

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION

Association for Retarded Citizens of)
North Dakota; Lindley Black, by his)
father, Sidney Black; Bradley Cossette,)
by his mother, Denise Cossette; Richard)
Schneiderhan, by his mother and)
guardian, Elmira Schneiderhan; Naomi)
Jordison, by her father, Timothy)
Jordison; Kelli Moriarty, by her mother)
and guardian, Jacquelyn Moriarty; and)
Philip Dechant, by his mother and)
guardian, Lois Dechant: on behalf of)
themselves and all others similarly)
situated,)
Plaintiffs)

v.)

Civil No. _____)

✓Arthur A. Link, Governor of the State)
of North Dakota; ✓Edward Klecker, Director)
of Institutions; ✓Milton Wisland, Super-)
intendent of Grafton State School;)
✓Richard Charrier, Assistant Superintend-)
ent of Grafton State School and Chief)
Administrative Officer of San Haven)
Division; ✓Joan Griggs Babbott,)
State Health Officer and Administrative)
Officer of the Department of Health;)
✓Sam Ismir, Director of Mental Health)
and Retardation Division of Department)
of Health; ✓Darvin Hirsch, Director)
of Office of Developmental Disabilities)
of Department of Health; ✓Carroll)
Burchinal, Director of Department)
of Vocational Education; ✓Howard)
Snortland, Superintendent of Public)
Instruction; ✓Gary Gronberg, Director)
of Special Education Division of)
Department of Public Instruction;)
✓T. N. Tangedahl, Executive Director)
of Social Services Board; ✓James O.)
Fine, Executive Director of Division)
of Vocational Rehabilitation of Social)
Services Board; ✓Marcellus Hartze,)
Director of Division of Community)
Services of the Social Services Board;)
and the State of North Dakota,)
Defendants.)

COMPLAINT

I. PRELIMINARY STATEMENT.

1. This action challenges the failure of defendants to fulfill their statutory and constitutional duties to plaintiffs, present and prospective residents of the Grafton State School, located near Grafton, North Dakota, and San Haven, located near Dunseith, North Dakota. Both facilities are state operated residential institutions for mentally retarded and developmentally disabled persons. The named plaintiffs and their class allege that they have been, and continue to be, gravely harmed by their confinement at either Grafton or San Haven. The design and physical condition of the buildings at the institutions deprive plaintiffs of privacy, dignity, and a normal, home-like environment and endanger their safety. Plaintiffs are crowded into wards at locations isolated from the mainstream of society and are forced to spend their days in idleness. Psychotropic drugs and other medication are used by defendants to medicate inappropriate behaviors induced by institutionalization and as a substitute for appropriate care and programming. The staff is inadequate to protect the residents from physical harm and to provide proper habilitation and care. Confinement at Grafton and San Haven has caused the plaintiffs to regress intellectually, emotionally, socially and physically, and has prohibited them from realizing their full potential. Plaintiffs maintain that they are capable of living in a less restricted atmosphere in the community and that,

despite plans to develop the needed community placements, defendants have failed to establish or maintain appropriate residences and programs outside the institutions.

2. Plaintiffs therefore seek a declaration that their constitutional and statutory rights have been and continue to be violated by the actions and omissions of defendants, and further, plaintiffs seek an injunction requiring: (1) immediate cessation of defendants' harmful and illegal practices; and (2) the creation and monitoring of community residences, programs and services necessary to replace the existing institutions and to meet the needs of the plaintiffs and their class for habilitation and care in the community, and to protect them from harm and loss of skills or potential.

II. JURISDICTION

3. This action arises under the First, Fourth, Fifth, Eighth, Ninth, and Fourteenth Amendments to the Constitution of the United States; the Rehabilitation Act of 1973, 29 U.S.C. §794; the Developmentally Disabled Assistance and Bill of Rights Act, 42 U.S.C. §6001 et seq; the Education for All Handicapped Children Act of 1975, 20 U.S.C. §1401 et. seq.; and 42 U.S.C. §1983.

4. Jurisdiction is conferred upon this court under 28 U.S.C. §1331, §1342(3),(4), and §1337. The amount in controversy exceeds \$10,000.00, exclusive of interest and costs as to each named plaintiff and each member of the class. The declaratory and injunctive relief prayed for in this

action is authorized by 28 U.S.C. §2201 and §2202, and by Rules 57 and 65 of the Federal Rules of Civil Procedure. This court has jurisdiction over the state claims made herein by reason of its 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 defendants are enjoined and restrained as prayed for below. There is no adequate remedy at law.

III. PLAINTIFFS

ASSOCIATION FOR RETARDED CITIZENS OF NORTH DAKOTA

6. The Association for Retarded Citizens of North Dakota (hereinafter "ARC") is a non-profit corporation which was incorporated in the State of North Dakota in 1957. Its principal offices are located at 1223 South 12th Street, Bismarck, North Dakota. The purpose of ARC is to promote the welfare of mentally retarded children and adults in the State of North Dakota.

7. ARC is an organization of approximately 1200 parents and guardians of mentally retarded citizens, mentally retarded citizens themselves, mental retardation professionals and other concerned citizens. These members include mentally retarded persons who are confined at Grafton and San Haven and the parents, guardians, relatives and next friends of persons who are confined at Grafton and San Haven. ARC has, for many years, been a prominent advocate for mentally retarded and developmentally disabled citizens. ARC has communicated its concern to the defendants as to

the lack of care and services and over the lack of appropriate community based alternatives for the residents of the institutions.

LINDLEY BLACK

8. Plaintiff Lindley Black is a ten year old mentally retarded person who has also been diagnosed as having congenital hydrocephalus with a resulting seizure disorder. Lindley has resided at Grafton since January 4, 1978. He brings this action through his father, Sidney W. Black of Fargo, North Dakota.

9. Lindley was placed at Grafton because his family could no longer care for him at home without the help of community programs and support services. Lindley's family would prefer to have Lindley with them in Fargo, but because appropriate services were not provided for Lindley, the family was forced to place him at Grafton.

10. Upon admission to Grafton, Lindley was placed on evaluation status. His evaluation status was not changed to a regular admission status until December 26, 1979. During the interim, Lindley was deprived of even minimal services simply because of his status.

11. Since his status has been changed to a regular admission status, Lindley is deprived of other services. He is not provided with sufficient hours of class time, physical therapy or speech therapy, and is left without meaningful activity for most of the day. Consequently, Lindley has physically and psychologically regressed since being admitted to Grafton. His vocabulary has diminished, he can no longer recognize his father, although they were formerly quite close, and he is no longer toilet trained.

