

**IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

Case No. 14-1082

ROSEMARY SCIARRILLO, by and through her guardians, Joanne St. Amand and
Anthony Sciarrillo,

Plaintiffs – Appellants,

v.

CHRISTOPHER CHRISTIE, as Governor of the State of New Jersey

Defendants - Appellees.

On Appeal from the United States District Court
for the District of New Jersey
D.C. Civil Action No. 2:13-cv-03478 (SRC-CLW)
Stanley R. Chesler, U.S.D.J.)

**JOINT APPENDIX
VOL. II (JA23-JA89)**

ON THE BRIEF:

Thomas B. York

The York Legal Group, LLC
6 Sentry Point Road
Lemoyne, PA 17043
(717) 236-9675
Attorneys for Appellants

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APPEAL,CLOSED,SCHEDO

**U.S. District Court
District of New Jersey [LIVE] (Newark)
CIVIL DOCKET FOR CASE #: 2:13-cv-03478-SRC-CLW**

SCIARRILLO et al v. CHRISTIE et al
Assigned to: Judge Stanley R. Chesler
Referred to: Magistrate Judge Cathy L. Waldor
Cause: 42:12101 Americans with Disabilities Act

Date Filed: 06/05/2013
Date Terminated: 12/13/2013
Jury Demand: Plaintiff
Nature of Suit: 446 Civil Rights:
Americans with Disabilities - Other
Jurisdiction: Federal Question

Plaintiff

ROSEMARY SCIARRILLO
*by and through her guardians, Joanne
St. Amand and Anthony Sciarillo*

represented by **THOMAS A. ARCHER**
METTE EVANS & WOODSIDE
3401 NORTH FRONT STREET
P.O. BOX 5950
HARRISBURG, PA 17110
717-232-5000
Email: taarcher@mette.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

JOYCE BANOS
*by and through her guardian, Peter
Banos*

represented by **THOMAS A. ARCHER**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

ROBERT JOHN BARRETT
*by and through his guardians, Robert
and Carol Barrett*

represented by **THOMAS A. ARCHER**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

CHARLES DAVID CHRISTENSEN
*and through his guardian, Daniel
Christensen*

represented by **THOMAS A. ARCHER**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

ARLEEN BRAUSE
*by and through her guardians, Joseph
Fass and Harriet Fass*

represented by **THOMAS A. ARCHER**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

JA23

Plaintiff

KENNETH COOPER

by and through his guardian, Minnie Cooper

represented by **THOMAS A. ARCHER**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

VINCENT GALLUCCIO

by and through his guardian, Domenica Galluccio

represented by **THOMAS A. ARCHER**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

RODNEY HAMMOND

by and through his guardian and his brother, Carrie Hammond and Walter Hammond

represented by **THOMAS A. ARCHER**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

SHARON KNAPP

by and through her guardians, Barry Knapp and Maria Knapp

represented by **THOMAS A. ARCHER**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

RICHARD SARAO

by and through his guardian, Mary Tritt

represented by **THOMAS A. ARCHER**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

CHERYL GORDON

by and through her brother, Joseph Gordon,

represented by **THOMAS A. ARCHER**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

PETER CANALE

by and through his guardians, Steven Canale and Maria Canale

represented by **THOMAS A. ARCHER**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

LINDA GRAVES

by and through her parents, Shirley and Billie Graves

represented by **THOMAS A. ARCHER**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

JA24

DIANE OBRIEN
*by and through her guardian, Fred
OBrien*

represented by **THOMAS A. ARCHER**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

THOMAS MARINELLO
*by and through his guardians, Jean
Marinello and Jody Sorge*

represented by **THOMAS A. ARCHER**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

MAUREEN DORAN
*by and through her guardians, Kathleen
DeCicco and Lori Centrella*

represented by **THOMAS A. ARCHER**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

KERR MITCHELL
*by and through his guardian, Juana
Mitchell*

represented by **THOMAS A. ARCHER**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

EUGENE CARR
*by and through his guardian Marylyn
Carr*

represented by **THOMAS A. ARCHER**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

LEAH WRIGHT
*by and through her guardian, Elizabeth
Wright*

represented by **THOMAS A. ARCHER**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

CATHERINE OBRIEN
*by and through her guardians, Donald
and Virginia OBrien and Susan Mason*
TERMINATED: 10/07/2013

represented by **THOMAS A. ARCHER**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

JACQUELINE FRIEDMAN
*by and through her guardians, Sam
Friedman and Gail Friedman*

represented by **THOMAS A. ARCHER**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

PAUL DITTAMO

represented by **THOMAS A. ARCHER**

JA25

*by and through his mother, Wendy
Dittamo*

(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

CLAYTON DAVIS
*by and through his guardians, Rose
Seyler and Dorothy Davis*

represented by **THOMAS A. ARCHER**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

STEPHEN SCOTT DYER
*by and through his guardian, Peter
Dyer*

represented by **THOMAS A. ARCHER**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

SUSAN GRIFFIN
*by and through her guardian, Barbara
Columbo,*

represented by **THOMAS A. ARCHER**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

EUGENE KESSLER
*by and through his guardian, Frances
Finkelstein*

represented by **THOMAS A. ARCHER**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

PHILIP CONKLING
*by and through his guardian, Caroline
Conkling*

represented by **THOMAS A. ARCHER**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

RALPH GRZYMKOWSKI
*by and through his guardians, Dana
and Mirek Grzymkowski*

represented by **THOMAS A. ARCHER**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

MARY ELLEN SCESA
*by and through her guardians, Kathleen
and Louis Scesa*

represented by **THOMAS A. ARCHER**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

ALICE TUCKER
by and through her guardian Bertha

represented by **THOMAS A. ARCHER**
(See above for address)

JA26

Westbrock

*LEAD ATTORNEY
ATTORNEY TO BE NOTICED*

Plaintiff

STEPHANIE ROOTS

*by and through her guardian, Marie
Reid*

represented by **THOMAS A. ARCHER**
(See above for address)
*LEAD ATTORNEY
ATTORNEY TO BE NOTICED*

Plaintiff

KESHA SMITH

*by and through her guardian, Deborah
Smith*

represented by **THOMAS A. ARCHER**
(See above for address)
*LEAD ATTORNEY
ATTORNEY TO BE NOTICED*

Plaintiff

ANDREW SEKELA

*by and through his guardian, Winifred
Sekela*

represented by **THOMAS A. ARCHER**
(See above for address)
*LEAD ATTORNEY
ATTORNEY TO BE NOTICED*

Plaintiff

PAUL VACCA

*by and through his guardians, Donald
and Theresa Vacca*

represented by **THOMAS A. ARCHER**
(See above for address)
*LEAD ATTORNEY
ATTORNEY TO BE NOTICED*

Plaintiff

RALPH VERLEUR

*by and through his guardian, Else
Verleur*

represented by **THOMAS A. ARCHER**
(See above for address)
*LEAD ATTORNEY
ATTORNEY TO BE NOTICED*

V.

Petitioner

United States

represented by **United States**
U.S. Department of Justice
Civil Rights Division
Special Litigation Section
950 Pennsylvania Avenue N.W.
Washington, DC 20530
202-514-8892
Fax: 202-514-4883
Email: christopher.cheng@usdoj.gov
PRO SE

V.

