

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

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FEB 24 2000

JOSEPH HAAS  
Clerk

CHRISTINA A., by and through her  
parent and Next Friend, JENNIFER  
A.; PATRICIA B., by and through her  
Next Friend, HILLARY B.; PHILIP C.,  
by and through his parent and Next  
Friend, ROBERT C.; SHANNAN D., by  
and through her parent and Next Friend,  
MELISSA D.; TODD E. by and through his  
parent and Next Friend, SANDRA E.; and  
CARL F., by and through his Next Friend,  
HILLARY B.

Plaintiffs,

Civil No. \_\_\_\_\_

COMPLAINT - CIVIL ACTION

vs.

JEFF BLOOMBERG, in his official capacity  
as Secretary of the South Dakota Department of  
Corrections;  
OWEN SPURRELL, in his official capacity  
as Superintendent of the State Training  
School at Plankinton, South Dakota.

Defendants.

\_\_\_\_\_ /

I. INTRODUCTION

1. This is a civil rights class action brought by Plaintiffs on behalf of all juveniles who are now or in the future will be confined at the State Training School in Plankinton, South Dakota ("Plankinton"), and who are subject to abusive and inhumane conditions, policies and practices. Plankinton includes the State Training School, the Juvenile Prison, [the Female Secured Unit], [and the Girls Intensive Program]. Each of these programs is operated by the South Dakota Department

of Corrections. Defendants are deliberately indifferent to Plaintiffs' constitutional and legal rights, and Defendants' conditions, policies, and practices at Plankinton constitute punishment and substantial departures from accepted professional judgment, practices and standards.

2. Plaintiffs, individually and on behalf of the Plaintiff class, seek declaratory and injunctive relief against Defendants in their official capacities on the grounds that Defendants have deprived plaintiffs of their rights secured to them by the First and Fourteenth Amendments of the United States Constitution, as enforced by 42 U.S.C. § 1983; the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1401 et seq., and regulations promulgated thereunder; and provisions of the South Dakota Constitution and South Dakota law.

## II. JURISDICTION

3. This Court has jurisdiction over this action under 28 U.S.C. §1343 (3), this being an action to redress the deprivation, under color of state law, of rights secured by the Constitution of the United States; the Civil Rights Act, 42 U.S.C. §1983, and IDEA, 20 U.S.C. § 1401 et seq., and regulations promulgated thereunder.
4. [ This Court also has jurisdiction over this action under 28 U.S.C. §1343(4), this being an action to secure declaratory and injunctive relief under Acts of Congress providing for the protection of civil rights, specifically the Civil Rights Act and the IDEA. ]

5. This Court also has jurisdiction over this action under 28 U.S.C. § 1331 (a), this being an action in which the matter in controversy arises under the Constitution and laws of the United States.

6. This Court is authorized to grant declaratory and injunctive relief under 28 U.S.C. §§ 2201 and 2202, and Rules 57 and 65 of the Federal Rules of Civil Procedure.

### III. VENUE

7. The Southern District for the District of South Dakota is an appropriate venue for this action pursuant to 28 U.S.C. §1391(b) as the acts and events giving rise to the claims herein occurred within the boundaries of the Southern Division of South Dakota.

### IV. PARTIES

#### A. Plaintiffs

8. Each of the named Plaintiffs is a citizen of the United States and is currently incarcerated at Plankinton. Each of the named Plaintiffs is personally subjected to Defendants' conditions, policies, and practices at Plankinton, as set forth herein, and each of the named Plaintiffs suffers actual injury as a result of those conditions, policies, and practices.

9. Each of the named Plaintiffs who is a minor sues through his or her Next Friend, who is their parent or other adult citizen of the State of South Dakota.

10. Plaintiff CHRISTINA A. is fifteen years old. She is from

Spearfish, South Dakota and has been incarcerated at Plankinton since January, 2000. Some of the conditions, policies, and practices complained of herein to which she is subjected are: unreasonable bodily restraint, "four-pointing," excessive force, unlawful infringement on communications with family, and inadequate mental health care. For example, Plaintiff CHRISTINA A. was handcuffed and shackled by six male guards who attempted to remove her from her cell because she did not come out of her cell when told to.