12. Lindley has received a number of medications while at Grafton. Recently, his medication dosages were "experimented with". As a result, his seizures have gone from controlled and mild to uncontrolled and severe. In August of 1980, Lindley's seizures became so severe that he had to be hospitalized. Prescribed dosages of medication varied between the bottle labels, the records on Lindley's ward and his medical records. Further, medications on his ward are dispensed by ward attendants, with minimum supervision from a charge aide.

13. Lindley was hospitalized on another occasion when he severely burned his feet in scalding water. He was swimming along with many other children. Only two ward attendants were present to supervise the activity. A hot water hose used to warm the pools was left running, and Lindley wandered over to the water and stood in it until his feet were burned. The attendants, apparently preoccupied with the numerous other children in their care, did not prevent him from harm, nor were they able to rescue him before severe burning took place.

14. Since being confined at Grafton, Lindley has not been protected from harm and abuse. He has not been provided with adequate education or habilitation. He has been deprived of regular family contact and has consistently regressed since being institutionalized. If Lindley continues to be subjected to the deprived environment, lack of programming and inadequate staffing, he will continue to regress and will be unable to learn skills necessary for him to live in a less restrictive environment.

BRADLEY COSSETTE

15. Bradley Cossette is a 26-year-old individual with cerebral palsy. His mother has been told by a physician that his brain is also deteriorating, and he suffers from retardation.

16. Bradley is currently living with his family, who attend to his needs and care. Much difficulty arises because Bradley should have constant supervision. Both parents must work in order to meet the financial expenses of a seven-person household.

17. No community facilities or services are available for Bradley's care during daytime hours when his parents must be at their jobs. His mother has had to cut back her working time to three days per week in order to be with Bradley. On other occasions, Bradley's siblings see to his care. Bradley could exist indefinitely in the community if day care services were available to his family.

18. From ages 13 to 18, Bradley was confined to the state school in Grafton because the pressures of a growing family and the lack of community alternatives made it impossible for his parents to give him the kind of care he needed. Bradley was most unhappy at Grafton because of the conditions there, and because he was away from his family. He is adamant about not returning to the Grafton state school.

19. With family and financial pressures, it is likely that Bradley will have to return to Grafton if community alternatives are not developed for individuals in Bradley's position.

RICHARD SCHNEIDERHAN

20. Plaintiff Richard Schneiderhan is a 34 year old person who suffers from mental retardation and Down's Syndrome. He brings this action through his mother, Mrs. Elmira Schneiderhan.

21. When Richard was an infant, his mother was advised by physicians to institutionalize her son. She refused at that time to institutionalize him in the Grafton State School because of the conditions there, and he has spent his 34 years at home. During the time he was growing up, there were no special education programs and no community facilities or other programming available to him. There are still no facilities or programs in the community appropriate to Richard's needs.

22. Richard currently lives with his mother, who enjoys his company and wishes to keep him at home rather than send him to the Grafton State School, which is the only available facility appropriate to his needs. She is concerned that he would feel abandoned, frightened, and confused there, since he has spent his life in a loving, tranquil, and home-like environment. Richard's mother is most concerned about his eventual placement, since she is 75 years old and will not always be able to see to Richard's care.

23. Richard is also in need of community daytime activities which are currently unavailable to him because of a lack of transportation. Richard's mother does not have a car, and no transportation is provided to get to the one day time activity center in Fargo.

24. Richard is threatened by institutionalization at Grafton. He is also in need of community-based education and programming services that are not now adequately provided by defendants.

NAOMI JORDISON

25. Plaintiff Naomi Jordison is a four year old physically and mentally disabled child who brings this action through her parents, Timothy and Ilona Jordison.

26. As an infant Naomi suffered from Hylas Membrane Disease and has cerebral palsy. Naomi cannot walk, cannot sit up, cannot feed or dress herself, and is not toilet trained. She communicates principally through gestures, but can vocalize.

27. The Vineland test, administered at age three, suggests that Naomi's functioning intellectual ability is at a profoundly retarded level.

28. Before moving to North Dakota with her family in August, 1980, Naomi was enrolled in a pre-school program for ages three years to six years in Sheldon, Iowa. Through that program Naomi regularly saw a physical therapist and a speech clinician, and had an individualized educational program. Naomi thrived in the pre-school setting.

29. No comparable pre-school services are available to Naomi in her community of Wahpeton, North Dakota, and she is currently without the stimulation of the social environment of a classroom or activity center. One time per week a staff member from Southeast Mental Health Center in Fargo, provides in-home service to Naomi for approximately one hour. No community-based programs or activity centers are available for her.

30. Naomi has no speech therapist, physical therapist, or special education teacher. Also, Naomi may be hearing-impaired, and needs an expensive ERA brainwave test, which the family

cannot afford, to determine the extent of that impairment. Her family takes her once a week to Fargo where she sees a private occupational therapist at the cost of \$30.00 per hour, approximately a third of which is not covered by Naomi's Medicaid insurance. No reimbursement is received by Naomi's parents for the considerable transportation expenses involved.

31. Community services are imperative to continue early stimulation, promote Naomi's development and prevent regression. The burden of Naomi's care upon her family is great. Her father is a full-time student and her mother must work full-time at a Stop-N-Go store to assist in meeting family expenses. Naomi, however, is very attached to her parents and younger sister, as they are attached to her. She is a happy child, and her parents do not wish to send her to the Grafton state school or San Haven. Because of her mental and medical disabilities, however, one of those institutions would be the likely out-of-home placement for her.

KELLI MORIARTY

32. Plaintiff Kelli Moriarty is a 21 year old mentally retarded person who has been confined at Grafton since September of 1978. She brings this action through her mother, Jacquelyn Moriarty.

33. During her confinement at Grafton, Kelli has been the victim of physical abuse. In July of 1979, Kelly was hospitalized as a result of a blow delivered by another resident. Her cheek was swollen and infected, and her life was endangered at that time.

34. Upon returning to Grafton, Kelli suffered cuts and bruises from a variety of "accidents". She required stitching

to close the cuts several times in the months following July of 1979. Defendants failed to adequately supervise Kelli, thereby allowing such "accidents" to take place. The staff at Grafton is inadequate in number and training to prevent such "accidents".

35. Kelli has been shifted from ward to ward within the institution. Her mother has requested that she not be moved, and if she is to be moved, her mother has requested advance notice of such a move. Despite the request, no advance notice has been provided. Kelli is being deprived of friendships and associations contrary to her wishes.

