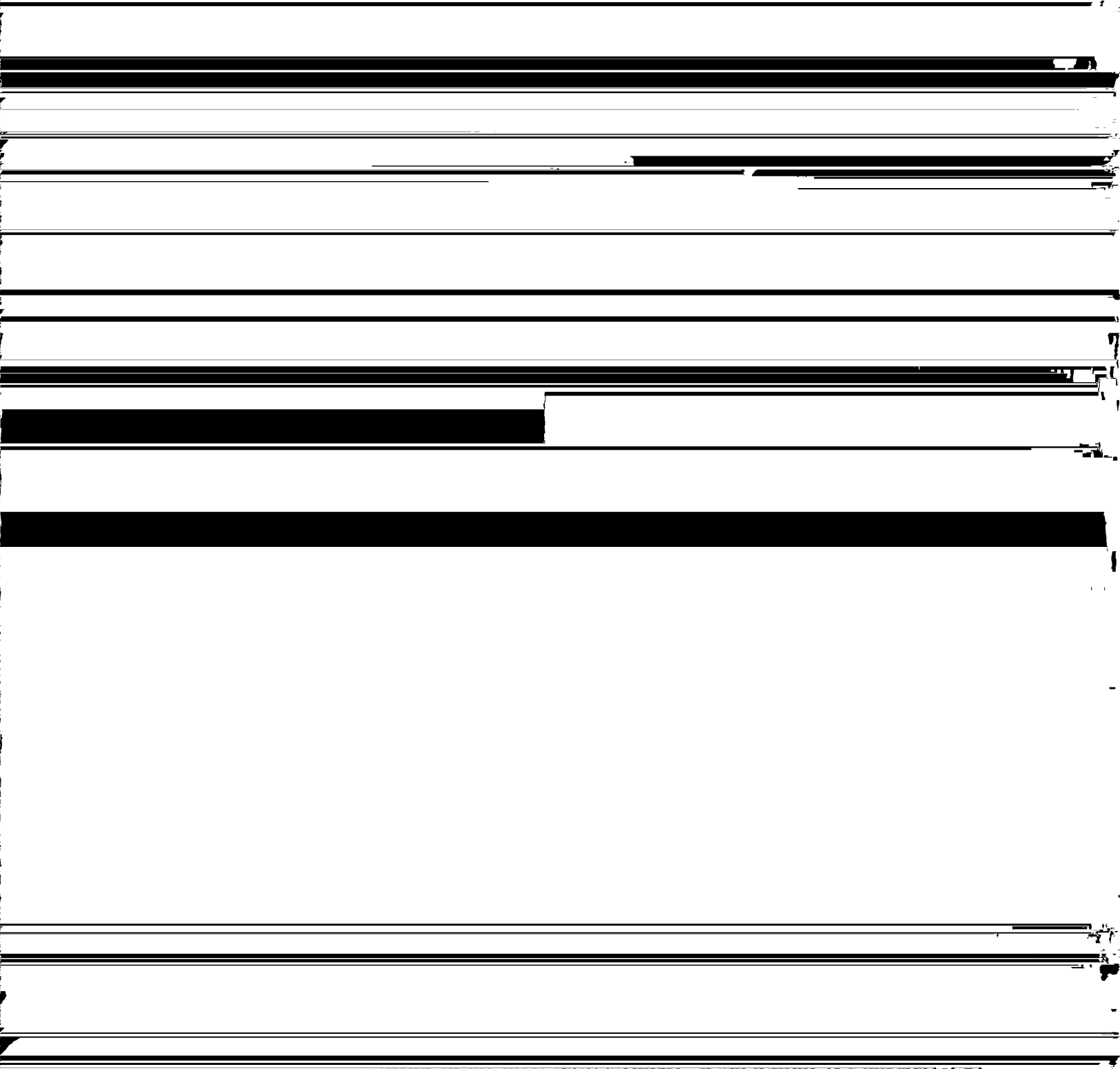


2. DHR is legally obligated to administer its services, programs, and activities to



C.F.R § 35.130(d), and is prohibited from unjustifiably institutionalizing and segregating children in PRTFs, 42 U.S.C § 12132.

7. In some instances, children's conditions are further exacerbated, not improved, by residential care.

depends on its network of PRTFs across Alabama to confine hundreds of children and youth in foster care with mental impairments, some as young as 12 years old. Many of these youth's needs could be reasonably accommodated in their communities.

9. Many more children and youth in DHR's custody are at serious risk of unnecessary confinement in PRTFs.

children to challenge the significant harm they have suffered because of DHR's needless institutionalization of children and youth with mental impairments in foster care.

17. Plaintiffs, like other children confined to PRTFs, are denied essential opportunities for healthy development, like living in a loving, supportive, family or family-like setting, building intimate relationships with trusted adults, exploring chosen passions and hobbies, and developing

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

confined to and shuffled between three PRTFs for the five years she has been in DHR's custody— one for eighteen months, another for eight months, and then to her current PRTF placement where she has lived for almost two and a half years.