11. Plaintiff PATRICIA B. is seventeen years old. She is from Pine Ridge, South Dakota and has been incarcerated at Plankinton since December, 1998. Some of the conditions, policies, and practices complained of herein to which she is subjected are: unreasonable bodily restraint, four-pointing, and arbitrary and excessive isolation. Male Plankinton staff four-pointed Plaintiff on her back, in a spread-eagled position. Male staff cut off her clothing with scissors while she was restrained.
12. PHILIP C. is seventeen years old. He is from Vermillion, South Dakota and has been incarcerated at Plankinton since June, 1999. Some of the conditions, policies, and practices complained of herein to which he is subjected are: unreasonable bodily restraint, four-pointing, unlawful infringement on communications with family, and inadequate mental health care. For example, Plaintiff suffers from severe depression and suicidal ideation but has not received

adequate mental health treatment.

13. Plaintiff SHANNAN D. is fourteen years old. She is from Sioux Falls, South Dakota and has been incarcerated at Plankinton since January, 2000. Some of the conditions, policies, and practices complained of herein to which she is subjected are: unreasonable bodily restraint, "four-pointing," arbitrary and excessive isolation, excessive force, unlawful infringement on communications with family, violation of privacy, and inadequate mental health care. For example, because they considered her to be suicidal, five to six Plankinton staff used a large plastic shield to overpower Plaintiff SHANNAN D. and forcibly removed her from her cell.
14. Plaintiff TODD E. is thirteen years old. He is from Sioux Falls, South Dakota and has been incarcerated at Plankinton since July, 1999. Some of the conditions, policies, and practices complained of herein to which he is subjected are: arbitrary and excessive isolation, unlawful infringement on communications with family, and inadequate education in the Juvenile Prison. For example, Plaintiff has been confined in isolation for more than thirty days continuously.
15. Plaintiff CARL F. is seventeen years old. He is from South Dakota and has been incarcerated at Plankinton since August, 1999. Some of the conditions, policies, and practices complained of herein to which he is subjected are: excessive force, arbitrary and excessive isolation, unlawful infringement on communications with family, inadequate

mental health care, and inadequate special education. For example, Plaintiff has attempted suicide several times and suffers from severe depression but has not received adequate mental health care.

#### **Defendants**

16. With respect to all matters alleged herein, each of the Defendants has acted, and continues to act, under the color of state law. [All of the conditions, policies, and practices described herein are the result of, and pursuant to, specific decisions, official policies, or customs of the Defendants. Each of the Defendants has actual or constructive knowledge, or should have such knowledge, of the conditions, policies, and practices complained of herein.]
17. Defendant Jeff Bloomberg is Secretary of the South Dakota Department of Corrections, having been appointed such by Governor William J. Janklow. [Under SDLC 26-11A-11, Defendant Bloomberg is responsible for all juveniles entrusted to the custody of the South Dakota Department of Corrections (DOC). Defendant Bloomberg has full control of all juvenile institutions, facilities, and programs under DOC's administration, including Plankinton.] He has been personally and directly involved in decisions to create the Intensive Girls Program and other programs at Plankinton and to establish and maintain conditions, policies and practices complained of herein.
18. Defendant Owen Spurrell is the Superintendent of the South

Dakota State Training School in Plankinton, South Dakota. Defendant Spurrell has direct control of all juvenile programs under DOC's administration at Plankinton, including the State Training School, the Juvenile Prison, the Female Secured Unit, and the Girls Intensive Program. He is personally and directly involved in decisions to establish and maintain conditions, policies and practices complained of herein.

#### V. CLASS ACTION

19. The named Plaintiffs bring this action on behalf of themselves and all other persons who are now, or in the future, will be held in custody at Plankinton, pursuant to Federal Rule of Civil Procedure 23(a) and (b) (2).
20. The class of Plaintiffs is so numerous that joinder of all members is impracticable, with as many as 175 juveniles confined at Plankinton on any given day. In addition, there are questions of law and fact common to the members of the plaintiff class. These include the factual circumstances and the legality and constitutionality of the conditions, policies, and practices under which Defendants confine Plaintiffs at Plankinton.
21. Defendants impose the conditions, policies, and practices challenged in this action on the named Plaintiffs and on the members of the Plaintiff class so that the claims of the named Plaintiffs are typical of those of the class.
22. [The named Plaintiffs will fairly and adequately represent the interests of the class] These Plaintiffs possess the

requisite personal interest in the subject matter of the lawsuit. They are represented by counsel experienced in class action litigation on behalf of children involving conditions of confinement. The Youth Law Center has litigated on behalf of children confined under abusive and illegal conditions of confinement in federal court in 18 states over the past twenty-one years. The attorneys of the law firm of Johnson, Eklund, Nicholson, Peterson & Fox have extensive litigation experience in federal court.