36. Kelli becomes highly nervous and periodically hyperventilates while in the institution. However, while outside the institution, Kelli's anxiety subsides and she is able to engage in more normal activity. Inside the institution, Kelli, according to defendants, continues to regress.

37. Confinement at Grafton has deprived Kelli of regular contact with her family. Kelli's mother resides in Williston. Since each visit entails an exhausting drive and great expense, Kelli's mother is unable to visit as often as is needed. Despite the foregoing, Kelli remains institutionalized at Grafton because defendants have failed to establish other community programs and services.

PHILIP DECHANT

38. Philip Dechant was a normal child until he contracted tubercular meningitis which resulted in cerebral palsy brain damage and retardation. Philip is confined at the Grafton state school and has become a ward of the state. He brings his action through his mother, Lois Dechant.

39. Philip has been deprived of friendships and freedom of association while at Grafton. At one point during his confinement at Grafton, Philip was transferred from his regular ward to Wylie Hall, a ward for more severely disturbed handicapped individuals. The transfer was made without parental consultation or consent.

40. Philip was also deprived of his right to liberty while at Grafton. He was kept in a restraining or "time-out" room without any explanation being provided to his parents. Further, because of staff shortages and the demands of other residents, Philip was tied into a wheel chair. As a direct result of this unnecessary restraint Philip has, over a period of time, lost his ability to walk.

41. Philip has also been denied his right to adequate treatment. When he was transferred out of Wylie Hall, he did not regain his ambulatory abilities because of an insufficient number of and inadequately trained physical therapy personnel. Many of the facilities needed to train Philip to walk again were not provided. Philip's father therefore contacted various private organizations in his community and raised the money needed to purchase a parallel bar platform for Philip and other Grafton residents. However, adequate facilities and a sufficient number of adequately trained physical therapists are still not present at Grafton and Philip remains unable to walk.

IV. DEFENDANTS

42. Arthur A. Link is the Governor of the State of North Dakota and as such is chief executive planning and budget officer with responsibility for evaluating agency budget requests and submitting a recommended budget to the legislature pursuant to the general executive power granted under North Dakota Constitution, Art. III, §71. Defendant Link is also charged with the responsibility of supervising the official conduct of all executive and ministerial officers pursuant to N.D.C.C. §54-07.01.

43. Edward Klecker is the Director of Institutions for the State of North Dakota and as such has full power to manage, control and govern the Grafton state school and the San Haven division pursuant to N.D.C.C. §54-23-01. Defendant Klecker is required by N.D.C.C. §54-23-09, to make rules and regulations for the administration, supervision and management of the institutions. Mr. Klecker is also required to investigate and report to the governor any abuses of wrongs alleged to exist in the institutions under N.D.C.C. §54-23-17. The director of institutions is authorized by N.D.C.C. §54-23-23 to compel the superintendent to provide adequate protection against fire. Mr. Klecker is appointed by the governor pursuant to N.D.C.C. §54-21-06.

44. Dr. Milton Wisland is the Superintendent of Grafton state school. The superintendent of the Grafton state school also serves as superintendent of San Haven pursuant to N.D.C.C. §25-04.03. He is appointed by and

responsible to the director of institutions. N.D.C.C. §54-23.02. The director of institutions is required by N.D.C.C. §25-04.02 to establish trades and manual industries in order to best prepare residents for future self-support. In practice, this responsibility falls upon the superintendent. Defendant Wisland is the appointed guardian of residents whose parents do not expressly retain guardianship and of residents who have no guardian. N.D.C.C. §25-04-13.1. Dr. Wisland has hiring and firing power over employees at Grafton pursuant to N.D.C.C. §25-04-03. Prior to repeal in 1979, N.D.C.C. §25-04.1-01 granted the superintendent the power to recommend sterilization of any resident. As superintendent, Dr. Wisland is generally responsible for the care, habilitation, treatment, training and protection of all persons confined at Grafton and San Haven.

45. Richard Charrier is assistant superintendent at the Grafton state school, San Haven division, and also serves as chief administrative officer of that division. Defendant Charrier is appointed by the superintendent of the Grafton state school pursuant to N.D.C.C. §25-04.03. He is required to maintain resident records and also has hiring and firing power over employees under N.D.C.C. §25-04-03. As chief administrative officer of San Haven, Mr. Charrier is generally responsible for the care, habilitation, treatment, training and protection of all persons confined at San Haven.

46. Dr. Joan Griggs Babbott is state health officer and administrative officer of the state department of health for the State of North Dakota. She is appointed by the governor pursuant to N.D.C.C. §23-01-05. Defendant Babbott is charged

with the general responsibility of eliminating health problems pursuant to N.D.C.C. §23-01.05. That statute also requires the state health officer to promote local health services. Dr. Babbott also sits on the health council, which council is required by N.D.C.C. §23-01-03 to establish standards for the maintenance of public health and to develop and enforce standards for hospitals and related institutions which render medical care.

47. Dr. Sam Ismir is the director of the health and mental retardation division of the department of health, which division was created pursuant to N.D.C.C. §23-01-07(10), and N.D.C.C. §25-10-01. Defendant Ismir, pursuant to N.D.C.C. §25-10-01(5), is to assist in providing rehabilitation services for the mentally retarded and pursuant to N.D.C.C. §25-10-05, is to supervise mental health and retardation units established pursuant to N.D.C.C. §25-12, et.seq.

48. Dr. Darvin Hirsch is the director of the office of developmental disabilities and is executive director of the developmental disabilities council, both entities created pursuant to N.D.C.C. §23-01-07(10), as part of the department of health. Defendant Hirsch is responsible for licensing and purchasing services from mental health and retardation units created pursuant to N.D.C.C. §25-12, et.seq., and for implementing suitable programs under Public Law 95-602.

49. Carroll Burchinal is the director of the department of vocational education, which department was created pursuant to N.D.C.C. §15-20.1 et.seq. Defendant Burchinal is charged with the responsibility of providing vocational rehabilitative programs, departments, schools and classes

for mentally retarded and developmentally disabled persons in North Dakota, regardless of whether such persons are institutionalized. Mr. Burchinal is appointed to his position by the State Board of Public School Education pursuant to N.D.C.C. §15-20.1-02.

50. Howard Snortland is the superintendent of public instruction for the State of North Dakota. He is an elected official pursuant to N.D.C.C. §15-21-01. Defendant Snortland is the general supervisor of schooling in North Dakota. Defendant Snortland is charged with the responsibility of maintaining free, open and accessible education by Section 147, North Dakota Constitution, and N.D.C.C. §15-47-01.

