

EXHIBIT 3

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

**2001 PLAN FOR COMPLIANCE AND CONCLUSION OF
EVANS V. WILLIAMS**

SUBMITTED BY
MARGARET G. FARRELL
SPECIAL MASTER

WITH THE COLLABORATION, COOPERATION AND AGREEMENT OF
THE PARTIES IN THIS ACTION

JANUARY 2001

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**LEGAL FRAMEWORK OF THE PLAN FOR COMPLIANCE & CONCLUSION OF
*EVANS V. WILLIAMS***

In his February 10, 1999 Order, Judge Stanley Harris ordered the Special Master, in cooperation and conjunction with the parties, if possible, to develop a plan for the conclusion of this action, addressing the disposition of the fines paid by defendants and including suggestions for post-litigation mechanisms to ensure the protection of the plaintiff class' continuing interests in adequate habilitation. *Evans v. Williams*, 35 F. Supp.2d 88, 97 (D.D.C. 1999).²

Among other things, the Plan is to address:

- a. A summary and articulation of the goals of this lawsuit;
- b. The status of compliance with various Court Orders;
- c. The quality assurance methods to be developed and implemented by the defendants to monitor the performance of public and private providers of service;

¹ *THIS PLAN WAS CONCEIVED, SHAPED, AND DRAFTED SIGNIFICANTLY BY EXPERT TO THE SPECIAL MASTER, CLARENCE J. SUNDRAM, FORMER CHAIRMAN OF THE NEW YORK STATE COMMISSION ON QUALITY OF CARE FOR THE MENTALLY DISABLED, WHO WORKED CLOSELY WITH THE SPECIAL MASTER AND PARTIES OVER THE TWO YEARS OF ITS DEVELOPMENT.*

² *THE EXISTING ORDERS IN THIS CASE ONLY REFERENCE THE EVANS CLASS MEMBERS (I.E., THOSE INDIVIDUALS WHO HAVE AT ONE TIME RESIDED AT FOREST HAVEN), AND THEREFORE, DO NOT INCLUDE ALL INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES IN DEFENDANTS' SERVICE DELIVERY SYSTEM. HOWEVER, DEFENDANTS HAVE EXPRESSLY AGREED NOT TO CREATE A BIFURCATED SYSTEM OF SERVICES FOR ITS CITIZENS WITH DEVELOPMENTAL DISABILITIES, AND THEREFORE, HAVE AGREED TO IMPROVE SERVICES WITHIN THEIR SYSTEM AND TO PROVIDE THE SAME LEVEL OF SERVICES TO CLASS AND NON-CLASS MEMBERS. AS A RESULT, THIS PLAN REFERS TO "CONSUMERS" RATHER THAN "CLASS MEMBERS" THROUGHOUT. CONSUMERS SHALL REFER TO ALL INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES, INCLUDING ALL EVANS CLASS MEMBERS, THAT THE DISTRICT OF COLUMBIA GOVERNMENT AND DEFENDANTS SERVE IN THEIR SERVICE DELIVERY SYSTEM. THIS NOMENCLATURE DOES NOT EXPAND THE COURT'S JURISDICTION TO NON-CLASS MEMBERS.*

d. The standards, including outcomes standards to be developed and implemented by defendants, that should be used to determine defendants' continued compliance with Court-ordered requirements, and the way in which compliance with such standards should be measured;

e. The degree of compliance that should be required with each of the standards recommended;

f. The steps necessary to establish permanent, objective, efficient, and effective post-termination monitoring of the programs serving consumers by independent entities; and

g. The steps necessary to coordinate existing mechanisms and to develop needed mechanisms for the advocacy of the interests of consumers on an individual and community-wide basis.

THE PLAN STRUCTURE

The Plan has the following structure:

1. It recognizes that there is already in place a declaratory judgment and permanent injunction recognizing a federal constitutional right to receive individualized habilitative care and treatment in the least separate, most integrated, and least restrictive settings, and to be kept free from harm. It also recognizes that there are Court Orders, which are outdated or no longer relevant, which need to be disposed of.³

2. Under each of the broad goals of the Court Orders, it summarizes the specific provisions of outstanding Court Orders that must be complied with as they relate to these broad goals. These Court Orders are grouped so that all related Court Orders are included under the goal to which they most closely relate. The Plan then identifies the specific actions that must be taken by the defendants to come into compliance with this group of outstanding Court Orders. These actions fall into three broad categories:

- a. Changes in the service delivery system;
- b. Creation and permanent funding of an independent External Monitoring Body;⁴
and
- c. Creation and permanent funding of legal representation and lay advocacy services.

³ *THE PARTIES SHALL ATTEMPT TO REACH AGREEMENT ON WHAT ORDERS MAY BE VACATED AND SHALL SUBMIT A JOINT MOTION TO THAT EFFECT TO THE COURT.*

⁴ *AS DESCRIBED MORE FULLY IN SECTION D.3 OF THE PLAN, THE PARTIES HAVE AGREED THAT THIS EXTERNAL MONITORING BODY WILL BE THE QUALITY TRUST FOR INDIVIDUALS WITH DISABILITIES, INC., A DURABLE, INDEPENDENT, NONPROFIT AGENCY [HEREINAFTER REFERRED TO AS A QUALITY TRUST.@]*

The Plan attempts to define with reasonable specificity the actions that are necessary to meet the requirements of the Court Orders. In many areas, the actions include the adoption of new policies and procedures and staff training to address particular issues. The Plan could approach these issues in different ways. One option is to provide for detailed prescriptions of what the policies and procedures and staff training ought to contain. The shortcoming of this approach is that it significantly restricts the room for judgment by those responsible for managing the system. An alternative approach that the Plan adopts is to provide for an open and accessible process of policy-making, where the parties and experts that they recommend, have a meaningful opportunity to provide input into proposed policies and training initiatives prior to their adoption and dissemination, and that the defendants give careful consideration to such input. In each section of the Plan where a need for new or revised policies and procedures is identified, the Plan requires that the process of policy-making will involve close collaboration with the plaintiffs⁵ and the plaintiff-intervenor, and experts whom they recommend, prior to the adoption of these policies and procedures. However, the final decision about the policies and procedures and training programs will remain with the defendants, understanding that if they fail to address serious concerns raised by the plaintiffs and plaintiff-intervenor, this may result in compliance issues down the road.⁶ In the final analysis, it is compliance with the specific outcome criteria that is required (*see* paragraph 4 below), and the tasks identified are a means to this end.

