

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

THE ARC OF VIRGINIA, INC., a not-for-profit corporation,	:	
	:	
	:	
Plaintiff,	:	COMPLAINT
	:	
	:	
v.	:	
	:	Case No.:
	:	
TIMOTHY M. KAINE, in his official capacity	:	
as Governor of the Commonwealth of Virginia,	:	
VIOLA O. BASKERVILLE, in her official	:	
capacity as Secretary of Administration	:	
of the Commonwealth of Virginia,	:	
MARILYN B. TAVENNER, in her official	:	
capacity as Secretary of Health and	:	
Human Resources of the Commonwealth	:	
of Virginia, DR. JAMES S. REINHARD, in his	:	
official capacity as Commissioner of the	:	
Department of Behavioral Health and	:	
Developmental Services of the Commonwealth	:	
of Virginia, and	:	
RICHARD F. SLIWOSKI, P.E., in his	:	
official capacity as Director of the Department	:	
of General Services of the Commonwealth of	:	
Virginia,	:	
	:	
	:	
Defendants.	:	

COMPLAINT

PRELIMINARY STATEMENT

This case asks the Court to prevent the Commonwealth of Virginia from keeping people with intellectual disabilities in an unlawful state of “unjustified institutional isolation” in defiance of the Supreme Court’s *Olmstead* decision.

The Defendants intend to build a new segregated institution to “replace” Southeastern Virginia Training Center (“SEVTC”), a state institution for Virginians with intellectual

disabilities. Under the Defendants' plan, 75 SEVTC residents will be forced to live in the new institution, even though a state-sponsored study found that each and every one of them can be served in the community rather than in an institution.

As a result, Defendants' plan violates those SEVTC residents' rights under federal law, including their rights to be free from discrimination and to receive services "in the most integrated setting" appropriate to their needs under the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973 and the Supreme Court's decision in *Olmstead v. L.C.*, 527 U.S. 581 (1999).

Plaintiff, The Arc of Virginia, Inc., prays that this Court hold that Defendants' plan, and/or the state Budget Bill Item that precipitated it, violate federal law and the rights of Arc members. Doing so will prevent the Defendants from building the new institution, protect the rights of people with intellectual disabilities to live in the most integrated setting and preserve the right of SEVTC residents to live in an appropriate, government-owned or operated facility if they choose to do so.

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343.
2. This Court has personal jurisdiction over the Defendants in that they are residents of the Commonwealth of Virginia and are employed as officials of the Commonwealth of Virginia.
3. The Arc's prayers for Declaratory relief are authorized by 28 U.S.C. § 2201.

4. The Arc's prayers for Injunctive relief are authorized by the Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131 ("The ADA"), Section 504 of The Rehabilitation Act of 1973, 29 U.S.C. § 794 ("Section 504") and the Supremacy Clause of the Constitution of the United States, U.S. Const. art. VI, cl. 2.
5. Venue is appropriate in this District pursuant to 28 U.S.C. § 1391 as this matter arose in this District and the Defendants' offices are located in this District.

PARTIES

PLAINTIFF

6. Plaintiff, The Arc of Virginia, Inc. ("the Arc"), is a not-for-profit corporation. The Arc is the Virginia state Chapter of The Arc of the United States, the world's largest community-based organization of and for people with intellectual and developmental disabilities. With the Arc of the United States and its over 780 state and local chapters, the Arc is devoted to promoting and improving supports and services for all people with intellectual disabilities.
7. The Arc's membership is comprised of people with intellectual disabilities, their family members and advocates.
8. The Arc is governed by a Board of Directors, three of whom are people with intellectual disabilities. The Arc's Board of Directors meets at least four times each year.
9. Each local chapter has a representative on the Board. Local chapter representatives are selected by the local chapter's Board of Directors, many of

which have members with intellectual disabilities. Each local chapter's Board is elected by its members.

10. The Arc's Mission Statement is "The Arc of Virginia advocates for the rights and full participation of all children and adults with intellectual and developmental disabilities. Together with our network of members and affiliated chapters, we improve systems of supports and services; connect families; inspire communities and influence public policy."
11. To fulfill its mission, the Arc engages in activities including, but not limited to: advocating for changes to law and public policy to benefit its members and people with intellectual and developmental disabilities; organizing and collaborating with individuals and organizations that advocate for changes to law and public policy to benefit its members and people with intellectual and developmental disabilities; providing information to its members and people with intellectual and developmental disabilities, their families and advocates about important issues; providing training for its members and people with intellectual and developmental disabilities to become self-advocates for issues important to them; providing information to the public, government and policymakers about issues that are important to its members and people with intellectual and developmental disabilities; and holding an annual conference bringing together its members, people with intellectual and developmental disabilities, advocates and policymakers from across the state to discuss and influence public policy. The Arc frequently speaks out on issues important to people with intellectual and

developmental disabilities and has been a leader in the struggle to prevent the Commonwealth from building a new segregated institution.

12. The Arc is pursuing this action to protect the rights of its members who are or may become residents of SEVTC and are, therefore, threatened with being placed in the new segregated institution rather than in the most integrated setting appropriate to their needs. These individuals have each suffered injuries, or are threatened with injuries - including violation of their rights under federal law and continued, unjustified institutionalization - that would allow them to bring suit against the Defendants in their own right.
13. The Arc is also pursuing this action in its own right because it has had to divert resources from its previously planned projects and efforts in order to oppose the Defendants' plan to build and fully populate a new segregated institution and Budget Bill Item 103.05(A)(1), to the extent it requires such a plan.
14. If the Defendants are permitted to implement their plan and build the new segregated institution, the Arc will have to continue to divert resources from its other work in order to provide information and advocacy to residents of the institution and to people threatened with admission to the institution.

DEFENDANTS

15. Defendant Timothy M. Kaine ("the Governor") is sued in his official capacity as the Governor of the Commonwealth of Virginia. The Governor is the highest state official of the Commonwealth of Virginia. The Governor "shall have the authority and responsibility for the formulation and administration of the policies

of the executive branch.” Va. Code § 2.2-103(A). The Governor has an obligation to ensure that his actions, policies and those of his subordinates and members of his administration comply with and uphold the ADA and Section 504. The Governor has failed in his obligation.

