



MR-IA-001-003

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

| | | |
|--------------------------------|---|-------------------------|
| EVERT CONNER, et al., | * | |
| Plaintiffs, | * | Civil No. 4-86-CV-30871 |
| vs. | * | |
| TERRY BRANSTAD, et al., | * | |
| Defendants. | * | CONSENT DECREE |
| and | * | |
| RUSS and SYBIL FINKEN, et al., | * | |
| Intervenors. | * | |

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A. BACKGROUND INFORMATION

Section 1 Preliminary Matters

1.01 Introduction

Plaintiffs filed this action on December 8, 1986, challenging the continuation of Iowa's institutionally based model of services for persons with developmental disabilities. Plaintiffs allege that Defendants have committed numerous violations of Title XIX of the Social Security Act, 42 U.S.C. section 1396d(d) (1988); section 504 of the Rehabilitation Act, 29 U.S.C. Section 794 (1988); the Individuals with Disabilities Education Act, 20 U.S.C. section 1400 et seq. (1988 & Supp. II 1990) (formerly the Education of the Handicapped Act), and the Americans With Disabilities Act, 42 U.S.C.A. section 12101, et seq. (West Supp. 1992).

1.02 Jurisdiction and Venue

Jurisdiction is conferred on this court by 28 U.S.C. section 1331, section 1343(a)(3) and (4) (1988); 20 U.S.C. section 1415(e)(4) (1988 & Supp. II 1990) and 29 U.S.C. section 794 (1988). The action arises under and is authorized by 42 U.S.C. section 1983 (1988); 42 U.S.C. section 1396d (1988); 20 U.S.C. section 1415 (e)(2) (1988 & Supp. II 1990); and 42 U.S.C. section 794(a)(2) (1988).

1.03 Class Definition

A. On September 8, 1987, this court conditionally certified the class as consisting of all persons who are or who may become residents of Glenwood or Woodward State Hospital-Schools and who could be appropriately placed in community-based living environments but who remain institutionalized.

B. For purposes of this Consent Decree (hereinafter Decree), the class is defined as all persons who, on the date this Consent Decree is signed, reside at either Glenwood or Woodward State Hospital-Schools and future persons who, after the admission evaluation is completed, are admitted to inpatient status and who could be appropriately placed in community-based services. Plaintiff subclass consists of all persons who resided at Glenwood or Woodward State Hospital-Schools from the date this action was filed forward until the completion of this Decree and who reside in the community. Plaintiff subclass shall be eligible for only the supports outlined in Section 5.09 of this Decree.

1.04 Purpose and Principles

A. The parties to this action agree that the interests of all class members can best be served by entering into this Consent Decree rather than by engaging in protracted, expensive litigation.

B. Defendants shall make all best efforts to implement the terms of this Decree in accord with the following principles:

1. Each class member is to be treated with dignity and respect for his/her individuality, in full recognition that one's personality, abilities, needs, and aspirations are not solely determined on the basis of a label or disability.
2. All class members should have options and relevant, meaningful opportunities to make their own choices in all aspects of their lives, including amounts and types of services received, recognizing the class members' ability to accept responsibility, exercise choices, and take risks.
3. All class members, within available resources, retain the right to seek to choose where the class member lives.
4. All class members have individualized needs and desires that change or vary with time and according to the person's circumstances. Needs and desires may include but are not limited to housing, personal assistance, financial security, education, vocational training, employment, sexuality, medical and dental care, socialization and companionship, friendships and family relationships, spirituality, emotional support, psychiatric treatment, crisis assistance, recreation, and transportation.

5. All class members will be allowed active and meaningful participation and decision-making authority in the development and implementation of the class member's Individual Program Plan (IPP).
6. Where class members are minors or have legal guardians or other designated representatives, the parents of those minor class members, and their families, or the guardians or other designated representatives of the class members retain rights of active and meaningful participation in any and all discussions, decisions, and consideration of options of choice, described in paragraphs 1-5 above.

1.05 Interpretation of the Decree

A. This Decree is legally binding and judicially enforceable. This Decree shall be applicable to and binding upon all the parties; their officers, agents, employees, successors, and assignees; and to agencies and entities which enter into contracts with the Defendants for the provision of services which are funded in whole or in part by state funds.

B. The terms of this Decree shall be interpreted consistently with its overall purposes and principles.

C. This Decree is severable, in that if any section or part is determined, for whatever reason, to be void or unenforceable,

the remainder of this Decree is to remain enforceable by the parties.

D. This Decree shall not be interpreted to diminish the rights or obligations currently accorded the parties, and or the class members' representatives by law.

Section 2 Definitions

2.01 Parties

A. Plaintiffs: Named plaintiffs in this action are: Evert Conner (deceased); Pauline Crouse (deceased), by and through her niece and legal guardian, Terri Jensen; Michael Monahan, by and through his natural mother and next friend, Lucy Monahan; Amanda Poulos, by and through her natural parents and next friends, Kenneth and Lisa Poulos; Archie Pratt, by and through his brother and legal guardian, Herschel Pratt; Pamela Schuler; and Jennalee Sturtz, by and through her natural parents and legal guardians, Lyle and Ruth Sturtz. Named plaintiffs represent the class as defined in Section 1.03 of this Decree. Iowa Protection and Advocacy Services, Inc., a private non-profit advocacy organization, joins the named Plaintiffs in asserting the rights of the class.

