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

HARRY NELSON, by and through his next friend, Yvonne M. Husic; RICHARD CINQUINA, by and through his next friend, Kevin T. Casey; RALPH GIPE, by and through his next friend, Kevin T. Casey; CHARLIE KRAUT, by and through his next friend, Robert M. Currier; GERALDINE GLENNON, by and through her next friend, Jerome Ianuzzi; and EDWIN MATTIA, by and through his next friend, Carole Ianuzzi, on behalf of themselves and all others similarly situated; PENNSYLVANIA PROTECTION & ADVOCACY, INC; and THE ARC-PENNSYLVANIA,

Plaintiffs,

v.

KAREN F. SNIDER, Secretary, Pennsylvania Department of Public Welfare; NANCY R. THALER, Deputy Secretary for Mental Retardation, Pennsylvania Department of Public Welfare; and WILLIAM SNAUFFER, Facility Director of Embreeville Center, in their individual and official capacities,

Defendants.

FILED JAN 24 1994

Civil Action No. 94-CV-440

Class Action

COMPLAINT

I. INTRODUCTION

1. Plaintiffs bring this civil rights action on behalf of approximately 192 people residing at Embreeville Center in Coatesville, Pennsylvania, a public institution for persons with mental retardation, certain former residents of Embreeville Center

and an indeterminate number of persons at risk of being placed at Embreeville Center.

2. Plaintiffs seek to enjoin defendants from continuing to confine persons with mental retardation at Embreeville Center under inhumane conditions that violate their rights, including their right to adequate habilitation, active treatment, freedom from harm, and freedom from undue restraint. Plaintiffs also seek an injunction requiring defendants to provide adequate and appropriate community services to those class members who, in the opinion of professionals, do not require institutionalization. These rights are guaranteed to class members by Title XIX of the Social Security Act, the Rehabilitation Act, the Americans with Disabilities Act, the Civil Rights Act of 1871, and the United States Constitution.

3. Embreeville Center is a state-owned and -operated institution for persons with mental retardation. It is classified as an intermediate care facility for the mentally retarded (ICF/MR) under Title XIX of the Social Security Act, and defendants receive federal funds to operate Embreeville Center under that Act. For the past several years, both state and federal investigators have found Embreeville Center to be out of compliance with federal Medicaid program requirements, including legal obligations relating to client protections, active treatment, health care, physical environment, and facility staffing. Each time Embreeville Center has been found to be deficient and threatened with the termination of federal funding, defendants have submitted plans promising to correct the cited deficiencies. Subsequent investigations show the

corrections were not made or were implemented inadequately. Thus, Embreeville Center is now provisionally certified and at imminent risk of losing all federal funding for its programs.

4. Conditions at Embreeville Center, including, but not limited to, understaffing, lack of habilitation services, a poorly designed and inadequate physical plant, and a pattern of physical, verbal, and psychological abuse, present a serious and continuing danger to the health, safety, and well-being of Embreeville Center residents and cause them to experience significant injury, harm, and regression. All or nearly all class members are capable of living in the community with appropriate support services and, in defendants' own professional judgment, should be served in the community. Nevertheless, class members remain confined at Embreeville Center and other facilities in defiance of that professional judgment.

II. JURISDICTION AND VENUE

5. This court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§1331 and 1343. Plaintiffs' causes of action arise under 29 U.S.C. §794, 42 U.S.C. §§1396, 1396a, 1396d, 1983 and 12131 et seq. Declaratory relief is sought under 28 U.S.C. §§2201 and 2202. Venue is appropriate in the Eastern District of Pennsylvania pursuant to 28 U.S.C. §1391(b).

III. PARTIES

A. Plaintiffs

6. Plaintiff Harry Nelson is 41 years old and has a diagnosis of severe mental retardation. Mr. Nelson has lived at

Embreeville Center since February 9, 1982, when he was transferred there from another facility. Mr. Nelson is non-ambulatory, uses a wheelchair for mobility, and also has a history of seizures.

7. Mr. Nelson lives in the Meadowview Building. Most of the residents who live in that building have been diagnosed with severe or profound mental retardation. Mr. Nelson and his fellow residents of the Meadowview Building mostly are ignored by direct care staff, who at times have been observed watching television while residents failed to receive active treatment. In addition, the residents have been observed masturbating, sleeping, and engaging in self-injurious behavior without interruption from staff.

8. Although Mr. Nelson is sociable and easy to talk to, he lives on a unit where most of the other residents are unable to speak. The direct care staff on the unit have recommended that Mr. Nelson live with a more diversified peer group, yet no action has been taken to implement that suggestion. While Mr. Nelson can perform independently many self-care activities, he does require assistance in certain areas.

9. Mr. Nelson attends the sheltered workshop program at Embreeville Center, where his goal is to clean and sort 15 units. Mr. Nelson does engage in the limited leisure activities provided and looks forward to these special events. When not engaged in such activities, however, Mr. Nelson spends the remainder of his time on his living unit and cannot leave without staff accompanying him outside.

10. Mr. Nelson has persistent problems with edema in his legs as a result of spending most of his awake time in a wheelchair. An occupational therapy report recommends that Mr. Nelson be out of his wheelchair at least every two hours, but this recommendation is not followed regularly. Oral hygiene is another problem for Mr. Nelson and for many other residents of Embreeville Center. A dental exam discovered that Mr. Nelson has gingivitis, which can only be corrected by regular brushing. Even though his habilitation plan lists brushing as one of his goals, progress has been inconsistent at best, and Mr. Nelson requires assistance in this activity because of some spasticity in his arms.

11. Another of Mr. Nelson's program goals is to live in a community setting. No definite plans have been made for his move to the community, however. Mr. Nelson is extremely anxious to leave Embreeville Center, in part because two of his closest friends already have moved to the community. Mr. Nelson clearly and articulately has expressed his desire to "move out of Embreeville" and states that, once gone, he is "not coming back."

12. Plaintiff Richard Cinquina is 46 years old and has a diagnosis of mild mental retardation with a schizo-affective disorder. Mr. Cinquina has a long history of institutionalization, and he was admitted to Embreeville Center on January 16, 1990.

13. In November 1991, Mr. Cinquina was moved from the Towerview Building to the second floor of the Meadowview Building because of aggressive and assaultive behavior. The second floor is a locked ward, and none of the five residents there ever leaves

this area without staff permission. A survey done by the federal Health Care Finance Administration (HCFA) determined that Mr. Cinquina is inappropriately placed at Embreeville Center, and HCFA has discontinued federal funding of his services.

14. Mr. Cinquina's habilitation plan does not reflect the individual attention that should be part of every class member's program. His current program identifies plans and goals that are written over plans and goals from prior years that are simply scratched out. Specific goals were identified, such as psychiatric counseling and sex education, but a psychiatric evaluation, requested on January 15, 1993, never occurred, and no counseling to address the sexuality issues has even been provided. Instead, high doses of medications appears to substitute for active treatment and program planning.

15. Mr. Cinquina clearly expresses his desire to leave Embreeville Center and to live in the community. Although Mr. Cinquina enjoys living in an urban environment and is able to use public transportation, his interdisciplinary team at Embreeville Center has recommended that, should he move into the community, Mr. Cinquina live in a suburban area inaccessible to public transportation. The team apparently believes that such a placement would make it less likely that Mr. Cinquina would run away.

16. During the past year, Mr. Cinquina has received multiple injuries caused by other residents and staff at Embreeville Center. He was punched in the eye; beaten by another resident; locked in a closet; received neck bruises when his head was held under the

shower by a resident; received other unexplained bruises; and was bruised and injured as a result of being restrained by staff. Mr. Cinquina was physically restrained by staff on February 13, 1993. His record states that the restraint occurred because Mr. Cinquina said he was an "old man" and refused to listen to staff. The next day, a physician prescribed 50 milligrams of Benadryl, to be repeated within one hour "if ineffective," although Benadryl is not one of the drugs listed in Mr. Cinquina's medication profile.

17. Mr. Cinquina's quality of life at Embreeville Center is poor. He is confined all day on a locked ward with four other men who are extremely aggressive. His surroundings are stark and void of any comfort. His bed consists of a plastic mattress and a plastic pillow without any sheets. His living area contains a few pieces of vinyl furniture. Staff are occupied primarily with preventing physical confrontations. There are no activities available on this locked unit for Mr. Cinquina and his fellow residents, and there is no opportunity for any proactive, meaningful programs to occur. Habilitation and active treatment is impossible in such an environment.

18. Plaintiff Ralph Gipe is 75 years old and has a diagnosis of mental retardation. He was admitted to Embreeville Center on December 17, 1985.

19. Mr. Gipe exhibits aggressive behavior and tears at his clothing when he is frustrated. Mr. Gipe openly expresses his desire to leave Embreeville Center, and he is particularly frustrated by defendants' lack of progress in securing a community

placement for him. Mr. Gipe often is unshaven and unkempt, although his habilitation plan lists personal cleanliness as one of his goals. His clothing often is dirty and soiled, his fingers are yellow-stained from cigarette smoking, and he spends most of his day wandering around the grounds of Embreeville Center.

20. A review of Mr. Gipe's records shows a direct correlation between his behavioral problems and increases in medication. This raises the likelihood that staff are using medication to control his behavior problems rather than using the preferred methods of education and training. Mr. Gipe displays signs of tardive dyskinesia, which may have occurred through the overuse of Haldol. Over the past three years, Mr. Gipe's medication was changed from Haldol to Quinidine, but this only happened after physical symptoms appeared. A pharmacological assessment recommended that Mr. Gipe's anti-psychotic medication be reduced, but his interdisciplinary team disagreed, and subsequently Mr. Gipe began displaying tardive dyskinesia symptoms.

