequately and fairly represent the interests of the class;

(e) 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;

(f) the prosecution of separate actions by individual members of the class would create a risk of varying adjudications with respect to individual members of the class that might establish incompatible standards of conduct for the defendants in this action; and

(g) separate actions would create a risk of adjudications with respect to individual members of the class that would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

116. The questions of law and fact common to the entire class and to the claims of the individual plaintiffs include but are not limited to:

(a) Have the defendants failed to provide services to plaintiffs in an integrated community setting?

(b) Do the defendants have an obligation under the Constitution and the laws of the United States to provide necessary services to plaintiffs and their class in integrated community settings?

(c) Have defendants provided an appropriate public education, including integration with nonhandicapped children, to handicapped children living at Fort Stanton and Los Lunas?

(d) Are there standards for the provision of services in the community that the defendants, under the Constitution and the laws of the United States, must respect and implement?

(e) Are the conditions at Fort Stanton and Los Lunas as alleged herein?

(f) Have defendants subjected residents of Fort Stanton and Los Lunas to abuse and neglect and unnecessary physical and chemical restraints and deprived the residents of adequate food, clothing, shelter, medical care, and habilitative training?

(g) Does segregation at Fort Stanton or Los Lunas violate, among other rights, plaintiffs' entitlement to: freedom from harm, the equal protection of the laws; habilitation in integrated community settings; freedom of association; freedom of expression; the right of family integrity; and participation, as they are able, in programs and activities receiving federal assistance regardless of the severity of plaintiffs' handicaps?

#### Defendants

117. Defendants Fort Stanton and Los Lunas are both state-owned and operated institutions in which approximately five hundred citizens are incarcerated, although they have committed no crimes. Both institutions are classified as Intermediate Care Facilities for the Mentally Retarded (ICF/MR) under Title XIX of the Social Security Act, and both receive federal funds under the Act, in addition to other federal financial assistance.

118. Defendant Health and Environment Department (HED) is charged with executing the primary functions of the State of New Mexico pertaining to the care and treatment of developmentally disabled persons. HED administers and operates Los Lunas and Fort Stanton. HED has the duty to insure that all residents of Los Lunas and Fort Stanton receive services in accordance with

the provisions and protections of federal and state law. HED is required to meet the mandates of the federal Intermediate Care Facilities for the Mentally Retarded (ICF/MR) regulations governing those facilities. It contracts with private agencies to provide residential and other services beneficial to and needed by persons with developmental disabilities.

119. Defendant Larry Gordon (the Secretary) is the Secretary of the New Mexico Health and Environment Department. He is its chief executive and administrative officer and is responsible for insuring that state facilities for developmentally disabled persons are operated in compliance with federal law. The Secretary is responsible for monitoring and evaluating the professional and administrative activities of Fort Stanton and Los Lunas, consulting with the administrators of those facilities and preparing and submitting to the state legislature budget requests sufficient to enable these facilities to carry out their functions and meet their statutory and constitutional obligations. He is also responsible for insuring that the needs of developmentally disabled persons in New Mexico are assessed every three years and that a residential services plan to meet these needs is completed. He is additionally responsible for preparing and submitting a budget request to the Governor and the legislature for the support of community-based services.

120. Defendants Carolyn Klintworth and Ervin Aldaz are respectively Acting Administrator and Administrator of Los Lunas and Fort Stanton. They are responsible for the operation, administration, and supervision of all aspects of their facilities, including the custody, care, and treatment of all persons admitted there. They are responsible for insuring compliance by the staff with each facility's and HED's rules, regulations, and procedures; with applicable state and federal law and regulations; and with court orders

governing the admission, care, treatment, and discharge of residents. They are further responsible for insuring that allegations of abuse of residents are reported to the appropriate local or state authorities. They have oversight responsibility for the process by which residents are discharged to community-based programs, nursing homes, or other placements.

121. Defendant New Mexico Department of Human Services (HSD) is the designated state agency responsible for the receipt and appropriate disbursement of funds under Title XIX of the Social Security Act and for the enforcement of the provisions of that Act in New Mexico. The Act requires review of the needs and level of care required by all persons in intermediate care facilities for the mentally retarded in order to insure that appropriate placements are made and to identify persons inappropriately placed in such facilities instead of in the community. HSD is also responsible for the administration and oversight of all home and community-based Medicaid service programs authorized by Section 1915(c) of Title XIX of the Act, and for insuring that such programs comply with federal requirements and with the service plan submitted by the State pursuant to which the waiver of certain Medicaid requirements has been granted by the federal government.

122. Defendant Lou Gallegos is the Secretary of the Department of Human Services. He is the executive and administrative officer of the Department and is responsible for insuring that HSD fulfills its obligations under the Social Security Act.

123. Defendant New Mexico Department of Education supervises all schools and school officials under the jurisdiction of the New Mexico Board of Education. The Department of Education, with the approval of the Board evaluates educational programs, and sets standards for diagnosis, screening and educational offerings for exceptional children in public schools and in state institutions under the authority of HED. The Department of Education

must insure that all state agencies administering educational programs fully comply with requirements guaranteeing that handicapped children be educated with nonhandicapped children to the maximum extent appropriate. The Department is also responsible for insuring that severely handicapped New Mexicans, including residents of Los Lunas and Fort Stanton, receive vocational rehabilitation services on a priority basis so that such individuals may prepare for and engage in gainful employment to the extent of their capabilities. The Department is also responsible for maximizing the use of community resources in the provision of vocational rehabilitation services.

124. Defendants Smith, Medlin, Castellano, Wisenteiner, Chavez, Martinez, Thomas, Bassett, Rodriguez, Mayfield, McMann, Pogna, Sanchez, Trujillo and King are the members of the New Mexico Board of Education. They are responsible for the formulation and adoption of curricula for the adequate instruction and education of all students in the public schools. They are also responsible for the establishment and enforcement of certification requirements for special education teachers and other school personnel who provide services to disabled children, and of standards for the identification, evaluation, placement and service programs for all handicapped children served through all public schools and state supported institutions. They are additionally responsible for applying for funds appropriated by Congress pursuant to the Education of the Handicapped Act (EHA), and they are responsible for carrying out the provisions of that Act within the State of New Mexico including assuring that handicapped students be educated with nonhandicapped students to the maximum extent appropriate.

125. Defendant Alan Morgan is the New Mexico Superintendent of Public Instruction. He is the executive and administrative officer of the State Department of Education and is responsible for insuring that the policies of

the Board are implemented, applied, and carried out.