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Defendant

CHRISTOPHER CHRISTIE
as Governor of the State of New Jersey

represented by **GERARD ANDREW HUGHES**
OFFICE OF THE NJ ATTORNEY
GENERAL
DIVISION OF LAW
25 MARKET STREET
PO BOX 112
TRENTON, NJ 08625-0112
(609) 341-5096
Email: gerard.hughes@lps.state.nj.us
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

**NEW JERSEY DEPARTMENT OF
HUMAN SERVICES**

represented by **GERARD ANDREW HUGHES**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

JENNIFER VELEZ
*as Commissioner of the New Jersey
Department of Human Services*

represented by **GERARD ANDREW HUGHES**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

**NEW JERSEY DEPARTMENT OF
HUMAN SERVICES DIVISION OF
DEVELOPMENTAL
DISABILITIES**

represented by **GERARD ANDREW HUGHES**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

DAWN APGAR
*as Deputy Commissioner/Acting
Assistant Commissioner of New Jersey
Department of Human Services
Division of Developmental Disabilities*

represented by **GERARD ANDREW HUGHES**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

**NORTH JERSEY
DEVELOPMENTAL CENTER**

represented by **GERARD ANDREW HUGHES**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

**WOODBIDGE
DEVELOPMENTAL CENTER**

represented by **GERARD ANDREW HUGHES**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

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Date Filed	#	Docket Text
06/05/2013	<u>1</u>	COMPLAINT against DAWN APGAR, CHRISTOPHER CHRISTIE, NEW JERSEY DEPARTMENT OF HUMAN SERVICES, NEW JERSEY DEPARTMENT OF HUMAN SERVICES DIVISION OF DEVELOPMENTAL DISABILITIES, NORTH JERSEY DEVELOPMENTAL CENTER, JENNIFER VELEZ (Filing and Admin fee \$ 400 receipt number 0312-5046110) with JURY DEMAND, filed by KESHA SMITH, STEPHANIE ROOTS, CATHERINE OBRIEN, KENNETH COOPER, SUSAN GRIFFIN, MAUREEN DORAN, ROSEMARY SCIARRILLO, KERR MITCHELL, MARY ELLEN SCESA, THOMAS MARINELLO, EUGENE KESSLER, STEPHEN SCOTT DYER, PHILIP CONKLING, LEAH WRIGHT, LINDA GRAVES, CLAYTON DAVIS, SHARON KNAPP, ALICE TUCKER, PAUL VACCA, RICHARD SARAO, JACQUELINE FRIEDMAN, PETER CANALE, PAUL DITTAMO, RALPH GRZYMKOWSKI, ARLEEN BRAUSE, JOYCE BANOS, RALPH VERLEUR, RODNEY HAMMOND, CHERYL GORDON, DIANE OBRIEN, VINCENT GALLUCCIO, ROBERT JOHN BARRETT, ANDREW SEKELA, WOODBRIDGE DEVELOPMENTAL CENTER, EUGENE CARR, CHARLES DAVID CHRISTENSEN. (Attachments: # <u>1</u> Civil Cover Sheet, # <u>2</u> Verification)(bdk,) (Entered: 06/07/2013)
08/21/2013	<u>2</u>	Application and Proposed Order for Clerk's Order to extend time to answer as to Complaint. Attorney GERARD ANDREW HUGHES for DAWN APGAR,GERARD ANDREW HUGHES for CHRISTOPHER CHRISTIE,GERARD ANDREW HUGHES for NEW JERSEY DEPARTMENT OF HUMAN SERVICES,GERARD ANDREW HUGHES for NEW JERSEY DEPARTMENT OF HUMAN SERVICES DIVISION OF DEVELOPMENTAL DISABILITIES,GERARD ANDREW HUGHES for NORTH JERSEY DEVELOPMENTAL CENTER,GERARD ANDREW HUGHES for JENNIFER VELEZ,GERARD ANDREW HUGHES for WOODBRIDGE DEVELOPMENTAL CENTER added. (HUGHES, GERARD) (Entered: 08/21/2013)
08/21/2013	<u>3</u>	WAIVER OF SERVICE Returned Executed by KESHA SMITH, STEPHANIE ROOTS, CATHERINE OBRIEN, KENNETH COOPER, SUSAN GRIFFIN, MAUREEN DORAN, ROSEMARY SCIARRILLO, KERR MITCHELL, MARY ELLEN SCESA, THOMAS MARINELLO, EUGENE KESSLER, STEPHEN SCOTT DYER, PHILIP CONKLING, LEAH WRIGHT, LINDA GRAVES, CLAYTON DAVIS, SHARON KNAPP, ALICE TUCKER, PAUL VACCA, RICHARD SARAO, JACQUELINE FRIEDMAN, PETER CANALE, PAUL DITTAMO, RALPH GRZYMKOWSKI, ARLEEN BRAUSE, JOYCE BANOS, RALPH VERLEUR, RODNEY HAMMOND, CHERYL GORDON, DIANE OBRIEN, VINCENT GALLUCCIO, ROBERT JOHN BARRETT, ANDREW SEKELA, EUGENE CARR, CHARLES DAVID CHRISTENSEN. All Defendants. (ARCHER, THOMAS) (Entered: 08/21/2013)
08/22/2013		Clerk's Text Order - The document <u>2</u> Application for Clerk's Order to Ext Answer/Proposed Order,, submitted by CHARLES DAVID CHRISTENSEN

