

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

HARVE PORTER and ROBERT NORMAN,)
By Their Next Friend, Susan Pierce)

and)

DISABILITY RIGHTS CENTER, INC.,)

Plaintiffs,)

vs.)

No. _____

KURT KNICKREHM, in his official capacity as)
Director of the Arkansas Department of Human Services,)
DR. JAMES C. GREEN, in his official capacity as)
Director of Developmental Disabilities Services,)

and)

KAY BARNES, RON CARMACK, DON A. DUNN,)
GROVER MILTON EVANS, WESLEY KLUCK,)
RANDY LANN, AND SUZANN MCCOMMON, in)
their official capacities as members of the Board of)
Developmental Disabilities Services)

Defendants.

COMPLAINT

Come now Plaintiffs, Harve Porter and Robert Norman, by and through their next friend, Susan Pierce, and Disability Rights Center, by and through their attorneys Janet C. Baker, Griffin J. Stockley, Dana K. McClain, and Adam H. Butler, and for their Complaint, state:

I. PRELIMINARY STATEMENT

1. This is an action brought on behalf of Harve Porter and Robert Norman pursuant to 42 U.S.C. § 1983, and the Due Process and Equal Protection Clauses of the 14th Amendment to the U.S. Constitution.
2. Plaintiff Harve Porter is an adult individual with developmental disabilities who has been confined at the Southeast Arkansas Human Development Center (SEAHDC) since May 28, 1998.
3. Plaintiff Robert Norman is an adult individual with developmental disabilities who has been confined at the SEAHDC since August 1999.
4. Plaintiff Disability Rights Center (DRC) is the Protection and Advocacy system for the State of Arkansas.
5. Defendants are individuals (as set out in detail below) who are authorized by state law to administer the services, programs and policies of the six Human Development Centers in Arkansas, including SEAHDC.
6. As adult residents of SEAHDC, Plaintiffs Porter and Norman are being confined in violation of the Due Process and Equal Protection Clauses of the 14th Amendment to the U. S. Constitution. They seek to have declared unconstitutional Ark. Code Ann. § 20-48-401 *et seq.* (Michie 2003 Suppl.) and DDS Director's Office Policy Manual policy numbers 1020, 1037, 1053

and 1086, insofar as these statutes and policies of Defendants deny them a right to a judicial hearing with due process procedures (as set out below). Further, they seek permanent injunctive relief mandating that Defendants forthwith grant them a judicial hearing in accordance with procedures and standards comporting with due process of law as mandated by the court until such time as the Arkansas General Assembly enacts constitutional standards and procedures pertaining to admission and release.

II. JURISDICTION AND VENUE

7. This court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343.
8. Injunctive and declaratory relief are authorized pursuant to 28 U.S.C. §§ 2201 and 2202 and Fed. R. Civ. P. 65 and 57.
9. Venue in this district is appropriate under 28 U.S.C. § 1391(b)(1) and (2) since a substantial number of the events that gave rise to this complaint occurred in this district.

III. PARTIES

Plaintiffs

10. Harve Porter is a thirty-eight (38) year old individual with developmental disabilities who is confined at SEAHDC.

11. Robert Norman is a forty-three (43) year old individual with developmental disabilities who is confined at SEAHDC.
12. As the Protection and Advocacy system for the State of Arkansas, Disability Rights Center is authorized by federal law to “pursue legal, administrative, and other appropriate remedies or approaches to ensure the protection of, and advocacy for the rights of such individuals [with developmental disabilities] within the State who are or who may be eligible for treatment, services or habilitation. . .” 42 U.S.C. § 15043(a)(2)(A)(i).

Defendants

13. Arkansas Department of Human Services (ADHS) is the state agency responsible for the coordination and provision of treatment, programming and services to individuals with disabilities throughout Arkansas.
14. Kurt Knickrehm is the Director of the ADHS. As Director of ADHS, pursuant to Ark. Code Ann. § 25-10-102 (b)(1)(A) (Michie 2002 Repl.), Defendant Knickrehm is required to exercise his authority to direct, control, and supervise the Division of Developmental Disabilities Services (DDS), the Division of Medical Services (DMS), the Division of Mental Health Services (DMHS) and all other divisions set forth in said statute. Defendant

Knickrehm is appointed by and serves at the pleasure of the Governor. [Ark. Code Ann. § 25-10-101 (b) (Michie 2002 Repl.)].