51. Gary Gronberg is the director of the special education division of the department of public instruction. He is appointed by the superintendent of public instruction pursuant to N.D.C.C. §15-59-03. Defendant Gronberg, under N.D.C.C. §15-59-05, is charged with the responsibility of coordinating all available services to ensure a cooperative special education program designed to educate those whose educational needs are not adequately provided for through the usual facilities and services provided by the State of North Dakota.

52. T.N. Tangedahl is the executive director of the social service board of the State of North Dakota. He is appointed by the governor pursuant to N.D.C.C. §50-06-02. Defendant Tangedahl is granted general powers relating to the social needs of North Dakotans pursuant to N.D.C.C. §50-06-05.1. The department of social services is also authorized to funnel various federal and state monies into state programs for the mentally retarded and developmentally disabled.

53. James O. Fine is the executive director of the division of vocational rehabilitation for the State of North Dakota. The social service board is generally responsible for vocational rehabilitation under N.D.C.C. §50-06.1-04, but this responsibility has been delegated to defendant Fine. Specifically, defendant Fine is required under N.D.C.C. §50-06.1-06 to provide vocational services to any disabled individual, provided only that rehabilitation can be "satisfactorily achieved".

54. Marcellus Hartze is the director of the community services division of the department of social services. Defendant Hartze is required to establish and monitor community alternatives to institutionalization. Defendant Hartze is also authorized to fund community alternatives through disbursement of state and federal funding.

V. CLASS ACTION ALLEGATIONS.

55. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, plaintiffs bring this suit on behalf of themselves and all other persons who now, or in the future, may be confined at either Grafton or San Haven.

56. The prerequisites to a class action enumerated in Rule 23(a) of the Federal Rules of Civil Procedure are satisfied in this case:

A. The class is so numerous that joinder of all members is impractical. Plaintiffs estimate that the class is greater than 1100 persons, which is the approximate population of Grafton and San Haven, and includes an undetermined number of people who in the future may be institutionalized at Grafton or San Haven.

B. There are substantial questions of law and fact presented in this action which are common to all members of the class. The questions of law and fact common to the entire class and to the claims of each plaintiff include:

- (i) Are the conditions at Grafton and San Haven as alleged?
- (ii) Have defendants failed to provide plaintiffs with services in the setting which is least restrictive of their liberty and most integrated into the community?
- (iii) Does the defendants' failure to provide (a) protection from harm; (b) adequate habilitation, care and treatment; (c) a humane and safe living environment; (d) educational service to school age children; (e) placement in a setting least restrictive of personal liberty; (f) dignity and freedom of travel and association; (g) generic and community services; (h) privacy, dignity and freedom of thought and association; and (i) benefits under and lack of legislative programs, violate plaintiffs' constitutional and statutory rights as alleged herein?

C. The claims of the plaintiffs are typical of the claims of the class and predominate over any questions affecting only individual members.

D. The named plaintiffs are all in need of safe, decent and humane treatment, as well as adequate habilitation and community-based residential facilities and services. They will fairly and adequately protect the interest of the class, and, in supporting their own claims, will simultaneously advance the claims of the other members of the class. The named insitutionalized plaintiffs will fairly represent the broad spectrum of types of mental and physical handicaps found within the class.

57. Plaintiffs bring this action under Rule 23(b) (1) of the Federal Rules of Civil Procedure because the prosecution of separate actions by individual members of the class would create a risk of adjudication of issues which would be dispositive of the interests of other members of the class not parties to the litigation. The prosecution of separate actions would also create a risk of varying or inconsistent adjudications with respect to individual members of the class, which would establish incompatible standards of conduct for defendants. Plaintiffs also bring this action under Rule 23(b)(2) of the Federal Rules of Civil Procedure because defendants have acted or refused to act on grounds generally applicable to the class as a whole. Defendants have denied to the class adequate habilitation, care and services, safe, decent and humane treatment, and community residential facilities and services. Final injunctive relief or corresponding declaratory relief with respect to the class as a whole is therefore appropriate.

VI. FACTUAL ALLEGATIONS.

A. THE GRAFTON STATE SCHOOL INCLUDING THE SAN HAVEN DIVISION: THE INSTITUTION, ITS RESIDENTS AND PURPOSES.

58. The Grafton state school is a residential institution owned and operated by the State of North Dakota. It is located in Walsh County near Grafton, North Dakota, and serves the mentally retarded and the developmentally disabled persons in the State of North Dakota. San Haven is a division of the Grafton state school. It was created as a treatment

center for tuberculosis pursuant to N.D.C.C. §25-05-01 in 1909. In 1973, it was absorbed as a division of the Grafton state school to provide additional care facilities for the mentally retarded and physically disabled in the State of North Dakota.

59. The Grafton state school began operation in 1904 under the name " North Dakota Institution for the Feeble Minded". The goals of the institution are:

(1) To provide pre-vocational and social training so that appropriate residents can be placed into community settings;

(2) To prevent or avoid institutionalization of individuals who can be more appropriately served in community-based programs;

(3) To provide programs and education and training to enhance the adaptive behavior and social responsiveness of those residents who will spend a prolonged period of time at the institution; and

(4) To serve as a multi-disciplinary evaluation resource for individuals who require extensive evaluations and to provide community agency evaluations.

60. Its statutory purpose is to provide for the relief, instruction, care and custody of the mentally deficient of the State of North Dakota. See N.D.C.C. §25-04-02.

61. San Haven is located in Rollette County near Dunseith, North Dakota. Admission to San Haven is only upon transfer from Grafton state school. There are now approximately 200 residents at San Haven.

62. The defendants are responsible for providing care, habilitation, and education to the mentally retarded and developmentally disabled residents of the Grafton state school and San Haven division.

63. Approximately 800 mentally retarded persons are confined at Grafton, many are multiply handicapped, with physical disabilities in addition to mental retardation. Many suffer from epilepsy, emotional disturbances, or cerebral palsy. Some are autistic. Many are confined to wheel chairs or are bedridden. Many require medical attention.

64. Mental retardation is an impairment in intellectual functioning and adaptive behavior which is often described as an educational problem. All mentally retarded persons are capable of some development and learning and, despite their lower intellectual level, mentally retarded persons have the same human feelings and emotions as other citizens.