		has been GRANTED. The answer due date has been set for 9/9/2013. (nr,) (Entered: 08/22/2013)
09/09/2013	<u>4</u>	MOTION to Dismiss <i>Complaint</i> by DAWN APGAR, CHRISTOPHER CHRISTIE, NEW JERSEY DEPARTMENT OF HUMAN SERVICES, NEW JERSEY DEPARTMENT OF HUMAN SERVICES DIVISION OF DEVELOPMENTAL DISABILITIES, NORTH JERSEY DEVELOPMENTAL CENTER, JENNIFER VELEZ, WOODBRIDGE DEVELOPMENTAL CENTER. Responses due by 9/23/2013 (Attachments: # <u>1</u> Brief, # <u>2</u> Certification of Counsel, # <u>3</u> Exhibit A and B, # <u>4</u> Text of Proposed Order, # <u>5</u> Certificate of Service)(HUGHES, GERARD) (Entered: 09/09/2013)
09/09/2013		Set Deadlines as to <u>4</u> MOTION to Dismiss <i>Complaint</i> . Motion set for 10/7/2013 before Judge Stanley R. Chesler. The motion will be decided on the papers. No appearances required unless notified by the court. (nr,) (Entered: 09/11/2013)
09/10/2013	<u>5</u>	TEXT ORDER: The Court will hold an initial conference (rule 16) before U.S.M.J. C. Waldor in courtroom 4C on 12/4/13 at 10:00 AM. Parties are to submit a Joint Discovery Plan no later than 3 days before the scheduled conference. Please contact chambers with any questions or concerns at (973) 776 7862. Ordered by Magistrate Judge Cathy L. Waldor on 9/10/13. (tjg,) (Entered: 09/10/2013)
09/13/2013	<u>6</u>	Rule 7.1(d)(5) Letter for an automatic extension of the return date of a dispositive motion re <u>4</u> MOTION to Dismiss <i>Complaint</i> . (ARCHER, THOMAS) (Entered: 09/13/2013)
09/13/2013	<u>7</u>	STATEMENT of <i>Interest</i> by United States. (Attachments: # <u>1</u> Exhibit) (CHENG, CHRISTOPHER) (Entered: 09/13/2013)
09/16/2013	<u>8</u>	AMENDED DOCUMENT by United States. Amendment to <u>7</u> Statement of <i>Interest Certificate of Service</i> . (CHENG, CHRISTOPHER) (Entered: 09/16/2013)
10/04/2013	<u>9</u>	MOTION for Extension of Time to File Response/Reply as to <u>4</u> MOTION to Dismiss <i>Complaint</i> by JOYCE BANOS, ROBERT JOHN BARRETT, ARLEEN BRAUSE, PETER CANALE, EUGENE CARR, CHARLES DAVID CHRISTENSEN, PHILIP CONKLING, KENNETH COOPER, CLAYTON DAVIS, PAUL DITTAMO, MAUREEN DORAN, STEPHEN SCOTT DYER, JACQUELINE FRIEDMAN, VINCENT GALLUCCIO, CHERYL GORDON, LINDA GRAVES, SUSAN GRIFFIN, RALPH GRZYMKOWSKI, RODNEY HAMMOND, EUGENE KESSLER, SHARON KNAPP, THOMAS MARINELLO, KERR MITCHELL, CATHERINE OBRIEN, DIANE OBRIEN, STEPHANIE ROOTS, RICHARD SARAO, MARY ELLEN SCESA, ROSEMARY SCIARRILLO, ANDREW SEKELA, KESHA SMITH, ALICE TUCKER, PAUL VACCA, RALPH VERLEUR, LEAH WRIGHT. (ARCHER, THOMAS) (Entered: 10/04/2013)
10/04/2013	<u>10</u>	NOTICE by JOYCE BANOS, ROBERT JOHN BARRETT, ARLEEN BRAUSE, PETER CANALE, EUGENE CARR, CHARLES DAVID CHRISTENSEN, PHILIP CONKLING, KENNETH COOPER, CLAYTON DAVIS, PAUL DITTAMO, MAUREEN DORAN, STEPHEN SCOTT DYER,

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		JACQUELINE FRIEDMAN, VINCENT GALLUCCIO, CHERYL GORDON, LINDA GRAVES, SUSAN GRIFFIN, RALPH GRZYMKOWSKI, RODNEY HAMMOND, EUGENE KESSLER, SHARON KNAPP, THOMAS MARINELLO, KERR MITCHELL, CATHERINE OBRIEN, DIANE OBRIEN, STEPHANIE ROOTS, RICHARD SARAO, MARY ELLEN SCESA, ROSEMARY SCIARRILLO, ANDREW SEKELA, KESHA SMITH, ALICE TUCKER, PAUL VACCA, RALPH VERLEUR, LEAH WRIGHT (ARCHER, THOMAS) (Entered: 10/04/2013)
10/09/2013	<u>11</u>	ORDER granting pltf's motion for an extension of time to file response to deflt's motion to dismiss. Signed by Judge Stanley R. Chesler on 10/8/2013. (nr,) (Entered: 10/10/2013)
10/10/2013	<u>12</u>	MOTION for Leave to Appear Pro Hac Vice by <i>Thomas B. York</i> by JOYCE BANOS, ROBERT JOHN BARRETT, ARLEEN BRAUSE, PETER CANALE, EUGENE CARR, CHARLES DAVID CHRISTENSEN, PHILIP CONKLING, KENNETH COOPER, CLAYTON DAVIS, PAUL DITTAMO, MAUREEN DORAN, STEPHEN SCOTT DYER, JACQUELINE FRIEDMAN, VINCENT GALLUCCIO, CHERYL GORDON, LINDA GRAVES, SUSAN GRIFFIN, RALPH GRZYMKOWSKI, RODNEY HAMMOND, EUGENE KESSLER, SHARON KNAPP, THOMAS MARINELLO, KERR MITCHELL, CATHERINE OBRIEN, DIANE OBRIEN, STEPHANIE ROOTS, RICHARD SARAO, MARY ELLEN SCESA, ROSEMARY SCIARRILLO, ANDREW SEKELA, KESHA SMITH, ALICE TUCKER, PAUL VACCA, RALPH VERLEUR, LEAH WRIGHT. (ARCHER, THOMAS) (Entered: 10/10/2013)
10/10/2013		Set Deadlines as to <u>12</u> MOTION for Leave to Appear Pro Hac Vice by <i>Thomas B. York</i> . Motion set for 11/4/2013 before Judge Stanley R. Chesler. The motion will be decided on the papers. No appearances required unless notified by the court. (nr,) (Entered: 10/15/2013)
10/18/2013	<u>13</u>	RESPONSE in Opposition filed by JOYCE BANOS, ROBERT JOHN BARRETT, ARLEEN BRAUSE, PETER CANALE, EUGENE CARR, CHARLES DAVID CHRISTENSEN, PHILIP CONKLING, KENNETH COOPER, CLAYTON DAVIS, PAUL DITTAMO, MAUREEN DORAN, STEPHEN SCOTT DYER, JACQUELINE FRIEDMAN, VINCENT GALLUCCIO, CHERYL GORDON, LINDA GRAVES, SUSAN GRIFFIN, RALPH GRZYMKOWSKI, RODNEY HAMMOND, EUGENE KESSLER, SHARON KNAPP, THOMAS MARINELLO, KERR MITCHELL, CATHERINE OBRIEN, DIANE OBRIEN, STEPHANIE ROOTS, RICHARD SARAO, MARY ELLEN SCESA, ROSEMARY SCIARRILLO, ANDREW SEKELA, KESHA SMITH, ALICE TUCKER, PAUL VACCA, RALPH VERLEUR, LEAH WRIGHT re <u>4</u> MOTION to Dismiss <i>Complaint</i> (ARCHER, THOMAS) (Entered: 10/18/2013)
10/24/2013	<u>14</u>	ORDER granting <u>12</u> Motion for Thomas B. York to Appear Pro Hac Vice. Signed by Magistrate Judge Cathy L. Waldor on 10/24/2013. (nr,) (Entered: 10/24/2013)
10/28/2013	<u>15</u>	REPLY BRIEF to Opposition to Motion filed by DAWN APGAR, CHRISTOPHER CHRISTIE, NEW JERSEY DEPARTMENT OF HUMAN

