

District Court of Gage County, Nebraska

**Garry Wheeler, Personal Representative
Of the Sara Schnell Estate,**

Plaintiff,

v.

**Dave Heineman,
Joann Schaefer, M.D.,
John C. Wyvill, and
Ron Stegemann**

Defendants.

Plaintiff alleges:

1. Sara Schnell, now deceased, had special needs for legal protection and was legally incompetent; she had been so adjudged prior the events described below. Sara Schnell was a developmentally-disabled person. Sara was victimized by the Defendants, who, while acting under color of state law, subjected Sara to deprivations of her well-established statutory and constitutional rights, privileges and immunities while acting under the color of State law.

2. Each Defendant is a wrongdoer, who acted under the authority of state law as a private actor who used the color of law to remove Sara from her home at the Beatrice State Developmental Center ("BSDC") unlawfully. Each Defendant acted under color of law to cause or permit failure to maintain BSDC in compliance with laws and regulations of or related to the U.S. Department of Health and Human Services and the U.S. Center for Medical Services, the *Civil Rights of Institutionalized Persons Act*, 42 USC § 1997, *US Const Amend XIV*, including its equal protection clause, its due process clause, and its privileges and immunities clause, the *Federal Fair Housing Act*, 42 USC § 2000(e) guaranteeing Sara Schnell's rights not to be discriminated against in her housing status and circumstances, or to be moved from her housing by reason of any status, including the status of legal disability, and the requirements of the *Americans with Disabilities Act*, 42 USC § 12132, and its implementing regulations at 28 CFR § 35.130.

Case No. CI 10 - 2
Judge: _____

**Complaint
& Jury Demand**

FILED
In The Office of the Clerk of the District Court
In Gage County, Nebraska

JAN 04 2010


CLERK OF THE DISTRICT COURT
DEPUTY

COPIES

3. The Defendants caused or permitted infringements on other well established rights held by Sara while acting under color of law as set forth in ¶¶ 11, 12 and elsewhere, *infra*. These infringements commenced before, and continued after, July 2, 2008 when the United States District Court for the District of Nebraska entered a Final Judgment on a “settlement agreement” making Defendants Heineman, Peterson, Wyvill and Stegemann responsible to comply with the “order and judgment of this Court,” rendered and entered in Civ. No. 08-08CV271. The U.S. District Court’s Judgment was not appealed; it necessarily adjudicated matters relevant to this proceeding. Plaintiff contends the parties to the Consent Judgment meant it to be preclusive of certain issues of fact concerning noncompliance with federal law. Plaintiff claims that these issues are now permanently resolved by the doctrines of issue preclusion, including *res judicata* and collateral estoppel and Plaintiff need not reprove noncompliance by Defendants with federal law and State law, which they admitted, assented to, agreed to, and were Ordered to remediate in Civ. No. 08-08CV271.¹

Jurisdiction, Venue and Parties

4. This Court has jurisdiction in this matter under *Neb Rev Stat* § 24-302 and under 42 USC § 1983, the federal *Civil Rights Act’s* jurisdictional provision. State and federal courts have concurrent jurisdiction over civil rights claims like this one.² An estate proceeding on behalf of the decedent’s estate has been commenced in the County Court of Gage County (No. PR 09-92).

5. The claims asserted here survived the Decedent’s death.³ All claims arise from common transactions, occurrences and actions of the Defendants. The Defendants are joined because the claims presented arise out of the same transaction, occurrence or series of transactions or occurrences and each Defendant acted under color of law to impinge on Sara’s well established legal rights.

¹ *Comfort Lake Ass’n, Inc. v. Dresel Contracting, Inc.*, 138 F3d 351 (8th Cir 1998) (*Clean Water Act* consent judgment case.)

² *Abdul-Akbar v. McKelvie*, 239 F. 3d 307 (3rd Cir. 2001)

³ *Neb Rev Stat* § 25-1401.

