



MR-OK-002-001

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

HOMeward BOUND, INC.,  
on behalf of its members,

and

BRIDGET BECKER, by her  
mother and next friend  
Mary Ann Becker,

JOHN DOUGLAS BERRY, by his  
parents and next friends  
John and Judy Berry,

MICHAEL BRASIER, by his  
parents and next friends  
John P. and Sharon Brasier,

DEMINKYN MARTIN, by his next  
friend Mary Ann Becker,

JULIE MARIE PAULSON, by her  
parents and next friends  
Paul and Susan Paulson, and

SUSAN MARIE THOMPSON, by her  
mother and next friend  
Barbara Thompson, on behalf  
of themselves and all others  
similarly situated,

Plaintiffs,

v.

HISSOM MEMORIAL CENTER,

and

GEORGE NIGH, in his official  
capacity as Governor of  
Oklahoma,

CIVIL ACTION NO.

85-C-437-E

CLASS ACTION COMPLAINT

REGINALD BARNES, WILLIAM :  
FARHA, ALBERT FURR, :  
LEON GILBERT, ROBERT GREER, :  
JANE HARTLEY, JOHN ORR, :  
DAVID WALTERS, and CARL WARD, :  
in their official capacities :  
as members of the Oklahoma :  
Commission for Human Services, :

DEPARTMENT OF HUMAN SERVICES :  
OF THE STATE OF OKLAHOMA, :

ROBERT FULTON, in his :  
official capacity as :  
Director of the Oklahoma :  
Department of Human Services, :

DEPARTMENT OF EDUCATION OF :  
THE STATE OF OKLAHOMA, :

BURL BARTLETT, E. L. COLLINS, :  
BARBARA JOHNSON, SEAY SANDERS, :  
JIMMY SCALES, and :  
C. B. WRIGHT, in their :  
official capacities as :  
members of the Oklahoma :  
Board of Education, :

JOHN FOLKS, in his official :  
capacity as the Oklahoma :  
Superintendent of Public :  
Instruction, :

JEAN COOPER, in her official :  
capacity as Assistant :  
Director for Developmental :  
Disability Services of the :  
Oklahoma Department :  
of Human Services, :

JAMES WEST, in his official :  
capacity as Assistant :  
Director for Rehabilitative :  
Services of the Oklahoma :  
Department of Human Services, :

JULIA TESKA, in her official :  
capacity as Acting :  
Superintendent of the Hisson :  
Memorial Center, and :

WENDELL SHARPTON, in his :  
official capacity as :  
Superintendent of the Sand :  
Springs School District, :  
: :  
Defendants. :

## CLASS ACTION COMPLAINT

### Introduction

1. This action is brought by Homeward Bound, Inc., and six individual retarded citizens of Oklahoma on behalf of themselves and all others similarly situated.

2. Plaintiffs bring this action to redress the unconstitutional and illegal conditions imposed under color of state law on 600 retarded persons, most of whom are children incarcerated and segregated by the State of Oklahoma in Hissom Memorial Center.

3. Hissom is a dangerous place to live. Plaintiffs have been and continue to be subjected to abuse, neglect, injury, and unnecessary physical and chemical restraints and denied adequate medical care, clothing, food and habilitative services.

4. By this action, plaintiffs seek to declare and enforce the constitutional and statutory rights of retarded persons to effective, meaningful, and integrated services in the community.

### Jurisdiction and Venue

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

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

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

8. Venue is proper in this district pursuant to 28 U.S.C. Section 1391(b).

#### The Plaintiffs

##### Homeward Bound

9. Plaintiff Homeward Bound, Inc. is a nonprofit corporation existing under the laws of the State of Oklahoma. Members of Homeward Bound include parents, other relatives, guardians, and next friends of people segregated at Hissom and of persons in jeopardy of being segregated there by the state, as well as retarded people presently segregated or in jeopardy of being segregated there.

10. Homeward Bound was formed when, in the face of the exclusion of their children from a wide array of public services (e.g., educational, vocational, and recreational programs) provided to all the state's citizens in the community, parents joined together to create and provide their

children the opportunity to receive those services, which are as essential to retarded people as they are to all others.

11. One of Homeward Bound's major purposes, for which it expends its resources, is to enforce the duties of defendants to provide meaningful and integrated services in the community for the retarded citizens of Oklahoma. Homeward Bound's members work to assist state officials to supply the necessary conditions for a full and free life for retarded people. Homeward Bound seeks to bring Oklahoma officials to recognize the competencies of those who are retarded, to replace historical but confining and defeating stereotypes with respect and appreciation, and to render effective the official Oklahoma policy that "all mentally retarded citizens deserve safe, healthy, positive, caring, learning centered programs and services and that these programs and services should be available in the least restrictive, most normalized and appropriate environment to meet each individual's identified needs."

Bridget Becker

12. Plaintiff Bridget Becker, a thirteen-year-old retarded adolescent, resides at Hissom, in Building No. 15. Bridget lived at home, where she was included with her brothers and sisters in all of the family activities until she was eleven. As a result of various family crises, including the divorce of her parents, the death of her older brother, and the need to also care for her learning disabled foster sister,

Bridget's mother sought the assistance of the state, because she was no longer able to care for Bridget at home. Although she sought a community living arrangement, Mrs. Becker was informed that the only alternative offered by the state was incarceration at Hissom.

13. At Hissom, Bridget resides in a locked building, congregated with thirty-one other retarded girls. She has suffered numerous bites, scratches, bruises, and other injuries while living there. Excluded from the public school in the community, she is forced to spend most of her time each day sitting on the floor or in a chair, idly, with the other residents in a large dayroom. Bridget fails to receive the appropriate habilitative services she needs, such as training in self-care skills. She is permitted little interaction with people who are not handicapped.

14. Building No. 15 does not provide a normal environment for Bridget, but an institutionalized one. The dayroom bears no resemblance to a normal living room. It is large and impersonal. It contains no comfortable furniture, but rather a row of seats lined up like those one would find in a bus station. The walls are stark, undecorated. The curtains on the windows are drab and institutional-looking, and are not opened during the day. Here, and in the other dayrooms at Hissom, a loudspeaker in a corner continually blasts messages for staff. There is a television, but it is mounted on a platform seven feet above the floor, so the residents are not able to turn it

on or off when they want or to select the programs they desire, or to learn to do so. A large basket filled with dirty towels and clothing takes up a corner of the room.

15. The sleeping area of Building No. 15 bears no resemblance to a normal bedroom for a thirteen-year-old. It is a huge room with a large hallway that has been partitioned into areas that contain four beds each. The residents are provided little privacy. The only decorations are pieces of adhesive tape that have been stuck on the walls with the names of Bridget and the other residents written on them in pen. There are a few stuffed animals and other toys in the building, but they are kept in a locked closet and rarely provided to Bridget and the other residents.

16. Bridget is forced to eat all of her meals in a large congregate setting. The food is institutional in look and taste: overly starchy and unappetizing, with little variety. Instead of receiving training in self-feeding skills, Bridget and the other residents are forced to wear strange-looking, oversized bibs at every meal to protect their clothing.

17. Bridget's clothing is ill-fitting and often ripped and stained. Although she is capable of learning to dress and undress herself, she has not been provided the training to enable her to do so. As a substitute for toilet-training, she is dressed in diapers. Because of her behavior problems, Bridget chews her clothing, but she has been provided with no habilitative programming to ameliorate that condition.

understand and his ability to communicate causes frustration that erupts in aggressive and self-abusive behavior.

23. Doug lived at home until he was thirteen. As he neared adolescence, his behavior problems became increasingly difficult to manage. His parents strove to keep him at home as long as possible but, when it became clear that a structured residential placement was needed, they began to investigate appropriate programs and found none in Oklahoma. However, because they wanted to maintain close contact with Doug, they reluctantly agreed to his incarceration at Hissom.