21. Plaintiff Charlie Kraut is 72 years old and has lived at Embreeville Center since July 1, 1984, when he was transferred from Pennhurst Center. Mr. Kraut has been diagnosed with profound mental retardation, is non-ambulatory, and uses a wheelchair, although it is very difficult for him to move himself.

22. During his years at Embreeville Center, Mr. Kraut's head and neck have become severely contractured. A photograph taken in 1988 shows Mr. Kraut sitting upright in his wheelchair. Today, Mr. Kraut's head rests so far toward the left side of his body that his

head appears to be on his shoulder. If one looks at Mr. Kraut from behind, his head cannot be seen at all. Although his chart states that laying down helps to alleviate the severe kyphosis that he experiences and recommends that he be placed on a mat after lunch, Mr. Kraut spends most of the day in his wheelchair.

23. Mr. Kraut's physical conditioning is worsening. Medical records indicate that Mr. Kraut is below standard weight despite receiving a double-portion diet. His hands are contractured, but a recommendation for a hand splint has not been implemented. His muscles are atrophying, and he experiences significant weakness. Although Mr. Kraut is supposed to be assisted by staff to walk and stand at intervals during the day, and although he recently obtained orthopedic shoes, his walking program has been discontinued due to what staff describes as non-compliant behavior. Mr. Kraut's and other residents' physical needs often are ignored by staff of Embreeville Center, which did not even have a full-time physical therapist until last year and had only one full-time therapist for 206 clients as recently as July 1993.

24. Mr. Kraut often acts aggressively toward himself and others, and he has been prescribed the medication Haldol. The request to use medication was open-ended, and no data was collected between December 1992 and June 1993 to determine if the medication had any positive effect.

25. Mr. Kraut experienced various injuries and illnesses in the past year, including lacerations, fractures, and internal

bleeding. In January 1992, Mr. Kraut was hospitalized and treated for dehydration.

26. Plaintiff Geraldine Glennon is 58 years old and has lived at Embreeville Center since July 31, 1973. Ms. Glennon has been diagnosed with mental retardation and also experiences major depression.

27. Ms. Glennon has been treated with the psychotropic drug Pamelor, and the dosage was increased gradually from 25 milligrams to 100 milligrams per day. While on the higher dosage, Ms. Glennon experienced greater agitation and irritability, cried more, and appeared to be angry. Recently, it has been discovered that Ms. Glennon's blood contained toxic levels of the medication. While she continues to take Pamelor today, she receives a lower dosage.

28. Ms. Glennon does not receive any counseling for her depression. Her program goals only address reactive responses from staff when certain behaviors are displayed, such as crying, anger, and aggression toward herself and others. The goals do not address the cause of the depression nor do they recommend professional counseling. Instead, staff use techniques such as re-direction, suggested relaxation, contingent separation, and positive reinforcement, none of which is a substitute for formal therapy.

29. Plaintiff Edwin Mattia is 47 years old and was committed to Embreeville Center on March 27, 1985 after his family became unable to provide him with the care he needs. Mr. Mattia is non-verbal and has a diagnosis of profound mental retardation.

30. Mr. Mattia is ambulatory, but he needs assistance while walking because his gait is unsteady, he has severe kyphoscoliosis with a pelvic tilt, and his right leg is shorter than his left leg. Mr. Mattia's program states that he is to wear a soft helmet when he is walking, but he has been observed not wearing the helmet. Mr. Mattia's interdisciplinary team recommended that he perform lift and extension exercises and that he see a physical therapist daily, but this did not occur when necessary because a full-time physical therapist only recently has been hired.

31. Mr. Mattia's medical condition is poor. He was hospitalized three times between August 1992 and March 1993 due to pneumonia. Due to this problem, his meals consist of chopped and ground meat, and a thickening agent is added. Mr. Mattia's chart states that he can feed himself, yet he has been observed being fed by staff for an entire meal. Mr. Mattia's goals indicate an emphasis on increasing his self-sufficiency, yet the training necessary to accomplish these goals is not provided. One of the goals involves toothbrushing, yet Mr. Mattia no longer has his own teeth and has not been provided with dentures.

32. Mr. Mattia is incontinent and must wear diapers. On at least one occasion, Mr. Mattia's clothing was soiled from urine, but staff did not change his clothes. Instead, staff took Mr. Mattia to a have a meal. At this meal, 12 residents were in one room with only one staff person present. This staff person at times left the room to bring additional residents to the meal, and thus residents were left unattended and without training.

33. On Mr. Mattia's living unit, the training programs are written on "fill-in-the-blank" forms that are individualized only to the extent that they identify a particular resident and the time of the program. During his training program, Mr. Mattia is asked to put dominoes in a box without throwing them to the floor. Mr. Mattia was observed during his training time to be hitting himself in the face and then slumped in the wheelchair he uses for off-unit programming. Mr. Mattia does not have a formal behavior management plan, yet staff are well aware that he hits himself and others. Staff intervention consists mostly of repeated meaningless requests for Mr. Mattia to stop.

34. Mr. Mattia leisure time consists of watching movies and football games and listening to the radio. In 1993, according to his records, Mr. Mattia has had two trips away from the institution and has been outdoors only three times.

35. All the individual plaintiffs listed above experience on a daily basis many of the harmful and unlawful conditions described in more detail below. Without sufficient community living arrangements and appropriate habilitation services, they will continue to experience those harmful conditions and be denied their rights under federal law.

36. The individual plaintiffs listed above are qualified individuals with disabilities entitled to the protections provided by §504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act.

37. Plaintiff Pennsylvania Protection and Advocacy, Inc. ("PP&A") is a non-profit Pennsylvania corporation that has been designated by the Governor of Pennsylvania, pursuant to the Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. § 6041 et seq., to act as the protection and advocacy agency for persons with developmental disabilities in the Commonwealth of Pennsylvania. PP&A is acting on behalf of the class members in its designated protection and advocacy capacity.

38. PP&A works to protect the civil rights of persons with disabilities throughout Pennsylvania. PP&A expends significant time and resources seeking to enforce the duties of state officials to provide habilitation services in integrated, community-based settings to persons with mental retardation, including the approximately 3,600 such persons residing in state institutions. PP&A seeks to ensure that persons with mental retardation in Pennsylvania are guaranteed the same protections and rights under federal and state law as all other citizens of the Commonwealth.

39. Plaintiff The Arc-Pennsylvania is a nonprofit Pennsylvania corporation, created in 1949, with member chapters in 52 of Pennsylvania's 67 counties. Members of The Arc and its local affiliates include parents, other relatives, guardians, and friends of persons inappropriately placed, or in jeopardy of being placed, in institutions and other long-term care facilities.

40. For 40 years, The Arc and its member chapters have conducted programs for the habilitation of persons with mental retardation and have acted as advocates for them. When faced with

the exclusion of persons with mental retardation from services in the community, members of The Arc joined together to create and provide alternative services through their association. Later, members of The Arc enforced the duty of responsible public officials to provide the educational, residential, vocational, recreational, and other opportunities that are as essential to persons with mental retardation as they are to all others. In so doing, members of The Arc have experienced and re-affirmed that persons with mental retardation are capable of growth and contributing to their friends, families, and communities.

41. One of The Arc's major objectives is to enforce the duties of state officials to provide habilitation services in integrated, community-based settings to persons with mental retardation, including the approximately 3,600 such persons residing in state institutions. The Arc and its affiliates work to ensure that persons with mental retardation in Pennsylvania are guaranteed the same protections and rights under federal and state law as all other citizens of the Commonwealth.

B. **Defendants**

42. Defendant Karen F. Snider is the Secretary of Public Welfare of the Commonwealth of Pennsylvania. The Department of Public Welfare (DPW) is the single state agency in Pennsylvania authorized to administer Medicaid programs under Title XIX of the Social Security Act. DPW also is charged with executing the primary functions of the Commonwealth of Pennsylvania pertaining to persons with mental retardation through the administration,

operation, and oversight of state-operated mental retardation centers, including Embreeville Center, and by funding county mental retardation programs for the operation of community-based mental retardation services.

43. Defendant Nancy R. Thaler is the Deputy Secretary for Mental Retardation of DPW. Ms. Thaler is responsible for all services for people with mental retardation in Pennsylvania. That includes planning, budgeting, regulating, licensing, training, supervision of 12 state operated facilities, including Embreeville Center, and an additional array of tasks and responsibilities that go with that.

44. Deputy Secretary Thaler testified under oath that her visits to Embreeville, caused her to reach the conclusion "[t]o close it and every one should move to the community," because residents "are at risk of neglect." Although Ms. Thaler has held the position of Deputy Secretary since December 17, 1992, she has never used her authority -- even failing to revoke licenses or issue provisional licenses -- to protect persons living at Embreeville from the "risk of neglect."

45. Defendant William Snauffer is the Facility Director of Embreeville Center. Mr. Snauffer is responsible for the operation, administration, and supervision of all aspects of the institution, including the custody, care, and treatment of all persons admitted there. Mr. Snauffer is responsible for insuring compliance with all applicable federal and state rules, regulations, and procedures. Mr. Snauffer also is responsible for insuring that

incidents of alleged abuse of residents are reported to the appropriate local and state authorities. Mr. Snauffer has responsibility for the process by which residents of Embreeville Center are discharged to community-based placements.