Parties

6. The Plaintiff in this action is Garry Wheeler, Personal Representative of the Sara Ann Schnell Estate, serving by virtue of an appointment order issued by the County Court of Gage County, Nebraska.

7. The Defendants are:

7.1 Dave Heineman. Mr. Heineman is a Nebraska who may be served with process at Lincoln. At relevant times, Mr. Heineman held office as Governor of Nebraska.

7.2 Joann Schaefer, M.D. At relevant times, Ms. Schaefer held office as Chief Medical Officer and Director of the Nebraska Department of Health and Human Services serving pursuant to a gubernatorial appointment. Ms. Schaefer may be served with process at Ms. Schaefer is sued as an individual.

7.3 John C. Wyvill. At relevant times, Mr. Wyvill held the Position of Director of the Division of Developmental Disabilities, Nebraska Department of Health and Human Services. Mr. Wyvill is sued as an individual.

7.4 Ron Stegemann. At relevant times, Mr. Stegemann was an employee of the Nebraska Department of Health and Human Services and at relevant times he was the Director and superintendent, or overseer, of the Nebraska State Developmental Center, Beatrice, Nebraska. Mr. Stegemann is sued as an individual.

General Allegations

8 At relevant times, the Beatrice State Developmental Center was a facility providing intensive treatment services, as an acute care facility, and functioning as an Intensive Care Facility for the Mentally Retarded (“ICF/MR”).

9 At all relevant times, BSDC was owned and operated by the State of Nebraska, and its operations were the responsibilities of the Defendants.

10 In his annual address to the Nebraska Legislature in 2007, Defendant Heineman asked the Nebraska Legislature to amend a state law restructuring the Nebraska Department of Health and Human Services (“DHHS”). The Legislature responded by doing so as requested when it adopted *Neb Rev Stat* § 81-3113 et seq. This

statute became effective in 2007.⁴ Defendant Heinemann used his apparent new power to harm the Plaintiffs' wards and appears to have harbored a plan to do so since as early as 2007.

11 Sara Schnell was a resident who lived at BSDC on a full-time basis. Sara made BSDC her home for many years. As the persons responsible for BSDC, the Defendants owed Sara the duty to protect her constitutional, federal, and state statutory rights including these well-established rights:

11.2 The right to adequate protection from harm;

11.3 The right to training and associated behavioral and mental health services;

11.4 Healthcare, including nutritional and physical management;

11.5 Discharge planning and placement in the most integrated setting;

11.6 Equal protection of the laws, and due process of law, under *US Const Amend XIV* and *Neb Const Article I § 3*;

11.7 Freedom from discrimination in housing, medical care, or other services by reason of their status as disabled persons under 42 *USC* § 1997, as each protected person was an institutionalized person at relevant times;

11.8 Equal protection of the laws under Title 19 of the *Social Security Act*, 42 *USC* § 1396 and 42 *CFR* Part 483, Subpart I;

11.9 Equal protection of the laws and services under the *Americans with Disabilities Act*, 42 *USC* § 12132 *et seq.* and 28 *CFR* § 35.130(d), and services and equal protection of the law under the *Nebraska Disabilities Act*, *Neb Rev Stat* § 83-1201 *et seq.*

12 In addition to the rights Sara enjoyed as recited in paragraph 11, she had, and the Defendants impinged on while acting under color of law, these constitutional rights:

⁴ See also, LB 296.