24. When Doug was admitted to Hissom and placed in Building No. 13, his parents were told they could not visit him nor contact him at all for three weeks. During those three weeks, Doug became severely depressed and lost thirteen pounds. Finally, because of the emergency, his parents temporarily removed him from the institutional grounds so that his depression could be alleviated and his weight loss could be corrected.

25. Doug's placement in Building No. 13, with severely retarded, lower-functioning children, was a result of defendants' failure properly to assess his skills and his level of retardation. When defendants' mistake was discovered, Doug was moved to another building but was then moved back to Building No. 13 for defendants' convenience, where he remains despite the admission in his Individual Program Plan that Building No. 13 is an inappropriate residential placement for Doug.

26. In Building No. 13, Doug has repeatedly been injured. He has suffered numerous deep bites, contusions and bruises. On one occasion his parents found him so badly bitten that he had a four-inch bruise on his arm.

27. Since he has been at Hissom, Doug has become aggressive toward other children, and has begun to bite other children. He has become increasingly self-abusive and this behavior has escalated to an extreme degree.

28. The harmful effect of Doug's self-abusive behavior and the abusive behavior of others toward him is exacerbated by defendants' neglect of his personal hygiene and by the unsanitary conditions in Building No. 13. He has sores that have become infected, have been left untreated, and do not heal. On one occasion, Doug's mother found him with a high fever that staff had failed to notice.

29. Despite the increasing escalation of Doug's behavior problems, defendants have failed to provide him with a program to extinguish these behaviors. A program was developed for him by a psychologist, but it has not been implemented.

30. Since entering Hissom, Doug has experienced regression in communication skills. At the time he entered Hissom, he was able to communicate by signing. Cottage staff are unable to read signs, thus discouraging Doug from attempting to communicate. Doug is excluded from the opportunity to attend a public school in the community. The institutional environment has caused Doug to lose social skills, and cottage staff

have failed to reinforce the self-care skills he possessed when he entered Hissom.

31. Doug experiences on a daily basis the demoralizing and illegal conditions described in paragraphs 95-132, below. Because defendants have failed to establish sufficient community living arrangements and services for retarded people, and have limited their usage to people less severely handicapped than Doug, he has no alternative to Hissom.

Michael Brasier

32. Plaintiff Michael Brasier, a seventeen-year old retarded adolescent, resides at Hissom, in Building No. 12. His disabilities occurred when his mother contracted rubella during her pregnancy. Michael has little residual hearing and can see only peripherally.

33. In 1977, due to the numerous demands normally presented in raising a large family, the failure of defendants to provide any respite, homemaker, or babysitting services, and the refusal of the local school district to provide appropriate educational services, Mr. and Mrs. Brasier requested defendants to provide a community living arrangement and services for Michael. However, the sole placement they had available was at Hissom.

34. Michael resides in a locked building with a large group of other retarded boys. The building has none of the characteristics of a normal home, but is completely institutional in look and ambience. He seldom is permitted to leave

the institution, except on those occasions that his parents take him home.

35. Since being placed at Hissom, Michael has developed severe behavior problems. This includes fits of screaming and thrashing and self-abuse by hitting himself in the head. On one occasion, Michael injured himself by putting his hand through a window. No programming has been provided to ameliorate Michael's behavior problems.

36. Michael has also been subjected to numerous incidents of abuse and injury, including contusions, bruises, and bites on his arms, hands and back. Another resident once pushed him so hard that he struck his head against a solid object, causing a deep, painful gash in his forehead.

37. Since he is excluded from the opportunity to attend a public school in the community, most of Michael's time is spent lying idly on the hard floor in Building No. 12. His parents had taught him a substantial amount of sign language before he was admitted to Hissom, but now he has lost that skill. Although he receives a small amount of speech therapy, nothing that he learns in that program is reinforced or fostered by the staff in Building No. 12. Michael could also benefit greatly from physical and occupational therapy, but he has been denied the opportunity to receive those services.

38. Whenever Mr. and Mrs. Brasier visit Michael, they never see any planned activity occurring in Building No. 12. As a result of the ubiquitous idleness to which he is sub-

jected, Michael's sleep patterns have become deviant. He sleeps during the day and has insomnia at night. Defendants have established no programming for this condition.

39. Michael is forced to eat all his meals in a congregate setting. The food he is served is bland, overcooked, and institutional-looking. He is not provided with the self-feeding skills that he is capable of learning.

40. Mr. and Mrs. Brasier have spent a substantial amount of funds purchasing clothing for Michael, but most of it has disappeared, or is worn by others. The clothing supplied by Hissom is often ill-fitting, torn, or has buttons missing. He has not been provided the habilitative programming that would enable him to learn to dress himself independently.

41. Michael has not been provided adequate dental care. Plaque frequently builds up on his teeth, causing them to appear green. He has not been provided habilitative programming that would enable him to learn to brush his teeth independently.

42. Michael experiences on a daily basis the demoralizing and illegal conditions described in paragraphs 95-132, below. Because defendants have failed to establish sufficient community living arrangements and services for retarded people, and have limited their usage to people less severely handicapped than Michael, he has no alternative to Hissom.

Deminkyn Martin

43. Plaintiff Deminkyn Martin, a thirteen-year-old retarded adolescent, resides at Hissom, in Building No. 13. Minky was placed as a foster child in the home of Mary Ann Becker after the state terminated the parental rights of his natural parents and requested that she take custody of him.

44. At the age of six, Minky began displaying increased behavior problems. Due to the strain on the family due to the fact that Mrs. Becker had four additional children to care for, including a learning disabled child and another retarded child, she informed state officials that support services were needed to ameliorate Minky's behavior problems, and requested a community living arrangement for him. The state instead incarcerated Minky at Hissom since there were no alternative placements available.

45. Mrs. Becker continues to visit Minky, takes him home for visits, and functions as his surrogate parent for the purposes of developing his program plans. Except for the times that Mrs. Becker takes him into the community, Minky rarely leaves the institution.

46. At Hissom, Minky resides in a locked building, congregated with thirty other retarded boys, with little or no planned activities. There is little habilitative programming for Minky and the other boys; staff spend their time attempting to prevent them from injuring themselves and one another. The

employees also spend much of their time in a staff lounge located outside of the locked door in Building No. 13.

47. At Hissom, Minky has sustained numerous bruises and contusions, and broken teeth. On one occasion he developed a fungus infection of such severity that his entire head had to be shaved.

48. Minky has frequent tantrums and engages in self-abuse, including banging his head against walls and other solid objects. He has injured himself by crashing his head through a glass window. Instead of developing a structured habilitative program plan to ameliorate Minky's behavior problem, Hissom staff subject him to chemical restraints with strong psychotropic drugs.

49. Building No. 13 is the antithesis of a normal home. The dayroom in which Minky is forced to spend the vast majority of his time is a constant scene of noisy confusion and commotion, as would be expected from the congregation of a large number of pre-adolescent and adolescent boys with no structured program for them. The congregation of persons with behavior problems in one place aggravates the risk of injury, harm, and unnecessary restraint of Minky.

50. The dayroom in Building No. 13 contains no comfortable furniture and no decorations, only a long row of hard chairs. The knob on the door leading from the dayroom to the staff lounge has been placed six inches from the top of the door, and is locked from the outside.

51. Minky is scheduled to receive a mere fifteen hours of habilitative programming per week. He would benefit greatly from increased programming, including an increased level of speech therapy, and interaction with children who are not handicapped in a public school in the community, but he is excluded from those opportunities. Minky is denied additional needed programming because he is considered "severely retarded."