46. Defendants Snider, Thaler, and Snauffer are sued in both their individual and official capacities.

47. Defendants Snider and Thaler are charged by the Pennsylvania Mental Health and Mental Retardation Act of 1966, 50 P.S. §4201 et seq., with the duty and power "to assure within the state the availability and equitable provision of adequate mental health and mental retardation services for all persons who need them, regardless of religion, race, color, national origin, settlement, residence, or economic or social status." They are charged to accomplish the mandate of the Act; to make grants; to pay for the purchase of and reimbursement for services in accordance with the Act; to adopt State-wide plans for mental retardation services; to supervise mental retardation facilities, services, and programs; to maintain relationships with other governmental bodies to assure maximum utilization of services; and to assist each county in carrying out its duties and functions under the Act. Defendants Snider and Thaler are responsible for ensuring that intermediate care facilities for the mentally retarded (ICFs/MR) meet minimum standards for licensure.

48. Defendants Snider and Thaler are responsible for conducting inspection of care (IoC) assessments of all Medicaid recipients who reside in ICFs/MR, monitoring the quality of

services in ICFs/MR, and recommending, when appropriate, the discharge of residents of ICFs/MR to community-based residential alternatives.

49. DPW receives Medicaid waiver funds under Title XIX of the Social Security Act for community-based residential, day, and ancillary services to persons with mental retardation and developmental disabilities.

50. Defendants, DPW, its Office of Mental Retardation, and Embreeville Center are recipients of federal financial assistance under the Social Security Act and also receive federal funds from other sources.

IV. Class Action Allegations

51. Individual plaintiffs bring this action pursuant to Fed. R. Civ. P. 23(a) and 23(b)(2) on behalf of the following class: All persons who, on or after the date of filing of this Complaint, are residing or will reside at Embreeville Center, all persons who have been or will be transferred from Embreeville Center to other settings, such as intermediate care facilities or skilled nursing facilities and remain defendants' responsibility, and all persons at risk of being placed at Embreeville Center.

52. The class is in excess of 192 persons, the current number of residents of Embreeville Center, and is so numerous as to make joinder of all members impracticable. The number of class members who are former residents of Embreeville Center is not known to plaintiffs at present, although this information is in the

possession of defendants. The number of persons at risk of being placed at Embreeville Center is unknown to plaintiffs at present.

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

54. There are substantial questions of law and fact common to the entire class, including, but not limited to, the following:

(a) Are the conditions at Embreeville Center as alleged in this Complaint?

(b) Does class members' segregation at Embreeville Center violate, among other rights, their right to the equal protection of the laws; habilitation in the least separate, most integrated community setting; freedom of association; freedom of expression; and participation in programs and activities receiving federal financial assistance regardless of the severity of their disabilities?

(c) Do defendants have an obligation under the Constitution and laws of the United States to provide necessary services to class members in the least

separate, most integrated community setting consistent with professional judgment?

(d) Have defendants subjected class members to abuse, neglect, and unnecessary physical and chemical restraint, deprived class members of adequate food, clothing, shelter, medical care, and habilitation, and mismanaged class members funds?

(e) Have defendants failed to develop and deliver a professionally designed, consistently and aggressively implemented program of training, treatment, and other services to enable each class member to function with the greatest self-determination and independence possible?

55. Individual plaintiffs' claims are typical of the class. Individual plaintiffs will adequately and fairly represent the interests of the class.

56. 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.

57. Plaintiffs' attorneys have the resources and experience necessary to represent all members of the class.

V. GENERAL FACTUAL ALLEGATIONS

58. Embreeville Center houses approximately 192 residents, most of whom are over the age of 18. In addition to mental retardation, many of the residents also have physical disabilities, including, among others, seizure disorders and mobility impairments.

59. Embreeville Center's purpose is to provide habilitation services to its residents in order to prepare them to return to their communities.

60. Mental retardation is a disability that is manifested during a person's developmental period (prior to age 22) and is characterized by significantly subaverage general intellectual functioning and deficits in adaptive behavior. It is generally believed that persons with mental retardation constitute between approximately one and three percent of the population.

61. Persons with mental retardation generally experience a reduced capacity to independently perform many functions of daily life. The functions affected by a person's mental retardation often include decision-making, self-care, language development, and communication.

62. Persons are placed at Embreeville Center, often via court commitments, most commonly because their families are unable to care for them in the natural home, and no community alternatives are available. Persons are placed at Embreeville Center because they require training and not because they present a danger to others.

63. Prior to recent years, persons with mental retardation who did not reside with their families often were committed into state custody and sent to live in large public institutions, such as Embreeville Center. These facilities, which had populations that ranged from several hundred to several thousand, provided their residents with little or no developmental programming or training

that would enable them to obtain the skills necessary to lead productive lives away from the institutional setting.

64. Approximately 20 years ago, this warehousing of persons with mental retardation began to be recognized as degrading and destructive to notions of individual value and worth. Widespread institutionalization was replaced with community-based habilitation. The term "habilitation" refers to the programs and training provided to a person with mental retardation to teach and develop skills needed in order to live as independently as possible in community settings.

65. During the past two decades, the number of community-based residential and vocational programs, including group homes or community living arrangements (CLAs), has increased dramatically. Such programs provide persons with mental retardation the opportunity to develop independent living skills and to work and interact with their non-disabled neighbors and friends. During these past 20 years, the number of persons living in institutions in Pennsylvania has decreased from nearly 12,000 to approximately 3,600.

66. The integration of persons with mental retardation into communities and workplaces is a part of the policy known as normalization. As part of this policy, persons with mental retardation live as similarly as possible as persons without disabilities. This policy has been adopted by both Congress and the Commonwealth of Pennsylvania and has been incorporated into the

statutes and regulations governing the provision of services to persons with mental retardation.

67. In enacting the Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. §6001 et seq., Congress adopted as federal policy that persons with mental retardation belong in the community, living and working with those without disabilities. As the Act notes:

> [p]ersons with developmental disabilities have a right to appropriate treatment, services, and habilitation for such disabilities...The treatment, services, and habilitation for a person with developmental disabilities should be designed to maximize the developmental potential of the person and should be provided in the setting that is least restrictive of the person's personal liberty.

42 U.S.C. §6009(1) and (2).

68. The Commonwealth of Pennsylvania has made clear that its policy of normalization:

> establishes the right of the mentally retarded person and his family to live a life which is as close to that which is typical for the normal population. Therefore, the system of residential services is designed to assure opportunities for mentally retarded persons to progress along a continuum of services generally characterized by movement from larger to smaller settings, group to individual residences, dependent to independent living, and movement from isolated settings to integrated living within the community.

55 Pa. Code §6400.1.

A. The Harmful Conditions Imposed Upon Residents of Embreeville Center

69. Embreeville Center is a "total institution," where recreational activities, social activities, and medical care are

provided in the same facility where residents sleep and eat. The institution's self-contained character inhibits meaningful community involvement. Many residents never leave the facility at all.

70. At Embreeville Center, residents spend their days waiting out the hours. They sprawl in ill-fitting wheelchairs or carts. They are parked in dayrooms or hallways unattended. Some residents languish in hospital beds, with little stimulation except when they are changed or fed. Others are left in wheelchairs, unattended for hours, with no stimulation or human contact available to them. Interaction between staff and residents is minimal.

71. The physical environment at Embreeville Center was designed for mass management and custodial care. Its architecture cannot be adapted to the habilitation needs of persons with mental retardation and other developmental disabilities. For many residents, activity space is limited to dayrooms attached to their living units that are inadequate for habilitation and active treatment.

72. The living and activity spaces at Embreeville Center are dehumanizing. The facility's physical layout encourages passivity and dependence rather than activity and growth. The environment is bare, uncarpeted, and devoid of warmth, individuality, and dignity. Living and sleeping areas are sparsely furnished and do not contain age-appropriate furnishings associated with normal active living. Residents are denied the developmental opportunities, the sensory and intellectual stimulation, and the

comfort and pleasure that persons living in the community obtain from their surroundings and conveniences in homes, schools, restaurants, work places, and recreational facilities.

73. At best, staff at Embreeville Center provide bare custodial care. Often, they fail to provide the attention necessary to safeguard residents from deterioration, atrophy, physical injury, and abuse.

B. **Lack of Adequate Basic Care**

74. The residents' basic care needs are ignored, and they often are left alone for hours. Residents in diapers often are wet, their clothes soaked through with urine. In some units, the smell of urine is pervasive.

75. Staff ratios often are inadequate to meet residents' basic care needs. Despite the inadequate staffing, the staff who are on duty commonly ignore their clients. They watch television, read magazines, or sit by themselves, leaving the residents unattended.

76. Direct care staff at Embreeville Center lack the skills to provide adequate basic care to residents with complex disabilities and serious health needs.

C. **Lack of Adequate Medical Care**

77. Many residents of Embreeville Center do not receive adequate and timely medical care or dental care. Their health problems often go unrecognized and untreated. The level of both primary medical care and of specialized consultation and care is seriously inadequate.

78. Defendants have failed to ensure that recommendations of health care professionals are implemented.

79. Medical staffing at Embreeville Center is not adequate to provide medical care that is consistent with professional standards. Not only is the number of adequately trained nurses at Embreeville Center insufficient to meet residents' health care

needs, but the existing nurses and direct care staff are untrained in the management of residents' complex health care needs.

80. Embreeville Center residents with significant health needs are not seen by consulting physicians as their conditions require. In particular, residents with neurological and orthopedic conditions are not identified, managed, evaluated, or treated consistent with the judgment of qualified professionals.

