

are subject to this punishment for minor infractions such as “talking too much” or failing to sit in the “back of their cells.” Staff frequently spray all of the youth on a living unit with this substance when only one resident has disobeyed an order.

2. On behalf of themselves and all similarly situated children, the named Plaintiffs seek declaratory, preliminary and permanent injunctive relief requiring that the Defendant cease its unconstitutional policies and practices at the Juvenile Detention Center and to provide class members with constitutionally required care and living conditions.

3. The children are joined in this action by Disability Rights Mississippi (“DRMS”), a non-profit agency with a federal mandate to protect the rights of children with disabilities who are confined in the Juvenile Detention Center. DRMS asserts its right to meet with children who are confined in the Juvenile Detention Center and to conduct regular monitoring and investigations in the Juvenile Detention Center. Plaintiff DRMS seeks declaratory and preliminary and permanent injunctive relief to prevent Defendant from denying DRMS, as authorized by its federal enabling statutes, full, complete, timely and unaccompanied access to the Juvenile Detention Center, its staff, and youthful residents, as well as full, complete, and timely access to records.

PARTIES

4. E.W. is a sixteen-year-old girl with learning disabilities and serious mental illnesses who is currently imprisoned in the Juvenile Detention Center. On behalf of herself and all similarly situated children, she brings this action by and through her next friend and mother, Kendra Watts. She has not been adjudicated delinquent by the youth court, and is detained while she awaits her court date. For the past two weeks, E.W. has been confined to her cell for 23 hours a

day, denied mental health and rehabilitative services, forced to live in unsanitary and unsafe conditions, and repeatedly threatened with mace by Juvenile Detention Center staff.

5. J.A. is a seventeen-year-old girl with learning disabilities and a history of receiving treatment for mental illness who is currently imprisoned in the Juvenile Detention Center. On behalf of herself and all similarly situated children, she brings this action by and through her next friend and mother, Linda Alford. She is confined at the Juvenile Detention Center as a post-adjudication disposition entered by the Lauderdale County Youth Court. For the past three weeks, E.W. has been confined to her cell for 23 hours a day, denied mental health and rehabilitative services, forced to live in unsanitary and unsafe conditions, and repeatedly threatened with mace by Juvenile Detention Center staff.

6. C.M. is a fourteen-year-old boy with learning disabilities and a history of receiving treatment for mental illness who is currently imprisoned in the Juvenile Detention Center. On behalf of himself and all similarly situated children, he brings this action by and through his next friend and mother, Lena Clark. He is confined at the Juvenile Detention Center as a post-adjudication disposition entered by the Lauderdale County Youth Court. For the past two weeks, C.M. has been forced to live in filthy conditions, confined to his cell for excessive periods of time, denied mental health and rehabilitative services, and arbitrarily subjected to mace by Juvenile Detention Center staff.

7. The named Plaintiffs' plight echoes the stories of many youth interviewed by attorneys. All of these children uniformly describe the Juvenile Detention Center as a squalid facility, where jail officials frequently resort to the abusive, arbitrary use of chemical restraints. These conditions violate the constitutional rights of the named Plaintiffs and all similarly situated

children, all of whom are entitled to reasonably safe and sanitary conditions of confinement, freedom from unreasonable bodily restraint, and protection from harm.

8. Plaintiff Disability Rights Mississippi (“DRMS”) is a nonprofit organization with a federal mandate to protect and advocate for the rights of persons with disabilities in Mississippi. Federal law extends this mandate to children with disabilities who are confined to juvenile detention centers. Through a contracted agent, DRMS devotes significant resources to investigating conditions of confinement and advocating on behalf of youth housed in juvenile facilities across the state of Mississippi. DRMS and its contracted agent, the Mississippi Youth Justice Project, have made considerable efforts to gain access to the children with disabilities who are confined in the Juvenile Detention Center in Lauderdale County and have been denied this access by the Defendant.¹ On November 11, 2009, this Honorable Court entered an Agreed Order negotiated by the parties that sets forth a tentative plan of access. Despite this tentative Agreed Order, DRMS requires a permanent injunction to ensure its access rights are protected. DRMS recently changed its name from Mississippi Protection and Advocacy Services, Inc. to Disability Rights Mississippi. Incorporated in 1976, DRMS has over thirty years of experience protecting the rights of children with disabilities throughout the state of Mississippi. DRMS files this complaint in its own name to redress injuries to itself and to the children DRMS is mandated to serve.