52. Minky experiences on a daily basis the demoralizing and illegal conditions described in paragraphs 95-132, below. Because defendants have failed to establish sufficient community living arrangements and services for retarded people, and have limited their usage to people less severely handicapped than Minky, he has no alternative to Hissom.

Julie Marie Paulson

53. Plaintiff Julie Marie Paulson, a twelve-year-old retarded child, resides at Hissom, in Building No. 17. Julie was cared for by her parents at home until she was seven. At that time, she was placed in a private residential school. When her mother became unemployed and seriously, chronically ill, the sole alternative presented to her by the state was commitment to Hissom. The state provided no respite care, no crisis intervention services, no support services at all to the family; the only option the state availed to the Paulsons was to incarcerate Julie at Hissom.

54. Julie lives in a building congregated with 47 other girls. But for the fact that her parents take her home on weekends, she would not leave the institution. When the weekend is over, Julie tells her parents that she hates to go back.

55. At Hissom, Julie has suffered numerous bruises on her legs and hips and severe rashes on her feet, and severe problems with her teeth. On one occasion, Mrs. Paulson found her daughter with a large, painfully infected, untreated abscess on her arm. Mrs. Paulson had to take Julie to a private physician to have it lanced and treated.

56. Julie's physical condition has substantially regressed since she was incarcerated at Hissom. Her posture has significantly worsened, her muscle tone is poorer, and her speech is no longer understandable. Hissom fails to provide Julie with the physical therapy, occupational therapy, and speech therapy she needs.

57. Building 17 fails to provide a normal, home-like environment for Julie. Few decorations appear on any of the walls in the building and the children are given no toys or games to help them occupy themselves. The dayroom contains none of the furniture ordinarily found in a home. In the bedroom, the children's beds are all closely aligned, barracks style, affording the residents no privacy. Even worse is the bathroom: All of the toilets and shower stalls are completely exposed, forcing the residents to exercise private bodily

functions in front of one another and in front of all of the staff.

58. Julie spends most of her time in Building No. 17 sitting idly amidst the noisy chaos sitting on the hard floor or on one of the row of chairs. The resulting boredom, monotony, and high noise levels have caused Julie to engage in body rocking, hair twisting, nose picking, and thumb sucking. However, Hissom has failed to institute any programs to ameliorate the conditions.

59. Although Julie is capable of learning to dress and feed herself and to toilet herself, she has not been provided adequate programs to enable her to gain all of these abilities. Many of the limited skills she has been taught in her programs have been lost when she is returned to Building 17. When Mr. and Mrs. Paulson visit Julie they never observe any of the residents engaged in planned activity that would reinforce basic self-help skills. They are all excluded from the opportunity to attend a public school in the community.

60. Julie experiences on a daily basis the demoralizing and illegal conditions described in paragraphs 95-132, below. Because defendants have failed to establish sufficient community living arrangements and services for retarded people and have limited their usage to people less severely handicapped than Julie, she has no alternative to Hissom.

Susan Marie Thompson

61. Susan Marie Thompson is a seventeen-year old retarded adolescent residing at Hissom in Building No. 17. She has lived there a year and three months. Susan has profound retardation as a result of microcephaly and perinatal anoxia and is multiply handicapped. She is nonverbal and nonambulatory and uses a wheelchair.

62. Mrs. Thompson, a single working parent, strove to keep Susan living at home as long as possible. Before Susan entered Hissom, Mrs. Thompson ensured that she was exposed to all the activities normal children enjoy: school, vacations, trips, sports, movies, camping, computers, dances, and movies. Susan was trained to communicate with signs and a blissymbol board, to feed herself, and to signal her toileting needs. By the time Susan was sixteen, Mrs. Thompson's own advancing age and consequent difficulty lifting and carrying Susan forced her to seek residential services for her daughter. She was informed that there was no alternative but Hissom. Because defendants offered no community programs, no family support services, no homemaker services, no respite care, no visiting nurses or therapists or small community residences, Mrs. Thompson had no choice but to place Susan at Hissom. Mrs. Thompson continues to visit Susan regularly and takes her home each weekend and on holidays and vacations.

63. At Hissom, Susan lives in a noisy ward with twenty-three other young women, eight of them in wheelchairs.

Staffing is inadequate to care for the multiply handicapped residents and to ensure their safety in an emergency. Cottage staff lack even a rudimentary grasp of sign language, are unable to communicate with Susan and ignore many of her basic needs, such as toileting.

64. Susan's living environment in Building No. 17 is stark, barren, and dehumanizing. She is deprived of the stimulating experiences and activities she enjoyed before entering Hissom. Except for the times that her mother takes her home, she leaves the grounds only on rare occasions. When Susan is taken outside her cottage, she and other residents in wheelchairs are merely lined up against the wall, "parked" in front of the cottage.

65. Since her incarceration at Hissom, Susan has received little or no habilitation or training in self-help skills in the cottage to which she is assigned that would reinforce the skills she learned at home before entering Hissom and that her mother continues to teach her on weekend home visits. When Mrs. Thompson visits, the residents of Susan's cottage are never observed engaged in any planned activity. On occasion Mrs. Thompson arrives at Hissom to find cottage staff eating and smoking in the kitchen, while the residents are unsupervised. Rather than reinforce Susan's toileting skills, staff have tied Susan to the toilet and left her unsupervised. When left unattended, she has also fallen from the toilet and been injured.

66. Although Susan's mother provides all of Susan's clothes and labels them, she regularly arrives at Hissom to find Susan dressed in other residents' belongings, and in clothes that are painfully tight and uncomfortable. Staff dress Susan without regard to the season or her own comfort. She is taken out in chilly weather wearing thin clothing, and dressed in heavy winter clothing in the summer. Her clothing is not kept in a personal chest or closet accessible to her but is scattered about in four different locations. Despite Mrs. Thompson's repeated efforts to remedy this situation through the Hissom social work staff, it has not been corrected.

67. Hissom's policies forbid Mrs. Thompson to discuss Susan's needs with her caregivers in Building No. 17. Mrs. Thompson is allowed to communicate with staff only through the social work department.

68. At Hissom, Susan receives only one hour a day of classroom instruction, plus an average of one hour and twenty minutes of specialized therapies. This is insufficient to prevent regression when Susan returns to the idleness of the cottage. She is excluded from the opportunity to attend a public school in the community with nonhandicapped children.

69. According to the Individual Program Plan developed for Susan shortly after she entered Hissom, Susan's appropriate long-term placement is in a group home in the community. However, there is no group home available for Susan and, upon information and belief, defendants presently have no plans to

establish any group homes for severely and profoundly retarded, multi-handicapped persons.

70. Susan experiences on a daily basis the demoralizing and illegal conditions described in paragraphs 95-132, below. Because defendants have failed to establish sufficient community living arrangements and services for retarded people and have limited their usage to people less severely handicapped than Susan, she has no alternative to Hissom.

#### Class Action Allegations

71. Plaintiffs Bridget Becker, Douglas Berry, Michael Brasier, Deminkyn Martin, Julie Marie Paulson, and Susan Thompson bring this action pursuant to Fed. R. Civ. P. 23(a), in combination with either Fed. R. Civ. P. 23(b)(1)(A) or (B) or, alternatively, Fed. R. Civ. P. 23(b)(2), on their own behalf and on behalf of all other persons who are now, or who may be in the future segregated by the state at Hissom Memorial Center.

72. The members of the class include all persons who are now at Hissom or may be transferred there in the future; retarded persons residing at home who, because effective community services to assist their families are unavailable, are in jeopardy of being sent to Hissom, and persons who have been transferred to skilled nursing facilities, intermediate care facilities, homes for the aged and similar facilities, yet remain defendants' responsibility and who, because of defendants' failure to provide alternatives in the community, may be

forced to return to Hissom. Plaintiffs seek for themselves and the members of the class declaratory and injunctive relief to require defendants to create the quantity and type of community living arrangements and other community services necessary for the habilitation of all plaintiffs and class members in the least separate, most integrated community setting.

