Travis D. v. Eastmont Human Serv. Ctr.
MR-MT-001-001

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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MONTANA
HELENA DIVISION

TRAVIS D., by his mother and next friend Leslie Barry;
ALLEN K., by his parents and guardians Michael and Earlene K.;
VIRGINIA L., by her sister and next friend Barbara Mercer;
ISIDOR S., by his next friend Nancy Staigmiller;
KIMBERLY B., by her next friend Dawn DeVor;
CORIE B., by his sister and next friend Lilly Westby;
TIFFANY M., by her next friend Johnelle Howanach;
LYLE H., by his parents and guardians Martha and Ervin H.;
JUDY M., by her next friend Nancy Staigmiller;
ALVIN W., by his next friend Gay Moddrell.

Plaintiffs,

vs.

EASTMONT HUMAN SERVICE CENTER and MONTANA DEVELOPMENTAL CENTER;
PETER BLOUKE, Director, Montana Department of Public Health and Human Services;
ROBERT ANDERSON, Administrative Services Division, Department of Corrections;
JOE MATTHEWS, Director, Disability Services Division, Department of Public Health and Human Services;
DAN ANDERSON, Administrator, Mental and Addictive Disorders Division, Department of Public Health and Human Services;
JENNIFER PRYOR, Superintendent, Montana Developmental Center;
SYLVIA HAMMER, Superintendent, Eastmont Human Service Center;
CARL KEENER, Medical Director, Montana State Hospital;
RON BALAS, Superintendent, Montana Mental Health Nursing Care Center; and
STATE OF MONTANA.

Defendants.

CIVIL ACTION
No. CV-96-63-H-CCL

CLASS ACTION COMPLAINT

I. INTRODUCTION

1. This is a civil rights action for declaratory judgment and to enjoin responsible officials of Montana from continuing unnecessarily to segregate people with developmental disabilities in state institutions, confining and isolating them there, and from failing to provide to them effective, family-sized residential and other services in the community which will enable them to grow and learn and earn and thrive and be productive.

2. This action is brought by ten individuals with developmental disabilities who are segregated and confined in state institutions, who sue by their parents, family members and next friends, on behalf of themselves and all others similarly situated, to redress violations of the laws and Constitution of the United States.

3. Named plaintiffs and class members (hereinafter referred to collectively as "plaintiffs") have been or are at risk of being involuntarily committed to the Montana Developmental Center (MDC or Boulder) at Boulder, Montana; Eastmont Human Service Center (Eastmont) at Glendive, Montana; and a few of them at two other state institutions, Montana State Hospital (MSH) at Warm Springs, Montana; and Montana Mental Health Nursing Care Center (MMHNCC) at Lewistown, Montana. Approximately 175 persons with developmental disabilities are confined at these institutions currently.

4. Small, individualized, family-sized community residential programs and other community support services are necessary to meet the developmental needs of plaintiffs, as well as to afford to them the normal human experience of being part of the community. Montana has established a comprehensive community-based service system which provides treatment, habilitation, vocational, residential and other support services to people with developmental disabilities in community settings. However, plaintiffs are denied these living arrangements and support services for reasons having nothing to do with their individual needs.

II. JURISDICTION AND VENUE

5. This being an action for declaratory and injunctive relief arising under the Americans with Disabilities Act, 42 U.S.C. §12101 *et. seq.*; and under 42 U.S.C. §1983 to redress the deprivation under color of state law of rights secured to plaintiffs by Title XIX of the Social Security Act, 28 U.S.C. §1396 *et. seq.*, and by the Fourteenth Amendment to the United States Constitution, this Court has subject

normal, integrated community setting.

Allen K.

10. Allen K. is a 25 year old man who has been involuntarily confined at MDC for seven years, since 1989. He brings this action by his parents and guardians, Earlene and Michael K.

11. Allen K. has had a traumatic brain injury. A tumor was removed from his brain when he was 11 yrs. old. The injury has affected Allen K.'s vision, personality, behavior and ability to control emotions, and he has been diagnosed as mildly retarded. Allen K. has retained many skills which were developed prior to his brain injury, including some reading, writing and math skills. He can converse in German and uses sign language.

12. Allen K. is a social and very caring individual who thrives on companionship and who would like to live near his family. His parents and three siblings all live in Great Falls. By segregating Allen K. in a state institution over 100 miles from his home, defendants are preventing him from experiencing, on a tangible, day to day basis, the loving support of his family and the opportunity to participate in normal family and community activities. His parents want to be able to take him to church on Sundays and have him over for Sunday dinner. So long as Allen K. is segregated and isolated at MDC, family activities such as these are not possible. Visits to the distant institution do not provide family interactions of the quality or quantity that Allen K. and his family want and need.

13. Defendants' own developmental disabilities professionals have determined that Allen can and should be supported in the community. However, defendants have failed to make the necessary community services available to him. His individual treatment planning team recognizes that appropriate community services can meet Allen K.'s need for structure and close supervision and has referred him to Montana's long waiting list for community services. Montana has long provided "intensive" community services to individuals with needs similar to Allen K.'s. "Intensive" community services are characterized by a high level of structure and supervision. Allen K. has applied for six separate intensive group home openings last year, but each time, defendants denied him the services and provided them to others, thereby continuing to relegate Allen K. to the confines of MDC.

Virginia L.

14. Virginia L. is a 49 year old woman who is profoundly retarded and has been involuntarily

confined at one state institution or another for forty years, since she was 9. She was committed to Montana State Hospital (MSH) at Warm Springs in 1956, MDC at Boulder in 1957, and since 1979, Eastmont Human Service Center (Eastmont) at Glendive. She brings this action by her sister and next friend, Barbara Mercer.

15. Virginia L. enjoys listening to music, going for walks and community outings and socializing. She does not speak, but she does communicate through vocalizations, gestures and physical prompting. Defendants have failed to provide Virginia L. with any of the now common assistive communication devices available to enable non-verbal disabled people to communicate effectively.

16. Virginia L.'s brother and sister recall her as an affectionate person who became distant and withdrawn after she was institutionalized. Because defendants have kept Virginia L. segregated at a state institution, away from her home community, she has been deprived of the ongoing support and involvement of her family. Virginia L.'s family would like her to live in Billings, where her father and sister live and where other family members visit.

17. Defendants' own developmental disabilities professionals have determined that Virginia L. can and should be supported in the community. However defendants have failed to make the necessary community services available to Virginia L. Her individual treatment planning team not only recommends community placement, but believes she is at risk of losing more life skills, opportunities and independence if she remains the institutional setting. The team believes that because of her institutional confinement, Virginia L. is not realizing her potential and that, given the opportunity to live in a family like community setting, she could learn and use many more skills.

