

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

SCHIFF HARDIN & WAITE

RECEIVED  
OCT 17 1989

DIARIZED..... DOCKETED.....  
ATTY.....

B.H., C.H., J.E. C.Z., E.G., O.G., )  
S.G., C.G., P.G., and A.G., by )  
their next friend JOSEPH MONAHAN, )  
individually and on behalf of )  
all others similarly situated, )

Plaintiffs, )

v. )

GORDON JOHNSON, Director of )  
the Illinois Department of )  
Children and Family Services, )

Defendant. )

No. 88 C 5599  
Judge Grady

RECEIVED

OCT 16 1989

H. STUART CUNNINGHAM, CLERK  
UNITED STATES DISTRICT COURT

SECOND AMENDED COMPLAINT

Plaintiffs file this Second Amended Complaint pursuant to Court Order. Plaintiffs incorporate herein all the allegations of plaintiffs' Amended Complaint dated November 4, 1988, for the express and sole purpose of preserving for appeal any and all issues raised by that pleading which are not included in the Second Amended Complaint as a result of the Court's Memorandum Opinion of May 30, 1989.

I. NATURE OF THE CONTROVERSY

1. This case is a civil rights class action for declaratory and injunctive relief pursuant to the Fourteenth Amendment to the United States Constitution, the Adoption Assistance and Child Welfare Act of 1980, 42 U.S.C. §§ 620-629, 670-679a ("AAA"), 42 U.S.C. § 1983 and 28 U.S.C. §§ 2201 et seq. Named plaintiffs B.H., C.H., J.E., C.Z., E.G., O.G.,

S.G., C.G., P.G. and A.G. represent the class of all children who, as of the date this case was filed, have been or will be in the custody of the Illinois Department of Children and Family Services ("DCFS"), and who have been or will be placed somewhere other than with their parents. (Hereinafter the named plaintiffs and the class will be referred to jointly as "plaintiffs").

2. Plaintiffs come into DCFS' custody because they are alleged to be victims of abuse or neglect by their parents or because their parents are unable to care for them. DCFS is mandated to protect such children from harm. Plaintiffs, however, suffer serious damage to their mental health and development because defendant Johnson, the Director of DCFS, has not placed them in safe and stable homes in a suitable time and in a suitable manner. Plaintiffs frequently have been shuffled among six or more temporary living arrangements for two or more years and hundreds of them have been victims of neglect or abuse at an increasing rate. These circumstances are directly attributable to the policies and practices of defendant Johnson.

3. Defendant has violated his statutory and constitutional duties to protect children in state custody from unwarranted intrusions on their emotional and physical well-being, and to provide safe and stable placements and minimally adequate medical care, training, shelter, clothing and food for children in state custody. Because of the defendant's

practices and policies, members of the plaintiff class will be subjected to a child welfare system which foreseeably has resulted and will continue to result in irreparable damage to their mental health and development and to their physical well being.

4. Defendant Johnson has long known that DCFS has consistently and repeatedly violated the statutory and constitutional rights of plaintiffs in that it does not and cannot adequately provide for plaintiffs' needs and in that DCFS seriously harms many of the children in its care. Nevertheless, he has failed to take any effective corrective action and has knowingly maintained the policies and practices which have foreseeably resulted in the harms and deprivations complained of herein.

## II. JURISDICTION

5. This Court has jurisdiction over this case pursuant to 28 U.S.C. §§ 1331 and 1343. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391, because the named plaintiffs and the defendant reside in the Northern District of Illinois and many of the acts described took place within the Northern District of Illinois.

## III. PARTIES

6. Plaintiffs are youths who are under the care and supervision of DCFS and who, as of the date this lawsuit was filed, have been or will be placed somewhere other than with their parents.

7. Joseph Monahan, next friend to plaintiffs, received his Bachelor of Social Work degree from the University of Illinois at Champaign-Urbana in 1977 and his Master of Social Work degree from that institution in 1978. He received his Juris Doctor degree from DePaul University School of Law in 1984 and is a member of the bar of the Illinois Supreme Court and of this Court. Mr. Monahan has had caseworker responsibilities both with Illinois Department of Public Aid and DCFS. From 1978 through 1981 he was the executive director of LaSalle County Youth Service Bureau. He has been a member of the boards of numerous child care and social service agencies and, in 1981, was honored for his services to the children of Illinois by special resolution of the Illinois General Assembly. His current law practice involves representation of disabled adults, the mentally ill, and numerous juvenile court appointments.