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		SERVICES, NEW JERSEY DEPARTMENT OF HUMAN SERVICES DIVISION OF DEVELOPMENTAL DISABILITIES, NORTH JERSEY DEVELOPMENTAL CENTER, JENNIFER VELEZ, WOODBRIDGE DEVELOPMENTAL CENTER re 4 MOTION to Dismiss <i>Complaint</i> (Attachments: # <u>1</u> Certificate of Service)(HUGHES, GERARD) (Entered: 10/28/2013)
11/19/2013		Pro Hac Vice fee: \$ 150, receipt number NEW018603 Re Thomas B. York (nr,) (Entered: 11/19/2013)
12/04/2013		Minute Entry for proceedings held before Magistrate Judge Cathy L. Waldor: Initial Pretrial Conference (by phone) held on 12/4/2013. (tjg,) (Entered: 12/04/2013)
12/04/2013	<u>16</u>	PRETRIAL SCHEDULING ORDER: Telephone Conference set for 4/10/2014 02:30 PM before Magistrate Judge Cathy L. Waldor. Amended Pleadings due by 6/16/2014. Fact Discovery due by 8/31/2014.. Signed by Magistrate Judge Cathy L. Waldor on 12/4/2013. (nr,) (Entered: 12/04/2013)
12/13/2013	<u>17</u>	OPINION. Signed by Judge Stanley R. Chesler on 12/13/2013. (nr,) (Entered: 12/13/2013)
12/13/2013	<u>18</u>	ORDER granting deft's 4 Motion to Dismiss complt., with prejudice ***CIVIL CASE TERMINATED. Signed by Judge Stanley R. Chesler on 12/13/2013. (nr,) (Entered: 12/13/2013)
01/10/2014	<u>19</u>	NOTICE OF APPEAL as to <u>18</u> Order on Motion to Dismiss by JOYCE BANOS, ROBERT JOHN BARRETT, ARLEEN BRAUSE, PETER CANALE, EUGENE CARR, CHARLES DAVID CHRISTENSEN, PHILIP CONKLING, KENNETH COOPER, CLAYTON DAVIS, PAUL DITTAMO, MAUREEN DORAN, STEPHEN SCOTT DYER, JACQUELINE FRIEDMAN, VINCENT GALLUCCIO, CHERYL GORDON, LINDA GRAVES, SUSAN GRIFFIN, RALPH GRZYMKOWSKI, RODNEY HAMMOND, EUGENE KESSLER, SHARON KNAPP, THOMAS MARINELLO, KERR MITCHELL, CATHERINE OBRIEN, DIANE OBRIEN, STEPHANIE ROOTS, RICHARD SARAO, MARY ELLEN SCESA, ROSEMARY SCIARRILLO, ANDREW SEKELA, KESHA SMITH, ALICE TUCKER, PAUL VACCA, RALPH VERLEUR, LEAH WRIGHT. Filing fee \$ 505, receipt number 0312-5446828. The Clerk's Office hereby certifies the record and the docket sheet available through ECF to be the certified list in lieu of the record and/or the certified copy of the docket entries. Appeal Record due by 1/12/2013. (ARCHER, THOMAS) (Entered: 01/10/2014)

PACER Service Center			
Transaction Receipt			
03/18/2014 09:16:25			
PACER Login:	yg0066	Client Code:	
			2:13-cv-03478-SRC-CLW Start

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Description:	Docket Report	Search Criteria:	date: 1/1/1970 End date: 3/18/2014
Billable Pages:	9	Cost:	0.90

JA33

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
VICINAGE OF NEWARK

ROSEMARY SCIARRILLO, by and :
through her guardians, :
Joanne St. Amand and :
Anthony Sciarrillo, :
: :
JOYCE BANOS, by and through her :
guardian, Peter Banos, :
: :
ROBERT JOHN BARRETT, by and :
through his guardians, Robert and :
Carol Barrett, :
: :
CHARLES DAVID CHRISTENSEN, by :
and through his guardian, :
Daniel Christensen, :
: :
ARLEEN BRAUSE, by and through her :
guardians, Joseph Fass and Harriet Fass, :
: :
KENNETH COOPER, by and through :
his guardian, Minnie Cooper, :
: :
VINCENT GALLUCCIO, by and :
through his guardian, :
Domenica Galluccio, :
: :
RODNEY HAMMOND, by and through :
his guardian and his brother, :
Carrie Hammond and Walter Hammond, :
: :
SHARON KNAPP, by and through :
her guardians, Barry Knapp and :
Maria Knapp, :
: :
RICHARD SARAQ, by and through his :
guardian, Mary Tritt, :
: :
CHERYL GORDON, by and through :
her brother, Joseph Gordon, :
: :
PETER CANALE, by and through :

his guardians, Steven Canale and :
Maria Canale, :
: :
LINDA GRAVES, by and through her :
parents, Shirley and Billie Graves, :
: :
DIANE O'BRIEN, by and through her :
guardian, Fred O'Brien, :
: :
THOMAS MARINELLO, :
by and through his guardians, :
Jean Marinello and Jody Sorge, :
: :
MAUREEN DORAN, by and through :
her guardians, Kathleen DeCicco :
and Lori Centrella, :
: :
KERR MITCHELL, by and through :
his guardian, Juana Mitchell, :
: :
EUGENE CARR, by and through :
his guardian Marylyn Carr, :
: :
LEAH WRIGHT, by and through :
her guardian, Elizabeth Wright, :
: :
CATHERINE O'BRIEN, by and through :
her guardians, Donald and Virginia :
O'Brien and Susan Mason, :
: :
JACQUELINE FRIEDMAN, by and :
through her guardians, Sam Friedman :
and Gail Friedman, :
: :
PAUL DITTAMO, by and through his :
mother, Wendy Dittamo, :
: :
CLAYTON DAVIS, by and through his :
guardians, Rose Seyler and :
Dorothy Davis, :
: :
STEPHEN SCOTT DYER, by and :
through his guardian, Peter Dyer, :
: :
SUSAN GRIFFIN, by and through her :
guardian, Barbara Columbo, :
: :

EUGENE KESSLER, by and through his
guardian, Frances Finkelstein,

PHILIP CONKLING, by and through
his guardian, Caroline Conkling,

RALPH GRZYMKOWSKI, by and
through his guardians, Dana and
Mirek Grzymkowski,

MARY ELLEN SCESA, by and through
her guardians, Kathleen and Louis Scesa,

ALICE TUCKER, by and through
her guardian Bertha Westbrook,

STEPHANIE ROOTS, by and through
her guardian, Marie Reid,

KESHA SMITH, by and through her
guardian, Deborah Smith,

ANDREW SEKELA, by and through
his guardian, Winifred Sekela,

PAUL VACCA, by and through
his guardians, Donald and
Theresa Vacca,

RALPH VERLEUR, by and through
his guardian, Else Verleur,

Plaintiffs,

v.