23. Defendants have acted and continue to act in a manner generally applicable to the class, thereby making appropriate final injunctive relief and injunctive relief with respect to the class as the whole.
24. Defendants move Plaintiffs into and out of the programs at Plankinton, and from Plankinton to other Department of Corrections facilities and other programs. [The injuries suffered by the named Plaintiffs and the members of the Plaintiff are capable of repetition, yet may evade review, thereby making class relief appropriate.]

#### VI. FACTUAL ALLEGATIONS - PLANKINTON

25. Plankinton is a secure juvenile correctional facility operated by the South Dakota Department of Corrections, located in Plankinton, South Dakota.
26. Plankinton includes four distinct programs: the State Training School, the Juvenile Prison, the Female Secured Unit, and the Girls Intensive Program. The State Training School has the capacity to house 76 boys and 22 girls aged

80

28

10 to 20 years old. The State Training School uses the "positive peer culture" model as a primary form of treatment for youth in its program. The Juvenile Prison is a secure, self-contained unit located adjacent to the State Training School. The Juvenile Prison is designed for 40 <sup>30</sup> boys between 14 and 21 years old. The Juvenile Prison serves as the "Indoctrination and Orientation" unit for Plaintiffs who are confined at the Plankinton facility and intake for youth going to other DOC facilities, and as the punitive setting for youth accused of violating institutional rules in other Plankinton programs. The Female Secured Unit houses 20 girls. The Female Secured Unit is equivalent to the Juvenile Prison for boys. The Girls Intensive Program, often referred to as the Girls Boot Camp, has the capacity to house 16 girls. Girls in this program are not confined in cells. Instead, they all sleep in an open dorm-like room on bunk beds. At this time there are only a few girls in the Girls Intensive Program because Defendants are preparing to move the program to Custer, South Dakota.

27. Many of the Plaintiffs are not incarcerated for crimes but are there for status offenses such as truancy, curfew violations, and running away from home. These children are designated as CHINS (Children in Need of Supervision). A disproportionate percentage of Plaintiffs, as many as 40%, are Native American children.
28. Although there are many dedicated and committed staff at

Plankinton, there are other staff who are abusive and disregard Plaintiffs civil and constitutional rights.

VII. VIOLATIONS OF PLAINTIFFS' RIGHTS -  
UNREASONABLE BODILY RESTRAINTS AND EXCESSIVE FORCE

A. Inhumane, abusive, punitive and arbitrary use of mechanical restraint

29. With Defendants' knowledge, and pursuant to official policy and custom, staff at Plankinton use handcuffs and shackles on Plaintiffs when such mechanical restraints are excessive, unreasonable, and unnecessary to protect Plaintiffs from injury to themselves or to prevent injury to others. Staff routinely use mechanical restraints such as handcuffs and shackles in such a way as to cause discomfort and physical injury to Plaintiffs by placing handcuffs and shackles on too tight, causing painful bruising, cuts, scratches, and other physical harm to Plaintiffs.

30. With Defendants' knowledge, and pursuant to official policy and custom, staff engage regularly in the practice of "four-pointing" Plaintiffs. Plaintiffs are physically forced to lie down on their backs, spread-eagled, on a raised concrete slab located in an isolation cell. Staff attach handcuffs and/or shackles to Plaintiffs' wrists and ankles, and connect the restraints to circular rings that are fastened securely to the cement surface on which Plaintiffs are forced to lie. Staff at Plankinton four-point male and female Plaintiffs in this painfully uncomfortable and humiliating position for hours at a time,

including overnight, allowing Plaintiffs only a short reprieve to take a shower and change clothes.

31. Male staff at Plankinton participate in forcibly stripping female Plaintiffs to their underwear or completely naked, or cut off Plaintiffs' clothes with scissors while Plaintiffs are in four-point restraints if Plaintiffs refuse to disrobe voluntarily. Staff then cover Plaintiffs with a thin piece of material. The thin piece of material, referred to as a "suicide gown," is often unwashed and stained with urine and blood from other children who have been four-pointed. Defendants' use of four-point restraints on Plaintiffs is cruel, abusive, punitive, unreasonable and unconscionable.

