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DISTRICT OF WYOMING
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CLERK

UNITED STATES DISTRICT COURT
DISTRICT OF WYOMING

ANNA MARIA WESTON, by her
guardian Barbra Weston,
et al.,

Plaintiffs,

v.

WYOMING STATE TRAINING SCHOOL,
et al.,

Defendants.

CIVIL ACTION NO. C90-0004

STIPULATED AGREEMENT

The Parties in the above-entitled action submit this Stipulated Agreement to the Court for its review and adoption, should the Court find this Settlement Agreement acceptable. It is anticipated that the Court will maintain jurisdiction of this case until such time as the Stipulated Agreement has been implemented.

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(This Table of Contents is not part of the Stipulated Agreement and is only for convenience of reference)

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STIPULATED AGREEMENT

This Class Action was commenced on January 3, 1990 against the State of Wyoming by the named Plaintiffs on various constitutional and statutory grounds, seeking improvement of conditions at WSTS, expansion of community resources and support services and transfer of class members to community programs.

Plaintiffs are individuals with mental retardation residing at WSTS. Defendants are state officials in charge of administering Wyoming's programs for class members. On April 30, 1990 this case was certified by the Court as a class action. As certified by the Court, the class consists of "All individuals with mental retardation currently at the Wyoming State Training School, or who are currently or may in the future be at risk of placement at the Wyoming State Training School, including youths from birth to 21 years, adults and senior citizens. (See Appendix "A" for a list of class members.)

Plaintiffs and Defendants, acting by and through counsel, by agreement dated April 24, 1990, and filed herein on April 27, 1990, established an agreed upon framework which might expeditiously and inexpensively as possible lead to the settlement of this litigation, thus this document was developed.

This Stipulated Agreement shall be incorporated into an order of the Court.

ARTICLE I

DEFINITIONS: CONSTRUCTION

1.01 "A Class Member's Rights" mean those basic human and legal rights which all citizens of the United States enjoy;

1.02 "Adequate Resources" mean resources pledged to accomplish the purposes and requirements contained herein;

1.03 "Admissions" or "Admissions Criteria" or "Properly Admitted" means criteria to be developed by the State that furnishes the procedures to admit eligible class members to WSTS within the bed limitations contained herein;

1.04 "Class Members" means as the Court Order defined. Appendix "A" contains a list of currently known class members. A procedure for the addition or deletion of individuals from the list is contained in Appendix "A". Appendix "A" shall be completed by the State within forty-five (45) days of the date of this Agreement and submitted pursuant to the review process.

1.05 "Communication/Information" means public presentations on the benefit of community supports for individuals with disabilities which includes the development of positive information regarding the alternative array of services for people with developmental disabilities.

1.06 "Completion Date" means the date of December 31, 1994, or any date, upon which there is final acceptance by the Court of

substantial compliance with the goals, objectives, terms and conditions contained herein;

1.07 "Compliance Advisory Board or CAB" means the individual or individuals appointed by the parties to have primary responsibility for assisting the parties and the Court in carrying out the implementation of the goals, objectives, terms and conditions contained herein. (Article VIII herein)

1.08 "Dispute Resolution" means the process to initiate and resolve disputes arising under this Agreement.

1.09 "Effective Date" means that date upon which the parties execute this Stipulation.

1.10 "Emergency Medical or Respite Care" means care provided to a class member properly admitted to the WSTS Health Care Center on a short-term basis pursuant to Section 2.02(c).

1.11 "Exit or Transition Plan" means a plan designed to provide for the success of the community placement for the class member as consistent with their IPP. Such transition plan is to begin as far in advance of the actual move as is possible, but in no case less than six (6) months prior to community placement.

1.12 "Health Care Center" means the 29 bed unit as WSTS specifically designed for medical purposes.

1.13 "Hearing Officer" means that individual appointed by the CAB for purposes of resolving disputes arising under this agreement for individuals with standing.

1.14 "Interdisciplinary Team" (IDT) means the group of persons who develop an IPP consisting of:

- (a) the class member;
- (b) the QMRP;
- (c) the independent case manager;
- (d) parents or guardians;
- (e) service providers;
- (f) therapists or specialists; or
- (g) anyone else necessary for the purposes of serving a class member.

1.15 "Immediate Needs Assessment Team (INAT)" means the team of experts agreed upon by the parties. See Appendix "B".

1.16 "Independent Case Manager" means the individual assigned to a class member with the functions outlined in Section 4.01.

1.17 "Individual Program Plan (IPP)" means the criteria-based document applicable to each class member that blueprints goals, objectives, services and resources as set forth in Article III.

1.18 "Least Restrictive Environment (LRE)" means the residential setting and day programming which affords the class member the most normalized lifestyle.

1.19 "Notice" means that all notices required by the terms hereof shall be in writing, mailed by first class or certified mail, postage prepaid, with return receipt requested, and addressed

as follows:

To the State of Wyoming:

Attorney General's Office
Capitol Building
Cheyenne, Wy 82002

To Class Members:

Protection & Advocacy System, Inc.
2424 Pioneer Ave., Suite. 101
Cheyenne, Wy 82001

To Compliance Advisory Board:
(see Appendix "C")

- 1.20 "Parties" refers to the State and P&A, or designees.
- 1.21 "Protection & Advocacy System, Inc. (P&A)" means the Wyoming private, non-profit corporation known as Protection & Advocacy System, Inc., which is established pursuant to federal law.
- 1.22 "P&A Monitoring" refers to the process by which the Wyoming Protection and Advocacy System, Inc. (P&A) is authorized to access and inspect records of class members and to hold discussions with class members, parents or legal guardians, WSTS staff, and staff of community facilities. The purpose of the monitoring process is to provide P&A accurate, complete, and timely information regarding the implementation of this Agreement. Monitoring shall be carried out in the least obtrusive manner possible. P&A's monitoring authority may be delegated by P&A to the agency's successors, assigns, representatives,

and/or experts. As required by P&A's federal enabling legislation, confidentiality of class members shall be maintained.

1.23 "Parents" or "Guardians" means the parents of minors or the legal guardians of class members.

1.24 "Quality Assurance" means the process to assure class members are receiving programs which meet their needs.

1.25 "Recreational Programs" is meaningful age appropriate leisure-time activities developed pursuant to Section 5.06 and a class member's IPP. Class members shall not be considered to be receiving recreational programming merely because he or she is outdoors. Recreation shall be conducted individually or in small social groups except for activities such as softball or swimming, where larger numbers are appropriate.

1.26 "Review by P&A" means that the State, with respect to goals, objectives, terms or conditions contained herein, shall provide the proposed final documents, plans, procedures, policies, programs, rules and regulations, and related items, to P&A for review and comment prior to adoption. (See Appendix "D")

1.27 "Standing" means the following individuals or entities with the right to appeal, pursuant to Article VIII: 1) class members; 2) State; 3) P&A; 4) parents of minors; and, 5) legal guardians.

1.28 "State" means the State of Wyoming, its boards, agencies or departments.

1.29 "Superintendent" means the Superintendent of the Wyoming State Training School.

1.30 "Time" means any date referred to in this Agreement which has expired is extended to ninety (90) days after the execution of this Agreement.