15. Dr. James C. Green is the Director of DDS and is authorized to operate and manage said division. As director of DDS, Defendant Green is responsible in an administrative capacity for the provision and coordination of all services to Plaintiffs, by authority delegated to him by the Board of DDS.
16. DDS is a division of ADHS and is responsible for the provision of treatment, programming and services provided to individuals with developmental disabilities by both community programs and human development centers throughout the State of Arkansas. However, the human development centers, as provided by law, are under the control of the Board of DDS. [Ark. Code Ann. § 25-10-102(b)(2)(A) (Michie 2002 Repl.)].
17. The Board of DDS is a seven person board created pursuant to Ark. Code Ann. § 20-48-203 *et seq.* (Michie 2001 Repl.). Kay Barnes, Ron Carmack, Don A. Dunn, Grover Milton Evans, Wesley Kluck, Randy Lann, and Suzann McCommon are duly appointed members of the Board.
18. The Board of DDS is authorized to make regulations concerning the admission, discharge, care, custody, placement, training and discipline of individuals receiving developmental disability

services in the human development centers. [Ark. Code Ann. §20-48-205(b) (Michie 2001 Repl.)]

IV. FACTUAL ALLEGATIONS

19. Plaintiff Harve Porter is a thirty-eight (38) year old individual who has mild mental retardation. Though he has now been confined at SEAHDC for five years, he has never been granted a judicial hearing to determine whether he must live his life in an institutional setting in which many of his daily activities are controlled and managed by employees of SEAHDC.
20. Plaintiff Robert Norman is a forty-three (43) year old individual with mental retardation. Though he has now been confined at SEAHDC for four years, he has never been granted a judicial hearing to determine whether he must live his life in an institutional setting in which many of his daily activities are controlled and managed by employees of SEAHDC.
21. There are six human development centers in the State of Arkansas. The human development centers provide confined institutional living for individuals with mental retardation that ranges in severity from individuals who manage their own daily needs and activities of daily living, to individuals who are unable to speak and require restraints to prevent them from injuring themselves.

22. Plaintiffs Porter and Norman are confined at SEAHDC pursuant to either statutory process (Ark. Code Ann. § 20-48-401 *et seq.* (Michie 2003 Suppl.)) or administrative process (DDS Director's Office Policy Manual policy numbers 1020, 1037, 1053 and 1086). (A true and correct copy of Ark. Code Ann. § 20-48-401 *et seq.* (Michie 2003 Suppl.) and DDS Director's Office Policy Manual policy numbers 1020, 1037, 1053 and 1086 are attached hereto and adopted by reference as if set out word for word and identified as Exhibits 1 and 2).

V. LEGAL CLAIMS – CONSTITUTIONAL VIOLATIONS

23. Plaintiffs incorporate by reference paragraphs 1 – 22.
24. All actions complained of herein were taken under color of state law.
25. Plaintiffs Porter and Norman have a fundamental liberty interest in constitutionally adequate admission and discharge procedures in the human development centers in the State of Arkansas. Insofar as these procedures, whether statutory or mandated by policy, impact a fundamental liberty interest of plaintiffs, they are subject to the judicial standard of strict scrutiny.
26. Plaintiffs Porter and Norman are being denied Due Process of Law as guaranteed by the 14th Amendment insofar as admission and release procedures for the state's human development centers set

forth in Ark. Code Ann. § 20-48-401 *et seq.* (Michie 2003 Suppl.) and DDS Director's Office Policy Manual policy numbers 1020, 1037, 1053 and 1086 do not provide for a judicial hearing which grant plaintiffs before admission: (a) the right to be present; (b) the right to the effective assistance of appointed counsel, if indigent; (c) the right to present evidence in his own behalf; (d) the right to cross-examine witnesses; (e) the right to view any and all petitions and reports in the court file of his case; (f) the right to subpoena witnesses; (g) the right to periodic judicial review; (h) the right to be placed in the least restrictive environment; (i) the right to adequate and timely notice of the above rights; and, (k) the right to a standard of judicial involuntary commitment which requires the state to prove by clear and convincing evidence that the individual sought to be committed poses a substantial risk of harm to himself or others and requires a level of supervision and care that can only be provided by SEAHDC or one of the other human development centers in the State of Arkansas.

27. Plaintiffs Porter and Norman are being denied Equal Protection of the law as guaranteed by the 14th Amendment insofar as admission and release procedures for the state's human development centers set forth in Ark. Code Ann. § 20-48-401 *et seq.* (Michie 2003 Suppl.), and DDS Director's Office Policy Manual policy numbers 1020, 1037, 1053 and 1086 do not provide the same or similar

procedures to them as are provided to individuals with mental illness who are admitted to a treatment program or facility pursuant to Ark. Code Ann. § 20-47-201 *et seq.* (Michie 2001 Repl.).

WHEREFORE, Plaintiffs pray,

- A. That the Court assume jurisdiction of this action;
- B. That the Court declare unconstitutional Ark. Code Ann. § 20-48-401 *et seq.* (Michie 2003 Suppl.) and DDS Director's Office Policy Manual policy numbers 1020, 1037, 1053 and 1086 pertaining to admission and release procedures of the human development centers;
- C. That the Court require Defendants to hold judicial hearings for plaintiffs which comport with minimum standards of due process and equal protection pursuant to the 14th Amendment; and
- D. For attorney's fees, for costs, and for all other proper and just relief to which the Plaintiffs may be entitled. [42 U.S.C. § 1988.]

Respectfully submitted,

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