

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

MICHIGAN PROTECTION & ADVOCACY
SERVICE, INC.,

Case No. 5:05-CV-0128

Plaintiff,

Hon. Richard Alan Enslin

v.

PATRICIA L. CARUSO, in her official capacity as
Director, Michigan Department of Corrections,

Defendant.

**SECOND AMENDED COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

I. PRELIMINARY STATEMENT

1. Michigan Protection & Advocacy Service, Inc. (“MPAS”) brings this action against the Defendant to challenge and remedy the Defendant’s illegal and unconstitutional use of isolation, denial of adequate mental health services, and denial of appropriate educational services to young prisoners with mental illness. The Defendant’s actions and inaction have caused youth with mental illness great and irreparable harm.
2. The Michigan Department of Corrections (“MDOC”) houses adolescent inmates who have been convicted of crimes as adults. From 1999 to October 2005, MDOC assigned many of these youth to the Michigan Youth Correctional Facility (“MYCF”), a maximum security (Level V) prison located in Lake County. Until it closed in October 2005, MYCF was Michigan’s only privately operated prison. It operated under a management contract with the MDOC and was subject to Michigan laws and MDOC regulations and policy directives. It housed approximately 480 youth between the ages of 14 and 19 years old who have been

convicted and sentenced as adults. In addition to being a maximum security facility, MYCF also had 70 beds used for disciplinary segregation and administrative segregation unit, where youth may be kept in nearly total isolation for weeks, months, or even years.

3. A significant number of youth who are housed by MDOC have serious and persistent mental illness. The youth with mental illness who were imprisoned at MYCF were moved along with all other MYCF residents to other MDOC facilities when MYCF closed in October 2005. The illegal conditions of confinement which these youth experienced at MYCF have been and are being replicated at the other MDOC facilities.
4. By allowing MDOC to house these youth in an isolation unit, in conditions of extreme social and sensory deprivation while denying them adequate mental health and education services, Defendant Patricia L. Caruso, the Director of MDOC, has, and continues to, knowingly subjected them to conditions that constitute cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments to the United States Constitution, has and is discriminating against them by virtue of their disabilities or the severity of their disabilities and in methods of administration of MYCF in violation of Title II of the Americans with Disabilities Act (ADA), 41 U.S.C. § 12132, and Section 504 of the Rehabilitation Act of 1973 (504), 29 U.S.C. § 794, and has and is depriving them of an appropriate education in violation of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1401 *et seq.* and regulations promulgated there under.

II. JURISDICTION AND VENUE

5. Plaintiff, MPAS, brings this action to redress the deprivation of rights guaranteed its constituents under the Eighth and Fourteenth Amendments, all of which are enforceable

under 42 U.S.C. § 1983, as well as those rights secured by the ADA, § 504, and IDEA. The Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343(a) (3).

6. Declaratory relief is authorized by Fed. R. Civ. P. 57 and by 28 U.S.C. §§ 2201, 2202.
7. This Court has jurisdiction to grant injunctive relief pursuant to Fed. R. Civ. P. 65.
8. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) because Defendant resides in this district, and because a substantial part of the events and omissions giving rise to Plaintiff's claims occurred in this district.

III. PARTIES

Plaintiff

9. Plaintiff MPAS is responsible for providing protection and advocacy services to individuals with disabilities pursuant to the Protection and Advocacy for Individuals with Mental Illness Act ("PAIMI"). 42 U.S.C. §§ 10801-108027, the Developmental Disabilities Assistance and Bill of Rights Act, (hereinafter "PADD Act" 42 U.S.C. § 15041 *et seq.*, and the Protection & Advocacy for Individual Rights Act (hereinafter "PAIR Act" 29 U.S.C. § 794e. Under PAIMI and PADD, MPAS is also authorized to monitor facilities and programs that house individuals with mental illnesses and developmental disabilities, to investigate suspected incidents of abuse and neglect, and to pursue administrative, legal, and other remedies on behalf of individuals with mental illnesses or developmental disabilities wherever programs for such individuals are operated within the State of Michigan. 42 U.S.C. § 10805.
10. Plaintiff MPAS is a private, non-profit agency established pursuant the PAIMI Act, the PADD Act, and the PAIR Act. In furtherance of its duties and this authority, and in response to requests from eligible clients, MPAS has monitored the conditions at MYCF and at other

MDOC facilities, met with and provided legal assistance to youth confined at those facilities, and investigated complaints of abuse and neglect. In addition, with the permission of numerous youth, MPAS has reviewed the records of those youth confined to MYCF and successor MDOC facilities.