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

74. This is a proper class action pursuant to Fed. R. Civ. P. 23 because (a) the class is so numerous as to make joinder of all members impracticable; (b) there are substantial questions of law and fact common to the entire class; (c) the claims of the plaintiffs are typical of the class; (d) the plaintiffs' attorneys have legal resources and experience adequate to protect all members of the class and the named plaintiffs will adequately and fairly represent the interests of the class; (e) defendants have acted on grounds generally applicable to the class, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole; and (f) the prosecution of separate actions

by individual members of the class would create a risk of varying adjudications with respect to individual members of the class that might establish incompatible standards of conduct for the defendants in this action, and would create a risk of adjudications with respect to individual members of the class that would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

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

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

(b) Are the conditions and the ineluctable nature of Hisson Memorial Center as alleged herein?

(c) Does segregation at Hisson violate, among other rights, plaintiffs' entitlement to: the equal protection of the laws; habilitation in the least separate, most integrated community setting; freedom of association; freedom of expression; the right of family integrity; and the participation as they are able in programs and activities receiving federal assistance regardless of the severity of plaintiffs' handicaps?

(d) Do the defendants have an obligation under the Constitution and the laws of the United States to provide

necessary services to plaintiffs and their class in the least separate, most integrated community setting?

(e) Have defendants provided an appropriate public education, including the integration with nonhandicapped children, to handicapped children living at Hissom?

(f) Have defendants subjected residents of Hissom to abuse and neglect and unnecessary physical and chemical restraint and deprived the residents of adequate food, clothing, shelter, medical care, and habilitative training?

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

#### Defendants

76. Defendant Hissom Memorial Center is a state-owned and operated institution in which approximately 600 retarded citizens are incarcerated. It is certified as an Intermediate Care Facility for the Mentally Retarded (ICF/MR) under Title XIX of the Social Security Act and receives federal funds under the Act, in addition to other federal financial assistance.

77. Defendant George Nigh is Governor of Oklahoma. He is responsible for executing the laws of the State of Oklahoma and for appointing the members of the Commission for Human Services. He has statutory authority under Okla. Stat. Ann. tit. 56, Section 131 to order the commitment of retarded

persons to state facilities and to designate the facility most appropriate for their admission.

78. Defendants Reginald Barnes, William Farha, Albert Furr, Leon Gilbert, Robert Greer, Jane Hartley, John Orr, David Walters, and Carl Ward are the members of the Oklahoma Commission for Human Services. They are responsible for selecting the Director of the Department of Human Services and for formulating the policies of the Department.

79. Defendant Department of Human Services is charged with executing the functions of the State of Oklahoma pertaining to the care and treatment of retarded persons, the administration and operation of Hisson Memorial Center, and other state facilities for the care, support, and training of persons with retardation, and for contracting with private agencies to provide residential and other services to retarded persons in the community. The Department has the statutory duty to ensure that all residents at Hisson are given humane care and treatment, that they receive no severe physical or emotional punishment, and that the rules and discipline at Hisson are designed to promote their well-being. It is further charged by statute with ensuring that the testing, diagnosis, care and treatment of residents is in accordance with the highest standards accepted in private and public practice. The Department of Human Services is responsible for ensuring, for each retarded child at Hisson, that adequate records are kept and that the child's abilities and potential are assessed

annually, and that children discharged from Hissom are placed in appropriate facilities. The Department has the authority to enter into an agreement with a county or a nonprofit public or private agency for the operation of a Community Mental Retardation Complex where services beneficial or necessary for retarded persons and their families may be provided. The Department is responsible for enforcement of the provisions of Title XIX of the Social Security Act in Oklahoma. The Act requires independent review of the needs of persons placed in intermediate care facilities for the mentally retarded to ensure that inappropriate placements are not made and to identify persons inappropriately placed in such facilities. The Act also requires that an intermediate care facility be operated in conformance with a set of standards to be eligible for federal financial participation or reimbursement.

80. Defendant Robert Fulton is Director of the Department of Human Services. He is the executive and administrative officer of the Department and is responsible for ensuring that Hissom Memorial Center and other retardation facilities are operated in compliance with the policies and procedures of the Department. He is responsible for monitoring, reviewing and evaluating the professional and administrative activities at Hissom, for consulting with the Superintendent of Hissom concerning the facility's needs, for determining the number of employees to be appointed there, and for preparing and submitting to the legislature budget requests suffi-

cient for Hisson to carry out its functions. The Director is responsible for approving the admission of retarded persons to institutions within the Department, for designating appropriate facilities for those persons and for transferring residents of an institution when the person's welfare, care and treatment can more effectively be provided at another facility. The Director is also responsible for preparing long-range plans and recommendations concerning the care and treatment of retarded persons. Additionally, he is responsible for the provision of vocational rehabilitative services to handicapped Oklahomans, including Hisson residents.

81. Defendants Burl Bartlett, E. L. Collins, Barbara Johnson, Seay Sanders, Jimmy Scales, and C. B. Wright are the members of the Oklahoma Board of Education, and defendant John Folks is the Oklahoma Superintendent for Public Instruction. They are responsible for the administration and supervision of the public school system of Oklahoma. They also are responsible for the formulation and adoption of curricula for the adequate instruction of all pupils in the public schools. The Oklahoma Board of Education is the agency designated to receive monies appropriated by Congress pursuant to the Education of the Handicapped Act, and to carry out the terms of that Act.

82. Defendant Jean Cooper is the Assistant Director for Developmental Disability Services of the Oklahoma Department of Human Services. She is responsible for planning, program

development and evaluation of mental retardation services within the Department of Human Services.

83. Defendant James West is the Assistant Director for Rehabilitative Services of the Oklahoma Department of Human Services. He is responsible for ensuring that severely handicapped Oklahomans, including Hissom residents, receive vocational rehabilitation services on a priority basis so that such individuals may prepare for and engage in gainful employment to the extent of their capabilities.

84. Defendant Julia Teska is the Acting Superintendent of Hissom Memorial Center. She is responsible for the operation, administration, supervision and inspection of all parts of Hissom Memorial Center, for the custody, care, control of all persons admitted to Hissom, and for directing their care and treatment. She also is responsible for ensuring the humane management of Hissom; for enforcing adherence to its governing rules and regulations among employees; for assuring adequate staff training; and for reporting incidents of abuse of residents to the local authorities. Additionally, she is responsible for admission of individuals to Hissom, with the approval of the Director of the Department of Human Services; for discharge of residents; for recommending a resident's transfer to another facility to the Director of the Department of Human Services; and for notifying relatives of persons who have escaped from the institution.

85. Defendant Wendell Sharpton is the Superintendent of the Sand Springs School District. He is responsible for administrative direction and supervision of all schools in his district, including the public school program at Hisson. He is charged with coordinating the programs, curricula and activities of the schools in his district and for supervising the classification of pupils and methods of instruction in the schools of his district.

### The Facts

#### How Plaintiffs and the Class Came to Be Incarcerated at Hisson

86. Hisson was established in 1961, as an outgrowth of the original "Oklahoma Institution for the Feeble-Minded," created on March 27, 1909 when the state legislature passed "AN ACT to establish an institution for the care, training and custody of feeble-minded, idiotic, and imbecile children; and the care and custody of feeble-minded, idiotic, and imbecile female adults." 1909 Okla. Sess. Laws 534, ch. 34, art. 2. The facility was created for "all imbecile and idiotic persons of whatever grade who are not insane." Id. Sec. 4. Thus, a regime of segregation was commissioned, and public and private attitudes and actions reinforcing that regime were legitimated and evoked.