CHRISTOPHER CHRISTIE, as
Governor of the State of New Jersey;
NEW JERSEY DEPARTMENT OF
HUMAN SERVICES; JENNIFER
VELEZ, as Commissioner of the New
Jersey Department of Human Services;
NEW JERSEY DEPARTMENT OF
HUMAN SERVICES DIVISION OF

CIV. NO.:

COMPLAINT
[DEMAND FOR JURY TRIAL]

**DEVELOPMENTAL DISABILITIES; :
DAWN APGAR, as Deputy :
Commissioner/Acting Assistant :
Commissioner of New Jersey Department :
of Human Services Division of :
Developmental Disabilities; NORTH :
JERSEY DEVELOPMENTAL :
CENTER; WOODBRIDGE :
DEVELOPMENTAL CENTER, :**

Defendants. :

June 5, 2013

COMPLAINT

The Plaintiffs, **ROSEMARY SCIARRILLO**, by and through her guardians, Joanne St. Amand and Anthony Sciarillo; **JOYCE BANOS**, by and through her guardian, Peter Banos; **ROBERT JOHN BARRETT**, by and through his guardians, Robert and Carol Barrett; **CHARLES DAVID CHRISTENSEN**, by and through his guardian, Daniel Christensen; **ARLEEN BRAUSE**, by and through her guardians, Joseph and Harriet Fass; **KENNETH COOPER**, by and through his guardian, Minnie Cooper; **VINCENT GALLUCCIO**, by and through his guardian, Dee Galluccio; **RODNEY HAMMOND**, by and through his guardian and brother, Carrie Hammond and Walter Hammond; **SHARON KNAPP**, by and through her guardians, Barry and Sharon Knapp; **RICHARD SARAIO**, by and through his guardian, Mary Tritt; **CHERYL GORDON**, by and through her brother, Joseph Gordon; **PETER CANALE**, by and through his guardians, Steven Canale and Maria Canale; **LINDA GRAVES**, by and through her parents, Shirley and Billie Graves; **DIANE O'BRIEN**, by and through her guardian, Fred O'Brien; **THOMAS MARINELLO**, by and through his guardians, Jean Marinello and Jody Sorge; **MAUREEN DORAN**, by and through her guardians, Kathleen DeCicco and Lori Centrella; **KERR MITCHELL**, by and through his guardian, Juana Mitchell; **EUGENE**

CARR, by and through his guardian Marylyn Carr; **LEAH WRIGHT**, by and through her guardian, Elizabeth Wright; and **CATHERINE O'BRIEN**, by and through her guardians, Donald and Virginia O'Brien and Susan Mason, **JACQUELINE FRIEDMAN**, by and through her guardians, Sam Friedman and Gail Friedman; **PAUL DITTAMO**, by and through his mother, Wendy Dittamo; **CLAYTON DAVIS**, by and through his guardians, Rose Seyler and Dorothy Davis; **STEPHEN SCOTT DYER**, by and through his guardian, Peter Dyer; **SUSAN GRIFFIN**, by and through her guardian, Barbara Columbo; **EUGENE KESSLER**, by and through his mother, Frances Finkelstein; **PHILIP CONKLING**, by and through his guardian, Caroline Conkling; **RALPH GRZYMKOWSKI**, by and through his guardians, Dana and Mirek Grzymkowski; **MARY ELLEN SCESA**, by and through her guardians, Kathleen and Louis Scesa; **ALICE TUCKER**, by and through her guardian, Bertha Westbrook; **STEPHANIE ROOTS**, by and through her guardian, Marie Reid; **ANDREW SEKELA**, by and through his guardian, Winifred Sekela; **KESHA SMITH**, by and through her guardian, Deborah Smith; **PAUL VACCA**, by and through his guardians, Donald and Theresa Vacca; **RALPH VERLEUR**, by and through his guardian, Else Verleur; by their undersigned attorneys, aver the following:

JURISDICTION

1. This action is for declaratory and injunctive relief under the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12132, the Rehabilitation Act of 1973, 29 U.S.C. § 794(a) ("Section 504"), the Medical Assistance Program authorized by 42 U.S.C. 1396, et seq., and the United States Constitution.

2. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1342, and 1343. Plaintiffs' claims for declaratory and injunctive relief are authorized under 28 U.S.C. §§ 2201-02 and 42 U.S.C. § 1983 and the waiver of state sovereign immunity enacted in 42 U.S.C. § 2000d-7(a)(I) and various Medicaid federal statutes and regulations incorporated into New Jersey law. At all times relevant to this action, Defendants have acted under color of state law.

VENUE

3. Venue lies in the District of New Jersey pursuant to 28 U.S.C. § 1391(b), and in the Newark Division, because the Plaintiffs officially reside in Northern Middlesex and Passaic Counties, New Jersey.

NAMED PLAINTIFFS

4. ROSEMARY SCIARILLO is a 58 year old female (d/o/b 3/13/1955) with profound intellectual disabilities who resides at the Woodbridge Developmental Center in Woodbridge, NJ. Rosemary brings this lawsuit by and through her sister and brother and legal guardians, Joanne St. Amand and Anthony Sciarrillo. She has resided at WDC for approximately 38 years.

5. JOYCE BANOS is a 55 year old female (d/o/b 4/28/1957) with a diagnosis of profound mental retardation who resides at the Woodbridge Developmental Center in Woodbridge, NJ. Joyce brings this lawsuit by and through her brother and legal guardian, Peter Banos. She has resided at WDC for approximately 42 years.

6. ROBERT JOHN BARRETT is a 56 year old male (d/o/b 1/24/1957) with a diagnosis of profound mental retardation who resides at Woodbridge Developmental Center in Woodbridge, NJ. Robert brings this lawsuit by and through his parents and legal guardians, Robert and Carol Barrett. He has resided at WDC for approximately 46 years.

7. CHARLES DAVID CHRISTENSEN ("DAVID") is a 66 year old male (d/o/b 5/15/1946) with a diagnosis of profound mental retardation who resides at the Woodbridge Developmental Center in Woodbridge, NJ. David brings this lawsuit by and through his brother and legal guardian, Daniel Christensen. He has resided at WDC for approximately 48 years.

8. ARLEEN BRAUSE is a 62 year old female (d/o/b 6/13/1951) with intellectual disabilities who resides at Woodbridge Developmental Center in Woodbridge, NJ. Arleen brings this lawsuit by and through her sister and brother-in-law, and legal guardians, Harriet and Joseph Fass. She has resided at WDC for approximately 48 years.

9. KENNETH COOPER is a 58 year old male (d/o/b 12/5/1955) with a diagnosis of severe mental retardation who resides at the Woodbridge Developmental Center in Woodbridge, NJ. Kenneth brings this lawsuit by and through his mother and legal guardian, Minnie Cooper. He has resided at WDC for approximately 49 years.

10. VINCENT GALLUCCIO is a 38 year old male (d/o/b 5/14/1975) with severe mental retardation who resides at Woodbridge Developmental Center in Woodbridge, NJ. Vincent brings this lawsuit by and through his mother and legal guardian, Dee Galluccio. He has resided at WDC for approximately 25 years.

11. RODNEY HAMMOND is a 58 year old male (d/o/b 7/7/1955) with a diagnosis of severe mental retardation who resides at the Woodbridge Developmental Center in Woodbridge, NJ. Kenneth brings this lawsuit by and through his mother and legal guardian,

Carrie Hammond, and his brother, Walter Hammond. He has resided at WDC for approximately 30 years.

12. SHARON KNAPP is a 67 year old female (d/o/b 5/13/1946) with a diagnosis of severe mental retardation who resides at Woodbridge Developmental Center in Woodbridge, NJ. Sharon brings this lawsuit through her brother and legal guardian, Barry Knapp, and her sister-in-law, Maria Knapp. She has resided at WDC for approximately 48 years.