3. For each set of actions, a timetable for implementation is established. These timetables recognize up to three stages of implementation and establish interim time frames for each stage to enable the parties and the Special Master to monitor the defendants' progress in the implementation process. The parties anticipate that periodic progress reports to the Special Master will be required as the process of implementation progresses, and that status conferences will be scheduled with the Court at least bi-monthly, and more frequently as the Special Master or the Court determines to be warranted. Thirty days prior to the scheduled date for a status conference, the Special Master will establish an agenda for the conference, and require a written progress report from the defendants on the items on the agenda. Such progress report will be provided within 14 days, with copies to the plaintiffs and plaintiff-intervenor. The plaintiffs and plaintiff-intervenor will have 10 days from the receipt of the progress report to file any comments on such report with the Special Master, with copies to the defendants.

4. For each set of actions, the Plan identifies specific outcome criteria for determining compliance with the related group of Court Orders. These criteria put the parties on notice about the results that must be achieved to satisfy the standard of compliance. Thus, while it is the intent of the parties to monitor the timely implementation of the specific tasks that have been identified as necessary for implementation of the Court Orders in each section, *the ultimate test of compliance will be in satisfying all of the related outcome criteria.* The parties agree that if the Court finds that defendants have satisfied the outcome criteria, the defendants will also be in compliance with the related Court Orders pursuant to this Plan, and the Court may vacate the

⁵ *THROUGHOUT THIS PLAN, THE TERM PLAINTIFFS@ IS INTENDED TO INCLUDE THE PLAINTIFF-INTERVENOR, THE UNITED STATES.*

⁶ *SUCCESSFUL IMPLEMENTATION OF POLICIES AND TRAINING ALSO REQUIRES THAT OTHER INTERESTED STAKEHOLDERS HAVE ACCESS TO THE PROCESS AND THE OPPORTUNITY TO HAVE THEIR CONCERNS HEARD AND CONSIDERED IN DEVELOPING POLICY AND TRAINING INITIATIVES AND PLANNING THEIR IMPLEMENTATION.*

related Court Orders subject to the provisions in paragraph 7 below. The failure of the defendants to implement the actions identified in the Plan as necessary to meet the requirements of the related Court Orders is also evidence of noncompliance with those Court Orders. In any event, pursuant to paragraph 7 below, the Court will ultimately decide whether or not the defendants have complied with the outcome criteria.

5. Measuring compliance does not lend itself to a mathematically precise formula. The measure of compliance depends on the nature of the interest at stake and the degree to which the defendants' noncompliance affects that interest.⁷ It is evident that some of the Court Orders are of more importance to the protection of critical interests of plaintiffs than others and therefore will require a higher threshold of demonstrated compliance.

For each set of actions, the Plan assigns a standard of compliance, consistent with the Court Order of February 10, 1999.⁸ The three threshold levels proposed are:

1) Full Compliance. This threshold level essentially requires full compliance (95 percent) with specific, objectively measurable requirements contained in the Court Order itself.⁹ Where there is specificity in the Court Order, obviously it cannot be disregarded lightly. This threshold anticipates that the defendants will completely meet these specific legal obligations, although it would give the Court and the Special Master discretion to disregard minor and inconsequential failures of total compliance which: (i) do not affect substantial interests of the plaintiff class; and (ii) are due to genuinely unanticipated or unforeseeable circumstances; or (iii)

⁷ *FORTIN V. COMMISSION OF MASS. DEP'T OF PUB. WELFARE*, 692 F.2D 790, 795 (1ST CIR. 1982); *JOSEPH A. BY WOLFE V. N.M. DEP'T OF HUMAN SERVICES*, 69 F.3D 1081 (10TH CIR. 1995), CERT. DENIED, 517 U.S. 1190 (1996).

⁸ *THIS PROVISION OF THE PLAN HAS BEEN THE SUBJECT OF ON-GOING AND SUBSTANTIAL DISCUSSION BETWEEN THE PARTIES AND THE SPECIAL MASTER AND, ULTIMATELY, THE PARTIES DID NOT REACH AN AGREEMENT ON IT. THE POSITION OF THE PLAINTIFFS AND PLAINTIFF-INTERVENOR IS THAT THERE SHOULD BE TWO LEVELS OF COMPLIANCE: FULL (100 PERCENT) AND HIGH (90 PERCENT). THE DEFENDANTS ACCEPT THE THREE TIERED STRUCTURE AND RECOMMEND DIFFERENT THRESHOLD LEVELS FOR COMPLIANCE: FULL (85 PERCENT); HIGH (80 PERCENT) AND SIGNIFICANT (75 PERCENT). AFTER CAREFULLY CONSIDERING THE POSITIONS OF THE PARTIES, THE SPECIAL MASTER RECOMMENDS THE STRUCTURE AND THRESHOLD LEVELS CONTAINED IN THE PLAN.*

⁹ *THIS THRESHOLD IS SET AT 95 PERCENT TO ACCOMMODATE THE DEFENDANTS' CONCERN NOT TO BE PENALIZED FOR OCCASIONAL AND TEMPORARY SLIPPAGE IN TOTAL COMPLIANCE LEVELS.*

are due to the actions of independent actors outside the control of the defendants which occurred despite the best good faith efforts of the defendants. Generally speaking, this level of compliance will be expected in implementing the structural aspects of the Court Orders which are essential conditions to implementing the programmatic aspects of the Court Orders.