87. Oklahoma officials actively inculcated fear of retarded people as not only dangerous, but a threat to the purity of the race, and directed that a "preference of admission" be given to retarded women of childbearing age. 1909

Okla. Sess. Laws 534, Sec. 5. State officials directed the identification of retarded people and their removal from the community, and enlisted the assistance of the public in doing so. The government undertook major outreach efforts to find potential cases to be institutionalized and authorized a variety of persons, including "the trustees of any township in Oklahoma," to seek a court order, against the will of the parents if necessary, to incarcerate "feeble-minded" people in the institution if the parents refused to do so. 1909 Okla. Sess. Laws 538, ch. 34, art. 2, Sec. 8. In the case of women of childbearing age, "any person" was authorized to institute commitment proceedings. Id. Sec. 15.

88. Once incarcerated, "the feeble-minded" were kept for life. As Dr. William L. Kendall, the first superintendent of the Oklahoma Institution for the Feeble-Minded, explained:

"Many times the friends of these patients naturally believe that they ought to leave the institutions after they have become strong, able-bodied workers and have settled down to steady good conduct under institution life. We believe that these children should be kept in the institution for the reason that if allowed to return home the defective persons in these communities are very likely to be attracted by each other and to marry or to inter-marry, thus intensifying the degenerative process. Feeble-mindedness is highly hereditary, for that reason the high-grade feeble-minded boys and girls are the most dangerous to the community."

Kendall, Treatment, Care and Training of Feeble-Minded Children, J. Okla. St. Med. Ass'n (July, 1914), at 3.

89. The Oklahoma Commissioner of Charities and Corrections announced the official state policy as follows: "[T]here is not yet sufficient room [at the Institution] to care for all those who should be committed.... If they are not cared for, they oft times become a menace to the community, and soon add to the burden of other State Institutions, as well as to the sum of human misery in the world." Report of the State Commissioner of Charities and Corrections 23 (1926).

90. Throughout most of this century, the state continued to seek "control" through incarcerating all "mentally defective person," by certifying them for custody not just for their "own welfare," but also if incarceration was deemed appropriate solely for "the welfare of others or of the community." 1949 Okla. Sess. Laws 230, tit. 35, ch. 2, Sec. 2.

91. The regime of segregation reached to and was reinforced by systematic exclusion of retarded children from public schooling, e.g., 1949 Okla. Sess. Laws 559, art. 10, Sec. 10; forced sterilization for those "afflicted with" such conditions as "idiocy" or "imbecility," in order to prevent the parenting of "socially inadequate off-spring likewise afflicted," 1931 Okla. Sess. Laws 80, ch. 26, art. 3; peonage, see 1909 Okla. Sess. Laws 536, Sec. 5; and bans upon exercise of the franchise, 1907 Okla. Sess. Laws 341.

92. As a result of the above state policies, the Oklahoma Institution for the Feeble-minded became "filled" to capacity. Report of the State Commissioner of Charities and Corrections

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69-70 (1928). In order to provide room to incarcerate increased numbers of retarded people, in the same spirit, additional institutions were legislatively authorized, one especially for epileptics at Pauls Valley, see 1945 Okla. Sess. Laws 491, and another at Sand Springs, see 1961 Okla. Sess. Laws 685, Sec. 2. The latter institution, named Hisson Memorial Center, is the subject of this case.

93. Retarded people continue to be incarcerated at Hisson because defendants have failed to provide alternative services for them in their communities. When a crisis occurs in the family of a retarded person, inadequate services are available to support the family or to assist in the care and treatment and the raising of the child at home or in a community residence near the home.

94. Retarded persons remain incarcerated and segregated at Hisson for the same reasons: the failure of defendants to provide sufficient alternative services, including residences in the community. Although the living conditions are unconstitutionally deficient and dangerous at Hisson, retarded persons and their families are forced to rely upon the institution, with all of its strictures, as the only setting available to them.

#### The Institutional Environment at Hisson

95. Hisson is located near Sand Springs, Oklahoma, a small town on the outskirts of Tulsa. The location is remote and inaccessible by public transportation, which limits the

ability of families and friends to maintain frequent contacts with residents there. The hardship is greater for persons with limited means, but in all cases the sheer isolation of Hissom accelerates the decline of affectionate relationships, stripping from the incarcerated individual those supports, both emotional and material, that are normally available in the community.

96. Hissom's isolation prohibits the use of community resources to establish training programs, to meet health needs, to provide employment or recreation, or to aid in the development of those diversified activities that non-incarcerated persons take for granted. Resources in Sand Springs are insufficient to absorb the social needs of Hissom's population.

97. The location of Hissom militates against effective programming. To be segregated in a huge facility, with the closest neighbors the residents of an institution for adjudicated juveniles, and completely isolated from society, accentuates differences and devalues the individuals within its walls. Like a prison, Hissom is neither a pleasant place to work nor one to visit, and access to skilled professional and volunteer resources is curtailed. The environment renders the learning and maintenance of lifeskills practically impossible.

98. Hissom's policies, procedures and practices discourage maintenance of ties between residents and their families and loved ones, and precludes the establishment of new ties and friendships. Visiting hours at the institution are unrea-

sonably limited, and parents are denied visiting privileges with their children at Hissom during the first three weeks of the child's stay.

99. Living and activity space at Hissom is inadequate in design, insufficient in area, inappropriate in setting, and dehumanizing in condition. Buildings are not functional for modern needs. Buildings are dirty and unsanitary, exposing plaintiffs to physical health hazards in addition to the discomfort of constant odors and filth. Diseases such as shigella, hepatitis, and chicken pox are transmitted through the unsanitary, crowded conditions.

100. Hissom was designed for mass management and custodial convenience. Plaintiffs spend almost all of their time in large groups in multi-function rooms that do not permit the separation of activities that would be found in private or group homes or in normal work or recreation places. Plaintiffs are not provided the opportunity to experience a variety of environments during the day, as are community members, and thus are deprived of important learning opportunities.

101. The physical layout is devoid of warmth, individuality, or dignity. The living and sleeping areas are sparsely furnished and are without the lamps, sofas, rugs, tables, comfortable chairs, pictures, magazines, toys, or other age-appropriate furnishings associated with normal, active living. Plaintiffs are denied the development, sensory and intellectual stimulation, comfort, and pleasure that community

residents obtain from the usual physical accoutrements in homes, schools, restaurants, workplaces, and recreational facilities.

102. The physical setting at Hissom does not permit privacy, individuality, or freedom of association to plaintiffs. Residents spend their days in large, concrete-walled dayrooms, seated in identical chairs or on the bare floor. They are deprived of their freedom to choose or reject their associates and to determine when and in what ways they relate to their friends. As a result, numerous residents have regressed, mentally and physically.

103. Inadequate closets or chests for personal possessions are available, and those that exist often are not accessible or permitted to be used by residents. Because of the shortage of staff and the lack of facilities for storage of personal items, the few belongings plaintiffs own are too often lost, stolen or destroyed within a short period of time. These conditions deprive plaintiffs of their dignity and identity, and also fail to help them develop the self-respect, consideration for others, and understanding of property relationships necessary to functioning in the community.

104. Toilet facilities are inadequate. Toilet seats are missing and washing facilities lacking. Bathrooms frequently lack walls, partitions or curtains between toilets or doors on stalls. Toilet and bathing facilities are not appropriately equipped for the use of persons with physical handicaps--for

example, there are no shampoo facilities for wheelchair-users. In some buildings potty chairs are located in the midst of sleeping or living areas. Many living areas have a definite stench of urine. Plaintiffs are deprived by these conditions of rights taken for granted by other citizens, to exercise their bodily functions in privacy and to observe proper hygienic measures.

