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9:30 AM

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

NEW JERSEY ASSOCIATION FOR :
RETARDED CITIZENS, INC.; :
LESTER BREESE, a mentally :
retarded citizen, by his :
sister and next friend, :
Lillian Durling; :
CHRISTIAN SCHAAF, a mentally :
retarded citizen, by his next :
friend, The Reverend Stephen :
Johnson; :
SARAH HANDLER, a mentally :
retarded citizen, by her next :
friend, The Reverend Stephen :
Johnson; :
ROBERT WYNN, a mentally retar- :
ded citizen, by his mother :
and next friend, Ann Wynn; :
AMY SIMPSON, a mentally retar- :
ded citizen, by her mother and :
next friend, Carolyn Simpson; :
ON BEHALF OF THEMSELVES AND :
ALL OTHER PERSONS SIMILARLY :
SITUATED; :
PLAINTIFFS, :
v. :
ANN KLEIN, Commissioner of :
the New Jersey Department :
of Human Services; :
MAURICE KOTT, Ph.D., Director :
of the Division of Mental :
Retardation of the New Jersey :
Department of Human Services; :
INGE PLANTE, M.D., Superintendent :
and Chief Executive Officer of :
New Jersey Neuropsychiatric :
Institute; :
DEFENDANTS. :

FILED
MAY 30 1979
At 9:30 AM
ANGELO W. LOCASCIO
Clerk

COMPLAINT
CLASS ACTION
Civil Action No.

79-1632

PRELIMINARY STATEMENT

1. This suit is a class action on behalf of all present and prospective residents of the New Jersey Neuropsychiatric Institute (hereafter NPI), a 620 bed, state-operated residential institution for mentally retarded people in Skillman, New Jersey. Defendants are officials of the New Jersey Department of Human Services who are responsible for the operation of NPI and for providing the services to which plaintiffs are legally entitled.

2. The named plaintiffs and the class they represent allege they are not provided appropriate programs and services and are not protected from harm at NPI. Instead, they are crowded into barren and sparsely furnished buildings in a location remote from the mainstream of society and are forced to spend their days in idleness. Seclusion, physical restraints, and medications are used by defendants as substitutes for appropriate care and programming. Physical abuse by other residents and the staff occurs frequently. The staff has little or no training and is inadequate to protect the residents from harm or to provide proper care. Many plaintiffs are capable of living in less restrictive settings within NPI and within the community, but defendants have failed to establish or maintain appropriate residences and programs for such persons outside the institution. Plaintiffs also allege that the conditions at NPI have caused them to regress intellectually, emotionally, socially, and physically.

3. Plaintiffs therefore seek a declaration that their constitutional and statutory rights have been and continue to be violated by the acts and omissions of defendants, and an

injunction requiring (1) immediate cessation of harmful practices, and (2) provision of appropriate habilitative programs and services to all members of the plaintiff class in the least restrictive environment suitable to their individual needs.

JURISDICTION

4. This Court has jurisdiction over the subject matter of this complaint by virtue of 28 U.S.C. 1331, 1343(3)-(4). Plaintiffs' request for declaratory and injunctive relief is authorized by 28 U.S.C. 2201 and 2202. This action is brought to redress and enjoin violations of rights, privileges, and immunities secured by 20 U.S.C. 1401 et seq., 29 U.S.C. 794, 42 U.S.C. 1396 et seq., 42 U.S.C. 6001 et seq., 42 U.S.C. 1983 and the Eighth and Fourteenth Amendments to the United States Constitution. The amount in controversy exceeds \$10,000, exclusive of interest and costs, as to each named plaintiff and member of the class. The Court has jurisdiction over the plaintiffs' state law claims by virtue of the doctrine of pendent jurisdiction.

5. Plaintiffs have suffered immediate and irreparable harm from defendants' actions, practices, omissions, policies, and procedures complained of herein, and will continue to suffer such harm unless enjoined and restrained as prayed for below.

PLAINTIFFS

NEW JERSEY ASSOCIATION FOR RETARDED CITIZENS, INC.

6. The New Jersey Association for Retarded Citizens, Inc., (hereafter NJARC), is a nonprofit corporation organized and existing under the laws of the State of New Jersey. The

purpose of NJARC is to advance the interests of the more than 200,000 mentally retarded citizens of New Jersey and to secure to them their rights under the Constitution and laws of the United States and the State of New Jersey. NJARC has a total membership of more than 14,000 which consists of parents and guardians of mentally retarded citizens, mentally retarded citizens themselves, and other interested volunteers. NJARC and its 20 member units have served the interest of mentally retarded persons in New Jersey and have acted as advocates for them for 30 years. NJARC also seeks to enforce the obligation of the responsible public officials to provide appropriate education, habilitation, and support services to the mentally retarded citizens of this state, including those individuals confined in state-operated residential institutions such as NPI. For the last three years, NJARC has consistently communicated its concern to defendants over the lack of care and services for the residents at NPI. NJARC has gained information about the serious problems at NPI from visits to NPI by its members and complaints from relatives and other interested people. The principal offices of NJARC are located at 99 Bayard Street, New Brunswick, New Jersey 08901.

LESTER BREESE

7. Lester Breese is a 51-year-old, mentally retarded man with epilepsy now living temporarily at the Johnstone Training Center, Bordentown, New Jersey, an institution operated by defendants. Mr. Breese was a resident at NPI for more than 16 years until December 28, 1978, when he was blinded in an incident there and was transferred to Wills Eye Hospital in Philadelphia. Defendants planned to return Mr. Breese to NPI in January 1979;

but, after vigorous protests by his family, he was temporarily placed at Johnstone Training Center. Mr. Breese is subject to return to NPI at any time. Mrs. Lillian Durling, Lester Breese's sister and next friend, resides in Rocky Hill, Somerset County, New Jersey.

8. Lester Breese was admitted to NPI on October 19, 1962, when he was 34 years old. When Mr. Breese's father died, his family became unable to care for him, and he was placed in NPI because it was close to his home and family.