65. Habilitation is the process of learning and maintaining the self-care and self-support skills which enable each individual to achieve the maximum degree of independence his capacity permits. Appropriate habilitative services include medical and psychological treatment, speech and physical therapy, and structured programs of education, training and basic skills ranging from dressing, cleaning, toileting, and feeding oneself to reading, writing, vocational skills, money management and the use of transportation. Adequate habilitation can be achieved only in an environment which is conducive to learning and growth and which puts the skills to use as they are learned. The environment must be open and stimulating and must restrict personal liberty as

little as each individual's condition permits. The "normalization" principle adopted by professionals who work with mentally retarded persons teaches that the lives of mentally retarded individuals should reflect normal community experiences to the maximum extent their handicap permits.

66. N.D.C.C. §15-34.1-02 requires mentally deficient persons between the ages of seven and twenty to attend Grafton state school. Despite this requirement, adequate schooling is not provided. The superintendent of the Grafton state school routinely accepts the role of guardian of the residents of the school pursuant to N.D.C.C. §25-04-13.1 without providing minimally adequate care, habilitation or education. The State of North Dakota has the highest per capita rate of institutionalization of the mentally retarded in the United States. However, as of June 30, 1978, North Dakota ranked fiftieth (50th) in funding for each institutionalized resident with a per diem cost of slightly over \$22.00 for each resident. For comparison purposes, Alaska is rated first with a per diem of \$116.05 for each resident. Minnesota's per diem was \$52.50/resident and Wisconsin expended \$69/resident. The problem of inadequate funding, in light of clear statutory and constitutional mandates, is sufficiently serious to require this court to invoke its jurisdiction.

B. PHYSICAL PLANT.

67. The grounds and the buildings at Grafton state school and the San Haven division are completely inappropriate for their current use as an institution for mentally retarded and developmentally disabled persons. The design of the buildings deprives the residents of personal privacy, dignity and an appearance of a normal, home-like environment.

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Appropriate fire detection and control facilities are noticeably absent and the lives of the residents are grossly endangered in case of fire.

68. Marked overcrowding in all resident dormitories is normal, with some beds being less than one foot apart. Rows of beds line the walls and fill most of the open space in the center of the rooms. Beds are sometimes crowded together without any type of partition, or even any space, separating them. Close contact and overcrowding is conducive to the spread of epidemic disease in addition to being violative of privacy rights.

69. Many of the residents at San Haven are forced to sleep in cribs rather than beds. Some cribs and beds are crowded into rooms with a nursing desk in the middle. Some of the cribs contain a meshed wire canopy which is designed to transform the crib into a cage. Toilet facilities are inadequate for the number of residents. Both toilet and bathing facilities are open and do not provide for the privacy of all residents.

70. Although most of the residents at San Haven are nonambulatory, many doors leading to the outside have stairs rather than ramps, thereby rendering many of the facilities inaccessible to the residents. Further, the lack of ramps, when combined with the lack of adequate fire alarm systems, presents the very real threat of a total disaster in the event of fire. This condition is also violative of North Dakota Law. N.D.C.C. §54-23-23. Nonambulatory children and adults live on the upper floors of the buildings. During a fire, the few slow moving elevators that would serve the upper floors could not be used. A majority of residents

could not be instructed to use the fire chutes because of the lack of adequate staffing. Most disabled residents would not be able to evacuate or be evacuated. Fire drills are not held regularly.

71. The walls of the day room areas at Grafton are bare cinder block or concrete, without accoustical materials. The resulting noise level can be intolerable. There are too few lamps, sofas, rugs, chairs, pictures, magazines, books or other home-like furnishings or equipment. A home-like environment is not provided for the residents.

72. Unreliable regulation of water temperature at the Grafton facility has resulted in severe second and third degree burns to residents. One death has occurred from scalding, and one severe burn occurs approximately every three months. While temperature controls are now being installed on shower and bathing facilities, residents remain exposed to scalding water from other sources.

73. Toilet facilities at both institutions are inadequate for the number of residents. Toilets are in large rooms and are open to the general ward or hall areas. Many nonambulatory residents are forced to bathe without sufficient privacy.

74. Curtaining or partitioning to provide levels of individual privacy within toilet, bathing and sleeping areas, along with sectioning of large day rooms to allow alternatives to the present mass grouping of residents would provide conceptual reinforcement to the living unit staff, and would more closely simulate a home-like environment.

75. Terrazzo floors are present in many of the resident living areas at Grafton. Such floors provide a risk of serious head injury and scalp lacerations due to falls. Falls frequently occur in patients with seizure disorders. While some floors have been carpeted, many floors remain a threat to the safety of the residents.

76. The resident bedrooms lack sufficient furniture or closets. In addition, insufficient storage space is available for the residents.

C. HABILITATION AND EDUCATION.

77. Care at Grafton state school and at the San Haven division is custodial. Habilitation and behavioral programming are severely lacking. Instead of receiving habilitative services, members of the plaintiff class spend most of their time in enforced idleness, sitting or lying in the ward areas of their residential building. As a result of insufficient activity, many residents adopt inappropriate behaviors as attention seeking devices.

78. Many residents do not receive instruction in basic life skills, such as toileting, feeding, and clothing oneself, despite the large number of residents lacking these skills who could benefit from such training. The staff is inadequate in number to provide such services.

79. The incessant boredom and lack of programming have caused many residents to lose skills they had when they came to the institution. Many who could speak no longer speak; many who could walk no longer walk. Lack of adequate habilitative services deprives the plaintiffs of appropriate

programs suited to the individual's needs and subjects them to intellectual, emotional, social and physical stagnation and to the loss of developmental potential.

80. Many residents of Grafton and San Haven have difficulty speaking or communicating. Many are thereby isolated from all meaningful human contact. Speech therapy or language training is available to only a few of the residents who need such services.

81. Nonambulatory and other physically handicapped residents are in dire need of physical therapy and exercise. As a result of defendants' failure to provide this needed therapy, many residents suffer from physical deformities, such as gross contractions, which could have been prevented or otherwise ameliorated with adequate trained staff; others are bedridden unnecessarily as a result of defendants' neglect.

82. Programming to help residents overcome behavioral problems is virtually non-existent. Many such residents are excluded from all programming because of their behavioral difficulties. The psychology department is seriously understaffed. Further, the existing psychological and physical therapy staff is not adequately trained to develop and implement programs to correct maladaptive and self-injurious behavior.

83. Vocational and rehabilitative training and services are limited to relatively few residents. Many who need these services are denied such services. Further, the vocational programs in effect fail to prepare some capable residents adequately for gainful employment. The lack of adequate staffing and community alternatives also discourages such training and community placement.