32. With Defendants knowledge, and pursuant to official policy and custom, staff engage in the practice of "bumpering" Plaintiffs. Staff attach shackles to Plaintiffs ankles and then attach another set of shackles which is passed underneath the opening to Plaintiffs' cell door out into the hallway. Staff then wrap a towel around the portion of the chain outside the cell door, and secure the towel with a set of handcuffs to create a "bumper" which holds the chain in place, with the result being that Plaintiffs are prohibited from walking about their cell. Staff who "bumper" Plaintiffs also place handcuffs on Plaintiffs' wrists, then cuff the handcuffs to the shackles on their ankles, forcing Plaintiffs to sit just inside the door to their cell while attached to a "bumpered" chain.

B. Excessive use of force by staff

33. With Defendants' knowledge, and pursuant to official policy or custom, staff at Plankinton use [excessive force] during "cell extractions" whereby as many as five to seven uniformed guards armed with a large plastic shield overpower a single youth, put the youth in handcuffs and shackles, and forcibly remove the youth from a cell.
34. The use of excessive force by staff at Plankinton causes physical and emotional harm to Plaintiffs.

C. Arbitrary and punitive use of lockdown, isolation, and discipline

35. In practice, Defendants' discipline system at Plankinton consists of the loss of privileges, the excessive use of lockdown and isolation, and the transfer of Plaintiffs from the State Training School program to the Juvenile Prison [or the Female Secured Unit] both of which are more restrictive than the State Training School.
36. Defendants regularly place Plaintiffs in lockdown and isolation for arbitrary reasons and for grossly excessive periods. Defendants routinely place Plaintiffs in isolation for 23 hours per day, for weeks, and sometimes months, at a time.
37. Defendants also place Plaintiffs in special "isolation" cells, often for the purpose of punishment, when Plaintiffs are suicidal or perceived by staff to be out of control. These cells, also referred to as "crisis" or "suicide" cells, [are small and bare.] Inside the isolation cells,

disciplinary  
segregation"

Defendants remove Plaintiffs' normal clothing, including their underwear, and only give Plaintiffs a pair of shorts and a short sleeved shirt to wear. Defendants do not permit female Plaintiffs to wear brassieres while confined in the isolation cells. Defendants give Plaintiffs a single blanket. Defendants require Plaintiffs to sleep on a raised cement slab which may [or may not] be covered by a thin mattress.

38. As a result of continuing policies and practices, Defendants regularly place Plaintiffs in isolation as punishment, for the convenience of staff, or in some instances, instead of therapeutic programming. Defendants do not have a procedure by which qualified professionals determine the need for isolation or the amount of time necessary for isolation. Defendants [fail to] use isolation only for instances where Plaintiffs pose an immediate threat to the health or safety of themselves or others. Defendants fail to release Plaintiffs from isolation when they have demonstrated that they are in control of themselves. Defendants fail to adequately monitor Plaintiffs in isolation. Defendants fail to provide adequate education, counseling, recreation, or other rehabilitative treatment to Plaintiffs in isolation.
39. Although Defendants have written policies for procedural due process on discipline, in practice Defendants [often fail to] provide minimum procedural due process protections to Plaintiffs accused of violating institutional rules and facing substantial periods of isolation, including advance

written notice of the charges against them; an opportunity to present their side of the story, call witnesses, and present documentary evidence, where permitting them to do so would not be unduly hazardous to institutional safety or correctional goals; an impartial decision maker (i.e., not the staff member involved in the incident); and a written decision describing the evidence relied upon, and the reasons for any disciplinary action taken.

40. Plaintiffs held in isolation experience extreme loneliness, anxiety, rage, and depression, among other potentially debilitating emotional and psychological problems.

Defendants fail to ensure that prolonged use of isolation does not have adverse psychological consequences on children. As a result of their continuing policies and practices of prolonged isolation, Defendants subject Plaintiffs to endure seemingly endless hours of mind-numbing solitude.

41. Defendants subject Plaintiffs to an arbitrary and punitive disciplinary system.

42. Staff at Plankinton arbitrarily punish Plaintiffs for behavior such as "displaying a negative attitude," "making negative comments," horse-playing with other children, failing to make their bed, improperly storing hygiene products, and performing tasks too slowly.

43. Defendants' arbitrary practices lead to excessive punishment for Plaintiffs, including increased lockdown and isolation. These practices are especially detrimental for Plaintiffs

with mental illnesses or learning disabilities. Defendants' failure to adequately train and supervise staff to respond in appropriate ways to Plaintiffs with mental illnesses or learning disabilities results in excessive punishment for such Plaintiffs.