8. Defendant Gordon Johnson is the Director of DCFS, an agency of the State of Illinois. Pursuant to Illinois statutes, defendant Johnson is responsible for developing, implementing, monitoring and maintaining the programs and practices of DCFS which are the subject of this Complaint and which have created and perpetuated the conditions under which plaintiffs live. Ill. Rev. Stat. ch. 23, ¶ 5001 et seq. (1987). Defendant Johnson is sued in his official capacity.

#### IV. CLASS ALLEGATIONS

9. Named plaintiffs B.H., C.H., J.E., C.Z., E.G., O.G., S.G., C.G., P.G., and A.G. bring this class action on their own behalf and on behalf of all others similarly situated, pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure. The plaintiff class consists of all children, as of the date this case was filed, who are or will be in the custody of DCFS and who have been or will be placed somewhere other than with their parents.

- (a) The defined class is so numerous that joinder of all plaintiffs is impracticable. The number of children in the plaintiff class is more than 15,000.
- (b) There are questions of law and fact common to the class and those questions predominate over questions affecting individual class members. The common questions include: (i) whether defendant has caused DCFS to fail to provide adequately for children in its care; and (ii) whether defendant's conduct violates the United States Constitution and the AAA.
- (c) The claims of the named plaintiffs are typical of the claims of the class, in that the named plaintiffs are in the custody of DCFS, they have suffered from one or more of the practices, policies or conditions described in this Complaint, and they are at risk of suffering from all of these practices, policies or conditions.

- (d) The named plaintiffs will fairly and adequately represent the interests of the class. They have no interests antagonistic to the class, they seek relief which will benefit all members of the class, and they are represented by counsel who are competent and experienced in civil rights litigation.
- (e) The defendant, by creating and maintaining the practices at issue in this case, has acted on grounds generally applicable to the class, and as a result declaratory and injunctive relief with respect to the entire class is appropriate. The plaintiffs' urgent need for appropriate services and care can best be addressed in one action on their behalf.

V. STATEMENT OF THE CASE

The DCFS System

10. DCFS is the state agency in Illinois charged with responsibility for the welfare of those children whose parents are unable or unwilling to care for them. If DCFS determines that a child has been abused or neglected, it is mandated by statute to take appropriate protective action. In fiscal year 1986, DCFS determined that approximately 6,000 children should be removed from the custody of their parents or guardians and placed in the custody of DCFS.

11. Once a child is removed from his or her parents, DCFS assigns the responsibilities for the matter to a "follow-up" caseworker. According to DCFS' procedures, the follow-up

caseworker is to work with the family, arrange for appropriate services -- for example, homemakers, counselors, therapists, and day care -- and oversee the child's welfare, including his or her medical needs, education, and, if the child is not immediately returned home, placement in a foster home, group home, or institutional care facility.

#### The Breakdown Of The DCFS System

12. Once in the custody of DCFS there is little hope that plaintiffs will actually receive minimally adequate care and treatment. Instead, thousands of them are consigned to a life of drift, disruption and despair.

#### Inadequate Staffing

13. Although defendant Johnson knows that, according to DCFS studies and the standards of national social work organizations, follow-up caseworkers responsible for more than twenty cases at a time cannot perform their essential duties competently, defendant Johnson typically causes DCFS to assign sixty or more cases to its follow-up caseworkers. Under these circumstances, the caseworkers cannot protect the children in their care, arrange for appropriate medical care, ensure that foster homes and institutions are safe and appropriate and make informed decisions about a child's basic needs.

Lack Of Essential Services

14. Even if caseworkers had the time meaningfully to monitor the children in their care, defendant's failure to ensure necessary resources and services, including the provision of minimally adequate food, shelter, clothing, training and medical and mental health care, causes serious psychological and physical harm to plaintiffs. On further information and belief, in the weeks before the filing of plaintiffs' original Complaint, defendant Johnson all but ceased providing counselling and other services which DCFS caseworkers specifically found were essential for children and their caretakers.