B. Defendants: Terry Branstad, in his official capacity as Governor of the state of Iowa; Michael V. Reagen, individually and in his official capacity as former Commissioner, Iowa Department of Human Services; Charles M. Palmer, in his official

capacity as Director of the Iowa Department of Human Services and individually and in his official capacity as former Deputy Commissioner and Director, Division of Mental Health, Mental Retardation and Developmental Disabilities, Iowa Department of Human Services; Larry Jackson, individually and in his official capacity as former Deputy Commissioner and Director, Division of Community Services, Iowa Department of Human Services; Jeanne Nesbit, in her official capacity as Division Administrator, Division of Community Services, Iowa Department of Human Services; Sandra Scott, individually and in her official capacity as former Division Administrator, Division of Social Services, Iowa Department of Human Services; Michael Davis, individually and in his official capacity as Superintendent, Woodward State Hospital-School; William E. Campbell, individually and in his official capacity as Superintendent, Glenwood State Hospital-School; and their successors and assigns.

C. Intervenors: Russ and Sybil Finken, parents of Seth J. Finken; Rita Wharnell, legal guardian of Stephen Hughes; Gloria Hucke, parent of Duane Hucke; Bill and Jan Hoff, parents of Tom Hoff; John and Evelyn Noel, parents of Lance Noel; Minoru Amemiya, parent of Michael M. Amemiya; Marjorie Stonecypher, parent of James Lechner; Kaylyn J. Bauer, legal guardian of Robert L. Russell; Avanel Baker, parent of Craig Wheeler; Glenwood State Hospital-School Parent-Family Association; Woodward State Hospital-School Parent Association; and American

Federation of State, County and Municipal Employees/Iowa Council
61.

2.02 Terms

The following definitions and acronyms shall apply to this Decree unless otherwise indicated herein:

A. Administrator: The individual serving as Administrator of the Division of Mental Health, Mental Retardation, and Developmental Disabilities of the Iowa Department of Human Services, established pursuant to Iowa Code section 217.10 (1993).

B. Behavioral Interventions: Actions used by staff to provide positive reinforcement for class members' socially acceptable behavior or used to help a class member learn socially acceptable behavior and avoid, reduce or eliminate inappropriate behaviors.

C. Case Manager: The individual assigned to a class member, responsible for coordinating the development, implementation, and monitoring of the class member's IPP.

D. Commission: The Mental Health and Mental Retardation Commission, as defined in Iowa Code section 225C.5 (1993).

E. Community Supports or Services: Community-based supports for persons with developmental disabilities may include, but are not limited to, case management, community supports coordination, housing and residential supports, crisis intervention, educational and vocational training, employment

opportunities, social support, advocacy, family support services, personal assistance services, outpatient counseling, transportation, medical and dental care, and recreational activities.

F. Consent Decree or Decree: This document and any amendments or modifications thereto, approved by the parties and adopted by the court.

G. Department of Human Services or DHS or Department: The Iowa Department of Human Services, as defined in Iowa Code section 217.1 (1993).

H. Designated representative or representative: The natural or adoptive parent of a minor; legal guardian; or family member, interested person, advocate or friend designated by a class member who is authorized to assist the class member in development and implementation of the class member's Individualized Program Plan and in other decisions affecting the class member's life.

I. Director: Director of the Iowa Department of Human Services, as defined in Iowa Code section 217.5 (1993).

J. Dispute resolution: The process for resolving disputes among the parties in the implementation of this Decree, as specified in Section 14.01 of the Decree.

K. Division of Mental Health, Mental Retardation and Developmental Disabilities or Division or Division of MH/MR/DD: This Division of the Iowa Department of Human Services, established pursuant to Iowa Code section 225C.3 (1993).

L. Effective date: The date that this Decree is filed with the court.

M. Family or Family Member: Natural or adoptive parents or siblings, spouse, children, or individual within the third degree of consanguinity to a class member.

N. Five-Year Plan For Community Supports and Services (or Five-Year Plan): The plan developed by the Department of Human Services under Section 9 of this decree.

O. Individualized Education Plan or IEP: The plan required under the Individuals with Disabilities Education Act, 20 U.S.C.A. sections 1400, et seq. (1990 & West Supp. 1991) as amended for all class members from birth through age twenty-one.

P. Individual Program Plan (IPP): A class member's individual service plan developed by an interdisciplinary team that represents the professions, disciplines or service areas that are relevant to the class member's needs which identifies the needs as described by a comprehensive assessment and designates those programs and supports which meet the class member's needs, as set forth in Section 6 of this decree.

