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22 Attorneys for Plaintiffs

23 IN THE UNITED STATES DISTRICT COURT

24 FOR THE DISTRICT OF OREGON

25 GARY H., ANGELO C., LARRY H.,) Civil No. 77-1039
26 RICKY W., JOSEPH M., JOSEPH B.,)
JOHN D., JIM J., BRIAN M.,)



1 CHARLES C., ALVIN C., BARKETT N.,)
TERRY E., LORENZO C., STEVEN D.,)
2 AVERY R., RICK J., HOWARD J., and)
ELWOOD H., by and through their)
3 guardians ad litem, MICHAEL TAYLOR)
and DON H. MARMADUKE, and DOUG G.,)
4 individually and on behalf of all)
others similarly situated,)

5
6 Plaintiffs,)

7 vs.)

8 LEO T. HEGSTROM, individually)
and in his capacity as Director)
of the Oregon Department of)
9 Human Resources; J. N. PEET,)
individually and in his capacity)
10 as Administrator of the Children's)
Services Division; RICHARD S.)
11 PETERSON, individually and in)
his capacity as Manager of the)
12 Juvenile Corrections Services)
Section; BENNETT K. HOLT, JR.,)
13 individually and in his capacity)
as Resident Superintendent of)
14 MacLaren School; LEONARD MUNKS,)
individually and in his capacity)
15 as Manager of the Juvenile)
Community Services Unit; DALE)
16 REEVES, individually and in)
his capacity as Administrator of)
17 the Vocational Rehabilitation)
Division; JOSEPH H. TRELEAVEN,)
18 M.D., individually and in his)
capacity as Administrator of)
19 the Mental Health Division;)
VERNE A. DUNCAN, individually)
20 and in his capacity as)
Superintendent of Public)
21 Instruction of the Oregon)
Department of Education;)
22 JESSE FASOLD, individually and)
in his capacity as Associate)
23 Superintendent of the Special)
Education and Special Schools)
24 Division,)

25 Defendants.)
26

SECOND AMENDED COMPLAINT

Civil Rights
Class Action

PRELIMINARY STATEMENT

1. MacLaren School (hereinafter usually referred to as "MacLaren"), located at 2630 N. Pacific Highway, Woodburn, Oregon, confines approximately 400 to 500 male juveniles who are in the custody of Children's Services Division. In addition to the juveniles housed at the facility in Woodburn, the plaintiff class includes MacLaren juveniles held at Hillcrest School in Salem, at Project Picture in Portland, and at Camps Florence, Tillamook, and Hildegard, in Florence, Tillamook, and LaGrande, respectively. Plaintiffs' class consists of all residents of MacLaren as of July 17, 1978, all residents since that date, and all future residents of MacLaren. All of the acts, practices, and conditions complained of herein have been suffered by at least one of the named plaintiffs. All of the members of plaintiffs' class suffer directly from some of the acts, practices and conditions complained of herein. All of plaintiffs' class suffer from the impact of these acts, practices, and conditions in that they combine to produce an atmosphere at MacLaren of fear, tension, and hostility which seriously conflicts with the goal of rehabilitating plaintiffs and providing them treatment.

2. Plaintiffs and the class they represent seek declaratory and injunctive relief to prevent violations of their constitutional and statutory rights by defendants, including but not limited to:

a. Violations of their right to be free from cruel and unusual punishments, including macings, beatings, druggings with powerful psychotropic drugs that have serious physical and

1 psychological side effects, strapping plaintiffs to beds for long
2 periods of time, forcing them to stand at attention for hours on
3 end, or to sit silently for days at a time, confining them in
4 cramped isolation cells and often depriving them of mattresses,
5 blankets, reading materials, and bathroom facilities, forcing
6 them to urinate out windows or on the floor, maintaining MacLaren
7 in an overcrowded, unsafe, and inhumane condition, and failing to
8 provide adequate treatment under the least restrictive conditions
9 necessary;

10 b. Violations of their right to due process of law,
11 including inflicting corporal punishments without providing
12 a hearing, removing privileges and lowering "tag levels"
13 affecting eligibility for parole without providing a hearing,
14 enforcing group penalties for individual offenses, providing
15 inadequate due process safeguards for plaintiffs subjected to
16 confinement in isolation, confinement in maximum security,
17 inter-institutional transfers, and re-confinement for alleged
18 parole violations, failing to inform plaintiffs of rules and
19 regulations, the violation of which can result in punishment,
20 denying plaintiffs' requests to consult with their attorneys,
21 and opening, reading, censoring, and obstructing communications
22 between plaintiffs and their attorneys or judicial officers and
23 with their family members;

24 c. Violations of their right to be free from involuntary
25 servitude, including forcing plaintiffs to scrub floors with a
26 toothbrush, to work full-time maintaining the school with no

1 pay, and to work as contract labor for private profit-oriented
2 enterprises with little or no pay.

3 d. Violations of their right to equal protection of the
4 laws, including failing to provide fire and emergency procedures
5 required by Oregon law in adult correctional facilities, failing
6 to give plaintiffs an administrative hearing before imposing
7 discipline, the use of corporal punishment, and maintaining
8 MacLaren in overcrowded and unhealthy conditions which are
9 prohibited under Oregon law in adult correctional facilities.;

10 e. Violations of their right to freedom of religion,
11 speech and association, including forcing plaintiffs to attend
12 particular religious services regardless of individual plain-
13 tiff's religious preferences, denying plaintiffs reading materials
14 while in detention, prohibiting conversational communications
15 between students, and interfering with plaintiffs' communications
16 and visitation with their families.;

17 f. Violations of their right to privacy, including failing
18 to provide adequate space, imposing regimentation designed to
19 minimize individualism and dignity, conducting humiliating and
20 degrading "skin searches" and other searches of students' bodies
21 without reasonable suspicion, interfering with their communications
22 and relationships with their families, and failing to protect
23 plaintiffs from harm.;

