

IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF SOUTH CAROLINA
 COLUMBIA DIVISION

RICKY S., CHRISTOPHER M.,)
 ALFRED S., BENNY B.,)
 ALEXANDER S. and LAFAYETTE M.)
 by and through their Guardian)
Ad Litem, INEZ MOORE)
 TENENBAUM, individually and as)
 representatives of a class of)
 juveniles,)

Plaintiffs,)

vs.)

RICHARD E. MCLAWHORN,)
 individually and officially)
 in his capacity as)
 COMMISSIONER OF THE)
 DEPARTMENT OF YOUTH SERVICES)
 FOR THE STATE OF SOUTH)
 CAROLINA; JOHN F. HENRY,)
 FRANK MAULDIN, KATHLEEN P.)
 JENNINGS, JOSEPH W. HUDGENS,)
 KAROLE JENSEN AND J. P. NEAL,)
 individually and officially in)
 their capacities as BOARD)
 MEMBERS FOR THE SOUTH)
 CAROLINA DEPARTMENT OF YOUTH)
 SERVICES,)

Defendants.)

Civil Action No. 90-3062

AMENDMENT TO COMPLAINT
 PURSUANT TO RULE 15(a), F.R.C.P.

RECEIVED
 CLERK'S OFFICE
 JAN 23 9 21 AM '91
 U.S. DISTRICT COURT
 COLUMBIA, S.C.

NOW COME the above-named minor Plaintiffs by and through their Guardian Ad Litem and attorneys, pursuant to Rule 15 of the Federal Rules of Civil Procedure, and amend their Complaint. No Answer has been filed in this matter; therefore an amendment as a matter of right, pursuant to Rule 15(a), is appropriate.

Plaintiffs hereby reassert and reallege all matters set forth in their original Complaint as though that Complaint were now reprinted verbatim. Additionally, Plaintiffs would add the following language after paragraph 21(h):

21(i) Programs -- The class is informed and believes that DYS fails to provide programs, provides substandard programs, or fails to insure access to existing programs, in Education, Vocational Education, Special Education, Social Programs, Recreational Programs, Library and Cultural Programs, Visitation Programs, and Religious Programs. The absence, poor quality, or lack of access to these programs have proximately caused and will continue to cause violations of the plaintiffs' First, Fourth, Sixth, Eighth and Fourteenth Amendment rights under the U. S. Constitution.

As to the deficiencies in, or absence of, the programs provided to plaintiffs, the constitutional violations encompass, but are not limited to, the following:

A. Counseling and Assessment

(a) Defendants fail to adequately assess children's psychological condition at or before the time of their admission. As a result, defendants inappropriately confine children with serious psychological illnesses, children who are mentally retarded, and children who are otherwise handicapped or developmentally disabled.

(b) Defendants fail to design and implement an adequate treatment plan for each child. As a result, defendants

fail to provide children with appropriate rehabilitation or treatment.

(c) Defendants do not make available or employ a sufficient number of qualified psychiatrists, psychologists and social workers to counsel and treat children.

(d) Defendants inappropriately delegate the responsibility for providing children with direct psychological treatment to persons who are inadequately trained and supervised. As a result, children do not receive psychological treatment.

(e) Defendants do not assess children for substance abuse or dependency and fail to provide substance abuse counseling for those children who need it.

(f) Defendants do not develop adequate after-care programs to follow-up once the child is released.

(g) By failing to provide adequate psychological assessment, care and treatment to handicapped children, defendants discriminate against them and punish them solely by reason of their handicap.

(h) The allegations stated in the sub-paragraphs 21(i)(A)(a-g) deprive plaintiffs and the class of their rights under the 8th and 14th Amendments to the United States Constitution and of their rights guaranteed them by §504 of the Rehabilitation Act 29 U.S.C. §794 and regulations promulgated thereunder.

B. Educational and Rehabilitative Programs

(a) Defendants fail to provide plaintiffs and the class with adequate and appropriate educational rehabilitative treatment.

(b) Defendants fail to provide adequate pre-vocational and vocational education as part of a child's treatment plan.

(c) Defendants fail to provide children with adequate forms of programming and activities. They require children to spend prolonged periods of time without any educational, recreational, therapeutic or other programming.

(d) Defendants fail to provide special education or related services to handicapped children who were receiving such services prior to their incarceration or who are entitled to such services because of their handicapping condition.

(e) Defendants fail to adequately assess children to determine whether they have special needs and how such special needs can be met.

(f) Defendants fail to develop appropriate individualized education programs for children who need special education and fail to assure parental involvement or to have surrogate parents appointed.

(g) Defendants fail to provide appropriate related services including speech therapy, physical therapy and psychological services to handicapped children who need such services to benefit from their education.

(h) By failing to provide otherwise qualified handicapped children adequate educational services as special education and related services, defendants discriminate against plaintiffs and the class they represent and punish them solely by reason of their handicap.