Q. Iowa University Affiliated Program or IUAP: The Iowa University Affiliated Program, located at the University of Iowa in Iowa City, Iowa, established pursuant to Iowa Code sections 263.9--13 (1993) and 42 U.S.C. sections 6061-6064 (1982 & Supp. V 1987).

R. State Hospital-Schools (or SHS): Glenwood and Woodward State Hospital-Schools, Iowa's two state institutions for persons

with mental retardation, established pursuant to Iowa Code section 222.1 (1993).

S. Superintendent: The superintendents of Woodward or of Glenwood State Hospital-Schools, positions established pursuant to Iowa Code section 222.3 (1993).

B. CLASS MEMBERS' RIGHTS AND PROTECTIONS

Section 3 Rights of Class Members

3.01 General Principles

A. Constitutional rights preserved: All class and subclass members shall maintain the same constitutional rights, privileges and immunities as do all other citizens of the United States and Iowa.

B. Defendants, in coordination with appropriate agencies, shall adopt necessary rules or policies to implement the purpose of Iowa Code sections 225C.28B(3) and (4) (1993), which are due process and participation in development of the Individual's Program Plan. Within ninety (90) days of the effective date of this Decree, Defendants will draft any rules necessary to implement these rights provisions. A copy of the draft rules or policies will be provided to the counsel for the Plaintiffs.

Such rules or policies shall include:

1. The class members' right to exercise their rights under said laws, regulations and this decree without reprisal, including reprisal in the form of denial of or termination of services.

2. Provisions for publishing the rights in manual form and providing copies to all class members and their designated representative.

3. Provisions for the class members' case manager to provide to the class member and his/her representative an explanation at least annually of the class member's legal and civil rights and responsibilities.

C. Defendants, in accordance with Iowa Code section 225C.28A (1993), will seek to attain the following quality standards in the provision of services to class members:

1. Provide comprehensive evaluation and diagnosis adapted to the cultural background, primary language, and ethnic origin of the person.

2. Provide an individual treatment, habilitation, and program plan.

3. Provide individualized treatment, habilitation, and program services as appropriate.

4. Provide periodic review of the individual plan.

5. Provide for the least restrictive environment and age-appropriate services.

6. Provide appropriate training and employment opportunities so that the person's ability to contribute to and participate in the community is maximized.

D. All of the following rights shall apply to class members:

1. Wage protection. All class members engaged in work programs shall be paid wages commensurate with the going rate for comparable work and productivity.

2. Insurance protection. Pursuant to Iowa Code section 507B.4(7) (1993), a class member shall not be denied insurance coverage by reason of mental retardation, a developmental disability, brain injury or chronic mental illness.

3. Due process. All class members retain the right to citizenship in accordance with the laws of the state.

4. Participation in planning activities. If an individual treatment, habilitation, and program plan is developed for a class member, the class member has the right to participate in the formulation of the plan.

E. Except for a violation of Iowa Code section 225C.28B(2) (1993), the sole remedy for violation of a rule adopted by the Commission to implement Iowa Code sections 225C.25 through 225.28B (1993) shall be by a proceeding for compliance initiated by request to the Division pursuant to Iowa Code chapter 17A (1993). Any decision of the Division shall be in accordance with due process of law and is subject to appeal to the Iowa district court pursuant to Iowa Code sections 17A.19 and 17A.20 (1993) by any aggrieved party. Either the Division or a

party in interest may apply to the Iowa district court for an order to enforce the decision of the division. Any rules adopted by the Commission to implement Iowa Code sections 225C.25 through 225C.28B (1993) do not create any right, entitlement, property or liberty right or interest, or private cause of action for damages against the state or a political subdivision of the state or for which the state or a political subdivision of the state would be responsible. Any violation of Iowa Code section 225C.28B(2) (1993) shall solely be subject to the enforcement by the commissioner of insurance and penalties granted by Iowa Code chapter 507B (1993) for a violation of Iowa Code section 507B.4(7) (1993).

F. For Section 3.01 B through E, the jurisdiction of this court is limited to review of allegations that the Defendants have failed to implement this compliance procedure established by the Iowa State Legislature.

G. Nothing in this Decree shall be construed to limit class or subclass members' rights under federal or state law.

Section 4 Behavioral Supports

4.01 General Principles

Defendants shall comply with all state and federal laws and regulations on the use of behavioral support strategies, interventions, and therapies for class members.

4.02 Behavioral Consultant

A. Within ninety (90) days of the effective date of this Decree, Defendants shall retain a consultant(s) (hereinafter Behavioral Consultant) experienced in the assessment of challenging behaviors in persons with developmental disabilities, the development of non-aversive behavior supports plans for such individuals, and the handling of emergency behavioral situations. Defendants shall contract with the Behavioral consultant(s) to provide not less than a combination of twenty (20) contract days during the first nine (9) months of the effective date of the Decree to assist in the development and implementation of a system of procedures and safeguards for dealing with challenging behaviors of class members. These procedures and safeguards apply to all class members.