Isidor S.

18. Isidor S. is a 74 year old man who has been involuntarily confined in successive state institutions since 1927 when he was 4 years old, a time when Montana law commanded the detention of the "feeble-minded, idiot and epileptic" in isolated institutions "for life" to prevent them from being a "menace to the state." Isidor S. was first confined at MSH, transferred to Galen in 1956, MDC in 1977, and Eastmont in 1979. Isidor S. is profoundly retarded. Isidor S.'s parents are presumed deceased and there is no record of contact by any sibling. He brings this action by his next friend Nancy Staigmiller.

19. Isidor S. is alert, active and aware of his environment He has a sense of humor; he will

smile and chuckle if he feels he has "gotten" someone. He makes baskets, does jigsaw puzzles, runs simple errands, crushes cans and stuffs envelopes. Isidor S. communicates his wishes and hopes, likes and dislikes, by reaching for items, making facial expressions and pushing items away. Defendants have not provided Isidor S. with any of the assistive communication devices now commonly available to enable non-verbal people to communicate effectively.

20. Isidor S. is in the senior retirement program at Eastmont, which consists mostly of leisure activities, but he chooses also to attend some vocational activities.

21. Defendants' own developmental disabilities professionals have determined that Isidor S. can and should be supported in the community. However, defendants have failed to make the necessary community services available to him. Isidor S.'s individual treatment planning team recommends a senior group home and day program in a community setting. The team believes Isidor S. risks losing more skills if he remains in the institutional setting. The team also believes he would benefit greatly from increased opportunities to participate in community life and activities.

Kimberly B.

22. Kimberly B. is a 28 year old woman who is profoundly retarded and has cerebral palsy and epilepsy and who has been involuntarily confined at Eastmont for 13 years. She brings this action by her next friend Dawn DeVor.

23. Kimberly B. has lived most of her life in the community, where she also attended public school. At the age of four months following the administration of a diphtheria vaccination, Kimberly B. began to experience developmental problems. She lived with her family in the family home in Nebraska until she was about 2 ½ years old, when she was placed at the Beatrice State Home in Beatrice, Nebraska where she resided for approximately two years. When Kimberly B. was almost five years old, she was provided a community group home and other community services. Kimberly B. lived in the community group home for ten years, until she was 15 years old. In 1983, after her parents' relocation to Montana and because of the unavailability of community resources, she was committed to Eastmont.

24. Kimberly B. uses a non-motorized wheelchair part of the time, but prefers to walk with a gait trainer (walker). She is aware of her environment and notices when a stranger enters the room. She enjoys going off campus for van rides and other excursions. She especially enjoys swimming and

bowling. For vocational activities, Kimberly B. crushes cans and folds washcloths. however she could and should be involved in a more challenging and productive vocational program.

25. Kimberly B. communicates by smiling, making intermittent eye contact, intentionally avoiding eye contact, laughing and other vocalizations. She also knows some sign language. Defendants have failed to provide Kimberly B. with any of the assistive communication devices now commonly available to enable non-verbal people to communicate effectively.

26. Defendants' own developmental disabilities professionals have determined that Kimberly B. can and should be supported in the community. However, defendants have failed to make the necessary community services available to her. Her individual treatment planning team strongly recommends community placement and has referred Kimberly B. to Montana's long waiting list for community services. The team recognizes that, as a result of having lived in a community group home for ten years of her life, Kimberly B. has experienced daily home living activities, normalized settings, life styles and other benefits which simply cannot be matched in the institutional setting. They believe Kimberly B. should be with other young adults and should be supported in an integrated community setting. Additionally, Kimberly B. displays some disadvantageous behaviors which her team believes result from boredom and lack of challenge and the lack of an appropriate peer group in the institutional setting. Kimberly B.'s treatment team notes that while in the community and public school setting in the past, she did not engage in the disadvantageous behaviors observed in the institutional setting. Most importantly, Kimberly B. was happier in an integrated community environment.

Corie B.

27. Corie B. is a 31 year old man who is profoundly retarded and has been involuntarily confined at MDC since 1985. He brings this action by his sister and next friend, Lilly Westby.

28. Corie B. was committed to Montana Developmental Center "temporarily" for management of an eating disorder in which he rejects non-liquid foods. This has been managed by mixing liquid into his food and giving him nutritional supplements, an approach any community service provider can utilize successfully.

29. Corie B. is the youngest of eight children and is a member of the Confederated Salish and Kootenai Tribes. He has two sisters and a brother who live in Polson, all of whom would like Corie B.

to live on or near the Flathead reservation, where he would be close to his family and his native culture. The Confederated Tribes actively follow Corie B.'s progress; a tribal social worker attends his annual treatment planning meetings. Tribal representatives also desire Corie B.'s placement on or near the reservation.

30. Corie B. uses a wheelchair for ambulation, but moves it with slowness and difficulty. Defendants have not provided Corie B. with an electric wheelchair, despite the fact that an electric wheelchair would enable him to move about more easily, readily and independently. At times, Corie B. walks using a forearm walker or other external support. Corie B. does not speak, but he does interact with others by shaking hands, making eye contact, smiling and laughing. Defendants have not provided Corie B. with any of the assistive communication devices now commonly available to enable non-verbal people to communicate effectively.

31. Defendants' own developmental disabilities professionals have determined that Corie B. can and should be supported in the community. However, defendants have failed to make the necessary community services available to him. Corie B.'s individual treatment team has recognized that an appropriate community placement can meet his need for occupational therapy, physical therapy and nutritional and health care needs and has referred him to Montana's long waiting list for community services. The team also has recognized that an appropriate community placement can provide the 24 hour supervision Corie B. needs due to his seizures, inability to respond to emergencies and inability to care for himself.

32. In fact, defendants' own developmental disabilities professionals identified Corie B. as one of twelve individuals who are the "highest priority" for community placement under an MDC population reduction plan scheduled to have been implemented this summer but now abandoned. As part of that plan, Corie B. would have been placed in a community group home in Ronan, near his family and native culture. However, only three of the identified twelve MDC residents will actually be provided community services.

Tiffany M.

33. Tiffany M. is a 21 year old young woman who is mildly retarded and has been involuntarily confined at MDC since June 1995. She brings this action through her next friend Johnelle Howanach.

Lyle H.