9. Since 1962, Lester Breese has been described consistently by the staff of NPI as pleasant, agreeable, cooperative, and very helpful on the ward.

10. Mr. Breese has not been protected from harm at NPI.

a) On June 2, 1975, Lester Breese lost his left eye in an incident at NPI.

b) On July 18, 1976, Lester Breese's skull was fractured at NPI.

c) On May 30, 1978, it was discovered that Lester Breese's right foot was fractured.

d) On September 29, 1978, Lester Breese was severely beaten on the face and chest by another resident of his residential building (Driscoll South) at NPI.

11. In October 1978, Mr. Breese's family informed defendants that they wanted him moved from Driscoll South because he was unsafe there. Lester Breese had told his family that he was afraid of being hurt by people in Driscoll South and wanted to return to the building where he had previously lived and where he had close friends. Defendants denied the family's request

that he be moved.

12. On December 28, 1978, a staff member of NPI was involved in a scuffle with Lester Breese on Driscoll South. Mr. Breese lost the sight in his right eye as a result of this scuffle. He is now blind.

13. Mr. Breese has not been provided with appropriate training and education programs to develop his potential at NPI. Although Mr. Breese was involved in music or informal recreation sessions which occurred at most for two or three hours a week, these sessions were virtually the only relief from the idleness which constituted the major portion of Mr. Breese's life at NPI.

CHRISTIAN SCHAAF

14. Christian Schaaf is a 25-year-old, mentally retarded person who has epilepsy and behavior problems. He has been a resident of state-operated institutions within New Jersey nearly all his life. Mr. Schaaf was transferred to NPI in May 1976 from Trenton Psychiatric Hospital and is presently confined in the Allen North Building at NPI. Christian Schaaf's next friend, the Reverend Stephen Johnson, resides at 23 Dickerson Drive, Piscataway, Middlesex County, New Jersey.

15. The Allen North Building, where Christian Schaaf is presently confined, is bleak, desolate, and unstimulating. Mr. Schaaf's bedroom is a seclusion cell approximately nine feet by ten feet. It has walls of concrete block, a metal door, and a small window near the ceiling. Besides a mat on the floor, there is no relief from its utter barrenness. There is no bed, dresser, closet, rug, lamp, nor any other furnishing. The day-room where Mr. Schaaf wanders around, when not in seclusion or asleep, is only slightly less bleak than his bedroom.

16. Defendants have excessively and inappropriately placed Mr. Schaaf in seclusion while at NPI. During most of Mr. Schaaf's confinement at NPI, he was kept in a cell except for brief respites for feeding, toileting, bathing, and infrequently socializing with other residents. Recently, however, Mr. Schaaf has been allowed to spend most of his time in the day-room of his building, returning to his cell only at night.

17. Defendants have failed to provide Mr. Schaaf with a meaningful and effective program of habilitation in which he can be taught basic self-help skills, how to socialize with his peers and how to reduce or eliminate his self-injurious and other maladaptive behaviors. Instead of this habilitation program, Mr. Schaaf spends his time, as do the other residents of Allen North, sitting, lying on the floor, or wandering around the day-room with nothing to do.

18. Defendants have administered in the past and continue to administer massive dosages of psychotropic medication to Mr. Schaaf as a substitute for adequate programming. Over-medication will cause severe and irreversible damage to Mr. Schaaf.

19. Defendants have not taken adequate measures to reduce Mr. Schaaf's self-injurious behavior nor to protect him from its consequences. Mr. Schaaf's body is constantly marked with severe bruises, open sores, and cuts from the times he has injured himself or has been injured by other residents.

20. Defendants have not provided Mr. Schaaf with suitable clothing. He is dressed in ill-fitting institutional garb, without buttons or zippers, or in hospital-type gowns. He is not even provided laces for his shoes.

SARAH HANDLER

21. Sarah Handler is a 45-year-old, mentally retarded woman with behavior problems who has been confined at NPI since February 3, 1976, when she was transferred from Greystone Park Psychiatric Hospital. She has lived in various state-operated institutions in New Jersey since the age of 15. Both her parents are deceased. Sarah Handler's next friend, the Reverend Stephen Johnson, resides at 23 Dickerson Drive, Piscataway, Middlesex County, New Jersey.

22. Ms. Handler has been confined in the Allen South building since she was placed at NPI on February 3, 1976. Allen South, like Allen North where Plaintiff Schaaf is confined, is similar to a prison in many ways. All the doors are locked. There are ten rooms similar to jail cells on each side of one wing of Allen South. Two of the cells are used for seclusion of residents and have only a metal bed, a toilet, and a sink. Some of the other eight cells in the wing are used for sleeping quarters. Ms. Handler's bedroom is one of these cells. The dayroom of Allen South is devoid of the normal elements of a humane living environment. The only furnishings are a few chairs and tables. There are no rugs, no curtains, and no decorations; nor are appropriate games or books provided to Ms. Handler and the other residents.

23. Ms. Handler is not receiving appropriate habilitative services at NPI, nor is she provided programs or therapy to help her control her frequent aggressive behavior. Instead, she spends a portion of most of her days in her bedroom or in seclusion. Ms. Handler often requests to be put in her bedroom because it is safer and quieter than the rest of Allen South.

Even when she is out of seclusion or her bedroom, there are few structured programs or activities designed to engage her attention and develop her potential. Rather, like the other residents, Ms. Handler wanders aimlessly about, bangs on the window to get the staff's attention, or fights with others in the building.

24. Ms. Handler has suffered numerous cuts and bruises and a fractured arm at the hands of other residents. She recently was so severely bitten on her face by another resident that plastic surgery may be required.

25. Ms. Handler has also been slapped and kicked by a supervisory staff member at NPI.

26. Three years ago, it was recommended by NPI staff that Ms. Handler be fitted for dentures. These dentures have never been provided. Ms. Handler continues to eat unappetizing pureed food and has garbled speech due in part to her lack of dentures.