Plaintiffs' counsel may recommend potential Behavioral consultants to the Defendants. In selecting the Behavioral consultant, the Defendants shall select four (4) possible consultants. The Defendants will provide the names and background information to the Plaintiffs' counsel for review and their recommendation thirty (30) calendar days prior to the proposed hire date.

B. The Behavioral Consultant's responsibility will include recommending to the Defendants definitions of behavioral interventions and policy or necessary rule revisions outlining procedures and safeguards for dealing with challenging behaviors

of class members. Consideration shall be given to the following components:

1. A program review committee(s) established to review and revise or approve any IPP which includes aversive procedures, chemical restraints, mechanical restraints, seclusion, time-out, or personal restraints;

2. Procedures and client safeguards for dealing with behavioral emergencies which have the potential for resulting in hospitalization of the class member, either in a regular or psychiatric hospital; and

3. Emergency procedures.

C. Within sixty (60) days from the conclusion of the consultation, Defendants shall draft any necessary rules or policies outlining procedures and safeguards with consideration of the recommendations of the Behavioral Consultant(s). Any necessary rules shall be promulgated pursuant to the Iowa Administrative Procedures Act.

4.03 Guidelines for Behavioral Supports

A. Positive behavioral intervention shall be made available to all class members and implemented in full compliance with state and federal law. Reasonable effort will be made to provide behavioral interventions on a planned basis, in the least intrusive manner possible, based on an assessment of the factors that contribute to the behavior and based on the rules or policies governing behavior interventions.

B. Reasonable effort will be made to assure that staff and support persons working with the class member follow the procedures established in the class member's behavioral intervention plan.

4.04 Behaviors Requiring Medical Restraint

A. Medical restraint is a physician's order to physically or mechanically hold a class member or to dispense prescribed behavior-modifying medication (excluding the normal use of anesthesia) in order to either: 1.) safely administer emergency medical or dental services, or 2.) prevent a class member from engaging in an otherwise acceptable activity (e.g., walking) to aid a healing process. If the restraint serves to prevent a class member from engaging in an unacceptable activity (e.g., self-injurious behavior), it shall be provided consistent with the behavioral support plan, physician's orders, and state and federal law.

B. Each class member who demonstrates anxiety or behaviors that interfere with non-emergency medical and dental care shall have included in his/her Individual Program Plan, a plan for addressing this concern. The plan may include such methods as pre-visits to health care professionals, education and training about the procedures, and identification of mechanisms that assist the class member in remaining calm.

4.05 Emergency Procedures

Emergency procedures, developed in accordance with the recommendations of the behavioral consultant, may be used as necessary in emergency circumstances.

4.06 Medications

A. Medication shall not be used as punishment, for the convenience of staff, as a substitute for programming or in quantities that interfere with a class member's daily living activities.

B. No prescription medication shall be administered except upon written order of the treating physician. Medication shall be administered only by trained persons or the class member as part of a plan to teach him/her self-medication.

C. Medications used for the management of behavior must be used only as an integral part of the class member's Individual Program Plan that is directed specifically towards the reduction of and eventual elimination of the behaviors for which the medications are utilized.

D. Medications utilized for control of inappropriate behavior shall not be used unless it is justified that the harmful effects of the behavior clearly outweigh the potentially detrimental effects of the medications and medication use is combined with a positive intervention component of the Individual Program Plan.

E. Medications used for the management of behavior shall be closely monitored, in conjunction with the physician and the drug regimen review requirements, for desired responses and adverse consequences. Unless clinical evidence justifies that this is contraindicated, such medications shall be gradually withdrawn at least annually in a carefully monitored program conducted in conjunction with the Individual Program Plan.

F. When behavior modifying medications are prescribed as part of the class member's Individual Program Plan, the plan must state and the class member and his/her designated representative must be advised of and consent to the following: the symptoms or behaviors which the medication is prescribed to relieve; alternative therapies; the risk of non-treatment; and precautions, contraindications, and potential adverse effects of the medication.

G. No physically intrusive, chemical or bio-medical research or experimentation shall be performed upon any class member without the informed consent of the class member or his/her designated representative. This does not preclude the use of alternative treatment plans, if medically indicated and with the required informed consent.

Section 5 Entry into the Community Service System

5.01 Notice

Defendants shall inform class members and their representative of class member's eligibility to receive available

community based services and supports. Notice shall be provided to individual class members and to community and governmental entities known to serve class members. Class members and their representative who initially decline the services shall be informed that they may apply for available services or supports at any subsequent time.

5.02 Application for Services

Class members may apply for community services on their own or with the assistance of a State Hospital-School case manager, referring agency, legal guardian, family member, advocate or their designated representative.

5.03 Referral to Case Manager

Within thirty (30) days of the effective date of this Decree, each class member shall be assigned a person on the state hospital-school's staff to serve as the class member's institutional case manager. Class members applying for community services as provided in section 5.02, will be promptly referred to the appropriate local case management agency. The referral will request the case management agency to work with the institutional case manager to coordinate placement planning for the class member. Thirty (30) days before the expected placement date, the community case management agency will be asked to assign a community case manager who will assume continued responsibility for development and implementation of the class

member's IPP. The Defendants will facilitate the referral process and shall support the case manager in carrying out his/her responsibilities.