2) High Compliance. This threshold requires compliance with the indicator at a rate generally exceeding 90 percent compliance. Where instances of noncompliance with the indicator are found, *none* can involve a serious and substantive violation of the Court Order with significant adverse impact upon class members (i.e., actual harm or a serious, risk of harm) in the judgment of the Court and Special Master (e.g., excusable noncompliance may involve failure to comply with documentation or some aspect of process, without significant adverse impact). Generally speaking, this level of compliance will be expected for important programmatic aspects of the Court Orders.

3) Significant Compliance. This threshold requires compliance with the indicator at a rate generally exceeding 80 percent compliance. Where instances of noncompliance with the indicator are found which involve a serious and substantive violation of the Court Order with significant adverse impact upon class members, this threshold may nevertheless be met if, in the judgment of the Court and Special Master, these instances were sporadic or isolated in nature and promptly addressed by effective corrective action.

6. The Plan identifies the method by which the Special Master, and ultimately the Court, will assess compliance for each set of outcome criteria. Thus, the parties will be aware at the outset of the manner in which different types of data will be evaluated in determining whether the standard of compliance has been met as to particular areas of the Court Orders.

7. The Plan provides that as the implementation process proceeds, defendants will utilize information generated from internal monitoring processes to determine when they believe they have met the standards for compliance with the identified outcome criteria for each set of actions related to a group of Court Orders. At this point, defendants shall approach the plaintiffs and plaintiff-intervenor to see if they concur that there is compliance with the set of actions and outcome criteria. If there is no agreement, the defendants can move the Special Master for a finding of compliance as to these Court Orders and can seek to have the related Court Orders vacated and dismissed.¹⁰ In doing so, the defendants, who have the burden of proof of establishing compliance, will offer evidence of compliance with the outcome criteria. If the plaintiffs and plaintiff-intervenor do not challenge the evidence of compliance within 30 days, the parties may move jointly for an Order vacating and dismissing the related Court Orders. The plaintiffs and plaintiff-intervenor may contest the contention of compliance within 30 days, by filing written reasons for their objections with the Special Master. After such filing, the plaintiffs and plaintiff-intervenor will have an additional 45 days to submit evidence in

¹⁰ *IN FREEMAN V. PITTS, 503 U.S. 467 (1992), THE UNITED STATES SUPREME COURT HELD THAT FEDERAL COURT DECREES CAN BE TERMINATED IN STAGES. IN DEALING WITH A LONG-STANDING SCHOOL DESEGREGATION CASE, IT APPROVED THE PARTIAL DISMISSAL OF PORTIONS OF THE CASE IN WHICH THE SCHOOL DISTRICT WAS IN COMPLIANCE, WHILE RETAINING JURISDICTION OVER NON-COMPLIANT ASPECTS OF THE COURT ORDERS.*

support of their objections. The plaintiffs and the plaintiff-intervenor shall have the right to access all persons, residences, facilities, buildings, programs, services, documents, records and materials necessary to determine if defendants have complied with existing Orders in this case or the provisions of this Plan that are related to class members or the care and/or services provided to class members in this case. Such access shall include all departmental and/or individual class member records. The Special Master shall schedule a hearing on the issue of compliance and may retain independent consultants to evaluate the status of compliance. If independent consultants are retained by the Special Master, upon receipt of the report of the independent consultants, the parties will have 30 days to file their comments. Any party may challenge the findings and conclusions of these consultants, leading to a fact-finding hearing before either the Special Master or the Court. Upon the conclusion of such hearings, the Special Master shall present the Court with proposed findings of fact and conclusions of law consistent with Fed. R. Civ. P. 53. The ultimate decision on whether particular Court Orders are to be vacated and/or whether this case is to be dismissed rests with the Court and not the Special Master. Unless there is a joint motion to vacate particular Court Orders, no Court Order shall be vacated without a hearing before the Court at which evidence of compliance with the Order is provided.

8. The Plan anticipates that, over time, the defendants will implement all of the required actions and meet the specified outcome criteria in order to successfully move the Court to vacate and dismiss the related Court Orders, except the declaratory judgment on the constitutional rights of the consumers to receive individualized habilitation in the least separate, most integrated and least restrictive environment and to be protected from harm. It is also anticipated that in the course of implementation, the existing District of Columbia statutes will be revised and a new set of updated legal standards will be adopted, incorporating the goals of the Court Orders, and will be enforceable in Superior Court and that plaintiff class members will have access to legal representation services as described in the Plan to enforce their rights. The permanent injunctions shall not be vacated until all other Orders are vacated.

9. The Plan itself generally is not intended to be an enforceable document. However, class members have a great interest in ensuring that the agreed upon actions identified in this Plan are in fact implemented effectively and in a timely manner by the defendants to secure the benefits and protections provided for by the Court Orders. Until the Plan is implemented and the compliance standards are met as described above and related Court Orders are vacated and dismissed as provided for in the Plan, the underlying Court Orders continue to remain enforceable in federal court. More specifically, in the event that the defendants do not implement the provisions of this Plan effectively and on a timely basis, plaintiffs and plaintiff-intervenor retain the right to seek appropriate judicial relief, based on this evidence of noncompliance with the Court Orders, including Orders requiring specific performance of the Plan.