13. RICHARD SARAO is a 55 year old male (d/o/b 5/1958) with a diagnosis of profound mental retardation who resides at the Woodbridge Developmental Center in Woodbridge, NJ. Richard brings this lawsuit by and through his mother and legal guardian, Mary Tritt. He has resided at WDC for approximately 48 years.

14. CHERYL GORDON is a 60 year old female (d/o/b 3/28/1953) with a brain injury diagnosis who resides at the Woodbridge Developmental Center in Woodbridge, NJ. Cheryl brings this lawsuit by and through her brother, Joseph Gordon. She has resided at WDC for approximately 8 years.

15. PETER CANALE is a 55 year old male (d/o/b 12/30/1958) with intellectual disabilities who resides at the Woodbridge Developmental Center in Woodbridge, NJ. Peter brings this lawsuit by and through his brother and sister, legal guardians, Steven Canale and Maria Canale. He has resided at WDC for approximately 45 years.

16. LINDA GRAVES is a 50 year old female (d/o/b 10/7/1963) with intellectual disabilities who resides at the Woodbridge Developmental Center in Woodbridge, NJ. Linda brings this lawsuit by and through her parents, Shirley and Billie Graves. She has resided at WDC for approximately 29 years.

17. DIANE O'BRIEN is a 53 year old female (d/o/b 11/2/1960) with a diagnosis of profound retardation who resides at the Woodbridge Developmental Center in Woodbridge, NJ. Diane brings this lawsuit by and through her father and legal guardian, Fred O'Brien. She has resided at WDC for approximately 47 years.

18. THOMAS MARINELLO is a 56 year old male (d/o/b 5/5/1957) with intellectual disabilities who resides at the Woodbridge Developmental Center in Woodbridge, NJ. Thomas brings this lawsuit by and through his mother and sister, legal guardians, Jean Marinello and Jody Sorge. He has resided at WDC for approximately 52 years.

19. MAUREEN DORAN is a 68 year old female (d/o/b 2/7/1945) with intellectual disabilities who resides at the Woodbridge Developmental Center in Woodbridge, NJ. Maureen brings this lawsuit by and through her sisters and legal guardians, Kathleen DeCicco and Lori Centrella. She has resided at WDC for approximately 12 years.

20. KERR MITCHELL is a 42 year old male (d/o/b 5/22/1971) with a diagnosis of profound mental retardation who resides at the Woodbridge Developmental Center in Woodbridge, NJ. Kerr brings this lawsuit by and through his mother and legal guardian, Juana Mitchell. He has resided at WDC for approximately 25 years.

21. EUGENE CARR is a 55 year old male (d/o/b 7/ 12/1957) with a brain injury diagnosis who resides at the Woodbridge Developmental Center in Woodbridge, NJ. Eugene brings this lawsuit by and through his mother and legal guardian, Marylyn Carr. He has resided at WDC for 43 years.

22. LEAH WRIGHT is a 49 year old female (d/o/b 12/9/1964) with a diagnosis of profound mental retardation who resides at the Woodbridge Developmental Center in

Woodbridge, NJ. Leah brings this lawsuit by and through her mother and legal guardian, Elizabeth Wright. She has resided at WDC for approximately 27 years.

23. CATHERINE O'BRIEN is a 52 year old female (d/o/b 3/28/1961) with a diagnosis of profound mental retardation who resides at the Woodbridge Developmental Center in Woodbridge, NJ. Catherine brings this lawsuit by and through her parents and sister and legal guardians, Donald and Virginia O'Brien and Susan Mason. She has resided at WDC for approximately 48 years.

24. JACQUELINE FRIEDMAN is a 48 year old female (d/o/b 12/2/1964) with intellectual disabilities who resides at the North Jersey Developmental Center in Totowa, New Jersey. Jacqueline brings this lawsuit by and through her brother and sister, legal guardians, Sam Friedman and Gail Friedman. She has resided at NJDC for approximately 47 years.

25. PAUL DITTAMO is a 46 year old male (d/o/b 2/20/1967) with a diagnosis of profound mental retardation who resides at the North Jersey Developmental Center in Totowa, New Jersey. Paul brings this lawsuit by and through his mother and legal guardian, Wendy Dittamo. He has resided at NJDC for approximately 44 years.

26. CLAYTON DAVIS is a 56 year old male (d/o/b 2/10/1957) with intellectual disabilities who resides at the North Jersey Developmental Center in Totowa, New Jersey. Clayton brings this lawsuit by and through his sister and legal guardians, Rose Seyler and Dorothy Davis. He has resided at NJDC for approximately 40 years.

27. STEPHEN SCOTT DYER is a 45 year old male (d/o/b 7/2/1967) diagnosed with profound mental retardation who resides at the North Jersey Developmental Center in Totowa, New Jersey. Stephen brings this lawsuit by and through his father and legal guardian, Peter Dyer. Stephen has resided at NJDC for approximately 42 years.

28. SUSAN GRIFFIN is a 59 year old female (d/o/b 9/15/1954) diagnosed with severe mental retardation who resides at the North Jersey Developmental Center in Totowa, New Jersey. Susan brings this lawsuit by and through her sister and legal guardian, Barbara Columbo. She has resided at NJDC for approximately 20 years.

29. EUGENE KESSLER is a 54 year old male (d/o/b 4/4/1959) with a diagnosis of moderate mental retardation, bipolar disorder, and pervasive developmental disabilities who resides at North Jersey Developmental Center in Totowa, New Jersey. Eugene brings this lawsuit by and through his mother and legal guardian, Frances Finkelstein. He has resided at NJDC for approximately 6 years.

30. PHILIP CONKLING is a 37 year old male (d/o/b 12/19/1976) with intellectual disabilities who resides at North Jersey Developmental Center in Totowa, New Jersey. Philip brings this lawsuit by and through his mother and legal guardian, Caroline Conkling. He has resided at NJDC for approximately 14 years.

31. RALPH GRZYMKOWSKI is a 40 year old male (d/o/b 3/4/1973) with a diagnosis of autism who resides at the North Jersey Developmental center in Totowa, New Jersey. Ralph brings this lawsuit by and through his parents and legal guardians, Dana and Mirek Grzymkowski. He has resided at NJDC for approximately 12 years.

32. MARY ELLEN SCESA is a 46 year old female (d/o/b 1/6/1967) with a diagnosis of severe mental retardation who resides at the North Jersey Developmental Center in Totowa, New Jersey. Mary Ellen brings this lawsuit by and through her parents and legal guardians, Kathleen and Louis Scesa. She has resided at NJDC for approximately 43 years

33. ALICE TUCKER is a 58 year old female (d/o/b 2/1/1955) with intellectual disabilities who resides at North Jersey Developmental Center in Totowa, New Jersey. Alice

brings this lawsuit by and through her sister and legal guardian, Bertha Westbrook. She has resided at NJDC for approximately 29 years.

34. STEPHANIE ROOTS is a 48 year old female (d/o/b 5/14/1965) with intellectual disabilities who resides at the North Jersey Developmental Center in Totowa, New Jersey. Stephanie brings this lawsuit by and through her mother and legal guardian, Marie Reid. She has resided at NJDC for approximately 28 years.