5.04 Advocacy and Self-Empowerment

Class members shall be provided information regarding advocacy and self-empowerment.

5.05 Assessment

Defendants shall assure that each class member has a comprehensive assessment of the class member's strengths, needs, and desires. The comprehensive assessment shall be conducted pursuant to an established methodology that is consistent with accepted professional standards. The comprehensive assessment shall assess, minimally, the following areas: the class member's mental health status and history; social setting, health, including medical, dental and mental health; daily living skills; criminal justice history; vocational and employment history; education and training; preferred language and mode of communication; legal status; intellectual assessment; functional behavioral assessment; and resource availability. The assessment shall be conducted by appropriately credentialed professionals, with the class member's participation and consent or that of his/her designated representative.

5.06 Needs-Based Nature of Assessment

The comprehensive assessment shall identify the community support needs and preferences of the class member and his/her representative and shall not be based on the availability of community based services. It shall form the basis for the class member's Individual Program Plan which must consider availability of community based services.

5.07 Assessment Report

A written report detailing the results of the comprehensive assessment shall be prepared and provided to the class member, the class member's parents if the class member is a minor, the legal guardian of a class member or any other person designated by the class member.

5.08 Referral to Community

Defendants shall refer class members to appropriate and available community programs, the Home and Community Based waiver, and any other waivers that may be in place, for purposes of out placement and shall cooperate with, and facilitate out placement.

5.09 SHS Admission Pre-Approval Procedure for Sub-Class Members:

A. Each subclass member or his or her designated representative requesting admission to a State Hospital-School

shall go through an application process designed to redirect admission to a community service whenever possible and appropriate, and to insure that admission will not occur except as a last resort and when no other appropriate community services are available.

B. The initial step shall require local Department of Human Services staff to review the application to assure that all reasonable efforts have been taken to maintain community placement. The Department will organize a system of regional screeners who will be responsible to assure that applicants seek available community alternatives prior to passing the application on to the Division. These screeners will work with social workers and case managers to seek alternative services and seek available county funding to maintain consumers in the community. Only after such alternatives have been explored, other appropriate alternatives have been determined not available, will applications for SHS admission be forwarded to the Division for consideration.

C. Applications, after screening at the local level, will be reviewed by the Division to determine whether or not all possible and appropriate community based services have been considered. The Division shall maintain a response team which reviews admission requests and attempts to identify possible appropriate alternatives, including offering consultative services by SHS staff to assist in adapting existing community options and to assist in attempting to create appropriate

alternatives to SHS placement. SHS consultation will be made available to a variety of agencies, including schools, residences, foster families, biological families, and providers of residential, social, medical, and vocational services. The response team shall be staffed by representatives from the Division, the Office of Field Operations, Medical Services and staff from each SHS.

D. Admission will not be approved until the response team has assured itself that all possible community options have been exhausted and that an appropriate bed is available at a State Hospital-School. The only exceptions to this policy will be for those cases where, at the time of placement, the State Hospital-School has given the placement facility, class member, and/or family a return placement guarantee or where the Division determines that the subclass member's health or safety is in immediate jeopardy. Whenever there are indications that the guaranteed return placement may be failing, the State Hospital-School shall offer the same consultation and support that would be offered for any request for admission to try and maintain the placement. For the life of the return placement guarantee and once it is determined that the placement has failed and no other appropriate community placement is available, the subclass member may be returned without going through the local screening and the Division's response team.

E. Timely notice will be provided to Plaintiffs' counsel of any application received by the Division for admission of a

subclass member to a state hospital-school and of all admissions to inpatient status. Notice shall include the date of application and a summary of actions taken by the Division's response team and the state hospital-school.

Section 6 Individual Program Plans

6.01 General Guidelines

A. Each class member shall have an Individual Program Plan (IPP). The IPP shall define class member placement, programming, and any other necessary supports to be provided. The IPP shall also include the needs assessment for community supports pursuant to section 5.06 of this Decree and shall be separately identifiable.

B. The development, implementation, and monitoring of the Individual Program Plan shall be coordinated by the case manager. The ratio of case managers to class members shall be sufficient to ensure that the terms of this Decree are implemented for all class members.

C. For class members from birth through age twenty one (21), Defendants shall cooperate with the appropriate education system in the development of an Individualized Education Plan (IEP) developed pursuant to the Individuals with Disabilities Education Act, 20 U.S.C sections 1400, et seq. (1988 & Supp. II 1990), as amended. The class member's IEP shall be incorporated into the more comprehensive IPP.

D. Following the comprehensive assessment, the State Hospital-School case manager shall convene and conduct a conference centered on the class member. The purpose of the conference shall be to assist the class member and his/her designated representative in establishing goals and objectives that will promote the best interests of the class member and lead to maximum independence and self-sufficiency. The case manager shall perform his/her duties and the conference shall be conducted in accordance with standards of performance developed by the Defendants in consultation with counsel for the Plaintiffs.