9. Defendant Lauderdale County is the governmental entity with responsibility to “establish and maintain detention facilities, shelter facilities,...or any other facility necessary to carry on

¹ Federal law permits DRMS to designate agents with whom it contracts to assist in carrying out its responsibilities under federal law. 42 U.S.C. § 10804(a)(1)(A-B); 42 C.F.R. § 51.42(a). Pursuant to this authority, DRMS has contracted with the Mississippi Youth Justice Project (MYJP) to conduct monitoring activities in juvenile justice and mental health facilities throughout the state of Mississippi. When conducting monitoring under the P & A Acts, MYJP is an agent of DRMS and thus has the same access authority under federal law. *See* Exhibit 2 (Memorandum of Cooperation between MYJP and DRMS).

the work of the youth court.” Miss. Code Ann. § 43-21-19. Lauderdale County is the entity with ultimate responsibility to secure and protect the rights of children held in the Juvenile Detention Center.

10. The Defendant ignores well-established law and acts with deliberate indifference by subjecting the named Plaintiffs and all similarly situated children to shockingly inhumane conditions of confinement, physical abuse, and inadequate mental health care.

JURISDICTION AND VENUE

11. The named Plaintiffs’ cause of action arises under the First, Eighth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983.

12. Plaintiff DRMS’s cause of action arises under the Protection and Advocacy for Individuals with Mental Illness Act of 1986 (“PAIMI Act”), 42 U.S.C. §§ 10801 *et seq.*; the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (“PADD Act”), 42 U.S.C. §§ 15001 *et seq.*; the Protection and Advocacy of Individual Rights Program (“PAIR Act”), 29 U.S.C. §§ 794e *et seq.* (these three laws are hereafter collectively referred to as “The P & A Acts”); and 42 U.S.C. § 1983.

13. Jurisdiction in this Court is proper pursuant to 28 U.S.C. § 1331.

14. Venue in this Court is proper under 28 U.S.C. § 1391(b). Defendant resides in this district, and the events and omissions complained of occurred in this district.

CLASS ACTION ALLEGATIONS

15. The named Plaintiffs bring this suit on their own behalf and on behalf of all children who are, or will in the future be, incarcerated at the Lauderdale County Juvenile Detention Center.

16. The class is so numerous that joinder of all members is impractical. The Juvenile Detention Center has the capacity to house 30 youth at one time and well over 100 youth pass

through the facility in a one-year time period. The Defendant has subjected literally hundreds of children to abusive conditions in the Lauderdale County Juvenile Detention Center. Children remain in the Juvenile Detention Center for varying lengths of time, and the population changes on a daily basis. The class also includes future members whose names are not known. Fed. R. Civ. P. 23(a)(1).

17. There are questions of law and fact common to all class members, including but not limited to the Defendant's failure to protect class members from harm, the Defendant's failure to provide class members with constitutionally safe and humane conditions of confinement and the Defendant's failure to ensure class members' meaningful, effective and adequate access to the courts. Fed. R. Civ. P. 23(a)(3).

18. Because the policies, practices, and customs challenged in this Complaint apply with equal force to the named Plaintiffs and the other members of the class, the claims of the named Plaintiffs are typical of the class in general. Fed. R. Civ. P. 23(a)(3).

19. The named Plaintiffs will fairly and adequately represent the interests of the class. They possess a strong personal interest in the subject matter of the lawsuit and are represented by experienced counsel with expertise in class action litigation in federal court. Counsel have the legal knowledge and resources to fairly and adequately represent the interests of all class members in this action. Fed. R. Civ. P. 23(a)(4).

20. The Defendant has acted and refuses to act on grounds generally applicable to the class in that Defendant's policies and practices of violating the Plaintiffs' constitutional rights has affected all class members. Accordingly, final injunctive and declaratory relief is appropriate to the class as a whole. Fed. R. Civ. P. 23(b)(2).

STATEMENT OF FACTS

21. The Lauderdale County Juvenile Detention Center is a 30-bed facility that holds children awaiting adjudication and disposition by the Lauderdale County Youth Court. It may also house youth for up to 90 days as a post-adjudication disposition. Miss. Code Ann. § 43-21-605(1)(k). Youth are regularly incarcerated at the Juvenile Detention Center both before and after disposition.

Protection from Harm Violations: Physical Abuse by Staff and Excessive Use of Restraints

22. Defendant has a custom and/or practice of acting with deliberate indifference to the constitutional rights of youth in its custody which manifest in egregious abuses like the excessive use of chemical restraints.