Lack Of Foster Homes And Appropriate Placements

15. Plaintiffs are informed and believe that defendant's policies and practices have caused a serious shortage of stable, appropriate foster homes, group homes, specialized foster homes, independent living programs and other placements for plaintiffs. As a result, DCFS places many children without regard to their needs or the adequacy of the placement, but solely because a foster home or other placement will accept a child. Because little attention is paid to the adequacy of placements and because no meaningful effort typically has been made to determine if a particular foster home or other placement is appropriate for a child, this practice means that placements selected by DCFS are often unsuitable



and physically and emotionally dangerous. This results in high turnover, multiple placements for the children, and an increasing risk of physical and sexual abuse resulting in unwarranted physical and emotional injury to the plaintiffs. This also results in experiences that are so trying for the foster parents that they are driven out of the system, thus compounding the problem.

16. In part because of the chronic shortage of foster homes, DCFS repeatedly has warehoused children for months or years in overcrowded and dangerous shelters maintained by defendant. For example, in May 1988, an eight year old child was raped by two twelve year olds at a DCFS-run shelter after defendant failed to respond to repeated and consistent internal reports that the institution was unable adequately to protect the children residing there. Such institutions are inherently unstable and inappropriate and often cause significant damage to the mental health and development of such children.

#### The Consequences Of the Breakdown

17. As a foreseeable result of defendant's knowing maintenance of the practices and policies which have created a chronically deficient system:

- (a) Thousands of children are placed in unstable and dangerous settings, causing serious and irreparable damage to their mental health and development.

(b) Thousands of children in DCFS custody drift through unsuitable placements in a variety of foster homes and other placements, causing unwarranted injury to their emotional well-being, disrupting their development and education and making it difficult if not impossible for them to form secure emotional attachments which are essential to their mental health and development. As of June 30, 1986, more than 4,300 children in DCFS care had been in six or more placements.

(c) Thousands of children are warehoused by DCFS in mental hospitals, detention centers, group homes and other institutions for weeks or months after they could have been placed in more appropriate settings. Some of these facilities house children in physically dangerous conditions in which many are raped, beaten or brutally disciplined. Many of them offer inadequate or no educational opportunities, minimal activities, and few opportunities for stable emotional bonding or support. Some children have spent close to a year locked in mental hospitals after professionals responsible for their treatment have found them ready for discharge, thereby seriously damaging such children's mental health and development.

(d) In the last four years, hundreds of children in DCFS' care have, at an increasing rate, become victims of the very kinds of abuse and neglect that caused the State to remove them from their homes in the first place.

(e) Many of plaintiffs fail to receive the bare necessities of minimally adequate care, including minimally adequate medical and mental health care, food, clothing, training and shelter.

18. The experiences of the named plaintiffs evidence the impact of the systemic deficiencies knowingly caused by defendant Johnson:

(a) B.H. is a 18 year old male who has been lost in the DCFS system for four years. After removal from the custody of his family, DCFS put B.H. in a series of at least 10 different placements, including repeated placements for extended periods of time in temporary shelters. One of the non-temporary placements provided by DCFS was so inappropriate that B.H. faked a suicide attempt in order to secure a new living arrangement. Although he is an honor student, B.H.'s education has been disrupted so many times that he did not graduate with his high school class in the spring of 1988. As of the date of his interview with

counsel in preparation for filing this lawsuit, B.H. was in a temporary shelter once again, had no recollection of having seen his caseworker for three months and recalled only two telephone conversations with the caseworker during that period.

(b) C.H. is a 16 year old male who has been in the DCFS system. During the first six months he was in the system, C.H. had five different placements. As of the date of the original Complaint in this case, C.H. had been in a temporary shelter for four months. C.H. was removed from his mother's home after he had a confrontation with her boyfriend. Despite the obvious family tensions, as of the date of his interview with counsel in preparation for filing this lawsuit, C.H. and his mother had received no joint or individual counselling. C.H. had not, to the best of his recollection, at the time of the filing of this case, seen his caseworker for a month.