11. MPAS brings this suit in its own name to vindicate the rights of youth, age 26 and younger with mental illness or other disabilities who are incarcerated in facilities operated by MDOC, including those youth with disabilities who resided at MYCF and have been transferred to other MDOC facilities either prior to or upon the closing of MYCF in October 2005.
12. The interest MPAS seeks to vindicate by bringing this lawsuit **is** the protection of the rights of youth with mental illnesses and developmental disabilities **is** central to MPAS's purpose. Plaintiff MPAS is charged with the statutory responsibility to represent the interests of persons with mental illnesses and developmental disabilities in state institutions, including prisons, who also have standing to sue in their own right.
13. The youth whose rights the Plaintiff seeks to vindicate here are persons with mental illnesses, emotional difficulties, and/or developmental disabilities such that they are persons with disabilities under the ADA.
14. The mission of MPAS is to advance the dignity, equality, self-determination and expressed choices of individuals. MPAS promotes, expands, and protects human and legal rights of people through the provision of information and advocacy.
15. The purpose of MPAS is to (a) implement a system to protect and advocate for the rights of persons with developmental disabilities or for individuals labeled mentally ill and other populations as are eligible for its services under its federal and state grants; (b) pursue legal,

administrative and other appropriate remedies to ensure the welfare and protect the rights of eligible individuals; (c) provide information and referral services to eligible persons, their parents, guardians, and attorneys, and to aid and advise them in obtaining and protecting the rights of eligible people, (d) provide education, training and technical assistance to agencies which serve eligible populations, attorneys, professional persons, courts and others regarding the rights of eligible persons, (e) advocate for quality services appropriate to address the needs and desires of eligible persons, and (f) receive and distribute funds for the accomplishment of these purposes.

16. MPAS' Board of Directors is composed of sixteen (16) individuals who broadly represent or are knowledgeable about the needs of clients served by the protection and advocacy system and includes individuals who have received or are receiving mental health services and family members of such individuals.
17. The MPAS Board of Directors has quarterly meetings in different locations within the State of Michigan. At these meetings, MPAS provides the public an opportunity to comment on its priorities and activities. MPAS also has a grievance procedure for clients to assure that individuals with mental illness and developmental disabilities have full access to the services of MPAS.
18. MPAS has an advisory council, the PAIMI Advisory Council. This council advises the MPAS Board of Directors on policies and priorities to be carried out in protecting and advocating for the rights of individuals with mental illness. The council includes attorneys, mental health professionals, individuals from the public who are knowledgeable about mental illness, at least one provider of mental health services, individuals who have received

or are receiving mental health services, and family members of such individuals, including at least one family member of a minor child who is receiving or has received mental health services. A majority of the members are persons who have received or are receiving mental health services or their family members.

19. The Plaintiff and its constituents with disabilities have brought the violations of law described in this complaint to the attention of the Defendant and her authorized agents. Numerous youth have filed and exhausted internal MYCF and MDOC grievances without positive results. Plaintiff MPAS has written to and met with Defendants to complain about the conditions described in this complaint, all without any change in policy, procedures or practices.

Defendant

20. Patricia L. Caruso is the Director of the MDOC. Under Michigan statute M.C.L. §791.203, Defendant Caruso is responsible for all individuals entrusted to the custody of the MDOC. She was also responsible to oversee, manage, and evaluate the MDOC management contract with The GEO Group, Inc. (“GEO”), a for profit corporation, when GEO operated MYCF. At all times relevant hereto, she has acted under color of state law. Defendant Caruso is sued in her official capacity. The MDOC is a governmental agency. M.C.L. §16.375.

IV. STATEMENT OF FACTS

21. The allegations contained in this complaint are based on information provided to and obtained by MPAS in the furtherance of its duties and authorities including, but not limited to, the review of records, the collection and analysis of data from those records, interviews with youth confined at MYCF and at other MDOC facilities after MYCF closed, interviews

with MYCF and successor facility staff and administrators, review of MYCF and MDOC policies and regulations, monitoring and other visits to MYCF and other MDOC facilities , and public information.

22. MDOC began assigning inmates to MYCF after GEO opened MYCF in July 1999 as a maximum security, Level V, prison for young male prisoners. The prison is owned and was operated by GEO under a management contract with the MDOC. The contract was authorized by M.C.L. § 791.220g.
23. Although it housed only male youth through age of 19, MYCF was a prison and was not designed or operated as a juvenile detention facility.
24. The MDOC's management contract authorized MYCF to house up to 480 youthful prisoners. The youth were housed in two identical housing pods that are divided into five separate units, each with 24 to 25 cells with two bunks.
25. MYCF also had a 40-bed disciplinary segregation unit, a 30-bed administrative segregation unit, and a 10 bed medical unit. Each of these units had one bed per cell.
26. In 1996, when the Michigan Legislature authorized MDOC to operate or to contract for the operation of a separate youth correction facility, the Legislature and MDOC expected an increase in the prison population of youth involved in violent crimes. In fact, this population decreased by 21% between 1994 and 2003.
27. When the youth prison was authorized in 1996, the Legislature and MDOC anticipated the need for a Level V, maximum security prison for youthful prisoners. In fact, only about 6% of the youth incarcerated at MYCF were classified as Level V prisoners, requiring the degree and extent of security and regimentation and the lack of training and habilitation programs,

which are common in prisons built and operated to the specifications of a maximum security facility.