23. During the first week in November in 2009, Plaintiff C.M. was sprayed with a chemical agent (also known as mace) by a guard while he was in his cell. The guard stood outside of C.M.'s cell door and sprayed mace indiscriminately into the cell. The mace struck C.M. on his body, constricting his breathing and causing severe irritation. The mace also hit the sole blanket that C.M. was allowed to have in his cell. C.M. was not allowed to shower until the following morning and was not provided with a new blanket. C.M. did nothing to justify the chemical restraint—indeed he was confined to his small jail cell during the time while the staff sprayed him with mace. At no time immediately prior to the application of mace did C.M. engage in an act of violence or aggression. Upon information and belief, staff sprayed C.M. and all of the other youth in the boys unit with mace in an attempt to punish every child for the actions of one youth who allegedly threw toilet paper out of his cell. There was absolutely no security or other penological or rehabilitative justification for this application of mace.

24. Upon information and belief, and based on interviews with youth who were recently held in the Juvenile Detention Center, staff members regularly spray putative class members with mace in an arbitrary and abusive manner. This use of mace significantly departs from reasonable professional judgment and violates clearly established law.

Protection from Harm Violations: Inadequate Mental Health and Rehabilitative Treatment

25. Defendant has a custom and/or practice of being deliberately indifferent to the serious mental health and rehabilitative needs of the youth confined at the Juvenile Detention Center.

26. Plaintiffs E.W., J.A., and C.M. all live with serious mental health needs and each youth received treatment for these mental health needs prior to their detention. Given each of the Plaintiffs' past history of mental health treatment, each youth requires regular mental health counseling, assessment and evaluation. The Defendants deny the Plaintiffs each of these requirements. Further, C.M. requires medications to modify his behavior, and the Defendants fails to ensure that he is provided with an appropriate medication distribution system, medication monitoring, evaluations or assessments related to their medications.

27. The Defendant fails to provide minimally adequate mental health services for the children in its custody. The Defendant has a policy and practice of denying the Plaintiffs access to mental health counseling, medication monitoring, and the staff fail to distribute and/or monitor children's medications in compliance with professionally accepted standards of care.

28. Defendant fails to assure adequate psychological assessments of children upon admission to the Juvenile Detention Center, resulting in under-identification of and inadequate treatment for children with serious mental illnesses, developmental disabilities or other disabilities.

29. None of the named Plaintiffs received the rehabilitative treatment to which they are entitled under federal law. The Defendants fail to provide the Plaintiffs with any sort of

programming, services, or interventions that could be reasonably related to their treatment or rehabilitation. Youth are not given adequate individualized counseling services to assess and meet their rehabilitative goals and needs. Youth do not receive adequate transitional services to assist their reintegration into the community and to help reduce potential recidivism.

30. Youth imprisoned in the Juvenile Detention Center spend the majority of their time locked-down in their cells. Recreation is inadequate and often nonexistent. Many youth sit or lie idle in rooms for extended periods of time. Youth confined in this manner suffer deteriorating physical and mental health.

31. Upon information and belief, and based on interviews with youth who were recently held in the Juvenile Detention Center, other putative class members are regularly denied adequate mental health care and rehabilitative services.

Protection from Harm Violations: Dangerous, Unsanitary and Deficient Conditions

32. The Defendant has a custom and/or practice of failing to provide sanitary facilities for the children in its care. Staff do not clean the living facilities regularly. Toilets and walls are stained with mold, rust and human excrement. The Plaintiffs are frequently bit by various insects. Dust commonly covers the living areas. The children, including the Plaintiffs, have to sleep on mats that often smell of urine and use stained, torn sheets. Youth often have to eat in their cells, and due to the small size of the cells, this means that they are forced to eat in close proximity to their filthy toilet facilities.

33. The Defendant has a custom and/or practice of failing to provide adequate living quarters for the children in its care. Youth are forced to live in extremely small, dark cells that contain only a toilet, sink and bunk bed. Girls, including Plaintiff J.A., who have not displayed any suicidal tendencies and have not voiced any suicidal thoughts or inclination are made to sleep in

the “suicide cell” when there are not enough other cells available to keep one girl in each cell.

When a girl is placed in the suicide cell, she is forced to sleep on the floor, with only her sleeping mat, sheet and thin blanket.

34. The Defendant has a custom and/or practice of failing to provide for the appropriate hygiene for the children in its custody. Defendant does not provide youth with adequate personal hygiene items. Youth, including the Plaintiffs, are not provided soap to wash their hands after they use the toilet, and they are only allowed to brush their teeth once a day. Children are required to share certain personal items, such as combs, without sterilization, endangering their health.

