



Jl-CA-008-001

CLERK OF DISTRICT COURT
EASTERN DISTRICT OF CALIF.
AT SACRAMENTO
BY _____
DEPUTY

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11 UNITED STATES DISTRICT COURT
12 EASTERN DISTRICT OF CALIFORNIA

14 NICK O., by his mother, and Next Friend
15 JANE O., on behalf of himself and all
16 others similarly situated,

Plaintiff,

17 vs.

18 C.A. TERHUNE, in his official capacity
19 as Director of the California Youth
20 Authority; RICHARD TILLSON, in his
21 official capacity as Superintendent
of the Northern Reception Center -
Clinic,

22 Defendants.

CMS- 89-0755 RAR-JEM

Case No.

COMPLAINT
CLASS ACTION

23 I. INTRODUCTORY STATEMENT

24 1. This is a civil rights class action challenging the
25 failure of the defendants to provide appropriate special
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1 education and related services to youth confined at the Northern
2 Reception Center - Clinic (NRCC) of the California Youth
3 Authority (CYA). Plaintiff brings this action for declaratory,
4 injunctive, and other equitable relief on behalf of himself and
5 all other handicapped youth confined at NRCC.

6 2. This action is brought to redress defendants'
7 violations of federal constitutional and statutory rights. This
8 action is brought pursuant to the Civil Rights Act, 42 U.S.C.
9 §1983, the Education of the Handicapped Act (EHA), 20 U.S.C.
10 §§1401 et seq. and its implementing regulations at 34 C.F.R.
11 §§300 et seq., Section 504 of the Rehabilitation Act of 1973
12 (§504), 29 U.S.C. §794 and its implementing regulations at 34
13 C.F.R. §§104 et seq.; and the due process and equal protection
14 clauses of the Fourteenth Amendment to the United States
15 Constitution.

16 II. JURISDICTION

17 3. This court has jurisdiction of this action under 28
18 U.S.C. §1343(3), this being an action to redress the deprivation,
19 under color of state law, of rights secured by the Constitution
20 of the United States; the Civil Rights Act, 42 U.S.C. §1983,
21 Section 504 of the Rehabilitation of 1973, 29 U.S.C. §794; and
22 the Education of the Handicapped Act, 20 U.S.C. §§1401 et seq.

23 4. This court also has jurisdiction of this action under
24 28 U.S.C. §1343(4), this being an action to secure declaratory,
25 injunctive, and other equitable relief under acts of Congress
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1 providing for the protection of civil rights, specifically the
2 Civil Rights Act, §504, and the EHA.

3 5. This court also has jurisdiction of this action under
4 28 U.S.C. §1331, this being a civil action arising under the
5 Constitution and laws of the United States.

6
7 III. PLAINTIFF

8 6. Plaintiff NICK O. is 15 years old and a citizen of the
9 United States. Since April 3, 1989, he has been confined at the
10 Northern Reception Center - Clinic of the California Youth
11 Authority in Sacramento, California. Prior to his incarceration,
12 he resided in San Mateo County, California.

13 7. Plaintiff brings this action by and through his mother
14 and Next Friend, JANE O. At all relevant times, JANE O. has
15 resided in San Mateo County, California.

16 8. Plaintiff brings this action under a pseudonym in order
17 to preserve confidentiality and protect himself from harassment
18 and humiliation.

19
20 IV. DEFENDANTS

21 9. Defendant C.A. TERHUNE is the Director of the CYA. As
22 such, he is responsible for the care and treatment of wards
23 confined in institutions and facilities operated by the CYA. As
24 Director, defendant Terhune is responsible for ensuring that
25 handicapped children in the custody of the CYA receive special
26 education and related services as mandated by law. He is sued in

1 his official capacity.

2 10. Defendant RICHARD TILLSON is the Superintendent of NRCC.
3 In that capacity, he has direct supervisory responsibility for
4 the operation, management and administration of NRCC. He is
5 responsible for assuring that handicapped minors at NRCC receive
6 special education and related services mandated by law. He is
7 sued in his official capacity.

8 11. At all relevant times, the defendants have acted, and
9 continue to act, under color of state law.

10
11 V. CLASS ACTION

12 12. Plaintiff brings this action on behalf of himself and
13 all other persons similarly situated. The class consists of all
14 current and future residents of NRCC who are educationally
15 handicapped and in need of special education and related
16 services.

17 13. The class is so numerous that joinder of all members is
18 impracticable. Each year more than 1,000 youth are admitted to
19 NRCC. The average daily population of NRCC is approximately 350.
20 Upon information and belief, at least 25% of the population at
21 NRCC is handicapped and entitled to special education and related
22 services.