27. Ms. Handler is administered large amounts of medication each day. These drugs cause her to tire easily, and make it difficult for her to concentrate on any kind of program or activity.

28. If there are no changes in the program and services provided Ms. Handler, she will remain unable to control her behavior, will continue to suffer bodily harm and physical deterioration, and will never be able to enjoy the benefits of life in a more homelike and less restrictive environment.

ROBERT WYNN

29. Robert Wynn is a 25-year-old man who is mentally retarded with behavior problems. He is presently confined in the Dodds Building at NPI. His mother and next friend, Mrs. Ann

Wynn, resides in East Orange, Essex County, New Jersey.

30. Robert Wynn was transferred to NPI from Essex County Hospital Center in June of 1977 by defendants. Robert Wynn's mother was assured by defendants that her son was being placed in an institution which could provide appropriate habilitative services and psychological therapy for his behavior problems. Mrs. Wynn acquiesced in the transfer even though NPI was much further from her home than the institution where her son was previously.

31. When Mr. Wynn first came to NPI, he was confined in Allen North. He suffered from being excessively and inappropriately placed in seclusion in Allen North.

32. In July 1978, he was moved into Dodds where he spends most of his waking hours in a dayroom where the barrenness is alleviated only by the chairs that line its wall, a few tables, and a television.

33. Mr. Wynn is not receiving appropriate habilitative services to develop his potential at NPI. Mrs. Wynn visits her son at various times during the day and on various days during the week. She has consistently found her son sitting idle in the dayroom. This lack of activity and stimulation not only deprives Mr. Wynn of the opportunity to develop to his full potential but also insures that he will lose the verbal, social, and self-help skills he presently possesses because those skills are not encouraged nor reinforced by his environment.

34. Mr. Wynn is not receiving adequate therapy for his behavior problems at NPI. The staff does not include him in programs because of his behavior problems; yet the staff notes that he exhibits these behavior problems when he is bored because of exclusion from programming. Mr. Wynn is entitled to appropriate

therapy to break this vicious circle of inactivity and inappropriate behavior which now constitutes his life at NPI.

35. Mr. Wynn is clothed in institutional garb, which is often too large for him and without zippers or buttons. For instance, Robert Wynn has been dressed on several occasions in size 44 pants without a belt, even though he wears a size 36.

36. Mrs. Wynn visits her son at least once a week. Since NPI is not accessible by public transportation and is geographically isolated, each of these visits entails four or five hours of travelling as well as an expenditure of \$20.60 for the train ticket and cab fare. Mrs. Wynn lives on a modest income and does not drive, so these visits are made at a great sacrifice.

AMY SIMPSON

37. Amy Simpson is a five-year-old child who has been classified by defendants as mentally retarded and possibly autistic. She is now temporarily residing at the Hill Haven Training School, Middletown, Delaware. She entered NPI when she was three and one-half years old, remained there for seven and one-half months from August 4, 1977 until March 18, 1978, and is subject to return to NPI at any time. Her mother and next friend, Carolyn Simpson, resides in Budd Lake, Morris County, New Jersey.

38. Amy Simpson was originally placed at NPI because her mother was hospitalized for health problems. No appropriate facility closer to Amy's home was made available by the defendants.

39. When Amy Simpson entered NPI, she possessed self-help and social skills including, but not limited to, the ability to wash, feed, and toilet herself with some assistance, to use

appropriately several short phrases, and to enjoy simple games. The staff called her very pleasant and lovable. Seven and one-half months later, Amy had lost these skills and attributes. She could no longer feed herself or chew properly; she threw her food to the floor; she often banged her head against the wall; she slapped herself in the face and mouth; she threw herself to the floor crying. Also, Amy stopped making short verbal requests and substituted tugging or grunting at individuals to make her wants known.

40. In the 14 months since Amy Simpson left NPI, she has regained most of the skills she lost there. She is once again very pleasant and interested in the company of other people. She is able to wash, feed, and toilet herself now. However, she has not regained the verbal communication skills which she lost at NPI. She seldom speaks.

41. From the first day of her admission to NPI, Amy was abused by older residents in the Kay Building where she lived. The staff was incapable of protecting Amy from this unabated abuse from older residents which resulted in at least:

- a) Amy's lip being cut several times;
- b) her head being bruised;
- c) her left eye being bitten;
- d) her face being "black and blue";
- e) her shoulder being bruised; and
- f) her back being bitten.

42. The staff was insufficient in number and in training to protect Amy from harm in the Kay Building. She fell down a flight of stairs on November 4, 1977, resulting in several contusions, even though staff had noted upon Amy's admission that

the stairs were too steep for her to use safely and that she would require assistance. She also fell in the bathroom and dayroom receiving bruises and cuts. She drank finger paints while a resident of the Kay Building because she was not sufficiently attended.

43. By the end of her first month at NPI, Amy had contracted shigellosis, a contagious disease which is passed on through oral contact with another's fecal matter. Amy required treatment in the infirmary of NPI for this condition. Amy lost considerable weight at NPI because her appetite became very poor during her confinement there.

44. On January 13, 1978, Amy was transferred to the infirmary at NPI as the only means of protecting her from physical abuse by other residents. In the infirmary, Amy spent most of her waking hours roaming around the ward or tied to a chair. She was tied to the chair, not as part of any type of program, but as a substitute for staff supervision and when the staff wanted her to stay in one place. The few toys which belonged to Amy that had not already been lost or destroyed in Kay Building were not transferred with her to the infirmary.

45. While at NPI, Amy received inadequate educational services for a few hours on week days. Any progress she may have made through this limited educational program was undermined by the unsafe, sterile, and abusive residential environments to which she returned.