126. Defendant Elie Guttierrez, the Director of Special Education within the New Mexico Department of Education, is an educational program manager. He is responsible for evaluating policies and procedures for the delivery of educational services to local educational districts, including state institutions. He must also evaluate the effectiveness of instructional programs, become informed of research findings in the area of special education and disseminate that current information to school personnel throughout the state.

127. Defendants Richard Lovato, Dottie Silver, Ismael Gurule, Laurel Edenburn and Anthony Apodaca are members of the Board of Education of the Los Lunas Public Schools and Defendants James McDaniel, Thomas Trost, Preston Stone, Hollis Fox and Kenneth Cox are members of the Board of Education of the Capitan Public Schools. They are responsible for educating handicapped students, including students residing at Los Lunas and Fort Stanton, in integrated settings with nonhandicapped students. They are responsible for adopting a budget sufficient for all school programs and for establishing policies governing the conduct of education in all district programs. They are further responsible for insuring that all handicapped children of school age within their districts receive a free, appropriate, individualized public education with nonhandicapped children.

**How Plaintiffs and The Class  
Came to be Segregated and Confined at  
Los Lunas and Fort Stanton**

128. Los Lunas was established by Act of the State Legislature on March 20, 1925, as the New Mexico "Home and Training School for Mental Defectives." 1925 N.M. Laws 254, ch. 133, Section 2. The institution was created -- at a time when prejudice and bigotry against severely handicapped people was



rampant in this country -- for "any person mentally underdeveloped or faultily developed" who "requires supervision, care, and control of his own welfare, or for the welfare of others, or for the welfare of the community". Id. Section 1 (emphasis added). Thus, a regime of segregation was commissioned, and public and private attitudes and activities reinforcing that regime were evoked and legitimated.

129. The New Mexico legislature actively inculcated fear of retarded people as dangerous, authorizing an admissions "preference to cases which constitute a special social menace." Id. Section 6 (emphasis added).

130. State officials directed the identification of retarded people and their removal from the community and enlisted the assistance of the public in doing so. The government undertook major outreach efforts to find potential cases for institutionalization and the legislature authorized commitment proceedings to be instituted by "[a]ny person over the age of twenty-one," against the wishes of the retarded person's parents or relatives, if necessary. The petition was merely required to allege "the facts bringing each person within the provisions of this Act," and incarceration to the State Home was authorized if the person was merely "found to be mentally defective, within the definition [sic] and provisions of this Act." Id., Section 6.

131. This regime of segregation was reinforced by systematic exclusion of retarded children from public schooling, forced sterilization, and bans upon exercise of the franchise.

132. Retarded people continue to be incarcerated at Los Lunas and Fort Stanton, because the State's previous actions dried up most community retardation services, and because the State has failed to provide alternative services for them in their communities. When a crisis occurs in the family of a retarded person, inadequate services are available to support the family or

to assist in the care and treatment of the retarded family member at home or in a community residence near the home.

133. Retarded persons remain incarcerated and segregated at Los Lunas and Fort Stanton for the same reason: the failure of defendants to provide sufficient alternative services, including residences in the community. Although the living conditions are unconstitutionally deficient and dangerous at Los Lunas and Fort Stanton, retarded persons are forced into confinement at the institutions, with all of their strictures, as the only settings available to them.

#### **The Institutional Environment At Los Lunas and Fort Stanton**

134. Los Lunas houses 367 individuals with various disabilities and is the only State-operated facility that provides services for individuals with severe physical and mental disabilities. Los Lunas also is the primary facility in the state for the confinement of school-age children with developmental disabilities. Approximately 100 school-age children are committed to Los Lunas; many are state wards.

135. Because Los Lunas is the only State-operated facility serving individuals with severe developmental disabilities, people from throughout the state are committed there. Native Americans from the Navajo reservation in western New Mexico (6-7 hours from Los Lunas by car), Hispanics and Native Americans from northern New Mexico (3-7 hours away) and individuals from the southern part of the state (3-7 hours away) are incarcerated at the institution. For many families who lack money and support services to care for their family members effectively at home, the distance from, and the difficulty in traveling to Los Lunas severely inhibits contact between residents and their families. The distance to Los Lunas from other areas of the State increases the isolation of its residents and denies them the critical

emotional support normally available within the home and the community.

136. Los Lunas is a self-contained facility. All residential and recreational facilities, educational and training programs and most medical care is provided at the institution. The self-contained environment of the institution mitigates against extensive community involvement. Individuals who are not "high-functioning," or without physical handicaps rarely leave the institution.

137. In September, 1986, a young female resident of Bashein Building, one of two "medical" units at Los Lunas, was brutally sexually assaulted by an unknown assailant. She later died from the resulting injuries. That same day, a male resident of Bashein was found dead. Subsequent investigations revealed that four other Bashein residents had suffered unexplained wounds to the head in the weeks preceding the deaths. The state police continue to investigate all of these incidents without success.

138. Defendant's reaction to these incidents has been to drastically increase "security" at the institution in a manner that has created an even more prison-like environment than previously existed. All cars are stopped upon entering and leaving the institution, and all of the occupants are questioned. Newly adopted visitation policies interfere with the residents' ability to maintain relationships with friends and family outside the institution. This past winter, large signs were temporarily posted at the entrance to the institution warning that all visitors were subject to a search of their vehicles. Although these security measures were ostensibly instituted to insure the safety of the residents, these procedures have created a seige-like atmosphere at the facility designed to keep the residents in and others out. Defendants have not increased their efforts to place residents of the institution in the community where their security could be insured in normal

environments.

139. The average number of deaths per year at Los Lunas has increased significantly recently, without explanation. At least four residents have died during the first five months of 1987. There were at least seven deaths in 1986.

140. Severely handicapped residents are not permitted to live in the more modern, humane and normal units. The more severely handicapped persons receive fewer and lesser quality services.

141. Many of the more severely handicapped residents at Los Lunas have been segregated in the Chavez and Bashein buildings. Chavez contains large open wards, with no privacy whatsoever. The residents are forced to stay in rows of cribs. The environment in Chavez is sterile and institutional, devoid of warmth and stimulating, normalized decoration or furnishings.

142. Bashein Building contains approximately 62 residents housed in two wings. They are forced to live in wards furnished only with cribs and bedside tables. A large nursing station and storage cabinets for clothing and linens dominate the entrance and hallways of Bashein. Few decorations are evident. Intense odors pervade the living areas.

143. Campbell Building and Building No. 10 are designated "behavior" units at Los Lunas. Doors in both facilities are kept locked and doorknobs in the dayroom areas are placed high on the doors. The rooms in Campbell and Building No. 10 are devoid of decoration and have sparse, institutional plastic furnishings. A lone television is kept locked behind a metal grill.

