

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

WILLIE M., a minor; JEANETTE M.,)
a minor; TOM H., a minor; TIMOTHY B.,)
a minor, all by their next friend,)
ALBERT SINGER, on behalf of them-)
selves and all others simlarly)
situated,)

Plaintiffs,

v.

JAMES B. HUNT, JR., Governor,)
State of North Carolina; SARAH T.)
MORROW, Secretary, Department of)
Human Resources, State of North)
Carolina; A. CRAIG PHILLIPS, State)
Superintendent of Public Instruction,)
State of North Carolina; DAVID)
BRUTON, Chairman, North Carolina)
State Board of Education; HOSEA C.)
BROWER, Director, Samarkand Manor,)
Division of Youth Services, Depart-)
ment of Human Resources, State of)
North Carolina; C. B. HAYSLETT,)
Director, C. A. Dillon School,)
Division of Youth Services, Depart-)
ment of Human Resources, State of)
North Carolina; FIELD MONTGOMERY,)
Director, Cherry Hospital, Division)
of Mental Health, Mental Retardation)
and Substance Abuse Services, Depart-)
ment of Human Resources, State of)
North Carolina; JOHN A. WILLIAMS,)
State Budget Officer, State of North)
Carolina; J A. PORTER, Controller,)
Department of Public Instruction,)
State of North Carolina; GEORGE)
BASON, District Court Judge, 10th)
Judicial District, State of North)
Carolina; LARRY T. BLACK, District)
Court Judge, 26th Judicial District,)
State of North Carolina,)

Defendants.)

Willie M. v. Hunt



JI-NC-003-001

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

I. PRELIMINARY STATEMENT

1. This is a class action for declaratory and injunctive relief on behalf of the named plaintiffs and the class consisting of North Carolina children under the age of eighteen who now or will in the future suffer from serious emotional, mental or neurological handicaps which handicaps have been accompanied by behavior which is characterized as violent or assaultive and who are, or will in the future be, institutionalized or otherwise placed in residential programs which fail to provide appropriate treatment and educational programs. Plaintiffs seek relief arising out of the Defendants'

failure to provide adequate or appropriate treatment and educational programs in the least restrictive setting possible thereby violating the Plaintiffs' rights under the Fifth Amendment, Eighth Amendment, the due process and equal protection clauses of the Fourteenth Amendment of the United States Constitution, the Education for All Handicapped Children Act, §504 of the Rehabilitation Act of 1973, and special education and right to treatment statutes.

- II. JURISDICTION AND RELATED MATTERS

2. Jurisdiction is conferred this on Court by 28 U.S.C. §1343(3) and (4) for actions arising under 42 U.S.C. §1983. The amount in controversy exceeds \$10,000 and there is jurisdiction under 28 U.S.C. §1331. Plaintiffs' action for declaratory relief is authorized by 28 U.S.C. §2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure. Plaintiffs' action for injunctive relief is authorized by Rule 65 of the Federal Rules of Civil Procedure. Plaintiffs' claims under the provision of the North Carolina General Statutes set out hereinafter are all state law claims which may properly be considered under this Court's exercise of pendent jurisdiction.

III. PARTIES

Plaintiffs

3. Plaintiff Willie M. is an eleven-year-old resident and citizen of Mecklenburg County, North Carolina. He is currently being held against his will at the Samarkand Manor in Eagle Springs, North Carolina, a facility of the Division of Youth Services of the North Carolina Department of Human Resources.

4. Plaintiff Jeanette M. is a sixteen-year-old citizen and resident of Catawba County, North Carolina. She is presently being held against her will at the C. A. Dillon School in Butner, North Carolina, a facility of the Division of Youth Services of the North Carolina Department of Human Resources.

5. Plaintiff Tom H. is a sixteen-year-old citizen and resident of Wake County, North Carolina. He is currently being held against his will at the C. A. Dillon School in Butner, North Carolina, a facility of the Division of Youth Services of

the North Carolina Department of Human Resources.

6. Plaintiff Timothy B. is a seventeen-year-old citizen and resident of Craven County, North Carolina. He is currently being held against his will at Cherry Hospital, a state psychiatric facility administered by the Division of Mental Health, Mental Retardation and Substance Abuse Services of the North Carolina Department of Human Resources.

7. Albert Singer is a citizen of North Carolina and a resident of Wake County, North Carolina. He sues on behalf of the above-named children as next friend. Minor Plaintiffs omit their full names in order to protect their identities. It is Plaintiffs' belief that the use of their full names will subject them to public humiliation and embarrassment.

