

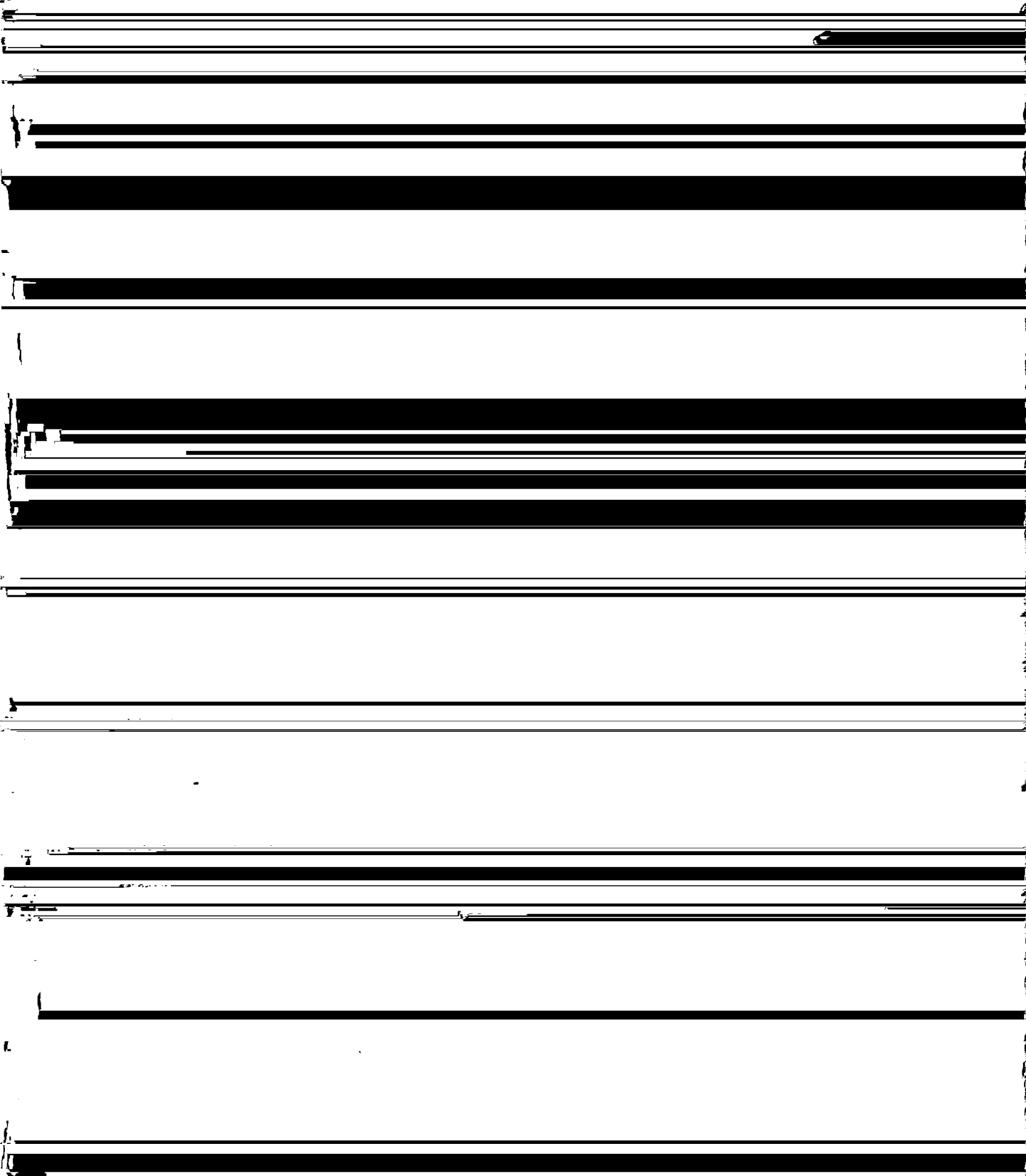
SOUTHERN DISTRICT OF MISSISSIPPI
FILED
MAR 07 2011

IN THE UNITED STATES DISTRICT COURT

~~IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MISSISSIPPI~~

[REDACTED]

Exhibit A - [Illegible text]