39. Lyle H. is a 47 year old man who has cerebral palsy and is profoundly retarded. He has been involuntarily confined at successive state institutions since 1969; now he is confined at Eastmont. He brings this action by his parents and guardians, Ervin and Martha H.

40. Lyle H. was born in Montana and lived with his family in the family home until he was 20 years old. In 1969, he was committed to MDC. From 1974 to 1979, Lyle H. was transferred to various nursing homes, then in 1979 was committed to Eastmont where he has been confined for the past 17 years.

41. Lyle H.'s family is seriously involved in his care and treatment planning and they visit as often as possible. Last year, for example, Lyle H. had visits from his aunt, sister and two brothers, although visits at the institution do not provide family interactions of a quality or quantity that Lyle H.'s family desires. Lyle H.'s parents want him to live in a smaller, family-scale, community-based setting, preferably in Billings, where his brother and other family members live and where his parents can visit him more easily from their new home in Arizona. If Lyle H. lived in Billings, he could be included in these family gatherings. Instead, by segregating Lyle H. in a state institution over 200 miles from Billings, difficult and expensive to reach with public transportation, defendants are preventing him from experiencing, on a tangible, regular basis, the loving support of his family and the opportunity to participate in normal family and other community activities.

42. Lyle H. uses a non-motorized wheelchair to move around the living unit, visiting with staff and peers. He is a social person who often tries to engage the attention of others. He enjoys being outside and, on the few occasions allowed, going off the institution grounds. He does not like big crowds. Although Lyle H. is non-verbal, he has not been provided any of the assistive technology devices now commonly available to enable him to communicate effectively.

43. Defendants' own developmental disabilities professionals have determined that Lyle H. can and should be supported in the community. However, defendants have failed to make the necessary community services available to him. Lyle H.'s treatment planning team believes he has many abilities which are not being, and cannot be, developed in his current institutional setting. The team believes that keeping Lyle H. in the institutional setting puts him at risk of loss of skills and opportunities and

independence. The team believes community placement would provide Lyle H. with the added challenge he needs, as well as more choices and activities directed at working with his physical disabilities. The team also believes Lyle H. would benefit from the increased staff attention and interaction in a smaller, community-based setting. The team has referred Lyle H. to Montana's long waiting list for community services.

Judy M.

44. Judy M. is a 46 year old woman who is profoundly retarded and has been confined at successive state institutions since she was 5 or 6 years old; now she is confined at Eastmont. She brings this action by her next friend Nancy Staigmiller.

45. Judy M. was one of ten children and an apparent victim of early infancy neglect and malnutrition, according to institution records. After an initial placement in foster care, Judy M. was committed to MSH in 1955, transferred to MDC in 1957 and to Eastmont in 1990. Judy M.'s parents are deceased and she has no family contact.

46. Judy M. does not speak but she does communicate through such means as gestures and physical prompting. Defendants have not provided her with any of the assistive communication devices now commonly provided to enable non-verbal people to communicate effectively.

47. Defendants' own developmental disabilities professionals have determined that Judy M. can and should be supported in the community. However, defendants have failed to make the necessary community services available to her. Judy M.'s individual treatment planning team not only recommends community placement, but believes that her institutional placement is causing a regression of skills, in that it fosters "trainer dependency." The team believes Judy M. would benefit from the greater challenge and independence of a community placement. The team also believes placing Judy in a smaller setting where she could receive more individual attention would better meet her needs, reducing or eliminating some "attention seeking" behaviors.

Alvin W.

48. Plaintiff Alvin W. is a 40 year old man who is profoundly retarded and has been involuntarily confined at MDC for 27 years, since he was 13. Alvin has no known family. He brings this action by his next friend Gay Moddrell.

49. Alvin W. uses a non-motorized wheelchair and sometimes walks with staff assistance. He expresses himself through facial expressions, vocalizations and physically guiding staff, but has no assistive communication device. He laughs, smiles and holds staff's hand when happy or content; he cries when he is sick or in pain.

50. Alvin W. could be effectively supported in a community setting, but his individual treatment planning team has not referred him for Montana's long waiting list for community services. The treatment team recognizes that Alvin W. could live in the community if he were provided an intensive group home with 24 hour awake supervision in a barrier free environment and other community services. However, his team notes that they have not referred him for community placement because they do not know of particular openings in community services which could meet his needs. Defendants have failed to provide the necessary community services which will allow Alvin W. to live and thrive in the community, although Montana has long provided the type of community services he needs to others with similar developmental disabilities.

IV. DEFENDANTS

51. Eastmont Human Service Center (Eastmont) is a state owned and operated institution for persons with developmental disabilities. It is operated by the Montana Department of Public Health and Human Services (DPHHS) under MCA §53-1-602. Eastmont is an intermediate care facility for the mentally retarded (ICF/MR) under Title XIX of the Social Security Act, 42 U.S.C. §1396d(d) with a noted capacity of 55 beds. It is located in eastern Montana in the town of Glendive, some 200 miles northeast of Billings and 35 miles from the North Dakota border. Forty-nine individuals with developmental disabilities are committed there.

52. Montana Developmental Center (MDC or Boulder) is a state owned and operated institution for persons with developmental disabilities. It is operated by DPHHS under MCA §53-1-602. MDC is an intermediate care facility for the mentally retarded (ICF/MR) with a noted capacity of 110 beds. It is located in the small town of Boulder, Montana, some 30 miles from Helena, where the nearest high quality medical center is located, and some 35 miles from Butte, where most of MDC's vocational program transactions take place. Most employees at MDC commute from Butte or Helena.

53. Defendant Peter Blouke is the Director of the Montana Department of Public Health and

Human Services (DPHHS), an agency of the State of Montana created under Art. XII, Section 3(3) of the Montana Constitution and operating under MCA §2-15-2201. DPHHS is charged by Montana law to provide services to Montanans with developmental disabilities and, in particular, "to do so whenever possible in a community-based setting," [MCA §53-20-101], and to "make every attempt to move residents from more to less structured living, larger to smaller facilities, . . . group to individual residences, segregated from the community to integrated into the community living," [Section 53-20-148(2)]. Defendant Blouke is charged with directing, organizing and executing the responsibilities of DPHHS, which include: responsibility for care, treatment, habilitation, discharge planning and transition services for individuals committed to MDC, Eastmont, MSH and MMHNCC; responsibility for the creation and administration of community services in a comprehensive community developmental disabilities service system, for the admission of persons to that system, and for the care, treatment and habilitation of all individuals in the community service system, including tribal members; and, responsibility for the administration of Title XIX services, which include both institutional and community-based services. Defendant Blouke is responsible also for ensuring that individuals with developmental disabilities receive the services to which they are entitled under the Constitution and laws of the United States and Montana. He is sued in his official capacity.