44. Defendants subject Plaintiffs to the "table program." In this program Plaintiffs are required to sit at a table over two days without speaking. If Plaintiffs speak they must start the two day period over again.

45. Defendants' arbitrary policies and practices also result in additional and extended incarceration. For example, Plaintiffs who enter the Juvenile Prison for intake and orientation eventually may progress from the Juvenile Prison to the State Training School program. However, staff at Plankinton routinely transfer male Plaintiffs back to the Juvenile Prison for alleged infractions where they may languish for many months. Juvenile Prison staff have discretionary power to allow Plaintiffs to return to the State Training School. This practice makes it extremely difficult for Plaintiffs to "successfully complete" any of the programs at Plankinton.

46. Plaintiffs with mental illnesses or other disabilities are less capable than non-disabled Plaintiffs of responding to Defendants' disciplinary practices and policies in ways acceptable to Defendants. Defendants subject such disabled Plaintiffs to particular injury by repeatedly sending them to lockdown and isolation. Defendants fail to exclude

Plaintiffs with mental illness and other disorders from the prolonged use of isolation, even when such Plaintiffs are unable to comply with Defendants' demands. Defendants' arbitrary and punitive use of mechanical restraints and excessive isolation are particularly harmful for Plaintiffs with mental illnesses, and cause the unnecessary and wanton infliction of pain on these Plaintiffs.

**D. Abusive violation of privacy**

47. With Defendants' knowledge, and pursuant to official policy and custom, male staff at Plankinton walk into the female Plaintiffs shower area while female Plaintiffs are unclothed. Male staff are authorized to enter the shower area and see female Plaintiffs naked. This practice is abusive and demeaning to female Plaintiffs.

**E. Failure to protect from harm**

48. Defendants fail to provide adequate staffing levels in Plankinton's living areas, thereby endangering the safety and security of Plaintiffs. Guards regularly fail to monitor Plaintiffs who are placed in crisis cells because they are perceived to be suicide risks. Defendants fail to monitor and prevent Plaintiffs from engaging in self-mutilation.
49. Defendants endanger Plaintiffs by inadequately screening and compensating staff employed at Plankinton, by inadequately training staff for their custody duties, by focusing on the use of force and unreasonable bodily restraints as methods of controlling Plaintiffs, and by inadequately supervising

staff at Plankinton.

**F. Failure to adequately train and supervise staff**

50. Defendants fail to adequately train and supervise staff at Plankinton for the usual and recurring situations which they face and Plaintiffs are injured as a direct consequence. The need for more and different staff training is so obvious that Defendants' failure to provide such training amounts to deliberate indifference.

**VIII. VIOLATIONS OF PLAINTIFFS' RIGHTS -  
UNLAWFUL INFRINGEMENT ON COMMUNICATIONS WITH FAMILY**

51. With Defendants' knowledge, and pursuant to official policy and custom, staff at Plankinton regularly monitor all telephonic communications between Plaintiffs and their families by placing the phone call on a speaker phone or by staff members standing in close proximity to Plaintiffs when they make their phone calls. Staff routinely prompt Plaintiffs to say positive things about Plankinton and its staff during such calls and threaten Plaintiffs with a loss of privileges if Plaintiffs speak negatively. Staff also require Plaintiffs to monitor one another's phone calls to their families.

52. With Defendants' knowledge, and pursuant to official policy and custom, staff at Plankinton also read and censor all of Plaintiffs' incoming and outgoing mail. Also, staff require Plaintiffs to read and censor one another's outgoing mail. Defendants' actual practices contravene Plankinton's written policy which claims that mail "will not be passed through

staff, visitors or other offenders."

53. Defendants knowledge and pursuant to official policy and custom, staff at Plankinton unduly restrict visitation by Plaintiffs' families by regularly monitor Plaintiffs' visits with their families when such monitoring is unnecessary for institutional security. Such practices discourage visitation.

**IX. VIOLATIONS OF PLAINTIFFS' RIGHTS -  
DENIAL OF BASIC NEEDS AND SERVICES**

**A. Inadequate mental health care**

54. Defendants are deliberately indifferent to the serious mental health needs of Plaintiffs at Plankinton.
55. Defendants fail to conduct or provide adequate psychological assessments of Plaintiffs upon admission to Plankinton. Defendants fail to maintain adequate mental health records for Plaintiffs. The result is that Plaintiffs who are mentally disabled are incarcerated at Plankinton with inadequate mental health care.
56. Defendants fail to employ a sufficient number of qualified psychiatrists, psychologists, and social workers to counsel and treat Plaintiffs who are mentally disabled. Defendants fail to provide any individualized psychiatric treatment, counseling, or psychotherapy to Plaintiffs in need of such services. Defendants also fail to provide adequate or effective group counseling by trained staff. Defendants fail to adequately train and supervise staff at Plankinton to care for youth with mental health needs. Instead,

Defendants routinely place emotionally depressed Plaintiffs into crisis cells where they are left unsupervised for long periods of time. As a result of these failures, Plaintiffs do not receive counseling or other necessary mental health treatment, and their mental condition deteriorates.