24 g. Violations of their right to treatment, including
25 failing to develop individualized treatment plans, failing to
26 provide psychological or psychiatric counseling, failing to

1 provide any contact with members of the opposite sex, failing
2 to provide adequate staff training or discipline, failing to
3 provide sufficient opportunities for exercise or recreation --
4 particularly for class members in detention -- failing to develop
5 and administer an adequate vocational and general educational
6 program including, but not limited to, a program for those
7 juveniles who are handicapped, developmentally disabled, or
8 possess special educational needs; and

9 h. Violations of their right to be confined only under
10 the least restrictive conditions necessary to provide suitable
11 treatment and rehabilitation. Specifically, this action seeks
12 to compel defendants to create sufficient and adequate treatment
13 and rehabilitation settings or programs which are less restrictive
14 than MacLaren as presently constituted, and, where appropriate,
15 to place plaintiffs therein.

16 JURISDICTION

17 3. This action arises under the Civil Rights Act, 42 U.S.C.
18 § 1983, to redress the deprivation under color of state law of
19 rights, privileges and immunities guaranteed to plaintiffs by the
20 First, Fourth, Eighth, Ninth, Thirteenth, and Fourteenth Amendments
21 to the United States Constitution; Title VI of the Civil Rights Act
22 of 1964, 42 U.S.C. § 2000d; the Education of All Handicapped Children
23 Act, 20 U.S.C. § 1401, et seq.; Title XX of the Social Security Act,
24 42 U.S.C. § 1397, et seq.; the Developmentally Disabled Assistance and
25 Bill of Rights Act, 42 U.S.C. § 6001, et seq., the Rehabilitation Act,
26 29 U.S.C. § 794, et seq., and the Vocational Education Act, 20 U.S.C.

1 § 2301, et seq. The jurisdiction of this Court is based upon 28
2 U.S.C. § 1343(3) and (4). Declaratory relief is sought
3 pursuant to 28 U.S.C. §§ 2201-02.

4 This Court also has jurisdiction to determine all state
5 claims made under Oregon Revised Statutes 419.474 and 420.120(3)
6 herein by the doctrine of pendent jurisdiction.

7 PLAINTIFFS

8 4. Plaintiffs GARY H., ANGELO C., JOSEPH M., JOSEPH B.,
9 JOHN D., JIM J., BRIAN M., CHARLES C., ALVIN C., BARRETT N.,
10 TERRY E., LORENZO C., STEVEN D., AVERY R., RICK J., HOWARD J.,
11 and ELWOOD H. at the commencement of this suit were juveniles
12 incarcerated in MacLaren. Plaintiffs RICKY W. and LARRY H. at
13 the commencement of this action were juveniles on unauthorized
14 leave from MacLaren, subject to immediate reincarceration at
15 MacLaren. Plaintiff DOUG G. was 18 years old, under the jurisdiction
16 of the Juvenile Court, and incarcerated in MacLaren at the
17 commencement of this suit. Most named plaintiffs have been
18 incarcerated at MacLaren more than once, and all, if hereafter
19 released, are substantially likely to be reincarcerated at
20 MacLaren one or more times in the future.

21 5. While incarcerated at MacLaren, plaintiffs have
22 endured and continue to endure its conditions, including the
23 actions of defendants as described hereinafter. Plaintiffs,
24 with the exception of DOUG G., bring this action by and through
25 MICHAEL TAYLOR and DON H. MARMADUKE as their guardians ad litem.
26 All of the individual plaintiffs together with the other members

1 of the class shall hereinafter be referred to collectively as
2 "plaintiffs" unless otherwise specified.

3 DEFENDANTS

4 6. Defendant LEO T. HEGSTROM is, and since January, 1979,
5 has been, the Director of the Oregon Department of Human Resources,
6 succeeding Richard A. Davis, and as such is responsible for
7 coordinating, providing, maintaining and supervising programs
8 and services rendered to plaintiffs by the Children's Services
9 Division of the Department of Human Resources.

10 7. Defendant J. N. PEET is, and at all times herein relevant
11 has been, the Administrator of the Children's Services Division,
12 and as such is responsible for equipping, conducting, maintaining,
13 and supervising MacLaren in a manner suitable for the confinement
14 of minors, and in conformance with law.

15 8. Defendant RICHARD S. PETERSON is, and at all times herein
16 relevant has been, the Manager of the Juvenile Corrections Services
17 Section of the Children's Services Division, and as such is
18 responsible for coordinating, providing, maintaining, and supervising
19 programs and services to plaintiffs.

20 9. Defendant BENNETT K. HOLT, JR., is, and at all times
21 herein relevant has been, the Resident Superintendent of MacLaren
22 School, and as such is responsible for the treatment and rehabilitation
23 of plaintiffs into useful and honorable members of society, and
24 for hiring, supervising, training and disciplining MacLaren staff
25 members.

26 10. Defendant LEONARD MUNKS is, and at all times herein

1 relevant has been, Manager of the Juvenile Community Services Unit of
2 the Juvenile Corrections Services Section, and as such is responsible
3 for granting, supervising and revoking plaintiffs' parole.

4 11. Defendant DALE REEVES is, and at all times herein
5 relevant has been, the Administrator of the Vocational Rehabilitation
6 Division of the Department of Human Resources, and as such is
7 responsible for the provision and administration of treatment,
8 rehabilitation and vocational training programs in Oregon, and
9 compliance with the Rehabilitation Act, 29 U.S.C. § 794, et seq.

10 12. Defendant JOSEPH H. TRELEAVEN, M.D., is, and at all
11 times herein relevant has been, the Administrator of the Mental
12 Health Division of the Department of Human Resources, and as
13 such is responsible for the administration of federal funds
14 appropriated pursuant to the Developmentally Disabled Assistance
15 Act and Bill of Rights, 42 U.S.C. § 6001, et seq.