1.31 "Wyoming State Training School (WSTS)" is defined by W.S. 25-5-101, et seq., and the amendments thereto.

EDUCATIONAL DEFINITIONS

1.32 "Child Study Committee (CSC)". A committee which is established by the LEA/IEU Special Education Director or designee to review and revise the class members' IEP.

1.33 "Educational Needs Assessment Team (ENAT)". A team of experts for the purpose of developing plans and recommendations to address class members educational needs.

1.34 "Free Appropriate Public Education (FAPE)" means the individualized educational supports and services for class members provided at public expense. This term is related to special education and related services for class members.

1.35 "Individualized Education Program (IEP)" means a written educational plan of supports and services for an individual class member under the age of 21.

1.36 "Intermediate Educational Unit (IEU)" means the Division of Community Programs of the State Department of Health for class members age 3 to 5 years.

1.37 "Local Education Agency (LEA)" means a school district in the State serving class members age 5 to 21.

1.38 "Least Restrictive Environment (LRE)" means the educational setting which affords the class member the most normalized lifestyle.

ARTICLE II

GENERAL PRINCIPLES AND COVENANTS

2.01 Applicability. This Agreement contains goals, objectives, terms and conditions applicable to the WSTS, community supports and services, and educational services with respect to class members.

2.02 Principles. The following principles guide this Agreement:

- a) Services and supports shall be tailored to the distinct and unique characteristics and circumstances of each class member.
- b) Each class member's IPP shall include a time frame for transitioning to the least restrictive living environment and day programming feasible for that individual.
- c) Admissions of class members to WSTS shall be limited to cases of emergency medical or respite care, which shall be provided for the shortest time necessary to serve the needs of the class member. Such temporary placements shall be reviewed by the IDT at intervals of no more than thirty (30) days beginning from the date of admission of the class member until such placement ends.
- d) During the pendency of this Agreement, there shall be no new admissions to WSTS, except those subject to the provisions of Appendix "A".

- e) Life in the community is a basic human right, not a privilege to be earned.
- f) Each class member has a right to participate in normal every day life.
- g) Each class member can grow and develop.
- h) All class members and employees shall be treated with dignity.
- i) Class member autonomy shall only be subject to State intrusion to the absolute minimum extent necessary to receive the appropriate supports and services.
- j) A class member's rights shall be cherished, valued, protected and actively promoted.
- k) Services shall be provided in a manner which meets the needs of class members regardless of their funding eligibility or participation in any particular government program.
- l) Class members, parents and guardians are expected to play an active and meaningful role in the development and implementation of appropriate supports and services in accordance with the class members' IPP.

2.03 Community System Principles. The service delivery system shall be designed in a manner to insure that necessary supports and services are provided as individually required.

- a) Generic services, are those services available generally in the community, shall be utilized first. Where such

services are not available and cannot reasonably be developed generically, the service shall be obtained from existing providers of developmental disability services. Where such services are not available or cannot be provided in a timely fashion, new services shall be developed.

b) The system shall be a single integrated means of provision of support to all Wyoming citizens with mental retardation.

c) Control of the system shall be at the individual level in order to insure responsiveness to class member's needs, changing circumstance, and the local environment.

d) The system at the community level shall provide services to persons with varying degrees and types of disabilities, including those with medical and behavioral disabilities. Regional hospitals, medical professionals, and health care providers shall be used as necessary for health care supports. Community mental health centers and programs shall assist in the development of behavioral supports.

e) The system shall provide services and supports to class members of all ages.

f) The system shall be strengthened by the intentional inclusion of partnerships at the federal, state, and area levels. Planning and implementation shall specify the unique role to be played by each.

g) Appropriate safeguards must be implemented at all

levels (e.g. at the level of class member planning; at the level of system planning.)

(h) The State undertakes the goals and objectives of the Agreement for the class members with the understanding by the parties that success is measured herein by the ultimate outcome for the class.

2.04 Protection and Advocacy System, Inc.

a) In carrying out its responsibilities, P&A shall act in accordance with P&A's authorizing legislation. P&A is an independent non-profit corporation whose independence from state control, appointments, and budget restrictions is critical to the monitoring and other safeguard provisions contemplated in any court orders and agreements.

(b) By the terms of this Agreement, the State shall ensure that during the pendency of this action and any subsequent court orders, that the currently existing Wyoming P&A shall remain as an independent, private non-profit corporation in all ways and as it is presently constituted with board members appointed by the P&A Board and which is authorized to receive the State's appropriated funds.

2.05 Review Process

(a) Any proposed final rule, regulation, plan, policy, procedure, program as set forth in Appendix "D" shall not be adopted by the State unless the State submits same to P&A for review and comment. P&A shall have a reasonable opportunity for review and to make written comment.

(b) The parties shall exchange information to ensure that a coordinated, cooperative effort is undertaken which will benefit the class as a whole.

2.06 Complete Agreement. This Agreement incorporates the complete understanding of the parties and is executed with the express agreement that all previous written and/or oral agreements or understandings are incorporated herein; and that this Agreement supercedes and takes precedence over all previous agreements, stipulations or understandings.

2.07 Severability. This Agreement is severable, in that if an Article or Section is determined, for whatever reason, to be void or unenforceable, the remainder of this Agreement is to remain enforceable by the parties.

2.08 Law. The applicable law to this Agreement is that body of Federal and State law pertaining to the class members including the rules and regulations of both State and Federal governments, departments, or agencies as written.

2.09 Ex parte Communication. To insure the neutrality of the parties and CAB, no one is to have ex parte communication with the United States District Court for the District of Wyoming.

ARTICLE III

INDIVIDUAL PROGRAM PLANS

3.01 Purpose. Each class member shall be provided supports, services and environments which are specifically designed and tailored by the IPP to insure participation in and control of the ordinary circumstances of life. Such supports, services, and environments shall insure the guarantee of individual rights for all class members.

3.02 IPP Components. The IPP shall be written and based on current conditions and shall include but not be limited to:

- a) The class member's immediate and long-term goals and objectives;
- b) the class member's strengths and needs;
- c) specific and measurable objectives for each goal which identify in behavioral and sequential terms the developmental steps that will be taken to attain the goal;
- d) the persons and resources necessary for implementation of each objective;
- e) the identification or design of the supports and services most conducive and least intrusive for achieving the goals;
- f) other considerations, including but not limited to INAT assessments.
- g) while the person continues to reside at WSTS, an exit/transition plan shall always be part of the IPP planning;

h) a retirement plan shall be developed for class members 55 years of age and over;

i) if necessary, a design for home living that identifies the supports and assistance required at home and work; and how the individual will interact with his/her community, make friends, get around; and so forth;

j) The IPP shall describe the class member's daily programming and shall contain a twenty-four hour schedule which identifies the individual's usual pattern of the day. The amount of programming shall be described by the plan, but only under exceptional and documented circumstances shall it provide less than six (6) scheduled hours of program activity per day designed to accomplish the achievement of stated objectives. Recreational activity identified in Section 5.06 of this document shall not be substituted as a part of the six hours.