57. With Defendants' knowledge and pursuant to policy and custom Plankinton staff dispense psychotropic medications without adequate training and supervision from qualified medical or mental health professionals.

58. Defendants fail to provide adequate mental health consultation or treatment for Plaintiffs who are suicidal or who are held in isolation. Defendants fail to take preventative steps to ensure Plankinton's physical structures (such as light bulbs and sprinkler heads in cell areas) are sufficiently safe, to prevent suicide attempts by Plaintiffs with mental illness.

59. Defendants' failure to provide necessary training and supervision to staff regarding adequate handling of Plaintiffs who are mentally ill impedes Plaintiffs' ability to successfully complete required programs.

60. Defendants bill Plaintiffs' parents for mental health treatment that Plaintiffs do not receive, bill at excessive rates, and often do not allow Plaintiffs' parents' private insurance to pay for treatment or medications.

X. VIOLATIONS OF PLAINTIFFS' RIGHTS --  
INADEQUATE PROGRAMMING

**A. Inadequate educational programming**

61. Defendants do not provide an adequate education to Plaintiffs in the Juvenile Prison.

**B. Inadequate special education for disabled students**

62. Defendants fail to develop and implement policies and procedures to assure that all educationally disabled Plaintiffs have access to a free and appropriate public education, including related and transition services, in accordance with the IDEA and state statutory requirements.
63. Defendants fail to adequately identify, screen, and assess Plaintiffs to determine whether they have special educational needs and how such special needs can be met.
64. Defendants fail to develop written Individual Educational Programs ("IEPs") for all Plaintiffs eligible for special education services. Defendants fail to provide the services specified in the IEPs for Plaintiffs who have existing IEPs, for example from their previous school placement.
65. Defendants fail to provide a sufficient number of qualified special education, related services, and transition services personnel at Plankinton to guarantee that all youth in custody eligible for special education receive a free and appropriate public education.
66. Defendants fail to assure parental involvement or to appoint surrogate parents in the development of IEPs.
67. Defendants fail to provide educationally disabled Plaintiffs with the appropriate special education, related services, and transition services to which they are entitled.

**XI. EXHAUSTION OF ADMINISTRATIVE REMEDIES**

68. Defendants fail to provide Plaintiffs with adequate administrative remedies regarding the policies, procedures, practices and acts complained of herein.
69. In this matter, exhaustion of administrative remedies would be inadequate and futile because there is no remedy available that can address Plaintiffs' allegations of denial of their civil and constitutional rights by Defendants, as alleged herein, within a reasonable period of time, and no remedy that can provide meaningful relief. This is particularly true where, as here, the claims are brought on behalf of a class of significant size, and Plaintiffs seek class-wide relief.
70. Administrative remedies are also not available to Plaintiffs because Plaintiffs have a well-founded fear of retaliation by staff at Plankinton if they file any administrative action. Plankinton staff verbally abuse Plaintiffs, and Plaintiffs do not report incidents of abuse due to their fear of retaliation. Plaintiffs are aware that youth at Plankinton who complain about conditions, policies, or practices are punished, including being placed in isolation.
71. Plaintiffs are not required to exhaust administrative remedies.
72. Defendants fail to provide notice to Plaintiffs of the availability of and potential eligibility for special education and related services. Defendants fail to provide notice and opportunities to use administrative procedures by

which Plaintiffs can exercise their right to such services and contest their deprivation of such right under the IDEA and corresponding state statutes and regulations.

**XII. NECESSITY FOR INJUNCTIVE RELIEF;  
NO ADEQUATE REMEDY AT LAW**

73. Defendants have acted and continue to act in violation of the law, as described herein. Plaintiffs do not have an adequate remedy at law. As a proximate result of the policies, practices, acts, and omissions of Defendants, Plaintiffs have suffered and continue to suffer serious and irreparable physical, psychological, mental, and emotional injuries. Plaintiffs have no plain, adequate, or complete remedy at law to redress the wrongs described herein. Defendants have acted and continue to act in violation of the law, and Plaintiffs will continue to suffer irreparable injuries from the conditions of confinement at Plankinton and Defendants' policies, practices, acts, and omissions unless this Court grants the injunctive relief requested by Plaintiffs.