54. Defendant Joe Matthews is the director of the Disability Services Division, a division of DPHHS. Defendant Matthews is charged with directing, organizing and executing the responsibilities of the Disabilities Services Division, which include: responsibility for care, treatment, habilitation, discharge planning and transition services for individuals committed to the two state developmental disabilities institutions, MDC and Eastmont; responsibility for the creation and administration of community services in a comprehensive community developmental disabilities service system, for the admission of persons to that system, and for the care, treatment and habilitation of all individuals in the community service system, including tribal members; and, responsibility for the administration of Title XIX services, which include both institutional and community-based services. Defendant Matthews is responsible for ensuring that individuals with developmental disabilities receive the services to which they are entitled under the Constitution and laws of the United States and Montana. He is sued in his official capacity.

55. Defendant Dan Anderson is the director of the Mental and Addictive Disorders Division, a division of DPHHS. Defendant Dan Anderson is charged with directing, organizing and executing the responsibilities of the Mental and Addictive Disorders Division, which include: responsibility for care, treatment, habilitation, discharge planning and transition services for individuals committed to the two state mental health institutions, MSH and MMHNCC. Although MSH and MMHNCC were designed to serve persons with mental illness, not persons with developmental disabilities, many persons with developmental disabilities are committed there. Defendant Dan Anderson is responsible for ensuring that residents at those institutions receive the services to which they are entitled under the Constitution and laws of the United States and Montana. He is sued in his official capacity.

56. Defendant Robert Anderson has had responsibility for the operation of Montana's developmental disabilities and mental health institutions and for care, treatment and habilitation of residents at those state institutions at relevant times in the recent past and continuing through the transition of a reorganized state government. Currently, he has responsibility for facility management within the Administrative Services Division of the newly formed Department of Corrections. Defendant Robert Anderson was the administrator of the Special Services Division of the former Department of Corrections and Human Services, which until 1995 had responsibility for all state institutions. Until July 1995, responsibility for providing services to people with disabilities in institutions was consigned to the same state agency responsible for the incarceration of convicted criminals. Defendant Robert Anderson is sued in his official capacity.

57. Defendant Jennifer Pryor is the Superintendent of the Montana Developmental Center in Boulder. Defendant Pryor is responsible for care, treatment, habilitation and discharge planning for residents at MDC. She supervises the professional staff who have recommended placement in integrated, community settings for MDC residents. She is responsible for carrying out the laws Constitution of the United States and Montana. Defendant Pryor is sued in her official capacity.

58. Defendant Sylvia Hammer is the Superintendent of Eastmont Human Service Center in Glendive. Defendant Hammer is responsible for care, treatment, habilitation and discharge planning for residents at Eastmont and supervises the professional staff who have recommended placement in integrated, community settings for Eastmont residents. She is responsible for carrying out the laws

Constitution of the United States and Montana. Defendant Hammer is sued in her official capacity.

59. Defendant Carl Keener is the Medical Director for the Montana State Hospital in Warm Springs. Montana State Hospital (MSH) is a state owned and operated institution for persons with mental illness. It is operated by DPHHS under MCA §Section 53-1-602. It is located in Warm Springs, Montana on the same campus as Montana prison facilities. Although never a developmental disability institution, approximately 10 individuals with developmental disabilities are involuntarily committed there. Defendant Keener is responsible for care, treatment, habilitation and discharge planning for residents at MSH. He is responsible for carrying out the laws Constitution of the United States and Montana. He is sued in his official capacity.

60. Defendant Ron Balas is the Superintendent for the Montana Mental Health Nursing Care Center in Lewistown. The Montana Mental Health Nursing Care Center (MMHNCC) is a state owned and operated institution for persons with mental illness who have skilled nursing care needs. It is operated by DPHHS under MCA §53-1-602. MMHNCC is located in Lewistown, Montana, at the geographic center of the state. Although never a developmental disability institution, approximately 10 individuals with developmental disabilities are involuntarily committed there. Defendant Balas is responsible for care, treatment, habilitation and discharge planning for residents at MMHNCC. He is responsible for carrying out the laws Constitution of the United States and Montana. Defendant Balas is sued in his official capacity.

61. The State of Montana is a political entity created and governed for and by the people of the State.

V. CLASS ACTION ALLEGATIONS

62. Pursuant to Federal Rule of Civil Procedure 23 (a) and (b)(2), individual named plaintiffs bring this action on behalf of the following class: All persons with developmental disabilities who, on or after the date of filing of this Complaint, are confined or will be confined at the Montana Developmental Center, Eastmont Human Service Center, Montana State Hospital or Montana Mental Health Nursing Care Center, have been transferred out of said institutions yet remain under defendants' custody and control or otherwise remain defendant's responsibility, or who are at risk of being confined in said institutions at some future date.

63. The plaintiff class is so numerous that joinder of all its members is impracticable. The class is in excess of 175 persons. Approximately 106 people are confined at MDC, 50 at Eastmont, 10 at MSH and 10 at MMHNCC. There are approximately 1300 people with developmental disabilities on the community waiting list who are at risk of involuntary commitment to state institutions.

64. There are questions of law and fact common to the class. All members of the class are persons with developmental disabilities who need habilitation and other support services, but who are segregated and confined at state institutions involuntarily or who are at risk of such confinement. Each class member is capable of living and thriving in an integrated, community setting with appropriate support services. All members are, or are at risk of, being denied integrated community services and are being discriminated against because of their disability.

65. The claims of the named plaintiffs are typical of those in the class. Named plaintiffs' claims are typical because they arise from the same pattern or practice: defendants' unlawful segregation and confinement of plaintiffs in state institutions and defendants' failure, despite requirements of the laws and Constitution of the United States, to provide services in integrated community settings. The claims are based on the same legal theories. Defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole.

66. These named plaintiffs will fairly represent and adequately protect the interests of members of the class as a whole. The named plaintiffs do not have interests antagonistic to those of other class members. Plaintiffs' counsel are qualified, experienced and generally able to conduct the proposed litigation.

VI. THE LAW

67. Plaintiffs bring this action to redress violations of the laws and the Constitution of the United States, as follows.