33. A.A. wants to live with a family in the community, attend high school like other youth her age, talk on the telephone, and socialize with friends. She wants to be a cheerleader, learn to play the piano, and learn to cook. She also wants to go skating, even though it scares her.

regimented, and she cannot do typical teenage activities and develop her independence. She is restricted from attending school in the community or engaging in any community-based hobbies or extracurricular activities.

35. A.A.'s ability to progress through and exit from her current PRTF placement hinges, in large measure, on her ability to advance through the program's "level system"—a one-size-fits-all behavior management system used by many PRTFs that is arbitrary, punitive, and non-therapeutic.

36. A.A.'s progress through the level system often has been slowed for such minor behaviors as "laughing when she is not supposed to," "standing at her bedroom door," and "being playfully defiant."

37. At one PRTF, A.A. was also subjected to an emotionally abusive disciplinary practice called Group Ignorance (GI) for almost a year, causing her significant emotional pain and distress.

38. GI is institutionalized shunning.

39. As described by the PRTF's student handbook, residents on GI were "not approved to interact with peers" and "[are] required to remain 10-ft from all residents at all times."

40. Residents on GI could interact with peers only during the provision of billable services like basic living skills instruction and therapist-led group therapy.

41. Residents on GI were not allowed to engage in "small talk" with staff. Even their therapeutic discussions with staff were required to "be minimal—only enough to support/encourage the resident."

University of Indiana School of Law, where she specialized in criminal law. She previously worked as a juvenile public defender and represented indigent defendants in mental health matters in adult and juvenile court.

48. Professor Carroll is familiar with the facts of A.A.'s case as well as the harms and risk of harm A.A. has suffered while in DHR's custody. She is dedicated to serving A.A.'s best interest in this litigation.

B. Plaintiff B.B.

49. B.B. is an 18-year-old Hispanic female who has a mental impairment that substantially limits one or more major life activities.

50. B.B. is currently in a PKTF, after being placed there by DHR in late 2019.

51. She is eligible for a community-based placement with appropriate supports and services.

time or summer job; and has never learned to drive or ride public transit.

58. B.B. would like to move to a foster home. She wants to graduate high school and go to college to study child development.

59. B.B. brings this action through her next friend, Jenny Carroll.

“lateral placement.”

D. Plaintiff D.D.

77. D.D. is a 16-year-old white male who has been diagnosed with mental and physical impairments that substantially limit one or more major life activities.

78. He is currently placed in a PRTF but is eligible for a community-based placement with appropriate supports and services.

board of the Alabama affiliate of the American Civil Liberties Union and is the current president of the Board of Alabama Appleseed Center for Law and Justice.

87. Ms. Freeman is familiar with the facts of D.D.'s case as well as the harms and risk of harm D.D. has suffered in DHR custody. Ms. Freeman is dedicated to serving D.D.'s best interests in this litigation.

based placements and services are available for the youth that need them and that engage youth in DHR custody receive the services they need.

93. Defendant Buckner is ultimately responsible for supervising and monitoring PRTFs, ensuring the adequacy and availability of appropriate community-based placement for children in DHR's care, and ensuring that DHR effectively transitions children to community-based placements and services when it is appropriate. Defendant Buckner is also responsible for the procurement and allocation of available funds to foster homes, therapeutic foster homes, and other home-like, community-based settings and services.

97. These children are inappropriately placed in segregated facilities because DHR has a policy or practice of failing to provide sufficient community-based placements and related supports and services.

98. Many of these children are forced to remain in these facilities far longer than their medical needs require because, in addition to failing to provide a lack of community-based resources, DHR systemically fails to ensure youth are timely discharged when they are ready.

A. PRTFs Are Segregated Facilities That Deprive Children of Healthy Childhood Experiences and Opportunities to Interact with Their Nondisabled Peers.

99. PRTFs are highly regimented and controlled facilities.

100. Youth confined to PRTFs are cut off from family and friends and have few opportunities to interact with anyone without a disability, other than staff.

101. Children in PRTFs attend school on site. They are not integrated with their nondisabled peers.

children, but residential settings impede the formation of secure attachments with adults.

106. Children placed in PRTFs experience worse outcomes than their non-institutionalized peers.

107. Social science research and evaluations of residential facilities and group homes have confirmed that youth placed in residential facilities spend more time in foster care overall, are less likely to be placed with their siblings, and are less likely to be placed in or near their home communities.

children raised in the community enjoy. Their talents and interests remain largely unexplored. They do not have a chance to find a first job or learn how to drive. And tragically, the gap between their development and that of their non-disabled peers grows larger each day DHR confines them unnecessarily in an institution.