**XIII. KNOWLEDGE OF THE DEFENDANTS**

74. Defendants are aware of the unlawful and unconstitutional conditions, policies and practices, and the harm to Plaintiffs enumerated above.

**XIV. CAUSES OF ACTION**

75. Plaintiffs hereby incorporate by reference all of the above factual allegations in paragraphs 1 to 74 to support the

following claims:

**Count I**

76. The conditions of confinement at Plankinton and Defendants' policies, practices, acts, and omissions complained of herein, constitute punishment and subject Plaintiffs to denial of due process of law, in violation of Plaintiffs' constitutional rights under the Fourteenth Amendment to the United States Constitution.

**Count II**

77. The conditions of confinement at Plankinton and Defendants' policies, practices, acts, and omissions complained of herein, are a substantial departure from accepted professional judgment, standards, and practices, and thereby subject Plaintiffs to denial of due process of law, in violation of Plaintiffs' constitutional rights under the Fourteenth Amendment to the United States Constitution.

**Count III**

78. The conditions of confinement at Plankinton and Defendants' policies, practices, acts, and omissions complained of herein, violate Plaintiffs rights to freedom of speech and association, privacy, and meaningful access to their families, in violation of Plaintiffs' rights under the First and Fourteenth Amendments to the United States Constitution.

**Count IV**

79. Defendants' policies, practices, acts, and omissions complained of herein, and in particular Defendants' failure

to provide adequate special education and related services, deprive Plaintiffs of their rights under the IDEA and regulations promulgated thereunder.

#### XIV. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray that this Court:

1. Assume jurisdiction over this action;
2. Permit the named Plaintiffs to proceed in pseudonym;
3. Certify this case as a class action pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure;
4. Issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202, and Rule 57 of the Federal Rules of Civil Procedure, that the conditions of confinement at Plankinton, and the policies, practices, acts, and omissions complained of herein:

(A) constitute punishment and subject Plaintiffs to denial of due process of law, in violation of Plaintiffs' constitutional rights under the Fourteenth Amendment to the United States Constitution;

(B) are a substantial departure from accepted professional judgment, standards, and policies, and thereby subject Plaintiffs to denial of due process of law, in violation of Plaintiffs' constitutional rights under the Fourteenth Amendment to the United States Constitution;

(C) violate Plaintiffs rights to freedom of speech and association, privacy, and meaningful access to their families, in violation of Plaintiffs' rights under the First and Fourteenth Amendments to the United States Constitution;

- (D) deprive Plaintiffs with educational disabilities of their rights under the IDEA;
5. Issue preliminary and permanent injunctions restraining and prohibiting Defendants from confining any Plaintiffs in Plankinton unless and until Defendants provide all of the following:
- (A) adequate and effective policies and practices that ensure that Plaintiffs will not be subjected to unreasonable mechanical restraints and use of excessive force by staff, including the stripping and four-pointing of Plaintiffs;
  - (B) adequate and effective means for Plaintiffs to report incidents of use of excessive force or unreasonable restraint by staff, without fear of retaliation by Plankinton staff or anyone else;
  - (C) an adequate and effective monitoring system to ensure supervision and accountability of staff with respect to the use of excessive force and unreasonable restraint;
  - (D) adequate and effective measures to protect Plaintiffs who report staff abuse;
  - (E) adequate and effective policies and practices to prohibit staff at Plankinton from using handcuffs, shackles, and other mechanical restraints except in extraordinary circumstances, i.e., when individual Plaintiffs are completely out of control and a physical danger to themselves, other Plaintiffs, or staff, and staff have exhausted all other means to bring Plaintiffs back under control; that staff use such mechanical restraints only so

long as the individual Plaintiffs are out of control, and staff remove the restraints as soon as the individual Plaintiffs are back in control or are returned to their rooms; that staff may use mechanical restraints for security purposes in moving individual Plaintiffs from one area of Plankinton to another or for moving Plaintiffs to locations outside of Plankinton such as hospitals; and that all incidents in which staff use mechanical restraints are documented by the staff directly involved and reviewed by the Superintendent;