81. Efforts to diagnose residents' conditions are seriously inadequate. Without adequate diagnosis, physicians cannot prescribe adequate treatment nor evaluate the efficacy of treatment. Because residents' physical conditions are not routinely monitored, medical treatment frequently is not initiated until after a person's condition has seriously deteriorated.

82. Medical records and charts maintained for many residents by medical and direct care staff are inadequate and incomplete. Charting of residents' behaviors, conditions, and progress on a daily basis is haphazard at best and often is unavailable in the residents' individual files, making proper professional judgments as to care and treatment impossible.

83. Long-range planning for managing persons with chronic medical conditions at Embreeville Center is inadequate. The institution fails to conduct basic and routine procedures for monitoring the course of chronic medical conditions and diseases.

84. Embreeville Center has lax procedures for monitoring the effectiveness of prescribed medications. Side effects of medications are not monitored or treated until too late. Residents

receive medications that are not effective and do not resolve their medical conditions. Residents reach toxic levels of medication and remain on high dosages of medication based on outdated medical plans. Medication changes are not made until severe symptoms appear.

85. Embreeville Center staff often ignore residents' psychiatric conditions and fails to monitor the effects of psychotropic medications. Some residents who receive psychotropic medications do not benefit from them, while others who might benefit do not receive them. Medications are automatically reduced or eliminated without individual justification.

86. The failure to diagnose psychiatric conditions adequately and to monitor the effects of psychotropic medications is dangerous to residents. This failure leads to the use of psychotropic medications as chemical restraints.

87. The significant lapses in the medical services being provided to residents of Embreeville Center are dangerous to the residents, compromise the residents' habilitation needs, and create an undue risk of physical harm and loss of life.

D. **Frequent Injury and Abuse**

88. Safety conditions at Embreeville Center are seriously deficient. The rate of injuries to residents is alarmingly high. During the past year, for example, an average of 170 injuries were reported each month. Three residents have died in the past year, including one person with pica behavior (the ingestion of non-edible objects) who was affixiated.

89. In congregate-care settings such as Embreeville Center, residents with maladaptive behaviors will hurt themselves and other residents. The risk of such injuries occurring at Embreeville Center is high, and such injuries often are severe.

90. Reasonable professional attempts to prevent injury are not made at Embreeville Center. Staff fail to intervene before residents injure themselves or others. Residents engage in repeated self-injurious behaviors with no intervention by staff.

91. Lack of trained staff and non-implementation of habilitation programs contribute significantly to the high rate of injury at Embreeville Center.

92. Embreeville Center staff are not trained effectively in the detection and reporting of abuse and neglect of residents.

93. Tolerance of staff abuse and neglect of residents is common at Embreeville Center. Staff often do not report abuse because they have learned that reporting abuse serves no purpose.

94. The Embreeville Center administration does not seek independent investigations of abuse. Physicians and nurses are not routinely involved in the investigation or analysis of incident/accident reports or abuse.

E. **Denial of Minimally Adequate Habilitation and Training**

95. Habilitation is the teaching and training process required by persons with mental retardation so that they can reach their fullest potential in physical, social, and mental growth.

96. Virtually all persons with significant intellectual disabilities have the capability, with proper education and

training, to learn some basic self-care skills, such as participating in feeding, toileting, mobility, and other needs. Nearly all residents of Embreeville Center could, with reasonable, individualized instruction and adaptations, participate more in their self-help functioning.

97. Active treatment is the formal process of training, treatment, and care that must be delivered to each Medicaid-eligible resident of an ICF/MR, such as Embreeville Center. Active treatment is a professionally designed, consistently and aggressively implemented program of training, treatment, and other services to enable each ICF/MR resident to function with the greatest self-determination and independence possible. See 42 U.S.C. §1396d(d); 42 C.F.R. §483.440.

98. Active treatment requires the development and implementation of an individualized program of intervention that is based upon and accountable to a comprehensive assessment of the individual needs of the resident and an individual program plan (IPP). Assigning an ICF/MR resident to a generic activity (one that is generally available at a facility) is not active treatment unless the activity fulfills an individual goal or objective that, in turn, addresses an assessed need of the individual resident. See 42 C.F.R. §483.440(a), (c)(3), (c)(4), and (d)(3).

99. No long-term view leading to greater independence, productivity, and integration guides the program planning process for residents of Embreeville Center.

100. Assessments of residents' needs are inadequate and not stated in specific behavioral terms. Accounts of residents' strengths and needs are often contradictory.

101. At Embreeville Center, IPPs are inadequate as a guide to habilitation. IPPs fail to specify the interventions needed to support the resident toward independence; fail to state specifically what the resident is supposed to learn; and fail to specify the methods to be used to teach the resident.

102. IPPs at Embreeville Center fail to include opportunities for individual choice and self-management. Residents are not offered reasonable treatment choices and alternatives. IPPs often do not reflect the input of the residents or their families.

103. Some residents' plans provide for habilitation activities for less than half a day. The resident, by design, is idle for the rest of the day.

104. The number of professional staff who work at Embreeville Center is inadequate.

105. The professional staff who are employed at Embreeville Center do not monitor adequately the delivery of the programs they develop for residents. There is no effective method to ensure quality and consistency of performance among direct care staff.

106. Direct care staff at Embreeville Center are not trained adequately to carry out their clients' IPPs and often do not even know the content of those IPPs. Direct care staff do not understand their clients' needs nor the techniques required to teach them functional skills.

107. Staff at Embreeville Center fail to collect accurate and meaningful progress data.

108. Embreeville Center lacks the capability to deliver active treatment because the basic components of active treatment--adequate professional staff, functioning interdisciplinary teams, adequate assessments, professionally-designed individual habilitation plans, and direct care staff trained and supervised in the delivery of each resident's plan--do not exist.

109. Staff at Embreeville Center fail to implement active treatment programs for residents.

110. Staff, often untrained, unsupervised, unfamiliar with their clients' needs and abilities, and unaware of what is expected of them, often stand idle in a roomful of their clients, socialize with one another, watch television, or ignore their clients.

111. Embreeville Center residents rarely interact with anyone other than a paid staff member. Most of their time is "dead time." They spent long periods of time "waiting" to go from one activity to another, self-stimulating, rocking, milling around, dozing, or simply doing nothing.

112. The interdisciplinary teams for each resident at Embreeville Center do not have a sufficient array of services available to make reasonable habilitation decisions for meeting the needs of the individual.

113. Training programs at Embreeville Center do not teach functional skills. Residents of Embreeville Center are denied the opportunity to learn the skills of daily living, such as dressing

and tooth-brushing. In the living units, materials that can be used to teach age-appropriate, functional skills are lacking.

114. Some "training activities" at Embreeville Center consist of watching television, exposure to meaningless, artificial stimuli such as moving lights and flashing neon signs, or other useless activities.

115. Many Embreeville Center residents are capable of going to the store, choosing and purchasing their food, cooking and serving meals, and caring for their own living units, but they have no opportunity to do so. Residents' meals are trucked to the living units on plastic trays. Staff cook and clean while the residents remain idle.

116. Residents of Embreeville Center are not provided with adequate individualized adaptations to enable them to do things for themselves. Adaptive equipment often is not available to residents who need it in their education and living areas.

117. Embreeville Center residents' opportunities to interact with non-disabled persons and to spend time outside the institution are extremely limited. Residents receive little or no community-based instruction. Thus, they have little or no opportunity to learn skills that will enable them to function in their communities, such as acting and dressing appropriately in public, eating in a restaurant, going to a movie, and crossing streets.

118. Few recreational or leisure time activities are available to residents. They have little or no opportunity to learn about life in the community.

119. At Embreeville Center, habilitation does not lead to greater independence, productivity, social integration, and inclusion. The quality of life of persons at Embreeville Center is unacceptable because it offers no opportunity for progress, participation in valued life activities, daily life-style choices, privacy, safety, dignity, and hope for improvement.

120. The consequences of defendants' failure to provide active treatment at Embreeville Center, or to implement professional recommendations for placement elsewhere, are devastating to residents. Their basic needs are neglected, their time is wasted, their bodies are constricted, and they develop behavior problems. Residents lose basic skills such as the ability to speak and walk. They are deprived of the opportunity to live in a decent home and to build relationships with non-disabled people. Their human potential is wasted.

F. Failure to Provide Adequate Behavior Management

121. Behavior management is an important component of habilitation and active treatment. At Embreeville Center, however, programs to deal with residents' behavioral problems are seriously inadequate. Physical and chemical restraints frequently are utilized as a substitute for appropriate care and programs. Medication is prescribed without a therapeutic goal. As a result, residents' behavioral problems are aggravated and escalate.

122. At Embreeville Center, residents do not have the environmental and physical supports to develop and maintain positive behaviors. Without those supports, behavior management

techniques are ineffective and reduced to crisis intervention after harm and injury already have occurred.

123. The number of psychologists who work at Embreeville Center is inadequate to carry out the design, delivery, monitoring, and evaluation of programs that could reduce residents' challenging behaviors. The psychologists who work at Embreeville Center lack the necessary training to develop and implement residents' behavior programs.

124. Staff at Embreeville Center do not have the skills and competence necessary to implement behavioral interventions to manage inappropriate behavior or to implement IPPs. Staff often fail even to break up incidents but tolerate repeated aggression and self-abuse. Staff intervention to manage inappropriate behavior is not designed to be consistent with a treatment plan, nor is it intended to be anything more than a stop-gap measure.

125. Documentation of residents' behaviors is inaccurate, unreliable, inconsistent, and incomplete. The inadequacy of behavioral record-keeping deprives professional staff of the information necessary to make professional, appropriate, and safe decisions regarding training.