16 13. Defendant VERNE A. DUNCAN is, and at all times herein
17 relevant has been, the Superintendent of Public Instruction of
18 the Oregon Department of Education, and as such is responsible
19 for the administration of federal funds appropriated pursuant to
20 Title XX of the Social Security Act, 42 U.S.C. § 1397, et seq.,
21 and the Education of All Handicapped Children Act, 20 U.S.C.
22 § 1401, et seq.

23 14. Defendant JESSE FASOLD is, and at all times herein
24 relevant has been, Associate Superintendent of the Special Education
25 and Special Schools Division of the Oregon Department of Education,
26 and as such is responsible for the provision and administration of

1 special education programs receiving federal financial assistance
2 under the Education of All Handicapped Children Act, 20 U.S.C.
3 § 1401, et seq.

4 15. Defendants HEGSTROM, PEET, PETERSON and HOLT have
5 actual knowledge that the acts, omissions, and conditions alleged
6 below occur on a regular basis at MacLaren. Said defendants
7 have either expressly approved these acts, omissions, and
8 conditions or acquiesced in them. In acting and failing to
9 act, and in maintaining the conditions hereinafter described,
10 defendants, and each of them, separately and in concert, have
11 been and are acting under color of the statutes, ordinances,
12 regulations, customs, and usages of the State of Oregon. Said
13 acts, omissions, and conditions continue to be maintained by
14 said defendants personally and through actions of their agents
15 and subordinates under instructions and directions from them.

16 16. All of the individual defendants and their successors
17 in office shall hereinafter be referred to collectively as
18 "defendants" unless otherwise specified.

19 CLASS ACTION ALLEGATIONS

20 17. Plaintiffs bring this action on behalf of themselves
21 and all others similarly situated pursuant to Rules 23(a) and
22 23(b)(2) of the Federal Rules of Civil Procedure. The members of
23 plaintiffs' class are all residents of MacLaren as of July 17,
24 1978, all residents since that date, and all future residents
25 of MacLaren. It is estimated that the members of plaintiffs'
26 class number in excess of fifteen hundred.

1 18. All of the acts, practices, and conditions complained
2 of herein have been suffered by at least one of the named
3 plaintiffs. All of the plaintiffs' class suffer from the
4 impact of these acts, practices and conditions, in that they
5 combine to produce an environment at MacLaren which seriously
6 conflicts with the goal of rehabilitation and treatment of
7 plaintiffs. All of the members of plaintiffs' class suffer
8 from the lack of available and appropriate less restrictive
9 residential and non-residential programs and facilities, and
10 from the lack of education, treatment, effective screening,
11 review and placement procedures at MacLaren. The members of
12 the class are so numerous that joinder of all members is
13 impracticable. The predominant questions of law and fact
14 are common to all members of the class. The claims of the
15 named plaintiffs are typical of the claims of the class, and
16 the named plaintiffs will fairly and adequately protect the
17 interests of the entire class. The parties opposing the class
18 have acted and refused to act on grounds generally applicable
19 to the class, thereby making appropriate final injunctive and
20 declaratory relief with respect to the class as a whole.

21 STATEMENT OF FACTS

22 19. Defendants claim to have discontinued, and have adopted
23 administrative rules concerning some of the practices complained
24 of herein; but plaintiffs have no assurance that they have, in
25 fact, abandoned these practices, or that they will not reinstitute
26 those practices which they have discontinued for the present.

1 20. Defendants impose harsh and brutal punishments on
2 plaintiffs without any notice, hearing, or opportunity for
3 plaintiffs to speak on their own behalf. These punishments
4 include:

5 a. Macing. For example, Plaintiff JIM J. was sprayed
6 with mace while confined in an isolation cell as punishment
7 for not remaining quiet;

8 b. Beatings, and other types of assault including kicking,
9 choking, and shoving. For example, Plaintiff JOSEPH B. was
10 beaten upon the face by staff while restrained in a "belly chain"
11 and ankle chains, Plaintiff LARRY H. had his head repeatedly
12 beaten against a stair railing by staff, and Plaintiff HOWARD J.
13 was punched in the face by staff and knocked across the room;

14 c. Drugging with powerful psychotropic drugs which can
15 have long-lasting physical and psychological side effects including,
16 but not limited to, extra-pyramidal reactions, hyperventilation,
17 fainting, insomnia, dizziness, dehydration, assaultiveness,
18 temporary paralysis, parkinsonism, depression, euphoria, neurosis,
19 delusions, and hallucinations. These drugs are administered as
20 punishment and as a "chemical straight-jacket," frequently in
21 combination with other punitive measures such as isolation.
22 Further, these drugs are administered with conscious disregard
23 for their effects and in violation of standard medical procedures
24 for their administration, including the administration of drugs
25 by non-medical personnel without prior authorization from a
26 physician, and not under the direct and immediate supervision

1 of a physician; the failure to monitor the patient for harmful
2 side effects; and the failure to keep complete records pertaining
3 to the time and amount of medication administered to each
4 resident;

5 d. Depriving plaintiffs confined in isolation cells or in
6 the maximum security unit of their mattresses, blankets, pillows,
7 and reading materials. For example, Plaintiffs LORENZO C.,
8 STEVEN D., ELWOOD H., CHARLES C., TERRY E., and DOUG G. were
9 deprived of their mattresses, blankets, and pillows while
10 confined in isolation;

11 e. Depriving plaintiffs confined in isolation cells
12 of adequate food, opportunity for exercise, reading materials,
13 and bathroom facilities, forcing them to urinate out windows
14 or on the floor; requiring plaintiffs confined in isolation
15 cells to wear degrading and ill-fitting institutional clothing;
16 blocking windows and doors to isolation cells with pillows or
17 padding, thus denying plaintiffs adequate ventilation and
18 rendering it difficult for plaintiffs to communicate with
19 the counselors on duty;

20 f. Restricting visitation rights of plaintiffs confined
21 in isolation and the maximum security unit to one hour per week,
22 or denying visitation altogether as punishment;