28. MDOC receives federal funds for its programs and facilities.
29. Michigan youth who are tried and sentenced as adults by Michigan courts may be committed to the MDOC. Until October 2005, male youth under the age of 19 who were committed to the MDOC, after a brief stay at a reception center, were assigned to MYCF, where they generally were held until age 19. Since October 2005, MDOC has assigned these youth, after a brief stay at a reception center, to other MDOC facilities and has transferred youth who were housed at MYCF in October 2005 to other MDOC facilities.
30. Defendant Caruso failed to monitor and supervise the operation of MYCF by GEO, thereby allowing and condoning the illegal practices described herein. Likewise, Defendant Caruso has failed to monitor and supervise the facilities to which MYCF youth were transferred, thereby allowing and condoning similar illegal practices.
31. Since October 2005, Defendant Caruso has allowed youthful inmates in MDOC facilities to be subjected there to a misuse of segregation and to a lack of mental health and educational services similar to those to which they were subjected at MYCF. She has allowed the disciplinary records and security designations that were assigned to youth at MYCF to follow them to the successor facilities, thereby substantially and unfairly affecting the conditions of their incarceration at the successor facilities.

Isolation

32. MDOC has systems and procedures that allow for the isolation and segregation of youth from the general prison population. Such isolation and segregation may be used for

disciplinary or punitive purposes (called **A**disciplinary segregation~~@~~ or for a variety of other reasons including punishment (called **A**administrative segregation~~@~~ and protective custody.

33. Youth held by MDOC who are alleged to have committed an act of major misconduct are subject to placement in disciplinary or punitive segregation. A youth may be placed in temporary segregation for up to four consecutive business days pending a hearing. After a hearing before a MDOC employee, a youth may be sentenced to disciplinary segregation for up to 30 days for each offense, or 60 days for all violations arising from a single incident. MDOC Policy B3 D3.105. The youth must serve the entire length of his disciplinary sentence. Sentences of more than 30 days must be approved by the warden of the facility. The youth's prior disciplinary history is a factor in determining placement in disciplinary or punitive segregation.
34. MDOC hearing officers who determine guilt or innocence on a charge, called a "ticket," of major misconduct are required under MDOC Policy 03.03.105 to make a determination as to whether the youth is responsible for his misconduct. Any inmate is not responsible for his conduct under this MDOC policy if the inmate lacked the substantial capacity to know right from wrong, or was unable to conform his conduct to MDOC rules. Of the hundreds of hearing decisions reviewed by the Plaintiff, only one recorded that the hearing officer made a determination that one youth was responsible for the misconduct for which he received punishment.
35. Upon completion of the term of disciplinary segregation, a youth may be placed in administrative segregation without a hearing. According to MDOC Policy Directive 04.05.120, which applied to MYCF and applies to all other MDOC facilities where youthful

inmates are currently held, administrative segregation is the most restrictive level of security classification. Under MDOC policies, a youth may be classified to administrative segregation if he demonstrates an inability to be managed with the general population, or if he is a serious threat to the physical safety of staff or other prisoners or to the good order of the facility, if he is a serious escape risk, or for other reasons set forth in MDOC Policy 04.05.120.

36. Confinement in administrative segregation begins with the approval of the facility's warden/deputy warden or shift supervisor. Confinement in administrative segregation for more than 30 days must be approved by the warden.
37. Confinement in administrative segregation of youth at MYCF for consecutive months was very common. According to the records received by the Plaintiff, youth spent, on average, a total of 68 days in administrative segregation from 2003 to 2005, with some experiencing significantly longer time periods. A record of long periods of segregation at MYCF has a negative impact on disciplinary decisions and actions at the facilities to which former MYCF youth are now assigned.
38. Discharge from administrative segregation requires the approval of a MDOC facility's Security Classification Committee or another authorized staff group. This review process should occur every seven (7) days for the first two months of administrative segregation and at least every 30 days thereafter. In the case of segregation as the result of a serious assault on staff, discharge requires the approval of a regional prison administrator.
39. According to MDOC Policy Directive 04.05.120, criteria for release from administrative segregation include an assessment of the youth's behavior and attitude while in segregation,

the potential the youth will honor "the trust implicit in less restrictive confinement," and an assessment of the youth's need for mental health programming.

40. Youth in detention, administrative segregation or behavior management (hereinafter referenced collectively as "segregation") at any MDOC facility are subjected to social isolation and sensory deprivation that approach the limits of human endurance. They are entombed in concrete cells virtually 24 hours a day, seven days a week, until they qualify for limited recreation after 30 days in administrative segregation. The cell doors at MYCF were and at other MDOC facilities are solid steel with a small window; the only opening is a small food port.
41. Youth in segregation are deprived of virtually all social contact and environmental stimulation. They are allowed no congregate activity and very few possessions. There are no educational or other programs. Visiting is non-contact and is severely restricted. Recreation time of one hour for 5 days is only provided after thirty days of administrative segregation. Thus, youth in segregation often spend months, or even years, in a state of almost total idleness. MDOC policy provides the right to possession of some personal property in administrative segregation and protective custody, including certain electronic equipment. MDOC Policy 04.05.120.

Effect on youth with mental illness

42. The Defendant, through her actions and inactions, has subjected youth with mental illness then at MYCF and now at other MDOC facilities to conditions and circumstances which have exacerbated their mental illness and caused them irreparable harm.