10. Once the Court Orders are vacated and dismissed, as described in paragraphs 7 and 8 above, the Plan anticipates that the Quality Trust will assume full monitoring responsibilities for class members and that any cases involving individual rights violations will be litigated in Superior Court under District of Columbia statutes and with the assistance of the legal representatives and lay advocates provided under the Plan. The Plan does not anticipate that plaintiffs or the plaintiff-intervenor will seek recourse to the federal court to litigate individual violations of rights in this case pursuant to the declaratory judgment which will remain unless:

(1) there are systemic violations of the declaratory judgment; or (2) legal remedies are unavailable in Superior Court (e.g., due to repeal of the statutes); or (3) there is a failure to adequately fund the Quality Trust pursuant to the Consent Order dated January 19, 2001.

A. GOAL¹¹ -- APPROPRIATE INDIVIDUALIZED HABILITATION AND TREATMENT IN THE COMMUNITY IN THE LEAST SEPARATE, MOST INTEGRATED AND LEAST RESTRICTIVE SETTINGS. (1978 FINAL JUDGMENT AND ORDER, SECTION, I.1, I.3)

1. Individualized Habilitation Plans

- i. Defendants shall develop and provide for each class member a written individualized habilitation plan, based upon individualized assessments and formulated in accordance with professional standards (as set forth in the Joint Commission on Accreditation of Hospitals, Accreditation Council for Services For Mentally Retarded and other Developmentally Disabled Persons, Standards for Services for Developmentally Disabled Individuals [1977]) with the participation of the retarded person, his or her parents, guardian, advocate, and parent surrogate if there is one; and to provide for each an individualized habilitation program designed in accordance with the plan, to provide annual periodic review of the plan and program, and the opportunity to each member of the plaintiff class and his or her parent, guardian, advocate, and surrogate parent, if there is one, to participate in such review. (1978 Final Judgment and Order, Section II.5.A a, 1983 Consent Order, section I.1) Defendants shall ensure that each consumer's assessment and habilitation plan are revised annually. (1981 Consent Order, section 2.a)*
- ii. Priority in implementing IHPs shall be given to class members who have been identified as Assaultive, self-injurious, self-abusive, mentally ill, or who have acute medical needs or identified needs for physical rehabilitative services (e.g., physical therapy, occupational therapy, surgery).@ (1981 Consent Order, section 2.e)*
- iii. Services required by consumers shall be identified in writing in full in all assessments and habilitation plans, whether or not such services are currently available. Defendants shall specify which consumers need particular services that are not being provided. This "needs assessment" shall be continuously updated, showing the additional resources, including staff, supplies and equipment, and transportation resources required by consumers, and shall be issued to the parties every six months. Every six months, defendants shall compile and submit to the Special Master, the Monitor and the parties an overall assessment of aggregate consumer habilitation needs; a recitation of the kind of services required to meet the habilitation needs of the consumer as indicated in their IHPs, and a list of all habilitation needs*

¹¹ THE COURT ORDER OF FEBRUARY 10, 1999 REQUIRES THAT, IN PREPARING THIS PLAN, THE SPECIAL MASTER MUST ARTICULATE THE GOALS OF THIS LAWSUIT (35 F. SUPP.2D AT 97-98).

indicated in the IHPs for which service has not been provided or is not available. (1981 Consent Order, section 2.c.; 1983 Consent Order, sections I.2, I.3; 1996 Remedial Plan, section III)

- iv. Defendants shall ensure that IHPs are disseminated in a timely fashion, i.e., within 30 days of the IHP team meeting. To that end, defendants shall purchase, lease or contract for sufficient copying capacity to make individualized habilitation plans or an accurate summary indicating any changes in the IHP since the last review, available to persons concerned with a provision of services to class members, including the Special Master, the Court Monitor, the family of the class member, day program providers and residential providers. (1996 Remedial Plan, section III)*
- v. On or before October 31, 1996, defendants shall submit to the Special Master a simplified, reduced, uniform and automated ISP to be used for all MRDDA clients, that permit ready comparison of the needs identified and the services provided to meet those needs. (1996 Remedial Plan, section 4)*
- vi. Defendants shall annually provide the Court Monitor and plaintiffs with a list of names of all class members, the dates they are to be assessed or to have IHPs revised, name of case managers and organizations involved in assessments and IHPs. (1983 Consent Order, section VI.1)*
- vii. Defendants shall provide a program of medical, dental and health related services for class members which provides accessibility, quality and continuity of care for physical illness or injury. All injuries and illnesses which require a doctor=s attention shall be immediately reported to the class member=s parent or guardian. (1978 Final Judgment and Order, section III.14. j.)*
- viii. Defendants shall provide each physically handicapped class member with individualized adaptive equipment as needed, including wheelchairs, walkers, braces, feeding apparatus, and auxiliary sensory devices such as hearing aids. Each and every class member shall be immediately evaluated to ascertain the need for such equipment. (1978 Final Judgment and Order, section III.14.k)*

b. Necessary Tasks to Implement the Court Orders

- i. An ISP¹² will be developed and reviewed annually for each consumer,

¹² THE TERM ISP (INDIVIDUALIZED SERVICE PLAN) IS USED INTERCHANGEABLY WITH THE OLDER TERM, IHP (INDIVIDUALIZED HABILITATION PLAN), WHICH IS USED IN THE COURT ORDERS, TO REFLECT A MORE CURRENT PROFESSIONAL APPROACH TO PROVIDING SERVICES AND SUPPORTS TO INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES IN COMMUNITY SETTINGS.

with the participation of the consumer, his or her family members and/or guardian, advocates, attorneys, residential and day program staff members, and appropriate clinical personnel, who know the consumer. Other participants may be included upon the invitation of the consumer or his/her legal guardian.

