

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF KENTUCKY**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
THE COMMONWEALTH OF KENTUCKY;	)	
Governor of the Commonwealth	)	
of Kentucky; Secretary, Cabinet	)	Civil No. _____
for Health and Family Services;	)	
Commissioner, Department of Mental	)	
Health and Mental Retardation	)	
Services, Cabinet for Health	)	
and Family Services; and Deputy	)	
Commissioner, Department of Mental	)	
Health and Mental Retardation	)	
Services, Cabinet for Health and	)	
Family Services,	)	
	)	
Defendants.	)	
	)	
_____	)	

**COMPLAINT**

PLAINTIFF, THE UNITED STATES OF AMERICA ("Plaintiff"), by its undersigned attorneys, hereby alleges upon information and belief:

1. The Attorney General files this Complaint on behalf of the United States of America pursuant to the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997, to enjoin the named Defendants from egregiously and flagrantly depriving individuals housed in the Communities at Oakwood ("Oakwood") of rights, privileges, or immunities secured and protected by the Constitution and laws of the United States.

**JURISDICTION AND VENUE**

2. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1345.

3. The United States is authorized to initiate this action pursuant to 42 U.S.C. § 1997a.

4. The Attorney General has certified that all pre-filing requirements specified in 42 U.S.C. § 1997b have been met. The Certificate of the Attorney General is appended to this Complaint and is incorporated herein.

5. Venue in the Eastern District of Kentucky is proper pursuant to 28 U.S.C. § 1391.

**DEFENDANTS**

6. Defendant Commonwealth of Kentucky owns and operates Oakwood and as such has responsibility for the services and supports provided to individuals residing at Oakwood.

7. Oakwood is a State facility for individuals with developmental disabilities.

8. Defendant Ernie L. Fletcher is the Governor of the Commonwealth of Kentucky and, in this capacity, he has responsibility for the operation of Oakwood.

9. Defendant Mark D. Birdwhistell is the Secretary of the Cabinet for Health and Family Services, which has responsibility for overseeing the operation of Oakwood.

10. Defendant John M. Burt is the Commissioner of the Department of Mental Health and Mental Retardation Services in the Cabinet for Health and Family Services, which has responsibility for overseeing Oakwood.

11. Defendant Deputy Commissioner of the Department of Mental Health and Mental Retardation Services in the Cabinet for Health and Family Services has responsibility for overseeing Oakwood.

12. The individual Defendants named in paragraphs 8 through 11 above are officers of the Commonwealth of Kentucky and are sued in their official capacity only.

#### **FACTUAL ALLEGATIONS**

13. Defendants are legally responsible, in whole or in part, for the operation of Oakwood and for the health and safety of the persons residing in Oakwood.

14. Oakwood is an institution within the meaning of 42 U.S.C. § 1997(1). Oakwood provides care to individuals with developmental disabilities.

15. Defendants are obligated to operate Oakwood in a manner that does not infringe upon the federal rights, as protected by the Fourteenth Amendment to the Constitution of the United States and by other federal law, of individuals residing in Oakwood.

16. Defendants are obligated to provide treatment, supports, and services to individuals residing in Oakwood

consistent with the Americans with Disabilities Act and implementing regulations. 42 U.S.C. § 12101 et seq., 28 C.F.R. § 35.

17. At all relevant times, Defendants have acted or failed to act, as alleged herein, under color of state law.

18. Individuals reside at Oakwood because they have been determined by Defendants to have significant developmental disabilities requiring extensive treatment, supports, and services.

19. Oakwood's supports and services substantially depart from generally accepted professional standards of care, thereby exposing individuals residing in Oakwood to significant risk and, in some cases, to actual harm.

20. Oakwood's supports and services substantially depart from generally accepted professional standards of care in the following specific respects, among others:

- a. the provision of adequate psychological and behavioral services;
- b. the provision of adequate medical, dental, and nursing services;
- c. the provision of adequate psychiatric services;
- d. the provision of adequate habilitation and therapy services, including physical therapy, occupational therapy, speech and language therapy, and other forms of therapy, physical management, nutritional

services and related services; and

- e. the provision of adequate protections from harm, including abuse and neglect, staff-on-resident harm, resident-on-resident harm, and resident self-injury.

