

**IN THE UNITED DISTRICT COURT FOR THE WESTERN DISTRICT OF
TENNESSEE WESTERN DIVISION UNITED STATES OF AMERICA,
PLAINTIFF V. STATE OF TENNESSEE, DONALD SUNDQUIST, GOVERNOR
OF THE STATE OF TENNESSEE; MARJORIE NELL CARDWELL,
COMMISSIONER, TENNESSEE DEPARTMENT**

COMPLAINT

1. 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. §§ 1997-1997j, to enjoin the named Defendants from depriving persons residing at the Nat T. Winston Developmental Center, in Bolivar, Tennessee ("NWDC"), the Clover Bottom Developmental Center, in Nashville, Tennessee ("CBDC"), and the Greene Valley Developmental Center, in Greeneville, Tennessee ("GVDC") (collectively, "the Centers") of rights, privileges or immunities secured or protected by the laws and Constitution of the United States.

JURISDICTION, STANDING AND VENUE

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1345.

3. The United States has standing to maintain 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 United States District Court for the Western District of Tennessee, Western Division is proper pursuant to 28 U.S.C. §§ 1391 and 1392. This Complaint is properly filed before United States District Court Judge Jon Phipps McCalla as a related case to United States v. Tennessee, et al., No. 92-2062 MI/A. See, e.g., U.S. District Court for the Western District of Tennessee Local Rule 4(a)(2).

DEFENDANTS

6. Defendant STATE OF TENNESSEE ("State") owns and operates the Centers, institutions housing individuals with mental retardation or other developmental disabilities. Some of the individuals are also elderly and mentally ill.

7. Defendant DONALD SUNDQUIST is the Governor of the State and, in this capacity, heads the Executive Branch of the State's government and, among other duties, reviews and approves budget requests submitted by Executive Branch agencies regarding the Centers. He selects and appoints the Commissioner of the Department of Mental Health and Mental Retardation.

8. Defendant MARJORIE NELL CARDWELL is the Commissioner of the Department of Mental Health and Mental Retardation and, in this capacity, exercises administrative control of, and responsibility for, the Centers.

9. Defendant DR. A. JANE WALTERS is the Commissioner of the Department of Education and, in this capacity, exercises administrative control of, and responsibility for, educational services for school age children living in the Centers.

10. Defendant STANLEY LIPFORD is the Superintendent of NWDC, and is responsible for the administration and day-to-day operations of NWDC.

11. Defendant JULIA BRATCHER is the Superintendent of CBDC, and is responsible for the administration and day-to-day operations of CBDC.

12. Defendant ROBERT ERB is the Superintendent of GVDC, and is responsible for the administration and day-to-day operations of GVDC.

13. The individual Defendants named in paragraphs 7 through 12 above are officers of the Executive Branch of the State of Tennessee and are sued in their official capacities.

14. NWDC, CBDC and GVDC are institutions as that term is defined in 42 U.S.C. § 1997(1)(A), (1)(B)(i) and (1)(B)(v).

15. Persons residing at the Centers are individuals with mental retardation or other developmental disabilities, and some of the individuals are also elderly and mentally ill.

16. Defendants Sundquist, Cardwell, Lipford, Bratcher, and Erb are legally responsible, in whole or in part, for the operation of and conditions at the Centers, as well as the care and treatment of persons residing at those institutions. Defendant Walters is responsible, in whole or in part, for the education of the school age children living at the Centers.

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

FACTUAL ALLEGATIONS

18. Defendants have failed and are continuing to fail to provide reasonably safe conditions and to ensure the reasonable safety and personal security of the Centers' residents.

19. Defendants have failed and are continuing to fail to provide adequate medical care and related services, including psychiatric care, and physical and occupational therapy, to the Centers' residents.

20. Defendants have failed and are continuing to fail to ensure that the Centers' residents are free from undue or unreasonable restraint.

21. Defendants have failed and are continuing to fail to ensure that chemical and physical restraints are administered to the Centers' residents by appropriately qualified professionals in keeping with accepted professional standards, and are not used as punishment, in lieu of treatment, or for the convenience of staff.

22. Defendants have failed and are continuing to fail to ensure that medications are prescribed and administered to the Centers' residents by appropriately qualified professionals in keeping with accepted professional standards, and are not used as punishment, in lieu of treatment, or for the convenience of staff.

23. Defendants have failed and are continuing to fail to provide the Centers' residents with that level of individualized training and behavioral programming to ensure and protect the Centers' residents' liberty interests, including their right to training sufficient to provide each resident a reasonable opportunity to enhance functioning, to grow and develop, attain self-help and social skills needed to exercise autonomy or independence, avoid both physical and psychological regression and loss of skills, and ensure their reasonable safety, security, and freedom from undue bodily restraint.

24. Defendants have failed and are continuing to fail to provide a sufficient number of adequately trained staff to render essential care, treatment and training to individuals living at the Centers.

25. Defendants have failed and are continuing to fail to maintain professionally based recordkeeping and record review systems to ensure that resident records contain accurate, up-to-date and relevant information necessary to enable staff to provide adequate care, treatment, and training to the Centers' residents.

26. Defendants have failed and are continuing to fail to ensure that the Centers' residents are adequately evaluated for community placement, that those individual residents who professionals determine should be placed in community programs are placed in such programs, and that all residents are served in the most integrated setting appropriate to each resident's individual needs.

27. Defendants have violated and continue to violate the due process rights of the Centers' residents guaranteed under the Fourteenth Amendment to the Constitution of the United States, while arbitrarily denying the Centers' residents rights under Tennessee state law. See, e.g., Tenn. Code Ann. § 33-3-104 and § 33-5-201.

28. Defendants have failed and are continuing to fail to meet the requirements of the Individuals With Disabilities Education Act ("IDEA"), 20 U.S.C. §§ 1400-1486, by failing to educate its school-age children in the least restrictive environment appropriate to their needs, and failing to provide these children with, inter alia, appropriate, individualized education plans, and adequate related services, including physical therapy and behavioral services.

VIOLATIONS ALLEGED

29. The acts and omissions alleged in paragraphs 18 through 28 violate the rights, privileges and immunities of residents of the Centers secured or protected by the laws and Constitution of the United States, and deprive the Centers' residents of such rights, privileges and immunities.

30. Unless restrained by this Court, Defendants will continue to engage in the conduct and practices set forth in paragraphs 18 through 28 that deprive residents of the Centers of rights privileges, or immunities secured or protected by the laws and Constitution of the United States, and cause irreparable harm to the residents.

PRAYER FOR RELIEF

31. The Attorney General is authorized under 42 U.S.C. § 1997a to seek only equitable relief.

WHEREFORE, the United States 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 the Centers set forth in paragraphs 18 through 28 above, and to require Defendants to take such action as will bring Defendants into compliance with federal law and provide Constitutional conditions of care to persons who reside at the Centers. The United States further prays that this Court grant such other and further equitable relief as it may deem just and proper.

Respectfully submitted,

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