(c) J.E. is a 15 year old male who has been in the custody of DCFS as long as he can remember. He was warehoused for the three months prior to the filing of the original complaint at the Henry Horner Children's Center ("Henry Horner"), an overcrowded, understaffed mental health facility which controlled his behavior by administering strong doses of psychotropic medication. J.E. constantly feared for his

physical safety at Henry Horner, where assaults are a frequent occurrence. He has had numerous caseworkers during his time with DCFS and he rarely sees his current caseworker. J.E. has been placed in a series of foster and institutional placements and removed from the one foster family with whom he was able to form a bond and with whom he continually asked to be reunited. During the time J.E. has been in the custody of CFS he has threatened suicide. After his placement at Henry Horner, J.E. was moved, over his and his mother's objection, to an out-of-state placement facility.

- (d) C.Z. is a 18 year old female honor student who came into DCFS' custody approximately one year prior to the filing of this case. She alleged she was sexually abused by her stepfather. During her first year with DCFS, C.Z. was in seven different placements. C.Z. received no meaningful help from DCFS in her efforts to cope with the events giving rise to her allegations of abuse by her stepfather or the deterioration of her relationship with her mother. On information and belief, solely because DCFS had no appropriate placement for her, on two separate occasions C.Z. remained in a locked ward at Henry Horner long after the specific recommendations of mental health officials that she was ready for dis-

charge. Prior to contact with counsel in preparation for filing this lawsuit, C.Z. had not seen her caseworker for two months. On one occasion, C.Z. slit her wrists in order to get the attention of the DCFS worker then in charge of her case.

- (e) E.G. and O.G. have been in DCFS's custody since October 9, 1987. DCFS has been involved with their family since October 1986 when O.G. severed his palate with a stick and hospital personnel called the case to DCFS' attention. Subsequent investigation revealed that E.G. and O.G., along with their siblings, A.G., P.G., S.G., and C.G., were kept by their parents locked in a feces and urine infested bedroom, that they were undernourished, that their medical needs were ignored, and that they were otherwise neglected. At the time of their removal from their home, E.G. was 3 and O.G. was 6. In the year after they were removed from their home, E.G. and O.G. were in a total of 8 different placements. In one of the placements, E.G. and O.G. were inadequately fed and clothed. They were removed from another placement because they were both "hit" by the foster mother. In a third placement E.G. and O.G. were sexually abused. Since that placement O.G. is alleged to have sexually acted out with other children. In a fourth placement O.G. was physically abused. Although O.G.

was initially removed from his parents' home because of the neglect which caused his severed palate, plaintiffs are informed and believe that prior to the filing of this case, E.G. had not received any speech therapy to help him cope with his physical handicap and he had never been evaluated for reconstructive surgery. As of the date of the filing of this Second Amended Complaint DCFS had submitted E.G. and O.G. for psychological testing and had identified the need for counselling for E.G. and O.G. but had not made any arrangements to provide E.G. or O.G. with counselling, especially in order to help them deal with the abuse they have suffered. In response to a foster parents' inquiry on the subject, the DCFS caseworker had threatened to remove E.G. and O.G. from a foster home if the foster parents continued to "cause trouble" by insisting on such critical services.

- (f) S.G., C.G., P.G. and A.G. are the brothers and sisters of E.G. and O.G. They range in age from two year to ten years. All of them have been placed together with the O'C family, a different foster placement from E.G. and O.G. Several of the G children have special needs. P.G., for example, was a premature baby who continues to suffer from a weak heart and asthma. C.G. has a variety of behavioral

problems. Notwithstanding these needs, DCFS failed to fund for periods of six and eight months legitimate babysitting and other expenses associated with care of the G children, including, for example, funds for participation in various neighborhood and school programs designed to assist C.G. Even after funding was promised for these expenses, actual payments were not forthcoming for months and the foster parents were able to obtain the babysitting they needed in order to get P.G. to his various doctors' appointments only through the cooperation of a friend. By reason of DCFS' lack of cooperation with the O'C family, DCFS has forced the foster parents to the choice of either advancing hundreds of dollars to pay for services the state should provide, ignoring the childrens' need for such services or abandoning the children to another placement.

19. The State of Illinois receives sufficient funds to be bound by the provisions of the AAA. DCFS is the designated agency which uses and distributes those funds.

20. Defendant's conduct described in this complaint is not the result of decisions made by competent professionals, and in fact is contrary to the judgment of many DCFS caseworkers and existing professional standards. In the alternative, defendant's conduct constitutes such a substantial departure from accepted professional judgment, practice and standards as



to demonstrate that defendant Johnson did not base his actions on such judgment.