- ii. All members of the ISP team, including consumers, will be offered training in the development of ISPs.
- iii. Each ISP will specify individualized objectives of the plan in terms of measurable outcomes.
- iv. Each annual ISP plan or review will identify the consumer=s service, support and protection needs regardless of availability, and will be modified by the team as needs and circumstances change, or to reflect the consumer=s expressed wishes, where known, and implemented promptly. The ISP will be disseminated to all the members of the team and placed in the consumer=s chart within 30 days of the planning meeting.
- v. The District will develop procedures for including in each ISP an assessment of the individual consumer =s need for medical and dental care and the means for securing such services within professionally acceptable timeframes.
- vi. The District will develop procedures and time frames for assessing the needs of consumers for the acquisition or repair of adaptive equipment, streamlining the approval process, obtaining necessary funds to purchase or lease such equipment and, providing such equipment to the consumer within 60 days from the date the need is determined. In cases where the adaptive equipment or repair services required by the consumer is not readily available due to special needs, the District will make all reasonable efforts to provide such equipment or repair services as soon as possible.
- vii. The District will develop a computerized information system to aggregate information regarding needs identified in the ISP process and disseminate such information as described below.
 - A. The District will develop a computerized software system for developing ISPs and aggregating information about consumer needs for the purposes of planning and budget making.
 - B. The District will purchase and distribute computers and software for use by case managers in the preparation of ISPs.
 - C. The District will train case managers and other staff responsible for the development of ISPs in the new

computerized process.

c. Time Frames for Implementation

Stage I -- 90 Days Following the Filing of the Plan with the Court

The Mental Retardation and Developmental Disabilities Administration [hereinafter MRDDA] ¹³ will disseminate procedures relating to the acquisition and repair of adaptive equipment as described above.

The District will disseminate to all providers and case managers procedures for including in each ISP an assessment of the individual consumer=s need for medical and dental care and the means for securing such services within professionally acceptable timeframes.

Stage II -- October 1, 2001

MRDDA will develop and test the software system for the computerized ISP system to accomplish the tasks described above.

MRDDA will ensure that case managers have computers and software required to automate the preparation of the ISPs and the aggregation of data in the ISPs, and will begin providing training to staff in using the new system.

The computerized system will be phased in beginning with the ISP revisions that are scheduled after October 1, 2001.

Stage III -- FY 2002 (October 1, 2002)

All consumer ISPs are computerized.

MRDDA will use the data from the computerized ISP system for the purpose of aggregating unmet consumer needs in planning for the system overall and in budget making.

¹³ *AT THE TIME THE PLAN WAS WRITTEN, MRDDA WAS THE ORGANIZATION WITHIN THE DISTRICT GOVERNMENT THAT HAD THE PRIMARY RESPONSIBILITY FOR THE PROVISION OF SERVICES AND SUPPORTS TO CONSUMERS. SHOULD THE LOCUS OF THESE RESPONSIBILITIES CHANGE AS A RESULT OF A GOVERNMENTAL REORGANIZATION OR A TRANSFER OF RESPONSIBILITIES, THE DEFENDANTS WILL CONTINUE TO BE RESPONSIBLE FOR THE PERFORMANCE OF THE TASKS ASSIGNED TO MRDDA IN THIS PLAN.*

d. Specific Outcome Criteria for Determining Compliance¹⁴

i. Consumers will have ISPs developed or revised in accordance with professional standards at least annually, and reviewed whenever there is a significant change in circumstances, based upon individualized assessments, with the active participation of the consumer, case manager, advocate, staff who know the consumer best and any available family members or guardians, at a minimum. ISPs will be disseminated to members of the planning team and placed in the consumer=s chart within 30 days of the planning meeting. Defendants shall notify the Court Monitor and the counsel for the plaintiffs of the dates of the assessments and the ISP meetings for all class members on an annual basis. The defendants shall notify parents/guardians when serious injuries or serious illness require a doctor=s attention.

ii. ISPs will be computerized.

iii. Consumers receive the services and supports identified in the ISP on a timely basis in the least separate, most integrated and least restrictive environment. ISPs must address the consumer=s need for suitable living arrangements, together with community-based day programs and services; employment as appropriate; recreation; medical, dental and health and mental health services which provide for accessibility, quality and continuity of care. If the person has decision-making incapacity, the ISP will provide for decision-making by a guardian or other appropriate surrogate decision-maker. For persons with physical disabilities, the ISP must provide for individualized adaptive equipment, as needed, based on appropriate professional evaluations of the need for such equipment.

(A) An assessment of the need for adaptive equipment is completed within 30 days of a request therefor.

(B) Acquisition and repair of adaptive equipment occur within 60 days from the date the need is determined, unless the District can demonstrate that the acquisition or repair of the adaptive equipment in a specific case was not reasonably possible due to circumstances outside its control, such as lack of availability of the equipment or repair service needed. In such cases, the District will make all reasonable efforts to provide such equipment or repair services as soon as possible.

(C) Medical and dental services are being provided within professionally acceptable timeframes.

¹⁴ THE FEBRUARY 10,1999 ORDER REQUIRES THE PLAN TO PROVIDE FOR A THE STANDARDS, INCLUDING OUTCOME STANDARDS TO BE DEVELOPED AND IMPLEMENTED BY THE DEFENDANTS, THAT SHOULD BE USED TO DETERMINE THE DEFENDANTS= CONTINUED COMPLIANCE WITH COURT-ORDERED REQUIREMENTS . . . @ ID. AT 98.

iv. All unmet needs of consumers are clearly identified in their ISPs whether or not such services are currently available. An action plan formulated in accordance with professional standards is developed and implemented to meet those needs within professionally acceptable timeframes.

v. An accurate needs assessment based on needs identified in individual class members= ISPs is completed and submitted every six months, and utilized in the defendants= planning process.

vi. Unmet needs will be aggregated and specific systemic plans, including necessary funding, will be developed and implemented within the next budget cycle.

vii. The completeness and appropriateness of all ISPs will be subject to Quality Assurance reviews at least annually.

viii. In the event that private providers do not comply with these performance expectations in paragraphs (i)-(iv), appropriate authorities within the District of Columbia government will take action necessary to ensure provider compliance, including the provision of technical assistance, or will impose sanctions designed to assure compliance, including, where necessary, termination of provider agreements, contracts and licenses, fines and termination of reimbursement arrangements.

e. Standard of Compliance¹⁵

High Compliance

f. Method of Assessing Compliance¹⁶

- i. Review the computerized database to verify that annual ISP plans/reviews have been completed; that unmet needs have been identified; and that such needs have been incorporated into planning and budgeting processes.
- ii. Review Quality Assurance documents regarding compliance with ISP standards and for documentation of corrective actions, disciplinary actions and enforcement actions taken as needed to correct any identified problems.