84. Many residents do not have even minimally adequate, current individualized habilitation plans that are actually carried into practice. Planning and evaluation is an essential prerequisite to adequate habilitation. The individuals confined at Grafton and San Haven are not adequately evaluated or diagnosed by defendants, either initially or periodically. Most plans remain abstract paper exercises, which neither effect nor reflect the life of an individual resident. Their habilitation plans therefore simply fail to reflect their needs. Many school age residents spend their days in idleness and boredom. Many receive no education at all. Moreover, defendants have failed even to adequately evaluate the educational needs of children at the institutions, and have failed to implement an individual education plan for each child. Most nonschool age residents have not received appropriate education in associated services and programs during their institutionalization. No education is provided for residents over the age of 22 years.

85. Adequate habilitation can only be achieved in an environment conducive to learning and growth and 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 persons capable of living and learning in a community setting, the comprehensive system of support and services is required to insure the availability and quality of appropriate residences and programs. Plaintiffs and their class are not provided habilitation in an open, stimulating environment with a minimum of restrictiveness.

Residents lack any semblance of self control over their environment which 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.

D. STAFFING

86. Staff at the Grafton state school and the San Haven division, both on the wards and on the professional level, is insufficient in number and inadequately trained to protect the residents and to provide them with appropriate habilitative care. Wards housing twenty (20) to thirty (30) severely handicapped people often have only one or two direct care staff, who necessarily spend the bulk of their time doing custodial work. Consequently, supervision of residents is inadequate, interaction between direct care staff and residents is negligible, and restraints are all too frequently used on residents in place of habilitative services.

87. Many residents have suffered actual physical harm, and all are at a risk because of inadequate staff supervision and improperly or poorly implemented procedures.

88. Some residents are tube fed. Other residents, unable to feed themselves, are spoon fed by staff members. Both types of feeding occur at a dangerously rapid rate. Most of these residents could be fed normally if adequate personnel were available to assist at meal times and staff members were trained in proper feeding techniques.

89. The medical and dental staffs at the institutions are far too small to handle the extraordinary demands placed upon them. Inadequate medical care often results from unlicensed physicians or the lack of in-house physicians attempting to serve the needs of the residents. Drugs are indiscriminately dispensed by persons who are not trained in the effects of those drugs. Registered and licensed practical nurses are employed, but are unable to provide appropriate services to the residents because they are required to service an inordinate number of residents. Further, such nurses are also required to act as ward supervisors.

90. Due in large part to a shortage of trained staff, the mentally retarded and developmentally disabled individuals confined at Grafton and San Haven are given psychotropic medication to render them easier to manage and as a substitute for appropriate habilitation. Frequently, these drugs are inappropriately prescribed by persons from the Jamestown state hospital, and are administered by Grafton and San Haven personnel without question. Such prescriptions are not periodically reviewed. These drugs may have serious detrimental physical effects on the residents, deprive them of freedom of thought, and prevent them from learning appropriate methods of interpersonal interaction.

91. Plaintiffs and other residents are the subjects not only of neglect but also of abuse, resulting in pain and suffering by the residents. Defendants, through inadequate supervision and lack of a sufficient number of staff, have failed to prevent these abuses.

92. Although the individuals confined at Grafton and San Haven spend most of their time with direct care staff, these staff members have not been adequately trained to

teach self-help or self-support skills, nor can they provide the habilitative services needed by the residents on a daily basis because of the number of residents each staff member is assigned.

93. Inadequate programming occurs because of the staff/resident ratio. When such programming is conducted, the present instrumentation is inadequate for many residents. Program planning and execution is therefore often misdirected. Further, proper programming cannot be undertaken because of the staff/resident ratio.

94. Many of the residents of Grafton and San Haven have physical disabilities. The physical therapy department at both institutions is grossly understaffed. Given inadequate staffing proper treatment simply is not possible.

95. Absenteeism runs high in the institutions, further increasing the already serious shortage of trained personnel.

96. Despite the fact that the director of institutions is required by N.D.C.C. §54-23-17 to investigate and report any abuses or wrongs alleged to exist in the institutions, such investigations and reports have not resulted in the correction of the causes of many of these abuses.

E. RESTRICTIONS ON LIBERTY

97. Unnecessary restrictions on liberty are an everyday part of the lives of the residents of Grafton state school and the San Haven division, including but not limited to, the following:

A. There is an excessive and inappropriate use of physical restraints. For example, shackles are used and a number of individuals are tied down and restrained much of the time. A time out room is routinely prescribed in lieu of adequate programming.

B. Residents are confined to their beds or to chairs because defendants fail to provide the necessary helping devices to make the residents mobile.

C. Many of the doors are inaccessible to residents, so that residents cannot enter or leave the ward without staff assistance.

D. The residents are seldom provided the assistance needed to go outside even in nice weather. The playground and outdoor facilities are seldom used.

98. Grafton state school is isolated from many of the major population centers in North Dakota. This discourages visits, depriving those residents of the emotional support of friends and family. Family and friends must often travel hundreds of miles for a visit.

99. San Haven is isolated from every major population area in the State of North Dakota. Due to geographical limitations, family involvement in resident care is compromised. Also, the use of volunteer services is limited by the geographic location and sparse local population base. The ability to recruit qualified professional persons is also limited.

100. The residents of both institutions do not have access to those generic services in the community available to other citizens. The isolation of the institutions denies residents the use of community services to meet health needs or to provide employment, recreation or transportation services.

101. Defendants do not provide an adequate program to prepare Grafton state school or San Haven residents to live outside the confines of the institutions.

102. Education occurs only on the grounds of the institution,

thereby segregating residential children from children who receive services from the public school system. No residents of the institution attend public school in the community. The institutionalized children are thereby denied friendships, associations and learning experiences with non-handicapped children, even during those parts of the educational day, such as transportation, lunch, recess, music or art which may be experienced by all students regardless of handicap.

F. LACK OF PRIVACY AND REGIMENTATION

103. Most daily functions, such as eating, waking, dressing, retiring and bathing are conducted en masse at fixed times chosen for the convenience of the institutional staff. Not only the public nature of these services, but also the manner in which these services are provided, deprives the individual residents of their privacy. Toileting and bathing become humiliating experiences for the residents because of the lack of privacy.

104. Few closets for personal possessions are available and the storage rooms that do exist are not accessible to the residents. Because of defendants' failure to provide secure storage facilities, personal items and gifts brought by parents and friends are usually lost, stolen or destroyed within a short time.