35. The Defendant has a custom and/or practice of failing to provide adequate clothing and shoes for children in its custody. Youth are not allowed to wear shoes. Defendant does not provide youth with underwear, and youth must wear the same underwear during their confinement. When their underwear is taken to be washed in the morning after a shower, youth, including menstruating girls, are not given another pair of underwear and must remain without underwear until the following morning. This forces girls who are menstruating to try to use maxi-pads in the over-sized uniforms issued by Defendants.

Protection from Harm Violations: Excessive Room Confinement

36. Defendant has a custom and/or practice of confining children for 23-24 hours per day in oppressively small cells that contain nothing but a toilet, sink and bunk bed. The cells are kept dark almost all of the time. Youth are only permitted to have a sleeping pad, sheet, thin blanket and plastic cup with them in their cells. Youth are denied any type of reading or writing materials in their cells.

37. Defendant has a custom and/or policy of failing to provide children with access to regular physical exercise, recreation or any other rehabilitative programming. Youth are occasionally permitted to exercise for thirty minutes, but generally youth are denied the opportunity to engage in any large muscle exercise for weeks at a time. Female youth are given even fewer opportunities for recreation than male youth.

Protection from Harm Violations: Inadequate Training and Supervision of Staff

38. The Defendant has a custom and/or practice of failing to ensure the proper training and supervision of Juvenile Detention Center staff. Consequently, the safety and security of youth at the Juvenile Detention Center is constantly threatened by the extreme incompetence of staff and the lack of adequate supervision and oversight. Staff frequently resort to physical violence and respond to youths' requests for help or assistance with taunts, profanity, and indifference.

Due Process Violations: Arbitrary and Punitive Disciplinary Practices

39. The Defendant has a custom and/or practice of subjecting youth to arbitrary and excessive discipline that is designed to punish and cause discomfort rather than maintain and restore discipline. Defendant has an unlawful pattern and practice of spraying children—including children with disabilities who may have challenges moderating their behavior—with mace for minor infractions like talking too loudly or failing to sit in the “back of their cells.” Staff do not inform youth of the facility's rules upon intake, and as a result, children often unknowingly violate rules, resulting in the use of mace. Staff spray mace directly inside the children's cells and sometimes directly on their skin—causing an excruciating burning sensation. Youth who have been maced are frequently not allowed to bathe until the following morning, forcing them to remain in discomfort for an extended period of time.

40. The use of mace is purely punitive and arbitrary. Staff frequently spray all the youth on a living unit with mace when only one resident disobeys an order. As a result of this practice, youth live constantly with the threat of being sprayed with mace—even when they themselves comply with all directives. The use of mace is not tailored to respond to the alleged rule violation or threat, if there is one, and is not limited to situations where it is necessary to restore or maintain order.

41. During the first week in November in 2009, Plaintiff C.M. was sprayed with mace by a guard while he was in his cell, after another youth threw a tissue out of his cell. Because the guard could not determine which child had thrown the tissue, the guard sprayed all of the boys at the Juvenile Detention Center at the time with mace as a punishment while the boys were secured in their cells.

42. Guards frequently threaten youth with mace for minor rule infractions or for behavior that is not prohibited. Guards have threatened Plaintiffs E.W., J.A., and C.M. with mace on numerous occasions for reasons including talking too loudly, spending more than 2-3 minutes in the shower, and speaking with Plaintiff DRMS about conditions in the facility.

Due Process Violations: Inadequate Family Unification and Community Reintegration

43. Defendants' continuing practices and policies place unreasonable and unnecessary burdens on youth and their ability to maintain contact with their families. This communication is essential for children's treatment and rehabilitation and for their eventual reintegration into the community, to ensure that the facility's policies and practices do not substantially depart from accepted professional judgment.

44. In-person visitation hours are held at times when many parents or guardians are working and are therefore unable to visit their children. When family members do visit, they are forced to

communicate with the children through a door, while a guard stands next to the youth, monitoring what the youth says. This surveillance often prevents youth from reporting any institutional or treatment deficiencies to their parent or guardian.

45. Youth are not allowed to use the telephone to communicate with their family. Access to the telephone is especially important for children with limited reading and writing skills in maintaining contact with family, as well as for children whose families are unable to visit during in-person visitation hours due to work or other conflicts.

Due Process Violations: Unlawful retaliation

46. The Defendant and its agents have subjected the Plaintiffs to unlawful harassment, taunting, and threats as a result of the Plaintiffs' participation in DRMS's investigation. The Defendant and its agents have threatened youth with mace, longer stays in detention and physical abuse in an effort to discourage the Plaintiffs from revealing the conditions inside the Lauderdale County Juvenile Detention Center to legal advocates.