Defendants

8. Defendant James B. Hunt, Jr., is a citizen of the State of North Carolina. He is the Governor of the State of North Carolina and the ex officio Director of the Budget for the State. As Director of the Budget, Hunt has extensive authority for reviewing the budget requests of State agencies, determination of the budgetary needs of each State agency and for submission to the North Carolina General Assembly of a proposed budget for all State agencies.

9. Defendant Sarah T. Morrow is the Secretary of the Department of Human Resources of the State of North Carolina. She has statutory responsibility for the administration of the Department and its Divisions. She has ultimate responsibility for the administration of the State's treatment and educational programs for children in the state who are committed to institutions on account of mental disabilities or delinquency. She is further empowered to issue such regulations and policies as are necessary to carry out the above statutory responsibilities.

10. Defendant A. Craig Phillips is the Superintendent of Public Instruction of North Carolina. In this capacity he is the Secretary and Chief Administrative Officer of the State Board of Education and as such is responsible for carrying out the educational programs developed and adopted by the North Carolina State Board of Education.

11. Defendant David Bruton is the Chariman of the North Carolina State Board of Education which is the official state government body responsible for developing and implementing the educational programs in North Carolina for the Plaintiffs and their class.

12. Defendant Hosea C. Brower is the Director of the Samarkand Manor in Eagle Springs, North Carolina, a facility of the Devision of Youth Services of the North Carolina Department of Human Resources.

13. Defendant C. B. Hayslett is the Director of the C. A. Dillon School in Butner, North Carolina, a facility of the Division of Youth Services of the North Carolina Department of Human Resources.

14. Defendant Field Montgomery is the Director of Cherry Hospital Goldsboro, North Carolina, a facility of the Division of Mental Health, Mental Retardation and Substance Abuse Services of the North Carolina Department of Human Resources.

15. In their capacities as directors of these facilities administered by the North Carolina Department of Human Resources, Defendants Hayslett, Brower and Montgomery are responsible for administering the policies and regulations issued by the Department of Human Resources regarding the treatment of the Plaintiff class.

16. Defendant John A. Williams is a citizen of the State of North Carolina and the State Budget Officer of the State of North Carolina. In this capacity he is responsible for authorizing the issuance of funds from the State treasury to various state agencies from money appropriated for such agencies by the North Carolina General Assembly. N.C.G.S. §143-3.2.

17. Defendant Larry T. Black is a citizen of the State of North Carolina and is a District Judge in the 26th Judicial District of North Carolina. In his capacity as District Court Judge, Black is charged by N.C.G.S. §7A-286 with the duty of selecting the disposition in a juvenile case tried before him which provides for the protection, treatment, rehabilitation or correction of the child.

18. Defendant George Bason is a citizen of the State of North Carolina and is the Chief District Court Judge for the 10th Judicial District of North Carolina. In his capacity as a District-Court Judge, Bason is charged by N.C.G.S. §7A-286 with the duty of selecting the disposition in a juvenile case tried before him which provides for the protection, treatment, rehabilitation or correction of the child.

19. The Defendants are sued in their official capacities and at all times material to this action, they have acted under color of state law, custom and usage of the State of North Carolina.

IV. CLASS ACTION

20. Plaintiffs bring this action pursuant to Rule 23 (b) (2) of the Federal Rules of Civil Procedure, on their own behalf and on behalf of all other North Carolina citizens under the age of eighteen who:

a. now or will in the future suffer from serious emotional, mental or neurological handicaps, which handicaps have been accompanied by behavior which is characterized as violent or assaultive; and,

b. are, or will be in the future, involuntarily institutionalized or otherwise placed in residential programs; and

c. for whom the Defendants have not provided appropriate treatment and educational programs.

21. The members of the class are so numerous that joinder of all members is impracticable. Upon information and belief there are over 200 handicapped children in North Carolina who come within the definition of this class. The predominant questions of law and fact are common to all members of the class, including the alleged policies and practices challenged in this action which Defendants apply consistently to similarly situated members of the class. The claims of the named Plaintiffs are typical of the claims of the class and the named Plaintiffs will fairly and adequately protect the interests of the entire class. The declaratory and injunctive relief sought by the named Plaintiffs is typical of the relief sought by all members of the class.

V. STATEMENT OF FACTS

Plaintiff Willie M.