144. Fort Stanton is located in rural Lincoln County, one of the most isolated and sparsely populated regions of the country. It is remote and inaccessible by public transportation. Originally a federal cavalry outpost established as a defense against Native Americans in 1855, the institution became a sanitarium for persons with tuberculosis in 1899. In 1966, the

State converted Fort Stanton to an institution for the mentally retarded, segregating these persons from the rest of society.

145. The institution's location 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 sheer isolation of Fort Stanton accelerates the decline of affectionate relationships, stripping from the incarcerated individual those supports, both emotional and material, that are normally available in small, home-like settings in the community.

146. Bordering the Fort Stanton facility is the intermediate security prison, Sierra Blanca. The isolation of the institution and its proximity to the prison accentuates the differences of people with developmental disabilities and devalues all individuals within the institution walls.

147. Fort Stanton's isolation prohibits the use of community resources to establish training programs, to meet health needs, to provide employment and recreation, or to aid in the development of those diversified activities that non-incarcerated persons take for granted. Skilled professional and volunteer resources in Lincoln County and in the nearby town of Capitan are limited and woefully insufficient to absorb the social and educational needs of Fort Stanton's population.

148. Fort Stanton's location in the remote forested wilderness of Lincoln County has contributed to a number of deaths at the institution. Several residents have wandered away from the institution and have never been heard from again or have been found dead from exposure to the elements. At least one resident drowned after falling into a river that flows near the institution.

149. Eddy Building is the residence for all male Fort Stanton residents labeled "low functioning." The building contains several bedrooms sur-

rounding a large room with a glassed-in office. A television set is mounted close to the ceiling where no resident can reach the dials.

150. Most female clients at Fort Stanton reside in Soccoro Building. Residents of Soccoro spend much of their time sitting or wandering in a large room where a television, also mounted close to the ceiling, plays at loud volume.

151. Sierra Building is the residence for the other men and boys at Fort Stanton. Sierra's residents have included individuals charged with crimes such as assault or auto theft who are incarcerated at Fort Stanton as an alternative to the criminal court system. As a result, individuals with developmental disabilities residing in Sierra are frequently intimidated and injured by tougher residents, who sometimes do not even have a developmental disability. The psychologist and social worker for Sierra residents utilize their military backgrounds to create an atmosphere of strict regimentation for those individuals confined there. Residents quickly lose any warmth and trust displayed when they first entered the institution.

152. The Fort Stanton dining hall is a large building with high ceilings that is always extremely noisy and chaotic. Residents are not permitted to choose their food, to participate in the preparation of their meals or to choose with whom they will eat. The routine of eating breakfast, lunch and dinner in the dining hall is unchanging from day to day. It is difficult for clients to learn appropriate eating or socialization skills during this mass-feeding process.

153. Both Fort Stanton and Los Lunas provide inadequate space for storage of personal possessions. Those facilities which are available often remain locked or otherwise inaccessible to residents. Because of the lack of storage facilities for personal items, the few belongings plaintiffs own are often lost, stolen or destroyed within a short period of time. These

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

154. Clean clothing, bed linen, and towels are frequently not available to either Fort Stanton or Los Lunas residents. Residents' clothing is routinely lost, and individuals are frequently required to wear improperly fitting clothes and underclothes and sometimes to even go entirely without necessary items of clothing. Many residents are forced to wear clothes conspicuously marked in black ink with their names or those of other residents. Clothing modified to fit handicapped residents' particular physiques and to help them learn to dress themselves properly is not provided. Plaintiffs are deprived of the personal development, comfort and satisfaction that accompanies the right to choose among a decent selection of appropriate, clean, well-fitting, seasonable and attractive personal clothing and to present an appearance similar to that of other citizens.

155. Soap, washcloths, towels, toilet paper, toothbrushes and toothpaste are not readily accessible to residents at Fort Stanton and Los Lunas. Plaintiffs do not learn to utilize hygienic supplies or to exercise self-care skills necessary for personal health and comfort, as well as for acceptance within the larger community.

156. Upon information and belief, the buildings at Fort Stanton and Los Lunas were constructed with materials containing asbestos. Any amount of asbestos poses a threat of serious, possibly deadly injury for the residents forced to live and work in buildings constructed with that material. The serious health problems associated with exposure to asbestos include pleural mesothelioma, lung cancer and asbestosis. The danger is compounded by the fact that many residents are forced to spend a great deal of time in their



assigned buildings, and that many of those subjected to the long-term effects of the asbestos are children, teenagers and young adults.

157. Fort Stanton and Los Lunas were designed for mass management and custodial convenience. Plaintiffs spend much of their time in large groups in multi-function rooms which do not permit the separation of activities that would be found in private or group homes or in normal work or recreation places. Residents at Los Lunas spend hours strapped in wheelchairs and parked in hallways unattended, waiting long periods of time for some activity to begin. Plaintiffs are not provided the opportunity to experience a variety of environments during the day, as are other citizens, and thus are deprived of important learning opportunities.

158. Living and activity space at Los Lunas and Fort Stanton is inadequate in design, insufficient in area, inappropriate in setting and dehumanizing in condition. The institutions' physical layouts are devoid of warmth, individuality, or dignity. The living and sleeping areas are sparsely furnished and do not contain lamps, sofas, rugs, tables, comfortable chairs, pictures, magazines, toys, or other age appropriate furnishings associated with normal, active living. Plaintiffs are denied the developmental opportunities and sensory, and intellectual stimulation, comfort, and pleasure that community residents obtain from the usual physical accoutrements in homes, schools, restaurants, work places, and recreational facilities.

159. The physical settings at Los Lunas and Fort Stanton do not permit privacy, individuality, or freedom of association to plaintiffs. Residents spend their days in large, sterile day rooms, seated on plastic furniture or on the uncarpeted bare floor. They are deprived of their freedom to choose or reject their associates and to determine when and in what ways they relate to their friends. As a result, numerous residents have regressed, mentally and



physically.

**Staff at Los Lunas and Fort Stanton**

160. Defendants have failed to recruit, employ and train direct care and professional staff at both institutions in sufficient numbers and have failed to place personnel in an environment making it possible for them to stimulate and assist in the daily lives and activities of the residents.

161. Fort Stanton's isolated, remote location makes its particularly difficult to recruit, employ and train qualified staff in sufficient numbers. The institution provides little, if any, staff training in developmental disabilities and methods of working with individuals with developmental disabilities. Many well-meaning staff members are not able to provide residents with quality services due to lack of information, training and appropriate facilities.