43. Mental illness is prevalent among the youth who were housed at MYCF and continue to be housed at other MDOC facilities. Even previously healthy youth may become mentally ill as a result of confinement in segregation or administrative segregation. For those youth who were already mentally ill upon their arrival, conditions at MDOC facilities, and particularly in segregation, cause serious and sometimes catastrophic deterioration in their mental health. As a result, numerous youth who were at MYCF hear voices and are obsessed with suicidal thoughts; others attempt to harm or kill themselves.
44. Many youth with a mental illness at MDOC facilities receive disciplinary charges (called **Ackets**) for behavior that is a symptom of their mental illness. Therefore, they are retained in the most restrictive conditions of segregation, including detention, administrative segregation, or behavior management, for months or even years at a time. The more severe a prisoner's mental illness, the more likely he is to become placed indefinitely in administrative segregation, where the harsh conditions will exacerbate his mental illness still further.
45. Mental health and correctional professionals and courts have long understood that “[m]ost inmates have a difficult time handling these conditions of extreme social isolation and sensory deprivation, but for seriously mentally ill inmates, the conditions can be devastating.” Jones El v. Berge, 164 F. Supp.2d 1096, 1098 (W.D. Wisc. 2001).
46. Moreover, mental health and correctional professionals and courts have recognized that because of their immature decision-making abilities and the status of their developmental maturation, incarcerated adolescents experience isolation and segregation even more harshly and are more susceptible to mental anguish than adults.

47. Mentally ill youth at MDOC facilities are more likely than inmates without a mental illness to be placed in segregation and are likely to spend longer periods of time there.
48. Youth housed at MDOC facilities who suffer from a mental illness have spent significant amounts of time in segregation, including Youth 1, who suffers from a mental illness and was held in a combination of detention and administrative segregation at MYCF for more than 600 days from December 2003 to October 2005. Since his transfer to another MDOC facility in October 2005, Youth 1 has been held in protective custody due to threats from other inmates and has received several misconduct tickets for which he has been placed in segregation. In addition, Youth 1 had been housed in a behavior management unit at the MDOC facility to which he was transferred, where he is locked down in his cell for approximately 22-23 hours out of 24 hours per day.
49. Youth 2, who suffers from a mental illness, was confined in administrative segregation at MYCF for at least 263 days from January 2005 through September 2005, after a ticket for threatening behavior, 56 days from July to September 2004 following a ticket for threatening behavior, and 24 days in December 2003 to January 2004 following a ticket for insolence. Youth 2 has a security level of V as the result of these tickets and times in segregation at MYCF. Since his transfer from MYCF in October 2005 to date, Youth 2 continues to be held in administrative segregation, at another MDOC facility, a prison operated and overseen by Defendant Caruso.
50. Youth 3, a youth with a mental illness, was confined in administrative segregation for 133 days in 2004 and 152 days in 2003 at MYCF. Since his transfer to another MDOC facility a

prison operated and overseen by Defendant Caruso, Youth 3 has spent significant amounts of time in protective custody after being stabbed by another inmate.

51. Youth 4, a youth with a mental illness and on the outpatient mental health team at MYCF, was confined in segregation and administrative segregation at MYCF for 46 days in October and November 2004, and for significant additional time from February through June 2005. Since transferring to another MDOC facility operated and overseen by Defendant Caruso, Youth 4 has received two major tickets and has received “toplock” as punishment. Toplock consists of being locked in one’s cell rather than being allowed to participate recreation time outside or in the day room of the unit.
52. Youth 5, a youth with a mental illness and on the outpatient mental health team at MYCF, was confined in administrative segregation at MYCF for at least 81 days in February through April 2005 and again in May 2005, for 31 days in November and December 2004 after a ticket for threatening behavior, and for 24 days in October 2004 after a ticket for disobeying a direct order. Youth 5 has at least 35 points on his security classification report from his time at MYCF. These points will adversely impact disciplinary decisions and security classifications at the facility to which Youth 5 has been transferred, and can affect eligibility for parole. Since his transfer to another MDOC facility a prison operated and overseen by Defendant Caruso, Youth 5 has spent significant amounts of time in protective custody after being threatened by other inmates.
53. Youth 6, a youth with a mental illness and on the outpatient mental health team was confined in segregation and administrative segregation at MYCF in May and July 2005 and from November 2004 through January 2005 for significant periods of time after receiving tickets

for disobeying a direct order and threatening behavior, and for a significant period of time in February and March 2004. Youth 6 exhibited suicidal tendencies so as to warrant a suicide evaluation in September 2004. Youth 6 has at least 35 points on his security classification report from his time at MYCF. These points will adversely impact disciplinary decisions and security classifications at the facility to which Youth 6 has been transferred, and can affect eligibility for parole. In addition, since October 2005, Youth 6 been housed in a behavior management unit at the Thumb Correctional Facility, operated at MDOC, where he is locked down in his cell for approximately 19-20 hours out of 24 hours per day, and attends school for three of the hours per day that he is out of his cell.