105. Residents are often moved to new ward areas without notice or consent. Consequently, they are abruptly deprived of friendships and associations which they have developed in their living units.

106. Residents are unable to secure the use of funds held in their names by defendants without complicated, time consuming procedures which effectively deny residents use of their own funds for more than minimal purchases.

107. Some residents are allowed to eat in a formal dining facility; however, some are forced to eat a majority of meals on the day area wards. Defendants thus have failed to feed some residents in a pleasant atmosphere or in a manner similar to that found in the community.

108. Irrespective of age, residents are regularly referred to by demeaning and inappropriate labels, such as, "boys", "girls", and "kids". Residents are often clothed in baggy or other inappropriate clothing which draws attention to their status as mentally retarded or developmentally disabled persons. The State of North Dakota has not provided funding to purchase sufficient and appropriate clothing.

109. Residents' complaints about the manner in which they are treated or about the oppressive environment at the institution are usually ignored.

G. NEITHER GRAFTON STATE SCHOOL NOR SAN HAVEN CAN PROVIDE MINIMALLY ADEQUATE HABILITATION.

110. The conditions and deficiencies described herein have persisted throughout the history of Grafton state school and San Haven. These institutions, because of their grossly inadequate physical facilities, their isolation from the surrounding communities, their inability to attract qualified staff, their highly restrictive and non-normalizing environment, cannot protect residents from harm and cannot provide them minimally adequate habilitation. Institutionalization at Grafton or San Haven is not necessary and is counter-productive for the habilitation, care, education and protection of most of the plaintiffs and their class. Most residents of Grafton state school and San Haven can be

discharged into the community, given adequate alternative living arrangements with access to appropriate back-up services. Plaintiffs and the class they represent remain confined at Grafton and San Haven solely because defendants have failed to establish community residences and programs for them.

111. Defendants have acknowledged that many of the residents of Grafton state school and San Haven do not need continued institutional care and should be placed in a less restrictive setting.

H. DEFENDANTS' FAILURE TO DEVELOP COMMUNITY PLACEMENTS.

112. Despite their own policies and standards, and in violation of the requirements of federal and state law, defendants have not acted to provide plaintiffs and the class they represent the necessary conditions for release to a less restrictive community environment.

113. The conditions at Grafton state school and San Haven have been brought to the defendants' attention over a period of years. Defendants have made repeated promises to remedy the problems. Despite these promises, despite written reports, plans and recommendations, conditions at Grafton state school remain unchanged.

114. In June of 1979, Dr. Steven J. Taylor, Ph.D., Assistant Professor of Special Education and Rehabilitation at Syracuse University, Syracuse, New York, submitted a report on Grafton and San Haven after touring the facilities at plaintiffs' request. Dr. Taylor concluded that Grafton's wards do not provide an atmosphere conducive to resident treatment and habilitation. He found that the size of wards precluded personal and individualized care and violated minimal professional standards of adequacy. Further, Dr.

Taylor found that the wards lacked appropriate and normalized furniture, decorations and amenities. He also found that the facilities were utterly lacking in privacy. Finally, Dr. Taylor objected to the various forms of restraint placed on the freedom of movement of Grafton residents. Dr. Taylor concluded that inadequate programming, shortages of direct care and professional staff, overcrowding, and the use of obnoxious restraining devices resulted in a denial of the residents' right to treatment, to education, to be free from harm and to humane living conditions. The suggested solution was the creation of a well planned and carefully implemented system of residential, supportive and training programs in the community.

115. The observation report of Dr. Taylor stated that the best description of San Haven division is as a "human warehouse". The report stated that residents are allowed to leave San Haven only through death. Dr. Taylor noted a variety of inadequacies in programming at San Haven and concluded that San Haven should be closed as soon as possible.

116. On February 18, 1980, the North Dakota Medical Association submitted a report on the Grafton state school at the request of defendants. The committee found that an inadequate physical plant failed to provide safety for the residents. Crowded conditions were found to hamper the development of individual programming. The committee concluded that this condition perpetuated permanent institutionalization and discouraged reduction of the patient population. Further, the committee found that the lack of adequate staff and the lack of adequate staff education have compromised the ability of the staff to improve the level of care and

to improve the level of resident functioning. The committee concluded that marked changes in the Grafton state school should be undertaken in the very near future.

117. The report offered by the North Dakota Medical Association, dated February 18, 1980, also notes the inadequacies in the programming and staffing at San Haven. The conclusion of the committee was to phase out the San Haven facility and consolidate the programs in one geographic site.

118. As early as 1964, the conditions at Grafton state school had been attacked as being violative of constitutional, statutory and basic human rights in reports submitted to defendants. Despite repeated promises and representations to the contrary, defendants have failed to create appropriate programming and community alternatives. Defendants' failure to act in light of actual and constructive notice of said conditions constitutes an intentional deprivation.

V. CLAIMS FOR RELIEF

FIRST CLAIM

119. By subjecting named plaintiffs and members of the plaintiff class to dangerous conditions, to inadequate and inhumane treatment and to inappropriate institutionalization which has resulted in a loss of skills, physical injury, 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. Section 6010, and 42 U.S.C. Section 1983.

SECOND CLAIM

120. By confining named plaintiffs and members of the plaintiff class without minimally adequate habilitation, training, education and care, and without providing the environment necessary for adequate habilitation, 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. Section 6010, and 42 U.S.C. Section 1983.

THIRD CLAIM

121. By failing to provide the named plaintiffs and the members of the plaintiff class, prior to their 21st birthday, with appropriate special educational services in the most normal setting possible after evaluation, defendants have violated and continue to violate plaintiffs' right to education as guaranteed by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, 20 U.S.C. Section 1401 et. seq., 29 U.S.C. Section 794, and 42 U.S.C. Section 1983.

FOURTH CLAIM

122. By subjecting named plaintiffs and members of the plaintiff class to unnecessary institutionalization by failing or refusing to provide residential placements and habilitative or educational programming in the community, and by conditioning the availability of services upon the surrender of their liberty, defendants have violated and continue to violate plaintiffs' right to liberty and to privacy as guaranteed by the Equal Protection and Due Process Clauses of the Fourteenth Amendment and by the First, Fourth, Fifth, and Ninth Amendments to the United States Constitution, 29 U.S.C. Section 794, 42 U.S.C. Section 6010(2), and 42 U.S.C. Section 1983.

FIFTH CLAIM

123. By segregating named plaintiffs and members of the plaintiff class in an isolated institution housing only persons determined to be mentally retarded, by segregating plaintiffs from handicapped persons living in the community, and by denying plaintiffs access to services and opportunities available to others in the community, 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 to the United States Constitution, 29 U.S.C. Section 794, and 42 U.S.C. Section 1983.