105. Clean clothing, bed linen, and towels are frequently not available. Plaintiffs' personal clothing is routinely lost, and plaintiffs are frequently required to wear improperly fitting clothes and underclothes, and sometimes even to go entirely without necessary items of clothing. Clothing modified to fit handicapped residents' particular physiques and to help them learn to dress themselves properly are not provided. Plaintiffs are deprived of the personal development, comfort and satisfaction that accompany the right to choose among a decent selection of appropriate, clean, fitting, seasonable, and attractive personal clothing and to present an appearance similar to other citizens.

106. Soap, wash cloths, towels, toilet paper, toothbrushes and toothpaste are frequently not readily accessible to residents. Plaintiffs do not learn to utilize hygienic supplies or to exercise self-care skills necessary for personal health and comfort, as well as for acceptance within the larger community.

107. Upon information and belief, buildings at Hisson were constructed with materials containing asbestos. Any amount of asbestos poses a threat of serious, possibly deadly injury to the residents forced to live and work in buildings constructed with that material. The serious health problems associated with exposure to asbestos include pleural mesothelioma, lung cancer, and asbestosis. The danger to residents is compounded by the fact that they rarely are able to leave their buildings, and that many of those subjected to the long-term effects of the asbestos are children.

The Institutional Staff at Hisson

108. Staff-to-resident ratios and staff training are inadequate to provide mere custodial care, let alone to evoke development and habilitation or even to protect plaintiffs from harm. The staffing requirements of recognized authoritative minimum standards are not met.

109. Plaintiffs are not provided with the habilitative services, stimulation, and attention necessary to prevent deterioration of and injury to their physical condition, psychological well-being, and personal development. Staff-to-resident ratios and the gross scale of institutional living operate to discourage personal, intimate, primary relationships like those enjoyed in normal living situations.

110. Defendants have failed to recruit, employ and train direct care and professional personnel in sufficient numbers, and have failed to place personnel in an environment making it

possible for them to stimulate and assist in the daily life activities of plaintiffs.

111. Defendants' failure to provide adequate trained staff to assist residents in the activities of daily living has denied plaintiffs the opportunity to retain basic self-care skills such as dressing, feeding and toileting.

112. Defendants have failed to provide plaintiffs with adequate medical care. There are insufficient numbers of physicians and nurses at Hissom to provide for residents' medical needs. Plaintiffs, because they are handicapped, are treated by practitioners certified for institutional practice only, rather than fully qualified physicians practicing the standard of medicine adhered to by community physicians.

113. Defendants have hired persons to practice medicine at Hissom who have no medical credentials.

114. Because of the severe shortage of registered nurses and other trained medical personnel, residents' health problems are unrecognized and untreated. Health assessments are done by aides with no medical training.

115. In place of active habilitative programming, defendants administer to residents heavy dosages of tranquilizing medications, in amounts grossly inconsistent with accepted medical practice and harmful to the residents.

116. Defendants neglect to supervise the administration of medications to residents. Residents are given prescribed

medications erratically, sometimes receiving too much, sometimes not receiving prescribed medications at all, thus endangering their health and safety.

117. Staffing is even more inadequate in the buildings where persons with severe and profound retardation live. These persons, whose handicaps prevent them from exercising the most basic self-care skills, need more attention from staff than the more mildly handicapped residents do; in fact, they receive even less.

#### The Institutional Program at Hissom

118. Programs for Hissom exist, if at all, chiefly on paper only. Idleness there is ubiquitous, regression is rampant.

119. Adequate and regular evaluations of each resident's physical, social, psychological, and personal development are not made. Defendants have not uniformly utilized a standard process for assessment of each resident. Individualized habilitation plans and programs are not appropriate for each recipient. Defendants have failed to provide periodic review of the appropriateness and effectiveness of the plan or program for each resident. Programs and services required by residents' individual program plans are not implemented or provided.

120. Defendants have failed to provide necessary and appropriate services, including medical and dental care and treatment, nursing care, psychological services, personal care

and protection, social work services, physical and occupational therapy, speech pathology and audiology services, recreation, and vocational and rehabilitative training, despite professional judgment that residents require these services.

121. Defendants have failed to prepare residents for or assist them in securing gainful employment, despite professional judgment that residents require these services.

122. Defendants have failed to provide for each resident an individualized exit plan for placement in an integrated community setting, despite professional judgment that residents' needs would most appropriately be met by such placements.

123. Although limited programs are provided them, plaintiffs spend most of their time in a dayroom adjoining their communal sleeping quarters, without planned activity, often wandering aimlessly or sitting or lying alone, and often without adequate clothing. Many residents languish in cribs or on mats all day with no stimulation except when they are changed or fed. There is very little interaction between staff and residents on the wards. Age-appropriate activities are unavailable. Lighting is often diminished and noise levels fluctuate wildly.

124. Activities such as eating, toileting, and bathing are often conducted en masse, at predetermined and unchanging times chosen for the convenience of the institution. This regimentation deprives plaintiffs of the normally experienced

freedom and dignity of choosing when to attend to their individual daily tasks and interests, and arranging their appearances according to their personal tastes.

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

126. Residents are required to perform work for the facility without being paid. These activities are not part of any individual program plan.

127. Residents are subjected to undue restraint in their freedom of movement, by excessive locking of doors, locking of residents into chairs, wheelchairs and onto toilets, and failing to put leg braces on individuals who need them to walk.

128. The Individual Program Plans (IPPs) developed for residents do not provide adequate, appropriate active programming. Programs listed in residents' individual plans are not actually delivered or implemented but exist on paper only. IPPs are poorly integrated, and many residents do not have IPPs at all.

129. Programs to deal with residents' behavioral problems are absent. Staff are not trained to understand the causes of

residents' aggressive or self-abusive behavior nor to intervene and modify it.

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

131. Plaintiffs have been excluded from the opportunity to attend public school with children who are not handicapped. They are provided a separate but unequal educational opportunity within the confines of Hissom. The education at the institution does not provide appropriate, individualized programs for the residents, nor does it provide appropriate levels of related services such as physical therapy, speech therapy, occupational therapy or psychological services.

132. Insofar as programs and services exist at Hissom, they are directed primarily to mildly and moderately handicapped residents, and not to residents with severe and profound retardation and multiple handicaps. Programs, therapies and services for the more severely retarded residents of Hissom are almost nonexistent.

#### The Persistence of the Institutional Conditions

133. As the persistence of these conditions throughout Hissom's existence and the presence of these conditions universally among institutions demonstrate, these conditions are endemic to large, segregated, isolated, "total institu-

tions" such as Hissom. A total institution is one that attempts to service all of the inmates' needs, as defined by the institution, within its own confines. Hissom inherently denies to plaintiffs the experiences, interactions, enjoyment, and opportunity for growth and development enjoyed by other members of society. Because of its mass nature, the institution operates according to the exigencies of the moment and maintains control of its inmates based on the limitations of the least able individuals. .

134. The behavior of retarded persons may differ from that of other persons, but those differences can be diminished substantially. By segregating retarded persons from the rest of the community and congregating them together, Hissom reifies, compounds, and aggravates these deviating behaviors, which ultimately yield total devaluation of the individuals.

135. Staff at institutions such as Hissom view and relate to residents primarily in large, massed numbers, in warehouse environments. Because of population density and because of the forced institutionalized appearance of residents, staff are deprived of the ability to perceive and relate to residents as human beings.