16. The Governor may be served at Patrick Henry Building, 3rd Floor, 1111 East Broad Street, Richmond, Virginia 23219.
17. Defendant Viola O. Baskerville (“the Secretary of Administration”), is sued in her official capacity as the Secretary of Administration for the Commonwealth of Virginia. The Secretary of Administration is appointed by the Governor and “serves at the pleasure of the Governor.” Va. Code § 2.2-200 (A). The Secretary of Administration has the power and obligation to hold the agencies in her charge “accountable for their administrative, fiscal and program actions in the conduct of the respective powers and duties of the agencies [and] [d]irect the development of goals, objectives, policies and plans that are necessary to the effective and efficient operation of government.” Va. Code § 2.2-200(C)(3-4). The Secretary of Administration oversees the Department of General Services (“DGS”) and has an obligation to ensure that her actions, policies and those of DGS comply with the ADA and Section 504. The Secretary has failed in her obligation.
18. The Secretary of Administration may be served at Patrick Henry Building, 1111 East Broad Street, Richmond, Virginia 23219.
19. Defendant Marilyn B. Tavenner (“the Secretary of Health and Human Resources”) is sued in her official capacity as the Secretary of Health and Human Resources for the Commonwealth of Virginia. The Secretary of Health and

Human Resources is appointed by the Governor and “serves at the pleasure of the Governor.” Va. Code § 2.2-200 (A). The Secretary of Health and Human Resources has the power and obligation to hold the agencies in her charge “accountable for their administrative, fiscal and program actions in the conduct of the respective powers and duties of the agencies [and] [d]irect the development of goals, objectives, policies and plans that are necessary to the effective and efficient operation of government.” Va. Code § 2.2-200(C)(3-4). The Secretary of Health and Human Resources oversees the Department of Behavioral Health and Developmental Services (“DBHDS,” formerly known as the Department of Mental Health, Mental Retardation and Substance Abuse Services (“DMHMRSAS”)) and has an obligation to ensure that her actions, policies and those of DBHDS comply with the ADA and Section 504. The Secretary has failed in her obligation.

20. The Secretary of Health and Human Resources may be served at Patrick Henry Building, 1111 East Broad Street, Richmond, Virginia 23219.
21. Defendant Dr. James Reinhard (“the Commissioner”) is sued in his official capacity as the Commissioner of DBHDS (formerly known as DMHMRSAS). The Commissioner is charged to “supervise and manage the Department and its state facilities.” Va. Code Ann. § 37.2-304. The Commissioner is obligated to ensure that his actions, policies and those of DBHDS comply with the ADA and Section 504. The Commissioner has failed in his obligation.
22. The Commissioner may be served at 1220 Bank Street, Richmond, VA 23219.

23. Defendant Richard F. Sliwoski, P.E. (“the Director”) is sued in his official capacity as the Director of DGS. The Director is “responsible for the overall supervision of the Department's divisions, programs and personnel.” Va. Code Ann. § 2.2-1100. The Director is obligated to ensure that his actions, policies and those of DGS comply with the ADA and Section 504. The Director has failed in his obligation.
24. The Director may be served 1100 Bank Street, Suite 420, Richmond, VA 23219.

FACTS

25. SEVTC is located on a 120 acre compound in an isolated section of Chesapeake, Virginia.
26. SEVTC can be entered by car only by turning off of Military Highway 13 onto Smith Avenue and then snaking through an industrial park, past signs saying “No Trespassing.”
27. SEVTC is segregated from the community at large on all sides.
28. SEVTC is segregated from the residential community on its Eastern border by a trench that is approximately one quarter mile long, five feet wide and two feet deep. Where the trench ends, SEVTC is segregated from that community by an approximately six foot high fence. It is also segregated from that community by multiple “No Trespassing” signs. All of the “No Trespassing” signs face the community, telling community members that they are not welcome at SEVTC.
29. The SEVTC compound is segregated from the industrial park along its Northern border by “No Trespassing” signs.

30. The SEVTC compound is segregated from the community along its Southern border by Interstate 64.
31. The SEVTC compound is segregated from the business development along its Western border by a six foot high fence.
32. If people who wish to visit the compound can ford these boundaries, they are then required to report to SEVTC's main office to request admission.
33. Under its visitation policy, SEVTC can deny any person or organization access to the compound, at its discretion.¹ SEVTC can do so even when an SEVTC resident has not been found incompetent by a court of law and has expressed a desire to meet with that person or organization.
34. SEVTC has used this authority to restrict its residents' contacts with organizations it presumably does not approve of.
35. For example, when the Arc formed a Chesapeake chapter to advocate for the rights of its members and other SEVTC residents, its self-advocate went to SEVTC to give residents information about the Arc and about their rights.
36. The Director of SEVTC, Robert D. Shrewsberry, Ph.D., responded by barring the Arc and its staff from soliciting membership or providing written information to SEVTC residents.
37. However, SEVTC allows members of other groups - presumably ones Dr. Shrewsberry likes - to visit SEVTC, solicit membership, distribute information and conduct meetings on the SEVTC compound.

¹ SEVTC cannot exclude organizations that have a statutory right to enter SEVTC, such as the Virginia Office for Protection and Advocacy.

38. SEVTC even provides advertising for one such group, known as “Parents and Friends of SEVTC.”
39. When Dr. Shrewsberry was asked why SEVTC provides such support to that group, he replied in a letter, “we see [Parents and Friends of SEVTC] as having a direct interest in the operation of the Center. The Arc does not enjoy such status.”
40. SEVTC also restricts residents’ rights to travel off of the compound and interact with nondisabled people. For example, under SEVTC policy, it can, in its discretion, determine that a resident is not “competent” to leave the compound and deny him or her the opportunity to see or mingle with members of the community at large. SEVTC can do so even when a person has not been found incompetent by a court of law.
41. In his proposed budget for 2010, the Governor proposed closing SEVTC. In an interview, the Governor stated that money spent on SEVTC should be put “into community services to treat people with mental illness and mental retardation.” The Governor further stated that SEVTC residents “don’t need to be institutionalized.” *See*, WAVY-TV, “Kaine on the economy and ‘going green,’” available at http://www.wavy.com/dpp/news/local_wavy_kaine_budget_update_southeastern_20090112
42. The Governor’s proposed budget called for redirecting money that had been earmarked for construction at SEVTC to build community-based housing for people with intellectual disabilities.