Well Established Right	Core Legal Sources	Synopsis of Right
<p>The right to continuing adequate healthcare, including nutritional and physical management.</p>	<p><i>US Const Amend IX and XIV, 42 USC § 1997, and 42 CFR Part 483, Subpart I, §§ 42 CFR 483.400-480.</i></p>	<p>BSDC was allowed to disintegrate by the Defendants to the point where it posed a health threat to its residents. Plaintiffs were not notified or allowed to be heard as this occurred, and they were not given equal protection of law as it occurred. Instead, abusive executive action occurred.</p>
<p>The right to adequate protection from harm while housed cared for and provided for as a ward of the State and developmentally disabled citizen.</p>	<p><i>US Const Amend XIV, 42 USC § 1997, and 42 CFR Part 483, Subpart I, §§ 42 CFR 483.400-480.</i></p>	<p>BSDC was allowed to disintegrate by the Defendants to the point where it posed a threat to the residents' safety. Plaintiffs were not notified or allowed to be heard as this occurred, and they were not protected as it occurred. Plaintiffs' medical needs were invaded as this occurred and abusive executive action occurred.</p>
<p>The right to training and associated behavioral and mental health services.</p>	<p><i>US Const Amend XIV, 42 USC § 1997, and 42 CFR Part 483, Subpart I, §§ 42 CFR 483.400-480.</i></p>	<p>BSDC was allowed to deteriorate to the point where these services were no longer provided. Plaintiffs were not notified or allowed to be heard as this occurred, and they were not protected as it occurred. They were denied equal protection of law and their privacy rights were invaded. They were denied housing and medical care in the process.</p>
<p>The right to advanced, responsible discharge planning and placement in the most integrated and appropriate setting, including fair housing.</p>	<p><i>US Const Amend IX, and XIV, 42 USC § 1997, 42 USC §2000e, and 42 CFR Part 483, Subpart I, §§ 42 CFR 483.400-480.</i></p>	<p>Plaintiffs' Protected Persons were ejected into placements not suited to caring for them and they were not notified, or given a chance to be heard or given due process as this occurred. They were denied equal protection of law and their privacy rights were invaded.</p>

Well Established Right	Core Legal Sources	Synopsis of Right
		They were denied housing and medical care in the process. Their right to personal security was also violated. Instead, abusive executive action occurred.
The right to procedural due process of law before being evicted and moved from their homes by the Defendants under color of law, and the right to be treated equally and not disparately in connection with their housing and decisions about it.	<i>US Const Amend XIV</i> and <i>Neb Const Article I § 3</i> and 42 USC 2000e	No other persons in care of the State of Nebraska were or have been evicted from their residences in this matter. The method of eviction was unique to persons with developmental disabilities. They were denied equal protection of law and their privacy rights were invaded. They were denied housing and medical care in the process. Plaintiffs and their protected persons were also denied due process of law and access to the courts. Instead, abusive executive action occurred.
Freedom from discrimination in housing, medical care, or other services by reason of their status as disabled persons.	<i>US Const Amend XIV</i> and 42 <i>USC § 1997</i> ; Title 19, <i>Social Security Act</i> , 42 <i>USC § 1936</i> .	No other State institution has been neglected to this level. This situation uniquely victimizes people with disabilities. Plaintiffs were not notified or allowed to be heard as this occurred, and they were not protected as it occurred. They were denied equal protection of law and their privacy rights were invaded. They were denied housing and medical care in the process. Instead, abusive executive action occurred.
Equal protection of the laws in the receipt and use of government benefits including social security, Medicare, Medicaid and	<i>US Const Amend XIV</i> and Title 19 of the <i>Social Security Act</i> , 42 <i>USC § 1396</i> and 42 <i>CFR Part 483, Subpart I</i> , and 42 <i>USC § 1997</i> .	Plaintiffs and the protected persons were not notified or allowed to be heard as this occurred, and they were not accorded equal protection of the