46. Through the intensive effort of her mother, Amy was transferred, eventually, from NPI to a residential school in Delaware, where she is not abused or neglected. However, Amy's mother, Carolyn Simpson, continues to be seriously ill and unable

to care for Amy who is very active physically. Mrs. Simpson has been advised by her physicians that she will never be able to care for Amy at home again. The defendants have the authority to return Amy to NPI at any time and the likelihood of their returning her to NPI increases as she grows older.

CLASS ACTION ALLEGATIONS

47. Plaintiffs Mr. Breese, Mr. Schaaf, Ms. Handler, Mr. Wynn, and Ms. Simpson sue on their own behalf and pursuant to Rules 23(a) and (b)(2) of the Federal Rules of Civil Procedure, on behalf of all other persons who are now, or who in the future may be, confined at NPI, including, but not limited to, all present residents of NPI and all persons who are subject to return to NPI.

48. This is a proper class action under Rules 23(a) and (b)(2) of the Federal Rules of Civil Procedure. The class is so numerous that joinder of all their respective members is impracticable in that there are approximately 600 persons confined at NPI. There are substantial questions of law and fact common to the class as a whole which predominate over any questions affecting only individual members. The claims of the named plaintiffs are typical of the claims of the class. The named plaintiffs will adequately and fairly protect the interests of the class. In addition, the defendants have acted or refused to act on grounds generally applicable to the class, thereby making preliminary and final injunctive relief and declaratory relief appropriate with respect to the class as a whole.

DEFENDANTS

49. Ann Klein is the Commissioner of the New Jersey Department of Human Services. She is the official agent of the Department of Human Services for all purposes. The Commissioner determines all matters of policy of the Department and supervises the Division directors of the Department of Human Services, including, but not limited to, the Director of the Division of Mental Retardation. The Commissioner of the New Jersey Department of Human Services has overall responsibility for the conditions and programs at NPI. The Commissioner is also authorized to supervise the receipt and distribution of federal funds as the budget officer of the Department of Human Services. N.J.S.A. 30:1-7, 30:1-9, 30:1-11, 30:1-12. She is sued in her official capacity.

50. Maurice Kott, Ph.D., is the Director of the Division of Mental Retardation within the New Jersey Department of Human Services. He is responsible for the planning, development, and coordination of state operated services for mentally retarded persons throughout New Jersey, including the operation of NPI and other state-operated residential institutions for mentally retarded persons in New Jersey. N.J.S.A. 30:1-9. He is sued in his official capacity.

51. Inge Plante, M.D., is the Chief Executive Officer in charge of the operation of NPI. She is directly responsible for the care, habilitation, treatment, training, and protection of persons confined at NPI. N.J.S.A. 30:1-12. She is sued in her official capacity.

52. Defendants and the agencies they represent are the recipients each year of considerable federal financial

assistance for the benefit of plaintiffs and other clients of the Division of Mental Retardation. For the fiscal year ending June 30, 1979, defendants will receive federal monies under at least the following statutes: a) the Social Security Act, 42 U.S.C. 1396 et seq. and 42 U.S.C. 1397 et seq.; b) the Developmentally Disabled Assistance and Bill of Rights Act, 42 U.S.C. 6001 et seq.; and c) the Elementary and Secondary Education Act, 20 U.S.C. 241a et seq.

53. Defendants have at all times pertinent hereto acted under color of the laws, customs, and usages of the State of New Jersey to deprive residents of NPI of their rights, privileges, and immunities. Each defendant has known, or had reason to know, of the conditions prompting plaintiffs' complaints.

54. The defendants have failed or refused to provide persons confined at NPI: protection from intellectual, social, emotional, and physical harm; a decent and humane physical and psychological environment; adequate numbers of qualified professional and direct care staff; and education and habilitation services delivered in the least restrictive environment. In particular, the acts and omissions of the defendants include the following:

FACTUAL ALLEGATIONS

A. NEW JERSEY NEUROPSYCHIATRIC INSTITUTE--ITS PURPOSE AND THE PEOPLE CONFINED THERE

55. Neuropsychiatric Institute (NPI) is a residential institution owned and operated by the State of New Jersey. It is located between the towns of Blawenburg and Belle Meade on the southwest edge of Somerset County, approximately eight miles from Princeton, New Jersey.

56. Prior to July 1975, NPI was an institution for persons suffering from mental illness, operated by the Division of Mental Health and Hospitals within the New Jersey Department of Human Services, hence the name which it retains, the Neuropsychiatric Institute.

57. In July 1975, the Division of Mental Retardation within the New Jersey Department of Human Services, became responsible for the operation of NPI. This transfer from the Division of Mental Health and Hospitals to the Division of Mental Retardation was necessitated by the large number of mentally retarded persons in state psychiatric facilities.

58. Defendants plan to admit to NPI 340 people from four other state institutions for mentally retarded persons by July 1981. This plan to increase the population of NPI by over 50% is reported in defendants' ICF/MR Summary, State of New Jersey, Department of Human Services, Division of Mental Retardation, revised March 1979.

59. Approximately 620 mentally retarded individuals are presently confined at NPI. Most of the people confined at NPI are multiply handicapped, with behavior problems and/or physical disabilities in addition to mental retardation.

60. The defendants are responsible for providing "functional services" to these 620 people. N.J.S.A. 30:4-25.1 et seq.

61. "Functional services" means "services and programs to provide the mentally retarded with education, training, rehabilitation, adjustment, treatment, care, and protection," N.J.S.A. 30:4-23, which services and programs are deemed most appropriate for that person, N.J.S.A. 30:4-25.4, designed to maximize her or

his potential and administered in the least restrictive manner and setting possible. N.J.S.A. 30:6D-9. This term "functional services" coincides with the term "habilitation" which is used throughout this complaint.

62. When mentally retarded people or others on their behalf apply for admission to a state-operated program, defendants evaluate the applicants to determine if they are in need of "functional services." Mentally retarded people found to be in need of "functional services" are "admitted" by defendants to a program. For the plaintiffs, the program is confinement at NPI. The courts are not involved with such admissions. This admission to NPI is, in fact, an involuntary confinement because most of the mentally retarded plaintiffs in this case do not have the capacity to make a choice between leaving or remaining at NPI. Those individuals who do have the capacity to make a choice, or have a guardian or relative to make the choice for them, are provided no alternative to confinement at NPI.