6.02 IPP Appeal

Notwithstanding any other remedies available under law, class members or their designated representatives, acting on their behalf, may appeal the contents of the IPP to the state hospital-school's Human and Legal Rights Committee. If the Human and Legal Rights Committee is not able to satisfactorily resolve the dispute then the class member, or his/her designated representative, may file an appeal under the Department's appeal procedure contained within the Administrative Code, as provided in Section 7.01 of this Decree.

Section 7 Appeal Procedures

7.01 General Provisions

A. Notwithstanding any other remedies available under law, class members or their designated representatives, acting on their behalf, may file an appeal under the Department's appeal procedure found at 441 IAC 7, whenever the class member believes the Department has inappropriately denied a service, suspended a service, discontinued a service, or the class member's choice of program has not been followed.

B. The case manager shall inform the class member and his/her designated representative of the right to appeal those Department actions spelled out in Section 7.01A.

7.02 Reporting

Defendants shall send copies of all appeals filed by or on behalf of class members to Plaintiffs' counsel on a monthly basis.

7.03 Human Rights Committees

Defendants shall maintain and utilize human rights committees at the hospital-schools in full compliance with state and federal laws.

C. REFOCUSING THE SERVICE DELIVERY SYSTEM

Section 8 Education and Training

8.01 Training Consortium

A. Defendants shall provide copies of this Decree to all planning councils, advocacy groups and providers.

B. Within ninety (90) days of the effective date of this Decree, Plaintiffs and Defendants shall jointly discuss with the Iowa University Affiliated Programs and other knowledgeable sources, the potential for an Iowa Training Consortium for Persons Supporting Iowans with Disabilities, and the potential for developing a training program to further the implementation of this Decree. Members of the Consortium may include individuals with disabilities or special health care needs and their representatives, a representative of the Iowa Association of Rehabilitation and Residential Facilities, a community support coordinator, community-based service providers, advocates, case management agencies, and educators. Plaintiffs believe that IUAP is the most qualified entity to coordinate the training consortium and that it falls within the sole source exception. Defendants will examine the sole source exception once the request for proposal (RFP) is drafted.

C. The training curricula to be discussed shall represent a continuum of competency-based experiences appropriate for:

1. Students in community colleges seeking degrees in human service work, including supports coordination;

2. Persons currently employed or desiring to be employed as direct care providers;

3. Persons currently employed or desiring to be employed as direct care workers in the two State Hospital Schools; and

4. Nurses, physicians (including psychiatrists), nurse clinicians, dentists, physician assistants, physical therapists, occupational therapists, speech-language pathologists, audiologists, nutritionists, and recreational therapists who are employed or desire to be employed in positions supporting persons with developmental disabilities in community-based or State Hospital-School settings.

D. Once developed, the curricular materials shall be made available to: a) existing community colleges; b) Regents' University faculty and staff, to expand existing and develop new course offerings, and c) regional community based trainers certified by the IUAP, using the "trainer of the trainer models", and 3) personnel of existing county cluster centered service providers.

8.02 Funding

Implementation of subsection 8.01 is contingent upon the availability of funding.

Section 9 Five Year Plan for Community Supports and Services

9.01 Principles

The Five Year Plan developed pursuant to Section 9.03 of this Decree will be based on the following principles:

1. Community support services must be based on individual class members' needs.
2. Services must be available and accessible to class members.
3. Federal funding sources must be maximized.
4. All funding resources must be directed in the most effective manner to meet class members' needs.

9.02 Policy Statement

The parties recognize that by statute the primary authority for funding services for class members in Iowa currently rests with county government. Implementation of any plan which either changes the current funding mechanism or requires the counties to implement specific services as a part of a restructuring of the current service delivery system will require legislative approval. This paragraph shall not be interpreted to be inconsistent with 9.03.

9.03 Development Of Five-Year Plan

A. The Department of Human Services shall develop a Five-Year Plan, the purpose of which is to identify and provide for the development of appropriate community supports and services

needed for community placement of class members. The plan shall include strategies that effectuate its goals and objectives. Those strategies that Defendants have authority to implement within current resources and responsibilities shall begin implementation in FY 1995. Those strategies requiring legislative action shall be recommended to the legislature by January 1, 1995, and thereafter, as appropriate. Defendants shall implement those strategies adopted by the legislature.

B. During the development of the Five-Year Plan, Defendants shall in good faith solicit and consider suggestions from Plaintiffs' counsel on a regular and ongoing basis. During the development of the Five-Year Plan, Defendants may also solicit appropriate input from affected persons or bodies, such as but not limited to representatives of: counties; class members or their designated representatives; regional planning councils; MH/MR Commission; providers; advocacy groups; and State Hospital-School staff. A copy of the Five-Year Plan shall be provided to the parties' counsel.