22. The Plaintiff Willie M. is an eleven-year-old boy who has been diagnosed as being emotionally disturbed with unsocialized aggression and other handicaps. Because of this condition he was removed from his normal school setting in the Charlotte-Mecklenburg School system in 1978 and placed into programs for the learning disabled and the emotionally handicapped which are inappropriate to meet the needs of Willie M.

23. While in the program for emotionally handicapped students, Willie M. was brought before the Juvenile Court of the 26th Judicial District on separate juvenile petitions alleging delinquency for committing larceny and that he was an abused and neglected child. Willie M. was subsequently adjudicated to be a delinquent child by the Defendant Judge Black.

24. Prior to the disposition of Willie M.'s case numerous attempts were made by his juvenile counselor and school social worker to locate an appropriate program for Willie but none was found to be suitable because of Willie's age, physical size, mental abilities, emotional disorders and behavior. Thereafter, the Defendant Judge Black committed Willie against his will to the custody of the Division of Youth Services of the North Carolina Department of Human Resources.

25. Since the date of his commitment to the Division of Youth Services on April 13, 1979, Willie M. has suffered substantial injury to his mental and physical well-being. Upon information and belief Willie M. is not receiving appropriate treatment nor participating in educational programs which are designed to meet his particular needs. The Defendants' agents at the Stonewall Jackson School in Concord where Willie was housed prior to his transfer to Samarkand Manor regularly placed him in a secluded area as a means of controlling his behavior.

26. On information and belief Willie M. suffers from a treatable condition which could be improved and allow him to live in a less restrictive environment if appropriate treatment and educational programs were available to him. On information and belief no such programs are made available to Willie M. by the Defendants or by any other source.

27. On information and belief the Defendants have, or should have had, long-standing knowledge of the conditions and needs of the Plaintiff but the Defendants, both jointly and separately, have refused and continued to refuse to provide appropriate treatment and educational programs for the Plaintiff. The confinement of Willie M. is cruel and unusual and results

in his being punished for physical and emotional problems which are presently beyond his control.

Plaintiff Tom H.

28. Plaintiff Tom H. is a sixteen-year-old boy who has been diagnosed as suffering from neurological and emotional disorders and other handicaps. As a result of these physical and emotional disabilities he has been held in legal custody of various counties of the State of North Carolina and of the State of North since June, 1972. The Defendants knew, or should have known, since that date, that Tom H. was in need of special treatment and educational programs.

29. In March, 1978, Tom H. was adjudicated to be delinquent by the Defendant Judge Bason and ordered to be admitted to Dorothea Dix Hospital, a facility of the Department of Human Resources, for evaluation and treatment of his behavioral problems prior to final disposition of the juvenile case. On information and belief the hospital was unable to provide appropriate evaluation, treatment or educational programs for the Plaintiff and he was discharged from the hospital. Thereafter he was confined at the Wake County Detention Center for 131 days awaiting placement in an appropriate program.

30. On May 25, 1979, Tom H. was committed against his will to the C. A. Dillon School by the Defendant Judge Bason. On information and belief Tom H. is not receiving appropriate treatment nor participating in educational programs which are designed to meet his particular needs. Tom has suffered substantial injury to his mental and physical well-being.

31. On information and belief Tom H.'s physical and emotional problems are treatable and could be improved and allow him to live in a less restrictive environment if appropriate treatment and educational programs were available to him. The confinement of Plaintiff Tom H. at the Dillon School is cruel and unusual in that his emotional and physical illnesses which have been characterized by occasional and unpredictable behavior having caused Tom H. to be adjudicated a delinquent, are presently beyond his control.

Plaintiff Jeanette M.

32. Jeanette M. is a fifteen-year-old girl who has been diagnosed as a child with chronic emotional problems and other handicaps which are manifested by aggressive and disruptive behavior. Plaintiff Jeanette M. has experienced problems caused by anti-social behavior for the past several years, having been placed in special education classes and community residential programs which were not appropriate to her needs.

33. In October, 1976 Plaintiff Jeanette M. was adjudicated a delinquent child and committed against her will to the C. A. Dillon School. Since that time she has also been housed at the Juvenile Evaluation Center in Swannanoa and at the Samarkand Manor in Eagle Springs. On information and belief none of the programs provided by Defendants to Plaintiff Jeanette M. since her commitment to the Division of Yourth Services in 1976 has been appropriate to meet her particular needs. She has suffered substantial injury to her mental and physical well-being.