136. Retarded persons, like other persons, vary in their needs, wishes, and abilities, and at different points of life different activities and environments are appropriate to each person. Large institutions classify residents once, and in the gross, based on a few salient characteristics, with little

opportunity for re-evaluation or challenge. The large, total institution deprives plaintiffs of their individuality, of the possibility of habilitation, and of living freely.

137. Hissom, segregated and isolated from the rest of society, deprives residents of the opportunity to interact with non-retarded people in non-custodial relationships and in normal community settings. Plaintiffs are denied the experiences of observing how other people behave and interact and of learning to carry out age-appropriate and acceptable social behavior and of experiencing the dignity and freedom of living in the community as normally as they may.

Normalization, Liberty, Integration, and Equality

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

139. Professional knowledge, research and the experience of states across the country confirm that retarded persons, subject to destructive environments such as Hissom, progress and gain skills when provided community services.

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

- Severely retarded persons placed in community living arrangements increased in skills and developmental growth while residents of the institution did not; and
- Severely retarded persons were receiving and benefiting from greater amounts of structured services than those at the institution even though the cost of community services was less than the per client institutional cost.

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

142. "Normalization" is a fundamental, widely accepted principle in the habilitation of retarded persons. It is based on the recognition of retarded persons as full human beings with rights to liberty and self-actualization and on the practical experience and observation that retarded persons can best achieve these goals in life patterns that are integrated with and similar to those followed by other persons. The normalization principle has been accepted as a guiding principle for programs serving retarded people by retardation professionals, including the American Association on Mental Deficiency, the President's Committee on Mental Retardation, and the Association for Persons with Severe Handicaps; by

consumers, including the Association for Retarded Citizens of the United States; and by the defendants themselves.

143. The normalization principle requires that retarded persons be treated alike and permitted experiences like other persons of the same age in their own community to the greatest possible extent. Their similarity to normal persons is to be emphasized and their deviant aspects deemphasized and diminished through appropriate habilitative programming. They are to be enabled to live in a culturally normative community setting, in typical housing, to communicate and socialize in age- and culturally-appropriate ways, and to utilize community resources as other citizens do. Normalization requires that habilitation occur in the settings in which acquired skills will be utilized and that habilitation be attained by the use of generic services in the community.

144. Plaintiffs and members of their class are human beings who have feelings, needs, and motivations like all other people. They have, to varying degrees, the potential for growth, development, and achievement of self-care and self-support. They are capable of benefiting from treatment and habilitative services to maximize their potential and to satisfy their social, emotional and economic needs.

145. Experience in Oklahoma and throughout the country demonstrates that these needs can be met and a normalized, free and equal life in the community assured to retarded persons. Experience shows that a normalized life in the community can be

assured to retarded persons while satisfactorily guaranteeing to parents the continued care and security of the person, after the parents' death, after the person has reached majority, and when, before age eighteen, circumstances contrive to require that the person reside apart from the family. Experience also shows that a normalized life, outside the institution, can be assured while satisfactorily guaranteeing to present employees at the institution job security and employment in community services.

146. Services in the community to support a normalized life for retarded people can be secured at a cost no greater than the current per capita annual expenditure at Hissom; it is likely that it can be provided for less. Moreover, the cost of providing such services in the community is enormously less than the cost of providing the services in the institution that are necessary to actually meet the needs of retarded persons.

147. Learning (and much else) by retarded people requires the example of other non-retarded people and in real-world environments where what is learned is done. As for all people, but relatively more so for retarded people (it is one of their "differences"), learning by retarded people during all of life proceeds in significant part by imitation and example and in the concrete, rather than by generalization from one context into another. Learning by retarded people flourishes in properly structured and integrated environments; in isolation it is destroyed.

148. As members of the community, retarded people of all ranges of ability can and do maintain not only steady but productive jobs. Retarded people can and do significantly care for themselves, keep clean and even pleasing rooms, and respect the rights of others, for in the community you never know when a friend whose respect you wish to keep may drop in. Retarded people do make good neighbors, to their own benefit and their neighbors'. The abysmally ignorant stereotypes to the contrary do not withstand the facts or a correct understanding of what difference being retarded makes. Retarded people need assistance, as do all persons, often relatively more, but that means not exclusion from the community but participation in it.

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

"It must be recognized that the vast majority of developmentally disabled persons and the vast majority of persons institutionalized should not be in these institutions at all. Efforts to assure proper treatment, education, and habilitation services in large institutions should not deflect attention from the fact that most of these institutions themselves are anachronisms, and that rapid steps should be taken to phase them out. Many of these institutions by their very nature, their size, their isolation, their impersonality, are unsuitable for treatment, education, and habilitation programs." S. Rep. No. 94-160, 94th Cong., 1st sess. 32-33 (1975).

#### The Failures of Defendants.

150. As early as 1964, the Oklahoma Department of Public Welfare convened a state-wide conference to plan for services

to retarded persons. The goals of the Department for the development of retardation services in Oklahoma, were presented as follows:

" 1. Institutional care should be restricted to those whose specific needs can be met best by this type of services.

" 2. The following objectives for residential care should be considered ....:

(1) Every such institution, including those that care for the seriously retarded, should be basically therapeutic in character and emphasis, and closely linked to appropriate medical, educational, and welfare programs in the community.

\* \* \* \*

(6) The goal of every residential program should be the elimination or amelioration of as many symptoms as possible and the achievement of independent, semi-dependent or even a sheltered extramural life for every person under care in accordance with his potential.

\* \* \* \*

" 5. [L]ocal communities, in cooperation with Federal and State agencies, [should] undertake the development of community services for the retarded. These services should be developed in coordination with the State comprehensive plan for the retarded, and plans for them should be integrated with those for construction and improvement of services in residential facilities."

151. Defendants have utterly failed to progress toward the goals they set for themselves more than two decades ago.

152. Despite their own policies, prevailing professional opinion, and clear standards, and in violation of the Constitution and federal law, defendants have not acted to provide to retarded persons the necessary conditions for a free and equal, normalized life in the community. Oklahoma ranks 50th among the states in per capita services provided to retarded persons in the community.

153. Defendants have committed resources available for relocating persons incarcerated at Hissom to facilities at the institution and have permitted the transfer of residents to similar large-scale, isolating institutions such as skilled nursing facilities, rather than to the development and use of community living facilities and community services.

154. In particular, defendants have made costly renovations to certain existing structures at Hissom and have transferred Hissom residents to those facilities. In addition, defendants have requested and obtained millions of dollars from the Oklahoma Legislature for further renovations.

155. Defendants have failed or refused to implement plans and programs for alternative community living facilities and other group homes despite explicit legislative authorization to provide them.

156. Defendants have failed to implement a range of programs and services to prevent needless segregation of

retarded persons. Instead, Hissom's population has been reduced by transferring residents to other institutions so that costly building programs on-grounds at Hissom might continue. Community home development has fallen far below needed levels. At present, there are only 40 community residential facilities for persons with retardation in Oklahoma, and none of them serve severely and profoundly or multihandicapped retarded people.

### Claims

#### Count I: Rehabilitation Act

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

A. Excluding retarded people from participation in state-operated federally funded programs;

B. Failing to provide retarded people federally funded services that are effective and meaningful and that are delivered in less separate, more integrated settings;

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

D. Segregating residents at Hissom on the basis of their physical handicaps;

E. Failing to accessibly accommodate facilities at Hissom for persons with physical handicaps;

F. Denying training and habilitation to residents at Hissom because of the severity of their retardation or their associated physical handicaps;

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

H. Failing to provide vocational rehabilitation services to severely handicapped residents of Hissom on a priority basis so that such individuals may prepare for and engage in gainful employment to the extent of their capabilities.