Well Established Right	Core Legal Sources	Synopsis of Right
related government subsistence support for developmentally disabled persons.		law as it occurred. They were also denied housing and medical care as this occurred.
Equal protection of the laws and appropriate, continuing, government services under the Americans with Disabilities equal protection under the Nebraska Disabilities Act.	<i>US Const Amend XIV, Americans with Disabilities Act, 42 USC § 12132 et seq. and 28 CFR § 35.130(d), Nebraska Disabilities Act, Neb Rev Stat § 83-1201 et seq.</i>	The circumstances of this case show a pattern of neglect and intentional violations of rights of the disabled. Plaintiffs' and the protected persons were not notified or allowed to be heard as this occurred, and they were not protected as it occurred. Their right to personal security was also violated and abusive executive action occurred.
The rights not to be forcibly moved detained and placed out of one's home without due process of law or as an act of discrimination prompted by unlawful classification for their health.	<i>US Const Amend XIV, Neb Const Art I § 3. 42 USC § 1997 and 42 USC § 2000e, and regulations hereunder. Neb Rev Stat § 83-1201 et seq.</i>	The Protected Persons were moved without notice to undisclosed locations even though all had court appointed guardians. They were denied access to the courts before the fact and were denied due process while being subjected to disparate unequal protection of the law. Their right to personal security was also violated. Instead, abusive executive action occurred.
The right to be secure in one's home and free from unreasonable search an seizure therein and removal there from, and to be free from the taking of one's residence or the leasehold interest of one there under. The right to be free from imprisonment in a place of the Defendants' selection upon being removed from their residences.	<i>US Const Amend IV, V, XIV; 42 USC § 1997 and 42 USC § 2000e and related laws.</i>	Defendants caused Plaintiff's not to be notified and their protected persons to be removed from their homes, seized, confined elsewhere, and for all this to occur without notice or due process of law. Their right to personal security was also violated. Instead, abusive executive action occurred.
The right to privacy	<i>US Const Amend IX & XIV</i>	The protected persons were disrupted from their homes and

Well Established Right	Core Legal Sources	Synopsis of Right
		separated from their things; their lives were laid bare and they were exposed to publicity, public attention and their privacy was invaded as a result. Instead, abusive executive action occurred.
All existing rights to substantive due process of law. The “core of the concept [of substantive due process is] protection against arbitrary action” by the government. <i>County of Sacramento v. Lewis</i> , 523 U.S. 833, 845 (1998).	<i>U S Const Amend XIV</i>	These rights included the right to be free of abusive executive action, and to be secure in one’s person and home. Instead, abusive executive action occurred.

13 These constitutional and statutory rights are recognized in federal law and in well-established, longstanding decisions of the United States Supreme Court including *Youngberg v. Romeo*, 457 US 307 (1982); *Olmstead v. LC*, 527 US 581 (1999); and in decisions of the Federal Courts of Appeals.⁵ *Youngberg* and *Olmstead* recognize that the rights set forth in ¶¶ 11, 12, and others in this Complaint are enjoyed by developmentally disabled persons, like, and including, Sara.

14 Compliance responsibility with these provisions of the law was owed to Sara by the Defendants. Yet, they infringed on these rights. All actions and conduct of the Defendants complained of occurred under color of state law. One fundamental obligation of Nebraska state law is compliance with federal law. This is a constitutional requirement as federal law is supreme to state law.⁶

15 Federal law provides that an individual with a disability is not required “to accept an accommodation which such individual chooses not to accept.”⁷ This right of Sara’s was also violated. Defendants were responsible to assure BSCD was

⁵ See, e.g., *Kozisek v. County of Seward, Nebraska*, 539 F3d 930 (8th Cir 2008) (ADA case).

⁶ For example, *Cf. Shaw v. Delta Air Lines, Inc.*, 463 US 85, 101-06, 103 S Ct 2890, 77 LEd2d 490 (1983) (state anti-discrimination laws are not expressly preempted by ERISA insofar as they are consistent with Title VII)

⁷ 28 *CFR* 35.130(9)(e)(1).

certified and maintained compliance with federal standards, known as conditions of participation, as required by 42 *CFR* Part 483, Subpart I, §§ 42 *CFR* 483.400-480.⁸ Defendants were responsible for assuring compliance with federal laws and guidelines to prevent abuse, mistreatment or neglect, promote safety and greater independence, choice, integration and productivity, and to meet the health needs of institutionalized persons including Sara.⁹ In addition, a federally mandated “State Medicaid Manual” imposes duties not performed by Defendants.¹⁰

16 Defendants failed to perform their duties. On the contrary, they caused or permitted BSDC to become a substandard facility that failed to meet the needs of Sara, failed to comply with law, and failed to achieve compliance after warning Defendants failed to perform other duties to Sara as well. For example, the *Code of Federal Regulations* imposed duties on Defendants for Sara’s benefit in 42 *CFR* § 441.302(d), as follows:

When a recipient is determined to be likely to require the level of care provided in a hospital, NF, or ICF-MR, the recipient or his or her legal representative will be—

- (1) Informed of any feasible alternatives available under the waiver, and
- (2) Given the choice of either institutional or home and community-based services.