126. Staff are unfamiliar with the behavior programs of the residents they supervise.

127. The inability of staff to deal with continual behavior problems results in more frequent accidents and injuries to residents.

128. Staff's inability to plan and implement behavior management programs results in the use of isolation and segregation of certain residents in a locked ward.

129. The behavior management practices at Embreeville Center are inadequate to prevent or reduce the incidence of abuse and injury to clients or to ensure freedom from undue restraint.

G. Failure to Provide Adequate Physical Therapy

130. Virtually no physical therapy treatment is provided at Embreeville Center. As recently as July 1993, Embreeville Center employed only one physical therapist for 206 residents in need of physical therapy, including more than 70 residents who are non-ambulatory. The physical therapy staff is completely insufficient to provide adequate services to Embreeville Center residents with physical disabilities.

131. Many Embreeville Center residents who have contractures or are non-ambulatory require frequent positioning and re-positioning in order to prevent skin breakdown and muscle and joint deterioration. Many such residents, however, are not positioned properly for sitting, eating, or other activities requiring proper body alignment or support. As a result of improper positioning and lack of adequate physical therapy, residents' deformities actually have increased. They have developed scoliosis, windswept deformities, frog-leg deformities, and contractures that preclude the ability to sit upright.

132. Lack of proper positioning and therapy also has led to digestive difficulties, circulatory problems, respiratory problems,

and deterioration of normal function, growth, and sensory and cognitive abilities.

133. Physical management programs at Embreeville Center are not individualized.

134. Therapeutic equipment helps to hold a developmentally disabled person's body in alignment, prevent the progression of deformity, and allow the person to move as normally as possible. With proper individualized therapeutic equipment, persons with severe developmental disabilities, severe physical disabilities and deformities, and severe and profound mental retardation can achieve better alignment, better control of their muscles and limbs, and more normal and varied movements. They can learn to sit in more upright positions that facilitate growth and learning.

135. Adequate therapeutic equipment is almost completely lacking at Embreeville Center. Residents with severe physical disabilities and deformities use ill-fitting wheelchairs that do not provide adequate support and, therefore, cause progression of the person's deformity and increase the risk of accidental injury.

136. Embreeville Center does not provide adequate assistive devices to enable residents to walk and move. Residents who could walk and move with assistance have been unreasonably prevented from doing so and have lost the ability to walk altogether.

H. Failure to Provide Adequate Nutritional Management

137. Embreeville Center staff are not trained properly to feed persons with severe disabilities. As a result, staff fail to properly position residents during meals, utilize appropriate

feeding techniques, and effectively monitor residents at meal time. Because of improper feeding techniques, Embreeville Center residents face the substantial life-threatening risk of aspiration.

138. Residents who have regressed in their ability to chew and swallow are not provided oral-motor intervention to maintain those abilities. This failure, together with improper feeding techniques, compounds the risk of weight loss, dehydration, aspiration, and infection.

139. Some plaintiffs have lost completely their ability to feed themselves or to eat a variety of solid foods in part because they are often rapidly fed pureed food. Lack of proper nutritional management has caused severe weight loss and other health risks for residents.

I. Failure to Provide Adequate Occupational Therapy

140. Occupational therapy is a component of habilitation and active treatment. Occupational therapists assist people with disabilities to master the functional activities of everyday living and meet the demands of their environment.

141. Occupational therapy staffing at Embreeville Center is inadequate. Only two full-time occupational therapists work at Embreeville Center. As recently as July 1993, Embreeville Center employed only one full-time occupational therapist. According to a recent survey done for HCFA, Embreeville Center has "an insufficient number of OT staff to provide service to a population of clients who have major deficits."

142. Occupational therapy is environmentally and contextually bound, and thus the limitations of the environment at Embreeville Center limit the ability of occupational therapists there to train or teach. Occupational therapists cannot adequately teach community living skills at Embreeville Center because the environment of the institution is completely unlike the community.

J. **Failure to Provide Adequate Language and Communication Services**

143. Communication services are an important part of active treatment. If people with severe developmental disabilities are not provided with adequate intervention to address their speech and language needs, they will regress.

144. Residents of Embreeville Center do not receive the speech therapy they need to improve or maintain their ability to understand others and communicate their needs. Communication boards and other devices to enable residents to communicate are rarely used, although many residents could benefit from using them. Staff make no attempt to communicate with residents in sign language, although many residents could benefit from learning signs. Staff are not trained in American Sign Language (ASL) or any other standardized non-verbal communication.

K. **Failure to Provide Adequate Vocational Training and Employment Opportunities**

145. People with severe intellectual disabilities and challenging behaviors can participate in productive employment and work at competitive jobs in normal workplaces.

146. With individualized systematic instruction and practice, the majority of the residents of Embreeville Center have the capability to learn and maintain vocational skills.

147. The opportunity to use and practice vocational skills in real work settings provides persons with severe disabilities not only with the benefits of earning wages and decreasing their dependence on public support, but also provides them with the benefits of participating in the community in a valued role--worker--and developing relationships with co-workers, friends, and other non-disabled people who are not paid to be with them. Opportunities to work in real job settings allows for modeling and learning appropriate work habits and social behaviors from non-disabled peers, which is not possible at Embreeville Center.

148. There has never been a systematic attempt to develop appropriate vocational programs for Embreeville Center residents. The programs called "vocational" at Embreeville Center are not truly vocational because they do not lead to jobs, nor do they teach skills that can prepare people for jobs. Residents remain in "pre-vocational" programs indefinitely.

L. **Violation of Basic Rights to Personal Choice, Dignity, Privacy, Communication, Access to Personal Property, Freedom of Association, and Participation in Community Activities**

149. Embreeville Center residents are deprived of their human and personal dignity. Staff interact with them either as children or as objects to be managed. Staff are allowed to treat residents with indifference and to abuse them without consequence.

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

CASE MANAGEMENT TRACK DESIGNATION FORM

HARRY NELSON, et al.

v.

KAREN F. SNIDER, Secretary, Pennsylvania Department of Public Welfare, et al.

CIVIL ACTION

FILED JAN 24 1994

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a case management track designation form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

(a) Habeas Corpus -- Cases brought under 28 U.S.C. §2241 through §2255. ( )

(b) Social Security -- Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ( )

(c) Arbitration -- Cases required to be designated for arbitration under Local Civil Rule 8. ( )

(d) Asbestos -- Cases involving claims for personal injury or property damage from exposure to asbestos. ( )

(e) Special Management -- Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) (x)

(f) Standard Management -- Cases that do not fall into any one of the other tracks. ( )

1-24-94
(Date)

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150. Residents of Embreeville Center are denied privacy because of the sheer numbers of residents and the lack of adequate staff to assist residents with intimate bodily functions in private.

151. Residents of Embreeville Center routinely are denied the basic rights of freedom of association and communication, access to personal property, and participation in community activities.

152. Residents of Embreeville Center are denied an adequate opportunity to participate in community activities. Even "field trips" outside the institutional grounds are extremely rare.

153. Residents of Embreeville Center experience acute social isolation. The living, learning, and working environments of the vast majority of residents are completely segregated from the community. They have little or no opportunity to acquire and practice life skills in typical settings, such as home, school, or workplace. They have little or no opportunity to interact and have relationships with persons who do not have disabilities. They have little or no opportunity to make friends who are not paid staff members.

154. Residents of Embreeville Center are denied the right to make the basic choices about their lives that other citizens take for granted. They have little or no opportunity to learn to make decisions for themselves.

155. Embreeville Center has denied residents their right to freedom of association and expression by restricting their access

to community activities and friendships. Residents rarely leave the facility to participate in outside community activities.

156. Many residents of Embreeville Center are unable to worship or attend the religious services of their choice.

157. The size, scale, isolation, and segregation of institutions are almost insurmountable impediments to the exercise of basic rights. Residents are assigned to large groups within the institution because of the logistical needs of the facility and cannot choose whom to associate with. The "group" approach to life precludes choice for most residents.

M. **Unnecessary Restraints**

158. Due to the absence of adequate programming to teach positive behaviors, Embreeville Center residents are subjected to unnecessary restraints and isolation.

159. Medication for control of behavior is used at Embreeville Center outside of and not in conjunction with the IPPs.

160. Residents often are physically restrained when the demands of individual residents become inconvenient for staff.

N. **Regression**

161. As a result of the conditions set forth in the paragraphs above, many Embreeville Center residents have regressed in their health and abilities to learn and retain skills. Residents' limbs are twisted and deformed, their bodies are bent and contorted, and their bones have decalcified. Residents who were in good health now have serious, even life-threatening, health problems, including damaged lungs and difficulties with breathing and digestion.

Residents who could eat independently now are fed by staff. The numbing effect of idleness and the institution's barren environment have contributed to residents losing cognitive skills, the ability to relate to others, and the ability to respond to their environment. Residents have lost the ability to speak and communicate. These skills are lost, in whole or in part, because residents have been denied the opportunity to engage in the activities of daily living in a manner similar to persons without disabilities.

O. **The Inevitability of the Harms Experienced by Residents of Embreeville Center**

162. Institutions like Embreeville Center inherently deny to their residents the experiences, interactions, and opportunities for growth and development enjoyed by other members of society.

163. By segregating persons with mental retardation and other developmental disabilities from the rest of the community and isolating them at Embreeville Center with others who have disabilities, defendants emphasize the residents' "difference" from the rest of society and stigmatize them for life.

164. Persons with mental retardation and other developmental disabilities, like other persons, vary in their needs, wishes, and abilities. At different points of life, different activities and environments are appropriate to each person. The environment of Embreeville Center is designed for a single purpose: the custodial care and mass management of persons with severe disabilities. The residents' consignment to this environment deprives them of their

individuality, of the possibility of habilitation, and their right to live freely.