1. The Americans with Disabilities Act

68. The Americans with Disabilities Act, 42 U.S.C.§12101, *et. seq.* was enacted by Congress in the exercise of its "power to enforce the Fourteenth Amendment" and signed by President Bush in 1990. The Act is based upon findings that:

- "individuals with disabilities . . . have been . . . subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society." 42 U.S.C. §12101(a)(7).

- that "despite some improvements," historically-imposed isolation and segregation "continue to be a serious and pervasive social problem." 42 U.S.C. §12101(a)(2).

- that "to isolate and segregate individuals with disabilities" are "forms of discrimination against [them]." *Id.*

69. The Act declares as its purpose to end "discrimination faced day-to-day by people with disabilities." 42 U.S.C. §12101(b)(4).

70. The Act at Title II prohibits discrimination by any public entity against any qualified individual with a disability and prohibits such an individual's exclusion from participation in or denial of the benefits of public services, programs or activities. 42 U.S.C. §12131.

71. As set forth in authoritative and binding regulation, required to implement the Act, 42 U.S.C. 12134, and promulgated in 1991 by the Attorney General of the United States, the Americans with Disabilities Act requires that:

> A public entity shall administer services, programs and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities. 28 C.F.R. §35.130(d) (*emphasis added*).

72. The Act forbids affording to qualified individuals with disabilities or to any class of individuals with disabilities any aid, benefit or service:

- which is "not equal to that afforded others," 28 C.F.R. §35.130(b)(1)(ii),
- which is not "not as effective . . . to reach the same level of achievement," 28 C.F.R. §35.130(b)(1)(iii),
- which is different or separate, 28 C.F.R.§35.130(b)(1)(iv), or
- which "otherwise limits [the individual] in the enjoyment of any right, privilege, advantage or opportunity enjoyed by others receiving the aid, benefit or service." 28 C.F.R.§35.130(1)(vii). (*emphasis added)*

73. The Attorney General in his 1991 comments to the statutorily commissioned regulation wrote:

> The public entity must administer services, programs and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities, i.e., in a setting that enables individuals with disabilities to interact with non-disabled persons to the fullest extent possible. 28 C.F.R. at page 461 (1995 ed.) (*emphasis added*).

See Helen L. v. DiDario, 46 F.3d 323 (3d Cir. 1995), *cert. denied sub nom.* Secretary of the Department of Public Welfare of Pennsylvania v. Idell S., 116 S.Ct. 64 (1995).

2. Title XIX of the Social Security Act

74. Title XIX of the Social Security Act, 42 U.S.C. §1396, *et. seq.*, was enacted "for the purpose of enabling each State to . . . furnish . . . rehabilitation and other services to help [disabled] individuals attain or retain capability for independence or self-care." 42 U.S.C. §1396.

75. Title XIX authorizes Federal financial assistance for "ICF/MR"s and for Home and Community-Based Services for retarded and relatedly disabled persons, and sets the conditions for State participation therein.

76. Montana has chosen to participate in Title XIX. The federal financial share of Montana expenditures under Title XIX is 70.8%. The State financed share is 29.2%.

77. Title XIX requires that, for each person "whose needs could be met by alternative services that are currently unavailable, the facility must . . . look for alternative services." 42 C.F.R. §456.371 (*emphasis added*).

78. Title XIX was enacted "for the purpose of enabling each State to . . . furnish . . . rehabilitation and other services to help [disabled] individuals attain or retain capability for independence or self-care," 42 U.S.C. at §1396, and requires for each retarded and relatedly disabled person in an "institution":

- "active treatment . . . aggressive, [and] consistent . . ., directed toward . . . as much self-determination and independence as possible [and] the prevention . . . of regression or loss of current optimal function status," *Id.* at §1396(d)(2); 45 C.F.R. §1483.440 (a) (1955) ("Conditions of Financial Participation").

- periodic review — "by professional personnel who are not themselves directly responsible for the care . . . and who do not have a significant financial interest in the institution and are not . . . employed by the institution providing the care involved "whether it is feasible to meet the persons needs through "alternative . . . noninstitutional services," . . . "to safeguard against unnecessary utilization . . . and to assure that payments are consistent with efficiency, economy and quality of care." 42 U.S.C. at §1396a(a)(30) & (31) and by 42 C.F.R. 4566.609(a) and (b).

- a plan for discharge 42 C.F.R.§456.380 (b)(b), and

- for each person "whose needs could be met by alternative services that are currently unavailable, the facility must . . . look for alternative services." 42 C.F.R. at §456.371 (*emphasis added*).

- the other — part of the legacy of state imposed segregation — at the self-same "school" in Boulder, at Eastmont institution in Glendive and also at state mental hospitals, segregated, isolated, congregate-care facilities where people with disabilities live a self-contained, inactive, artificial life, seldom gain and often lose life skills and are deprived of the learning, earning and associational opportunities present in the community.

89. More than 1300 individuals with developmental disabilities are supported in the community residential service system, ranking Montana among the highest of the fifty states in the proportion of people with retardation supported in small community integrated residences.

90. But at least 175 people with developmental disabilities — about 106 at MDC, 50 at Eastmont, 10 at MSH and 10 at MMHNCC — are still confined in institutions, and have been confined there, on average, for some 20 years. Many of these individuals were committed there as children, when institutionalization was thought to be the only alternative.

91. Montana officials have said and written that those persons retained in institutions are those who are severely disabled, itself an unlawful discrimination. In fact, among the more than 1300 people with developmental disabilities receiving community residential services and living and thriving in the Montana communities, including many who were once confined in institutions, are persons whose disabilities are just as severe as those of people still in the institutions. These functional disability "twins" in the community have disabilities and support needs which match the disabilities and needs of each of the 175 people still confined by defendants in the institutions. For example, Montana's community service system already serves 135 adults with profound retardation, 106 people who use wheelchairs and 607 people who take anti-seizure medication.

92. Both the community service system and the institutional system are funded under Title XIX of the Social Security Act. In both, federal dollars pay 70.8% of the cost with the State paying 29.2% (FY 1995).

93. The annual combined federal and state expenditure for institutional placement averages approximately $118,000 per person at MDC and $80,000 per person at Eastmont.

94. The annual average per person cost for people with similar developmental disabilities currently being served in the Montana community-based service system is approximately $33,000. In defendants' 1994 plan, defendants calculated the annual cost in FY96 and FY97 of necessary and appropriate community services for 66 institutionalized individuals to be $30,000 per person and the

annual cost in FY98 for another 7 institutionalized individuals to be $66,000 per person. In the recent MDC reduction plan, defendants appropriated $57,000 per person for 12 institutionalized individuals.