3.03 Interdisciplinary Team ("IDT"). Each Class Member shall have a qualified mental retardation professional (QMRP) at WSTS and/or an Independent Case Manager during transition and thereafter and an IPP developed and regularly reviewed and revised by an Interdisciplinary Team ("IDT").

3.04 IPP Timetable of Events. IPPs shall be developed in accordance with the following and pursuant to the criteria noted above in Section 3.02:

a) The parties recognize that the implementation of the IPP is of the highest priority, but that this requirement may be impacted by the campus physical modifications, increasing staff ratios, and downsizing schedules of WSTS and other matters agreed upon in this Agreement. This recognition, however, shall not be construed as an admission that in any way limits either party from arguing to the CAB that the State has or has not used due diligence in seeking all available resources in implementing all such IPP's.

b) In the event that the State contends that such timelines cannot be met, then it shall submit its documented basis for this contention to the CAB for approval of any extension.

c) By June 30, 1991, IPP's including Individual Education Plans (IEP's) shall be in place and implemented (subject to (b) immediately above) for all class members at WSTS under the age of 21.

d) By December 30, 1991, IPP's shall be in place and implemented (subject to (b) immediately above) for all other class members of WSTS.

e) IPP's which are consistent with the approved criteria shall be in place and implemented (subject to (b) immediately above) for all class members receiving

community services by no later than December 31, 1992.

3.05 IPP Criteria. Within sixty (60) days of the effective date of this Agreement:

- a) The State shall draft criteria for IPP. The criteria shall be submitted pursuant to the review process.
- b) The State will continue to provide services without interruption.

3.06 Review Process of IPP.

- a) The IPP shall be reviewed at least monthly by the QMRP and/or the Independent Case Manager, and at least annually by the IDT team, to ascertain progress, regression and need for revision of the plan.
- b) Where it is evident that a plan is no longer applicable or is not working, the team shall revise the plan.
- c) In the interim between an annual IPP meeting, if a team member perceives a reason for an additional team meeting, he/she shall notify the team leader who shall convene the team as soon as possible, but not to exceed thirty (30) days.
- d) There may be periodic and random review of IPP's by P&A.

3.07 Notice Requirements. Notice of all IDT/IPP meetings including a listing of relevant documentation will be submitted to all IPP team members and an opportunity to attend and fully participate in a conference shall be extended to all members.

3.08 Reporting Requirements. Parents and guardians shall be kept informed of the class member's educational, vocational, and living skills, progress and medical condition to assure active and meaningful participation.

3.09 Staffing. Specified direct care employee shall have continuing responsibility for each resident's daily living and safety. Records shall be maintained listing such employees and the class members for whom they are responsible.

ARTICLE IV

INDEPENDENT CASE MANAGEMENT UNIT

4.01 Purpose. Independent Case Management Unit is the system of individuals assigned to a class member with the following functions:

- a) Be the point of contact at intake, when a class member or his/her family wants to initiate services;
- b) Assess whether the class member qualifies for services based upon standard service qualification criteria;
- c) Assist the class member to receive services;
- d) Assist the class member to become a part of his/her community;
- e) Advocate for and with the class member as necessary;
- f) Coordinate the delivery of all services to the class member;
- g) Be available to help the class member in arranging medical and other appointments;
- h) To carry out his/her responsibilities outlined in this agreement;
- i) Such other services necessary to assist the class member reach his/her program goals.

4.02 Caseload Standard. Following entry of this Agreement, independent case management for class members shall be

as follows:

a) The caseload standard for class members shall be one (1) case manager for every fifteen (15) to twenty-five (25) class members.

b) All class members to remain at WSTS shall have case managers assigned at a standard of approximately 1:50 no later than March 31, 1992.

c) The standard may vary as determined by the State according to complexity of the individual cases within a caseload; the individual needs of class members; and the relative ability of the family or class member to act as the class member's advocate.

d) The standard for supervisors shall be no more than eight (8) case managers for each supervisor.

4.03 Financing. Providing adequate case management services cannot be decided purely in financial terms; case management cannot be accomplished without significant funding by the State from whatever revenue sources exist in order to meet the following objectives:

a. The role of the State is to provide efficient and effective Case Management services and facilities to meet the objectives contained herein and to provide the services set forth in IPP's;

b. The State is responsible for budgeting sufficient funds

to meet the objectives in this Agreement and the services set forth in the IPP, including training and case managers.

4.04 Implementation. The Independent Case Management assignment timelines shall be as follows:

a) By December 31, 1991:

1) All class members residing in the community.

2) All class members applying for community services residing at WSTS.

3) All class members to be transitioned into the community in calendar years 1991 and 1992.

b) By March 31, 1992, all other class members.

4.05 Management

a) The Independent Case Management system shall be established in the State Department of Health and shall be independent of the Division of Developmental Disabilities but on the same level.

b) A plan including rules and regulations for the Independent Case Management system shall be submitted pursuant to the review process.

ARTICLE V

THE INSTITUTION

5.01 Reduction in Bed Capacity.

- a) By December 31, 1994, and thereafter, WSTS shall be reduced to an institution of 190 or fewer beds.
- b) Twenty-nine (29) of the 190 beds shall be reserved for persons properly admitted to the WSTS Health Care Center.

5.02 Resident Living

- a) This section shall apply to dress, grooming, movement, use of free time and contact and communication with the outside community, including access to education, vocational and therapy services in generic settings. Each class member shall have the opportunity to learn skills that help him/her learn how to successfully integrate with his/her environment and how to make choices necessary for daily living.
- b) Each class member shall be provided with clean, adequate and seasonally appropriate clothing. Such clothing shall be individually chosen and comparable in style and quality with clothing worn by persons of similar age and sex in the community.
- c) Within and subject to the IPP process, WSTS shall assist each class member to move from 1) more to less structured living; 2) group to individual residences; 3) segregated from the community to integrated with the community; and 4)

dependent to independent living, to the maximum extent of his/her capabilities.

d) Class members shall not be segregated according to disability or degree of disability.

e) All class members shall, except where otherwise indicated by a licensed medical personnel's order which demonstrates cause, spend no less than twelve (12) hours of their waking day out of bed and dressed in street clothes, spend a majority of their waking day out of their bedrooms, have planned daily activity, and be rendered mobile by suitable methods and devices. Each class member's schedule shall be that schedule designed by the IPP team and be consistent with the IPP. Class members shall not stay in beds, cribs, wheelchairs or orthopedic carts all day long, except on the written order of licensed medical personnel. All such standing physician orders will be reviewed when the IPP's are reviewed.

f) As soon as possible, but no later than sixty (60) days from the effective date of this Agreement, the parties shall prepare, a document listing the legal and civil rights of class members, which shall be circulated to staff and class members, parents and guardians of class members, and P&A, and posted throughout WSTS. Training shall be provided regularly to class members, their parents and guardians, and staff on rights and responsibilities.