B. HABILITATION

1) Training and Care

63. All plaintiffs and members of the class they represent have the ability to attain some degree of self-care and self-support skills. Habilitation is the process of attaining and maintaining such self-care and self-support skills as will enable these individuals to achieve the maximum degree of independence their capacities permit. Examples of self-care skills are dressing, cleaning, toileting, feeding one's self, and effectively communicating one's needs to others. Examples of self-support skills might include basic reading, writing, and arithmetic, appropriate work habits, the use of public transpor-

tation, money management, enjoying the company of others, and recreation. Appropriate habilitative services include medical and psychological treatment, speech and physical therapy, as well as structured programs of education and training in self-care and self-support skills.

64. Instead of receiving habilitative services, plaintiffs spend most of their time in enforced idleness, often wandering aimlessly, sitting, or lying on the bare floor of the dayroom or halls of their residential buildings.

65. A large percentage of the mentally retarded individuals at NPI are in no habilitation or education programs. Many of the individuals who do receive some habilitative services are involved in programs for only an hour or less a week. This means that most of the residents of NPI have nothing to do most of the day.

66. The multiply handicapped, nonambulatory, and lower functioning people confined at NPI receive even less services than the rest of the population. Many of these individuals are in dire need of physical therapy and exercise which they do not receive.

67. In March of 1978, the defendants inspected NPI and reported their findings in "Annual Inspection Report, New Jersey Neuropsychiatric Institute, March 1978." This report concluded, in part, that

a) there is an absence of services to 41% of the population at NPI;

b) of the 59% of the population who receive services, many receive one hour or less weekly;

c) many residents of NPI are inactive for a

good portion of the entire day;

d) although there are frequent references in resident evaluations to training in self-help skills, no viable cottage programs have been implemented.

2) Habilitation Through Individualized Plans

68. Habilitation can only be achieved through a comprehensive individual habilitation plan that is formulated after a thorough evaluation and diagnosis of the retarded individual's mental, social, and physical abilities and potential. The plan must describe in specific and measurable terms the programs and services necessary to maximize the individual's growth potential and the criteria for evaluating their effectiveness. It must be written so it is intelligible to the clinical and direct care staff who will implement it, and include the names of the staff who are responsible for implementation. It must be periodically reevaluated and improved to reflect the individual's evolving needs. The programs and services described in the plan must be delivered by qualified staff in the least restrictive environment possible.

69. Plaintiffs have not been provided with minimally adequate individualized habilitation plans. The individuals confined at NPI are not adequately evaluated or diagnosed by defendants either initially or periodically. Habilitation plans have not been formulated for some residents, and those that do exist remain primarily paper exercises which do not affect the life of the individual resident.

70. The individualized habilitation plans that do exist are seriously deficient in that they are based on inadequate assessments of the resident's skills and needs, fail to provide

for minimally adequate habilitative services, fail to describe the required programs and services in an intelligible manner, and lack objective criteria for measurement of the residents' progress.

71. The defendants' inspection report of NPI (see paragraph 67) found, in part, that

a) the few individualized habilitation plans developed under NPI's new interdisciplinary team system are not specific enough in terms of identifying objectives, target dates for their achievement, and staff responsibility for implementing activities to achieve objectives;

b) no formal evaluation of new residents is made by the institution;

c) NPI has not developed a viable schedule for reevaluation of residents' skills and needs.

3) Habilitation in the Least Restrictive Environment

72. Adequate habilitation can only be achieved in an environment conducive to learning and growth which puts to use the skills the individual learns. The environment must be open and stimulating and must restrict the individual's personal liberty as little as the individual's condition permits. For those individuals capable of living and learning in community settings, a comprehensive system of support services is required to ensure the availability and quality of appropriate residences and programs.

73. Plaintiffs are not provided habilitation in an open, stimulating environment with a minimum of restrictiveness.

a) The residents are seldom allowed outside even in the warm weather months.

b) The doors to all residential buildings are kept locked.

c) There is excessive and inappropriate use of seclusion and physical restraints within these buildings.

d) Severely physically handicapped and nonambulatory residents of NPI are not rendered mobile by the necessary helping devices. Therefore, they are confined to their chairs or beds.

74. Defendants do not utilize existing community resources, nor do they develop resources in the community to meet the educational, recreational, health, or vocational needs of the residents. These activities, to the extent they exist at all, are provided on the grounds of NPI which is geographically isolated from the mainstream of society.

75. Defendants do not provide an adequate program to prepare NPI residents to live outside the confines of the institution.

76. Defendants have not established community residences and programs for those individuals presently at NPI who would be appropriately served in a noninstitutional setting. Thus, these individuals are inappropriately and unnecessarily deprived of the opportunity to enjoy a normal and homelike environment and to be integrated with their nonhandicapped peers.

77. The defendants' inspection report of NPI (see paragraph 67) found, in part, that

a) locked doors are the rule rather than the exception;

b) no walks, organized games, or other outdoor activities were observed during the onsite inspection.

4) Regimentation and Clothing

78. An individual's sense of individuality and dignity is fostered by having choices. Wearing clothing which fits and which is personal and attractive is one way individuals enhance their sense of self-worth. The opportunity to choose what clothing one will wear, and what time one will bathe, give individuals a sense of control over their lives; and having some control over one's environment is as necessary to the dignity and individuality of a mentally retarded person confined in a large institution as it is to any other human being.

79. Most residents at NPI are forced to wear institutional, ill-fitting clothing.

a) Frequently, they are clothed in hospital gowns or in clothes without buttons or zippers.

b) Shoe laces and belts are virtually nonexistent and some residents are forced to spend the entire day holding up their oversized pants or walking around without shoes or socks.

c) Clothing and other personal possessions brought by parents and relatives quickly disappear, and staff often advise parents not to bring these items because they will be "lost."