43. The Secretary of Health and Human Resources and the Commissioner supported the Governor's plan to close SEVTC and provide community-based services in testimony to the Virginia General Assembly and at public meetings.
44. However, instead of closing SEVTC, the Virginia General Assembly passed Budget Bill Item 103.05(A)(1), which ordered that a new 75-bed "facility" be built. A copy of Budget Bill Item 103.05, which contains Item 103.05(A)(1), is attached to and made a part of this Complaint as Exhibit A.
45. Budget Bill Item 103.05(A)(1) directs the Department of Mental Health, Mental Retardation and Substance Abuse Services ("DMHRMSAS," now known as DBHDS) and DGS to "rebuild and resize the Southeastern Virginia Training Center to a 75-bed facility to serve profound and severely disabled clients" and allots \$23,768,000.00 for construction.
46. Upon information and belief, before passing Budget Bill Item 103.05(A)(1), neither the General Assembly nor the Defendants performed or caused to be performed any evaluations or analysis to determine whether a new segregated institution is necessary to provide services to SEVTC residents.
47. Upon information and belief, before passing Budget Bill Item 103.05(A)(1), neither the General Assembly nor the Defendants performed or caused to be performed any individualized evaluations or analysis of SEVTC residents to determine if any require services in a new segregated institution that cannot be provided in more integrated, community-based settings.
48. Upon information and belief, before passing Budget Bill Item 103.05(A)(1), neither the General Assembly nor the Defendants performed or caused to be

performed any evaluations or analysis to determine whether a new segregated institution would provide more appropriate and lawful services to SEVTC residents than those offered in more integrated, community-based settings.

49. The General Assembly also passed Budget Bill Item 103.05(A)(3), which directs DGS and DMHMRSAS to “build, acquire or renovate 12 community based Intermediate Care Facilities (ICF-MR) and 6 MR Homes.”
50. In April of 2009, the Governor approved and signed the Commonwealth’s budget for 2010, including Budget Bill Item 103.05(A)(1) and Budget Bill Item 103.05(A)(3).
51. The Governor could have exercised his “line item veto” power to remove Budget Bill Item 103.05(A)(1), but chose not to do so.
52. Upon information and belief, the Defendants are each implementing or working to implement Budget Bill Item 103.05(A)(1).
53. In June of 2009, a state-sponsored study of SEVTC residents concluded that all SEVTC residents “Can Be Served in the Community,” confirming the Governor’s belief that SEVTC residents “don’t need to be institutionalized.” The study was performed by the Human Services Resource Institute, pursuant to a contract with DBHDS, and was based on medical records and evaluation data collected and kept by DBHDS. A copy of the study is attached to and made a part of this Complaint as Exhibit B.
54. On or about 29 June 2009, the Arc wrote to the Governor, stating that the state-sponsored survey shows that there is no need to build the new segregated institution because all SEVTC residents can be served in the community. The Arc

asked the Governor to defer building the new institution to study the results of the survey.

55. On or about 9 July 2009, the Secretary of Health and Human Resources responded on behalf of the Governor. She stated that the Governor would not delay building the new institution.
56. On or about 6 July 2009, the Commissioner responded to a request for information asking whether current SEVTC residents will make up the population of the new institution.
57. The Commissioner stated “[T]he process for determining the identity of the individuals who will be offered SEVTC beds is currently in development. No one has yet been selected as a candidate for an SEVTC bed at this date.” A copy of the Commissioner’s letter is attached to and made a part of this Complaint as Exhibit C.
58. DBHDS (formerly known as DMHMRSAS) headed an Advisory Committee of stakeholders to discuss ways to implement Budget Bill Item 103.05(A)(1).
59. The Arc was made a member of the SEVTC Advisory Committee. As a member of the Advisory Committee, the Arc opposed plans to build a segregated institution and advocated for SEVTC residents to be provided with community-based services.
60. On 13 August 2009, DBHDS informed the Advisory Committee of the Defendants’ plan for implementing Budget Bill Item 103.05(A)(1). The Commissioner gave a summary of the plan and answered questions regarding it.

61. At the time the Commissioner announced Defendants' plan, there were 155 residents of SEVTC.
62. Under the Defendants' plan, a new segregated 75-bed institution will be built under the auspices of DGS and DBHDS, which are headed by the Director and the Commissioner, respectively.
63. Under the Defendants' plan, the new segregated institution will be built on the SEVTC compound
64. In response to a question, the Commissioner stated that the 75-bed census for the new institution was not arrived at through any "science or study."
65. Under the Defendants' plan, the new segregated institution will be fully populated by current and future SEVTC residents.
66. Upon information and belief, the Defendants' plan calls for the new segregated institution to remain fully populated.
67. Under the Defendants' plan, all SEVTC residents will be evaluated. The Commissioner stated that the evaluations would not be conducted using the Supports Intensity Scale (SIS), a nationally recognized method for determining the true support needs for people with intellectual disabilities.
68. The Commissioner's refusal to use the SIS is troubling, given that the state-sponsored survey finding that all SEVTC residents can live in the community was completed, in large part, using the SIS.
69. Based on DBHDS' evaluation method, 65 SEVTC residents will be chosen to live in the new institution - whether or not those persons actually require treatment in an institutional setting.

70. Under the Defendants' plan, the remaining 10 beds in the new institution will be filled with SEVTC residents who are transitioning from or to community settings.
71. Under Defendants' plan, the remaining SEVTC residents will be placed in the community-based Intermediate Care Facilities for the Mentally Retarded ("ICF-MRs") and MR homes provided for in Budget Bill Item 103.05(A)(3) or in other community placements.
72. A DBHDS representative publicly admitted that there will be "very little" to no difference between the service needs of those individuals forced to live in the new segregated institution and those permitted to live in the community-based ICF-MRs and MR homes.
73. Upon information and belief, and as required by federal law, the community-based ICF-MRs called for in Budget Bill Item 103.05(A)(3) will provide the SEVTC residents chosen to live in them with the same level of care provided in SEVTC, but in a more integrated, community-based setting.
74. Upon information and belief, prior to creating their plan to build and fully populate the new institution, Defendants did not perform or cause to be performed any evaluations or analysis, with the exception of the state-sponsored study concluding that all SEVTC residents can be served in the community, to determine whether a new segregated institution is necessary to provide services to SEVTC residents.
75. Upon information and belief, prior to creating their plan to build and fully populate the new institution, Defendants did not perform or cause to be performed any individualized evaluations or analysis of SEVTC residents, with the exception

of the state-sponsored study concluding that all SEVTC residents can be served in the community, to determine if any require services in a new segregated institution that cannot not be provided in more integrated, community-based settings.

76. Upon information and belief, prior to creating their plan to build and populate the new institution, Defendants did not perform or cause to be performed any evaluations or analysis, with the exception of the state-sponsored study concluding that all SEVTC residents can be served in the community, to determine whether the new segregated institution will provide more appropriate services to SEVTC residents than those offered in more integrated, community-based settings.
77. On or about 19 August 2009, counsel for the Governor responded to a request for “copies of all assessments, evaluations, studies or documents that were created or reviewed prior-to or leading to the conclusion that a new 75 bed institution is needed or appropriate.” Counsel stated that there were no such documents in the possession, custody or control of the Governor, the Secretary of Administration or the Secretary of Health and Human Resources.
78. Counsel also stated that the Governor and the two Secretaries did not have “any individualized assessments . . . indicating that a new institution is required to house people with disabilities” or any documents “indicating how, specifically, the 75 bed census was determined.”
79. Counsel’s letter was copied to each of the Defendants herein. A copy of the letter is attached to and made a part of this Complaint as Exhibit D.