17 Defendant Heineman received a specific 59-day Warning Letter dated March 7, 2008, executed by the United States Department of Justice and by the Assistant Attorney General of the United States for Civil Rights. Copies of the letter were sent to the Attorney General of Nebraska, the United States Attorney for the District of Nebraska, and Defendants Peterson, Wyvill, and Stegemann. The letter reported specific DOJ findings that Mr. Heineman and the other Defendants were causing or

⁸ A State Operations Manual was adopted, including an Appendix J, governing guidance to caregivers, found at www.cms.hhs.gov/manuals/Downloads/som107ap_j_intermcare.pdf.

⁹ Regulations describing these requirements include, but are not limited to, those at 42 *CFR* Part 483, Subpart I, above, and found at www.cms.hhs.gov/GuidanceForLawsAndRegulations/09_icf/mr.asp.

¹⁰ *The State Medicaid Manual* was first issued by the U S DHHS in December 1988. The Nebraska DHHS promulgated its version and posts it for the public at <http://www.hhs.state.ne.us/med/phphys.htm>.

permitting violations of the Constitutional, statutory, and other well-established legal rights of BSDC residents, including Sara.

18 The Defendants acknowledged their violations of the law and submitted their acknowledgement of those violations to the United States District Court for the District of Nebraska in Civ. No. 08-08CV271. On July 2, 2008, the United States District Court for the District of Nebraska entered judgment as follows:

WHEREFORE, the parties to this action having agreed to the provisions in the Consent Judgment set forth above, and the Court being advised in the premises, this Consent Judgment is hereby entered as the order and judgment of this Court. It is so ordered, this second day of July 2008 at Lincoln, Nebraska.”

**Hon. Richard G. Kopf
United States District Judge**

19 Despite this Judgment, which included an obligation that the Defendants cause funding to be established for a special study by one or more independent experts and that conditions change, the Defendants did not cause conditions to change but permitted them to further deteriorate. Under conditions violative of Sara’s rights, the Defendants caused, or permitted, BSDC to deteriorate so dramatically as to determine and declare, themselves, it was no longer safe, fit, or suitable for Sara and other residents of BSDC. Instead of fixing the facility to comply with Constitutional, statutory, and other lawful obligations, the Defendants permitted Sara’s rights to be trampled upon by moving her and other residents without warning and without alternatives being provided. This is tantamount to a corn farmer letting the weeds grow so he can file a crop loss claim.

20 In February 2009, the Defendants, acting in concert, coined a new phrase “medically fragile” which they presented to Sara’s guardian, at a subsequent time, as descriptive of a diagnosed medical condition of Sara. But, medical science knows no such diagnosis as “medically fragile.” The diagnostic service manuals for persons with developmental disabilities or mental disorders contain no such description or diagnosis. The current procedural terminology, commonly known as the CPT codebook for 2008

copyrighted by the American Medical Association recognizes no such diagnosis.¹¹ None exists. The phrase “medically fragile” was concocted to create a veneer over Defendants’ actions, taken under color of state law, to remove Sara and other protected persons from their homes, with no due process of law, no respect for their rights as citizens, and to leave them without care of the kind required by state and federal laws, cited above, protecting and providing for persons with similar disabilities.

