

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

UNITED STATES OF AMERICA, Plaintiff

v.

THE STATE OF NEW MEXICO; THE NEW MEXICO SCHOOL FOR THE VISUALLY
HANDICAPPED; and THE BOARD OF REGENTS OF THE NEW MEXICO SCHOOL FOR THE
VISUALLY HANDICAPPED, Defendants

COMPLAINT

The Attorney General of the United States brings this action on behalf of the United States of America, pursuant to the Civil Rights of Institutionalized Persons Act of 1980 ("CRIPA"), 42 U.S.C. § 1997, to enjoin the named defendants from depriving students enrolled at the New Mexico School for the Visually Handicapped of rights, privileges or immunities secured or protected by the Constitution of the United States and federal statutes.

JURISDICTION, STANDING AND VENUE

1. This Court has jurisdiction over this action under 28 U.S.C. § 1345.
2. The United States is authorized to maintain this action pursuant to 42 U.S.C. § 1997a.
3. The Attorney General of the United States certifies that all pre-filing requirements specified in 42 U.S.C. § 1997b have been met. The certificate of the Attorney General, appended to this complaint, is incorporated herein by reference.
4. Venue in the District of New Mexico is proper pursuant to 28 U.S.C. § 1391. All claims set forth in this Complaint arose in said District.

PARTIES

5. Plaintiff is the UNITED STATES OF AMERICA.
6. On behalf of defendant STATE OF NEW MEXICO ("State"), defendant BOARD OF REGENTS operates and governs defendant NEW MEXICO SCHOOL FOR THE VISUALLY HANDICAPPED ("NMSVH" or "School"). NMSVH, located in Alamogordo, New Mexico, is a state residential institution for the education and training of blind and visually impaired students aged five to twenty-one years. The School is an institution as that term is defined in 42 U.S.C. § 1997(1)(A) and (B)(i), (II) and (III).
7. Defendant NMSVH Board of Regents has day-to-day supervisory authority over the School.
8. Defendants are legally responsible, in whole or in part, for the operation of and conditions at NMSVH, as well as for the care and treatment of students residing in that institution.
9. At all relevant times, defendants have acted or failed to act, as alleged herein, under color of state law.

FACTUAL ALLEGATIONS

10. Defendants fail to provide students with adequate mental health care delivered by appropriately qualified staff and addressed in individualized education plans.
11. Defendants fail to provide adequate Braille education and related services.
12. Defendants fail to ensure that NMSVH has sufficient mechanisms for responding to allegations of abuse and neglect of students in order to protect students from harm.
13. Defendants fail to make appropriate determinations about the necessity for residential placement of students at NMSVH.
14. Defendant State of New Mexico has not repealed or issued a saving construction of NMSA §§ 21-5-5 and 21-5-8 which, absent a saving construction, would violate federal law insofar as they may be read to require that any student sent to NMSVH attend the School for seven years, regardless of progress made by the student and regardless of the local public school district's ability after the student's matriculation at NMSVH to provide the child with a free appropriate public education.

VIOLATIONS ALLEGED

15. The acts and omissions alleged in paragraphs 10 through 14 constitute a pattern or practice of resistance to the full enjoyment by NMSVH students of rights, privileges or immunities secured or protected by the Constitution of the United States, Section 504 of the Rehabilitation Act, 29 U.S.C. § 794; the

Individuals with Disabilities Education Act, 20 U.S.C. § 1400 *et seq.*, 20 U.S.C. § 1412(a)(5); and Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131 *et seq.*, 28 C.F.R. § 35.130, and deprive NMSVH students of such rights, privileges or immunities.

PRAYER FOR RELIEF

16. The Attorney General is authorized under 42 U.S.C. § 1997 to seek equitable and declaratory relief.

WHEREFORE, Plaintiff, the United States of America, prays that this Court enter an order permanently enjoining defendants, their agents, employees, subordinates, successors in office, and all those acting in concert or participation with them from continuing the acts, practices and omissions at NMSVH set forth in paragraphs 10 through 14 above, and that this Court require defendants to take such actions as will remedy the acts, practices and omissions set forth in paragraphs 10 through 14 above, to ensure lawful conditions to students enrolled in or residing at NMSVH. The United States further prays that this Court grant such other and further equitable relief as it may deem just and proper.

Respectfully submitted,

JANET RENO, Attorney General of the the United States
BILL LANN LEE, Acting Assistant Attorney General, Civil Rights Division

JOHN J. KELLY, United States Attorney, District of New Mexico

STEVEN H. ROSENBAUM, Chief, Special Litigation Section
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CERTIFICATE OF THE ATTORNEY GENERAL

I, Janet Reno, Attorney General of the United States, certify that with regard to the foregoing Complaint, United States v. State of New Mexico, et al., I have complied with all subsections of 42 U.S.C. § 1997b(a)(1). I certify as well that I have complied with all subsections of 42 U.S.C. § 1997b(a)(2). I further certify, pursuant to 42 U.S.C. § 1997b(a)(3), my belief that this action by the United States is of general public importance and will materially further the vindication of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States.

In addition, I certify that I have the "reasonable cause to believe" set forth in 42 U.S.C. § 1997a to initiate this action. Finally, I certify that all prerequisites to the initiation of this suit under 42 U.S.C. § 1997 et seq. have been met.

Pursuant to 42 U.S.C. § 1997a(c), I have personally signed the foregoing Complaint. Pursuant to 42 U.S.C. § 1997b(b), I am personally signing this Certificate.

Signed this ___ day of _____, 1999, at Washington, D.C.

JANET RENO Attorney General of the United States