23 g. Conducting frequent individual and group strip searches
24 and locker searches without reasonable suspicion or any legitimate
25 security purpose solely to degrade and intimidate plaintiffs,
26 and at times in the presence of female staff;

1 h. Imposing group punishments such as " standing on line"
2 in which plaintiffs must stand at attention sometimes for hours
3 on end; "group freezes" in which plaintiffs must sit silently
4 for days at a time, thus preventing plaintiffs from participating
5 in educational, vocational, or recreational activities;
6 requiring all students in a cottage to sit in the locker room
7 while only one student at a time takes a shower, even though
8 more showers are available, as a means of preventing their
9 participation in normal evening activities;

10 i. Forcing plaintiffs to scrub floors or walls with
11 a toothbrush; and

12 j. Strapping or chaining plaintiffs to beds
13 in isolation cells for long periods of time as punishment;
14 strapping or chaining plaintiffs to beds without mattresses;
15 and beating plaintiffs so restricted. For example,
16 Plaintiff ELWOOD H. was chained with handcuffs and leather
17 leggings to his metal bed frame without a mattress after
18 he had been maced.

19 21. Defendants in fact impose sanctions upon plaintiffs
20 for purported violations of unwritten rules or policies of
21 which plaintiffs have no notice whatever. Defendants fail to
22 provide plaintiffs with any prior notice of the sanctions which
23 such violations may involve, and fail to provide standardized
24 sanctions for such violations. Defendants enforce such rules
25 and regulations and impose such sanctions arbitrarily.

26 //

1 22. Plaintiffs are subjected to brutal group punishments
2 in the event an individual attempts to run away. Plaintiffs
3 are compelled to pursue the runaway and encouraged to beat up
4 the runaway upon capture. Failure to capture the individual
5 can result in suspension of group privileges or the imposition
6 of group punishments, including "group freezes" and "standing
7 on line."

8 23. Defendants impose harsh and inhumane punishments and
9 restrictions on plaintiffs without a hearing that adequately
10 safeguards plaintiffs' rights and due process of law. These
11 punishments and restrictions include:

12 a. Confinement in cramped isolation cells lacking adequate
13 heat, ventilation, or lighting and frequently lacking adequate
14 plumbing when plaintiffs are neither a danger to themselves or
15 others. Plaintiffs so confined are deprived of communications,
16 including communication with attorneys or visitation. Further,
17 they are provided with no exercise, no outdoor or indoor
18 recreation, and no educational program. Plaintiffs in isolation
19 must subsist on a meager diet, and are not provided with an
20 opportunity to consult with psychiatrists or psychologists;

21 b. Confinement in the maximum security unit in which
22 contact with other persons outside of MacLaren is highly
23 restricted, and in which activities and privileges are kept
24 to a minimum;

25 c. Removal of all forms of group privileges including
26 but not limited to off-campus recreational activities, recreational

1 and swimming privileges, and smoking privileges. These group
2 privileges are removed for individual offenses;

3 d. The lowering of plaintiffs' "tag levels" (privilege
4 levels) which determine eligibility for parole, plaintiffs'
5 freedom of movement or lack thereof on and off campus, and
6 other privileges such as access to second helpings of food,
7 use of the canteen, and access to recreational activities.

8 e. Transferring plaintiffs or denying plaintiffs'
9 requests for transfers from MacLaren to Hillcrest School or
10 to Camps Florence, Tillamook and Hildegard, substantially
11 affecting the amount of time before plaintiffs are released
12 on parole as well as privileges afforded to and hard labor
13 required of plaintiffs; and

14 f. Revoking the parole of plaintiffs who have been
15 released from MacLaren, without providing a judicial or a
16 formal administrative hearing and a determination that any
17 conditions of parole have been violated.

18 24. Defendants in imposing each of the sanctions or
19 deprivations listed in Paragraph 23 fail to provide plaintiffs
20 with all or some of the following incidents of procedural due
21 process:

22 a. The right to counsel or counsel substitute;

23 b. The right to written notice of charges;

24 c. The right to confront and cross-examine witnesses;

25 d. The right to speak on their own behalf;

26 e. The right to an impartial tribunal; and

1 f. The right to a written record on which to base an
2 appeal.

3 25. It has been defendants' practice to prevent plaintiffs
4 from learning of their legal rights, and from obtaining the
5 assistance of attorneys or others to protect and assert those
6 rights, for example:

7 a. Defendants have actively intimidated and discouraged
8 plaintiffs from seeking to consult with their attorneys.
9 Defendants have advised plaintiffs that an attorney cannot
10 help them because they are totally within the control of the
11 State, and defendants have prevented or discouraged plaintiffs
12 from communicating with their attorneys by telephone or written
13 correspondence. Defendants encourage plaintiffs to waive their
14 right to judicial or administrative proceedings;

15 b. Defendants open, read, inspect, censor, obstruct, and
16 impede mail between students and persons in and outside of
17 MacLaren, including but not limited to attorneys and judicial
18 officers. Defendants refuse to convey mail containing any
19 statement critical of the conditions, programs, or treatment
20 at MacLaren or critical of the conduct of personnel employed
21 at MacLaren; and

22 c. Defendants fail to afford plaintiffs access to a
23 set of Oregon Revised Statutes, fail to maintain an
24 adequate law library, and refuse requests by plaintiffs to
25 examine other available legal materials. Defendants also fail
26 to provide plaintiffs with assistance from persons trained

1 in law in the preparation and filing of legal papers.