162. Both Los Lunas and Fort Stanton have staff sufficient to provide little more than custodial care. Residents are not provided with the habilitative services, stimulation and attention necessary to prevent deterioration of their physical condition, psychological well-being or personal development.

163. Residents are frequently unable to develop personal relationships with staff or to engage in one-to-one contact and conversations such as those enjoyed in normal living situations. The gross scale of institutional living operates to discourage such relationships and other personalized, individual activities.

164. The overworked staff at Los Lunas has not been able to provide the attention necessary to protect residents from physical injury and abuse. Client abuse by other unsupervised residents is frequent and uncontrolled.

165. Los Lunas residents are often physically restrained when the

demands of individual clients become too overwhelming for staff. Ambulatory residents are frequently locked into wheelchairs for staff convenience. Clients have been locked into closets by staff as punishment or for convenience.

166. Client abuse and injury by other unsupervised residents at Fort Stanton is frequent because insufficient staff members are available to oversee the activities of all residents in their care; in some cases, staff members simply choose not to intervene.

167. The direct care staff at Los Lunas and Fort Stanton have not been trained to recognize abuse and are unaware of what constitutes physical and emotional abuse of residents. Both institutions have been without a formal training program on recognition and monitoring of abuse.

168. Los Lunas has failed to provide complete criminal background checks of its employees and has subjected residents to the custody of individuals unqualified to work with severely disabled people. Some employees have been discharged after delayed investigations revealed disturbing criminal backgrounds.

169. Upon information and belief, the normal state policy of providing criminal background checks of all employees is not followed at Fort Stanton. At least one individual dismissed from Los Lunas for abuse has been hired at Fort Stanton in a direct care position.

170. Los Lunas and Fort Stanton direct care staff receive only minimal orientation and training in the care and habilitation of persons with developmental disabilities before being hired to work in the institutions.

171. Direct care staff at Los Lunas are not trained to properly feed severely handicapped clients. For the convenience of staff, clients are sometimes fed too quickly, causing discomfort and health-related problems.

Approximately one hundred uncredentialed Foster Grandparents have major responsibilities for feeding and other direct care of residents but receive inadequate training. The lack of instruction and staff shortages have caused client injuries and contributed to deaths from aspiration and choking.

172. Los Lunas residents are transferred from building to building arbitrarily, without regard to either their own abilities, skills, or training or that of staff. Staff members without relevant training are called upon to work in buildings with aggressive and violent residents. They receive no instruction in management techniques, are fearful for their safety, and have themselves been physically injured. Staff who lack training in the handling and care of severely disabled residents have been transferred to buildings with the most fragile residents.

173. Many Los Lunas residents who have contractures or are non-ambulatory require frequent repositioning in order to prevent skin breakdown and muscle and joint deterioration. These clients do not receive the repositioning they require to prevent deterioration and, as a result, have physically regressed.

174. Los Lunas currently employs only two full-time occupational therapists, one part-time occupational therapist and one physical therapist for 367 residents. For many residents, years of institutionalization and the lack of ongoing and appropriate therapy has resulted in unnecessary physical and muscular deterioration. Many residents would benefit from frequent direct physical therapy. The physical therapist concentrates mainly on wheelchair redesign and renovation rather than providing direct therapy to residents. The occupational therapists provide evaluations and conduct in-service training. Only a handful of residents receive sorely needed occupational or physical therapy.

175. Fort Stanton currently employs no full-time occupational therapist.

Residents receive no occupational therapy services despite their needs to develop self-care and community living skills.

176. A part-time physical therapist provides limited services on a temporary basis to Fort Stanton residents. Although many residents have cerebral palsy or other muscular disorders which impair their ability to walk well, they are denied essential physical therapy services at Fort Stanton.

177. The speech/language department at Los Lunas is staffed by one speech language pathologist (SLP) with two part-time assistants and two audiologists who perform hearing evaluations. The SLP also has administrative duties which limit her efforts to provide direct speech therapy to residents.

178. Fort Stanton employs only one speech therapist for all 140 clients. Although many residents need speech therapy designed to improve their ability to understand others and communicate their own needs intelligibly, that therapy is not available for all.

179. Los Lunas has failed to provide its residents with adequate, timely medical care. Residents' health problems often go unrecognized and untreated because of a shortage of trained medical personnel and because medical staff are often slow to respond to requests for examination and treatment from non-medical staff. The victim of a recent sexual assault lay untreated and undiagnosed for at least two days before her injuries resulted in her death. Medical staff finally agreed to examine the resident the morning of her death at the insistence of educational staff. Even then, her injuries were not discovered.

180. Upon information and belief, residents injured in falls and accidents at Los Lunas have been left unattended and untreated while non-medical staff have attempted to obtain medical services and consultation from the institution's physicians.

181. Fort Stanton medical staff do not have specific training in the treatment and care of developmentally disabled individuals. Staff members have been known to flush residents' medications down the toilets as a punishment if they arrive late for medication.

182. Upon information and belief, uncredentialed direct care staff at both institutions routinely administer oral, anal and topical medications.

183. Professional staff members at Fort Stanton lack the qualifications necessary for the positions they hold. Until recently, no psychologist at Fort Stanton had even a masters degree in psychology.

184. Fort Stanton professional staff members lack even rudimentary training or coursework in mental retardation or developmental disabilities. Most of the teachers lack certification in special education.

185. Many Fort Stanton staff members reside on the grounds of the institution. The resulting parochial, self-contained atmosphere discourages efforts to integrate residents into the larger community and creates an artificial, enclosed social microcosm at the institution. Staff members are reluctant to assist residents in moving out of Fort Stanton and into the community because of their local attitudes and their fear of losing their jobs and homes.

186. Fort Stanton's management fails to instill in staff members a positive and caring attitude toward the individuals they serve. Although some staff members bring that quality with them as individuals, the overall outlook of the staff towards the clients is a negative one. Descriptions of residents, both orally and in writing, concentrate on their inabilities and weaknesses. There is no recognition of the residents' strengths and no belief in the residents' abilities to grow, learn and change. As a result, an atmosphere is created which hinders efforts to provide habilitation.

**Programming at Los Lunas and Fort Stanton**

187. The Individualized Habilitation Plans (IHPs) developed for residents do not provide adequate, appropriate active programming. Staff shortages and poor or non-existent training limits the quality and quantity of programming offered to residents.

188. Individualized Habilitation Plans (IHPs) are not appropriate or individualized for each Fort Stanton or Los Lunas resident. Goals are copied verbatim from IHP to IHP. Goals remain the same year after year. No continuity, integration or follow-up of goals is provided.