¹⁵ THE FEBRUARY 10, 1999 ORDER PROVIDES THAT THE PLAN SHOULD IDENTIFY A THE DEGREE OF COMPLIANCE THAT SHOULD BE REQUIRED FOR EACH OF THE STANDARDS RECOMMENDED. @ ID.

¹⁶ IT ALSO PROVIDES THAT THE PLAN SHOULD IDENTIFY A THE WAY IN WHICH COMPLIANCE WITH SUCH STANDARDS SHOULD BE MEASURED. @ ID.

- iii. Direct observation of a random sample of 10 percent of consumers= residential and day programs,¹⁷ record reviews and interviews¹⁸ with consumers and families/guardians to determine the adequacy and appropriateness of their ISPs and services and supports provided to these persons.
- iv. Conduct interviews with case managers and advocates assigned to consumers in the sample above regarding the adequacy of the ISP process and the availability and appropriateness of services to consumers. Interviews with the Quality Trust staff should be included in the process.

2. Provision of Residential, Vocational and Day Services

a. Related Court Orders

i. Defendants must provide the class members with community living arrangements suitable to each, together with such community-based day programs and services in the least separate, most integrated and least restrictive community settings. (1978 Final Judgment and Order, section II.5. b)

¹⁷ IN THIS AND OTHER SECTIONS OF THE PLAN WHERE SAMPLE SIZES ARE DESCRIBED, WHEN IT IS NECESSARY TO ASSESS THE SERVICES AND SUPPORTS TO SUBSETS OF CONSUMERS WHERE THE NUMBERS IN THE SUBSET ARE TOO SMALL FOR RANDOM SAMPLING TO BE AN APPROPRIATE METHODOLOGY, PURPOSEIVE NON-RANDOM SELECTION OF A SAMPLE OF AT LEAST 25 CASES WILL BE UTILIZED TO ASSESS SERVICES AND SUPPORTS TO CONSUMERS IN THE SUBSET. SUCH SUBSETS SHALL INCLUDE: PERSONS NEEDING ADAPTIVE TECHNOLOGY; PERSONS FOR WHOM RESTRICTIVE CONTROL PROCEDURES ARE USED; PERSONS WHO RESIDE IN NURSING HOMES OR OTHER LARGE FACILITIES; PERSONS INVOLVED IN A SERIOUS INCIDENTS;@ AND PERSONS AAT RISK@ DUE TO SERIOUS MEDICAL CONDITIONS.

¹⁸ WHERE INTERVIEWS ARE INCLUDED AMONG THE METHODS OF ASSESSING COMPLIANCE, THE PURPOSE OF THE INTERVIEWS IS TO INFORM THE REVIEWERS OF ISSUES OR CONCERNS THAT REQUIRE FURTHER INVESTIGATION. THE INTERVIEWS MAY GUIDE THE REVIEWERS TO EXAMINE PARTICULAR DOCUMENTS OR OTHER SOURCES OF INFORMATION THAT ARE RELEVANT TO THE ISSUE OF COMPLIANCE. THE REVIEWERS SHALL MAKE EVERY EFFORT TO OBTAIN INDEPENDENT VERIFICATION OF ASSERTIONS MADE BY RESPONDENTS IN THE COURSE OF INTERVIEWS.

- ii. No more than eight (8) mentally retarded persons shall be housed in a community living arrangement. Independent evaluation is required if Defendants find medical needs require placement in a facility of more than 8 persons. (1978 Final Judgment and Order, section II.5.c)*
- iii. Defendants shall provide at least five hours of programming daily to class members. Independent evaluation is required for those residents not receiving five hours of programming, with a projected date for the initiation of this requirement. (1983 Consent Order, section VIII.4)*
- iv. In addition to the programming requirements, defendants shall implement a comprehensive recreation program for consumers. (1983 Consent Order, section VIII.6)*
- v. Defendants shall plan to provide opportunities for alternative employment as necessary and appropriate, including training for employment in community programs. (1978 Final Judgment and Order, section II.7.h)*
- vi. No class member shall be fed in any position less than the maximum upright position consistent with his or her capabilities and handicaps. (1978 Final Judgment and Order, section III.14.m)*
- vii. Each consumer shall receive a nourishing, well-balanced diet and assistance in development of proper eating habits. Denial of a nutritionally adequate diet shall not be used as punishment. (1978 Final Judgment and Order, section III.14.l)*
- viii. No class member shall be denied habilitative programming as a punishment. (1978 Final Judgment and Order, section III.14.o)**
- ix. All class members shall be provided with all reasonable opportunities for visitation, for telephone communication, and to send and receive mail. (1978 Final Judgment and Order, section III.14.p)**

b. Necessary Tasks to Implement the Court Orders

- i. The District will develop criteria and placement procedures for nursing home placements and discharges, and provide the plaintiffs and plaintiff-intervenor an opportunity to review and comment on these criteria and procedures prior to finalization. Community alternatives will be used whenever possible for consumers with complex medical needs.
- ii. A plan will be developed for the placement of persons, identified as being inappropriately served in nursing homes, day programs and employment programs into less restrictive, more integrated and appropriate community settings.