2 26. Defendants force plaintiffs into involuntary servitude
3 by:

4 a. Requiring plaintiffs not attending classes to work at
5 MacLaren maintaining the school and to perform tasks such as
6 laundry work, kitchen work, farm work, and maintenance work for
7 no pay or compensation;

8 b. Requiring plaintiffs to work at forestry camps in
9 Florence, Tillamook, and LaGrande. These plaintiffs are paid
10 85 cents to \$1.25 per hour for hard labor, done with heavy
11 and dangerous equipment, and performed under adverse weather
12 conditions. Money earned by plaintiffs is placed in "accounts"
13 at MacLaren where it does not earn any interest;

14 c. Subjecting plaintiffs who refuse to work at these
15 jobs to confinement in isolation or reduction of tag levels; and

16 d. Failing to provide plaintiffs who are injured while
17 working any form of compensation or adequate medical care and
18 protection from injury.

19 27. Defendants force plaintiffs to attend religious
20 services of evangelical groups, often in direct violation of
21 the religious beliefs of plaintiffs. These services are
22 conducted solely to convert plaintiffs to these faiths. In
23 some cottages plaintiffs who do not choose to attend religious
24 services are forced to work; plaintiffs in the detention unit
25 and reception cottages are locked in isolation if they do not
26 attend religious services.

1 28. Defendants interfere with plaintiffs' exercise of
2 religious liberty by predicated attendance at religious
3 services on a majority vote of the members of some cottages;
4 or by denying plaintiffs attendance at religious services as
5 a punishment, or if plaintiffs are scheduled to work during
6 the period when services are being conducted. Defendants also
7 compel residents who are Native Americans to have their hair
8 cut in contravention of the residents' tribal customs and
9 religious beliefs.

10 29. Defendants censor or otherwise refuse to convey mail
11 to or from students that contains statements considered by
12 defendants in their sole discretion to be inimical to security
13 at MacLaren or immoral. This standard is vague, overbroad,
14 and permits arbitrary and malicious censorship without good
15 cause or a showing of a clear and present danger to the school.
16 Defendants restrict in some cottages the number of letters
17 plaintiffs may write and fail to provide postage for plaintiffs
18 unable to afford it.

19 30. Defendants fail to encourage and promote relationships
20 between plaintiffs and the members of their families. Defendants
21 severely restrict the visitors plaintiffs may receive and the
22 telephone calls plaintiffs may make. Plaintiffs are not allowed
23 to receive visits from siblings between the ages of twelve and
24 eighteen except with special permission. Visits with relatives
25 other than parents are also prohibited in the absence of special
26 permission. Special permission for such visits is arbitrarily

1 granted and withheld. Plaintiffs are only allowed to receive
2 visits from their parents for four hours on Sunday afternoons.

3 31. Students who have completed their GFD or obtained
4 high school diplomas are not allowed to use the library. Access
5 to the library by plaintiffs in the school program is restricted.

6 32. Defendants maintain MacLaren in an overcrowded and
7 physically substandard condition. In some cottages plumbing
8 is so decrepit that it is nonfunctional approximately fifty
9 percent of the time, leading to stench and unsanitary conditions
10 in those bathrooms. All of the cottages are infested with
11 silverfish; some of the cottages are also infested with rats,
12 mice and cockroaches. Plaintiffs frequently find bugs in their
13 clothing when they are dressing. Control of heat in cottages
14 is frequently inadequate, and plaintiffs frequently complain
15 of cold or of excessive heat. Kitchen procedures for food
16 preparation are unsanitary due in part to inadequate supervision
17 of plaintiffs who are forced to work there. Food provided
18 plaintiffs is nutritionally inadequate and insufficient for
19 the needs of growing teenagers.

20 33. Procedures for evacuating cottages in case of fire
21 are inadequate and plaintiffs are not informed of them.
22 Defendants have failed to document continuous supervision
23 of plaintiffs as requested by the State Fire Marshall.
24 Defendants have not informed the State Fire Marshall of fire
25 evacuation procedures used at MacLaren, and on numerous occasions
26 defendants have failed promptly to abate other hazardous condi-

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1 tions, contrary to the request of the State Fire Marshall.
2 Lack of fire evacuation procedures has endangered plaintiffs.
3 For example, students and staff in bed on the second floor of
4 Chadwick Cottage, who smelled fire on the first floor, could
5 not use the fire escapes until the presence of fire had been
6 verified by outside security personnel sent from another building.

7 34. Defendants violate plaintiffs' right to treatment and
8 right to humane living conditions as follows:

9 a. Defendants fail to develop individualized treatment
10 plans and to provide minimally adequate treatment and rehabili-
11 tation programs;

12 b. Defendants fail to provide appropriate and adequate
13 supervision of plaintiffs;

14 c. Defendants fail to provide reasonable access to toilet
15 facilities during bedtime hours;

16 d. Defendants fail to train and psychologically screen
17 staff;

18 e. Defendants fail to provide adequate psychiatric,
19 emergency medical, and routine medical or dental care. Plaintiffs
20 in need of routine medical attention are allowed to see a
21 doctor, nurse, or technician only if nonmedical cottage personnel
22 determine that the complaint is serious enough to warrant
23 seeing medical personnel. Unreasonable and unnecessary delays
24 in delivery of these services is common. Medical technicians,
25 unlicensed to do so, prescribe medications and medical procedures
26 Cottage staff, unlicensed to do so, administer medications;

1 f. Defendants fail to provide reasonable access to
2 psychologists and psychiatrists to give routine care to
3 plaintiffs;

4 g. Defendants provide only cursory physical examinations
5 upon admission to MacLaren;

6 h. Defendants fail to provide plaintiffs with appropriate
7 treatment for alcohol and drug abuse;

8 i. Defendants fail to provide plaintiffs with sufficient
9 privacy at any time. Beds in the dormitories of the cottages
10 have as little as one foot of space between them. No personal
11 locked storage spaces are provided for plaintiffs and, con-
12 sequently, personal possessions and necessities such as combs
13 and toothbrushes are frequently stolen. Defendants consistently
14 fail to promptly replace these necessities, thus encouraging
15 juveniles to lie, steal, and bully other juveniles to obtain
16 these necessities;

17 j. Defendants do not arrange regular interactions with
18 members of the opposite sex for plaintiffs, and consequently
19 plaintiffs have no contact with peer group members of the
20 opposite sex. As a proximate result of the deprivation of
21 contact with members of the opposite sex, plaintiffs suffer
22 a grave risk of social retardation and personality distortion;

23 k. Defendants subject plaintiffs to long periods of enforced
24 idleness, including a long and unnecessary delay when plaintiffs
25 are first admitted to MacLaren before they are enrolled in any
26 treatment program or cottage; and

1 1. Defendants allow and tacitly encourage the brutalizing
2 of plaintiffs by other plaintiffs.