47. On November 9-11, 2009, advocates from DRMS conducted visits with the Plaintiffs and other putative class members in the Lauderdale County Juvenile Detention Center.

48. Plaintiff J.A. was subjected to repeated and continuous threats and harassment by the guards simply because she spoke with DRMS advocates. For example, Female Guard 1 called her a "bitch" for speaking with DRMS agents and took a business card that a DRMS agent had given J.A. and threw it away. The same guard threatened that "she would light [J.A.] up with a can of mace" and stated that if she used mace on J.A., J.A.'s release date would be delayed. Female Guard 2 accused J.A. of lying to DRMS advocates in an attempt to be released early. Female Guard 3 also accused J.A. of lying and told J.A. that she should not trust the DRMS agents, saying that "they don't care if we talk to [the DRMS agents] 'cause [the DRMS agents]

will not be there for us.” The harassment continued after J.A. spoke with DRMS a second time. Plaintiff J.A. has suffered extreme emotional distress as a result of this unlawful retaliation.

49. After boys at the Juvenile Detention Center spoke with legal advocates from DRMS on November 9, 2009, the male staff also pressured the youth to not speak with DRMS agents. Male staff members discussed the prospect of losing their jobs due to DRMS investigations in front of the boys, including Plaintiff C.M., and spoke negatively about the youth who talked to DRMS.

50. After Plaintiff E.W. met with DRMS agents on November 9-10, 2009, female guards intensified their threats of mace and subjected her to taunts and harassment.

51. The Defendant has a pattern and practice of intimidating, harassing and threatening the children in its custody who seek to enforce their rights inside the Juvenile Detention Center. The Defendant’s actions have a chilling affect on children’s rights to seek redress from the Defendant and discourage children from accessing the courts to remedy their unconstitutional conditions of confinement.

Plaintiff DRMS’s Access Authority

52. Congress established Protection and Advocacy (“P & A”) systems in 1975 to protect and advocate for the rights of persons with developmental disabilities, and reauthorized these systems in the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (“PADD Act”). 42 U.S.C. §§ 15001 *et seq.* Congress provided P & A systems with the authority to investigate incidents of abuse and neglect against individuals with developmental disabilities and pursue legal, administrative, and other remedies on their behalf. 42 U.S.C. § 15043(a). Congress has expanded the scope of the P & A system to provide protection and advocacy services to all persons with disabilities. The Protection and Advocacy for Individuals with

Mental Illness Act of 1986 (“PAIMI Act”) provides for the protection of rights of individuals with mental illness, 42 U.S.C. §§ 10801 *et seq.*; and the Protection and Advocacy of Individual Rights Program (“PAIR Act”) was created to protect the rights of all other individuals with disabilities who are not covered under the PADD and PAIMI Acts. 29 U.S.C. §§ 794e *et seq.*

53. Pursuant to federal law, DRMS has rights to:

- a. reasonable unaccompanied access, for monitoring and investigatory purposes, to public and private areas of the detention facility in the Juvenile Detention Center, 42 C.F.R. § 51.42(b); 42 C.F.R. § 51.42(c); 45 C.F.R. § 1386.22(f); 45 C.F.R. § 1386.22(g);
- b. interview facility service recipients, staff and other persons as part of an abuse and neglect investigation when DRMS determines it has probable cause to believe an incident has occurred, 42 C.F.R. § 51.42(b);
- c. provide information and training on individual rights and services provided by the P & A system, 42 C.F.R. § 51.42(c); 45 C.F.R. § 1386.22(g);
- d. communicate privately with facility residents, 42 C.F.R. § 51.42(d); 45 C.F.R. § 1386.22(h);
- e. access to records of facility residents, 42 C.F.R. § 51.41; 45 C.F.R. § 1386.22(a)-(e); and
- f. access to facility incident reports and investigatory findings, 42 C.F.R. § 51.41(c)(2); 45 C.F.R. § 1386.22(b)(1)-(2).

54. Because Mississippi receives federal funding under the P & A Acts, the state must have an effective P & A system. DRMS is the designated Mississippi P & A System. (*See Mississippi Protection & Advocacy v. Cotten*, 929 F.2d 1054, 1055-56 (5th Cir. 1991). Federal law permits DRMS to designate agents with whom it contracts to assist in carrying out its responsibilities under federal law. 42 U.S.C. § 10804(a)(1)(A-B); 42 C.F.R. § 51.42(a).