189. Defendants have failed to provide all Fort Stanton or Los Lunas residents with individualized discharge plans for placement in integrated community settings, despite professional judgment that residents need such placements. The State has failed to provide sufficient community placements and provides virtually no community opportunities for the most severely disabled residents.

190. Activities such as eating, toileting, and bathing are often conducted en masse, at predetermined and unchanging times chosen for the convenience of the institutions. This regimentation deprives Plaintiffs of the normally experienced freedom and dignity of choosing when to attend to their individual daily tasks and interests, and of arranging their appearances according to their personal tastes.

191. At Los Lunas, many residents languish in cribs or on mats with no stimulation except when they are changed or fed. Other non-ambulatory residents are left in their wheelchairs, unattended for hours, with no stimulation or interaction available to them. There is little interaction between staff and residents in the cottages. Age-appropriate activities are unavailable. Lighting is often diminished and noise levels fluctuate wildly.

192. Physical and pharmaceutical restraint procedures and tranquilizing

medications are frequently utilized for restraint of residents and as a substitute for appropriate care and programs of habilitation. Plaintiffs are subjected to punishment and to medication prescribed without a specific therapeutic goal.

193. Programs to deal with residents' 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. When confronted with inappropriate or difficult behavior problems, professional staff generally opt for pharmaceutical remedies despite the availability of alternative programs and the lack of compelling evidence that tranquilizing or psychotropic medications are effective or appropriate in controlling such behavior in individuals with mental retardation.

194. Los Lunas professional staff have administered substances manufactured for animals to Los Lunas residents to control their biting behaviors. The preparation, "Bitter Bite," has not been approved by the United States Food and Drug Administration for use on humans.

195. Residents at Los Lunas are subjected to undue restraints on their freedom of movement by excessive locking of doors. Ambulatory clients are restrained in wheelchairs; others are locked in closets. Use of papoose restraints to immobilize and restrain residents is a common practice.

196. Medical records and charts maintained by medical and direct care cottage staff are inadequate and incomplete. Charting of residents' behavior, condition and progress on a daily basis is haphazard at best and no longer available in the residents' individual cottage files.

197. Medical files are incomplete and poorly maintained. Medical staff have been unable to determine if vaginal bleeding is the result of normal biological functions or sexual assault, as in the case of a Los Lunas resident

who was attacked in September, 1986.

198. Charting of injuries and abuse or suspected abuse is incomplete and results of investigations regarding such injuries are often absent. Staff notations indicate that residents have suffered unexplained bruises or injuries that have neither been reported nor treated. Notes on residents' condition, behavior and progress as well as specific unusual incidents made by the educational and other professional staff are not routinely entered into the residents' files. This information is frequently unavailable to the resident's advocates, attorneys or families.

199. Plaintiffs have been excluded from the opportunity to attend public school with children who are not handicapped. They are provided separate educational services within the confines of the institutions. They are denied, without any educational justification, the six-hour education day mandated by New Mexico law for all students. The education programs at the institutions do not always provide appropriate, individualized programs for the residents, nor do they provide appropriate related services such as physical therapy, speech therapy, occupational therapy or psychological services.

200. Educational programming at Fort Stanton consists of routine tasks recycled year after year. The students are not provided the opportunity to develop their vocational, leisure and self-care skills. Although all persons at Fort Stanton could participate actively in a vocational program, only the least handicapped residents are given opportunities to do so. Participants in the ceramics and farm programs most often sit idly while instructors perform the actual work. In addition, residents receive little marketable training in job skills.

201. Education in daily living skills is rarely integrated into the routine of each resident in a normalized fashion. Toothbrushing does not



occur immediately after meals or in the evening, but rather at mid-morning or mid-afternoon. Clients who have toileting programs are expected to learn these skills at the staff's convenience, and not necessarily at a time when they would ordinarily go to the bathroom.

202. Students spend much of their time repetitively placing laces through boards, sticking pegs in holes, looking into hand-mirrors and working a few childish puzzles. A great deal of time is spent sitting idly. Little age appropriate activity is available for adult residents; they color pictures and pursue other projects designed for children.

203. Programming for the clients does not include opportunities to learn about life in the community. Trips to the community are rare, and community visits are often offered only as a reward for "good behavior." Residents have little opportunity to leave the institution's grounds and learn how to live in society.

204. There are few structured recreational or leisure time activities available to residents. Residents spend little time outdoors. Staff prefer to keep them inside where they can be more easily observed and controlled. Fort Stanton and Los Lunas residents rarely are permitted opportunities to hike, picnic or camp.

205. Fort Stanton and Los Lunas residents spend most of their time wandering or sitting idly and aimlessly. This lack of programming makes it difficult for clients to develop friendships with other clients in a normalized fashion through social interaction. Without normalized social activities, residents are unable to learn how to relate to one another and to the larger social community in an appropriate manner.

206. Fort Stanton does not permit clients the opportunity to worship at the church of their choice. Only a limited number of church services are

available for clients at the institution.

207. Defendants' failure to provide Plaintiffs with professionally-devised programs and activities to help them maintain fundamental skills has caused plaintiffs to experience regression and the loss of skills they possessed when they entered the institutions.

**The Persistence and Inevitability  
of Institutional Conditions at Los Lunas  
and Fort Stanton**

208. The conditions described herein have persisted throughout the existence of Los Lunas and Fort Stanton. The presence of these conditions universally among institutions demonstrates that such conditions are endemic to large, segregated, isolated, "total institutions" such as Los Lunas and Fort Stanton. A total institution is one that attempts to serve all of the residents' needs, as defined by the institution, within its own confines. Los Lunas and Fort Stanton inherently deny to Plaintiffs the experiences, interactions and opportunities for growth and development enjoyed by other members of society.

209. The behavior of retarded persons may differ slightly from that of other persons, but retarded and non-retarded persons are more alike than they are different. By segregating retarded persons from the rest of the community and congregating them together, the State reifies, compounds, and aggravates the residents' deviating behaviors.

210. Staff at Los Lunas and Fort Stanton view and relate to residents primarily in large, massed numbers, in warehouse environments. Because of the population density and because of the forced institutionalized appearance of residents, staff lose the ability to perceive and relate to residents as human beings.

211. Retarded persons, like other persons, vary in their needs, wishes, and abilities. At different points of life, different activities and environ-

ments are appropriate to each person. Large institutions classify residents once, and in the gross, based on a few salient characteristics, with little opportunity for reevaluation or change. The large, total institution deprives Plaintiffs of their individuality, of the possibility of habilitation, and of living freely.

