



2. Silvercrest was established by the Indiana General Assembly as a state center. I.C. § 16-33-3-2. It provides for the educational diagnosis, evaluation, assessment, short-term remediation, referral and care of children who, because of serious disabling conditions, cannot make satisfactory progress in public schools. I.C. § 16-33-3-3.

3. Defendants have unilaterally determined that no new students will be placed in Silvercrest, and that Silvercrest will ultimately close by July, 2006. However, an emergency exists requiring preliminary relief because Defendants have determined that conferences to determine placement of Silvercrest students will be completed by the end of January, 2006, and such conferences are being scheduled immediately, or have already taken place. Typically students are being moved out of Silvercrest promptly after completion of such conferences. Students are being moved out of Silvercrest at a rapid pace and the number of students at the facility are currently less than half of capacity.

4. Plaintiff Angel Marie Combs is a student currently residing at Silvercrest. Brenda Joyce Combs is the legal guardian and mother of Angel Marie Combs. Angel Marie Combs is ten years old and has been a full-time resident of Silvercrest since June 2005. Angel Marie Combs's disabilities include, but are not limited to, ADHD, oppositional defiance, mild mental retardation (her mental abilities are estimated to be that of a five or six year old), post traumatic stress disorder, and attachment disorder.

5. Plaintiff Mary Catherine Waltz is a student currently residing at Silvercrest. Catherine and Darrel Waltz are the legal guardians and parents of Mary Catherine Waltz. Mary Catherine Waltz is ten years old and has been a full-time resident of Silvercrest since May, 2005. Mary Catherine Waltz's disabilities include, but are not

limited to, ODD (a defiance disorder), bipolar disorder, ADHD, mental retardation (her mental abilities are estimated to be that of a five year old), and post traumatic stress disorder.

6. Plaintiff Abigail Marie Ford is a student currently residing at Silvercrest. Stefan Ford is the legal guardian and father of Abigail Marie Ford. Abigail is eleven years old and has been a full-time resident of Silvercrest since January, 2005. Abigail Marie Ford's disabilities include, but are not limited to, autism, mental retardation (her mental abilities are estimated to be that of a two year old), impaired fine motor skills and severe behavioral aggression.

7. Plaintiff Tyler Michael Voirol is a student currently residing at Silvercrest. Susan and Douglas Voirol are the legal guardians and parents of Tyler Michael Voirol. Tyler Michael Voirol is thirteen years old and has been a full-time resident of Silvercrest since August, 2005. Tyler Michael Voirol's disabilities include, but are not limited to, mental retardation (his mental abilities are estimated to be that of a fourth grader), reading and math disabilities, behavioral disorders, and communicative disorders.

8. Plaintiff Haley Dyan Tow is a student currently residing at Silvercrest. Donna M. Poteet is the legal guardian and mother of Haley Dyan Tow. Haley Dyan Tow is twelve years old and has been a full-time resident of Silvercrest since July of 2005. Haley Dyan Tow's disabilities include, but are not limited to, autism, epilepsy, oppositional defiance, obsessive compulsive disorder, and behavioral aggression.

9. Plaintiff Mark Vincent Bowersock-Horn is a student currently residing at Silvercrest. Georgia J. Bowersock is the legal guardian and mother of Mark Vincent Bowersock-Horn. Mark Vincent Bowersock-Horn is seventeen years old and has been a

full-time resident of Silvercrest since January, 2005. Mark Vincent Bowersock-Horn's disabilities include, but are not limited to, cerebral palsey, mental retardation, and autism. He is mute, has seizures, and is incontinent.

10. Plaintiff Jacob Lee Hinson is a student currently residing at Silvercrest. Mary Crystalann Neal is the legal guardian and parent of Jacob Lee Hinson. Jacob Lee Hinson is eight years old and has been a full-time resident of Silvercrest since July, 2005. Jacob Lee Hinson's disabilities include, but are not limited to, autism, communicative disorder, and moderate mental disabilities.

11. Plaintiff Logan Tyler Gilliatt is a student currently residing at Silvercrest. Kelli-Ann Gilliatt is the legal guardian and parent of Logan Tyler Gilliatt. Logan Tyler Gilliatt is seven years old and has been a full-time resident of Silvercrest since January, 2005. Logan Tyler Gilliatt's disabilities include, but are not limited to, cerebral palsy (caused by a stroke at birth), left-sided weakness, autism spectrum disorder, and mental disabilities.

12. Plaintiff Damien Michael Bonifer is a student currently residing at Silvercrest. Joan Carol Ritter is the legal guardian and grandmother of Damien Michael Bonifer. Damien Michael Bonifer is thirteen years old and has been a full-time resident of Silvercrest since August, 2005. Damien Michael Bonifer's disabilities include, but are not limited to, autism, behavior disorders, and ticks.

13. The Plaintiffs who are students at Silvercrest (Students) all suffer from multiple disabilities and are all qualified to receive services from Silvercrest pursuant to the requirements set forth at I.C. § 16-33-3-8.