PARTIES

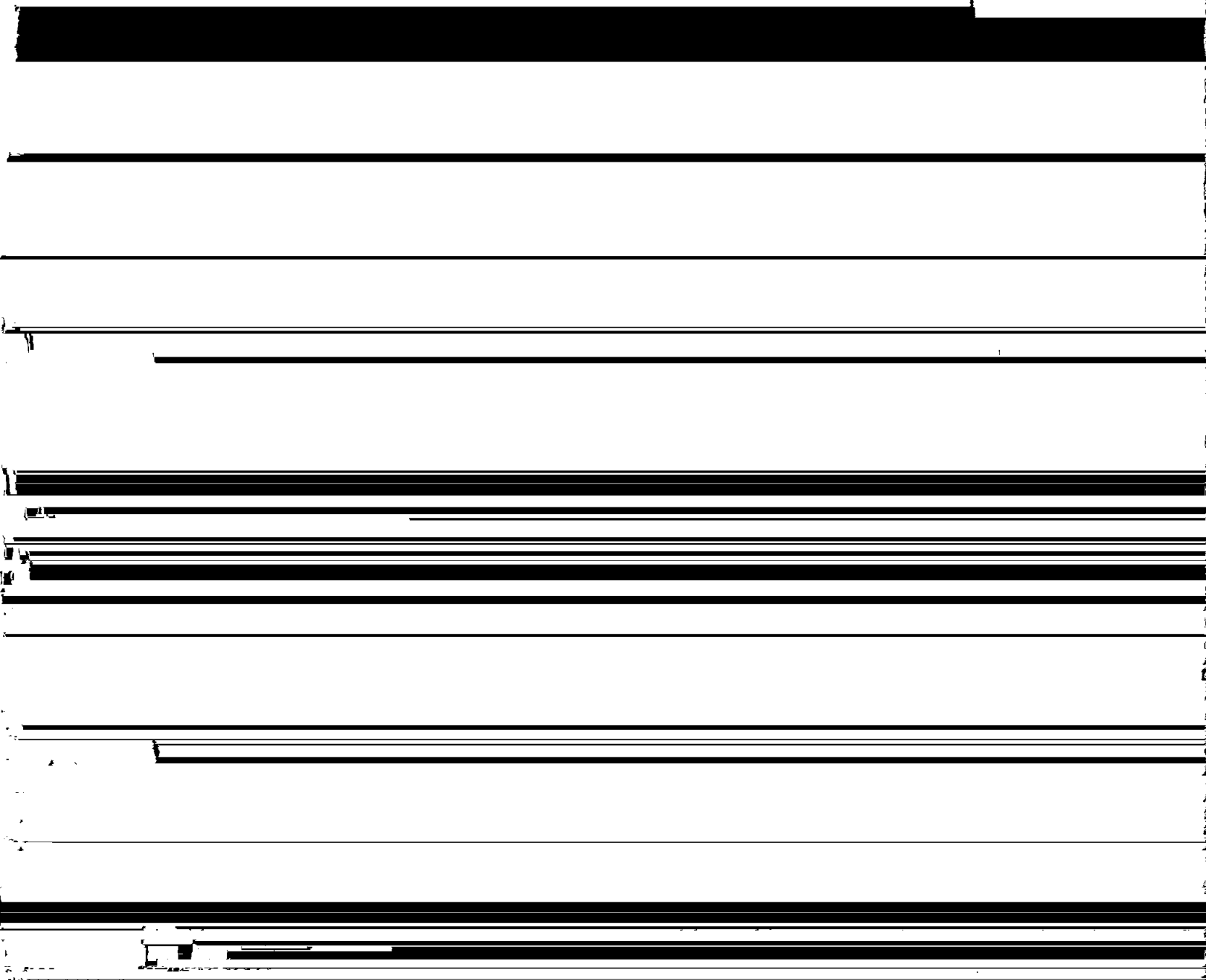
4. Plaintiff Disability Rights Mississippi ("DRMS") is a nonprofit organization with a federal mandate to protect and advocate for the rights of persons with disabilities in Mississippi.

Federal law extends this mandate to all states in the United States.

STATEMENT OF FACTS

6. The Forrest County Juvenile Detention Center is a 46-bed facility that holds children awaiting adjudication and disposition by the Forrest 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).

7. DRMS has probable cause to conclude that children detained in the Juvenile Detention Center live in abusive and unlawful conditions. The illegal conditions in the Juvenile Detention Center include dangerous and unsanitary living quarters, physical abuse, excessive use of restraints, overcrowding, excessive cell confinement, a lack of educational programs, and