95. Montana spends Federal Medicaid dollars on community-based services for people with developmental disabilities under the authority of a Home and Community-Based Services Waiver, pursuant to Title XIX of the Social Security Act and MCA §53-6-402. Title XIX allows, and indeed requires, that Title XIX expenditures in institutions be moved to community services to support in the community those individuals who do not require placement in an ICF/MR. Essentially, the HCBS waiver allows Title XIX funds to be used to support a variety of home and community-based services for discharged ICF/MR residents and for those at risk of ICF/MR placement.

96. Given the respective costs of institutional and community placement, for each person moved from Boulder to the community, at least one and as many as three additional individuals with similar disabilities can be appropriately served in the community; for each person discharged from Eastmont to the community, possibly one and as many as two additional individuals with similar disabilities can be appropriately served in the community.

97. Extensive experience in Montana as well as extensive experience nation-wide shows that each person with a developmental disability, including especially those with the most severe developmental disabilities, can be served — and served more effectively — and, in fact, are served — in integrated settings in the community. Systematic professional studies nationwide of what happens to institutional residents when they move to the community, including Montana studies and surveys conducted by defendants and their agents, show strong improvements in skills and quality of life in practically every area that is measurable. These studies show significant improvements in adaptive behavior, in the skills of daily living, self-direction, productivity, integration (actual interaction with non-disabled persons) and in satisfaction with their lives in the community.

98. Four states similar in demographics to Montana — Maine, New Hampshire, Rhode Island and Vermont — have now achieved a community service system which serves people with developmental disabilities without needing or using an institution. Other states, including Alaska, Colorado, Hawaii, New York, Michigan and Wyoming are moving toward replacing their state institutions for people with developmental disabilities with complete community service systems.

99. In Montana, defendants have admitted that the demand for institutional services has significantly declined and will continue to decline. Defendants have closed institutional admissions to children. Eastmont has had no admissions from the community for at least six years. Montana's executive officials acknowledge there is no appropriate mission for Eastmont and that it should close. Having experienced access to the public schools and other community services as well, Montanans say, in surveys conducted by defendants, that they do not want institutional services for their children when they become adults.

100. As long ago as 1981, responsible Montana officials announced their intention to replace Montana's institutions for people with developmental disabilities with a comprehensive community service system.

101. For some time and still, Montana has provided by statute as follows:

A. In the Montana Long Term Care Reform Act, Ch. 384, L-1995; MCA §53-6-602:

(1) The legislature finds that in keeping with the traditional concept of the inherent dignity of the individual in a democratic society, . . . persons with disabilities should be able to live as independently as possible.

(2) The legislature further finds that: (a) the ability to continue to live in a person's own residence or in the least restrictive setting best serves the health and dignity of . . . persons with disabilities. . . .

(3) The legislature declares that the policy of this state is to: (a) respect the dignity of persons in the provision of state-sponsored and state-funded services for . . . persons with disabilities by seeking to maintain the maximum level of independence possible for those persons receiving services; (b) foster the development of community services that allow a person to choose to remain in a person's own residence or in the least restrictive setting.

B. MCA §53-19-101: The legislature, in recognition of the needs of persons with severe disabilities and of the desirability of meeting those needs on a community level to the extent of available funding and in order to reduce the need for institutional care settings, establishes by this part a community program to assist persons with severe disabilities to live and function independently. This program implements Title VII of the federal Rehabilitation Act of 1973 (29 U.S.C. 796, *et. seq.*) as may be amended, for persons with severe disabilities in Montana.

C. MCA §53-20-101: The state recognizes that its purpose is to "secure for each person . . . with developmental disabilities such treatment and habilitation as will be suited to the needs of the person and to assure that such treatment and habilitation are skillfully and humanely administered with full respect for the person's dignity and personal integrity;" and to "accomplish this goal whenever possible in a community-based setting."

D. MCA §53-20-148(2): Institutional facilities in Montana are required to "make every attempt to move residents from more to less structured living, larger to smaller facilities, . . . group to individual residences, segregated from the community to integrated into the

Administration, which administers Title XIX of the Social Security Act states, with regard to Montana's plan for mental health managed care for people with mental illness, that:

> Under the ADA and regulations written at 28 C.F.R. 130(d), a State must not place or keep in an institutional facility any person who could be served more appropriately in a community-based setting. The State is further obligated to create the community-based services to serve these individuals. The court cases of Helen L. vs. DiDario (1995) and Charles Q. vs. Houston (April 1996) have determined that a State's argument that no community-based services currently exist is not a permissible argument for keeping individuals in institutional settings when they would more appropriately be treated in a community setting. *(emphasis added).*

107. Montana's executive officials abandoned their plan to place some 66 to 73 institutionalized individuals in community services by FY98, in part, because they were unable to obtain the legislative approval required by MCA §53-1-602. Under that plan, defendants would have transferred the funds supporting one state institution, Eastmont, to create the community services so desperately needed to implement the treatment decisions of defendants' own developmental disabilities professionals.

108. The provisions of two Montana statutes also have contributed to the aforementioned derelictions; they burden and inhibit implementation of the federal laws and the United States Constitution. One, MCA 53-20-132 (En. Sec. 1, Ch. 417, L. 1987; amd. Sec. 15, Ch. 381, L. 1991; amd. Sec. 21, Ch. 255, L. 1995) is entitled, "Court-ordered placement in community-based services prohibited," provides that:

> Nothing in this part may be construed as authorizing the placement and delivery of services to persons with developmental disabilities in community-services by court order. Placement of persons in community-based services is governed by 53-20-209.

Montana limits state court orders to institutional settings, MCA 53-20-125, even when the state court has determined that the individual could and should be habilitated in a community setting. Section 53-20-125(8) allows the court to "refer" persons found to need community services to the State Department of Public Health and Human Services and, together with Section 53-20-132, confides entirely to the unreviewable discretion of the executive branch whether or not the individual will get the needed community services and singularly deprives persons with developmental disabilities of any resort to state courts to secure needed community services as provided by law or to enforce professional judgments and judicial determinations that such are needed. Montana's commitment laws offer no protection against unnecessary institutionalization.

they had previously achieved).

b. Plaintiffs are disengaged throughout their days and not engaged in meaningful activities. Much of their time is dead time. They spend long periods "waiting" to go from one activity to another, thumbing through magazines, milling around, dozing or simply doing nothing, or trying to ignore or escape the chaotic environment around them.

c. Plaintiffs have, and can secure, very little privacy.