23 14. In addition, there are questions of law and fact common
24 to members of the plaintiff class regarding defendants' policies
25 and practices. These include (a) whether defendants' failure to
26 identify, evaluate, and assess the special educational needs of

1 all handicapped children in a timely manner, and in accord with
2 procedural safeguards, violates plaintiffs' legal rights, and (b)
3 whether the defendants' failure to provide handicapped minors at
4 NRCC with free appropriate special education and related
5 services, in accord with properly developed individualized
6 education programs (IEP's), violates plaintiffs' legal rights.
7 The claims of the named plaintiff are typical of the claims of
8 the members of the plaintiff class.

9 15. The named plaintiff and plaintiff's attorneys will
10 fairly and adequately protect the interests of the members of the
11 class. Plaintiff knows of no conflict of interest among class
12 members. Plaintiff is represented by counsel experienced in
13 civil rights class action litigation.

14 16. By their policies and practices, the defendants have
15 acted, and continue to act, on grounds and in a manner generally
16 applicable to the class, thereby making appropriate final
17 injunctive relief or corresponding declaratory relief with
18 respect to the class as a whole.

19 17. The injuries suffered by the named plaintiffs and the
20 members of the plaintiff class as a result of the policies and
21 practices of the defendants are capable of repetition, yet may
22 evade review, thereby making class relief appropriate.

23
24 VI. FACTUAL ALLEGATIONS

25 18. The CYA operates 11 institutions and 6 camps throughout
26 California. Youth are committed to the custody of CYA by

1 Juvenile and Superior Courts in the counties.

2 19. Two of the 11 institutions operated by the CYA (NRCC
3 and the Southern Reception Center - Clinic) are diagnostic and
4 assessment units for youth prior to their placement in CYA
5 institutions or camps. All youth committed to CYA for the first
6 time are initially sent to one of the two Reception Centers.

7 20. At the present time, all of the CYA institutions and
8 camps are significantly overcrowded. There are between 8,500 and
9 9,000 youth currently confined in CYA facilities designed to hold
10 5,840.

11 21. In previous years, the length of stay for testing and
12 assessment at NRCC was approximately 22 to 28 days. At the
13 present time, due to the overcrowding at the CYA institutions,
14 youth are routinely confined at NRCC in excess of 30 days. Some
15 youth are confined at NRCC for up to six months.

16 22. There is no special education program or related
17 services available for youth confined for evaluation and
18 assessment at NRCC.

19 23. The defendants routinely fail to identify and assess
20 special educational needs, properly develop individualized
21 education plans.

22 24. Defendants fail to properly implement individualized
23 education plans and provide special education and related
24 services to handicapped youth in a timely fashion.

25 25. Since April 3, 1989, NICK. O. has been confined at
26 NRCC.

1 26. NICK O. has a long history of placement in special
2 education programs. In 1981, when he was eight years old and in
3 the third grade, NICK O. was certified as eligible for special
4 education by the San Francisco Unified School District. He was
5 classified as seriously emotionally disturbed (SED). An IEP
6 describing his special educational needs was developed. For the
7 next several years NICK O. was continually identified as eligible
8 for special education. In 1987, his family moved to San Mateo
9 County and NICK O. began receiving special education services
10 there. In 1988, NICK O. was confined in Hillcrest Juvenile Hall
11 and Camp Glenwood in San Mateo, and a new IEP was developed on
12 March 21, 1988.

13 27. NICK O.'s academic functioning is severely delayed.
14 Also, his emotional problems interfere with his ability to
15 benefit from an education. He has been classified as seriously
16 emotionally disturbed since 1981. NICK O. is handicapped within
17 the meaning of the EHA and §504.

18 28. Since his confinement at NRCC, the defendants have
19 failed to provide NICK O. any special education and related
20 services designed to meet his needs. The defendants have not
21 developed an IEP for NICK O. Upon information and belief, no IEP
22 planning conference for NICK O. has been scheduled or held. NICK
23 O.'s mother has not been notified about any IEP planning
24 conference at NRCC and has not attended any such conference.

25 29. NRCC personnel have not implemented any IEP's or other
26 educational plans for NICK O. from any of his prior schools of

1 attendance. As a result, NICK O. has not had continuity in his
2 special educational program.

3 30. Since NICK O. has been at NRCC, neither NICK O. nor his
4 mother have been informed about the rights of handicapped
5 children to procedural safeguards and a free appropriate public
6 education.

7 31. Defendants know or should know that their actions,
8 omissions, policies and practices fail to comply with the
9 requirements of federal law. Pursuant to Cal. Educ. Code §56475,
10 the CYA has a longstanding interagency agreement with the
11 California Superintendent of Public Instruction to provide
12 special education and related services to individuals with
13 exceptional needs as mandated by federal and state law. The CYA
14 is a "local education agency" as that term is used in 20 U.S.C.
15 §1401(8) and a "public agency" as that term is used in 34 C.F.R.
16 §§300.2 and 300.11.