B. PRTFs in Alabama Are Not Monitored to Ensure They Are Safe.

113. Defendant fails to consistently monitor to ensure that PRTFs are safe places for children to live.

insurance reported to state, a girl was held in the same conditions for four weeks. I.P.L. 1072.01, d. 11 ... ad

forced to take her thin, plastic bed pad, place it in the barren time-out room, and sleep on the floor for four weeks.

methods of control on their youth residents with mental impairments, like the “Group Ignorance” shunning program that A.A. was subjected to for almost a year.

120. It is also common for youth in PRTFs to be subjected to dingy living conditions that can border on being squalid.

127. Nevertheless, public reporting and data shows that DHR oversees residential facilities, defined as group homes and institutions, for children in foster care—a fact which DHR

integrated community settings.

133. In its annual reporting to the federal government in 2018, DHR admitted that it has long relied on institutional placements because it lacks sufficient community-based alternatives,

noting that it needed to recruit and retain well-trained foster/adoptive resource families so that the state's "dependence on congregate care facilities" would decrease.

equally across all jurisdictions.”

141. DHR has also publicly admitted to a “lack of clarity” regarding who is responsible for training staff to recruit foster families who are willing and able to address the special care needs of youth in care.

142. When foster parents are not adequately trained and supported, the foster placement is more likely to fail, which often results in the children being moved to a PRTF.

payments” to foster homes serving “emotionally disturbed” children or children with “pronounced behavior problems.” This program is supposed to enable more children with mental health needs to be placed with families in the community.

148. But DHR’s Monthly Statistical Reporting shows that almost no caregivers receive difficulty of care payments.

services in the community. Expanding the availability of community-based behavioral and mental health services would thus not require DHR to fundamentally alter its programs and services.

154. There are, for example, mobile crisis and crisis stabilization services available for adults in Alabama.

180. These level systems focus on compliance with rules, not improvement in the child's

placements and services.

of the Federal Rules of Civil Procedure on behalf of a class consisting of every youth who now or during the pendency of this action meets the following criteria:

The youth is adjudicated dependent under Ala. Code § 12-15-314(a)(3), has a mental health impairment that substantially limits one or more major life activity, is referred to, placed in, or at risk of placement in a PRTF (or, as DHR refers to these facilities, an “Intensive” facility), and who is or will be eligible for community-based placements or services.

timely and appropriately discharged from PRTFs into family homes and other integrated community settings.

- d. Whether Defendant has a policy or practice of unjustifiably institutionalizing youth in the Class in PRTFs.
- e. Whether Defendant's policies and practices with respect to the Class violate the ADA.
- f. Whether Defendant's policies and practices with respect to the Class violate Section 504 of the RA.

regularly mandated protection and advocacy agency, and

- c. Attorneys from the Southern Poverty Law Center, a non-profit civil rights organization with offices in Alabama, Florida, Georgia, Louisiana,

197. These attorneys have extensive experience litigating complex class actions in federal court, especially with respect to institutional reform litigation on behalf of youth involved with child welfare systems. Plaintiffs' attorneys have committed sufficient resources to represent the Class.

defined by the ADA, 42 U.S.C. § 12131, and its implementing regulations, 28 C.F.R. § 35.104.

204. DHR is a public entity covered by Title II of the ADA. *See* 42 U.S.C. §

42 U.S.C. § 12131, and its implementing regulations, 28 C.F.R. § 35.104. As such, the ADA prohibits Defendant and DHR from discriminating against individuals with disabilities in its programs and services. *See* 42 U.S.C. §12132. And the unjustified segregation of individuals with disabilities constitutes unlawful discrimination under Title II of the ADA. *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581, 600 (1999).

...in the provision of foster care services...

200. By amending the powers, purposes, and procedures

governing the provision of foster care services in Alabama to ensure they are provided in the most

[REDACTED]

as defined by Section 504 of the Rehabilitation Act, 29 U.S.C. § 794(a), and its implementing regulations, 28 C.F.R. § 41.51.

214. DHR is a governmental agency that receives federal financial assistance and operates programs or activities within the meaning of Section 504. *See* 29 U.S.C. § 794(b)(1)(A). Defendant, acting in her official capacity, is a public entity as defined by the Rehabilitation Act, 29 U.S.C. § 794, and its implementing regulations, 28 C.F.R. § 41.51. As such, the Rehabilitation

...based support services for children with disabilities and class members that would

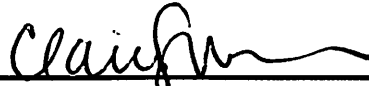
allow them to live in integrated settings,

sufficient capacity of community-based placements and services to meet the needs of Alabama's children in foster care with mental impairments; to implement and sustain an effective system to

Date: July 20, 2021

Respectfully Submitted,

SOUTHERN POVERTY LAW CENTER



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