55. To effectuate the Congressional mandate to protect and advocate for the rights of individuals with disabilities, the P & A Acts require that a P & A system and its authorized agents have physical access to individuals with disabilities, access to individuals’ records, and

physical access to the facilities housing these individuals. 42 U.S.C. § 15043(a)(2)(H)-(J); 42 U.S.C. § 10805(a)(3)-(4); 45 C.F.R. § 1386.22; 42 C.F.R. § 51.42(a)-(c). This access includes the right “to meet and communicate privately” with residents “both formally and informally, by telephone, mail and in person.” 45 C.F.R. § 1386.22(h); 42 C.F.R. § 51.42(d).

56. Under the PAIMI Act, “any public or private residential setting that provides overnight care accompanied by treatment services” is a facility that a P & A is authorized to access and monitor. These “[f]acilities include... juvenile detention facilities.” 42 C.F.R. § 51.2. *See also* 45 C.F.R. § 1386.19 (specifying that facilities covered under the PADD Act include juvenile detention facilities).

57. The detention center at the Lauderdale County Juvenile Detention Center is a covered “facility” as defined under the PAIMI Act and the PADD Act. 42 U.S.C. § 10802(3); 42 C.F.R. 51.2; 45 C.F.R. § 1386.19.

58. A significant number of the youths who are detained at the Lauderdale County Juvenile Detention Center live with disabilities—including various forms of mental illness and learning disabilities. The Director of the Juvenile Detention Center has previously estimated that 60% of the youth held at the facility require mental health services. *See* Angela A. Robertson & R. Gregory Dunaway, *Juvenile Detention Monitoring in Mississippi: Report on Facility Compliance with Section 5 of the Juvenile Justice Reform Act of 2005 (Senate Bill 2894)* (Jan. 2006), <http://www.ssrc.msstate.edu/publications/jdmm.pdf>. This estimate is consistent with mental illness prevalence rates reported for incarcerated youth throughout the state of Mississippi and the country as a whole. *See* Angela Robertson & Jonelle Husain, Mississippi State University, *Prevalence of Mental Illness & Substance Abuse Disorders Among Incarcerated Juveniles* (July 2001), <http://www.ssrc.msstate.edu/publications/Prevalence%20of%20Mental>

%20Illness.PDF (finding that 66% to 85% of incarcerated juveniles in Mississippi suffer from at least one diagnosable mental disorder, compared to only 14% to 20% of youth in the state's general population); Thomas Grisso, *Adolescent Offenders with Mental Disorders*, 18 THE FUTURE OF CHILDREN 143, 150 (2008), http://futureofchildren.org/futureofchildren/publications/docs/18_02_07.pdf (estimating that about one-half to two-thirds of youth in various juvenile justice settings meet criteria for one or more mental disorders, compared to about 15 to 25 percent of youth in the U.S. general population).

59. Under the P & A Acts, Congress designated two distinct bases for access to facilities and residents: (1) access for the purpose of investigating allegations of abuse and/or neglect, 42 U.S.C. § 15043(a)(2)(B), 42 U.S.C. § 10805(a)(1)(A), 45 C.F.R. § 1386.22(f), 42 C.F.R. § 51.42(b); and (2) access for the purpose of monitoring the facility and the treatment of its residents, 42 U.S.C. § 15043(a)(2)(H), 42 U.S.C. § 10805(a)(3), 45 C.F.R. § 1386.22(g), 42 C.F.R. § 51.42(c).

60. To carry out its mandate to investigate incidents of abuse and neglect, DRMS is entitled to “reasonable unaccompanied access . . . to all areas of the facility which are used by residents or are accessible to residents . . . [and] shall have reasonable unaccompanied access to residents at all times necessary to conduct a full investigation of an incident of abuse or neglect.” 42 C.F.R. § 51.42(b). *See also* 45 C.F.R. § 1386.22(f).

61. To carry out its monitoring duties, DRMS is entitled to reasonable unaccompanied access to all residents of a facility at reasonable times to provide P & A services and contact information, rights information, monitor compliance with respect to the rights and safety of service recipients, and to view and photograph all areas of the facility which are used by residents or are accessible to residents. 42 C.F.R. § 51.42(c); 45 C.F.R. § 1386.22(g).

62. The PAIMI Act states that DRMS has the right of access to all residents of a facility “despite the existence of any State or local laws or regulations that restrict informal access to minors and adults with legal guardians or conservators.” 42 C.F.R. § 51.42(e).