d. As defendants' own employees have found year after year in their annual Title XIX surveys of MDC and Eastmont; plaintiffs do not receive active treatment: for many there are no programs of active treatment; for many there are only programs randomly begun and randomly ended and only sporadically engaged; programs are not consistently monitored or changed when change is indicated; and, programs are not implemented in a timely manner.

e. Counseling services by a qualified professional are not provided to plaintiffs with an identified need for such services.

f. Psycho-active medications are over-used; integrated program plans and active treatment programs to diminish the use of psycho-active medications are not provided; and, psychiatrists *prescribe the administration of medications from a distance, without personally meeting and* interacting with the individual.

g. Modern aids to mobility and communication are not provided.

h. Physical injuries — broken bones, muscle strains, cuts and large, vivid bruises — occur more frequently in the institutional setting. Defendants' own records show a marked decrease in physical injuries suffered by the same person after he or she moves to community-based services.

i. Routine, as well as critical, medical services are often uncertain and untimely because they are thirty or more miles away and require a major excursion, to Butte, Helena or Billings where comprehensive preventive and primary as well as acute and specialized medical care is available.

j. There are no employment opportunities outside the institution, even for those residents who were gainfully employed in the community prior to commitment. Institution residents live and work with the same people, day after day.

k. Because of the remote and isolated location of the state's institutions, plaintiffs are deprived of necessary and appropriate support services. Services such as speech therapy, medical treatment, psychological counseling and employment opportunities are more readily available in other communities in the state.

l. Plaintiffs live a self-contained and narrow life, rarely interact with anyone other than a paid staff member and other people with disabilities, with no opportunity to go for walks or for "rolls" in a wheelchair in the neighborhood, to pet their neighbor's dog, to shop for weekly groceries, to invite friends for dinner or even to prepare, and to choose, their own meals.

115. Individuals with severe disabilities — those with profound or severe retardation, with multiple disabilities including communication and mobility deficits, with complex medical needs, and with maladaptive behaviors which are often aggravated and increased at the institution — fare the least well in large congregate-care settings. They suffer most from the harms set forth in the preceding paragraphs and

have the most to gain from the individually-focused structure and consistency of smaller settings. For example, systematic studies show that individuals with challenging behaviors have made the most significant improvements in behavior when moved to smaller, supported living models.

116. Developmental disabilities professionals, including defendants' own professionals, now generally believe the task of the service system is to **support** people in **normal, integrated** residential and work settings, in or near their home communities, in homes they choose themselves, where they can live with people with whom they want to live and work where they want to work. This approach is called "the support model." The supported living approach is based on the values of individual choice, independence, productivity, integration and inclusion of citizens with disabilities. It also recognizes that people with retardation, whose disability inhibits their ability to "transfer" skills learned in one setting to another, should learn daily living skills in the **real** community where they will be using those skills.

117. Montana families recognize the harms suffered at institutions and support the provision of services in integrated community settings. Defendants' own surveys show:

> (a) Families of former institutional clients transferred to community settings within the preceding four years, after experiencing both service settings, now prefer community services, in contrast to their initial satisfaction with institutional services and opposition to community placement prior to the community placement. In fact, respondents expressed higher levels of satisfaction with community based services than with institutional services on **every** item.
>
> (b) Parents of children with developmental disabilities overwhelmingly prefer small, home-like environments for their children when they reach adulthood. Parents responding to the survey consider institutional housing the least favorable of all options; some respondents considered that form of housing totally unacceptable.

118. Professional recommendations for community placement and discharge from the institution are not made and/or not acted upon because of the "unavailability" of community services, an unavailability created by defendants' own actions in supporting costly, segregated institutions instead. Institutionalized individuals who are recommended for community placement by their individual treatment planning teams are placed on the community waiting list and often languish there for years.

119. DPHHS's developmental disabilities professionals have limited their recommendations for community placement to institutionalized individuals with less severe disabilities, unlawfully excluding and discriminating against classes of institutionalized individuals based on the type and severity of their disabilities. In conducting the 1994 assessments of institution residents to determine which individuals

were a priority for community placement, defendants established criteria which excluded classes of individuals with disabilities from consideration, including those with physical disabilities requiring the use of a gastrostomy tubes or jejunostomy tubes, those with "total care needs," and those with medical or behavioral needs which require a very intensive staffing level.

120. Plaintiffs have suffered and continue to suffer irreparable harm from defendants' actions and inactions. Plaintiffs have no adequate remedy at law to secure redress of their rights; monetary damages are inadequate. Accordingly, injunctive relief is necessary.

VIII. CAUSES OF ACTION

Count I: The AMERICANS WITH DISABILITIES ACT

121. All plaintiffs are "qualified individuals" under the Americans with Disabilities Act (ADA).

122. Defendants, by their actions and inactions set forth above, have violated rights of the plaintiffs secured by Title II of the ADA, 42 U.S.C. Section 12131 *et seq.*, and 28 C.F.R. Part 35, by:

(a) failing to provide public services, programs, and activities to plaintiffs "in the most integrated setting appropriate to the needs of the qualified individual with disabilities," including "in a setting that enables individuals with disabilities to interact with non-disabled persons to the fullest extent possible," as required by 42 U.S.C. §12132 and 28 C.F.R. §35.130(d);

(b) denying plaintiffs participation in integrated services and programs by failing to "make reasonable modifications in policies, practices and procedures when the modifications are necessary to avoid discrimination on the basis of disability," as required by 28 C.F.R. §35.130(b)(7) and by 28 C.F.R. §35.105(a) and (b);

(c) failing to undertake a programmatic "self-evaluation" of its current services, policies and practices for programmatic discrimination and failing to make the necessary modifications required as a result of the self-evaluation, as required by 28 C.F.R. §35.105(a) and (b);

(d) denying plaintiffs the opportunity to participate in public services and programs that are as effective and meaningful as those delivered to others, as prohibited by 28 C.F.R. §35.130(b)(1)(iii);

(e) denying plaintiffs the opportunity to participate in public services and programs that are not separate or different, as required by 28 C.F.R. §35.130(b)(2);

(f) unnecessarily excluding certain individuals because of the severity and type of their disabilities

from fully and equally using and enjoying integrated, community-based public services, programs and activities, thereby providing different and separate benefits and services to a class of individuals with disabilities than is provided to others, as prohibited by 28 C.F.R. §35.130(b)(1)(iv); and

(g) otherwise limiting plaintiffs "in the enjoyment of any right, privilege, advantage and opportunity enjoyed by others receiving the aid, benefit or service," as prohibited by 28 C.F.R. §35.130(b)(1)(vii).