3 35. Defendants fail to screen or test plaintiffs to
4 determine if they are developmentally disabled or otherwise
5 educationally handicapped, and fail to provide adequate and
6 appropriate specialized educational services or programs for
7 those members of the plaintiff class who, because of a
8 developmental disability or educational handicap, are in
9 need of such services and programs.

10 36. Defendants fail to screen or test plaintiffs to
11 determine if they are handicapped, fail to create and maintain
12 appropriate treatment rehabilitation and vocational training
13 programs for the relevant members of plaintiffs' class under
14 the least restrictive conditions consistent with their treatment
15 and rehabilitation needs, and discriminate against those members
16 of plaintiff's class solely on the basis of handicap in the
17 provision and administration of such programs and in placements.

18 37. Defendants fail to provide plaintiffs with meaningful
19 vocational education which is of high quality, which is reasonably
20 related to plaintiffs' actual or anticipated opportunities for
21 gainful employment, and which is suited to plaintiffs' needs,
22 interests, and abilities.

23 38. Reading materials commonly available in the cottages,
24 detention units, and reception areas are inappropriate for
25 the educational needs and interests of plaintiffs, and inconsistent
26 with programming designed to encourage the improvement of reading

1 skills.

2 39. Defendants practice racial discrimination, making the
3 achievement of certain privilege levels virtually impossible
4 for minority group members, aggravating racial tensions between
5 plaintiffs, penalizing minority children for associating with
6 each other, and promoting a general atmosphere of fear and hatred
7 at MacLaren. Defendants have also failed and refused, and
8 continue to fail and refuse to create, contract with, or utilize
9 sufficient numbers of community placements which will accept
10 minority -- particularly black -- children. As a proximate
11 result of defendants' actions and omissions to act, minority
12 children who are suitable for placement in community facilities
13 and programs are confined at MacLaren, and these minority
14 children are required to spend longer periods of confinement
15 at MacLaren than white children of comparable ages and backgrounds.

16 40. Defendants deprive plaintiffs of the opportunity
17 to be placed in programs, including residential and nonresidential
18 community programs, which are less restrictive of plaintiffs'
19 constitutional rights. A significant number of the
20 members of plaintiffs' class did not and do not require
21 secure confinement, and would benefit from being placed
22 in alternative residential programs or facilities without
23 impairment of legitimate juvenile corrections objectives.
24 These include group homes, foster homes, shelter care,
25 halfway houses and other residential environments. A sub-
26 stantial number of the remaining juveniles could live in community

1 placements with their own families or in foster or group
2 homes if adequate support services were available in the
3 community. Support services include mental health counseling,
4 drug and alcoholism therapy, occupational therapy, vocational
5 training and counseling, recreational programs, crisis intervention
6 and respite overnight care (short-term or on a permanent basis).
7 The limited treatment and rehabilitation services which are
8 offered at MacLaren can be and routinely are administered
9 in less restrictive community-based programs. Such programs
10 also offer other treatment and rehabilitation services which
11 are not available at MacLaren and which would greatly further
12 plaintiffs' successful integration into the community.

13 41. Only a small fraction of plaintiffs' class has been
14 placed in less restrictive alternatives, either because there
15 are not enough places in existing programs to handle the number
16 of juveniles who are appropriate for placement, or because
17 defendants have failed to utilize suitable existing placements.
18 The absence of adequate and appropriate community-based placements
19 is the result of a pattern and practice on the part of
20 defendants of failing to locate, investigate and create such
21 alternatives. Even members of plaintiffs' class who are initially
22 suitable for community placements are required to spend many
23 months in MacLaren before they are placed in community facilities
24 or programs.

25 42. Defendants fail to obtain available student reports,
26 records, histories, and evaluations, and fail to conduct adequate

1 evaluations of each student, thereby impeding a determination
2 of whether a student should be placed in a less restrictive
3 setting. Defendants further fail to adequately document the
4 considerations, if any, given to placement in a community setting
5 or facility.

6 43. Defendants have not established adequate placement
7 procedures for students at MacLaren.

8 44. Defendants have no adequate procedures for referring
9 prospective students to less restrictive alternative settings
10 prior to or upon admission to MacLaren.

11 45. Defendants do not adequately deploy staff in order
12 to effect proper placement, to monitor and supervise,
13 existing placements, or to facilitate the transition from
14 MacLaren to less restrictive settings.

15 46. Defendants have not provided enough places in
16 existing alternative facilities to provide plaintiffs with
17 suitable treatment in the least restrictive setting.

18 47. Defendants have failed to establish or enforce
19 minimum standards for placing students in alternative facilities.

20 48. Defendants have failed to allocate the resources
21 necessary to develop less restrictive alternatives that will
22 provide suitable treatment and services for plaintiffs' needs.

23 49. Defendants have failed to develop, coordinate, or
24 implement any comprehensive state-wide, regional or local plans
25 for the establishment and maintenance of an adequate number of
26 suitable less restrictive settings.

1 50. Defendants receive federal funds appropriated pursuant
2 to the Education of All Handicapped Children Act, 20 U.S.C. §
3 1401, et seq., the Developmentally Disabled Assistance Act and
4 Bill of Rights, 42 U.S.C. § 6001, et seq., the Rehabilitation
5 Act, 29 U.S.C. § 794 et seq., and the Vocational Education Act,
6 20 U.S.C. § 2301, et seq., and have received federal funds
7 reimbursements for services to members of plaintiffs' class
8 pursuant to Title XX of the Social Security Act, 42 U.S.C. §
9 1397 et seq.