Count II: Social Security Act

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

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

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

C. Failing to allow residents to manage their own personal financial affairs;

D. Requiring residents to perform work for the facility without pay;

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

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

G. Accommodating more than four residents per bedroom;

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

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

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

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

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

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

N. Failing to review or evaluate the appropriateness of the continued residence of retarded persons in Hissom and other Title XIX facilities or the feasibility of meeting their needs through alternative institutional or noninstitutional care;

O. Failing to develop discharge plans and referral to appropriate community resources;

P. Failing to monitor residents' medications;

Q. Failing to have written agreements with qualified professionals and hospitals outside the facility to provide required services not furnished by the facility;

R. Subjecting residents to emotional and physical abuse;

S. Refusing to permit residents communication, association, and private meetings with individuals of their choosing;

T. Failing to permit residents to participate in social, religious, and community group activities;

U. Segregating residents on the basis of their physical handicaps;

V. Failing to treat plaintiffs and the class with consideration, respect, and full recognition of their dignity and individuality;

W. Failing to assure that services are provided pursuant to the state's Title XIX Plan in a manner consistent with the best interests of plaintiffs and the class.

Count III: Education of the Handicapped Act

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

A. Failing to insure that to the maximum extent appropriate, plaintiffs and the class are educated with children who are not handicapped;

B. Requiring Hissom residents to be segregated in separate schools even though their handicaps are not uniformly

of such a nature or severity that attendance in a more integrated environment, with the use of supplementary aids and services, cannot be achieved satisfactorily;

C. Failing to provide or arrange for the provisions of nonacademic and extracurricular services and activities, including meals and recess periods, in a way that insures that each class member participates with nonhandicapped children in those services and activities to the maximum extent appropriate to the needs of that child;

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

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

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

G. Failing to evaluate each class member to determine the nature and extent of the special education and related services

that the child needs by providing and refining assessments that distinguish precisely each individual student's strengths and needs, learning style, behavioral needs, and life-skill needs;

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

I. Failing to assign a surrogate parent to insure that the rights of each class member is protected when no parent can be identified, the whereabouts of a parent cannot be discovered, or the child is a ward of the state;

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

K. Failing to provide a functional curriculum;

L. Failing to provide to teachers instructional advisors, functional materials or appropriate equipment;

M. Failing to reduce routinized instruction by creative teaching techniques, high levels of expectations for students, individualized planning and instruction, and knowledge, command and use of promising educational practices and materials;

N. Failing to assess, evaluate and train in natural environments, thereby wrongly relying on skills to be transferred from one environment to the other;

O. Failing to task-analyze skills to be taught in such a way that they are broken down into each component and subcomponent part for instruction;

P. Failing to develop and apply a relevant data system, giving staff an accurate assessment of successes of cues and reinforcers, interactions and external stimuli;

Q. Failing to provide a variety of instructional arrangements, including one-to-one, small group, student-to-student interactions;

R. Failing to provide systematic concurrent teaching strategies to reduce "dead time";

S. Failing to seek, encourage, and incorporate advice, consultation and information from the family and friends of individual students in order to evaluate and program plan; and

T. Failing to provide effective sequencing and integration of instructional tasks, settings, personnel and disciplines in assessment and in the planning, design, delivery, evaluation and redesign of each child's education.

#### Count IV: Equal Protection

Defendants have violated the rights of plaintiffs and the class secured by the Equal Protection Clause of the Fourteenth Amendment by establishing, encouraging, subsidizing, and otherwise sanctioning in de jure fashion enactments, programs, policies and practices that have excluded, separated, and segregated retarded people from the rest of us.

Count V: Expression and Association

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

A. Preventing class members from associating and assembling with others of their choice;

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

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

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

Count VI: Privacy, Dignity and Family Integrity

Defendants have violated the rights of plaintiffs and the class to the privacy, dignity, and family integrity secured by the First, Fourth, Ninth, and Fourteenth Amendments, by:

A. Stripping the residents of Hissom of their individuality;

B. Requiring that they exercise the most personal of bodily functions under the constant intrusive stares of staff and other residents in a way that is patently offensive to a reasonable person;

C. Affording them little or no opportunity to be alone when they want to be, or to be with others of their choosing;

D. Failing to provide them normal opportunities to express love, warmth, affection, and sexuality; and

E. Forcing them to live their lives congregately, according to the demands of the institution rather than according to their personal preferences.

Count VII: Due Process

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

A. Failing to provide adequate shelter, clothing, food and health care;

B. Imposing unnecessary restraints, physical or chemical;

C. Subjecting class members to abuse, neglect and other harmful conditions, including the injury stemming from regression and the stigma caused by segregation and incarceration;

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

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

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

G. Conclusively presuming that residents of Hissom cannot benefit from particular services or cannot live in noninstitutional settings;

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

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

J. Failing to provide a friend-advocate to assist each class member to live safely in freedom, and to exercise their rights guaranteed by the First, Fourth and Ninth Amendments, and under the Equal Protection and Due Process Clauses of the Fourteenth Amendment.

Count VIII: Imposition of Unconstitutional Conditions

Defendants have violated the right of plaintiffs and the class to freedom from the imposition of unconstitutional conditions by forcing them to submit to violations of the First, Fourth and Ninth Amendments and the Equal Protection and Due Process Clauses of the Fourteenth Amendment--violations created by defendants themselves--as a condition for the receipt of services provided by the state.

Relief

WHEREFORE, plaintiffs respectfully request that this Court:

1. Preliminarily and permanently enjoin defendants to provide all plaintiffs and members of the class effective services in the least separate, most integrated community setting appropriate to their needs.

2. Preliminarily and permanently enjoin defendants from admitting persons to Hissom or from transferring present residents from Hissom unless such transfer is to the least separate, most integrated community setting appropriate to their needs, with appropriate related ancillary services provided.

3. Preliminarily and permanently enjoin defendants to make available in advance of that time and with dispatch the necessary alternative residential facilities and services in the community.

4. Preliminarily and permanently enjoin defendants to safeguard plaintiffs' right to freedom from abuse, neglect, and unnecessary physical and chemical restraints, and to provide adequate food, clothing, shelter, medical care, and habilitative programming to plaintiffs.

5. Preliminarily and permanently enjoin defendants to develop written individualized habilitation and exit plans for each plaintiff and member of the class and to provide an individualized habilitation program for each.

6. Preliminarily and permanently enjoin defendants to make available a friend-advocate and surrogate parent to each

plaintiff and member of the class to assist each in securing the substantive and procedural protections aforesaid.

7. Declare unconstitutional, and unlawful under Section 504 of the Rehabilitation Act and its accompanying regulations, the failure of defendants to provide plaintiffs and members of the class with effective services delivered in the least separate, most integrated community setting, and preliminarily and permanently enjoin them to provide such services.

8. Preliminarily and permanently enjoin defendants from failing to perform their duties under other federal statutes: to wit, 42 U.S.C. Sections 1396 and 1396a, 20 U.S.C. Sections 1401-1415, and 29 U.S.C. Section 720, and their accompanying regulations.

9. Preliminarily and permanently enjoin defendants to submit to plaintiffs and to the Court for its approval a plan for implementation of the aforesaid.

10. Enter a final judgment certifying the class of individuals the plaintiffs represent to include all persons who are now at Hissom or who may be transferred there in the future; retarded persons residing at home who, because effective community services to assist their families are unavailable, are in jeopardy of being sent to Hissom; and persons who have been transferred to skilled nursing facilities, intermediate care facilities, homes for the aged, and similar facilities, yet remain Hissom's responsibility, and who, because of

defendants' failure to provide alternatives in the community, may be forced to return to Hisson.

11. Award plaintiffs their costs and attorneys fees.

12. Award plaintiffs and the members of the class such other relief as is necessary to effectuate their rights to effective services in an integrated community setting.

Respectfully submitted,

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