54. Youth 7, a youth with a mental illness and on the outpatient mental health team, was confined in segregation and administrative segregation at MYCF for significant periods of time from March through June 2005, and for 33 days in October and November 2004. Youth 7 has at least 25 points on his security classification report from his time at MYCF. These points will adversely impact disciplinary decisions and security classifications at the facility to which Youth 7 has been transferred. The points also can affect his eligibility for parole, as evidenced by the denial of his parole in December 2005.
55. Youth 10, a youth with a mental illness, spent 47 days in administrative segregation at MYCF from December 2004 to January 2005 after 30 days in detention, 12 days in administrative segregation in June and July 2004, 34 days in administrative segregation in December 2003 and January 2004, and additional time in detention in July 2003. Youth 10 engaged in suicidal behavior in July 2003, February 2004 and December 2004. Youth 10 has approximately 12 points on his security classification report from his time at MYCF.

Youth 10 was threatened with being placed on suicide watch for filing a grievance at MYCF regarding his length of time in administrative segregation. In addition, since October 2005, Youth 10 been housed in a behavior management unit at the Thumb Correctional Facility, operated at MDOC, where he has been locked down in his cell for approximately 22 hours out of 24 hours per day, even though he has not received a ticket in over a year.

56. Youth 13, a person with a mental illness and on the outpatient mental health team at MYCF, spent at least 81 days in administrative segregation at MYCF in 2005 after 15 days in detention for an assault ticket. Youth 13 also spent 31 days in administrative segregation at MYCF in November and December 2004 after 10 days in detention for a threatening behavior ticket, and 24 days in administrative segregation at MYCF in October 2004 after receiving a ticket for disobeying a direct order. In May 2005, prior to the closing of MYCF, Youth 13 was transferred to administrative segregation at another MDOC facility at security level V, where he remained in administrative segregation for approximately six months. Youth 13 continues to be held by MDOC at a level V facility based in large part on the points he accumulated at MYCF.
57. Youth 14, a person with a mental illness and on the outpatient mental health team at MYCF, was held in administrative segregation for at least 80 days at MYCF from October 2004 to January 2005. In January 2005, prior to the closing of MYCF, Youth 14 was transferred to administrative segregation at another MDOC facility at security level V, where he remains to date.
58. Youth 15, a person with a developmental disability and mental illness and on the outpatient mental health team at MYCF, who came to MYCF at age 15, was housed in administrative

segregation at MYCF from November 2004 to August 2005 until his transfer to a residential treatment program at another MDOC facility. Youth 15 has approximately 35 points on his security classification record from his time at MYCF. These points will adversely impact disciplinary decisions and security classifications at other MDOC facilities, including the facility to which Youth 15 has been transferred, and can affect his eligibility for parole.

Youth 15 is currently housed in a behavior management unit at the Thumb Correctional Facility, operated at MDOC, where he is locked down in his cell for approximately 22 hours out of 24 hours per day, even though he has not received a ticket for over six months.

Protective Custody

59. Youth at MYCF were held in the administrative segregation unit as protective custody when they have been threatened with bodily harm by staff or other youth. The same restrictions applied to prisoners held in segregation have been applied to youth in protective custody. According to MDOC policy, youth should remain in protective custody only as long as their protection needs cannot be met through a transfer to general population at an appropriate institution.
60. One youth with a mental illness, Youth 3, was held in protective custody at MYCF for a total of 56 days in 2004. Another youth with mental illness, Youth 4, was held in protective custody at MYCF for two months in 2004.
61. At various MDOC facilities operated by Defendant Caruso, youth continue to be held in segregation for their own protection. Youth 3 has been held in protective custody for several months at a MDOC facility. Youth 5 has been placed in protective custody at his current MDOC facility since September 2005, based on threats from other inmates. Youth 22 has

been held in protective custody since late March 2006 at a MDOC facility after being attacked by another inmate.

Punishment of Youth with Mental Illness.

62. Because many youth with serious mental illness are believed to be merely **A**alingering, **@** manifestations of their mental illness were interpreted by MYCF staff and have been interpreted by staff at successor facilities as willful misconduct and are punished by reclassification to disciplinary then administrative segregation.
63. Youth who are placed in administrative segregation have engaged in repeated self-harming behavior and suicide attempts.
64. Youth 1, a youth with a mental illness who has been on the outpatient mental health team at both MYCF and his current MDOC facility, spent at least 600 days in detention and administrative segregation at MYCF from December 2003 to October 2005, and again in detention in November 2005 at the facility to which he was transferred. Youth 1 has been placed on **A**ood loaf **@** several times. Food loaf means that the youth's entire meal is placed in a blender and then served to the youth. See MDOC Policy 04.05.120. LL-OO. Youth 1 was on suicide watch in November 2004 and has engaged in self harm as recently as February and March 2006 at his current MDOC facility.
65. Youth 7 is a youth with a mental illness who was on the outpatient mental health team at MYCF, and is currently housed at MDOC's inpatient mental health facility. Youth 7 was in segregation and administrative segregation at MYCF for significant periods of time from March through June 2005, and in October and November 2004, and engaged in self-abusive behavior and has been placed on suicide watch at least seven (7) times between October

2004 and October 2005, while at MYCF. Since his placement at another MDOC, Youth 7 has continued to engage in several incidents of self-injurious behavior for which he has been hospitalized.