5.03 Environment

a) Except as otherwise noted in this Agreement, by June 30, 1991, the State shall provide living facilities which afford residents privacy, comfort and sanitation. This shall include, but not be limited to:

i) accessible, private and easily usable toilets and bathing facilities, including specialized equipment for persons who have physical disabilities. Appropriate temporary facilities may be utilized.

ii) accessible and easily usable sinks and drinking facilities.

iii) adequate toilet paper, soap, towels, linen and bedding.

iv) individual bed and dresser or storage place.

v) attractive and comfortable living and sleeping areas as soon as reasonably practical.

vi) normalized furnishings and leisure equipment.

vii) normal living temperatures, including water temperature regulation, and adequate ventilation.

viii) separate clean and dirty linen storage areas.

ix) secure individual storage space.

b) The number of life safety code beds at WSTS will be 162 beds by no later than March 31, 1992.

c) Excepting 401 and 404 Meadowview, living areas shall be

sectioned and partitioned (floor to ceiling partitions) so that no more than eight (8) class members live or sleep in one unit. Programming and working areas shall be quiet, appropriately designed and conducive to programming. Architectural barriers which impede living and programming for class members with physical disabilities shall be corrected or removed. Class members shall be encouraged to decorate their living areas and to select their furniture.

d) Every building shall be kept clean, sanitary, odorless, and insect and rodent free at all times, and sufficient equipment and cleaning supplies, such as brooms, mops, etc shall be provided to housekeeping staff for this purpose. In particular, lavatory areas are to be cleaned as often as necessary every day, and bathtubs shall be cleaned after the bath of each class member.

e) Housekeeping staff and services shall be provided to all living units every day in both the day and evening shifts. Adequate housekeeping staff shall be employed for this purpose.

f) Class members shall not ordinarily sit or be on the floor only for therapeutic reasons (i.e. physical therapy positioning) or when participating in activities that require sitting or being on the floor.

g) Each class member shall, as prescribed, wear and use

glasses, hearing aids, crutches, braces, and other adaptive equipment in their living units, and class members who need such aids shall be provided with and assisted to use them.

h) Toys and equipment, as appropriate to each class member's needs, shall be readily accessible to class members during waking hours.

5.04 Direct Care Staff, Mid-Level Supervisors and Clinical Staff

a) Each class member at WSTS shall receive supports and services as necessary every day in accordance with his/her IPP to assure adequate care and leisure experience and eating assistance. The direct care staff's primary responsibility shall be the care and development of each class member. To this end, appropriate provision shall be made to ensure that direct care staff are not required to perform significant routine housekeeping chores, except during the third or night shift when time shall only be spent if available after providing necessary class member care.

b) WSTS shall employ, train, and maintain sufficient direct care staff to ensure that the following staff number shall be present and on duty:

i) During normal waking hours, there shall be no less than one (1) aide for each four (4) class members. The administration shall ensure that staffing is adequate to

the complexity of the living environment and the needs of the class members.

ii) During sleeping hours there shall be one (1) aide for each ten (10) class members.

c) By December 31, 1994, the overall staff to client ratio shall not be less than 3.5 staff to 1 client.

d) WSTS shall develop and implement a plan by June 1, 1991 for on-call help (i.e. substitute roster) when a staff person is ill or otherwise unable to work his/her regularly scheduled hours.

e) There shall be a minimum of one (1) supervisor or charge for every six (6) direct care staff on duty regardless of shift.

f) WSTS shall establish and maintain an overall ratio of clinical staff to class members as required by the IPP's. No later than December 31, 1993 the ratio of clinical staff to residents shall be no less than one (1) full time equivalent clinical staff to three (3) class members. For this purpose, clinical staff shall include, physicians, psychologists, dentists, nurses, pharmacists, teachers, physical therapists, social workers, speech and hearing therapists, occupational therapists, recreation therapists, music therapists, qualified mental retardation professionals, psychologist/behavior specialists, teacher/vocational development specialists and

case managers, but shall not include aides and mid-level supervisors. Each of the above clinical disciplines shall be adequately represented by appropriately qualified staff. The numbers of class members to be included within each discipline shall be at the discretion of the Superintendent, but the minimum number of clinical staff shall apply and be dictated by IPP's and assigned commensurate with the IPP's by the Superintendent.

5.05 Staff Development.

a) The State shall actively recruit qualified staff, including top-level management and professionals, whose licensure, certification or qualifications would be suitable for practice or employment in comparable circumstances in the community. All personnel shall meet minimum requirements of their job descriptions.

b) There shall be full staff and volunteer orientation and training programs on an ongoing basis, with a plan for continuing training hours, to increase employee's skills and interest in achieving the program goals of the class members. Within ninety (90) days of the effective date of this Agreement, the State shall prepare and submit to P&A, pursuant to the review process, a training plan (and subsequent updated plans) to improve WSTS's orientation and in-service training programs, which plan shall specify the proposed staffing,

curriculum and duration of such program.

c) At a minimum, the training plan shall meet the following criteria:

i) The training plan shall be updated annually by the State.

ii) The training plan shall incorporate standards to be accomplished that are measurable and documented.

d) Each classified or contract employee shall have a current evaluation and goal setting document, as prescribed by the State's Personnel Department.

e) WSTS shall establish a system of incentives that encourage staff to increase productivity and maintain morale (e.g. attendance at regional and national training seminars).

f) A staff exchange program shall be designed and implemented, which provides WSTS staff and community program staff an opportunity to visit and learn from each other and their progress.

g) By the effective date of this Agreement, a WSTS ombudsperson/client rights specialist shall be available who will focus on class members rights and services and who will be freely available to staff without retaliating against staff who report abuse, neglect, or other issues and who will be in a separate office not tied to another WSTS department. Such

an ombudsperson shall be retained on either a consultant basis or as an authorized staff employee. The ombudsperson shall make at least quarterly reports to the Superintendent, the CAB and to Protection and Advocacy, or more often if any report requires immediate response. The ombudsperson/client rights specialist reports directly to the Superintendent.

An ombudsperson shall have independent authority to make any appropriate investigation in order to ascertain the true facts about the alleged wrongful practice or violation of individual civil rights. In order to assure the employee that s/he need not fear retaliation or revenge by fellow employees or WSTS, a report by an employee shall be confidential, unless waived by the employee. Such employee shall not be discharged or otherwise discriminated against for making any report of alleged abuse, neglect or violation of individual civil rights.

h) Subject to federal funding and availability, WSTS shall maintain a foster grandparent program.

5.06 Recreational Programs.

a) Recreational programs at WSTS shall be suitable to the age of the class member and shall meet the recreation needs of each class member(s) as set forth in his/her IPP as soon as possible but no later than December 31, 1993. There shall be enough recreational equipment to provide adequate recreation

services for class members. Whenever possible, recreational activities shall take place in the community. Additional vehicles shall be provided to ensure adequate transportation of all class members, regardless of disability. There shall be special emphasis on equipment for lower functioning class members. The recreation program shall conform as closely as possible to normal community recreational activities, in particular in terms of equipment, age and sex grouping, facilities and surroundings.

b) Unless there is a medical order or IPP team recommendation to the contrary, a minimum of two (2) hours per day of recreation activities shall be provided for each class member.

c) There shall be at least one (1) recreational therapist or specialist for every fifty (50) class members, assisted by recreation therapy aides. Recreation staff shall receive in-service training and shall conduct activities during the day and evening.

d) Age-appropriate library facilities and material shall be developed for the use of class members.