63. The PAIMI and PADD Acts provide DRMS with access to records of individuals who are in the custody of the state and with respect to whom a complaint has been received by DRMS or with respect to whom there is probable cause to believe that such individual has been subjected to abuse or neglect. 42 C.F.R. § 51.41(b)(2)(ii)-(iii); 45 C.F.R. § 1386.22(a)(2)(ii)-(iii).

64. The PAIMI regulations also require the Defendant to provide DRMS:

Reports prepared by an agency charged with investigating abuse, neglect, or injury occurring at a facility rendering care or treatment, or by or for the facility itself, that describe any or all of the following: (i) Abuse, neglect, or injury occurring at the facility; (ii) The steps taken to investigate the incidents; (iii) Reports and records, including personnel records, prepared or maintained by the facility, in connection with such reports of incidents; or (iv) Supporting information that was relied upon in creating a report, including all information and records used or reviewed in preparing reports of abuse, neglect or injury such as records which describe persons who were interviewed, physical and documentary evidence that was reviewed, and the related investigative findings. 42 C.F.R. § 51.41(c)(2).

65. The access provisions of the P & A Acts are interrelated and it is clear that Congress intended for the provisions to be applied in a consistent manner, and the PAIR Act expressly incorporates by reference, at 29 U.S.C. § 794e(f), the authority regarding access to facilities and records set forth in the PADD Act.

Denial of Access

66. Plaintiff DRMS has made numerous attempts in the past to explain DRMS’s federal P & A access rights to Defendant and to gain access to the Juvenile Detention Center to exercise

these access rights. Defendant and its agents have repeatedly rejected or ignored DRMS's requests for access.

67. Between September 11, 2008 and the present, DRMS exchanged letters and telephone calls with Defendant regarding P & A access to the Juvenile Detention Center. *See* Exhibit 1 (Correspondence between DRMS and County Officials). On several occasions, DRMS provided Defendant with a detailed research memorandum explaining the legal basis and scope of DRMS's P & A authority. DRMS also made multiple offers to meet with County officials to explain DRMS's P & A rights, and to provide information about DRMS's P & A activities in juvenile justice facilities throughout Mississippi.

68. Despite DRMS's numerous efforts to assert its P & A access rights through informal, collaborative means, County officials consistently barred DRMS from accessing the Juvenile Detention Center and expressed serious misreading of the applicable law. On October 5, 2009, in a telephone conversation with a DRMS representative, a Lauderdale County official erroneously stated that DRMS was not permitted to speak with eligible youth in the Juvenile Detention Center because these conversations would violate the Mississippi Rules of Professional Conduct.

69. On October 6, 2009, Mississippi Youth Justice Project attorneys Bear Atwood and Poonam Juneja, acting as agents of DRMS, arrived at the Lauderdale County Juvenile Detention Center to conduct monitoring and investigation activities as required by the P & A Acts. DRMS provided County Officials with ample notice of the date and time of the intended visit and had rescheduled this visit once at Defendant's request. Upon their arrival at the Juvenile Detention Center, Lauderdale County Deputy Sheriffs Siciliano and Richardson informed Ms. Atwood and Ms. Juneja that they were not allowed on the premises and escorted them away from the facility.

70. As detailed above, Defendant has repeatedly precluded DRMS from exercising its Congressionally-mandated duties of protecting and advocating for the youth held at the Juvenile Detention Center, and has deprived these children of their rights to DRMS's services.

71. On November 11, 2009, this Honorable Court entered an Agreed Order negotiated by the parties that sets forth a tentative plan of access. Despite this tentative Agreed Order, DRMS requires a permanent injunction to ensure its access rights are protected.

NECESSITY FOR INJUNCTIVE RELIEF

72. The Defendant has acted and continues to act in violation of the law as explained above. The named Plaintiffs and the class they seek to represent do not have an adequate remedy at law. As a result of the policies, practices, acts and omissions of the Defendant, the named Plaintiffs, and the class they seek to represent, have suffered serious, imminent, irreparable physical, mental and emotional injuries.

73. Plaintiff DRMS does not have an adequate remedy at law and will be irreparably harmed if the Defendant is permitted to continue prohibiting DRMS and its agents from:

- a. having reasonable unaccompanied access, for monitoring and investigatory purposes, to public and private areas of the detention facility at the Lauderdale County Juvenile Detention Center;
- b. interviewing youth, staff and other persons as part of its duty to monitor the facility and investigate incidents of abuse and neglect;
- c. providing information and training on individual rights and services provided by the P & A system;
- d. communicating privately with facility residents;
- e. accessing facility incident reports and investigatory findings; and
- f. accessing residents' records.