80. Instead of performing such evaluations or assessments to determine the actual needs of SEVTC residents and forming a plan to meet those needs in the most integrated setting appropriate to them, the Defendants simply created a plan that will result in 75 people being placed in a new segregated institution, whether or not those people actually require services in an institutional setting.
81. On 21 September 2009, the Commissioner testified to a committee of the Virginia General Assembly about Defendants' plan.
82. Upon information and belief, in response to a question, the Commissioner admitted that each and every person residing in a state-run institution for people with intellectual disabilities, even those with the most severe needs, can be served in community-based settings.
83. On 13 October 2009, Heidi Dix, Deputy Commissioner of DBHDS, gave a presentation to Virginia's Community Integration Advisory Committee on Defendants' plan to build the new segregated institution.
84. In response to a question, Ms. Dix stated that the proposed 75-bed census for the new institution was not based on the individual needs of SEVTC residents.
85. Ms. Dix stated that the 75-bed census seemed "arbitrary" to DBHDS.
86. Ms. Dix stated that one of the members of the Virginia General Assembly who proposed that census told her that it was based on the population of a children's institution and seemed like "a nice round number."
87. Defendants have received two proposals for building the new institution. Each proposal calls for the construction of a separate and segregated 75-bed institution to house SEVTC residents.

88. Under Defendants' plan, they will choose a proposal and sign a contract with one bidder in December 2009. Construction on the new institution is scheduled to begin in August 2010.
89. On or about October 14, 2009, each Defendant was provided with additional notice of the nature of the claims making up this action. The Arc gave the Defendants notice that it considers their plan to build and fully populate a new segregated institution and Budget Item 10.05(A)(1), as passed or as implemented by Defendants' plan, to violate federal law.
90. The Arc has requested that Defendants defer construction of a new segregated institution or explore other ways to implement Budget Item 103.05(A)(1) that would provide service to SEVTC residents in the most integrated setting appropriate to their needs.
91. This Complaint was only filed after Defendants refused to do so.

CAUSES OF ACTION

FIRST CAUSE OF ACTION:

BROUGHT BY THE ARC, IN ITS ORGANIZATIONAL CAPACITY, FOR

DECLARATORY RELIEF:

**DEFENDANTS' PLAN TO BUILD A NEW SEGREGATED INSTITUTION
and/or BUDGET BILL ITEM 103.05(A)(1) VIOLATE ARC MEMBERS' ADA**

RIGHTS

92. The Arc incorporates and realleges all of the foregoing as if fully set forth hereat.

93. The Defendants in their official capacities and the state agencies they head are “public entities” for the purposes of the ADA. *See*, 42 U.S.C. § 12131(1)(B) (“public entities” include “any department, agency, special purpose district, or other instrumentality of a State or States or local government.”).
94. There are Arc members residing in SEVTC.
95. There are also Arc members at risk of being admitted to SEVTC. These members are on the Commonwealth’s waiting list for Medicaid services. Each of these individuals has been found, by representatives of the Commonwealth, to meet the criteria for institutionalization. Some have been found at “urgent” need of services in order to avoid institutionalization. If these individuals do not receive community-based services, they are at risk of being institutionalized and admitted to SEVTC.
96. The Arc is pursuing this cause of action to protect the ADA rights of its members.
97. The Arc members on whose behalf the Arc brings this action are all persons with intellectual disabilities (formerly known as “mental retardation”) that limit their major life activities including, but not limited to, caring for themselves and learning.
98. The Arc members on whose behalf the Arc brings this action all meet the essential eligibility requirements to receive, and do receive, services for their intellectual disabilities from the Commonwealth of Virginia, its state agencies and officers.
99. Therefore, the Arc members on whose behalf the Arc brings this case are persons with disabilities and “qualified individuals with disabilities” for the purposes of the ADA. *See*, 42 U.S.C. § 12102; 28 C.F.R. § 35.104.

100. The Arc members on whose behalf the Arc brings this action would have standing to bring this action in their own right because Defendants' plan to build and fully populate a new segregated institution and Budget Bill Item 103.05(A)(1), as passed or as implemented by Defendants' plan, violate or threaten their ADA rights.
101. Protecting the ADA rights of the Arc members on whose behalf the Arc brings this action is germane to the Arc's purpose, including but not limited to "advocat[ing] for the rights and full participation of all children and adults with intellectual and developmental disabilities."
102. Neither the claims asserted by the Arc nor the relief sought by the Arc requires the participation of individual Arc members.
103. The Arc members on whose behalf the Arc brings this action, like all SEVTC residents, have an ADA right to receive services in the most integrated setting appropriate to their needs. *See*, 28 C.F.R. § 35.130(d); *Olmstead v. L.C.*, 527 U.S. 581 (1999).
104. As the state-sponsored study showed, no Arc member at SEVTC - indeed, no SEVTC resident - requires services in a segregated institution that cannot be provided in one of the community ICF-MRs or MR homes provided for in Budget Bill Item 103.05(A)(3) or in other community placements.
105. The state-sponsored study notwithstanding, Defendants have not performed any appropriate or individualized analysis concluding that any Arc member or other SEVTC resident requires services in a new segregated institution that cannot be

provided in a more integrated, community-based placement such as a community ICF-MR, Waiver home or other community placement.

106. The ADA provides that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs or activities of a public entity, or be subject to discrimination by such entity.” 42 U.S.C. § 12132.
107. The regulations implementing the ADA require a public entity to administer its services, programs and activities in “the most integrated setting appropriate to the needs of qualified individuals with disabilities.” 28 C.F.R. § 35.130(d).
108. In its Commentary to the regulations it promulgated to interpret the ADA, the United States Department of Justice states, “public entities are required to ensure that their actions are based on facts applicable to individuals and not on presumptions as to what a class of individuals can or cannot do.” Commentary to 28 C.F.R. § 35.130.
109. In *Olmstead v. L.C.*, the Supreme Court held that “unjustified institutional isolation is a form of discrimination” in violation of the ADA. 527 U.S. 581, 600 (1999).
110. Defendants have chosen to implement Budget Bill Item 103.05(A)(1) through their plan to build and fully populate a new segregated institution.
111. Defendants’ plan to build and fully populate a new segregated institution and Budget Bill Item 103.05(A)(1), to the extent it requires such a plan, will result in 75 SEVTC residents being placed in the new segregated institution - whether or not they “need” institutionalization.