5.07 Food and Nutrition.

A) Class members shall immediately receive a nourishing, well-balanced, nutritionally adequate diet.

b) The parties recognize that the implementation of the remaining services identified in this Section is of the

highest priority. Food and nutrition services required by Section 5.07(b) through 5.07(i) shall be implemented as soon as possible but no later than December 31, 1993. This requirement, however, may be impacted by the campus physical modifications, increasing staff ratios, and downsizing schedules of WSTS and other matters set forth in this Agreement.

c) Unless IPP's otherwise dictate, each class member shall learn to feed him or herself and shall receive hot and cold foods and beverages in normal fashion with due regard for personal hygiene (including washing hands before and after every meal), use of appropriate utensils, quantities of food, dining room surroundings, meal schedules which correspond to normal community standards, with no less than thirty to forty-five (30-45) minutes allotted for each resident's meal. Unless contraindicated for medical reasons, class members shall learn to eat in family style and to choose their own quantities and items according to individual tastes and preferences and dietary needs. Direct care staff shall be trained in and shall utilize proper eating assistance techniques.

d) Each class member shall receive liquids at appropriate intervals during each meal, not just at the

end of the meal. The food and nutrition needs shall meet the standards of recommended dietary allowances. There shall be a mechanism for ensuring that class members who shall require special diets receive them.

e) A medical order reviewed by the IDT shall be required if class members are to be fed a diet other than solid foods, are to be fed in any setting other than a suitable dining area, or are to be fed in a prone position.

f) There shall be a sufficient number of competent personnel, including personnel with experience in mental retardation, to instruct the staff and to fulfill the objectives of the food and nutrition services, including:

1. Institution Food Administrator;
2. Nutritionists and/or dieticians;
3. Speech, Occupational Therapists or other specialists with skills in oral motor facilitation;
4. Other food service personnel.

g) Dining areas and food storage, preparation and distribution shall be in compliance with state and local sanitation requirements. There shall be sufficient dishes and utensils for all class members, which shall be thoroughly cleaned between uses.

h) Food shall be prepared by methods that preserve

nutritional value, served at normal temperatures, and protected from contamination in transport and storage.

i) Denial of a nutritionally adequate diet shall not be used as punishment, or as part of a behavior modification program.

j) Lists of class members on special diets shall be maintained and available to appropriate food service personnel.

5.08 Professional Service Areas

a) Each class member who has not had a complete medical and dental examination within the past year shall have such examinations as soon as possible, but no later than twelve (12) months of the effective date of the signing of this Agreement.

b) Emergency dental/medical care shall be available on a 24-hour seven-day-week basis.

c) No unnecessary physical or chemical restraints shall be used on class members during medical/dental treatment.

d) Annual visits to the dentist shall be part of a preventive dental plan.

5.09 Restraints and Abuses

a) Mistreatment, neglect or abuse in any form to any class member shall be prohibited. Within three (3) months of the

which shall not exceed ninety (90) days. The chief medical officer or pharmacological professional shall provide an annual statement of the volume and frequency of drugs administered by type and condition of each class member.

c) Each class member's IPP shall address the individual's medication needs and the medication's effect. The IDT shall monitor the drug regimen of each class member.

d) In every instance where a psychotropic medication is used, a behavior management plan with adequate documentation shall be developed and implemented for the reduction or elimination of psychotropic medication usage.

e) Each class member shall have a right to be free from unnecessary or excessive medication. Polypharmacy shall be avoided unless specifically medically indicated.

f) Pharmacy services at WSTS shall be directed by a professionally competent and licensed pharmacist. Whether employed full time or on a contract basis, the pharmacist shall perform duties which include but are not limited to the following:

i) receiving the original or direct copy, of the physician's drug treatment order;

- ii) reviewing the drug regimen, and any changes, for potentially adverse reactions, interactions, contradictions, rationality, and laboratory test modification, and advising the physician of any recommended changes, with reasons, and with an alternate drug regimen;
 - iii) maintaining for each class member an individual record of all medications (prescription and non-prescription) dispensed, including quantities and frequency of refills.
- g) Only appropriately trained staff shall be allowed to administer drugs. Staff administering oral medications shall ensure that they are swallowed by the class member. Class members shall be trained to self-administer medications.
- h) Written policies and procedures that govern the safe administration and handling of all drugs shall be developed by the responsible pharmacist, physician, nurse and other professional staff.
- i) each drug shall be tracked to the point of administration.
 - ii) medications shall not be used by any class member other than the one for whom the medication was issued.

- iii) procedures shall be established for obtaining drugs when the pharmacy is closed.
- i) Drugs shall be stored under proper conditions of sanitation, temperature, light, moisture, ventilation, segregation, and security.
- j) Discontinued and outdated drugs, and containers with worn, illegible or missing labels shall be returned to the pharmacy for proper disposition.
- k) Medication errors and drug reactions shall be recorded and reported immediately to the practitioner and/or clinical department who ordered the drug and shall be reported separately in the medication records.

5.12 Maintenance

- a) WSTS shall comply with the provisions of the Life Safety Code of the National Fire Protection Association as soon as possible, but no later than December 31, 1994.
- b) The State shall maintain a program of adequate maintenance of buildings and equipment.
- c) As soon as possible, but no later than December 31, 1994, floors in living or sleeping areas other than dining or bathroom areas shall be provided with carpeting or other appropriate floor covering meeting residential needs.
- d) Hazardous chemicals shall be properly labeled and stored to insure the safety of the class member.

5.13 Organization Chart.

- a) A meaningful organizational chart of WSTS staff shall be maintained, clearly defining areas of responsibility and accountability by position and name. A means for resolving disputes between units and professional departments shall be created, including methods for clarifying any misunderstanding that may arise in this regard. WSTS management shall be evaluated as determined by the State.
- b) A policies and procedures manual shall be maintained and updated no less than annually by WSTS. Revisions shall be made as necessary incorporating review and consideration from staff and consultants and/or review process.
- c) The management of WSTS shall involve all appropriate levels of employees in facility planning and committees.

5.14 Records

- a) There shall be a unified system for all records for each class member, developed and maintained under the supervision of a competent librarian or registrar. Each class member's records shall be readily available to all professional staff, consultants and the CAB. Direct care staff consultants and/or CAB involved with a particular class member shall have access to those portions of a class member's records relevant to programming. Information shall be incorporated in the class member's records in sufficient detail to enable those person's

involved in the class member's program to provide effective continuing services. All entries in the class member's record shall be legible, dated and have the signature and identification of the individual making the entry.

b) These records shall include:

i) Identification data;

ii) The class member's history, including but not limited to:

- * relevant family data, including family visits and contacts, educational records;

- * prior institutional medical history, both physical and mental;

iii) An inventory of the class member's life skills;

iv) A record of each physical examination, psychological reports, and any other evaluations, including all those required by this Agreement;

v) A copy of each class member's IPP and any modifications or revisions thereof, with an appropriate summary to guide direct care staff in implementing each plan;

vi) The findings made in periodic (at least quarterly) reviews of the class member's response to his/her development;

vii) All social service reports;

- viii) The community placement plan and any modifications or revisions thereof;
- ix) A medication history and status;
- x) A description of any incidents or accidents involving the class member to be entered by a staff member noting personal knowledge of the incident or accident, or other source of information, including all appropriate reports of investigations of the class member's mistreatment;
- xi) A monthly summary of the extent and nature of any work activities and the effect of such activity upon the class member's growth and development;
- xii) Minutes of all IDT team meetings of the class member;
- xiii) All other class member's orders and certifications required by this Agreement, or any other agreement, decree, or court order;
- xiv) The State shall employ an adequate number of appropriately qualified staff to facilitate the prompt and accurate processing, typing, checking, indexing, filing and retrieval of records and record data.