10 ACTUAL AND SUBSTANTIAL CONTROVERSY

11 51. An actual and substantial controversy exists between
12 plaintiffs and defendants in that plaintiffs contend and
13 defendants deny that the actions and omissions of defendants
14 described in Paragraphs 1-50 above are as alleged and constitute
15 violations of plaintiffs' constitutional and statutory rights.

16 IRREPARABLE HARM AND NO ADEQUATE REMEDY AT LAW

17 52. By reason of defendants' violations, plaintiffs have
18 suffered, and will continue to suffer, irreparable harm, injury,
19 and loss in that their most fundamental human rights have been,
20 are being, and will continue to be subjected by defendants to
21 acts, omissions, and conditions which are likely to seriously
22 impair their physical and mental health.

23 53. Plaintiffs have no plain, speedy, and adequate remedy
24 at law to remedy these deprivations of their constitutional and
25 statutory rights and threats to their lives and health. Damages
26 cannot adequately compensate plaintiffs for the loss of their

1 constitutional and personal rights.

2 LEGAL CLAIMS

3 54. For plaintiffs' claims, each enumerated below, they
4 reallege and incorporate by reference Paragraphs 1 through 53
5 above in each statement of claim, and further allege:

6 First Claim

7 55. Defendants' actions in imposing harsh and brutal
8 punishments upon plaintiffs, as described in Paragraphs 20 and
9 23; imposing group punishments upon plaintiffs, as described
10 in Paragraphs 20 and 22; maintaining MacLaren in an overcrowded,
11 unsafe, and inhumane condition, as described in Paragraphs 32,
12 33 and 34; and in confining plaintiffs without providing adequate
13 treatment in the least restrictive setting necessary, as
14 described in Paragraphs 34 through 38 and 40 through 49,
15 constitute cruel and unusual punishment, in violation of
16 plaintiffs' rights under the Eighth and Fourteenth Amendments
17 to the United States Constitution.

18 Second Claim

19 56. Defendants' actions in arbitrarily imposing punish-
20 ments or sanctions upon plaintiffs for purported violations of
21 unwritten rules, and imposing punishments or sanctions upon
22 plaintiffs without notice, a hearing, and other incidents of
23 procedural due process, as described in Paragraphs 21 and 24,
24 are in violation of plaintiffs' rights under the Due Process
25 Clause of the Fourteenth Amendment to the United States
26 Constitution.

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Fourth Claim

58. Defendants' actions in forcing plaintiffs to work
without pay, as described in Paragraph 26, are in violation
of plaintiffs' right to be free from involuntary servitude,
under the Thirteenth Amendment to the United States Constitution.

Fifth Claim

Sixth Claim

60. Defendants' actions in restricting plaintiffs' visitation with their families and others, as described in Paragraph 30; censoring or restricting their mail, as described in Paragraphs 25 and 29; and restricting the use

tions in restricting plaintiffs'
families and others, as described in
or restricting their mail, as
25 and 29; and restricting the use

1 of the library, as described in Paragraph 31, are in violation
2 of plaintiffs' rights to freedom of speech and association
3 under the First and Fourteenth Amendments to the United States
4 Constitution.

5 Seventh Claim

6 61. Defendants' actions in confining plaintiffs in MacLaren
7 under the conditions described herein: in failing to provide
8 adequate treatment and rehabilitation programs and humane living
9 conditions, as described in Paragraph 34; in failing to
10 provide adequate educational services, as described in Paragraphs
11 35, 37, and 38; and in failing to provide adequate services
12 to handicapped members of plaintiffs' class, as described in
13 Paragraph 36, are in violation of plaintiffs' right to treatment
14 under the Due Process Clause Amendment and the Eighth and
15 Fourteenth Amendments to the United States Constitution and
16 ORS 419.474 and 420.120(3).

17 Eighth Claim

18 62. Defendants' failure to insure that plaintiffs are
19 placed in the least restrictive setting necessary to provide
20 suitable treatment and rehabilitation, as described in Paragraphs
21 40 through 49, is in violation of plaintiffs' right to the
22 least restrictive alternative which will effectuate the purpose
23 of their confinement under the Due Process Clause of the
24 Fourteenth Amendment to the United States Constitution, and
25 their rights to association, assembly, speech, belief, and
26 travel under the First and Fourteenth Amendments to the United

1 States Constitution.

2 Ninth Claim

3 63. Defendants' actions in conducting frequent strip
4 searches and locker searches, as described in Paragraph 20;
5 interfering with plaintiffs' communications and relationships
6 with their families, as described in Paragraphs 20, 23, 29,
7 and 30; maintaining MacLaren in an overcrowded condition
8 affording plaintiffs no opportunities for privacy, as described
9 in Paragraphs 32 and 34; and failing to insure that plaintiffs
10 are placed in the least restrictive setting necessary to
11 provide suitable treatment and rehabilitation, as described
12 in Paragraphs 40 through 49, are in violation of their right
13 to privacy under the First, Ninth, and Fourteenth Amendments
14 to the United States Constitution.

15 Tenth Claim

16 64. Defendants' actions in maintaining conditions and
17 practices as described in Paragraphs 20 through 25, 32, 33
18 and 39, that are prohibited in adult correctional facilities
19 in Oregon; failing to provide compensation for injuries incurred,
20 by students working at MacLaren, as described in Paragraph 26,
21 which is required in adult correctional facilities; discriminating
22 against certain groups of plaintiffs in the use of library
23 facilities, as described in Paragraph 31; failing to provide
24 plaintiffs with special education and related services, as
25 described in Paragraph 35; failing to provide plaintiffs with
26 adequate treatment in the least restrictive alternative, as

1 described in Paragraphs 34 through 49; failing to provide
2 appropriate services to and discriminating against handicapped
3 members of plaintiffs' class, as described in Paragraph 36;
4 and failing to provide plaintiffs with meaningful vocational
5 education, as described in Paragraph 37, are in violation of
6 plaintiffs' rights under the Equal Protection Clause of the
7 Fourteenth Amendment to the United States Constitution.