80. Eating, waking, retiring, and bathing of the individuals confined at NPI are conducted en masse, at predetermined and unchanging times chosen for the convenience of the institution and staff. Toileting or bathing may become a humiliating experience because of the lack of privacy in the bathrooms.

5) Seclusion and Medication

81. Seclusion (which at NPI means being left alone in a barren, locked room) and physical restraints are frequently imposed upon NPI residents for the convenience of staff and as

a substitute for habilitative services. Plaintiffs Christian Schaaf, Sarah Handler, Robert Wynn, and Amy Simpson have all suffered from inappropriate and excessive seclusion or physical restraints.

82. The mentally retarded individuals confined at NPI are given high dosages of psychotropic drugs to render them easier to manage and as a substitute for appropriate habilitation. These drugs may have seriously detrimental physical effects on the residents.

83. The defendants' inspection report of NPI (see paragraph 67) found, in part, that due to the large number of medications being prescribed for each resident and the excessive volume of medication given in a one year period, it is questionable that each resident's prescribed medical program is in reality thoroughly reviewed and evaluated.

6) Summary: Lack of Habilitation at NPI

84. The lack of habilitative services through individualized plans in the least restrictive environment prevents the plaintiffs from developing their potential for self-care and self-support. The regimentation, ill-fitting "state issue" clothes, and lack of privacy causes the plaintiffs to lose, if ever attained, their sense of self-respect and dignity. Seclusion and psychotropic drugs are substituted for therapy and programs to which the plaintiffs are entitled.

85. The bleak, unstimulating environment and the constant idleness that the individuals there must endure promotes mental, physical, social, and emotional deterioration of the people at NPI. Due to the conditions of their confinement, the plaintiffs are losing the self-help, self-support, communication,

social, and other skills they once possessed. The failure of defendants to provide less restrictive and more normal treatment and living environments, including appropriate community based residences and programs, also contribute to this loss of skills.

86. The proposed increase in the number of people at NPI from approximately 600 to 950 (see paragraph 58) will exacerbate NPI's present inability to provide appropriate habilitation and to protect the plaintiffs from harm. Also, expanding the size of NPI by over 50% will increase its restrictiveness and isolation from the mainstream of society.

C. EDUCATION

87. All plaintiffs between the ages of 5 and 21 are entitled to a free and appropriate education and to such related services as are required to assist them to benefit from this education. These related services include, but are not limited to, audiology, speech, physical, and occupational therapy, medical and psychological services, and recreation. In order to be effective, this education and related services must be provided to the plaintiffs on the basis of an individualized education plan or program. Also, it must be provided in as normal a setting as possible, including noninstitutional settings where appropriate.

88. There is a residential educational program, the Drake School, for autistic children at NPI; it is presently housed in the Strecker Building.

a) The approximately 25 children involved in this program spend about four hours each week day in a structured education program.

b) In their remaining waking hours and on the weekends, these autistic children are confined in the Strecker Building without the structured activities that are necessary to

maintain any self-help, self-support, or communication skills they may have acquired during the four hours of educational programming.

c) The staff of Strecker is not able to prevent the children from physically abusing each other and is not able to protect the children from harm.

d) Plaintiff Amy Simpson did not and the other children presently confined in Strecker do not receive an appropriate program of special education and related services through an adequate individualized education plan.

e) No consideration is given to whether these children could be educated in a less restrictive and more normal environment.

89. The plaintiffs between the ages of 5 and 21 confined in residential buildings other than Strecker have also not been provided with an appropriate program of special education and related services in accordance with an adequate individualized plan or program.

90. The State of New Jersey has submitted a state plan to the federal government under the Education for All Handicapped Children Act, 20 U.S.C. 1401 et seq. Defendants are bound by the requirements of that law which mandates an appropriate program of special education for all handicapped children between the ages of 5 and 21.

D. STAFFING

91. A well trained direct care and clinical staff in adequate numbers is necessary to protect the plaintiffs from harm and to provide them with appropriate habilitation. This staff should be trained to provide self-help and self-support skills

directly to the residents. There should be a sufficient number of staff to carry out training activities and to supervise the residents so that they do not harm themselves and each other.

92. The direct care staff in the residential buildings is inadequate to protect the residents of NPI from harming each other and inadequate to provide them with appropriate habilitative care.

a) The direct care staff must spend the bulk of its time doing custodial work or writing reports. Therefore, the interaction between direct care staff and residents is negligible.

b) There is rampant absenteeism at NPI which results in staff being moved constantly from one residential building to another in an attempt to reach the institution's definition of minimum coverage in each building.

c) This constant movement of staff discourages the development of personal or positive relationships between staff and residents. For example, the staff member who was involved in the scuffle in which Plaintiff Breese was blinded was new, untrained, and not regularly assigned to Plaintiff Breese's building.

93. The training of the direct care staff is either nonexistent or grossly inadequate.

a) Though the individuals confined at NPI spend most of their time exclusively with the direct care staff, this staff has not been trained to teach self-help or self-support skills nor to provide the other habilitative services needed by the residents on a daily basis.

b) The staff has not been trained in the proper

way to react when residents are physically abusive in order to minimize the risk of danger to themselves and to the residents.

c) Much of the staff has not even been trained to administer emergency first aid.

94. Untrained and unqualified staff members are frequently improperly assigned by supervisory personnel the task of administering medication to the residents. As a consequence, residents at times receive an incorrect dosage or the wrong medication.

95. The clinical staff, including, but not limited to, those who should provide or supervise the provision of habilitation, education, psychological, speech, physical therapy, medical, and social services to the residents, is inadequate in training and number.

96. The inadequate number of clinical staff at NPI is particularly felt by those individuals confined to wheelchairs or otherwise physically handicapped who are not receiving the physical therapy they desperately need.