34. Her emotional problems are treatable and could be improved substantially and allow her to live in a less restrictive environment if appropriate treatment and educational programs were available to her. The Defendants have or should have had long-standing knowledge of the serious emotional handicaps and the needs of Plaintiff Jeanette M. but Defendants have refused to provide appropriate treatment and educational programs. Her present confinement is cruel and unusual in that she is being punished for problems which are presently beyond her control.

Plaintiff Timothy B.

35. Plaintiff Timothy B. is a seventeen-year-old boy who has been diagnosed as having a severe emotional disorder, organic brain syndrome and other handicaps. These handicaps have been accompanied by behavior toward other persons which is characterized as aggressive and resulted in the placement of Plaintiff Timothy B. in a number of residential programs during the past several years.

36. Plaintiff Timothy B.'s legal guardian, the Craven County Department of Social Services, admitted him to Cherry Hospital in Goldsboro, North Carolina in November, 1978. At Cherry Hospital Timothy B. has been denied admission to the adolescent unit because of his particular emotional and behavioral problems and he currently resides in an inappropriate "high control unit" at the hospital.

37. On information and belief no appropriate treatment and educational programs are being provided for Timothy B. at this time. Timothy B.'s emotional and physical handicaps are treatable and could be improved and allow him to reside in less restrictive environments if appropriate treatment and educational programs were available to him. Defendants have, or should have, known that Plaintiff Timothy B. is in immediate need of appropriate treatment and educational programs and the Defendants have failed and refused to provide such programs. Timothy B.'s continued confinement by the Defendants is cruel and unusual in that he is being punished for problems which are presently beyond his control.

VI. STATEMENT OF CLAIM OF THE CLASS

38. On information and belief there are more than two hundred children in the State of North Carolina who suffer from serious emotional, mental or neurological handicaps which are accompanied by behavior which is characterized as violent or assaultive. These children are, or will be in the future, confined against their will by the Defendants but these children will not receive the special treatment and educational programs which are appropriate for their needs. The federal Education for All Handicapped Children Act (P.L. 94-152) and the state's special education statutes (N.C.G.S. §115-363 et seq.) require the Defendants to provide appropriate educational programs for this class of children. These children are furthermore entitled to treatment programs in the least restrictive setting by the due process and equal protection provisions of the Fourteenth Amendment to the United States Constitution. On information and belief the Defendants have failed to provide the treatment and educational programs designed to fulfill the particular needs of these children.

39. Because the treatment and educational programs that do exist in the state receive federal funding, they are required by §504 of the Rehabilitation Act of 1973 not to deny a person participation in such programs on the basis of a handicap alone. On information and belief the Defendants' method of providing programs to children in the Plaintiff class denies these children participation in appropriate programs because of their handicaps.

40. On information and belief the Defendant Morrow and others in planning programs for the large number of children who suffer from the handicaps of the Plaintiff class have not complied with the state right to treatment statutes pertaining to children in training schools (G.S. §134A-20) and mental facilities (G.S. §122-55.14(d)). Defendants are well aware of these inadequacies and even encouraged the passage of legislation in 1979 which would have established treatment programs for some members of the Plaintiff class.

41. The named and class Plaintiffs therefore continue to be confined in institutions which fail to provide appropriate treatment and educational programs for them. They continue to suffer irreparable harm both physically and emotionally, and have no adequate remedy at law.

VII. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

42. The above-described policies and practices of the Defendants and the above-described failures and refusals to

provide adequate or appropriate treatment and educational programs, and their failure to provide this treatment and education in the least restrictive setting consistent with the Plaintiffs' needs, deny the named and class Plaintiffs their right to due process of law and equal protection under the Fifth and Fourteenth Amendments to the United States Constitution.

SECOND CLAIM FOR RELIEF

43. The failure of the Defendants to provide adequate or appropriate treatment and educational programs for the named and class Plaintiffs has resulted and will in the future result in the confinement of these named and class Plaintiffs for the sole purpose of punishment in violation of the named and class Plaintiffs' rights against cruel and unusual punishment under the Eighth and Fourteenth Amendments of the United States Constitution.