5.15 Management

- a) WSTS shall develop and implement an Internal Quality Assurance Plan, including Peer Reviews, to be submitted for

the review process to P&A. All relevant disciplines at WSTS (e.g. medical, psychology, etc.) shall have input to the quality assurance plan.

b) WSTS shall establish and implement plans as necessary to achieve the outcomes identified in this Agreement.

c) By December 31, 1991 and December 31, 1993, WSTS shall prepare updated four (4) year plans and submit them to P&A for the review process.

d) Efforts and services of WSTS and community programs should be integrated into one coordinated authority as appropriate under the provisions of the Wyoming State Government Reorganization Plan, and consistent with the need to maintain continuity of government oversight of WSTS.

e) A Community Integration Services Office shall be created within the WSTS. The Community Integration Coordinator will be an individual who believes in community placement and who is an advocate of the rights of people with disabilities. This individual will facilitate effective transition into the community and ensure that barriers to such transition are removed. The Community Integration Coordinator shall submit reports to the CAB which will contain such information as progress made, barriers to transition, and recommendations for facilitating the transition, etc.

ARTICLE VI

COMMUNITY PLACEMENT AND STANDARDS

6.01 Resident Population and Movement

a) By December 31, 1994 and thereafter, WSTS shall be reduced to an institution of 190 or fewer beds; twenty-nine (29) of these beds are reserved for persons properly admitted to WSTS Health Care Center. To achieve this desired goal, the resident population shall be reduced according to the following formula:

i) By June 30, 1991, the WSTS residing on-campus census shall not exceed 310.

ii) By June 30, 1992, the WSTS residing on-campus census shall not exceed 270.

iii) By June 30, 1993, the WSTS residing on-campus census shall not exceed 215.

iv) By June 30, 1994, the WSTS residing on-campus census shall not exceed 170.

v) By December 31, 1994, the WSTS campus shall not exceed 161. WSTS may maintain a bed capacity not exceeding 190 with the understanding that 29 of that capacity shall be reserved for class members properly admitted to the Health Care Center of WSTS. The CAB shall evaluate as needed.

vi) For the purpose of this Agreement, WSTS on-campus

census shall mean those class members residing on-campus and admitted to the WSTS and shall not include persons residing at WSTS for emergency medical or respite care on a short-term basis.

b) WSTS class members shall be discharged to community settings in accordance with the IPP's team assessment, including, but not necessarily limited to, the following:

- i) independent living;
- ii) natural home;
- iii) adult companion program;
- iv) shared living arrangement;
- v) foster home;
- vi) supported living arrangements;
- vii) small group living of no more than four (4) persons.

c) To accomplish these objectives, the State shall for the next four years, provide appropriations sufficient for the development and operation of community support services throughout the state to serve the needs of the class.

d) Each class member, according to individual choice and the IPP process, shall be placed in a location as close as practical to the area in which his/her parents/guardians, and other interested parties reside.

e) Community support services may include existing community

programs, facilities and other services developed as a consequence of the need to provide appropriate services and supports for class members. The State shall take all steps necessary to develop and operate a broad range of community facilities, programs, and support services to meet the needs of the class members. Until such time as other private or governmental agencies develop and operate community facilities and programs sufficient to meet the needs of the class, the State will accept direct responsibility for the funding and assurance of the development of these services as necessary.

f) No class member shall be discharged from WSTS merely to meet a placement timetable.

g) In establishing a schedule for transitioning class members into community-based placements, individuals who meet the following description shall be given priority:

- 1) those who request or whose parents (of minor children) or legal guardian request community placement;
- 2) children aged 21 or younger; and
- 3) during each year of the four-year plan, class members with varying degrees of disabilities shall be moved into community placements in order to insure the comprehensive development of community services.

6.02 Area Resource Specialist

a) The State shall create four geographic service areas for delivery of individualized supports and services as required for class members. The combined service areas shall cover the entire state. The State shall, by October 31, 1991, employ an Area Resource Specialist for each of the four service areas. The Area Resource Specialists shall oversee and insure the development of additional community service services across the area as necessary to meet the terms of class member's IPP's. The Area Resource Specialists shall insure an ongoing area wide public education and information program regarding the positive contributions of persons with mental retardation.

b) The Area Resource Specialist shall be responsible for identifying or developing the means to deliver appropriate individualized services as provided in the IPP. Such specialists shall be familiar with and actively pursue the development of state-of-the-art strategies for integrating class members into the communities, the provision of home living, work and education. Such specialists shall be familiar with existing services within the area. Such specialists shall first attempt to contract with existing agencies to provide services as required by IPP's. Where such services do not exist, the specialists shall encourage area

providers to develop such services. Generic services, available to other citizens in the community, shall be used to provide supports needed to the extent they are available. Where such services are not available and cannot be reasonably developed, the service shall be obtained from providers of developmental disabilities.

6.03 Technical Assistance. The State shall develop and no later than ninety (90) days after the date of this Agreement, present pursuant to the review process, a plan which will insure the provision, by no later than December 1, 1991, of expert technical assistance as necessary and requested for all components of the Wyoming service delivery system, both public and private. Such plan shall also specify the manner in which the State shall provide emergency assistance to class members when, for any reason, they require it.

6.04 Rate Setting Methodology

- a) The State shall provide funding at rates which reflect the actual cost of services and any regional variation in costs.
- b) This Agreement does not require the expenditure of funds for supports and services for class members in a community setting which would exceed the average cost for class members to WSTS exclusive of community start-up and capital costs.

6.05 Rules and Regulations. The State shall by December 31, 1991, draft and present rules and regulations subject to the review

process to insure the quality of supports and services provided for in this Agreement. Such regulations shall be consistent with enhancing participation in the community and decreasing dependence on state services. All regulations shall be consistent with provisions of this Agreement.

6.06 Monitoring

- a) The State shall annually monitor compliance of service providers with state regulation and the delivery of individualized services as required by the IPP.
- b) Such monitoring shall provide a follow-up mechanism to rapidly achieve compliance where a program is found out of compliance.
- c) Monitoring activities shall include a written report.