97. The inadequate number of staff and the lack of training and supervision of the staff have caused neglect as well as intentional physical abuse of the residents by the NPI staff. Residents, for example, Sarah Handler who was kicked and slapped by staff at NPI, have been assaulted, battered, and otherwise physically mistreated by the staff at NPI.

98. The defendants' inspection report of NPI (see paragraph 67) found, in part, that

a) direct care staff spends most of its efforts in custodial care, cottage maintenance, laundry, or other ancillary duties, and the level of training and attention required to

further enhance resident development is conspicuously absent;

b) residential buildings frequently operate below the established minimum level of staff required even for custody and safety;

c) the relationship that exists between parents and staff is generally one of distrust.

E. PHYSICAL PLANT

99. The impersonal, sterile atmosphere and design of the residential buildings at NPI deprives the residents of personal privacy, dignity, and any semblance of a normal, homelike environment.

100. The residential buildings are overcrowded, poorly designed, and inadequately furnished, with one large, open dayroom which serves as the living area. The walls are frequently painted cinderblock without acoustical materials, and the resulting noise level can be intolerable. There are no curtains, rugs, lamps, pictures, magazines, or other homelike furnishings. Often there are not enough chairs for all the residents, so those without chairs must wander around the large empty dayroom or lie on the floor.

101. In the Allen South and North Buildings, seclusion cells are used for bedrooms for some of the residents. In other buildings, for example, Earle, there are long rows of beds crowded together without any type of partition.

102. Most of the mentally retarded individuals confined at NPI do not have a drawer or closet for their personal use. On Allen North some of the men have drawers in their bedrooms, but the drawers are empty; the men are not allowed to use them.

103. There are 15 buildings on the grounds of NPI used

for residences including a 52-bed infirmary. Numerous violations of federal and state fire, life safety, and construction regulations have been identified in these buildings, especially the infirmary. Some of these violations have remained uncorrected for years. These uncorrected violations as well as the ineffective fire fighting force at NPI render these buildings unsafe for the mentally retarded people housed in them.

104. Several of the buildings at NPI in which defendants have confined physically handicapped persons, including the infirmary, are inaccessible and do not have toileting or other facilities for the physically handicapped.

105. NPI is in an isolated area and is inaccessible by public transportation. Families and friends without private transportation must spend inordinate amounts of time and money in order to visit individuals confined at NPI. This inaccessibility by public transportation and geographical isolation of NPI discourage visits from relatives and friends, thus, depriving these residents of the emotional and material supports which these visits might bring.

106. The defendants' inspection report of NPI (see paragraph 67) found, in part, that a warm, homelike environment is extremely difficult to maintain, particularly in the older buildings. The general floor plan of large open dormitories and single dayrooms promotes the massing of residents into one group.

CLAIMS FOR RELIEF

First Claim

107. Plaintiffs repeat the allegations of paragraphs 1 to 106 as though the same were set forth herein at length.

108. By confining named plaintiffs and members of the plaintiff class for the stated purpose of habilitation, training, and education, without providing the same, defendants have violated, and continue to violate, plaintiffs' right to habilitation as guaranteed by the due process clause of the Fourteenth Amendment to the United States Constitution, 42 U.S.C. 1396 et seq., 42 C.F.R. §§442.400 et seq., 42 U.S.C. 6010, and 42 U.S.C. 1983.

Second Claim

109. Plaintiffs repeat the allegations of paragraphs 1 to 108 as though the same were set forth herein at length.

110. By subjecting named plaintiffs and members of the plaintiff class to the conditions, as set forth above, and to inappropriate institutionalization which results in loss of skills and in intellectual, social, emotional, and physical regression, defendants have violated, and continue to violate, plaintiffs' right to protection from harm as guaranteed by the Eighth and Fourteenth Amendments to the United States Constitution, 42 U.S.C. 6010 and 42 U.S.C. 1983.

Third Claim

111. Plaintiffs repeat the allegations of paragraphs 1 to 110 as though the same were set forth herein at length.

112. By failing or refusing, as set forth above, to provide habilitative or educational services to named plaintiffs and members of the plaintiff class in accordance with an individualized plan which includes statements of individual skills and needs based upon appropriate professional assessments, specifications of long-term goals and short-term interim objectives stated in behaviorally measurable terms, descriptions of programs

and services to be provided and assignment of specific responsibilities for their provisions, specifications of evaluation criteria for determining the effectiveness of such programs and services, and statements of criteria and projected dates for movement to less restrictive and more normal living and program environments, defendants are violating plaintiffs' right to individualized habilitation plans and education programs as guaranteed by the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution, 20 U.S.C. 1412(2)(B), (4), (6) and 1414(a)(5), 45 C.F.R. §§121a.340 et seq., 29 U.S.C. 794, 45 C.F.R. §§84.33(b), 84.54, 42 U.S.C. 1396 et seq., 42 C.F.R. §§442.463, 42 U.S.C. 6011, and 42 U.S.C. 1983.

Fourth Claim

113. Plaintiffs repeat the allegations of paragraphs 1 to 112 as though the same were set forth herein at length.

114. By failing or refusing, as set out above, to provide named plaintiffs and members of the plaintiff class, during the period prior to their 21st birthday, with a free appropriate program of special education and related services designed to meet their individual needs, defendants have violated, and continue to violate, plaintiffs' right to education as guaranteed by the equal protection and due process clauses of the United States Constitution, 20 U.S.C. 1401 et seq., 45 C.F.R. §§121a.1 et seq., 29 U.S.C. 794, 45 C.F.R. §§84.31 et seq., and 42 U.S.C. 1983.

Fifth Claim

115. Plaintiffs repeat the allegations of paragraphs 1 to 114 as though the same were set forth herein at length.

116. By segregating named plaintiffs and members of

the plaintiff class in an isolated institution housing only persons determined to be mentally retarded, and then failing or refusing, as set forth above, to provide an adequate level of habilitation, training, and education, defendants have violated, and continue to violate, plaintiffs' right to be free from discrimination as guaranteed by the equal protection clause of the Fourteenth Amendment, 29 U.S.C. 794 and 42 U.S.C. 1983.