165. In an environment designed for mass management of large numbers of residents, persons with intellectual disabilities cannot receive the consistent individual attention they need to grow, develop, and avoid regression. Persons who cannot communicate in words need attention from others who know them well and understand their method of communication. People with significant intellectual disabilities and those who cannot speak, far more than those who can speak articulately and whose disabilities are less severe, need close personal attention that they can receive only in a family-scale setting.

166. Persons with developmental disabilities with complex needs fare the least well in large congregate settings. The more complex the person's needs, the smaller the setting must be to enable staff to focus on and provide consistent attention to the individual.

167. A congregate care facility like Embreeville Center is not a natural environment. It is an artificial environment in which persons with disabilities cannot learn real-life skills or functional activities. In such an environment, persons with intellectual disabilities cannot receive what their specific learning needs require: the opportunity to learn real-life skills in the environments where those skills are practiced.

168. Congregate care facilities are dangerous because of a high risk that a resident will lose his or her own sense of

personal identity and the reinforcing and stimulating aspects of direct handling in a stable and family-like atmosphere.

169. The threat of abuse of persons with intellectual disabilities is increased in an institutional setting to the extent that the institution congregates a large number of people with dependent needs. Residents of Embreeville Center face this increased risk on a daily basis.

170. Persons with challenging behaviors need as "models" persons without maladaptive behaviors. When persons with challenging behaviors are congregated together, as they are at Embreeville Center, there is an enhanced risk of learning maladaptive behaviors from the example of behaviors of others.

171. The size and scale of Embreeville Center is an impediment to the consistent, effective delivery of therapeutic activities and services. In a large setting, many more staff must be trained in each person's therapy and management programs than would be the case in a smaller setting.

172. The maintenance of employee resolve and standards is much more complicated at a congregate care facility like Embreeville Center than it is in a small program. It is difficult in a large facility to hold staff accountable to deliver residents' programs. The complexity of the institutional bureaucracy and the lack of staff accountability in a large congregate environment make it difficult to get the simplest thing done.

173. It is tremendously difficult to recruit qualified professional staff to work at places like Embreeville Center. This

is due not only to the low pay but also to the administrative barriers that staff must overcome to work efficiently in that environment.

174. Because so many persons with severe disabilities are congregated together at Embreeville Center, the residents' needs overwhelm the staff. Congregating a large number of persons with complex needs greatly increases the difficulty for staff of finding activities that are interesting, stimulating, or meaningful for the residents.

175. The opportunity to share places with people who are not disabled cannot be afforded to people with disabilities in institutions; it can only be afforded in communities. The opportunities and benefits of being around other people who do not have disabilities (including the benefits of modeling and learning personal and community living skills), the opportunity to form friendships with people who do not have disabilities, and the opportunity to gain the respect of members of the community are not available in institutions.

176. No matter how large the ratio of staff to clients in a large congregate-care setting, such a facility can never achieve the same favorable results as a normal home with supports. Increasing the ratio of staff to clients will only lead to a point of diminishing returns. When only one staff person, however, works with a very small number of residents in a normalized setting, the quality of staff interaction with residents improves greatly.

P. The Ineffectiveness of Institutionalization as a Means to Provide Residents with Habilitation and Training

177. Embreeville Center embodies the "deficit" or "developmental" model of providing services to persons with developmental disabilities. That model, current in the early 1970s but now obsolete, was based on the premise that a person with a disability should be placed in a special setting whose purpose is to "treat" his disability or deficit. An aspect of the deficit model is the concept of the "continuum of care," i.e., a continuum of residential settings from the most restrictive to the least restrictive, from the most heavily staffed to the least heavily staffed. According to the deficit or developmental model, a person is expected to move through the various stages of the continuum--from a state institution to a nursing home or large ICF/MR, to a small ICF/MR, to a group home, to a semi-independent living arrangement and finally to a home of one's own--as he "improves" and meets the exit criteria for each setting. According to this concept, people can move from a restrictive congregate setting such as Embreeville Center only by demonstrating their "readiness" for the next level of the continuum. In vocational services, the developmental model dictates that the person earn his or her way along a similar "continuum of care," from a day activity center, to a work activity center, to sheltered work, and eventually to a real job only as his or her skills improve.

178. Research and experience have shown conclusively that the developmental model and its continuum-of-care approach are

unnecessary and highly unsuccessful in preparing persons with developmental disabilities to live and work in more integrated and normal settings.

179. Research and experience have shown that institutions are not needed to serve persons with intellectual and developmental disabilities, including persons with complex needs such as challenging behaviors or serious medical problems; that nearly everyone can live in the community; and that people with mental retardation and other developmental disabilities are better off in integrated community settings than in large congregate settings based on the "deficit" model.

180. Other states have reduced their admissions to state institutions to zero, demonstrating conclusively that the institutional model and the continuum-of-care approach are unnecessary. Other states serve people with disabilities as severe as those of the residents of any state institution in Pennsylvania in home and community-based settings. Still other states have concluded explicitly that they have no further need for state institutions. New Hampshire and Vermont have closed their state institutions. Other states, including Rhode Island, Colorado, and Michigan, have explicit or implicit plans to close all their state institutions within the next few years.

181. No services are provided at Embreeville Center that cannot feasibly be made available to class members in the community. To the contrary, critically-needed services such as physical therapy, occupational therapy, communication, nutritional

management, and behavior management are provided inadequately and sporadically at Embreeville Center or not at all. In the community, the professional services residents need are widely available.

182. In a family-scale residence, it is easy for staff to become familiar with the person's habilitation needs in a way that staff in the institution cannot.

183. Defendants' failure to make community services available to class members with serious medical needs is irrational, since in Pennsylvania as in other states, children and adults with complex medical needs--including persons who are technology dependent, ventilator dependent or have catheterization tubes and feeding tubes--are living at home with their families with support services. In Southeastern Pennsylvania, many former institutional residents with complex health needs live in community living arrangements with the support of visiting nurses and nearby community hospitals, where medical care is far superior to that provided at Embreeville. The vast majority of Pennsylvanians with serious medical needs do not go to institutions to receive medical, therapeutic, or educational services, but instead receive those services in their homes and communities.

184. Under the federal ICF/MR program, federal funds pay approximately 55 percent of the cost of care at Embreeville Center. The ICF/MR program, in effect, gives the states a right to draw against an open-ended federal bank account for their state

institutions, as long as the state's own surveyors continue to certify that those facilities are meeting federal regulations.

185. Pennsylvania Department of Health (DOH) surveyors have an inherent conflict of interest when they survey a state facility such as Embreeville Center. The Commonwealth has a strong fiscal interest in continued Medicaid reimbursement for services at Embreeville Center, and that interest is jeopardized when state-employed surveyors find violations of the conditions of participation.

186. Defendants' ICF/MR survey process is inadequate. DOH surveyors fail to ensure that Medicaid-certified facilities in Pennsylvania, including Embreeville Center and other ICFs/MR, meet minimum standards for certification for the receipt of Medicaid funds pursuant to Title XIX of the Social Security Act. Under the Medicaid regulations, failure to meet all eight of the ICF/MR conditions of participation requires that the facility be decertified. DOH surveyors, however, have ignored the myriad violations of ICF/MR standards at Embreeville Center and routinely certify the facility even though deficiencies are so massive that a reasonable independent surveyor could not find the institution in compliance with the ICF/MR conditions of participation.

Q. **The Benefits of Living in Normal, Integrated Community Settings**

187. Professional judgment dictates that persons with disabilities be served in life patterns that are integrated with and similar to those followed by other persons. The vast majority of mental retardation/developmental disabilities professionals,

public agencies, and service providers, including defendants, now reject the developmental or deficit model and see their purpose as that of supporting people with mental retardation and developmental disabilities in normal, integrated residential and work settings. Professionals now believe that the task of the service system is not to assign people to a facility based on a diagnosis but to support people in homes they choose themselves, where they can live with the people with whom they want to live. This paradigm shift from the developmental model to the support model is reflected in the mission statement of the Pennsylvania Office of Mental Retardation and in the goals and objectives of all the major national organizations concerned with people with developmental disabilities.

188. Longstanding federal policy toward people with developmental disabilities, articulated and enacted over the course of nearly three decades, is based on the values of independence, productivity, integration, and inclusion of citizens with disabilities. That policy in turn mirrors the professional consensus that the proper place for people with mental retardation and developmental disabilities is in normal homes, schools, and workplaces and not in segregated "facility-based" programs.

189. Defendants acknowledge that it is beneficial for people to live in the most normal settings possible. Defendants know that persons with mental retardation benefit enormously from opportunities to practice daily living skills in normal environments and to exercise choice and judgment.

190. Defendants acknowledge and accept the professional consensus that persons with developmental disabilities should not go to large congregate institutions to receive services.

191. Defendants acknowledge that the most important concepts shaping the delivery of mental retardation services during the last decade include "normalization" and "community integration" as formal objectives of state agencies administering services for persons with mental retardation.

192. Research, demonstration, and practice have shown conclusively that people with mental retardation and other developmental disabilities are better off in integrated community settings than in large congregate settings based on the "deficit" model. Persons with mental retardation grow and gain skills and overcome institution-imposed regression when provided with opportunities to learn and practice basic skills in small, well-structured, supervised community settings.

193. In the last 15 years, a body of research, of which defendants are aware, has developed showing what happens to the quality of life of people with developmental disabilities when they move from large congregate-care settings to community living. The results of this research are remarkably consistent and demonstrate that people are better off in nearly every way when they leave large congregate care settings and begin living in small, community-based family-scale homes.