14. Among the requirements for Silvercrest residency is that the Students' admission has been approved by the Indiana Department of Education ("DOE") and that the Students possess at least two (2) major disabling conditions. I.C. § 16-33-3-8-1. As such, the Students are considered to be "students with a disability" requiring special education and related services pursuant to 511 IAC 7-17-69. The Students are "at risk" individuals due to their multiple disabilities and require educational, medical, social and/or psychological treatment and therapy.

15. Plaintiffs Melissa L. Kirk and Melanie K. Young are individuals employed by the State of Indiana at Silvercrest. Melissa L. Kirk and Melanie K. Young are both employed in the position of Home Supervisor 3 and each has held that position for eleven (11) years.

16. Plaintiff American Federation of State, County and Municipal Employees, Council 62 (AFSCME) is a labor organization representing various employees of the State of Indiana, including Plaintiffs who are employees of Silvercrest.

17. The Defendants are sued in their official capacities.

18. The Defendant Mitchell E. Daniels is the Governor of the State of Indiana and to the Plaintiffs' knowledge and beliefs is the individual ultimately responsible for the ordering of the closing of Silvercrest and the dispersal of Plaintiffs to other types of facilities that do not provide the same services as Silvercrest.

19. The Indiana State Department of Health [ISDH], is designated by Indiana statute to administer Silvercrest for the State of Indiana pursuant to I.C. § 16-33-3-1 et seq. Judith Monroe, M.D. as the Commissioner of the ISDH has administrative control and responsibility for Silvercrest under I.C. § 16-33-3-4.

20. The actions of Defendants in furtherance of the decision to close Silvercrest will cause Plaintiffs to suffer irreparable harm.

**Count I**  
**Silvercrest cannot close without legislative action.**

21. Silvercrest was created and exists pursuant to statute. The statutory language establishing Silvercrest is mandatory. I.C. 16-33-3-2 states:

The Silvercrest children’s development center *is established* as a state center. (Emphasis added).

I.C. 16-33-3-3 states:

The center *shall provide* for the educational diagnosis, evaluation, assessment, short term remediation, referral, and care of children who may benefit from such service, but who, because of serious disabling conditions, cannot make satisfactory progress in the programs of public schools or special institutions of the state. The provision of services shall be for the purpose of properly referring these children to more appropriate programs operated by other agencies or institutions and providing reassessment of these children as indicated. (Emphasis added).

I.C. 16-33-3-5 further states that the center “shall provide” various services including education, assessment, and training. I.C. 16-33-3-9 states that the center “shall provide” tuition, board, room, laundry, and ordinary medical attention, including emergencies.

22. In making the decision to close Silvercrest, Defendants unlawfully usurped the role of the Indiana General Assembly, in violation of I.C. 16-33, and in violation of the Indiana Constitution.

**Count II**  
**Silvercrest Advisory Committee’s statutory role was usurped.**

23. Pursuant to I.C. 16-19-6-9, the Indiana General Assembly created an “advisory committee” for Silvercrest, with members appointed by the Governor.

24. The duties of the Silvercrest Advisory Committee under I.C. 16-19-6-9(i) include acting in an advisory capacity to the Silvercrest superintendent, and acting in an advisory capacity to the state health commissioner, concerning ways and means of improving Silvercrest and the care of the residents in Silvercrest.

25. Prior to making the decision to close Silvercrest, the Silvercrest Advisory Committee was not consulted by Defendant Monroe about the closing. The Advisory Committee learned of the closing only when it was announced in the news media.

26. The Advisory Committee could have provided insight and information regarding Silvercrest and the students it serves, which should have been considered prior to making the decision to close the center.

27. In making the decision to close Silvercrest, Defendants violated I.C. 16-19-6-9. In ignoring I.C. 16-19-6-9, Defendants also violated the Indiana Constitution, including Article 3, Section 1.

WHEREFORE, Plaintiffs request that the Court enter a preliminary and permanent injunction prohibiting Defendants from further implementing their plan to close Silvercrest Children’s Developmental Center.

I affirm, under penalties for perjury, that the facts stated in this Amended Verified Complaint for Preliminary Injunction and Permanent Injunction are true.

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Mary C. Neal

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Date

I affirm, under penalties for perjury, that the facts stated in this Amended Verified Complaint for Preliminary Injunction and Permanent Injunction are true.

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Georgia J. Bowersock

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Date

I affirm, under penalties for perjury, that the facts stated in this Amended Verified Complaint for Preliminary Injunction and Permanent Injunction are true.

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Mary C. Neal

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Date

I affirm, under penalties for perjury, that the facts stated in this Amended Verified Complaint for Preliminary Injunction and Permanent Injunction are true.

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Kelli-Ann Gilliatt

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Date

I affirm, under penalties for perjury, that the facts stated in this Amended Verified Complaint for Preliminary Injunction and Permanent Injunction are true.

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Joan C. Ritter

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Date

Respectfully submitted,

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Mary Jane Lapointe, Atty. No. 3706-53

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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing was served via U.S. First Class Mail and facsimile on the \_\_\_\_ day of January 2006, to the following:

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