112. At the same time, Defendants' plan will result in other SEVTC residents with similar needs receiving services in more integrated, community-based ICF-MRs and other community placements.
113. Therefore, Defendants' plan to build and fully populate a new segregated institution and Budget Bill Item 103.05(A)(1), to the extent it requires such a plan, violate and/or threaten Arc members' ADA rights by placing them at risk of receiving services in the new segregated institution instead of the most integrated setting appropriate to their needs.
114. Defendants' plan to build and fully populate a new segregated institution and Budget Bill Item 103.05(A)(1), as passed or as implemented by Defendants' plan, further violate or threaten Arc members' ADA rights by:
- (i) Denying them appropriate, individualized assessments to determine their needs - including which, if any, require services in a new segregated institution that cannot be provided in more integrated, community-based settings - before deciding to build a new, segregated institution;
 - (ii) Denying them the opportunity to participate in or benefit from an aid, benefit, or service including, but not limited to, services in a more integrated, community-based setting;
 - (iii) Affording them an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;
 - (iv) Providing them with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;
 - (v) Providing them with different or separate aids, benefits, or services than is provided to others when such action is not necessary to provide qualified individuals with disabilities with aids, benefits, or services that are as effective as those provided to others;

- (vi) Otherwise limiting them in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service;
- (vii) Utilizing criteria or methods of administration that have the effect of subjecting them to discrimination on the basis of disability;
- (viii) Imposing or applying eligibility criteria that screen out or tend to screen them out from fully and equally enjoying any service, program, or activity, without showing that such criteria can be shown to be necessary for the provision of the service, program, or activity being offered; and
- (ix) Restricting their ability to interact with nondisabled peers due to the segregated and restrictive nature of the institution.

SECOND CAUSE OF ACTION:

BROUGHT BY THE ARC, IN ITS ORGANIZATIONAL CAPACITY, FOR

DECLARATORY RELIEF:

DEFENDANTS' PLAN TO BUILD A NEW SEGREGATED INSTITUTION

and/or BUDGET BILL ITEM 103.05(A)(1) VIOLATE ARC MEMBERS'

SECTION 504 RIGHTS

- 115. The Arc incorporates and realleges all of the foregoing as if fully set forth hereat.
- 116. The Commonwealth of Virginia receives federal funds to provide services to individuals with intellectual disabilities, including SEVTC residents.
- 117. The Defendants in their official capacity and/or the state agencies they head receive Federal financial assistance for the purposes of Section 504. *See*, 28 C.F.R. § 41.3 (“recipients” includes any “instrumentality of a State or its political subdivision . . . or any person to which Federal financial assistance is extended directly or through another recipient .”).
- 118. There are Arc members residing in SEVTC.

119. There are also Arc members at risk of being admitted to SEVTC. These members are on the Commonwealth's waiting list for Medicaid services. Each of these individuals has been found, by representatives of the Commonwealth, to meet the criteria for institutionalization. Some have been found at "urgent" need of services in order to avoid institutionalization. If these individuals do not receive community-based services, they are at risk of being institutionalized and admitted to SEVTC.
120. The Arc is pursuing this cause of action to protect the Section 504 rights of its members.
121. The Arc members on whose behalf the Arc brings this action are all persons with intellectual disabilities (formerly known as "mental retardation") that limit their major life activities including, but not limited to, caring for themselves and learning.
122. The Arc members on whose behalf the Arc brings this action all meet the essential eligibility requirements to receive, and do receive, services for their intellectual disabilities from the Commonwealth of Virginia, its state agencies and officers.
123. Therefore, the Arc members on whose behalf the Arc brings this action are "handicapped persons" and "qualified handicapped persons" for the purposes of Section 504. *See*, 28 C.F.R. §§ 41.31-41.32.
124. The Arc members on whose behalf the Arc brings this action would have standing to bring this action in their own right because Defendants' plan to build and fully populate a new segregated institution and Budget Bill Item 103.05(A)(1), to the extent it requires such a plan, violate or threaten their Section 504 rights.

125. The Section 504 rights of the Arc members on whose behalf the Arc brings this action are germane to the Arc's purpose, including but not limited to "advocat[ing] for the rights and full participation of all children and adults with intellectual and developmental disabilities."
126. Neither the claim asserted by the Arc nor the relief sought by the Arc requires the participation of individual Arc members.
127. The Arc members on whose behalf the Arc brings this action, like all SEVTC residents, have a Section 504 right to receive services in the most integrated setting appropriate to their needs.
128. As the state-sponsored study showed, no Arc member at SEVTC - indeed, no SEVTC resident - requires services in a new segregated institution that cannot be provided in one of the community ICF-MRs or MR homes provided for in Budget Bill Item 103.05(A)(3) or in other community placements.
129. The state-sponsored study notwithstanding, Defendants have not performed appropriate or individualized analyses concluding that any Arc member or other SEVTC resident requires services in a new segregated institution that cannot be provided in a more integrated, community-based setting such as a community ICF-MR or other community-based placement.
130. Section 504 provides that "No otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 29 U.S.C. § 794.

131. Under Section 504, recipients of federal funding must make individualized inquiries into the needs of people with disabilities when making decisions or taking actions impacting those needs. *See, e.g., School Board of Nassau County v. Arline*, 480 U.S. 273 (1987)
132. The regulations implementing Section 504 require programs or activities receiving Federal financial assistance to “administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.” 28 C.F.R. § 41.51.
133. Defendants have chosen to implement Budget Bill Item 103.05(A)(1) through their plan to build and fully populate a new segregated institution.
134. Defendants’ plan to build and fully populate a new segregated institution and Budget Bill Item 103.05(A)(1), to the extent it requires such a plan, will result in 75 SEVTC residents being placed in the new segregated institution - whether or not they “need” institutionalization.
135. At the same time, Defendants’ plan will result in other SEVTC residents with similar needs receiving services in more integrated, community-based ICF-MRs and other community placements.
136. Defendants’ plan to build and fully populate a new segregated institution and Budget Bill Item 103.05(A)(1), as passed or as implemented by Defendants’ plan, violate and/or threaten Arc members’ Section 504 rights by placing them at risk of receiving services in a segregated institution instead of in the most integrated setting appropriate to their needs.

137. Defendants' plan to build and fully populate a new segregated institution and Budget Bill Item 103.05(A)(1), as passed or as implemented by Defendants' plan, further violate Arc members' Section 504 rights and/or threaten their Section 504 rights by:

- (i) Denying them appropriate, individualized assessments to determine their needs - including which, if any, require services in a new segregated institution that cannot be provided in more integrated, community-based settings - before deciding to build a new, segregated institution;
- (ii) Excluding them, solely by reason of their disabilities, from services provided to others in a program receiving federal financial assistance including, but not limited to, services and treatment provided in more integrated, community-based settings;
- (iii) Denying them, solely by reason of their disabilities, the benefits of services provided to others in a program receiving federal financial assistance;
- (iv) Subjecting them, solely by reason of their disabilities, to discrimination under a program receiving federal financial assistance; and
- (v) Restricting their ability to interact with nondisabled peers due to the segregated and restrictive nature of the institution.