194. For example, the Secretary of the United States Department of Health and Human Services commissioned a five-year

study to determine the growth and development of persons with severe mental retardation who moved from Pennhurst Center to family-scale community living arrangements. Researchers monitored the former Pennhurst Center residents for five years and found that persons in community settings increased in skills and developmental growth while residents of the institution did not. The federal government study concluded that persons with mental retardation who moved from Pennhurst Center to community placements were "better off in every way." (J. W. Conroy and V. J. Bradley, The Pennhurst Longitudinal Study: A Report of Five Years of Research and Analysis (Temple University 1985)). After the initial five-year study was completed, the authors of the Pennhurst Longitudinal Study continued to follow the 1,700 members of the class in the Pennhurst litigation and found that many continued to experience significant gains in growth and well-being.

195. The Pennhurst Longitudinal Study and other systematic studies of what happens to institutional residents when they move to the community have found:

(a) When former institutional residents are placed in the community, they make highly significant gains in skills and development (adaptive behavior).

(b) Former institutional residents who move to the community make significantly greater gains in adaptive behavior than persons with comparable needs who remain at the institution.

(c) When people who are labelled severely or profoundly retarded move into family-like community settings, they show even greater gains, proportionally, in adaptive behavior than persons labelled mildly and moderately retarded. No support exists for the proposition that some people are "too low functioning" to succeed in the community.

(d) Although the initial gains in adaptive behavior following placement in the community are generally the most dramatic, the gains do not level off but continue. Former institutional residents continue to make significant gains in the community.

(e) Former institutional residents make significant gains in reducing challenging or maladaptive behavior after they are placed in the community.

(f) An inverse relationship exists between the size of a residential setting and the degree of community integration of its residents.

(g) Former institutional residents generally receive more hours of service in the community than they received at the institution.

(h) Before community placement, the majority of families of former institutional residents are strongly opposed to community placement of their relatives. After community placement, however, this pattern is completely

reversed: The majority of family members become strongly supportive of community placement.

196. The experience of properly planned institutional closure in other states demonstrates that virtually all residents of state institutions can live in small, integrated residential settings in the community and that closure can be accomplished without adverse effects to institutional residents.

197. The question of whether people with mental retardation and developmental disabilities are better off in family-scale, integrated settings than in large congregate settings (settings of more than 15 beds) is no longer an issue for scholars and professionals in the field. There is strong consensus among scholars who have studied the relation between size and quality of care that family-scale residences are better than institutions for people with retardation in every way that is measurable.

R. Mismanagement of Residents' Finances

198. The personal finances of many Embreeville Center residents are controlled and managed by a guardianship officer, who has a fiduciary obligation to such residents. The guardianship officer has breached that fiduciary obligation by mismanaging residents' personal funds, failing to assure that the spending of such funds occurs for the sole benefit of the residents, and failing to assure that all spending of residents' personal funds is supported by receipts or other appropriate documentation.

S. **Defendants' Discriminatory Exclusion of Persons with Severe Disabilities From the Community**

199. Defendants do not refer residents for community placements because of residents' severe and multiple disabilities. Professional recommendations for community placement cannot be made or acted upon because of the unavailability of community services for class members.

200. Pennsylvania's mental retardation programs embody the obsolete "medical model." They are characterized by a system of residential facilities from the largest and most heavily staffed (institutions like Embreeville Center) to the smallest and least heavily staffed (such as group homes in typical houses, duplexes, or apartments where residents live semi-independently). Historically, this system categorically assigned persons with severe disabilities and complex needs to institutions such as Embreeville Center. This system is a substantial departure from the professional consensus of the field. By continuing to operate this system, defendants discriminate intentionally against persons with severe and profound retardation, physical disabilities, challenging behaviors, and serious health needs.

201. Defendants have failed to prevent their contractors (the community providers) from discriminating against class members with severe disabilities. Defendants have failed to provide funding on a per-diem basis for community services that is equitable when compared to the funding available to the institutions. The service system operated by defendants is characterized by an absence of

planning and a lack of coordination between the separate agencies that share responsibility for serving persons with developmental disabilities.

202. DPW has applied for and received a waiver from HCFA as provided under §2176 of the Omnibus Budget Reconciliation Act of 1981. The §2176 waiver allows Medicaid funds to be used to support a variety of home- and community-based services for former ICF/MR residents or those who are at risk of ICF/MR placement. To obtain a waiver, a state must show HCFA that it will use the waiver to close ICF/MR beds or refrain from opening new ones. The waiver provides the same federal match--approximately 55 federal cents for every 45 state cents--that defendants receive for services at Embreeville Center. Effective use of the §2176 waiver would enable defendants to provide integrated services to persons currently residing at Embreeville Center at no additional expense to the state treasury.

203. Defendants have not planned for mental retardation services based on the identified needs of class members. Class members were placed and remain at Embreeville Center because institutional beds were and are available and not because that service met and meets their individual needs.

204. Defendants have chosen to allocate substantial fiscal resources for mental retardation services to institutions. This is a political, not a professional, decision. Class members are denied community services, not because of some professional judgment that they should be institutionalized, but because

substantial fiscal resources are directed toward institutional programs.

205. In their actions and inactions described above, defendants have failed to exercise professional judgment. Defendants' actions and inactions are such a substantial departure from professional judgment, standards, and practice as to demonstrate that they actually did not base their decisions on professional judgment.

206. In their actions and inactions described above, defendants have acquiesced, with deliberate indifference, in a policy and practice of failing adequately to train employees and in other policies, practices, customs, and usages that are likely to result and have resulted in the violation of class members' statutory and constitutional rights.

207. The actions and inactions of defendants described above have resulted and will continue to result in harm, injury, and regression to class members.

208. Plaintiffs have no adequate remedy at law.

VI. CAUSES OF ACTION

Count I: Social Security Act

209. Defendants, by their actions and inactions described above, have violated rights secured by Title XIX of the Social Security Act, 42 U.S.C. §§1396, 1396a, 1396d(d); the regulations promulgated pursuant thereto, 42 C.F.R. §435.1009, Part 483, Subpart D, and Part 456, Subparts E, F, and I; and 42 U.S.C. §1983, by:

(a) failing to exercise adequate operating direction over Embreeville Center as required by 42 C.F.R. §483.410(a)(1);

(b) failing adequately to document plaintiffs' and class members' health care, active treatment, and other information as required by 42 C.F.R. §§483.410(c)(1) and 483.440(c)(5)(iv);

(c) failing to allow and encourage plaintiffs and class members to exercise their rights as citizens, as required by 42 C.F.R. §483.420(a)(3);

(d) failing to enable plaintiffs and class members to communicate, associate, and meet privately with persons of their choice and to participate in social, religious, and community group activities, as required by 42 C.F.R. §483.420(a)(9) and (11);

(e) failing to enable plaintiffs and class members to retain and use appropriate personal possessions and clothing, as required by 42 C.F.R. §483.420(a)(12);

(f) failing to promote participation of plaintiffs' and class members' parents and legal guardians in the process of providing active treatment to plaintiffs and class members, as required by 42 C.F.R. §483.420(c)(1);

(g) failing to implement procedures that prohibit physical, verbal, sexual, and psychological abuse or punishment, as required by 42 C.F.R. §483.420(d)(1);

(h) failing to provide an active treatment program that is integrated, coordinated, and monitored by a qualified mental retardation professional, as required by 42 C.F.R. §483.430(a);

(i) failing to provide sufficient professional staff and adequate professional program services to implement the active treatment program defined by each plaintiff's and class member's individual program plan, as required by 42 C.F.R. §483.430(b);

(j) failing to provide appropriately qualified, trained, and competent staff in numbers that are sufficient to assist and supervise plaintiffs and class members in carrying out their individual program plans, as required by 42 C.F.R. §483.430(c), (d), and (e);

(k) failing to provide plaintiffs and class members with a continuous, aggressively and consistently implemented program of active treatment, consisting of needed interventions and services in sufficient number and frequency to enable plaintiffs and class members to attain as much self-determination, independence, and functional skills as possible, as required by 42 C.F.R. §483.440(a);

(l) failing to provide plaintiffs and class members with adequate post-discharge plans, as required by 42 C.F.R. §483.440(b);

(m) failing to provide plaintiffs and class members with accurate, comprehensive functional assessments identifying their developmental strengths, their developmental and behavioral needs, and their need for services, without regard to the need for availability of services, as required by 42 C.F.R. §483.440(c)(3);

(n) failing to provide plaintiffs and class members with adequate individual program plans setting forth the specific objectives necessary to meet the client's needs, as required by 42 C.F.R. §483.440(c)(4);

(o) failing to ensure that plaintiffs' and class members' individual program plans identify the mechanical supports needed to achieve proper body position, balance, or alignment and specify the reason for each support, the situations in which it is to be applied, and a schedule for its use, as required by 42 C.F.R. §483.440(c)(6)(iv);

(p) failing to ensure that plaintiffs' and class members' individual program plans include opportunities for client choice and self-management, as required by 42 C.F.R. §483.440(c)(6)(vi);

(q) failing to ensure that each plaintiff's and class member's individual program plan is implemented by all staff who work with that person, as required by 42 C.F.R. §483.440(d)(3);

(r) failing to ensure that each plaintiff's and class member's comprehensive functional assessment is

reviewed at least annually by the interdisciplinary team for relevancy and updated as needed, and that person's individual program plan revised as appropriate, as required by 42 C.F.R. §483.440(f)(2);