(F) adequate and effective policies and practices to ensure that staff at Plankinton use isolation to control behavior only when individual Plaintiffs are out of control and a physical danger to themselves, other Plaintiffs, or staff, and staff have exhausted all other means to bring Plaintiffs back under control; that staff use isolation only so long as the individual Plaintiffs are out of control, and staff release Plaintiffs from isolation as soon as the individual Plaintiffs are back in control; that any Plaintiff held in room isolation for more than two hours will be interviewed by medical or mental health staff; that staff may use room confinement as a sanction as part of an adequate disciplinary system that includes full due process protections for Plaintiffs; and that all incidents in which staff use isolation are documented by the staff directly involved and reviewed by the Superintendent;

(G) an adequate and effective disciplinary system that

- includes full due process protections for Plaintiffs prior to receiving sanctions for conduct;
- (H) adequate staffing levels and procedures in the living areas at Plankinton sufficient to protect Plaintiffs from risk of harm;
- (I) a system to adequately classify Plaintiffs according to legitimate security and safety needs;
- (J) adequate pre-hiring screening, monetary compensation, pre-service and in-service training, and supervision of staff at Plankinton;
- (K) adequate mental health services for Plaintiffs, including adequate assessments upon admission, sufficient numbers of qualified mental health professionals at the facility, individual counseling by mental health professionals, group counseling by adequately trained staff, adequate consultation for Plaintiffs who are suicidal or who are held for extended periods in isolation, adequate training for staff to care for Plaintiffs with mental health needs, and preventive measures to remove dangers to Plaintiffs with mental health needs from Plankinton's physical structures;
- (L) adequate and effective sanitation in the facility, including regular cleaning of bathrooms and dormitories, control of vermin, and availability of basic hygiene supplies, adequate clothing and shoes, and adequate laundry services;
- (M) a free and appropriate public education, including

related and transition services, for Plaintiffs with educational disabilities, including adequate identification, screening, and assessment at admission; development and full implementation of Individual Education Programs; adequate maintenance of Individual Education Programs and other records; sufficient numbers of qualified and appropriately trained special education, related services, and transition services personnel; effective methods to assure parental involvement or appointment of surrogate parents; and appropriate notification of parents of their rights and the rights of Plaintiffs;

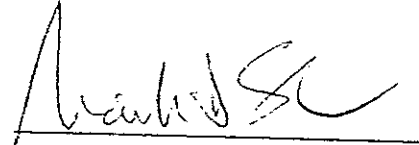
(N) assurance of unmonitored telephone calls and visits between Plaintiffs and their families and uncensored mail correspondence between Plaintiffs and their families.

6. Order Defendants to develop and implement a comprehensive plan for the correction of the unlawful policies, practices, acts and omissions complained of herein and to submit this plan to the Court and to the attorneys for Plaintiffs for review.
7. Appoint a Special Officer to review and insure implementation of the plan to be submitted by Defendants and to protect the rights of Plaintiffs during the pendency of this action.
8. Retain jurisdiction over Defendants until such time as the Court is satisfied that Defendants' unlawful policies, practices, acts and omissions complained of herein no longer exist and will not recur.

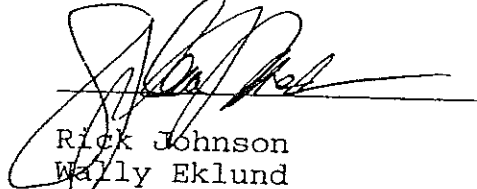
9. Award Plaintiffs the costs of this lawsuit and reasonable attorney's fees.
10. Order such additional relief as this Court may deem just and proper.

Date: February 24, 2000

By:



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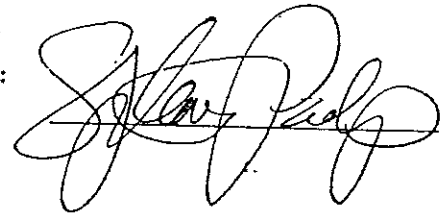
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Complaint to the United States District Court for the District of South Dakota, Southern Division, has been transmitted by facsimile and mailed, United States Mail, this 24th day of February, 2000, to Brent Wilber, Esq., May, Adam, Gerdes, & Thompson, P.O. Box 160, Pierre, South Dakota, 57501-0160 and Owen Spurrell, Superintendent South Dakota State Training School, Circle Drive, P.O. Box 70, Plankinton, South Dakota, 57368-0078.

By:

A handwritten signature in black ink, appearing to read "J. Alan Fiedler", written over a horizontal line.