66. Youth 8, a youth with a mental illness, while at MYCF was placed on a 10 day detention for disobeying a direct order only ten (10) days after having been released from a three-day suicide watch. In February 2005, mental health professionals at MYCF recommended his transfer to a mental health facility, but he continued to be held at MYCF until October 2005. Since his transfer to another MDOC facility, Youth 8 has been discharged from the out patient mental health team but has been held in disciplinary segregation and administrative segregation.
67. While at MYCF, Youth 9 was on suicide watch on several occasions between November 2004 and January 2005, before, during and after time served in detention and administrative segregation. Since his transfer to a residential treatment program at another MDOC facility, Youth 9 has been on suicide watch. At his current MDOC facility, Youth 9 has been assaulted by a corrections officer and then written a ticket. When Youth 9 discussed his responsibility for this ticket with his therapist, she informed him that she had to give the opinion that he was responsible or else he would be sent to the hospital. Youth 9 was found responsible for another ticket at his current MDOC facility without any meeting or discussion with the therapist who opined that he was responsible.
68. Youth 11, a youth with a mental illness, spent a significant period of time in segregation and administrative segregation at MYCF from March through May 2005 and served 10 days in detention in September 2004. Youth 11 engaged in self-harm at MYCF in March 2005, and

has been on management plans as recently as September 2005. Youth 11 was diagnosed with a mental disorder at the MDOC reception center in June 2004, but was not admitted to the MYCF outpatient mental health team until March 2005.

69. One youth with a mental illness who came to MYCF at age 16, Youth 12, spent significant periods of time in administrative segregation at MYCF beginning in January 2005 after a 10 day detention for threatening behavior, 54 days in administrative segregation and detention from August to October 2004, and significant periods of time in administrative segregation from April through June 2004, and in April through July and September through October 2003. Youth 12 has been on suicide watches in November 2004, June 2003, April 2003, January 2003, and December 2002. Youth 12 has approximately 35 points on his security classification report from his time at MYCF. Since his transfer to another MDOC facility, Youth 12 has spent significant time in both detention and administrative segregation, but has not been admitted to any outpatient mental health team even though he was approved for the outpatient mental health team at MYCF.
70. Youth 16, a person with a mental illness and on the outpatient mental team both at MYCF and his current MDOC facility, attempted suicide in March 2003 and again had suicidal ideations in March 2004 and June 2004. Youth 16 spent at least 46 days in administrative segregation at MYCF, in October and November 2004 and accumulated at least 35 points on his security classification report from his time there. His disciplinary record at MYCF has been a negative factor in disciplinary decisions at the facility to which he was transferred.
71. Since his transfer to another MDOC facility, Youth 16 was held in a behavior modification unit in which he was locked down in his cell for approximately 23 hours out of 24 hours per

day, and did not have any access to any electronic equipment. At that facility, he spent time in detention after receiving a ticket for behavior for which he alleged that he should not be held responsible due to his mental illness. Youth 16 was subsequently assigned to a level 5 facility based on his points from MYCF and his conduct since his transfer to another MDOC facility.

72. Youth 17, a person with a mental illness, spent 78 days in administrative segregation at MYCF from July to October 2004 after receiving a ticket and serving 60 days in detention for possession of contraband. In October 2004, Youth 17 attempted to commit suicide and was subsequently assaulted by MYCF staff while in administrative segregation at MYCF. Youth 17 has approximately 16 points on his security classification report from his time at MYCF. Youth 17 has received three major misconduct tickets since his transfer from MYCF to another MDOC facility, and was been placed in detention at that facility.
73. Youth 18, a person with a mental illness and on the outpatient mental health team at MYCF, spent approximately 31 days in administrative segregation at MYCF in September and October 2004 after receiving a fighting ticket, and was placed on food loaf in May 2005. Youth 18 engaged in suicide attempts in both December 2003 and June 2005. Youth 18 accumulated approximately 26 points on his security classification report based on his time at MYCF.
74. Since his transfer to another MDOC facility, Youth 18 has been placed in both administrative segregation and detention for more than 90 days, and has been increased to a level V security level. At the same time, he was involuntarily removed from the outpatient mental health team.

75. Youth 19, a person with a mental illness and on the outpatient mental health team at MYCF and his current MDOC facility, spent a significant amount of time in administrative segregation at MYCF in November 2004. Youth 19 engaged in self harm and was placed on suicide watch on two occasions in August and November 2004 while at MYCF.
76. Youth 20 is a person with a mental illness who was on the outpatient mental health team at MYCF. At MYCF, Youth 20 was placed in administrative segregation for 3 days in 2003 after making a suicide threat, for 13 days in 2003 after a ticket for unauthorized occupation of cell, for 41 days in 2004 after a ticket for creating a disturbance and insolence, and for 21 days in 2004 after a ticket for disobeying a direct order.
77. Youth 20 attempted suicide in October 2003, and was suicidal again in May 2004, August 2004 and January 2005. He again engaged in self-harm in May 2005. Since moving to another MDOC facility after his time at MYCF, Youth 20 has received two major misconduct tickets for which he was placed in segregation. Youth 20 accumulated approximately 20 points on his security classification report based on his time at MYCF and currently has 35 points, which has resulted in his placement at a level 5 facility and will affect his eligibility for parole.