8 Eleventh Claim

9 65. Defendants' actions in practicing racial discrimination,
10 as described in Paragraphs 28 and 39, are in violation of
11 plaintiffs' rights under the Equal Protection Clause of the
12 Fourteenth Amendment to the United States Constitution and
13 Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d.

14 Twelfth Claim

15 66. Defendants actions in subjecting plaintiffs to
16 unreasonable and unnecessary strip searches and locker searches,
17 as described in Paragraph 20, constitute unreasonable searches
18 and seizures in violation of plaintiffs' rights under the
19 Fourth and Fourteenth Amendments to the United States Con-
20 stitution.

21 Thirteenth Claim

22 67. Defendants' failure to identify, locate and evaluate
23 developmentally disabled or educationally handicapped members
24 of plaintiffs' class, and provide them with special education
25 and related services adequate to meet their individual needs,
26 as described in Paragraph 35, is in violation of their rights

1 under the Education of All Handicapped Children Act, 20 U.S.C.
2 § 1401, et seq.

3 Fourteenth Claim

4 68. Defendants' failure to determine, both upon admission
5 and throughout their period of confinement, whether treatment
6 could be provided to plaintiffs in a less restrictive, non-
7 institutional setting, and failure to place members of plaintiffs'
8 class, where appropriate, in such alternative programs, as
9 described in Paragraphs 40 through 49, is in violation of
10 plaintiffs' rights under Title XX of the Social Security Act,
11 42 U.S.C. § 1397, et seq.

12 Fifteenth Claim

13 69. Defendants' failure to provide plaintiffs with adequate
14 treatment, under the least restrictive conditions consistent with
15 their needs, as described in Paragraphs 34 through 49, is in
16 violation of their rights under the Developmentally Disabled
17 Assistance Act and Bill of Rights, 42 U.S.C. § 6001, et seq.

18 Sixteenth Claim

19 70. Defendants' actions in failing to screen or test
20 plaintiffs to determine if they are handicapped, failing to
21 provide appropriate services to those members of plaintiffs'
22 class, and discriminating against them solely by reason of
23 handicap, as described in Paragraph 36, are in violation of
24 plaintiffs' rights under the Rehabilitation Act, 29 U.S.C. §
25 794, et seq.

26 Seventeenth Claim

1 71. Defendants' failure to provide plaintiffs with mean-
2 ingful vocational education which is of high quality, which is
3 reasonably related to plaintiffs' actual or anticipated oppor-
4 tunities for gainful employment, and which is suited to plaintiffs'
5 needs, interests, and abilities, as described in Paragraph 37,
6 is in violation of plaintiffs' rights under the Vocational
7 Education Act, 20 U.S.C. § 2301, et seq.

8 PRAYER FOR RELIEF

9 WHEREFORE, plaintiffs request that this Court:

10 1. Issue a declaratory judgment pursuant to 28 U.S.C. § 2201
11 and 2202 and Rule 57 of the Federal Rules of Civil Procedure that
12 the acts, practices, and omissions of defendants complained of
13 herein violate plaintiffs' rights under the First, Fourth, Eighth,
14 Ninth, Thirteenth, and Fourteenth Amendments to the United States
15 Constitution, Title VI of the Civil Rights Act of 1964, 42 U.S.C.
16 § 2000d, the Education of All Handicapped Children Act, 20 U.S.C.
17 § 1401, et seq., Title XX of the Social Security Act, 42 U.S.C.
18 § 1397, et seq., the Developmentally Disabled Assistance Act and
19 Bill of Rights, 42 U.S.C. § 6001, et seq., the Rehabilitation
20 Act, 29 U.S.C. § 794, et seq., the Vocational Education Act, 20
21 U.S.C. § 230, et seq., and ORS 419.474 and 420.120(3).

22 2. Enter preliminary and permanent orders enjoining
23 defendants and each of them, their successors in office, and
24 their agents, servants, subordinates, employees, and those
25 under their control and those acting in concert with them,
26 from engaging in any of the unlawful and/or unconstitutional

1 acts, practices or omissions complained of heréin.

2 3. Enter preliminary and permanent orders enjoining
3 defendants and each of them, their successors in office, and
4 their agents, servants, subordinates, employees and those
5 under their control and those acting in concert with them
6 from harassing, intimidating, punishing, or retaliating in
7 any manner against plaintiffs from participating in this
8 lawsuit, and from interfering in any manner with plaintiffs'
9 communications with their attorneys in this lawsuit.

10 4. Direct the defendants, within ninety (90) days of
11 the date of such Order, to develop and submit to this Court
12 a plan, including a timetable for implementation, which will
13 secure the rights of the plaintiffs to conditions of confinement
14 consistent with state and federal statutes and the United States
15 Constitution, to treatment and to placement in the least
16 restrictive setting consistent with their individual needs, and
17 which will ensure that no juvenile shall be confined at MacLaren
18 unless MacLaren is the least restrictive alternative consistent
19 with his individual needs.

20 5. Appoint, after consultation with counsel for all
21 parties, a person or persons, such as a master, ombudsman, or
22 panel of experts, to monitor and enforce the decree issued by
23 the Court until such time as this Court determines that such
24 an information-gathering and enforcement mechanism is no longer
25 necessary.

26 6. Retain jurisdiction over this matter until the above

1 plan has been completely implemented.

2 7. Award reasonable attorneys' fees and costs of suit
3 herein to plaintiffs.

4 8. Award such other relief as may be necessary and
5 proper.

6
7 DATED: 9/26/80

Respectfully submitted,

8
9 *Alan Baily*

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