C. The Defendants shall, in consultation with Defendants' counsel and the other parties involved in development of the plan, annually review the plan. Defendants will notify Plaintiffs' and Intervenors' counsel of any subsequent changes or recommended changes to the plan.

D. Defendants shall recommend that any state savings resulting from the Five-Year Plan be directed to community services for class members.

9.04 Consultants

Within sixty (60) days of the effective date of this Decree, Defendants shall contract with consultant(s) for a minimum of twenty (20) days to provide technical assistance for the development of the Five-Year Plan, including but not limited to funding recommendations and implementation strategies. The consultant shall provide training and technical assistance to the Department, community agencies, and providers in locating funding sources, and identify techniques for writing and obtaining grants for community based services. Plaintiffs' counsel may recommend potential consultants to the Defendants. In selecting the consultant, Defendants shall select four (4) possible consultants. Defendants will provide the names and background information to Plaintiffs' counsel for review and their recommendation thirty (30) calendar days prior to the proposed hire date.

Section 10 Iowa's State Hospital-Schools

10.01 General Principles Governing the State Hospital-Schools

A. The Defendants shall maintain the hospital schools in full compliance with applicable statutory and regulatory requirements, as amended, imposed on ICFs/MR. Certification of such compliance will be maintained.

B. Out-placement Guidelines

1. There shall be no exit criteria which a class member must meet in order to be placed in the community. The primary criterion in determining whether a class member should be placed in the community shall be the availability of appropriate services to meet his/her documented needs. Any class member for whom sufficient supports can be appropriately arranged and provided in the community shall be eligible for placement, regardless of developmental status or type or extent of developmental disabilities.

2. No class member shall be discharged from either institution simply to meet a perceived schedule unless appropriate community supports are in place.

3. Preferably, class members should be returned to their home communities. In those instances in which family or the class member choose not to associate, "home community" shall be defined according to other close emotional ties or supports the class member may have.

4. The following class members will be given priority by the state hospital-schools in placement in the community:

a. Those who request or whose parent (of minor children), legal guardian, or designated representative request community placement; and

b. Persons who are twenty one (21) years of age or younger.

5. During each year of the implementation of this Decree, class members with varying types and degrees of disability shall be placed into the community to insure the comprehensive development of a nondiscriminatory community-based system.

6. Defendants shall make every effort to ensure that placement into the community is successful. These efforts include but are not limited to:

- a. Client-centered planning;
- b. Careful and detailed transition planning;
- c. Pre-placement visits and overnights;
- d. Follow up by hospital-school staff; and
- e. Provision of re-admission prevention consultation for class members placed into the community.

7. Defendants will make best efforts to place class members in available smaller housing and residential settings, such as apartments and single family dwellings, but with the approval of the class member or the parent if a class member is a minor, other facilities appropriate to the person's needs will be used.

8. Any parent of a minor, or designated representative of a class member shall retain the right to actively participate in the outplacement decision. This Decree shall not be interpreted to diminish the rights or obligations currently accorded the parties, and/or the class members' representatives by law.

D. IMPLEMENTATION

Section 11 Class Notice

11.01 Notice of Consent Decree

Within fifteen (15) working days of the effective date of this Decree, Plaintiffs shall prepare a Notice of Consent Decree in Class Action Lawsuit subject to Court approval. Defendants shall ensure that within forty-five (45) days of Court approval, the Notice is posted in plain view in both hospital-schools, and sent to all identified class members and their designated representatives, and subclass members, for whom Defendants have a last known address, and their designated representatives. Defendants shall send a copy of the Notice to consumer organizations, advocacy groups, community providers, and other interested parties that request a copy. Distribution of the Notice of Consent Decree remains the ongoing obligation of Defendants throughout the life of the Decree.

Section 12 Funding

12.01 System Development

Defendants recognize their obligation under this Decree to facilitate the development of a continuum of care and choices and a unified and cohesive system of community based services for class members.

12.02 Budget Request

A. Each year that this Decree is in effect, and taking into account the economic circumstances of the state, the Director shall include in the annual DHS budget request to the Governor those funds which are necessary to implement this Decree in accord with its terms. The amount of the request shall be sufficient to maintain and enhance community based services for class members and to implement any plan adopted by the legislature as provided in section 9. The Director shall be responsible for assuring that the State MH/MR/DD plan incorporates the Five-Year Plan For Community Supports and Services. The state MH/MR/DD plan will be made available to the Governor, the legislature and Plaintiffs' and Intervenors' counsel.

B. Defendants shall support the Director's budget to achieve the initiatives set forth in this Decree.

C. A copy of all portions of the Governor's budget applicable to this Decree shall be sent to counsel for Plaintiffs and Intervenors when the budget is sent to the legislature, and a copy of the final budget approved by the legislature shall be sent to counsel for Plaintiffs and Intervenors immediately following approval of the budget. This applies to any supplemental budget requests as well.