212. Los Lunas and Fort Stanton, segregated and isolated from the rest of society, deprive residents of the opportunity to interact with non-retarded people in non-custodial relationships and in small, home-like settings in the community. Plaintiffs are denied the experiences of observing how other people behave and interact, of learning to carry out age-appropriate and acceptable social behavior and of experiencing the dignity and freedom of living in the community as normally as they may.

#### **Normalization, Liberty, Integration, and Equality**

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

214. Professional knowledge, research and the experience of other states across the country confirm that retarded persons who are subject to destructive environments such as Los Lunas and Fort Stanton progress and gain skills when provided community services.

215. In a five year study commissioned by the Secretary of the U.S. Department of Health and Human Services comparing the growth and development of severely retarded persons moved from an institutional facility, older but much like Los Lunas, to community living arrangements, researchers systematically monitoring residents for five years found:

- Severely retarded persons placed in community living arrangements increased in

skills and developmental growth while residents of the institution did not; and

- Severely retarded persons were receiving and benefiting from greater amounts of structured services than those at the institution even though the cost of community services was less than the per client institutional cost.

216. The federal government study concluded that retarded persons moved from the institution to community placements were "better off in every way." J.W. Conroy & V. J. Bradley, The Pennhurst Longitudinal Study: A Report of Five Years of Research and Analysis, Temple Univ., Philadelphia, PA; A Project of the U.S. Department of Health and Human Services, Office of Human Development Services, Washington, DC (1985).

217. Professional judgement dictates that retarded persons be served in life patterns that are integrated with and similar to those followed by other persons. This determination has been accepted as a guiding principle for programs serving retarded people by such retardation professional organizations as the American Association on Mental Deficiency, 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.

218. Professional experience similarly dictates that retarded persons be treated like other persons of the same age in their own community to the greatest extent possible. Their similarity to nonretarded persons is to be emphasized and their deviant aspects deemphasized and diminished through appropriate habilitative programming. They are to be enabled to live in a culturally normative community setting, with typical housing, to communicate and socialize in age- and culturally-appropriate ways, and to utilize community resources as other citizens do. Habilitation is to be attained through the use of generic services in the community.

219. 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.

220. Experience in New Mexico and throughout the country demonstrates that these needs can be met and a normalized, free and equal life in the community assured to retarded persons. Experience shows that a normalized life in the community can be provided for a retarded person while satisfactorily guaranteeing to parents the continued care and security of the person, after the parents' death, after the person has reached majority, and when circumstances contrive to require that the person reside apart from the family. Experience also shows that integrated services for retarded people, including 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.

221. Services in the community to support retarded people can be secured at a cost no greater than the current per capita annual expenditure at Los Lunas and Fort Stanton; 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 in the institution the services that are necessary to actually meet the needs of retarded persons.

222. Learning by retarded people requires the examples of other non-retarded people in real-world environments where what is learned is done. As for all people, but relatively more so for retarded people (it is one of their "differences"), learning by retarded people 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 retarded people flourishes in properly structured and integrated environments; in isolation it is destroyed.

223. As members of the community, retarded people of all ranges of ability can and do maintain not only steady but productive jobs. Retarded people can and do significantly care for themselves, keep clean and pleasing rooms, and respect the rights of others. Retarded people 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 being retarded makes. Retarded people need assistance, as do all persons, but often relatively more. That means not exclusion from the community but participation in it.

224. In recognition of these facts, the U.S. Congress has concluded:

"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 these institutions by their very nature, 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).

#### **The Failures of Defendants**

225. Although defendants espouse community placement, they utterly have failed to progress toward their own meager goals. Despite their own policies, prevailing professional opinion, and clear standards, and in violation of the

Constitution and federal law, defendants have not acted to provide to retarded persons the necessary conditions for a free, equal, integrated life in the community.

226. Defendants have stated a commitment to make resources available for relocating persons confined at Los Lunas and Fort Stanton to the community, and have instead invested those resources in the institutions. Defendants have permitted the transfer of residents to similar large-scale, isolating institutions, such as skilled nursing facilities, rather than developing community living facilities and community services.

227. Defendants have failed or refused to implement plans and programs for alternative community living facilities despite explicit state and federal authorization to provide them.

228. Defendants have failed to implement a range of programs and services to prevent the needless segregation of retarded persons. Community and group home development has fallen far below needed levels.

229. Defendants individually have fragmented responsibilities for assisting Plaintiffs. As a result, there are painful gaps in the state's service system. Defendants provide no centralized case management system to insure that the needs of individuals with developmental disabilities are met.

230. Because state officials historically have directed its retardation resources and reviews toward isolated segregated institutional settings, and as a matter of state policy encouraged the parents and relatives of retarded New Mexicans to make use of state institutions, community retardation resources naturally have dried up.

231. Today, financing, operation, and monitoring of residential and day services for persons with developmental disabilities continues to be fragmented and uncoordinated between the Health and Environment Department, the Human Services Department, and the Department of Education. The result is a

system with significant gaps in services and a lack of clear lines of authority and responsibility. At the client level, the absence of any meaningful case management systems reflects this absence of responsibility and perpetuates a lack of access to appropriate services by an entire class of clients or potential clients who must find their own services, and are denied procedural due process in contesting their denial of service.

232. The Health and Environment Department has failed to monitor services to developmentally disabled persons through contracts with private, non-profit service providers around the state or to periodically assess the needs of the state's developmentally disabled residents and to prepare plans to meet these needs.

233. Few of the residential services made available by HED through its community contractors are fully accessible to persons with mobility impairments. As a result, many residents of institutions, and many other potential clients living elsewhere, are denied appropriate community living services only because they are mobility-impaired.

234. HED's local contractors discriminate against potential clients based on their degree of disability or the presence of secondary disabilities or medical conditions.

235. In conjunction with the Health and Environment Department, the Human Services Department applied for and received in 1983 a waiver of Medicaid rules from the federal government as provided under Section 2176 of the Omnibus Budget Reconciliation Act of 1981. HSD assumed complete control of the Waiver program in 1986. The Waiver allows Medicaid funds to be used to support a variety of community-based services. These services and placements are designed to allow institutional residents to be served at less cost in community settings, and to divert those at risk of institutional placement to



community settings. In the approved waiver, the state committed itself to a substantial reduction in the number of residents at Fort Stanton in order to reallocate the Medicaid funding needed to create the community placements that most of the institution's residents need.

236. Despite the explicit assurances to this effect provided to the federal government, neither HED nor HSD implemented the waiver program in they proposed. Not a single resident has been moved from Fort Stanton; indeed the institution has grown significantly in size during the period since the Waiver was granted. The number of community placements promised by the Waiver application and authorized by the granting of the Waiver is far greater than the number of placements actually provided, requiring many persons to remain in inappropriate institutional placements in deplorable conditions.