35. ANDREW SEKELA is a 41 year old male (d/o/b 12/7/1971) with intellectual disabilities who resides at the North Jersey Developmental Center in Totowa, New Jersey. Andrew brings this lawsuit by and through his mother and legal guardian, Winifred Sekela.

36. KESHA SMITH is a 43 year old female (d/o/b 12/7/1970) with a diagnosis of profound mental retardation who resides at the North Jersey Developmental Center in Totowa, New Jersey. Kesha brings this lawsuit by and through her mother and legal guardian Deborah Smith. She has resided at NJDC for approximately 28 years.

37. PAUL VACCA is a 51 year old male (d/o/b 1/15/1962) with a diagnosis of profound mental retardation who resides at the North Jersey Developmental Center in Totowa, New Jersey. Paul brings this lawsuit by and through his parents and legal guardians, Donald and Theresa Vacca. He has resided at NJDC for approximately 21 years.

38. RALPH VERLEUR is a 50 year old male (d/o/b 5/22/1963) with a diagnosis of severe mental retardation who resides at North Jersey Developmental Center in Totowa, NJ. Ralph brings this lawsuit by and through his mother and legal guardian, Else Verleur. He has resided at NJDC for approximately 24 years.

DEFENDANTS

39. The Defendant, CHRISTOPHER CHRISTIE, is the Governor of the State of New Jersey. Governor Christie is sued in his official capacity only.

40. The Defendant, NEW JERSEY DEPARTMENT OF HUMAN SERVICES (“DHS”), is a public entity covered by Title II of the Americans with Disabilities Act 42 U.S.C. § 12131(1). It receives federal funds under § 504 of the Rehabilitation Act, 29 U.S.C. § 794. DHS administers services for more than one million of New Jersey’s citizens, including individuals and families with low incomes; people with mental illnesses, developmental disabilities, or late-onset disabilities; people who are blind, visually impaired, deaf, hard of hearing, or deaf-blind; parents needing child care services, child support and healthcare for children; and families with catastrophic medical expenses for their children. DHS is the largest agency in New Jersey. DHS operates eight divisions including the Division of Developmental Disabilities.

41. The Defendant, JENNIFER VELEZ, is the Commissioner of the New Jersey Department of Human Services (“DHS”). Ms. Velez is sued in her official capacity. Defendant Velez is ultimately responsible for ensuring that New Jersey operates its delivery of services to individuals with disabilities in conformity with the United States Constitution, the ADA, the ADA implementing regulations, section 504 of the Rehabilitation Act of 1973 as amended, 29 U.S.C. § 794(a), and section 504’s implementing regulations.

42. The Defendant NEW JERSEY DEPARTMENT OF HUMAN SERVICES DIVISION OF DEVELOPMENTAL DISABILITIES (“DDD”), is a public entity covered by Title II of the Americans with Disabilities Act 42 U.S.C. § 12131(1). It receives federal funds under § 504 of the Rehabilitation Act, 29 U.S.C. § 794. DDD funds services and supports for eligible New Jersey residents with developmental disabilities. The division was created in

response to the need for better and more effective services for state residents with developmental disabilities.

43. The Defendant, DAWN APGAR, is Deputy Commissioner/Acting Assistant Commissioner of the New Jersey Department of Human Services Division of Developmental Disabilities. Ms. Apgar is sued in her official capacity. Defendant Apgar operates New Jersey's system of services to individuals with developmental disabilities and is ultimately responsible for ensuring that eligible New Jersey residents with developmental disabilities receive services and supports effectively and in accordance with the United States Constitution, the ADA, the ADA implementing regulations, section 504 of the Rehabilitation Act of 1973 as amended, 29 U.S.C. § 794(a), and section 504's implementing regulations.

44. The Defendant, NORTH JERSEY DEVELOPMENTAL CENTER ("North Jersey" or "NJDC"), is a residential facility that provides, among other things, habilitation, behavioral, and medical services and supports for individuals with developmental and intellectual disabilities. North Jersey opened in February 1928. With its campus-like setting, it includes approximately thirty-five (35) buildings, including living areas, sheltered workshops, vocational building, school building, chapel, healthcare center, auditorium, and recreational facilities. It is located in Totowa, Passaic County, New Jersey. It is the northern most residential developmental center in New Jersey. NJDC is a public entity covered by Title II of the Americans with Disabilities Act 42 U.S.C. § 12131(1). It receives federal funds under § 504 of the Rehabilitation Act, 29 U.S.C. § 794.

45. The Defendant, WOODBRIDGE DEVELOPMENTAL CENTER ("Woodbridge" or "WDC"), is a residential facility that provides, among other things, habilitation, behavioral, and medical services and supports for individuals with developmental and intellectual

disabilities. Woodbridge was established in 1965. With its campus-like setting, it includes approximately twenty-five (25) buildings, including residential cottages, therapy rooms, healthcare services center, multi-purpose rooms, and recreational and entertainment facilities. It is located in Woodbridge, Northern Middlesex County, New Jersey. WDC is a public entity covered by Title II of the Americans with Disabilities Act 42 U.S.C. § 12131(1). It receives federal funds under § 504 of the Rehabilitation Act, 29 U.S.C. § 794.

CLASS ACTION ALLEGATIONS

46. Pursuant to Fed. R. Civ. P. 23(a) and (b)(2), the named Plaintiffs bring this action on behalf of themselves and all other persons similarly situated.

47. The Plaintiffs bring this action pursuant to the Civil Rights Act, 42 U.S.C. § 1983; the Americans with Disabilities Act, 42 USC § 12132; § 504 of the Rehabilitation Act, 29 U.S.C. § 794 (“Section 504”), and the waiver of state sovereign immunity enacted in 42 U.S.C. § 2000d-7(a)(1), various Medicaid federal statutes, and regulations incorporated into New Jersey law and the United States Constitution, on behalf of a Class consisting of themselves and all other persons who are residents of the North Jersey Developmental Center and Woodbridge Developmental Center, Passaic and Northern Middlesex counties, respectively, New Jersey, as of August 1, 2012.

48. The proposed class consists of: New Jersey residents who reside or resided at the North Jersey or Woodbridge Developmental Centers, at anytime since August 1, 2012, or at any time during this litigation.

49. Joinder of the entire Class is impracticable because the Class Members are numerous, and are persons with severe or profound developmental disabilities. Virtually all Class Members are unable to give their consent except through guardians or family members.

50. The Plaintiffs' claims are typical of the claims asserted on behalf of the Class.

51. The Plaintiffs do not have any interests that are adverse or antagonistic to any claims or potential claims of the Class.

52. The Plaintiffs will fairly and adequately protect the interests of the members of the Class.

53. The Plaintiffs are committed to the vigorous prosecution of this action and have retained counsel competent and experienced in this type of litigation.

54. The Plaintiffs do not seek monetary damages. Hence, the burden and expense of prosecuting this litigation makes it unlikely that members of the Class would or could prosecute individual actions. If individual actions were pursued by Class Members, prosecution of those individual claims would be impracticable and inefficient.