12.03 Funding Initiatives

A. Defendants shall use their best efforts to maximize the amount of federal and other sources of funding available for the development of community based services for class members. This may include, but is not limited to, the identification and dedication of specific staff to serve as a funding assistance resource center for community based agencies and providers, which may assist them to educate, seek, or assist in the application for federal or in-kind or other private contributions to fulfill any federal matching requirements.

B. Defendants shall use their best efforts to ensure that community based services are funded to the maximum extent feasible by Title XIX/Medicaid, particularly through the Home and Community Based Waiver and other government programs determined to be cost efficient, including but not limited to Early and Periodic Screening, Diagnosis and Treatment (EPSDT), and family preservation alternatives to foster care.

Section 13 Legislation

13.01 Changes Identified

Defendants shall identify any steps in the process of developing community-based services which could be streamlined, improved, or eliminated and shall report that information to the legislature and, in writing, to counsel for Plaintiffs and Interveners. Defendants shall make their best efforts to effectuate legislative or regulatory changes and elicit

cooperation from other state entities in order to accelerate the development of community based services for class members as described herein.

13.02 Personal Assistance and Family Support

Pursuant to the passage of the state legislation creating a personal assistance services program for persons with disabilities and a comprehensive family support program of families of persons with disabilities, H.F. 2302, 75th General Assembly, amending Iowa Code section 225C.46 -- .48, Defendants shall in good faith solicit and forward to the Personal Assistance and Family Support council created by the legislation, suggestions from Plaintiffs' counsel regarding implementation, improvements, and amendments to this legislation. Issues to address will include but not be limited to age limitations of the current legislation, consumer representation, and model grants.

Section 14 Planning, Monitoring, and Dispute Resolution

14.01 Enforcement

The parties agree that the terms of this Decree may be specifically enforced directly by the Court upon written motion of the parties, with notice to opposing counsel. The parties shall make reasonable attempts to informally resolve all disputes prior to their application to the court.

14.02 Meetings Between the Parties

In addition to any other provision in this Decree, the parties and counsel shall meet to exchange information regarding the status of compliance, and to facilitate communication and problem solving. Any consultants hired by the parties may participate in these meetings if requested by the parties to do so. The meetings shall be held at least quarterly, and more often as necessary or requested by the parties or the Court. If any of the consultants provided for in this Decree are asked to participate, any day of participation shall be considered within the total number of days of the consultant's contract. The meetings shall be held alternately in offices of counsel for the parties.

14.03 Access of Counsel for Plaintiffs

A. Plaintiffs' counsel and consultants, experts, representatives, and assignees shall, as representatives of the Plaintiff class, continue to have access to: 1) class members; 2) records of class members; and 3) all other data, information, documents, and similar materials relevant to counsel's representation of the class. Defendants shall respond to all reasonable requests from Plaintiffs' counsel within twenty (20) business days. Plaintiffs' counsel shall maintain confidentiality.

B. All state hospital-school staff shall be directed, permitted, and required to answer all questions of counsel for

Plaintiffs and requests for information freely, promptly, and truthfully without fear of any retribution or disciplinary action. Defendants reserve the right to take appropriate disciplinary action if an employee violates any laws of the state, program policies or work rules. This paragraph does not supersede or erode any rights given to employees of the State Hospital-Schools covered by a collective bargaining agreement.

C. To the extent allowed by law, Plaintiffs' counsel shall be informed about decisions regarding class member transfers and placements in the following manner: as soon as possible, but in emergencies no later than five (5) days after a class member's transfer or placement. Defendants shall insure that Plaintiffs' counsel receive a copy of the class member's transition plan; the name, address, and telephone number of the class member's case management agency; and the name, address and telephone number of the residence or facility to which the class member is being transferred or placed.

D. In addition to any other requirements herein, Defendants shall provide Plaintiffs' counsel the following in a timely and ongoing manner: notification of class deaths, including any and all reports that result; Monthly Report of Medical Services Under Title XIX of the Social Security Act (Series B-1); Population Movement Report (Series D-1); and the Iowa Council on Human Services Budget Recommendations.

14.04 Modification of Decree

This Decree may be modified only upon written agreement of the parties and Order of the Court issued thereon; upon motion by a party and Order of the Court issued thereon; or by the Court's own motion.

Section 15 Attorneys' Fees

15.01 Plaintiffs' Cost and Fees

Plaintiffs' counsel reserve the right to seek an appropriate award of costs and disbursements including attorneys' fees, and Defendants reserve the right to oppose such a request.

15.02 Costs of Enforcement

Notwithstanding any other provision of this Decree, Plaintiffs may seek attorneys' fees and costs for the costs of enforcement of this Decree should Plaintiffs prevail in any motion they file alleging non-compliance with the Court's order, or this Decree. The parties agree that Plaintiffs do not waive the right to such fees.

C. M. Palmer

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing instrument was served upon each of the attorneys of record of all parties to the above-entitled cause by enclosing the same in an envelope addressed to each such attorney at his respective address as disclosed by the proceedings of record herein, with postage fully paid, and by depositing said envelope in a United States Post Office depository in Iowa City, Iowa on the

14 day of July, 1994
R. Robert Butman

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