SIXTH CLAIM

124. By failing to provide plaintiffs and members of the plaintiff class with appropriate habilitation in the least restrictive, most normal environment possible; by failing to provide residential facilities and habilitation services in the community; by failing to prepare current individual habilitation plans; and by failing to designate someone responsible for the implementation of each plan, defendants have violated and continue to violate plaintiffs' rights as guaranteed by North Dakota Century Code §25-03.1-40.

SEVENTH CLAIM

125. By failing to provide plaintiffs and members of the plaintiff class dignity, privacy and humane care, freedom from physical harm, unrestricted communication and visitations, appropriate habilitation, education and care, prompt and appropriate medical care, freedom from physical and chemical

restraint, confidentiality and other fundamental human rights, defendants have violated and continue to violate plaintiffs' rights as guaranteed by North Dakota Century Code §25-03.1-40 and §54-23-23.

EIGHTH CLAIM

126. By failing, or by having failed, to provide plaintiffs and members of the plaintiff class who are or were school age with full educational opportunities appropriate to their needs, defendants have violated and continue to violate plaintiffs' right to a full free and appropriate education as guaranteed by §147, North Dakota Constitution, North Dakota Century Code §15-29-08, Public Law 94-142, and 42 U.S.C. Section 1983.

VII. RELIEF REQUESTED

WHEREFORE, plaintiffs respectfully request that this court assume jurisdiction over this matter and grant the following relief:

1. Certify this action as a class action;
2. Declare that the defendants' actions and failure or refusals to act have violated and continue to violate plaintiffs' constitutional and statutory rights as alleged herein;
3. Preliminarily and permanently enjoin defendants pursuant to standards and guidelines adopted by the court on the basis of the records established herein, to take all steps necessary to protect plaintiffs from harm while they are institutionalized at Grafton state school or San Haven division;
4. Preliminarily and permanently enjoin defendants from continuing to impose unnecessary restrictions on plaintiffs' liberty and privacy and continuing to violate plaintiffs' rights in violation of North Dakota Century Code §25-03.1-40;

5. Preliminarily and permanently enjoin defendants from threatening, harassing or terminating the employment of any state employee who provides evidence to, converses or otherwise cooperates with plaintiffs or counsel for plaintiffs because of such action.
6. Preliminarily and permanently enjoin defendants to prepare written individualized habilitation and exit plans based upon up to date individualized assessments of each resident, formulated in accordance with professional standards, and to provide for annual review thereof, with an opportunity for the individual, his next friend, guardian, or parents and advocate to be heard. Each plan should specify the type of community-based residential facility needed by that individual, services and daily programs which must be available for habilitation, education, care and treatment in the less restrictive community setting, and a target date for community placement;
7. Preliminarily and permanently enjoin defendants from discharging or transferring plaintiffs from Grafton state school and San Haven division without: (a) a complete exit plan; (b) a determination that the living environment and services will meet the resident's needs and will be provided in the least restrictive setting appropriate for that resident; (c) notice, including the notice of the information upon which the proposed placement was based, to the individual, his legal guardian, his family and his legal advocate; (d) an opportunity for the resident, his guardian and/or family to challenge the transfer through due process procedures if they object; and (e) comprehensive auditing and monitoring services that will insure the quality of each residential placement;
8. Preliminarily and permanently enjoin defendants from failing to provide plaintiffs without undue delay and in accordance with the plans in subparagraphs 9 and 10 below, a place in a small scale residential facility with appropriate habilitation and education programs, support services and an effective monitoring system;
9. Direct defendants to develop and present to the court a detailed plan, suitable for immediate implementation upon approval, for the creation of an appropriate and adequately funded network of community based residences and services and for the provision in the community of adequate programs of habilitation, training, education and care for all members of the plaintiff class in accordance with individualized habilitation plans meeting legal and professional requirements. The plan to be submitted should comply with the standards and guidelines adopted by the court on the basis of the record established herein. The

plan shall include a system of monitoring and safe guards to assure quality residential settings, adequate habilitation plans and adequate support services; provision for the appointment of a friend/advocate for each and every plaintiff and their class to assist in pursuing procedural and substantive rights as secured herein; and a plan for the training and alternative employment of institutional staff;

10. Direct defendants to develop and present to the court a detailed plan suitable for immediate implementation upon approval, for the provision of a free, open and appropriate education and related services designed to meet the individual needs of all members of the plaintiff class below the age of 21 years, or those over 21 years, who, because of the defendants' acts and omissions, have not received full educational benefits as required; such programs to be provided in the least restrictive and the most normal environment possible, and in accordance with individualized education plans which meet legal and professional requirements. The plan to be submitted by the 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 public school settings;
11. To allow plaintiffs to submit to the court in writing any objections to the plans heard by the court in sub-paragraphs 10 and 11 within a reasonable time following plaintiffs' receipt of those plans;
12. Convene a hearing if necessary on any objections to those plans plaintiffs may raise, and after such a hearing order immediate implementation of those plans as approved by the court;
13. Appoint a Special Master acceptable to plaintiffs and with sufficient qualified staff and resources, responsible for developing, overseeing and monitoring defendants' implementation of the orders of this court and of the plans approved by this court. The Master should be granted full access to all relevant facilities, programs and records and should be able to require compliance reports by defendants. The Master should also be able to visit with and interview all class members and all of defendants' employees at reasonable times and places and have the power to subpoena witnesses and take sworn testimony. The Master should be provided further with reasonable compensation, reimbursement for expenses, and should have the authority to require implementation measures and assist in settling disputes among the parties;

14. Maintain continuing jurisdiction over the action until the defendants are in full compliance with every order of this court and plans approved by this court have been fully implemented;
15. Award plaintiffs reasonable attorney fees and costs incurred in bringing this action; and
16. Grant such other relief as might be just, necessary, and appropriate to effectuate the rights of plaintiffs and their class to habilitation, education, and to care and treatment in the least restrictive setting.

Dated this 26th day of September, 1980.

Mike Williams

KAPSNER & KAPSNER
Michael J. Williams
John C. Kapsner
333 North Fourth St.
Bismarck, North Dakota 58501
(701) 258-0630

Mary Deutsch Schneider
Legal Assistance of North Dakota
15 South 21st Street
Fargo, North Dakota 58107
(701) 232-6495

Attorneys for Plaintiffs

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B/1-13