6.07 Management

- a) Section 5.05 of this Agreement shall apply where applicable.
- b) Public Education. By June 30, 1991, the State shall develop and implement a systematic public education plan which will encourage understanding and involvement of communities and neighborhoods with persons with mental retardation. Such plan shall be reviewed by P&A pursuant to the review process.
- c) Legal and Civil Rights. The State shall, by June 20, 1991, prepare a document listing the legal and civil

rights of the class members. Such document shall be provided to all class members. Training shall be provided regularly to class members on their legal and civil rights and responsibilities. Such document shall be submitted to P&A pursuant to the review process.

d) Ombudsperson.

i) By no later than December 31, 1990, a State ombudsperson shall be available who will focus solely on individual rights and services in the community and who will be freely available to anyone who wishes to report abuse, neglect, or other community service issues. Such an ombudsperson shall be retained by the State in the independent quality assurance entity. This ombudsperson shall serve only those persons requiring community services and thus, is separate from the ombudsperson serving at WSTS. The ombudsperson shall make at least quarterly reports to the State, the CAB and P&A.

ii) The ombudsperson shall have independent authority to make any appropriate investigation in order to ascertain the true facts concerning the alleged wrongful practice or violation of

individual or civil rights. All reports made by the ombudsperson shall be confidential, unless waived by the individual reporting an allegation. Any individual reporting shall not be discharged or otherwise discriminated against for making any report of alleged abuse, neglect or violation of individual or civil rights.

ARTICLE VII

EDUCATION

7.01 Purpose. School age students who are class members at the WSTS are the responsibility of the State through the LEA/IEU. The SDE assures, through monitoring and funding, free and appropriate public education for each student at WSTS.

7.02 Emerson School. Emerson School will be closed by September 1, 1992.

7.03 IEP Review Dates. LEAs/IEUs will convene IEP/CSC meetings to conduct reviews of IEPs and related services by October 1, 1991 for WSTS class members. The IEPs of all other class members living in state facilities will be reviewed by December 31, 1991.

7.04 Educational Needs Assessment Team. An ENAT will be established by SDE subject to approval of the CAB to review the current IEPs of school-age class members at WSTS and other state facilities. The team will consist of at least three members who are knowledgeable and experienced in one of the following areas including, but not limited to:

- a) early childhood education (3-5 yr. old);
- b) transitional education (16-21 yr. old);
- c) general education of persons with disabilities;
- d) medical matters and/or behavior disorders.

The ENAT will make recommendations and shall be a resource for

the IEP/CSC and IDT in transitioning those school-age students who are class members to the appropriate and least restrictive educational environment. ENAT's expenses will be paid by the State out of non-Foundations funds upon completion in writing of their recommendations to the parties and CAB. ENAT's initial written reports will be completed July 1, 1991, and sent to the IEP/CSC and IDT.

7.05 Parent Involvement. All parents of school-age members will be notified about the IEP review process by the State and will be encouraged to be actively involved. In cases where the child is a ward of the State or the parents cannot be located or choose not to be involved with their child's education, that school-age class members will be assigned a surrogate parent to act on behalf of that child.

7.06 Surrogate Parent. The surrogate parent(s) shall be assigned by SDE and thereafter the student's LEA/IEU shall be that of the surrogate parent. The expenses of the surrogate parent shall be paid by the State out of Foundation funds.

7.07 The Individual Education Plan. Each written IEP prepared for a school-age class member residing in a state facility shall include:

- a) the date of the initial placement at the facility;
- b) the reason for the placement at the facility;
- c) a summary of the current services provided to, or

needed by the student; and

d) a projected date for transitioning to a LEA/IEU.

7.08 Transition. Prior to a student's transition, the LEA/IEU, state facility and SDE will work closely in the transitioning process. The state facility will provide the LEA/IEU with the school-age class member's IPP, educational evaluations, and other relevant records to assist in the transition.

No school-age class member shall be transitioned without a current IEP/IPP.

7.09 Funding. For the first twelve (12) months that an LEA is financially obligated to provide educational services, the LEA shall receive one-hundred percent (100%) of the costs allowable under W.S. 21-3-309(e) payable in twelve (12) monthly Foundation Program payments from the time the obligation commences. The payment shall be predicated on cost estimates agreed to between the LEA and SDE. Thereafter, W.S. 21-13-309(e) shall be used to compute the Foundation Program costs in the usual fashion for such LEAs. LEAs/IEUs may contract for educational and related services for all school-age class members.

7.10 Other Resources. In order to assure free and appropriate education and related services, SDE may accredit or certify educational programs and related educational support service providers.

7.11 Personnel. SDE shall be provided four (4), full time

staff positions to comply with the terms and conditions of this Agreement.

ARTICLE VIII

IMPLEMENTATION, MONITORING AND DISPUTE RESOLUTION

8.01 Compliance Advisory Board

a) There shall be established a Compliance Advisory Board (hereinafter CAB) of two persons, who will have primary responsibility for assisting the Court and the parties in carrying out the implementation of this Consent Decree/Settlement Agreement. The CAB and its staff shall utilize a dispute resolution policy in order to minimize litigation, argument, and fault-finding and to ensure that the energies and resources of the interested persons remain focused on forwarding the best interests of the class members.

b) The parties shall use their best efforts to first resolve any differences on an informal basis, with the assistance of CAB or CAB staff as necessary. If, after reasonable attempts have been made, the parties have not resolved a dispute, such disagreement shall be decided formally by the following entities in the following order: 1) CAB; 2) the Hearing Officer (see Section 8.05); and 3) the Court.

8.02 Members. One person shall be selected by the Plaintiffs, subject to approval of the Defendants. One person shall be selected by the Defendants, subject to approval of the Plaintiffs.

Upon the inability of either of the CAB members to continue to serve, his or her replacement shall be selected in the same manner as the person to be replaced.

8.03 CAB Functions and Duties. The CAB will function as follows:

- a) The CAB shall operate informally and meet whenever it deems appropriate.
- b) The CAB is authorized to hire staff members as necessary.
- c) The function of the CAB is to oversee and facilitate the Defendants' compliance with this Agreement. The CAB shall be informed fully of the provisions of this Agreement and of the Defendants' implementation and the results thereof in order to provide meaningful assistance and resolve any issues of compliance that may arise. To that end, the CAB is authorized to hire persons with expertise in the various areas of mental retardation and/or community integration who can provide the technical assistance necessary for the successful implementation of this Agreement.
- d) Within forty-five (45) days of the effective date of this Agreement, the parties shall jointly develop and submit to CAB a recommended plan for CAB oversight which includes client services at WSTS, review of community

placements, and implementation of this Agreement. The CAB may invite other interested parties to submit recommendations on how CAB should carry out its oversight function. The parties recommended plan shall be submitted to CAB for CAB's review, modification, and ultimate adoption as the oversight plan. The CAB may modify the oversight plan and its methods of oversight as necessary to carry out the successful and meaningful implementation of this Agreement. Either party may at any time recommend such modifications to the CAB.

e) The parties shall jointly compile semi-annual written reports outlining the degree of progress with respect to the CAB oversight plan and the implementation of this Agreement. Such reports shall also include recommendations concerning the steps necessary to maintain compliance with the terms of this Agreement. All such reports shall be submitted to the CAB. The first semi-annual report shall be due six (6) months from the effective date of this Agreement.

f) The CAB, its staff, and experts hired by the CAB shall have prompt access to all information, records, buildings and areas, including those of community providers, and shall be permitted to interview any member of the class, employee of the State or employee of a

provider, at reasonable times and places, to the extent necessary to discharge their duties under this Agreement. The CAB, staff, and experts shall maintain confidentiality of the class members, any persons residing in community facilities and of staff or employees or providers who are interviewed.