The Failure to Diagnose and Treat Mental Illness

78. The Defendant MDOC operates a reception center facility at Jackson, Michigan. All male prisoners committed to MDOC spend a brief time at the reception facility before assignment to a particular prison. Youth under 19 convicted as adults are confined at the reception facility before transfer to MYCF or since the closing of MYCF another MDOC facility.

79. Youth are screened for mental illness at a MDOC reception center before transfer to MYCF or, since the closing of MYCF, to another MDOC facility.
80. Serious mental illness often goes undiagnosed at the MDOC reception center. In cases known to the Plaintiff, youth who have been diagnosed as seriously mentally ill before coming to prison, who have received years of treatment in the community for that mental illness, have been admitted to psychiatric hospitals, and have been placed on powerful psychotropic drugs, have nevertheless been deemed by MDOC reception center mental health staff to be merely **A**nalingering**@**or **A**nipulating**@**. As a result, when these youth arrive at a MDOC facility they do not receive the treatment they need for their mental illness.
81. In other cases known to the Plaintiff, youth diagnosed with mental illness and recommended by the reception center for mental health services, were determined by MYCF or, since October 2005, by another MDOC facility upon their arrival not to need mental health services.
82. Many of the youth who are not provided with mental health treatment spend time in administrative segregation at MYCF, including Youth 12, who was evaluated for the MYCF outpatient mental health team in March 2003 but was not placed on that team, and still has not been placed on the outpatient mental health team at his current MDOC facility.
83. MYCF staff evaluated Youth 1 for inclusion on its outpatient mental health team in April 2004, but he was not admitted to that team until October 2004. Youth 1 has engaged in self-injurious behavior as recently as March 2006 at his current MDOC facility, but continues to be denied adequate mental health services.

84. Youth 2, who has been held in administrative segregation at his current MDOC facility and at MYCF for over 8 months, did not receive any mental health services for a significant period of time at his current MDOC facility, and continues to be denied his previously-prescribed medication and adequate counseling, despite self-injurious behavior as recent as April 11, 2006. After engaging in self-injurious behavior on April 11, 2006, Youth 2 was held down in 4 point restraints for at least 12 hours, but continues to be denied adequate mental health services.
85. Youth 14, who has been held in administrative segregation at his current MDOC facility and at MYCF for over 2 years, did not receive any mental health services for a significant period of time at his current MDOC facility.
86. Youth 18, a person with a mental illness and on the outpatient mental health team at MYCF, was taken off the outpatient mental health team at the MDOC facility where he was placed after MYCF. He requested to be placed back on that team, but that request was denied.
87. Youth 20, a person with a mental illness and on the outpatient mental health team at MYCF, has not been evaluated for mental health services at his current MDOC facility.
88. Youth 21, a person with a mental illness and on the outpatient mental health team at MYCF, has received seven (7) tickets for major misconduct at his current MDOC facility, resulting in twelve (12) points on his security classification report. He was involuntarily removed from the outpatient mental health team at his current MDOC facility.
89. Youth 22, a youth with a mental illness who has been on the outpatient mental health team at his current MDOC facility, has not been receiving adequate mental health services, including counseling.

90. Youth 23, a youth with a mental illness who has had suicidal tendencies in the recent past, has not received adequate mental health services despite his requests for those services.

Inadequacies of Mental Health Care

91. Despite the overwhelming need, mental health services at MYCF and other MDOC facilities are systemically inadequate. There is insufficient staffing to meet the needs of mentally ill prisoners. As a result, identification, assessment, monitoring and treatment of mentally ill prisoners are inadequate. Although many mentally ill prisoners are prescribed powerful psychotropic medications with potentially dangerous side effects, they are rarely, if ever, seen by a psychiatrist.
92. Mental health services to youth in segregation are inadequate. When mental health staff does speak with youth in segregation, it is almost always done at cell-front, by yelling through the side slit in the cell door, within earshot of other prisoners and staff. Many youth refuse to speak with mental health staff under these conditions because they fear harassment and victimization if other youth learn that they are suicidal or suffering from other mental health problems. Cell-front interviews are useless because of the complete lack of confidentiality; a prisoner may tell mental health staff that he is fine, when he is in fact paranoid, hallucinating, or contemplating suicide.
93. Because many youth with serious mental illness are believed to be merely "malingering," manifestations of their mental illness are interpreted by MDOC staff as willful misconduct and are punished by reclassification to disciplinary then administrative segregation.
94. After a prisoner has attempted or threatened suicide, a mental health management plan is developed. The following explanation was found in numerous mental health management

plans: **A**mate threatened suicide in an attempt to manipulate his environment. If the inmate threatens suicide or makes an attempt to harm himself he is to be managed by custody staff in accordance with the procedures for disruptive inmates. **@** These youth are treated as disciplinary problems if they inform staff of their suicidal thoughts or ideations.