237. The Waiver regulations require that persons proposed for admission to institutional placements be offered the alternative of Medicaid-financed community services. This alternative is rarely offered to new or current residents of Fort Stanton and Los Lunas, who are thus denied the option of community services for which they might qualify under the program.

#### **Claims**

##### **Count I: Rehabilitation Act**

Defendants have violated the rights of Plaintiffs and the class secured by Sections 100 and 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. Sections 720 and 794, and regulations promulgated pursuant thereto, 34 C.F.R. part 104, and 45 C.F.R. parts 84 and 1361, by:

- a. Excluding retarded people from participation in state-operated federally funded programs;
- b. Failing to provide retarded people federally assisted services that

are effective and meaningful and that are delivered in less separate, more integrated settings;

c. Denying retarded people the benefits of federally funded activities on the basis of the severity of their handicaps;

d. Segregating residents of Los Lunas and Fort Stanton on the basis of their physical handicaps;

e. Denying training and habilitation to residents at Los Lunas and Fort Stanton because of the severity of their retardation or their physical handicaps;

f. Denying community services to residents because of the severity of their handicaps; and

g. Failing to maximize vocational rehabilitation services in the community for severely handicapped residents of Los Lunas and Fort Stanton on a priority basis so that such individuals may prepare for and engage in gainful employment to the extent of their capabilities.

**Count II: Social Security Act**

Defendants have violated the rights of Plaintiffs and the class secured by Title XIX of the Social Security Act, 42 U.S.C. Sections 1396 and 1396a, and regulations promulgated pursuant thereto, 42 C.F.R. part 42, subparts G and I, by:

a. Failing to provide training and habilitation services to all residents regardless of age, degree of retardation or accompanying disabilities or handicaps;

b. Failing to provide professional services to residents in physical therapy, occupational therapy, speech pathology and audiology, psychology, dentistry, nursing, and pharmacy;

c. Failing to allow residents to manage their own personal financial

affaires;

d. Failing to allow residents to retain personal possessions and clothing in their living areas;

e. Failing to provide for individual privacy in toilets, bathtubs, showers and living areas generally;

f. Accommodating more than four residents per bedroom;

g. Failing to provide living areas equipped for use by persons with physical handicaps;

h. Using physical and chemical restraints for the convenience of staff, and as a substitute for activities or treatment;

i. Failing to develop adequate activities for residents, thereby forcing them to spend the greater part of each day in unstructured activities;

j. Failing to provide sufficient, appropriately qualified and trained staff in resident living areas, especially in living areas for severely and profoundly retarded and severely physically handicapped persons;

k. Failing to provide adequate, integrated individual treatment plans for residents;

l. Failing to perform adequate individual interdisciplinary assessments of residents;

m. Failing to review or evaluate the appropriateness of the continued residence of retarded persons in Los Lunas or Fort Stanton and other Title XIX facilities or the feasibility of meeting their needs through alternative noninstitutional care;

n. Failing to determine whether it is necessary and desirable for the residents of Los Lunas and Fort Stanton to remain in those facilities;

o. Failing to review and determine that services provided at Los Lunas and at Fort Stanton are adequate to promote the maximum physical, verbal, and psychosocial functioning of the residents there;

- p. Failing to develop discharge plans and referral to appropriate community resources;
- q. Failing to monitor residents' medications;
- r. Failing to have written agreements with qualified professionals and hospitals outside the facility to provide required services not furnished by the facility;
- s. Subjecting residents to emotional and physical abuse;
- t. Refusing to permit residents communication, association, and private meetings with individuals of their choosing;
- u. Failing to permit residents to participate in social, religious, and community group activities;
- v. Segregating residents on the basis of their physical handicaps;
- w. Failing to treat plaintiffs and the class with consideration, respect, and full recognition of their dignity and individuality;
- x. Failing to assure that services are provided pursuant to the state's Title XIX Plan in a manner consistent with the best interests of Plaintiffs and the class.

**Count III: Education of the Handicapped Act**

Defendants have violated the rights of plaintiffs and the class secured by the Education of the Handicapped Act, 20 U.S.C. Sections 1401-15, and regulations promulgated pursuant thereto, 34 C.F.R. part 300, by:

- a. Failing to insure, to the maximum extent appropriate, that Plaintiffs and the class who are of school-age are educated with students who are not handicapped;
- b. Requiring Los Lunas and Fort Stanton residents to be segregated in separate schools even though their handicaps are not uniformly of such a nature or severity that attendance in a more integrated environment, with

i. Failing to assign a surrogate parent to insure that the rights of each class member are protected when a parent is unavailable, the whereabouts of a parent are not known, or the student is a ward of the State;

j. Failing to group students in age appropriate classes or locate classes in age appropriate schools where nonhandicapped students also attend, and precluding opportunities for interaction between handicapped and nonhandicapped students; and

k. Failing to insure that monitoring of the educational program at Fort Stanton and Los Lunas occurs in a timely fashion.

**Count IV: Equal Protection**

Defendants have violated the rights of Plaintiffs and the class secured by the Equal Protection Clause of the Fourteenth Amendment by establishing, encouraging, subsidizing, and otherwise sanctioning in de jure fashion enactments, programs, policies and practices that have excluded, separated, and segregated persons with retardation.

**Count V: Expression and Association**

Defendants have violated the rights of Plaintiffs and the class to the freedoms of expression and association secured by the First Amendment, by:

a. Preventing class members from associating and assembling with others of their choice and from not associating or residing with others not of their choice;

b. Diminishing and failing to protect the capacity of class members to produce ideas by thinking and learning, and to express those ideas through communication;

c. Failing to permit residents the free exercise of their religious beliefs; and

d. Failing to utilize less restrictive alternatives when impinging upon the above rights.

**Count VI: Privacy, Dignity and Family Integrity**

Defendants have violated the rights of plaintiffs and the class to privacy, dignity, familial integrity and association as secured by the First, Fourth, Ninth and Fourteenth Amendments and with regard to the protective rights of familial integrity and association, have done so intentionally; the rights set forth above have been violated by:

- a. Stripping the residents of Los Lunas and Fort Stanton of their individuality;
- b. Requiring that they exercise the most personal of bodily functions under the constant intrusive stares of staff and other residents in a way that is patently offensive to a reasonable person;
- c. Affording them little or no opportunity to be alone when they want to be, or to be with others of their choosing;
- d. Failing to provide them normal opportunities to express love, warmth, affection, and sexuality; and
- e. Forcing them to live their lives congregately, according to the demands of the institution, rather than according to their personal preferences.