Sixth Claim

117. Plaintiffs repeat the allegations of paragraphs 1 to 116 as though the same were set forth herein at length.

118. By subjecting named plaintiffs and members of the plaintiff class to inappropriate and/or overly prolonged institutionalization, and by failing or refusing, as set forth above, to provide residential placements and habilitative or educational programming in the least restrictive and most normal environment possible, defendants have violated, and continue to violate, plaintiffs' right to liberty as guaranteed by the equal protection and due process clauses of the Fourteenth Amendment to the United States Constitution, 20 U.S.C. 1412(5)(B), 45 C.F.R. §§121a.550 et seq., 29 U.S.C. 794, 45 C.F.R. §§84.34(a), (b), 84.54, 42 U.S.C. 6010(2), and 42 U.S.C. 1983.

Seventh Claim

119. Plaintiffs repeat the allegations of paragraphs 1 to 118 as though the same were set forth herein at length.

120. By failing or refusing, as set forth above, to provide named plaintiffs and members of the plaintiff class with adequate programs of habilitation, training, and education, defendants have violated, and continue to violate, plaintiffs'

right to such programs as guaranteed by Article 1, Sec. 1, of the New Jersey Constitution, N.J.S.A. 30:6D-1 et seq., N.J.S.A. 30:4-23 et seq., and N.J.A.C. 10:44-1.1 et seq.

Eighth Claim

121. Plaintiffs repeat the allegations of paragraphs 1 to 120 as though the same were set forth herein at length.

122. By failing or refusing, as set forth above, to provide to named plaintiffs and members of the class, during the period prior to their 21st birthday, with a free appropriate program of special education and related services designed to meet their individual needs, defendants have violated, and continue to violate, plaintiffs' right to education as guaranteed by Article 8, Sec. 4, of the New Jersey Constitution, N.J.S.A. 18A:46-1 et seq., N.J.A.C. 6:28-1.1 et seq., and N.J.S.A. 30:6D-5(c), and N.J.A.C. 10:44-6.2.

Ninth Claim

123. Plaintiffs repeat the allegations of paragraphs 1 to 122 as though the same were set forth herein at length.

124. By subjecting named plaintiffs and members of the plaintiff class to inappropriate and/or overly prolonged institutionalization and by failing or refusing, as set forth above, to provide residential placements and habilitative or educational programming in the least restrictive and most normal environment possible, defendants have violated, and continue to violate, plaintiffs' right to liberty as guaranteed by Article 1, Sec. 1, of the New Jersey Constitution and N.J.S.A. 30:6D-9.

Tenth Claim

125. Plaintiffs repeat the allegations of paragraphs 1 to 124 as though the same were set forth herein at length.

126. By failing or refusing, as set forth above, to provide habilitative or educational services in accordance with an individualized plan which includes the elements set forth in paragraph 112 above, defendants have violated, and continue to violate, plaintiffs' right to individualized habilitative plans and educational programs as guaranteed by N.J.S.A. 30:6D-5(c), N.J.S.A. 30:6D-10 to 12, and N.J.A.C. 6:28-1.8.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully request that this Court take jurisdiction of this matter and issue an order or orders providing as follows:

- a) Certifying this action as a class action pursuant to R. 23(a) and 23(b)(2) on behalf of the class described in paragraph 47 above;
- b) Declaring that defendants' actions and failures or refusals to act have violated, and continue to violate, plaintiffs' rights as herein alleged;
- c) Directing defendants to develop and present to the Court within 90 days a detailed plan, suitable for immediate implementation upon approval, for the provision of adequate programs of habilitation, training, and education to all members of the class, such programs to be provided in the least restrictive and most normal environment possible and in accordance with individualized habilitation plans and/or educational programs which meet legal and professional requirements. The plan to be

submitted by defendants should comply with the standards and guidelines adopted by the Court on the basis of the record established herein, and should include, where appropriate, the creation of an adequate and adequately funded network of community residences and services for members of the class;

- d) Directing defendants to develop and present to the Court within 90 days a detailed plan, suitable for immediate implementation upon approval, for the provision of a free, appropriate program with special education and related services designed to meet the individual needs of all members of the class below the age of 21 years, such programs to be provided in the least restrictive and most normal environment possible and in accordance with individualized education programs which meet legal and professional requirements. The plan to be submitted by defendants should comply with the standards and guidelines adopted by the Court on the basis of the record established herein, and should include provisions for review and appeal of evaluation, classification, program, and placement decisions and, where appropriate, for education of class members in noninstitutional settings;

- e) Enjoining all new admissions to NPI;

- f) Allowing plaintiffs to submit to the Court and to defendants in writing any objections to the plans ordered by the Court in paragraphs (c) and (d) within 60 days of plaintiffs' receipt of said plans;
- g) Convening a hearing, if necessary, on any objections to said plans that plaintiffs may raise;
- h) After such hearing, ordering immediate implementation of such plans as amended and approved by the Court;
- i) Designating an independent individual or entity, acceptable to plaintiffs herein, as responsible for overseeing and monitoring defendants' implementation of the orders of the Court and of the plans approved by the Court. Such individual or entity should be granted full access to all relevant facilities, programs, and records, and should be authorized to visit and interview all class members and all defendants' employees at reasonable times and places. Such individual or entity should further be provided with reasonable compensation, reimbursement for expenses, staff and clerical support, supplies, and office space necessary to the performance of his/her/its responsibilities, and should have the authority to recommend implementation measures to the parties and, if necessary, to the Court;
- j) Retaining jurisdiction over this matter, pending full implementation of all orders issued

and plans approved by the Court; and
k) Such other, further, or different relief
as the Court deems justified under the
premises.

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DATED: May 30, 1979