17 32. In October, 1986, in response to an administrative
18 complaint, the Office for Civil Rights of the United States
19 Department of Education found the CYA in violation of federal law
20 for its failure to properly identify educationally handicapped
21 youth or to provide special education and related services at the
22 Southern Reception Center - Clinic. The California State
23 Department of Education made a similar finding in May, 1986. In
24 response to these findings, the CYA agreed to take remedial
25 action at both the Southern Reception Center - Clinic and NRCC.

26 33. In November, 1988, the California State Department of

1 Education conducted a compliance review of NRCC and cited the
2 defendants for multiple violations of their legal obligation to
3 provide special educational services, including failure to
4 develop and write assessment plans in a timely manner, in
5 violation of 34 C.F.R. §§300.530-534, 543; failure to develop
6 proper IEP's in a timely manner, in violation of 34 C.F.R. §§343,
7 346; and failure to provide appropriate special education and
8 related services to eligible youth at NRCC, in violation of 34
9 C.F.R. §§300.1 et seq.

10 34. Exhaustion of any administrative remedies would be
11 futile in this matter. Plaintiffs allege that defendants
12 routinely fail to provide required procedural safeguards in a
13 timely manner and fail to provide any special education program
14 or related services at NRCC.

15 VII. LEGAL CLAIMS

16 35. For plaintiff's legal claims, they reallege paragraphs
17 1 through 34 above, as is fully set forth herein, and further
18 allege:

19 FIRST CLAIM

20 36. Defendants' policies, practices, acts, and omissions
21 complained of herein, and in particular defendants' failure to
22 properly identify, evaluate, and assess special educational needs
23 and develop IEP's in a timely manner deprive plaintiff and the
24 class he represents of rights guaranteed to them by the EHA,
25 §504, and the due process and equal protection clauses of the
26 Fourteenth Amendment to the United States Constitution.

1 SECOND CLAIM

2 37. Defendants' policies, practices, acts, and omissions
3 complained of herein, and in particular defendants' failure to
4 provide any special education or related services at the
5 California Youth Authority's Northern Reception Center - Clinic,
6 deprive plaintiff and the class he represents of rights
7 guaranteed to them by the EHA, §504, and the due process and
8 equal protection clauses of the Fourteenth Amendment to the
9 United States Constitution.

10 PRAYER FOR RELIEF

11 WHEREFORE, plaintiff prays that this court:

- 12 A. Assume jurisdiction over this action;
- 13 B. Permit this plaintiff and his mother as Next Friend to
14 proceed in pseudonym;
- 15 C. Certify this action as a class action pursuant to Rules
16 23(a) and (b)(2) of the Federal Rules of Civil Procedure;
- 17 D. Issue a declaratory judgment declaring that defendant's
18 actions, omissions, policies and practices violate rights
19 guaranteed to plaintiff and members of the class by the EHA,
20 §504, and the equal protection and due process clauses of the
21 Fourteenth Amendment to the United States Constitution;
- 22 E. Issue preliminary and permanent injunctions prohibiting
23 defendants from confining any plaintiffs in any facilities
24 operated by the California Youth Authority or, in the
25 alternative, issue preliminary and permanent injunctions
26

1 restraining and prohibiting defendants from confining any
2 plaintiffs in any facilities operated by the California Youth
3 Authority unless and until defendants:

4 (1) identify, evaluate and assess the special
5 educational needs of all handicapped children and develop
6 appropriate IEP's in a timely manner and in accord with
7 procedural safeguards.

8 (2) provide handicapped minors at NRCC with free
9 appropriate special education and related services in accord with
10 properly developed individualized education programs.

11 F. Order the defendants to develop and implement a plan for
12 remediation of the unlawful policies, practices, acts, and
13 omissions complained of herein, and to submit this plan to the
14 court and to the attorneys for plaintiffs for their review.

15 G. Appoint a special master to review and insure
16 implementation of the plan submitted by defendants and to protect
17 the rights of plaintiffs during the pendency of this action.

18 H. Retain jurisdiction over this action until
19 implementation of this Court's decree has been completed.

20 I. Award plaintiff's attorneys fees and costs of this
21 proceeding, pursuant to 42 U.S.C. §1988, 29 U.S.C. § 794 (a), and
22 20 U.S.C. §1415.

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J. Issue such other and further relief as this Court may
deem just and proper.

DATED: May 25, 1989

BY: Loren M. Warboys
Loren M. Warboys
Attorney for Plaintiff