THIRD CAUSE OF ACTION:
BROUGHT BY THE ARC, IN ITS OWN RIGHT, FOR DECLARATORY
RELIEF
DEFENDANTS' PLAN TO BUILD A NEW SEGREGATED INSTITUTION
and/or BUDGET BILL ITEM 103.05(A)(1) ARE INVALID,
UNCONSTITUTIONAL AND UNENFORCEABLE PURSUANT TO THE
SUPREMACY CLAUSE

138. The Arc incorporates and realleges all of the foregoing as if fully set forth hereat.
139. The Arc has opposed Defendants' plan to build and fully populate a new segregated institution and Virginia Budget Bill Item 103.05(A)(1), to the extent it requires such a plan, as a member of the SEVTC Advisory Committee and through its public statements, public efforts and letters to the Governor and other policymakers.
140. The Arc has had to divert resources from previously planned projects and goals in order to oppose Defendants' plan and Budget Bill Item 103.05(A)(1), to the extent it requires such a plan.
141. In addition, if Defendants are permitted to implement their plan to build a new segregated institution, the Arc will be forced to continue diverting resources from its other work in order to provide advocacy for its members and other SEVTC residents who are either placed in the new institution or at risk of being placed in the new institution.
142. As part of its efforts to oppose the Defendants' plan and the Budget Bill Item, the Arc has expended staff and monetary resources to advocate to the SEVTC

Advisory Council that a segregated institution should not be built; formed a new chapter to serve people in or at risk of being admitted to SEVTC; engaged in advocacy designed to prevent Defendants from building the new institution; issued public statements, orally and in writing, opposing the construction of a new segregated institution; and met with policymakers, including some of the Defendants herein, to educate them about the rights of Arc members and other people with intellectual disabilities to live in the most integrated setting and to urge them not to build a new segregated institution.

143. The diversion of the Arc's staff and monetary resources to oppose the Budget Bill Item and Defendants' plan have decreased the resources the Arc has to spend on, and decreased the work the Arc could do on, its previously planned projects such as advocating for the reduction or elimination of the waiting list for Medicaid services for individuals with intellectual and developmental disabilities.
144. In addition, since it began diverting resources to oppose Defendants' plan to build and fully populate a new segregated institution and Virginia Budget Bill Item 103.05(A)(1), to the extent it requires such a plan, the Arc has also had less staff and monetary resources to devote to its other advocacy work such as advocating for the retention or restoration of services to its members and other people with intellectual and developmental disabilities in the face of state budget cuts and advocating for and monitoring the development of community housing for people with intellectual and developmental disabilities.
145. In addition, the Arc also had to divert staff and monetary resources that had been earmarked for other activities, including their own internal operations. Because

the Arc diverted resources to oppose Defendants' plan to build and fully populate a new segregated institution and Virginia Budget Bill Item 103.05(A)(1), to the extent it requires such a plan, it did not have the resources to complete a previously scheduled upgrade to its internet site, which would have provided more information and educational material for its members, policymakers and the public.

146. If Defendants are permitted to implement their plan to build and fully populate a new segregated institution, the Arc will continue to divert resources in order to provide advocacy and services to its members and other residents of the new institution and those at risk of being placed in the new institution. This will include efforts to educate its members and other residents about their rights to live in the most integrated setting and advocacy and advocacy to contend that those residents should not be placed in a new segregated institution.
147. Because it will divert its resources, the Arc will have fewer resources to expend on, and will therefore be limited in its ability to work on, previously planned projects such as defending existing community-based services from budget cuts; advocating for more community housing, educating policymakers, advocating for the end of the waiting list for Medicaid services, and upgrading its internet site.
148. In passing the ADA, Congress found "historically, society has tended to isolate and segregate individuals with disabilities discrimination against individuals with disabilities persists in such critical areas as . . . institutionalization . . . and access to public services. 42 U.S.C. § 12101(a)(3).

149. The ADA provides that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs or activities of a public entity, or be subject to discrimination by such entity.” 42 U.S.C. § 12132.
150. In its Commentary to the regulations it promulgated to interpret the ADA, the United States Department of Justice states, “public entities are required to ensure that their actions are based on facts applicable to individuals and not on presumptions as to what a class of individuals can or cannot do.” Commentary to 28 C.F.R. § 35.130.
151. The regulations implementing the ADA require a public entity to administer its services, programs and activities in “the most integrated setting appropriate to the needs of qualified individuals with disabilities.” 28 C.F.R. § 35.130(d).
152. In *Olmstead, et al. v. L.C., et al.*, the Supreme Court analyzed the ADA and found that “unjustified institutional isolation of persons with disabilities is a form of discrimination. . . .” 527 U.S. 581, 600 (1999).
153. The Court held “Institutional placement of persons who can handle and benefit from community settings perpetuates unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life
Second, confinement in an institution severely diminishes the everyday life activities of individuals, including family relations, social contacts, work options, economic independence, educational advancement, and cultural enrichment. . . .
In order to receive needed medical services, people with mental disabilities must, because of those disabilities, relinquish participation in community life they could

enjoy given reasonable accommodations, while persons without mental disabilities can receive the medical services they need without similar sacrifice.” 527 U.S. at 600.

154. The Court further held that, in order to comply with the ADA, a State should have a “comprehensive working plan for placing qualified persons with mental disabilities in less restrictive settings, and a waiting list that moved at a reasonable pace not controlled by the State’s endeavors to keep its institutions fully populated.” 527 U.S. at 605-606.
155. Defendants’ plan to build and fully populate a new segregated institution and Budget Bill Item 103.05(A)(1), to the extent it requires such a plan, will result in 75 SEVTC residents being placed in the new segregated institution - whether or not they “need” institutionalization.
156. At the same time, Defendants’ plan will result in other SEVTC residents with similar needs receiving services in more integrated, community-based ICF-MRs and other community placements.
157. Defendants’ plan to build and fully populate a new segregated institution and Budget Bill Item 103.05(A)(1), as passed or as implemented by Defendants’ plan, violate and/or conflict with the ADA by:
 - (i) Denying SEVTC residents appropriate, individualized assessments to determine their needs - including which, if any, require services in a new segregated institution that cannot be provided in more integrated, community-based settings - before deciding to build a new, segregated institution;
 - (ii) Denying SEVTC residents services in the most integrated setting appropriate to their needs;
 - (iii) Forcing SEVTC residents into “unjustified institutional isolation;”