123. MCA §53-20-132, as applied by defendants, by singularly constraining the authority of Montana courts and precluding them from ordering community residential and other services for people with developmental disabilities when the facts show that is what they need and what federal and state law otherwise requires, violates the Americans with Disabilities Act and thereby, the Supremacy Clause of Article VI of the United States Constitution.

124. MCA §53-20-214, as applied by defendants, by singularly prohibiting without rational basis, except upon budget amendment by the Montana state legislature, the transfer of appropriations, employees and spending authority, authority which is otherwise available to the executive, only as to institutionalized people with developmental disabilities who have been historically subjected by the State to a tradition of disfavor; and by precluding people with developmental disabilities from benefitting as others can from the ordinary conduct of government, violates the Americans with Disabilities Act and thereby, the Supremacy Clause of Article VI of the United States Constitution.

Count II: The SOCIAL SECURITY ACT

125. Defendants, by their actions and inactions described above, have violated Title XIX of the Social Security Act, 42 U.S.C. § 1396, et seq., by:

(a) failing to conduct regular individual determinations to determine whether institutional "services" are necessary and desirable for plaintiffs and whether it is feasible to meet habilitation needs through "alternative...noninstitutional services" which are "consistent with efficiency, economy and quality of care" and to implement them, as required by 42 U.S.C. §1396a(a)(30) and (31) and by 42 C.F.R. 4566.609(a) and (b); and

(b) failing to provide such alternative community services and a plan for discharge to the plaintiffs as to whom they have found institutional services unnecessary and undesirable and community services to

provide greater independence and self-determination, less risk of regression and loss of function, and otherwise to meet their needs. *Id.*; 42 U.S.C. §1396(d)(2), and 42 C.F.R. §§456.371, 456.380, 1483.440, and 456.609(a)(b) and (c).

Count III: The EQUAL PROTECTION CLAUSE

126. Defendants have violated the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution by excluding, separating and segregating persons with developmental disabilities from the rest of society without any rational basis.

127. MCA §53-20-132, as applied by defendants, by singularly constraining the authority of Montana courts and precluding them from ordering community residential and other services for people with developmental disabilities when the facts show that is what they need and what federal and state law otherwise requires, violates the Equal Protection Clause in that it perpetuates, without rational basis, the tradition of disfavor toward institutionalized developmentally disabled citizens and the historical link between state court commitment and institutional confinement exclusively, a link which was originated and established by state action in the first decades of this century based on stereotypic assumptions. *See*, City of Cleburne, Texas v. Cleburne Living Center, 1055 S.Ct. 3249, especially at 3261 (1985) (opinion of Justice Stevens and the Chief Justice).

128. MCA §53-20-214, as applied by defendants, by singularly prohibiting without rational basis, except upon budget amendment by the Montana state legislature, the transfer of appropriations, employees and spending authority, authority which is otherwise available to the executive, only as to institutionalized people with developmental disabilities who have been historically subjected by the State to a tradition of disfavor; and by precluding people with developmental disabilities from benefitting as others can from the ordinary conduct of government, violates the Equal Protection Clause.

Count IV: The DUE PROCESS CLAUSE

129. Defendants have violated the Due Process Clause of the Fourteenth Amendment by failing to provide community services to institutionalized persons with developmental disabilities when sound professional judgment would require it. *See*, Youngberg v. Romeo, 457 U.S. 307, 323 (1982)).

130. MCA §53-20-132, as applied by defendants, by singularly constraining the authority of Montana courts and precluding them from ordering community residential and other services for people

with developmental disabilities when the facts show that is what they need and what federal and state law otherwise requires, violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution, in that it unconstitutionally strips the hearing tribunal of its authority to afford relief.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully request that this honorable Court:

1. Exercise its subject matter jurisdiction of this case.

2. Determine that plaintiffs may maintain this action as a class action pursuant to Federal Rule of Civil Procedure 23.

3. Declare that the Americans with Disabilities Act requires:

(a) that each plaintiff and class member must be served in the most integrated setting appropriate to the needs of each;

(b) that each plaintiff and class member must be served in a setting that enables each to interact with non-disabled people to the fullest extent possible;

(c) that the State must not place or keep in an institutional facility any person with developmental disabilities who could be served appropriately in a community-based setting; and

(d) that the State is obligated to make available to each plaintiff and class member the community-based services necessary to appropriately serve each.

4. Declare that the Equal Protection Clause prohibits the unnecessary segregation of people with developmental disabilities.

5. Declare that the Due Process Clause of the Fourteenth Amendment to the United States Constitution prohibits the retention of people with developmental disabilities in state institutions when such retention is a substantial departure from professional judgment.

6. Declare that defendants have unconstitutionally applied MCA §53-20-132 and MCA §53-20-214 and, if necessary, enjoin them from continuing to do so.

7. Declare that plaintiffs are entitled under Title XIX of the Social Security Act to receive "alternative...noninstitutional services" in the community which meet their individual needs.

8. Enjoin defendants to complete a self-evaluation of DPHHS policies and practices as required by the Americans with Disabilities Act (ADA), and to modify its services, policies and practices as necessary to meet the requirements of the ADA.

9. Enjoin defendants to propose and, after court hearing and approval, to implement a plan to:

(a) promptly arrange and conduct independent evaluations, by qualified and independent developmental disability professionals not employed by defendants, of the individual needs of all individuals who are residents of MDC, Eastmont, MSH and MMHNCC on or after the date of filing this Complaint, according to criteria agreed upon by the parties and which does not discriminate on the basis of severity of disability, whether a community setting is the most integrated setting appropriate to each individual's needs; and

(b) ensure that each plaintiff and class member for whom it is determined that the most integrated setting appropriate to his or her needs is a community setting is promptly provided the necessary community services in such setting.

9. Enjoin defendants to actually provide to each plaintiff and class member for whom it is determined that the most integrated setting appropriate to his or her needs is a community setting effective, person-centered, community-based residential, vocational and other support services appropriate to the needs of each.

10. Enjoin defendants from admitting individuals with developmental disabilities who could be served appropriately in community-based services to the Montana Developmental Center, Eastmont Human Service Center, Montana State Hospital and Montana Mental Health Nursing Care Center.

11. Award plaintiffs their costs, expenses and reasonable attorneys' fees pursuant to 42 U.S.C. Section 12205 and 42 U.S.C. Section 1988.

12. Grant such other and further relief as the Court deems just and proper.

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Respectfully submitted this 23rd day of August, 1996.

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