(i) Exhaustion of administrative remedies by plaintiffs and the class would be futile as defendants deprive

children of special education and related services on a class-wide basis.

(j) The allegations stated in sub-paragraphs 21(i)(B)(a-i) deprive plaintiffs and the class of their rights under the 8th and 14th Amendments of the United States Constitution and their rights guaranteed to them by §504 by the Rehabilitation Act 29 U.S.C. §794 and regulations promulgated thereunder, and of their rights guaranteed them by the Education for All Handicapped Children Act Public Law 94-142, 20 U.S.C. §§1401 et seq, and regulations promulgated thereunder.

C. Programs Affecting Free Speech and Association

(a) Defendants deprive children of their right to communicate and associate with their families and friends outside of the institutions by interfering with and restricting mail, telephone and visitation communication. This communication is necessary to children's treatment and rehabilitation and to assist their reintegration into the community.

(b) Defendants improperly restrict children from communicating by telephone with their parents, relatives or friends. These restrictions work a particularly severe hardship on children whose parents live great distances from the institutions or are otherwise unable to visit them.

(c) Defendants severely restrict children's opportunities for visitation with family and friends. Defendants unreasonably limit the number of visitors a child may have and the hours during which visits may occur.

(d) Defendants deprive plaintiffs and the class of adequate access to the courts by failing to inform children that

they may make telephone calls or receive telephone calls from counsel.

(e) Defendants fail to provide children with either legal materials or access to counsel who can assist them with their legal problems. Defendants also fail to provide children with any instruction or assistance in protecting their rights through the legal system. Defendants fail to make provision for individual religious beliefs or needs of the children, or which is expressed by the families of the children.

(f) Defendants improperly restrict the free exercise of religion by failing to provide for a variety of religious beliefs or denominational differences.

(g) The allegations stated in sub-paragraphs 21(i)(C)(a-f) deprive plaintiffs and the class they represent of their rights under the 1st, 6th, and 14th Amendments to the United States Constitution.

Respectfully submitted, this the 23rd day of January
1991.

FAIREY & PARISE, P.A.

By: WGS
W. Gaston Fairey
Federal I.D. No.: 758
J. Christopher Mills
Federal I.D. No.: 4802
Post Office Box 8443
Columbia, South Carolina 29202
(803) 252-7606

NELSON, MULLINS, RILEY & SCARBOROUGH

By: 

R. Bruce Shaw
Federal I.D. No.: 3802
Robert O. Meriwether
Federal I.D. No.: 1040
Post Office Box 11070
Columbia, SC 29211
(803) 799-2000

Attorneys for the Plaintiff Class

SOUTH CAROLINA PROTECTION AND
ADVOCACY SYSTEM FOR THE HANDICAPPED,
INC.

By: 

Nancy McCormick
Federal ID No.: 2776
Holly Walker
Federal ID No.: Pending
3710 Landmark Drive, Suite 208
Columbia, South Carolina 29204
(803) 782-0639

Attorneys for the Subclass

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

COLUMBIA DIVISION

ALEXANDER S., ALFRED S.,)
BENNY B., CHRISTOPHER M.,)
LAFAYETTE M., and RICKY S., by))
and through their Guardian ad)
Litem, INEZ MOORE TENENBAUM,)
individually and as)
representatives of a class of)
juveniles,)

PLAINTIFFS,)

v.)

RICHARD E. MCLAWHORN,)
individually and officially in))
his capacity as Commissioner)
of the Department of Youth)
Services for the State of)
South Carolina; JOHN F. HENRY,)
FRANK MAULDIN, KATHLEEN P.)
JENNINGS, JOSEPH W. HUDGENS,)
KAROLE JENSEN AND J. P. NEAL,)
individually and officially)
in their capacities as BOARD)
MEMBERS FOR THE SOUTH)
CAROLINA DEPARTMENT OF YOUTH)
SERVICES,)

DEFENDANTS.)

C/A No.: 3:90-3062-17

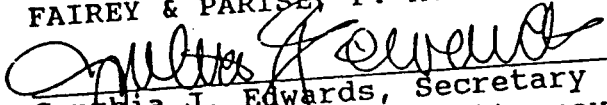
CERTIFICATE OF SERVICE
BY MAIL

I do hereby certify that I have served upon the attorneys for the Defendants the Amendment to Complaint Pursuant to Rule 15(a), F.C.R.P. in this action by depositing a copy of same in the United States Mail, first class, postage prepaid, addressed as follows:

James C. Leventis, Esquire
Edward M. Woodward, Jr., Esquire
WOODWARD, LEVENTIS, UNGER, HERNDON & COTHRAN
Post Office Box 12399
Columbia, South Carolina 29211

This the 23rd day of January, 1991, in
Columbia, South Carolina.

FAIREY & PARISE, P. A.


Cynthia J. Edwards, Secretary
For W. Gaston Fairey, Attorney
For Plaintiff Class