THIRD CLAIM FOR RELIEF

44. The federal Education of All Handicapped Children Act (P.L. 94-142) provides that all public agencies within the state, including state and local educational agencies, must insure that all handicapped children have available to them a free appropriate public education which includes special education and related services to meet their individual needs. Furthermore, the State is required to identify, locate, evaluate and appropriately place all handicapped children. A free appropriate education may be provided in a public school, or if necessary, in an approved private school. 20 U.S.C. §1412(1), (6); 1413 (a)(4)(B); 45 C.F.R. §121a et seq. The policies and practices of the Defendants described above which deny, and will in the future deny, the named and class Plaintiffs appropriate educational programs and related services violate their rights under P.L. 94-142.

FOURTH CLAIM FOR RELIEF

45. Article 45 of Chapter 115 of the General Statutes of North Carolina (N.C.G.S. §115-363 et seq.) provides that all children with special needs in North Carolina shall have access to a free, appropriate public education, including special education and related services to meet their individual needs. The policies and practices of the Defendants described above which deny, and will in the future deny, the named and class Plaintiffs appropriate educational programs and related services violates their rights under N.C.G.S. §115-363 et seq.

FIFTH CLAIM FOR RELIEF

46. On information and belief Defendants have acknowledged that they do not provide programs that are appropriate for the members of the Plaintiff class who are residents of treatment facilities. N.C.G.S. §122-55.14(d) requires that each minor patient of a treatment facility shall have a right to appropriate treatment for mental and physical ailments and for the prevention of illness or disability and shall have a right to this treatment in a setting which allows him to live as normally as possible. Defendants are denying Plaintiffs their statutory right to treatment under North Carolina law.

SIXTH CLAIM FOR RELIEF

47. North Carolina requires that each child in an institution for committed delinquents under Chapter 134A of the North Carolina Statutes receive appropriate treatment according to his needs. N.C.G.S. §134A-20. The above-described policies and practices of the Defendants result in the placement of many of the named and class Plaintiffs in state institutions under Chapter 134A but without providing the Plaintiffs with appropriate treatment, thereby denying these Plaintiffs their right to treatment under state law.

SEVENTH CLAIM FOR RELIEF

48. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794) provides that no handicapped individual, as defined by 29 U.S.C. §706(6), shall be solely by reason of his handicap, denied participation in, denied the benefits of, or be subjected to discrimination under any program receiving federal financial assistance. Named and class Plaintiffs are denied, and will in the future be denied, participation in and the benefits of treatment programs by the Defendants in violation of Section 504 solely because of their handicaps.

VIII. PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs pray:

- A. That this Court take jurisdiction of this matter.
- B. That an order issue permitting this action to proceed as a class action under Rule 23 (b) (2) of the Federal Rules of Civil Procedure.
- C. That this Court grant declaratory relief pursuant to 28 U.S.C. §§2201 and 2202, declaring that the Defendants in this action are in violation of the above-cited statutory and constitutional provisions as set forth herein.
- D. That this court order the following preliminary and permanent injunctive relief:

1. The Defendants immediately provide a temporary program on behalf of the named Plaintiffs which shall both evaluate the treatment and educational needs of the named Plaintiffs and provide for the named Plaintiffs appropriate treatment and educational programs in settings which are the least restrictive alternative consistent with the individual Plaintiffs' legitimate treatment needs.

2. The Defendants immediately initiate a program to identify and evaluate individual members of the Plaintiff class for the purpose of determining the appropriate treatment and educational needs of these Plaintiffs.

E. That the Court order the Defendants to develop and provide, at the Defendants' expense, appropriate individual treatment and educational programs for all the named Plaintiffs and the members of their class.

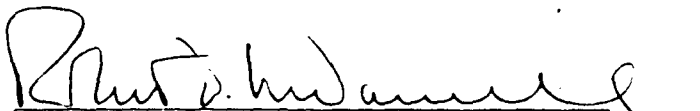
F. That this Court retain jurisdiction over Defendants until such time as the Court is satisfied that their acts and omissions alleged herein no longer exist and will not reoccur.


G. That this Court grant such other relief as it deems necessary and proper.

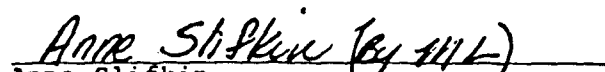
H. That this Court order the payment of reasonable attorney's fees and costs to the Plaintiffs.

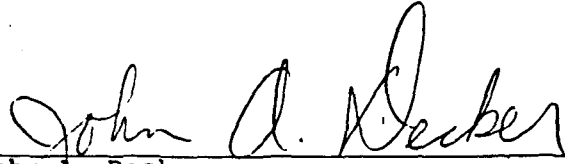
This the 3rd day of October, 1979.

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