- iii. The plan will be implemented in compliance with the procedures and criteria.

c. Time Frames for Implementation

Stage I B90 Days Following Filing of the Plan with the Court

Implement paragraph i.

Stage II B120 Days Following Filing of the Plan with the Court

Implement paragraph ii.

Stage III B240 Days Following Filing of the Plan with the Court

Implement paragraph iii.

d. Specific Outcome Criteria for Determining Compliance

- i. All class members are served in residential and day or employment programs that are the least restrictive, most integrated settings appropriate to their needs. Class members also are provided with adequate supports to allow their participation in recreation and social activities in their communities.
- ii. No consumers are placed in or remain in large institutions or nursing homes inappropriately, or because appropriate community alternatives are not available.
- iii. Any placements into nursing homes or any other residential facilities serving more than eight people are preceded by an independent evaluation which supports such a placement.
- iv. Class members are fed according to their individual needs by adequately trained staff.
- v. Each class member has access to an adequate and nourishing diet. Class members have access to visitors, telephones and mail.
- vi. In the event that private providers do not comply with these performance expectations, appropriate authorities within the District of Columbia government will take action necessary to ensure provider compliance, including the provision of technical assistance, or will impose sanctions designed to assure compliance, including, where necessary, termination of

provider agreements, contracts and licenses, fines and termination of reimbursement arrangements.

e. Standard of Compliance

High Compliance

f. Method of Assessing Compliance

Review of all placements of consumers in nursing homes and a 10 percent random sample of consumers in large congregate day programs and in residential programs to determine whether the placements comply with the criteria and procedures adopted in compliance with the Plan.

3. Staff Training

a. Related Court Orders

- i. Defendants shall insure that all BCS [Bureau of Community Services] staff are trained in the concepts of delivery of services in the community and philosophy of normalization for mentally retarded persons. (1983 Consent Order, section IX.9)*
- ii. Defendants shall require all staff currently assigned to any residential setting in which class members have been placed to attend training programs designed or approved by the defendants and complete its training on or before September 30 1983. Thereafter, defendants shall require all such staff to receive this training before commencing their duties. (1983 Consent Order, section 9.8) Appropriate training programs for all staff shall be developed and implemented. Such programs shall help ensure that each consumer is provided with habilitation and care in a safe, humane environment. (1978 Final Judgment and Order, section III.14.s; 1983 Consent Order, section IX.8; 1981 Consent Order, section 1.h)*
- iii. Defendants shall submit a report to the Court Monitor and to the plaintiffs and the United States each quarter describing the training to be provided in the next quarter for all direct care staff, listing the staff who are to attend such training. (1983 Consent Order, section VIII.7; 1981 Consent Order, section 1.h)*
- iv. Defendants shall recruit, hire and train a sufficient number of qualified community staff to prepare individual community habilitation plans for each consumer and upon completion of such plans to assist in*

the execution of the responsibility to create, develop, maintain and monitor the community living arrangements, programs and other services required. (1978 Final Judgment and Order, section II.7.c)

v. Training programs shall be provided to staff who administer drugs to class members. (1978 Final Judgment and Order, section III.14.g)

b. Necessary Tasks to Implement the Court Orders

i. The District will commence an emergency short-term training program for the staff of at-risk community providers to develop basic skills and competencies in the staff of such programs. The District will work with the plaintiffs, the plaintiff-intervenor and appropriate experts in designing the curriculum for this training program.

ii. The District will develop and implement an on-going training program with the involvement of plaintiffs, the plaintiff-intervenor, experts and stakeholders, for all staff working within the mental retardation and developmental disabilities services delivery system in order to develop the skills and competencies required to provide services meeting the standards applicable to the programs in which they work.

iii. The District will identify regulatory and contractual mechanisms needed to ensure that all Community Support Workers receive the required training.

iv. Department of Human Services and Department of Health Office of General Counsel will work with the plaintiffs and the plaintiff-intervenor to develop any necessary legislation regarding training and certification of personnel who work with individuals with mental retardation and other developmental disabilities for submission to the City Council.

c. Time Frames for Implementation

Stage I B 120 Days Following Filing of the Plan with the Court

- i. The District will identify, through surveys or otherwise, the number, educational level, qualifications and general experience of community-based workers to receive training. The District will identify the curriculum to be used and the training organization to be responsible for the training.
- ii. Begin training for case managers.

Stage II B270 Days Following Filing of the Plan with the Court

The defendants shall:

- i. Identify funding for staff training, including appropriated funds, public and private grants and provider contributions.

- ii. Prepare and propose detailed Comprehensive System of Personnel Development program.
- iii. Ensure that all MRDDA case managers have received initial training.
- iv. Determine the frequency of required refresher training/advanced training for support workers.
- v. Establish a pre-determined number of annual continuing education credits to maintain professional certification.
- vi. Identify regulatory and contractual mechanisms needed to ensure that all Community Support Workers receive the required training.
- vii. Propose any necessary legislation regarding training and certification of personnel who work with individuals with mental retardation and other developmental disabilities for submission to the City Council.
- viii. Develop mechanisms for enforcement (contract language, rules, regulations, policies and procedures) of basic training requirements for support workers.
- ix. Begin direct care staff training on a regular, long-term basis.