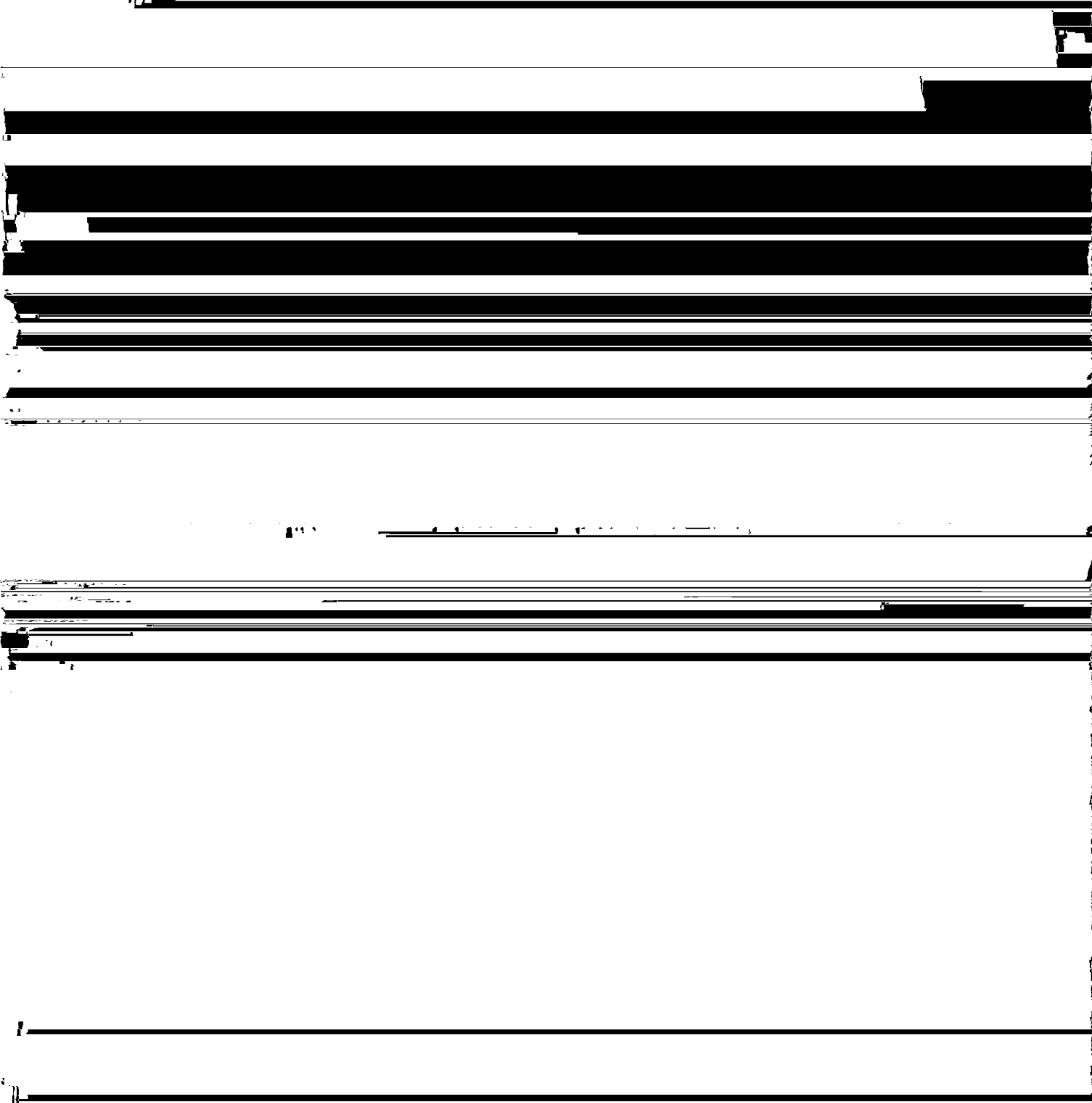


investigate incidents of abuse and neglect against individuals with developmental disabilities and pursue legal, administrative, and other remedies on their behalf. 42 U.S.C. § 15043(a).

Congress has expanded the scope of the D. & A. system to provide protection and advocacy

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).

12. To effectuate the Congressional mandate to protect and advocate for the rights of individuals with disabilities the D & A Act requires that a D & A system and its authorized



16. 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).

17. 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).

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).

21. 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.

22. To the extent Mississippi state law protects the identities of minors and requires parental consent, this confidentiality is preempted by federal authority to monitor these facilities. 42 C.F.R. § 51.42(e).

23. Moreover, federal courts have widely recognized that a P&A is “the final arbiter of probable cause” for the purpose of investigating abuse or neglect. *See Arizona Ctr. For Disability Law v. Allen*, 197 F.R.D. 689, 693 (D. Ariz. 2000); *see also Office of Prot. & Advocacy for Persons with Disabilities v. Armstrong*, 266 F. Supp. 2d 303, 321-22 (D. Conn. 2003) (holding that P&A is entitled to make its probable cause determination independent of any other agency or third party review).

Denial of Access

24. In the wake of media reports of wide spread abuse inside the facility, Plaintiff DRMS asserted its access authority in January 2011. As a courtesy, DRMS gave County Officials advance notice of the date and time of the proposed visit. DRMS even went so far as to reschedule the visit once at the request of County Officials. Eventually, the parties agreed that DRMS could conduct a monitoring visit on January 28, 2011.

25. DRMS agents Indv Owens II Corrie Cockrell and Jed Onnenheim arrived at the Forrest

Director Chris Selman informed them that they were not allowed to speak to any of the children detained in the facility.

26. On March 1, 2010 DRMS sent the Defendant a letter requesting clarification of the policies regarding DRMS access to the juvenile detention center *Exhibit C Correspondences*

NECESSITY FOR INJUNCTIVE RELIEF

[REDACTED]

- 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 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 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;

Approved to the Plaintiff

- f. Grant the Plaintiff such other relief as the Court deems just.

This 7th day of March, 2011

Respectfully submitted,

Robert B. McDuff, MS Bar No. 2532
767 North Congress Street

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