(s) failing to ensure that interventions for managing challenging behaviors of plaintiffs and class members are employed with sufficient safeguards and supervision to protect their safety, welfare, and civil and human rights, as required by 42 C.F.R. §483.450(b)(2);

(t) failing to incorporate into plaintiffs' and class members' individual program plans the use of systematic interventions to manage inappropriate client behaviors, as required by 42 C.F.R. §483.450(b)(4);

(u) failing to assure that drugs for control of inappropriate behaviors are approved by the interdisciplinary team and used only as an integral part of an individual program plan that is directed specifically toward the reduction of and eventual elimination of the behaviors for which the drugs are employed, as required by 42 C.F.R. §483.450(e)(2);

(v) failing to provide medical services necessary to maintain an optimum level of health for each plaintiffs and class member and prevent disability, as required by 42 C.F.R. §483.460(a);

(w) failing to assure that health services are integrated into plaintiffs' and class members' individual program plans, as required by 42 C.F.R. §483.460(b);

(x) failing to assure plaintiffs and class members an adequate living environment, as required by 42 C.F.R. §483.470;

(y) failing to assure adequate food, nutrition, and meal services, as required by 42 C.F.R. §483.480;

(z) failing to maintain the compliance of Embreeville Center with the conditions of participation for intermediate care facilities for persons with mental retardation;

(aa) failing to determine whether services available at Embreeville Center and other Title XIX facilities in which plaintiffs and class members reside are adequate to meet plaintiffs' and class members' health, rehabilitation, and social needs and to promote their maximum physical, mental, and psychosocial functioning, as required by 42 C.F.R. §456.609(a);

(bb) failing to determine whether it is necessary and desirable for plaintiffs and class members to remain at Embreeville Center and other Title XIX facilities, as required by 42 C.F.R. §456.609(b);

(cc) failing to review the appropriateness of plaintiffs' and class members' continued placement at Embreeville Center and other Title XIX facilities in

which they reside and failing to determine the feasibility of meeting their needs through alternative non-institutional services, as required by 42 C.F.R. §456.609(c);

(dd) failing to ensure adequate utilization review and discharge planning; and

(ee) failing properly to evaluate each plaintiff's and class member's need for admission prior to placement at Embreeville Center.

Count II: Rehabilitation Act

210. Defendants, by their actions and inactions described above, have violated rights secured by §§100 and 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. §§720 and 794, and regulations promulgated pursuant thereto, 45 C.F.R. Parts 84 and 1361, by:

(a) denying plaintiffs and class members the benefits of federally assisted services and programs;

(b) failing to make reasonable accommodations to enable class members to participate in integrated public services and programs;

(c) failing to provide plaintiffs and class members federally assisted services that are as effective and meaningful as those delivered to other citizens and that are delivered in less separate, more integrated settings;

(d) denying plaintiffs and class members the benefits of federally assisted training, habilitation,

and other programs on the basis of the severity of their retardation or other disabilities;

(e) segregating plaintiffs and class members on the basis of their physical, behavioral, or medical disabilities;

(f) providing federally assisted services to plaintiffs and class members with severe disabilities and for plaintiffs and class members with physical or behavioral disabilities only in segregated settings; and

(g) aiding and perpetuating discrimination against plaintiffs and class members in federally assisted programs because of the severity of their mental retardation and physical disabilities.

Count III: Due Process Clause

211. Defendants, by their actions and inactions described above, have violated rights secured by the Due Process Clause of the Fourteenth Amendment to the United States Constitution and by 42 U.S.C §1983 by:

(a) subjecting plaintiffs and class members to harm and injury, including abuse, injuries from accidents and neglect, regression, physical deterioration, deprivation of social relationships, and the harms arising from segregation and confinement;

(b) failing to provide adequate shelter, clothing, food, and health care;

(c) imposing unnecessary physical and chemical restraints;

(d) failing to provide minimally adequate habilitation and training;

(e) failing to give consideration to the habilitation, placement, and other needs and rights of each individual plaintiff and class member and by failing to treat him or her in accordance with his or her own individual needs;

(f) conclusively presuming that plaintiffs and class members cannot benefit from particular services or cannot live in non-institutional settings;

(g) denying plaintiffs and class members an adequate opportunity to be heard on the appropriateness of their habilitation plans, programs, and environment;

(h) failing to provide a friend or advocate to assist each plaintiff and class member to exercise, and ensure compliance with, his or her rights; and

(i) failing, in the actions and inactions described above, to exercise professional judgment.

Count IV: Equal Protection Clause

212. Defendants, by their actions and inactions described above, have violated rights secured by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. §1983 by establishing, encouraging, and otherwise sanctioning enactments, programs, policies, and practices that have

excluded, separated, and segregated persons with mental retardation from the rest of society without any rational basis for such actions.

Count V: First Amendment

213. Defendants, by their actions and inactions described above, have violated rights secured by the First Amendment to the United States Constitution and 42 U.S.C. §1983 by:

(a) preventing plaintiffs and class members from associating and assembling with others of their choice;

(b) preventing plaintiffs and class members from meeting and speaking privately with friends, advocates, and others of their choice;

(c) preventing plaintiffs and class members from communicating with others of their choice;

(d) diminishing and failing to protect the capacity of plaintiffs and class members to produce ideas by thinking and learning and to express those ideas through communication; and

(e) preventing and interfering with plaintiffs and class members rights to the free exercise of religion.

Count VI: Americans With Disabilities Act

214. Defendants, by their actions and inactions described above, have violated rights secured by Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §12131 et seq., and regulations promulgated pursuant thereto, 28 C.F.R. Part 35, by:

(a) denying plaintiffs and class members the opportunity to participate in, and the benefits of, public services and programs that are as effective and meaningful as those delivered to other citizens and that are delivered in less separate, more integrated settings;

(b) failing to make reasonable modifications in policies, practices, and procedures to enable class members to participate in integrated public services and programs;

(c) imposing eligibility criteria that unnecessarily exclude certain classes of individuals with disabilities and that prevent plaintiffs and class members from fully and equally using and enjoying public services, programs, and activities;

(d) failing to administer public services, programs, and activities for plaintiffs and class members in the most integrated setting appropriate to their needs;

(e) failing to furnish appropriate auxiliary aids and services to enable plaintiffs and class members an equal opportunity to participate in, and enjoy the benefits of, public services, programs, and activities.

(f) failing to remove architectural and communication barriers to enable plaintiffs and class members to participate in public services, programs, and activities; and

(g) aiding and perpetuating discrimination against plaintiffs and class members in public services because of the severity of their mental retardation and physical disabilities.

215. Plaintiffs incorporate by reference herein the allegations contained in paragraph 209, above.

VII. **Relief**

216. WHEREFORE, plaintiffs respectfully request that this Court:

(a) declare that defendants' actions and inactions as described above violate plaintiffs' and class members' rights under Title XIX of the Social Security Act and implementing regulations; the Rehabilitation Act of 1973 and implementing regulations; the Due Process Clause of the Fourteenth Amendment to the United States Constitution; the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution; the First Amendment to the United States Constitution; the Civil Rights Act of 1871, 42 U.S.C. §1983, and the Americans with Disabilities Act and implementing regulations;

(b) after hearing, preliminarily and permanently enjoin the defendants to:

(i) provide each plaintiff and class member effective developmental services in the

most integrated community setting appropriate to his or her needs;

(ii) make available as soon as possible the necessary community-based residential facilities, home services, and vocational and day services appropriate to the needs of each plaintiff and class member;

(iii) cease admitting persons to Embreeville Center or transferring present residents from Embreeville Center unless such transfer is to the most integrated community setting appropriate to their needs and appropriate developmental services are provided;

(iv) recruit, train, and assign sufficient numbers of case managers and qualified mental retardation professionals to develop written individualized habilitation and discharge plans for each plaintiff and class member and to provide an individualized habilitation program for each plaintiff and class member;

(v) establish a system to prevent abuse and neglect of Embreeville Center residents; thoroughly and promptly investigate allegations of abuse and neglect; and

establish appropriate consequences for abuse and neglect of residents by Embreeville Center staff;

(vi) hire sufficient numbers of professional and direct care staff at Embreeville Center, including sufficient numbers of qualified physicians, physical therapists, occupational therapists, speech and language pathologists, psychologists, and aides;

(vii) provide adequate medical care to plaintiffs and class members;

(viii) develop and deliver a professionally designed, consistently and aggressively implemented program of training, treatment, and other services to each plaintiff and class members to enable him or her to function with the greatest self-determination and independence possible;

(ix) provide professionally designed therapeutic support services, including adaptive equipment, positioning, mealtime programs, behavioral programs, and other assistance necessary to protect each plaintiff and class member from harm and regression;

(x) develop and provide adequate training programs for professional and direct care staff at Embreeville Center and assure that all staff are able to demonstrate the skills and competencies to provide active treatment to the plaintiffs and class members they serve;

(xi) provide a safe environment for each plaintiff and class member;

(xii) make available a friend or advocate to each plaintiff and class member to assist each in securing the substantive and procedural protections to which each is entitled; and

(xiii) submit to plaintiffs and to the Court for its approval a plan for implementation of the aforesaid;

(c) award plaintiffs their reasonable attorneys' fees and costs; and

(d) grant such other relief as is appropriate.

Dated: January 24, 1994

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Thomas B. York, hereby certify that on this day a copy of the foregoing Defendants' Motion for Enlargement of Time to Respond to Plaintiffs' Motion for Consolidation and to the Complaint was sent by regular mail to:

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Date: March 16, 1994

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