21. Oakwood's supports and services substantially depart from generally accepted professional standards of care in the provision of sufficient numbers of adequately trained staff to render adequate treatment, supports, and services and to protect residents from harm, as outlined in paragraphs 19 and 20.

22. Defendants have failed and continue to fail to assess individuals residing in Oakwood to ascertain whether these individuals are receiving adequate treatment, supports, and services in the most integrated setting appropriate to their individual needs; that those individuals whom professionals determine should be placed in community programs are placed in such programs, when appropriate; and that these individuals are served in the most integrated setting appropriate to their needs.

#### **VIOLATIONS ALLEGED**

##### **COUNT ONE:**

#### **Violations of the Due Process Protections of the Fourteenth Amendment to the United States Constitution**

23. The United States incorporates by reference the allegations set forth in Paragraphs 1 through 22 as if fully set forth herein.

24. The egregious and flagrant acts and omissions alleged in paragraphs 19 through 21 constitute a pattern or practice that violates the federal rights, as protected by the Fourteenth Amendment to the Constitution of the United States and by other federal law, of individuals residing in Oakwood.

25. Unless restrained by the Court, Defendants will continue to engage in the egregious and flagrant acts and omissions set forth in paragraphs 19 through 21 that deprive Oakwood residents of rights, privileges, or immunities secured or protected by the Constitution of the United States and federal law, and will cause irreparable harm to these residents.

**COUNT TWO:**

**Violations of the Americans with Disabilities Act**

26. The United States incorporates by reference the allegations set forth in Paragraphs 1 through 22 as if fully set forth herein.

27. The egregious and flagrant acts and omissions alleged in paragraph 22 violate the Americans with Disabilities Act and implementing regulations. 42 U.S.C. § 12101 et seq., 28 C.F.R. § 35.

28. Unless restrained by this Court, Defendants will continue to engage in the egregious and flagrant acts and omissions set forth in paragraph 22 that deprive Oakwood

residents of rights, privileges, or immunities secured and protected by federal law, and will cause irreparable harm to these residents.

**PRAYER FOR RELIEF**

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

WHEREFORE, the United States prays that this Court enter an order:

a. Declaring that the acts, omissions, and practices set forth in paragraphs 19 through 22 above constitute a pattern or practice of resistance to Oakwood's residents' full enjoyment of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, and that those acts, omissions and practices violate the Constitution and laws of the United States; and

b. Permanently enjoining Defendants, their officers, agents, employees, subordinates, successors in office, and all those acting in concert or participation with them from continuing the acts, omissions, and practices set forth in paragraphs 19-22 above, and that this Court require Defendants to take such actions as will ensure that lawful conditions of institutionalization are afforded to Oakwood residents, including the provision of adequate treatment in the most integrated setting appropriate to their individual needs; and

c. Granting such other and further equitable relief as this Court may deem just and proper.

Respectfully submitted,

          /s/          Alberto R. Gonzales            
THE HONORABLE ALBERTO R. GONZALES  
Attorney General of the United States

Dated:           August 31          , 2006



AMUL R. THAPAR  
United States Attorney

/s/ Wan J. Kim  
WAN J. KIM  
Assistant Attorney General  
Civil Rights Division

/s/ Shanetta Y. Cutlar  
SHANETTA Y. CUTLAR  
Chief  
Special Litigation Section

/s/ Judy Preston  
JUDY PRESTON  
Deputy Chief  
Special Litigation Section

/s/ Mary R. Bohan  
MARY R. BOHAN  
Trial Attorney  
U.S. Department of Justice  
Civil Rights Division  
Special Litigation Section  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-6400  
(202) 514-6255  
(202) 514-0212 (fax)

Dated: August 31, 2006