55. This Court is the most appropriate forum for adjudicating the claims at issue, which arise under federal law.

56. The Plaintiffs do not anticipate any difficulty in the management of this action as a class action.

57. There are many questions of law and fact common to the Class, which predominate over any questions which may affect individual members. The predominant common questions of law and fact include, among others:

- (a) Whether Defendants are liable for violation of the Civil Rights Act, 42 U.S.C. § 1983;

- (b) Whether Defendants are liable for violation of the Americans with Disabilities Act, 42 U.S.C. § 12132;
- (c) Whether Defendants are liable for violation of § 504 of the Rehabilitation Act, 29 U.S.C. § 794 (“Section 504”);
- (d) Whether Defendants are liable for violation of various Medicaid federal statutes and regulations incorporated into New Jersey law;
- (e) Whether Defendants are liable for violations of the United States Constitution; and
- (f) Whether named Plaintiffs and Class Members are entitled to equitable and injunctive relief.

58. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy.

59. Plaintiffs seek declaratory and injunctive relief, attorneys’ fees and expenses as permitted by law, on behalf of themselves and the Class.

COMMON FACTUAL ALLEGATIONS.

60. All of the Plaintiffs reside at the North Jersey or Woodbridge Developmental Centers or resided there as of August 1, 2012.

61. Almost all of the Plaintiffs have lived in their homes at NJDC and WDC for many years, with approximately 80 percent of those residents having lived there for more than 20 years. Many of these individuals have resided at the Developmental Centers for over 40 years.

62. The North Jersey Developmental Center is an Intermediate Care Facility for Individuals with Intellectual Disabilities (“ICF/IDD”) that is operated by the State of New Jersey.

63. The Woodbridge Developmental Center is an Intermediate Care Facility for Individuals with Intellectual Disabilities (“ICF/IDD”) that is operated by the State of New Jersey.

64. An Intermediate Care Facility for Individuals with Intellectual Disabilities (“ICF/IID”) (formerly referred to as an Intermediate Care Facility for the Mentally Retarded or “ICF/MR”) is regulated by the Centers for Medicare and Medicaid Services (“CMS”) in conjunction with the State’s licensing agency. Part of that regulatory process includes routine surveys by CMS and the State’s licensing agency to ensure quality treatment and services are provided by ICF/IID-certified facilities, like North Jersey or Woodbridge Developmental Centers.

65. Eligibility for residence in a New Jersey developmental center is defined by Section 1.3 of Division Circular #3, N.J.A.C. 10:46-1.3, effective March 24, 2011. That regulation defines the developmental disability that must be present in order to receive services as a severe, chronic disability of an individual, which is attributable to a mental impairment, physical impairment, or combination of both; is manifested before age 22; is likely to continue indefinitely; results in a combination of functional limitations in major life activities; reflects the need for a combination of special interdisciplinary care or treatment of lifelong or extended duration; and includes, but is not limited to, developmental disabilities, autism, cerebral palsy, epilepsy, spina bifida, and other neurological impairments.

66. All of the Plaintiffs are diagnosed as in need of state-run ICF/IID institutional care and have been appropriately designated as eligible for state-operated ICF/IID-level of care.

67. Many of the individuals residing at the North Jersey Developmental Center have been diagnosed with profound or severe intellectual disabilities. Almost all individuals residing at NJDC have been diagnosed with additional disabilities, including seizure disorders, autism, cerebral palsy, vision difficulties, and hearing impairments. For example:

- (a) The Plaintiff, Jacqueline Friedman, is profoundly cognitively disabled. She is non-verbal and requires constant care.
- (b) The Plaintiff, Paul Dittamo, cannot walk, is non-verbal and experiences daily seizures. His medical care requires constant communication between professionals.
- (c) The Plaintiff, Stephen Dyer, is non-verbal and is diagnosed with microcephaly, spastic cerebral palsy, seizure disorder, bilateral contractures, bilateral chronic hip dislocation, delayed swallowing reflex, small hiatal hernia, osteoporosis, and esophogitis.
- (d) The Plaintiff, Susan Griffin, is diagnosed with severe mental retardation, bipolar disorder, schizophrenia, and atrophy of the brain. She requires constant care and medical coordination between professionals.
- (e) The Plaintiff, Eugene Kessler, is diagnosed with moderate retardation and pervasive developmental disabilities, he suffers from autism, bipolar disorder, and lacks judgment. He often becomes agitated and prone to harm himself, or others.

- (f) The Plaintiff, Philip Conkling, is autistic and suffers from cognitive disabilities. Philip thrives on structure and routine.
- (g) The Plaintiff, Ralph Grzymkowski, is diagnosed with autism. He exhibits severe behaviors and is very combative. He requires constant supervision.
- (h) The Plaintiff, Mary Ellen Scesa, is diagnosed with severe mental retardation and Dyke-Davidoff Syndrome, she is non-ambulatory and non-verbal. She suffers from seizures as well. She requires constant care.
- (i) The Plaintiff, Alice Tucker, is diagnosed with seizure disorder, schizophrenia, cerebral palsy, depression, malignant breast cancer, high blood pressure, and gout. She is extremely combative and aggressive. She is bi-polar and experiences multiple personalities.
- (j) The Plaintiff, Stephanie Roots, suffers from seizures. She had a tumor in her pelvis and now requires a leg brace to ambulate.
- (k) The Plaintiff, Andrew Sekela, is prone to elopement when a situation arises that he perceives as unfair or when he becomes overwhelmed. He has multiple seizure disorder brought on by multiple brain scarring from meningitis suffered at age two. Andrew requires constant supervision.
- (l) The Plaintiff, Kesha Smith, is epileptic and suffers from petit mal seizures. She has limited speech and is prone to wandering and aggressive behavior. She requires much supervision.
- (m) The Plaintiff, Paul Vacca, has cerebral palsy, he is non-verbal and walks with a difficult gait. He experiences frequent falls and engages in self-injurious behavior, banging his head when frustrated.

- (n) The Plaintiff, Ralph Verleur, has cerebral palsy, is blind in one eye, is incontinent, and is not ambulatory. He relies on staff for total care including blowing his nose. He suffers from echolalia. He takes constipation and anti-convulsant medication.

68. Most (approximately 97%) of the individuals residing at the Woodbridge Developmental Center have been diagnosed with profound or severe intellectual disabilities. Almost all individuals residing at WDC have been diagnosed with additional disabilities, including seizure disorders, autism, cerebral palsy, vision difficulties, and hearing impairments. For example:

- (a) The Plaintiff, Rosemary Sciarrillo, suffers from severe scoliosis, dysphagia, severe constipation, severe osteoporosis (with high fracture risk), and a seizure disorder. She is unable to communicate and needs to be re-positioned every couple hours. Rosemary is totally dependent upon staff to initiate and complete all activities of daily living.
- (b) The Plaintiff, Joyce Banos, suffers from major depressive disorder, seizure disorder, cerebral palsy, moderate dysphagia, constipation, thoracolumbar kyphoscoliosis, myopic astigmatism, osteopenia, chronic esophagitis, and gastritis. Joyce is non-verbal. Her routine medications include Citrical, Vitamin D, Zantac, Lamictal, Colace, and Lexapro.
- (c) The Plaintiff, Robert Barrett, is non-verbal. He is blind in one eye and has scoliosis. He requires 1:1 supervision to prevent self-injury and wears a helmet and face mask to protect himself from his own slaps and from falls.