

Merrimack
No. 87-068

JANE M., JOHN N. & a.

v.

MARY MONGAN & a.

October 15, 1987

Bruce E. Friedman, Arpiar Saunders, and John MacIntosh, of Concord (Messrs. Friedman, Saunders and MacIntosh on the brief, and Mr. Friedman orally), for the plaintiffs.

Stephen E. Merrill, attorney general (Susan S. Geiger, assistant attorney general, on the brief and orally), for the State.

MEMORANDUM OPINION

Prior to June 3, 1986, the plaintiffs petitioned the superior court to enjoin construction of a building that the defendants proposed to place on the grounds of the Youth Development Center, to house girls committed to that institution. The plaintiffs claimed that there was no legislative authority for such construction, with the consequence that the building, if completed, would provide opportunities for the placement of children in violation both of their statutory rights to least restrictive placement, and of their due process rights to the benefit of such statutory entitlements. On August 27, 1986, the superior court, without explanation, granted the State's motion to dismiss for lack of plaintiffs' standing or a justiciable controversy. This appeal from the dismissal rests on statutory claims.

The budget act for fiscal years 1986 and 1987, in effect when the petition was filed, expired on June 30, 1987, and the State's legal authority for the proposed action rests on the present operating budget of the Division of Children and Youth Services of the Department of Health and Human Services. Laws 1987, ch. 400, PAU 02, 03, 06. That act provides an appropriation of \$675,000 in each of fiscal years 1988 and 1989 for "Female Residential Center." Although plaintiffs argue that legislative history of prior operating