Special Education Services

95. Defendant failed to adequately identify, screen, and assess youth formerly housed at MYCF who have disabilities that cause them to have special educational needs and fail to determine how those needs can be met.
96. Special education services at MYCF and at other MDOC facilities have been extremely limited. Most educational services, whether regular or special, are designed solely to prepare youth to pass a GED examination. Education services for youth with special educational needs are not individually tailored to meet the needs of individual students.
97. Defendant Caruso has had inadequate special education staff to provide a free and appropriate public education to all youth formerly housed at MYCF with special educational needs, including related and transitional services.
98. Plaintiff has identified at least fifteen (15) youth, including Youth 2, Youth 6, Youth 12, Youth 13, Youth 14, Youth 15, Youth 16, and Youth 17, who are currently housed at MDOC facilities and have not received their GED, are eligible for special education services, but have not been enrolled in any classes or have not received adequate special education services since they were moved from MYCF to another MDOC facility in October 2005.
99. Youth with special educational needs who are in a Level V facility or in segregation are almost totally deprived of individualized special education services, including related and transitional services. The Plaintiff has learned that at most, such youth may be visited by a

special education teacher once a week for usually fewer than 10 minutes. Some youth in administrative segregation are not allowed to have educational materials in their cells. Youth with special educational needs are expected to learn and study on their own while in segregation.

100. In March 2005, Plaintiff filed a complaint with the Michigan Department of Education (“MDOE”) alleging various violations of IDEA at MYCF, including the allegations in this complaint.
101. On March 28, 2006, the MDOE issued a final decision in response to that complaint, a copy of which is attached hereto as Exhibit 1.
102. Plaintiff has adequately exhausted any potential administrative remedies for the claims made in this complaint by filing a complaint with the MDOE approximately thirteen (13) months ago. MDOE has now given MDOC 90 additional days to implement corrective actions and submit proof of compliance. MDOE’s failure to respond in a timely manner to the plaintiff’s complaint demonstrates the futility of further pursuit of that remedy.

V. CAUSES OF ACTION

103. The conditions described in this Complaint result in gratuitous pain and suffering, and pose an imminent danger of serious illness, injury, or death to prisoners with mental illness.
104. In imposing the conditions described in this Complaint, Defendant has acted with deliberate indifference to the serious health, safety, and mental health needs of prisoners with mental illness, and to the risk that these prisoners will suffer serious illness, injury, or death. Defendant has repeatedly been made aware of these conditions by meetings with and correspondence from the Plaintiff’s staff, by MDOC staff, by prisoner grievances, and other means, but have failed to take reasonable corrective action.

105. Plaintiff's constituents include youth housed at MDOC facilities and who have a mental illness. These constituents are qualified individuals with disabilities within the meaning of the ADA and qualify as individuals with disabilities as defined in § 504. Absent these disabilities, these youth would otherwise qualify for the services provided by the Defendant.
106. Plaintiff's constituents include youth currently housed at MDOC facilities, and who have a mental illness, emotional difficulties and learning disabilities, have special educational needs within the meaning of IDEA.
107. The conditions described in this Complaint are likely to persist unless enjoined by this Court. Plaintiff and its constituents have no adequate remedy at law.
108. By subjecting youth with mental illness to the conditions of confinement described herein, with full knowledge of those conditions and of their devastating effects on these prisoners, Defendant has acted, and continues to act, with deliberate indifference to these prisoners's serious health, safety, and mental health needs, and have subjected these prisoners to cruel and unusual punishment, in violation of the Eighth and Fourteenth Amendments to the United States Constitution, as enforceable through 42 U.S.C. § 1983.
109. The conditions of confinement at MYCF and other MDOC facilities and the Defendant's policies, practices, acts, and omissions complained of in this Complaint are a substantial departure from accepted professional judgment, standards, and practices and thereby deprive the Plaintiff's constituents of due process of law, in violation of their constitutional rights under the Fourteenth Amendment to the United States Constitution.
110. The failure of MDOC hearing officers to make a determination as to whether the youth should be held responsible for misconduct when charged with a major misconduct deprives

the Plaintiff's constituents of due process of law, in violation of their constitutional rights under the Fourteenth Amendment of the U.S. Constitution.

111. The Defendant's failure to provide adequate special education and related services deprived the Plaintiff's constituents of their rights under IDEA and regulation promulgated hereunder.
112. By placing youth with mental illness in disciplinary and administrative segregation because of behaviors which are related to their mental and emotional illnesses, the Defendant has denied the youth of the benefits of the facility's services, programs or activities, including school, recreation, exercise, and mental health services, thus discriminating against the Plaintiff's constituents on the basis of their disability in violation of the ADA and § 504.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully request that the Court:

1. Issue a judgment declaring that the actions of Defendant described herein are unlawful and constitute cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments to the United States Constitution, and punishment in violation of the Fourteenth Amendment to the United States Constitution; and discrimination in violation of the ADA and § 504 and failure to provide a free and appropriate education in violation of the IDEA.
2. Permanently enjoin Defendant, their subordinates, agents, employees, and all others acting in concert with them, from subjecting prisoners with mental illness to the conditions described in this Complaint;
3. Grant youth who have been impacted by the Defendant's policies and practices injunctive relief entitling them to adequate education and mental health services, adjustment of their security status, and adjust their eligibility for parole to reflect the harm imposed on them by

MYCF's use of administrative segregation and failure to provide adequate education and mental health services to them;

4. Grant Plaintiffs their reasonable attorney fees and costs pursuant to 42 U.S.C. § 1988 and other applicable law; and
5. Grant such other relief as the Court considers just and proper.

Respectfully Submitted,

Date: April 24, 2005

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