g) The CAB and its staff may conduct any additional and reasonable inquiries deemed necessary to address the issues to be covered by the semiannual reports, and where appropriate, may draw upon and employ the experience of recognized experts (as outlined in Subsection (c) of this Section), within the limits of the CAB budget. The parties shall be advised in advance of any such employment, and shall be permitted to attend any exit conferences and receive copies of any written reports.

h) The parties strongly encourage the CAB members and staff to make informal suggestions to the State, in whatever form they deem appropriate, which in their opinion will facilitate compliance with this Agreement.

i) Any class member or his/her representative, parent, surrogate parent, guardian, or employee may bring a situation or disagreement related to the provisions of this Agreement or of his/her individual program to the staff of the CAB for guidance,

interpretation, or resolution by the staff or by the CAB. Efforts shall be made to resolve any such matter informally, including first resort to available administrative processes.

j) The CAB shall provide to the parties all information submitted to the Court by the CAB or its staff, in any form.

k) Any report or investigation received by any party regarding this Agreement shall be promptly provided to CAB, the State and P&A.

l) CAB members and CAB staff shall receive compensation from the State, on a monthly basis, and shall be promptly reimbursed by the State for reasonable out-of-pocket expenses incurred in performing their duties. The State shall provide office space in a mutually agreeable location, telephone service, postage, clerical staff and support equipment to enable the CAB to carry out its duties.

i) Within ninety (90) days of the appointment of the CAB, the CAB shall prepare and submit to the parties and the Court a two-year budget which describes in sufficient detail the proposed expenses for the operations of the CAB. The budget for the CAB shall be approved

by the Court. After the first year of implementation of the Agreement, CAB shall review the projected budget for the second year and may recommend modifications as necessary and subject to court approval.

8.04 Liaison Personnel. WSTS and the Division of Community Programs of the State's Department of Health shall each have a full-time liaison position and SDE shall have a part-time position to insure compliance with this Agreement.

These liaison persons will coordinate their efforts and responsibilities with an individual from the Governor's Office to synchronize the State's compliance with this Agreement and communications with the CAB.

8.05 Meetings. The CAB and the parties shall hold an initial meeting with the Court to discuss and seek authorization of the oversight plan and the compliance monitoring process. Additional meetings shall be convened by CAB as necessary to facilitate the effective implementation of the Agreement. The CAB or parties may request a meeting at any time, and may request discussion on any issue by providing a written request at least ten (10) days prior to such conference. The purpose of these conferences will be to facilitate communication and problem-solving. Emergencies or life-threatening situations shall be resolved as expeditiously as possible, with the requirement for the ten-day notice waived.

8.06 Dispute Resolution Process. The parties to this agreement believe that citizens with mental retardation in the State are best served by the cooperative efforts of the parties with a focus on problem solving as opposed to the adversarial nature of litigation. To this end, the parties agree to make their best efforts to resolve all disputes arising from this Agreement on an informal basis. However, in the event that the parties believe that the terms of the Agreement are being violated or that an IDT decision regarding placements or services is inappropriate, the following procedures shall be utilized.

8.07 Non-Compliance With Agreement.

- a) Written notice of alleged non-compliance must be submitted to the opposing party (respondent) and the CAB. The notice must recite the specific facts, the grounds relied upon to demonstrate non-compliance, and the relief being sought. In addition, the notice shall contain a description of efforts made to informally resolve the issue prior to the filing of the notice.
- b) Within seven (7) working days from receipt of the written notice of alleged non-compliance, the respondent shall serve a written response on the complaining party and the CAB setting forth with particularity either a plan of abatement consistent with the terms of this Agreement or, if the respondent disagrees that the facts

or grounds cited in the notice constitute non-compliance, serve a denial containing an explanation of the facts and grounds which support such position.

c) If the complaining party is not satisfied with the response, it may within seven (7) working days of receipt request a review by the CAB by serving a notice to the CAB and the opposing party.

d) The CAB may request such additional information from the parties as it deems necessary and shall set the matter for a settlement conference with the parties within ten (10) days of its receipt of notice. Such conference may be in person or via telephone, as the CAB deems appropriate. In the event the dispute cannot be settled, the CAB shall refer it to the Hearing Officer for the purpose of taking additional evidence and making findings and recommendations to the CAB.

e) Except where good cause is demonstrated, a matter shall be heard within ten (10) days from the date a hearing is requested. The Hearing Officer shall make his/her findings and recommendations within ten (10) days from the date of the hearing.

f) The CAB shall issue a final written decision setting the facts upon which they rely within ten (10) days of receipt of the Hearing Officer's findings. If the

members of the CAB cannot reach an agreement, they may refer the matter to a person who is mutually agreed upon by the CAB whose opinion shall be final; or, the CAB may issue separate opinions.

g) Any party not satisfied with the final decision may appeal that decision to the Court within ten (10) days of their receipt of a final decision.

h) During all phases of this process, the parties are free to submit documentary evidence, affidavits, and briefs which support their positions.

8.08 Appeals of IDT and IEP Decisions. The process of resolving disputes surrounding IDT and IEP decisions on placements or services shall be the same as that set forth in Section 8.07 of this Agreement with the following exceptions:

a) Parents of adults who are not guardians shall not have the right to appeal the CAB's decision to the Court.

b) Disputes regarding IEP decisions shall not be appealable to the District Court. The dispute resolution process set forth in this Agreement shall be neither exclusive nor binding and all such issues shall be subject to the review mechanisms set forth in the Individual with Disabilities Education Act, 20 U.S.C. Section 1415.

8.09 Emergencies.

a) Notwithstanding the provisions in Section 8.06, where a party believes an issue involves an immediate threat of harm to a class member, all parties and the CAB shall be immediately notified and take such actions necessary to protect the safety of the class member pending the resolution of the issue.

b) In such emergency situations, the CAB may modify the review process in any manner it deems necessary to protect the safety of the client, including but not limited to, immediate contacts and requests for relief from the Court.

8.10 Hearing Officer.

a) The Hearing Officer shall be selected by the CAB from the recommendations of the parties and shall be an attorney familiar with the rights of individuals with mental retardation and with the terms of this Agreement.

b) The Hearing Officer shall preside over all hearings consistent with the provisions of this Agreement, take and rule upon evidence and report his/her findings and conclusions in writings to the CAB.

c) Hearings conducted by the Hearing Officer shall be recorded by a certified court reporter. Parties may call and cross-examine witnesses, and submit evidence in


accordance with the Federal Rules of Evidence.


d) The Hearing Officer shall receive appropriate compensation from the State for such time as he/she devotes to matters under this Agreement, on a monthly basis. The Hearing Officer shall be reimbursed by the State for reasonable out-of-pocket expenses incurred in the performance of his/her duties.

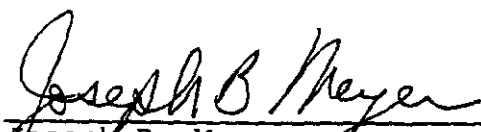
DATED THIS 13th day of March, 1991.


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