**Count VII: Due Process**

Defendants have violated the rights of Plaintiffs and the class to the liberty and property interests secured by the Due Process Clause of the Fourteenth Amendment, by:

- a. Failing to provide adequate shelter, clothing, food and health care;
- b. Imposing unnecessary restraints, physical and chemical;
- c. Subjecting class members to abuse, neglect and other harmful conditions, including the injury stemming from regression and the stigma

the use of supplementary aids and services, cannot be achieved satisfactorily;

c. Failing to provide or arrange for the provision of nonacademic and extracurricular services and activities, including meals and recess periods, in a way that insures the participation of each class member with nonhandicapped students in those services and activities to the extent appropriate to the unique needs of that student;

d. Failing to make individualized determinations for each class member of the appropriateness of placement in a separate school;

e. Failing to establish various alternative placements to insure that all class members receive an integrated education appropriate to their individual needs;

f. Failing to provide adequate transportation and such developmental, corrective, and other supportive services as are required to assist each class member to benefit from special education, including speech pathology and audiology, psychological services, physical and occupational therapy, recreation, vocational education, early identification and assessment of disabilities, counseling, medical services for diagnostic or evaluation purposes, social work services, parent counseling and training, and other related services;

g. Failing to evaluate each class member to determine the nature and extent of the special education and related services that the student needs by providing and refining assessments that distinguish precisely each individual student's strengths and needs, learning style, behavioral needs, and life-skill needs;

h. Failing to provide written notice to or to obtain the consent of the parents of each class member before conducting evaluations of or placing the class members in a program providing special education and related services;

and other harms caused by segregation and incarceration;

d. Failing to place class members in settings that are more integrated and less separate, and that would enable them to enjoy the liberties normally associated with one's citizenship;

e. Failing to provide habilitative services to enable each class member to enjoy the rights enumerated in Counts I through VII(D);

f. Failing to give consideration to the habilitative, placement, and other needs and rights of each individual class member, treating him or her in accordance with his or her own situation;

g. Conclusively presuming that residents of Los Lunas and Fort Stanton cannot benefit from particular services or cannot live in non-institutional settings;

h. Denying class members' rights to the property and liberty interests created by New Mexico state law to services in integrated settings;

i. Denying class members an adequate opportunity to be heard on the appropriateness of their habilitative plans, programs, and environment; and

j. Failing to provide a friend-advocate to assist each class member to live safely in freedom, and to exercise their federally protected Constitutional rights.

**Count VIII: Imposition of Unconstitutional Conditions**

Defendants have violated the right of Plaintiffs and the class to freedom from the imposition of unconstitutional conditions -- violations created by defendants themselves -- as a condition for the receipt of services provided by the State.

**Relief**

WHEREFORE, Plaintiffs respectfully request that this Court:

1. Declare unconstitutional and unlawful the failure of defendants



to provide all Plaintiffs and members of the class with effective services delivered in integrated community settings appropriate to their needs and permanently enjoin them to provide such services.

2. Preliminarily and permanently enjoin defendants:

(a) to provide all Plaintiffs and members of the class effective services in integrated community settings appropriate to their needs.

(b) from admitting persons to Los Lunas and Fort Stanton or from transferring present residents from Los Lunas and Fort Stanton unless such transfer is to integrated community settings appropriate to their needs, with appropriate related ancillary services provided.

(c) to make available in advance of that time and with dispatch the necessary alternative residential facilities and services in the community.

(d) to safeguard Plaintiffs' and the Plaintiff class' rights to freedom from abuse, neglect, and unnecessary physical and chemical restraints, and to provide adequate food, clothing, shelter, medical care, and habilitative programming to Plaintiffs and members of the Plaintiff class.

(e) to develop written individualized habilitation and exit plans for each Plaintiff and member of the class and to provide an individualized habilitation program for each.

(f) to make available a friend-advocate and/or surrogate parent to each Plaintiff and member of the class to assist each in securing the substantive and procedural protections aforesaid.

(g) from failing to perform their duties under other federal statutes, including 42 U.S.C. Sections 1396 and 1396a, 20 U.S.C. Sections 1401-1415, and 29 U.S.C. Section 720, and their accompanying regulations.

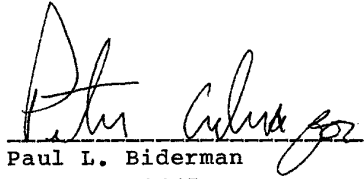
(h) to submit to Plaintiffs and to the Court for its approval a plan for implementation of the measures set forth above.

3. Schedule a hearing without delay on Plaintiffs' claims of class certification and enter a final judgment certifying the class of individuals the Plaintiffs represent to include all persons who are now at Los Lunas or Fort Stanton or who may be transferred there in the future; retarded persons residing at home who, because effective community services to assist their families are unavailable, are in jeopardy of being sent to Los Lunas and Fort Stanton; and persons who have been transferred to skilled nursing facilities, intermediate care facilities, homes for the aged, and similar facilities, yet remain defendants' responsibility, and who, because of defendants' failure to provide alternatives in the community may be forced to return to Los Lunas or Fort Stanton.

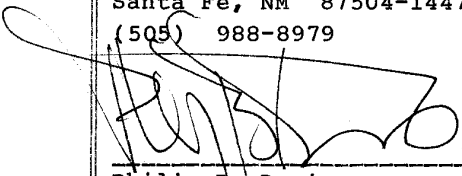
4. Award Plaintiffs their costs and attorneys fees.

5. Award Plaintiffs and the members of the class such other relief as the Court deems appropriate.

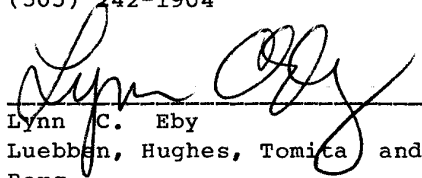
Respectfully submitted,



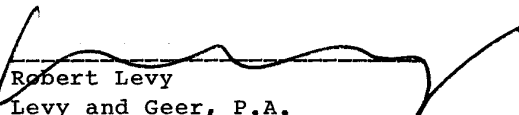
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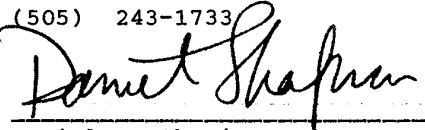
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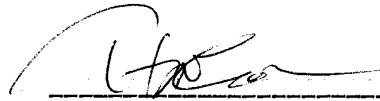
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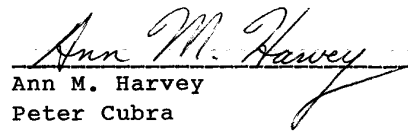
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