21 For decades, BSDC was operated in a responsible and prudent way permitting it to be staffed, organized, cleaned, managed, and governed in a way that was safe, sound, respectful of its residents, and consistent with the legal rights of its residents. However, when the Defendants, as a group, took charge of the facility, they caused or permitted its deterioration, and its continuing deterioration, with the resultant infringement on the Constitutional, statutory, and other well-established legal rights of Sara. No justification or excuse exists for their conduct.

22 Defendant Schaefer, acting in concert with and for all the Defendants, narrowed the licensure scope of services permitted by BSDC and, by doing so, made it ineligible to house or care for Sara. This action was taken instead of action to “fix” the problem. All Defendants participated in this decision and in its implementation.

23 Thereafter, the Defendants, acting in concert, arranged for Sara, who could not read and who was profoundly developmentally disabled, to have a notice posted to the door of her residential quarters within hours before she was abruptly moved from the facility. Notification was mailed to Sara’s guardian, but the notification was sent on a Friday or Saturday and delivered after Sara had been moved to an undisclosed location, with unknown and undisclosed capacities or abilities to provide care for her and under unknown conditions.

24 Sara’s guardian and the guardians of other people housed at BSDC coincidentally learned of the identities of one another, but the Defendants refused to disclose the identities of all patients moved from BSDC at or about the same time. Moved patients, and possibly Sara, were physically restrained and strapped or tied to

¹¹ For at least some Federal Health & Human Services purposes the CPT are recognized and adopted as law. *Fed Reg* 07-3490 (ASCs).

gurneys, beds, chairs, or in ambulances or vans to be transported. And, they were placed into vehicles by the same persons the Defendants criticized in connection with care for other patients, as inappropriate caregivers to be transported to undisclosed destinations. Sara was frightened and responded by regressing, deteriorating, and developing health difficulties.

25 Sara (DOB 4/8/44) was a profoundly learning-disabled person from the time of her birth. She was medically stable until after she was moved from her home by the Defendants.

26 On February 2nd 2009 Sara was classified as “medically fragile” by the subterfuge conduct of the Defendants. On February 3rd 2009 Sara was removed from the Beatrice State Developmental Center and placed in a hospital in Lincoln, Lancaster County Nebraska. Sara was a resident of Beatrice State Developmental Center for almost 53 years, and before the deterioration of BSDC and her removal from it, she was happy and relatively healthy.

27 Sara’s health and mental well-being degraded after her removal from BSDC as a proximate consequence of her forced move. She suffered emotional distress, fear, anxiety, and mental as well as physical suffering, illness and pain as a proximate result of defendants’ actions.

28 The Defendants further violated Sara’s constitutional and legal rights under *US Const Amend XIV*, *Neb Const Art I § 3* and *Neb Rev Stat § 83-8, 201 et seq.* when Sara was moved without prior notification. Before Sara was moved her guardian was given no opportunity to confront, examine, or be heard concerning the best interests or welfare of Sara. This is true despite the fact the Defendants knew, or reasonably should have known, that Sara had a court appointed guardian who was entitled to the same notice as Sara. Specifically, Defendants knew or should have known that “a guardian of an incapacitated person has the same powers, rights, and duties respecting his or her ward that a parent has respecting his or her unemancipated minor child” under Nebraska law.¹² In fact, even Sara’s guardian could not have placed Sara outside her

¹² *Neb Rev Stat § 30-2628(a).*

residence without first complying with specific evaluations including, where necessary, professional evaluations to assure protection of the Sara's best interests.¹³

29 The Defendants acted against Sara because she was developmentally disabled. They did not take any such action against any Nebraska citizen except Sara and other developmentally disabled persons.¹⁴ By doing so, the Defendants violated Sara's Constitutional rights to equal protection of the laws, equal privileges and immunities, due process of law, and statutory and regulatory rights conferred by federal law and the *Nebraska Developmental Disabilities Act*.