EXHAUSTION

74. The named Plaintiffs have exhausted all available administrative remedies.

CAUSES OF ACTION

75. Plaintiff incorporates by reference all of the above factual allegations to support the following claims:

Count I

76. The conditions of confinement at the Juvenile Detention Center and the Defendant's deliberate indifference to those conditions, considered both individually and in their totality, constitute cruel and unusual punishment and a denial of due process in violation of Plaintiffs' rights under the Eighth and Fourteenth Amendments to the United States Constitution, as enforced through 42 U.S.C. § 1983.

Count II

77. Defendant's refusal to protect children from harm, otherwise keep them physically safe and secure and free from unconstitutional practices like excessive room confinement, arbitrary and punitive disciplinary practices and excessive use of restraints violates Plaintiffs' constitutional rights under the Eighth Amendment and the Fourteenth Amendment to the United States Constitution, as enforced through 42 U.S.C. § 1983.

Count III

78. Defendant's deliberate indifference to the children's serious mental health needs and their right to rehabilitative services violates the Plaintiffs' constitutional rights under the Eighth and Fourteenth Amendments to the United States Constitution, as enforced through 42 U.S.C. § 1983.

Count IV

79. Defendant's policy and practice of harassing, intimidating and threatening Plaintiffs who seek to enforce their constitutional and statutory rights, violates the Plaintiffs' First and Fourteenth Amendment rights to the United States Constitution, and to due process of law, as enforced through 42 U.S.C. § 1983.

Count V

80. The policies, procedures, regulations, practices and customs of the Defendant violate and continue to violate the rights of the Plaintiff DRMS to full, complete, timely and meaningful access to the Detention Center, staff, residents and their records, in violation of the PAIMI, PADD and PAIR Acts, and under color of law in violation of the Civil Rights Act of 1871, 42 U.S.C. § 1983.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays that this Honorable Court grant the following relief:

- a. Declare that the acts and omissions of the Defendant violate the federal law;
- b. Enter a preliminary and permanent injunction requiring the Defendant, its agents, employees and all persons acting in concert with the Defendant to cease their unconstitutional and unlawful practices;
- c. Grant injunctive relief enjoining the Defendant and its agents and employees from denying DRMS and its contracted agent immediate, full, complete, meaningful and unaccompanied access to the staff, residents, records and facilities at the Juvenile Detention Center to conduct monitoring activities and abuse and neglect investigations without advance notice and at any reasonable time, including business and visiting hours, in violation of the PAIMI, PADD and PAIR Acts;
- d. Issue a declaratory judgment that the Defendant's policies, regulations, and practices of denying DRMS and its contracted agent immediate, full, complete, meaningful, and unaccompanied access to the staff, residents, records and facilities at the Juvenile Detention Center to monitor and to conduct abuse and neglect investigations, without advance notice and at any reasonable time, including during business and visiting hours, violate the PAIMI, PADD and PAIR Acts;

- e. Award to the Plaintiff reasonable costs and attorney's fees; and
- f. Grant the Plaintiff such other relief as the Court deems just.

Respectfully submitted,

s/PoonamJuneja

Poonam Juneja, Miss. Bar No. 103181
Vanessa Carroll, Miss. Bar No. 102736
Sheila A. Bedi, Miss. Bar No. 101652
Mississippi Youth Justice Project
A Project of the Southern Poverty Law Center
921 N. President St., Suite B
Jackson, Mississippi 39202
601-948-8882 (telephone)
601-948-8885 (fax)

Robert B. McDuff, Miss. Bar No. 2532
767 North Congress Street
Jackson, Mississippi 39202
601-969-0802 (telephone)
601-969-0804 (fax)

Kimalon Melton, Miss. Bar No. 99466
Disability Rights Mississippi
5305 Executive Place
Jackson, Mississippi 39206
601-981-8207 (telephone)
601-981-8313 (fax)

Counsel for Plaintiffs

Certificate of Service

I hereby certify that on November 12, 2009, a true and correct copy of the foregoing document was filed electronically. Notice of this filing will be sent by email to all parties by the Court's electronic filing system. Parties may access this filing through the Court's CM/ECF System.

Dated: November 12, 2009

/s/ Sheila A. Bedi, Miss. Bar. No. 101652
Mississippi Youth Justice Project
A Project of the Southern Poverty Law Center
921 N. President St., Suite B
Jackson, Mississippi 39202
601-948-8882 (phone)
601-948-8885 (fax)