21. Defendant has knowingly, intentionally and with deliberate indifference to the rights of plaintiffs maintained the conditions and policies described in this Complaint; or defendant knew or should have known of said conditions and policies and, although he had a duty to act, failed to take corrective action.

22. As a direct and proximate result of the conduct of defendant described above, plaintiffs have suffered and continue to suffer irreparable damage to their mental health and development, emotional distress, humiliation, anxiety and pain.

## VI. CLAIMS FOR RELIEF

### COUNT I CONSTITUTIONAL CLAIMS

23. Plaintiffs hereby incorporate by reference the allegations of paragraphs 1-22 as paragraph 23 of this Count I of their Complaint.

24. Defendant has violated plaintiffs' rights to protection from physical and psychological harm, reasonable care and due process of law under the Fourteenth Amendment to the United States Constitution in that:

- (a) Defendant has caused plaintiffs to be subjected to policies and practices which shock the conscience, put plaintiffs at risk of physical injury and cause

them to suffer serious damage to their mental health and development.

- (b) Defendant has failed to provide plaintiffs with minimally adequate medical care, training, food, clothing, shelter, treatment and services to protect them from physical and psychological harm.

WHEREFORE, plaintiffs respectfully request that this Court:

A. Certify this action as a class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure;

B. Issue a declaratory judgment that the conditions, policies and practices complained of herein violate the Fourteenth Amendment to the United States Constitution;

C. Grant an injunction requiring defendant to submit and implement a plan assuring lawfully adequate care and treatment for plaintiffs;

D. Appoint a master pursuant to Rule 53 of the Federal Rules of Civil Procedure to determine the adequacy of defendant's plan and to monitor its implementation;

E. Expressly reserve the right of all class members to bring separate lawsuits for damages;

F. Award plaintiffs their costs and reasonable attorneys' fees, pursuant to 42 U.S.C. § 1988; and

F. Grant such additional relief as the Court deems just and proper.

COUNT II  
ADOPTION ASSISTANCE ACT CLAIMS

25. Plaintiffs incorporate by reference the allegations of paragraphs 1-24 as paragraph 25 of this Count II of their Complaint.

26. Defendant has violated plaintiffs' rights under the Adoption Assistance and Child Welfare Act of 1980, 42 U.S.C. §§ 620--629, 670--679a ("AAA"), in that DCFS has failed to:

- (a) Develop and implement case plans as defined by the AAA;
- (b) Develop and implement a meaningful case review system for each child in the foster care system as defined by the AAA.

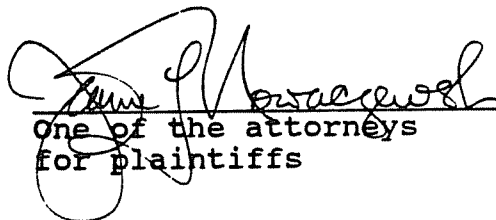
WHEREFORE, plaintiffs respectfully request that this Court:

- A. Certify this action as a class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure;
- B. Issue a declaratory judgment that the conditions, policies and practices complained of herein violate the AAA;
- C. Grant an injunction requiring defendant to submit and implement a plan assuring adequate care and treatment for plaintiffs;
- D. Appoint a master pursuant to Rule 53 of the Federal Rules of Civil Procedure to determine the adequacy of defendant's plan and to monitor its implementation;

E. Expressly reserve the right of all class members to bring subsequent lawsuits for damages;

F. Award plaintiffs their costs and reasonable attorneys' fees pursuant to 42 U.S.C. § 1988; and

G. Grant such additional relief as the Court deems just and proper.

  
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situated

CERTIFICATE OF SERVICE

JEANNE L. NOWACZEWSKI, one of the attorneys for plaintiffs, hereby certifies that she caused a copy of the foregoing Second Amended Complaint to be personally served upon:

Susan Getzendanner  
Christina M. Tchen  
Thomas J. Wiegand  
SKADDEN, ARPS, SLATE, MEAGHER & FLOM  
333 West Wacker Drive  
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by hand delivery this 16th day of October, 1989.

  
\_\_\_\_\_  
Jeanne L. Nowaczewski