Damages, Generally

30 All the forgoing acts and conducts of Defendants occurred simultaneously and concurrently. The claims of the Plaintiff arise out of a single set of decisions made by the Defendants, and a single series of transactions and occurrences. The Defendants sought to shut down BSDC and chose, as a method to accomplish this goal, the deterioration of the facility, and its rampant, recurrent, abusive violations of Federal and State law until it reached a point at which it was not fit to function as an ICF/MR. Even after it ceased to be fit for this purpose, it remained Sara's place of residence and home. Yet, because of Sara's developmentally disabled status, Defendants abruptly removed her from her home, without notice, warning, adequate justification, an opportunity to be heard, or due process of the law. By doing so, they deprived Sara of equal protection and equal privileges and immunities.

31 Sara was damaged because of the Defendants' common actions, events, occurrences, decisions, timing, and conduct. General damages are claimed.

32 As Sara's guardian, Garry Wheeler was entitled to all notifications and to have all knowledge and information otherwise owed to each protected person, and Ms. Wheeler had a right to act on behalf of Sara under the auspices of her status as guardian. Yet, the Defendants trampled on well-established legal rights.

33 Plaintiff is obligated as PR of the estate to collect the estate's assets, including the asset represented by this lawsuit. The services of lawyers, expert witnesses,

¹³ *Neb Rev Stat* § 30-2628(a)(1).

¹⁴ *Neb Rev Stat* § 83-1205 defines what constitutes a developmental disability under Nebraska Law.

and the costs of filing fees, depositions, document production and discovery, independent medical examinations, and medical testimony are all required in order to present this case in court and prove the Plaintiff's claims. Plaintiff is entitled to recover lawyer's fees and litigation expenses and expert witness fees.¹⁵ Plaintiff seeks judgment for these fees and costs. Defendants' conduct, and disregard for Sara's rights resulted in physical and emotional trauma to Sara which makes this litigation, essential in this matter. General damages for emotional distress to Sara prior to her death are sought.¹⁶

34 Sara and her guardian on her behalf both suffered emotional distress that was the direct, proximate result of the denials of procedural due process of law and impingements on Sara's legal rights. General damages are sought.¹⁷

35 The Defendants acted willfully, maliciously and intentionally, or with callous disregard to Sara's rights. This did so by discriminating unlawfully against Sara who was disabled and therefore was a member of a protected class. Defendant's conduct was motivated by evil motive or intent, or it involved reckless or callous indifference to Sara's federally protected rights. Indeed, Defendants set out to trample on those legal rights to achieve their objective to close the BSDC, avoid loss of federal funds, reduce state expenditures, and deprive Nebraska citizens, including Sara, of their well-established legal rights. Defendants exhibited the requisite evil motive or callous indifference toward Sara¹⁸ proving that they acted against Sara "in the face of a perceived risk that [their] actions will violate federal and State law..."¹⁹ Punitive damages for this willful misconduct are sought by the Plaintiff.

Requests for Relief

36 On the forgoing basis, Plaintiff requests judgment against the Defendants, jointly and severally, for general damages and special damages, taxable costs, and punitive damages which are accruing, lawyer's fees, expert witness costs, fees and related litigation expenses to the extent permitted by law.

¹⁵ 42 U.S.C. § 1988.

¹⁶ *Hammond v. Northland Counseling Center, Inc.*, 218 F3d 886 (8th Cir 2000).

¹⁷ *Id.*

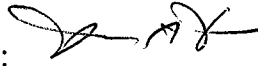
¹⁸ *Royal v. Kautzky*, 375 F3d 720, 724 (8th Cir 2004).

¹⁹ *Kolstad v. Am. Dental Ass'n*, 527 US 526, 536 (1999), cited with approval, *Sturgill v. United Parcel Service, Inc.*, 512 F3d 1024, 1035 (8th Cir 2008).

Jury Demand

37 Plaintiff respectfully demands trial by jury.

December 31, 2009.

By: 

David A. Domina, #11043
Brian E. Jorde, #26313
Mark D. Raffety, #19355
Domina Law Group pc llo
2425 S. 144th Street
Omaha, NE 68144
(402) 493-4100

Plaintiffs' Lawyers