- (iv) Failing and/or refusing to create a “comprehensive, effective plan for placing qualified persons with mental disabilities in less restrictive settings;”
- (v) Creating a plan that “endeavors to keep [the new] institution fully populated;”
- (vi) Denying qualified individuals with disabilities the opportunity to participate in or benefit from an aid, benefit, or service;
- (vii) Affording qualified individuals with disabilities an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others including, but not limited to, services provided in more integrated, community-based settings;
- (viii) Providing qualified individuals with disabilities with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;
- (ix) Providing different or separate aids, benefits, or services to individuals with disabilities or to any class of individuals with disabilities than is provided to others when such action is not necessary to provide qualified individuals with disabilities with aids, benefits, or services that are as effective as those provided to others;
- (x) Otherwise limiting qualified individuals with disabilities in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service;
- (xi) Utilizing criteria or methods of administration that have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability;
- (xii) Imposing or applying eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any service, program, or activity, without showing that such criteria can be shown to be necessary for the provision of the service, program, or activity being offered; and
- (xiii) Restricting individuals with disabilities’ ability to interact with nondisabled peers due to the segregated and restrictive nature of the institution.

158. Section 504 provides that “No otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 29 U.S.C. § 794.
159. The regulations implementing Section 504 require programs or activities receiving Federal financial assistance to “administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.” 28 C.F.R. § 41.51.
160. Under Section 504, recipients of federal funding must make individualized inquiries into the needs of people with disabilities when making decisions or taking actions impacting those needs. *See, e.g., School Board of Nassau County v. Arline*, 480 U.S. 273 (1987)
161. Defendants’ plan to build and fully populate a new segregated institution and/or Budget Bill Item 103.05(A)(1), as passed or as implemented by Defendants’ plan, violate Section 504 by:
- (i) Denying SEVTC residents appropriate, individualized assessments to determine their needs - including which, if any, require services in a new segregated institution that cannot be provided in more integrated, community-based settings - before deciding to build a new, segregated institution;
 - (ii) Excluding qualified individuals with disabilities, solely by reason of their disabilities, from services provided to others, including, but not limited to, services provided in integrated, community-based settings;
 - (iii) Denying qualified individuals with disabilities, solely by reason of their disabilities, the benefits of services provided to others;
 - (iv) Subjecting qualified individuals with disabilities, solely by reason of their disabilities, to discrimination under a program receiving federal financial assistance;

- (v) Denying qualified individuals with disabilities services in the most integrated setting appropriate to their needs; and.
- (vi) Restricting individuals with disabilities' ability to interact with nondisabled peers due to the segregated and restrictive nature of the institution.

162. Because Defendants' plan to build and fully populate a new segregated institution and Budget Bill Item 103.05(A)(1), as passed or as implemented by Defendants' plan, violate the ADA and Section 504, they are preempted, unconstitutional and unenforceable pursuant to the Supremacy Clause of the Constitution of the United States. U.S. Const. art. VI, cl. 2
163. Defendants' plan to build and fully populate a new segregated institution and Budget Bill Item 103.05(A)(1), as passed or as implemented by Defendants' plan, conflict with the ADA and Section 504 and stand as an obstacle to the accomplishment of the full purposes and objectives of the ADA and Section 504, including, but not limited to, the objective of ensuring that people with disabilities receive services in the most integrated setting appropriate to their needs.
164. Therefore, Defendants' plan to build and fully populate a new segregated institution and Budget Bill Item 103.05(A)(1), as passed or as implemented by Defendants' plan, are preempted by the ADA and Section 504 and are unconstitutional and unenforceable pursuant to the Supremacy Clause of the Constitution of the United States. U.S. Const. art. VI, cl. 2.

FOURTH CAUSE OF ACTION:

BROUGHT BY THE ARC, IN ITS ORGANIZATIONAL CAPACITY, FOR

INJUNCTIVE RELIEF:

**DEFENDANTS SHOULD BE ENJOINED FROM BUILDING THE NEW
INSTITUTION BECAUSE THEIR PLAN TO DO SO, and/or BUDGET BILL
ITEM 103.05(A)(1), VIOLATE ARC MEMBERS' ADA RIGHTS**

165. The Arc incorporates and realleges all of the foregoing as if fully set forth hereat.
166. Defendants' plan to build and fully populate a new segregated institution and Budget Bill Item 103.05(A)(1), as passed or as implemented by Defendants' plan, violate and/or threaten Arc members' ADA rights, as described above, including but not limited to their right to receive services in the most integrated setting appropriate to their needs.
167. Defendants' plan to build and fully populate a new segregated institution and Budget Bill Item 103.05(A)(1), as passed or as implemented by Defendants' plan, cause Arc members irreparable harm, or place them at risk of irreparable harm, that has no remedy at law, including continued violation or threatening of their ADA rights and continued, unjustified and indefinite institutionalization.

FIFTH CAUSE OF ACTION:

BROUGHT BY THE ARC, IN ITS ORGANIZATIONAL CAPACITY, FOR

INJUNCTIVE RELIEF:

**DEFENDANTS SHOULD BE ENJOINED FROM BUILDING THE NEW
INSTITUTION BECAUSE THEIR PLAN TO DO SO, and/or BUDGET BILL
ITEM 103.05(A)(1), VIOLATE ARC MEMBERS' SECTION 504 RIGHTS**

168. The Arc incorporates and realleges all of the foregoing as if fully set forth hereat.
169. Defendants' plan to build and fully populate a new segregated institution and Budget Bill Item 103.05(A)(1), as passed or as implemented by Defendants' plan, violate and/or threaten Arc members' Section 504 rights, as described above, including but not limited to their right to receive services in the most integrated setting appropriate to their needs.
170. Defendants' plan to build and fully populate a new segregated institution and Budget Bill Item 103.05(A)(1), as passed or as implemented by Defendants' plan, cause Arc members irreparable harm, or place them at risk of irreparable harm, that has no remedy at law, including continued violation or threatening of their Section 504 rights and continued, unjustified and indefinite institutionalization.

SIXTH CAUSE OF ACTION:

BROUGHT BY THE ARC, IN ITS OWN RIGHT FOR INJUNCTIVE RELIEF

DEFENDANTS SHOULD BE ENJOINED FROM BUILDING THE NEW

INSTITUTION BECAUSE THEIR PLAN TO DO SO, and/or BUDGET BILL

ITEM 103.05(A)(1), ARE INVALID, UNCONSTITUTIONAL AND

UNENFORCEABLE PURSUANT TO THE SUPREMACY CLAUSE

171. The Arc incorporates and realleges all of the foregoing as if fully set forth hereat.
172. Injunctive relief is available to enjoin state officers from implementing laws or taking actions preempted under the Supremacy Clause of the Constitution of the United States. U.S. Const. art. VI, cl. 2.
173. Defendants' plan to build and fully populate a new segregated institution and Budget Bill Item 103.05(A)(1), as passed or as implemented by Defendants' plan, violate and/or conflict with the ADA and Section 504 and stand as an obstacle to the accomplishment of the full purposes and objectives of those Acts, including, but not limited to, the objective of ensuring that people with disabilities receive services in the most integrated setting appropriate to their needs.
174. Unless Defendants are enjoined from implementing their plan, they will build the segregated institution called for in their plan and/or Budget Bill Item 103.05(A)(1), causing Arc members and other persons with intellectual disabilities irreparable harm that has no remedy at law, including continued violation or threatening of their ADA and Section 504 rights and continued, unjustified and indefinite institutionalization.

175. This irreparable harm, and/or the threat of it, will cause the Arc to continue to divert resources to counter or minimize the harm to its members, other people with intellectual disabilities, and its mission.

PRAYER FOR RELIEF

WHEREFORE, your Plaintiff, The Arc of Virginia, Inc., respectfully prays that this Court grant it the following relief:

On Count One

- A. Enter a Declaratory Judgment setting forth Arc members' rights to receive appropriate services from the Defendants under the ADA, including but not limited to their right to receive services in the most integrated setting appropriate to their needs;
- B. Enter a Declaratory Judgment setting forth Defendants' obligations to provide appropriate services to the Plaintiffs under the ADA, including but not limited to their obligation to provide services in the most integrated setting appropriate to their needs;
- C. Enter a Declaratory Judgment holding that Defendants' plan to build and fully populate a new segregated institution and Budget Bill Item 103.05(A)(1), as passed or as implemented by Defendants' plan, violate Arc members' ADA rights, including but not limited to their right to receive services in the most integrated setting appropriate to their needs;

- D. Grant the Arc their legal costs and attorneys' fees to the extent authorized by law;
and
- E. Grant the Arc such other and further relief that to this Court seems just and proper.

On Count Two

- A. Enter a Declaratory Judgment setting forth Arc members' rights to receive appropriate treatment services from the Defendants under Section 504, including but not limited to their right to receive services in the most integrated setting appropriate to their needs;
- B. Enter a Declaratory Judgment setting forth Defendants' obligations to provide appropriate services to Plaintiffs under Section 504, including but not limited to their obligation to provide services in the most integrated setting appropriate to their needs;
- C. Enter a Declaratory Judgment holding that Defendants' plan to build and fully populate a new segregated institution and Budget Bill Item 103.05(A)(1), as passed or as implemented by Defendants' plan, violate Arc members' Section 504 rights, including but not limited to their right to receive services in the most integrated setting appropriate to their needs;
- D. Grant the Arc their legal costs and attorneys' fees to the extent authorized by law;
and
- E. Grant the Arc such other and further relief that to this Court seems just and proper.

On Count Three

- A. Enter a Declaratory Judgment holding that Defendants' plan to build and fully populate a new segregated institution and Budget Bill Item 103.05(A)(1), as passed or as implemented by Defendants' plan, violate and/or conflict with the ADA;
- B. Enter a Declaratory Judgment holding that Defendants' plan to build and fully populate a new segregated institution and Budget Bill Item 103.05(A)(1), as passed or as implemented by Defendants' plan, violate and/or conflict with Section 504;
- C. Enter a Declaratory Judgment holding that Defendants' plan to build and fully populate a new segregated institution and Budget Bill Item 103.05(A)(1), as passed or as implemented by Defendants' plan, are preempted by the ADA and are, therefore, unconstitutional and unenforceable pursuant to the Supremacy Clause of the Constitution of the United States;
- D. Enter a Declaratory Judgment holding that Defendants' plan to build and fully populate a new segregated institution and Budget Bill Item 103.05(A)(1), as passed or as implemented by Defendants' plan, are preempted by Section 504 and are, therefore, unconstitutional and unenforceable pursuant to the Supremacy Clause of the Constitution of the United States;
- E. Order the Defendants to pay the Arc's attorneys fees and costs, to the extent authorized by law;
- F. Grant the Arc such other and further relief that to this Court seems just and proper.

On Count Four

- A. Preliminarily and Permanently Enjoin the Defendants from implementing their plan to build a new segregated institution and fully populate it with SEVTC residents;
- B. To the extent that Budget Bill Item 103.05(A)(1) requires the construction of a new, segregated institution for SEVTC residents, preliminarily and permanently enjoin the Defendants from complying with it and from building that institution;
- C. Enjoin the Defendants to conduct appropriate individualized assessments of SEVTC residents – to include nationally recognized assessment tools by an independent evaluator acceptable to the Arc – to determine the actual needs of SEVTC residents;
- D. Enjoin the Defendants to meet the needs of SEVTC residents in the most integrated setting appropriate to their needs;
- E. Order the Defendants to pay the Arc’s attorneys fees and costs, as authorized by the ADA; and
- F. Grant the Arc such other and further relief that to this Court seems just and proper.

On Count Five

- A. Preliminarily and Permanently Enjoin the Defendants from implementing their plan to build a new segregated institution and fully populate it with SEVTC residents;

- B. To the extent that Budget Bill Item 103.05(A)(1) requires the construction of a new, segregated institution for SEVTC residents, preliminarily and permanently enjoin the Defendants from complying with it and from building that institution;
- C. Enjoin the Defendants to conduct appropriate individualized assessments of SEVTC residents – to include nationally recognized assessment tools by an independent evaluator acceptable to the Arc – to determine the actual needs of SEVTC residents;
- D. Enjoin the Defendants to meet the needs of SEVTC residents in the most integrated setting appropriate to their needs;
- E. Order the Defendants to pay the Arc’s attorneys fees and costs, as authorized by Section 504; and
- F. Grant the Arc such other and further relief that to this Court seems just and proper.

On Count Six

- A. Preliminarily and Permanently Enjoin the Defendants from implementing their plan to build a new segregated institution and fully populate it with SEVTC residents;
- B. To the extent that Budget Bill Item 103.05(A)(1) requires the construction of a new, segregated institution for SEVTC residents, preliminarily and permanently enjoin the Defendants from complying with it and from building that institution;
- C. Order the Defendants to pay the Arc’s attorneys’ fees and costs, to the extent authorized by law; and

D. Grant the Arc such other and further relief that to this Court seems just and proper.

Dated: 27 October 2009

Respectfully Submitted:

The Arc of Virginia, Inc.
by counsel

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