Stage III B360 Days Following Filing of the Plan with the Court

- i. The defendants shall begin the Training Certification Program.
- ii. All currently employed Community-Based Support Workers trained.
- iii. Refresher/Advanced training courses begin for community based support workers.

d. Specific Outcome Criteria for Determining Compliance

i. The District has a system in place to ensure that all new employees assigned to residential and day treatment programs attend orientation and preliminary skill-training prior to assignment to a work site. All staff, including transportation staff, must receive on-going training throughout the course of their employment to develop, acquire or maintain the knowledge and skills required for their positions. No staff person may be permitted to undertake any direct care duties or responsibilities with consumers without direct supervision until they complete training and acquire required competence and pass competency tests.

ii. All staff employed by the District and provider agencies will have attended required training programs and satisfactorily demonstrated competence in the skills

required for the positions they hold (e.g., by passing a post-training test or evaluation to demonstrate the acquisition of the required skills).

iii. All employees who are authorized to administer drugs are credentialed to do so after attending training programs and demonstrating their competence in the skills required for this responsibility (e.g., by passing a post-training test or evaluation to demonstrate the acquisition of the required skills).

iv. All case managers are trained in individualized service planning and demonstrate competence in the skills required for their positions (e.g., by passing a post-training test or evaluation to demonstrate the acquisition of the required skills).

e. Standard of Compliance

High Compliance

f. Method of Assessing Compliance

- i. Review of documents to verify staff attendance at training and evidence of acquisition of competencies in the skills taught (e.g., passing scores in post-training tests).
- ii. Review of grievances and unusual incident reports and related investigations and other quality assurance documents to determine whether lack of training is identified as a cause of incidents and grievances, and if so, whether corrective actions were taken and were adequate.
- iii. Interview a random sample of 10 percent of consumers, their families, guardians and staff of the residential and day treatment programs regarding training issues.
- iv. Interview a random sample of advocates and case managers assigned to the consumers in the sample regarding staff competencies.

4. Restricted Control Procedures (Includes medications, use of restraints and time-out)

a. Related Court Orders

- i. Written policies and procedures governing the safe administration and handling of medications shall be established. (1978 and Final Judgment and Order, section III.14.h)*

- ii. Administering excessive or unnecessary medications to class members is prohibited. (1978 Final Judgment and Order, section III.14.d)*
- iii. Using medications as punishment, for the convenience of staff, as a substitute for programming, or in quantities that interfere with a class member's individual developmental program is prohibited. (1978 Final Judgment and Order, section III.14.e.)*
- iv. Monitoring of each class member=s medications and provision for at least monthly review by a physician of each resident=s medication are required. (1978 Final Judgment and Order, section III.14.i)*
- v. Only appropriately trained and qualified staff are permitted to administer drugs to class members. (1978 Final Judgment and Order, section III.14.)*
- vi. Administering drugs to class members on a PRN basis is prohibited. (1978 Final Judgment and Order, section III.14.h)*
- vii. Aversive behavior modification techniques shall not be employed on any resident. (1978 Final Judgment and Order, section III.14.n)*
- viii. Use of seclusion for any purpose is prohibited. (1978 Final Judgment and Order, section III.14.b)*
- ix. Use of Physical Restraints or "timeout" as punishment, for the convenience of staff, or as a substitute for a habilitation program is prohibited. Physical restraint and time out procedures shall be applied only over short periods of time in conjunction with other specified programmed activities as set forth in the consumer's individualized habilitation plan, only if alternative techniques have failed and only if it imposes the least restriction consistent with its purpose. Physical restraint shall be employed only when absolutely necessary to protect consumers from injuries to themselves or to prevent injuries to others. There shall be no PRN restraint orders and orders for restraint shall not be in force longer than 12 hours. (1978 Final Judgment and Order, section III.14.c)*
- x. A resident placed in restraints shall be checked at least every 30 minutes by appropriately trained staff and a record kept of such checks. (1978 Final Judgment and Order, section III.14.c)*

b. Necessary Tasks to Implement the Court Orders¹⁹

An important part of individual service planning is the proper consideration and oversight of the use of psychotropic medication, time out and restraints (referred to as Restricted Control Procedures) as responses to challenging behaviors which may be exhibited by

¹⁹ CONSISTENT WITH THE APPROACH TAKEN IN THIS PLAN, THE DETAILED PROVISIONS OF THE POLICY ARE NOT SPECIFIED, RELYING INSTEAD ON SPECIFIC OUTCOME MEASURES.

MR/DD consumers with cognitive disabilities. It is necessary to assure that appropriate medication is provided when needed and that unnecessary, excessive, and inappropriate medications are not used. (Seclusion of MR/DD consumers is expressly forbidden due to its clinical inappropriateness for this population.)

The defendants shall develop written policies and procedures that address the circumstances under which Restricted Control Procedures may be used and the safeguards that will be in place to prevent misuse or overuse of such procedures. In developing such policies and procedures, the defendants shall obtain such technical assistance and consultation as may be necessary from experts with experience in the provision of behavioral, neurological and psychiatric care to persons with developmental disabilities. In selecting the experts, the defendants shall consult with the plaintiffs, the plaintiff-intervenor and the Special Master. The experts shall have access to and review available information from the Court Monitor and other sources regarding the existing conditions within the defendants= system that the policies and procedures are intended to address.

c. Time Frames for Implementation

Stage I B90 Days Following the Filing of the Plan with the Court

The defendants shall:

- i. Draft written policies, with opportunity for review and comment by the plaintiffs and the plaintiff-intervenor.
- ii. Identify training needs of professional and direct care staff.
- iii. Develop a list of competent behavioral support professionals who are available to providers and disseminate it to providers and case managers.

Stage II B180 Days Following the Filing of the Plan with the Court

- i. These policies and procedures are being implemented in ISPs as they come up for renewal/revision.
- ii. A training curriculum on Restricted Control Procedures is developed and integrated into the staff training program required by the Plan.
- iii. A Review Committee is appointed, which includes representation from families, advocates and providers, to review all uses of Restricted Control Procedures and procedures developed for its operation.

Stage III B 240 Days Following the Filing of the Plan with the Court

- i. The policies and procedures are fully implemented.
- ii. The Review Committee is reviewing all uses of Restricted Control procedures and reporting any concerns to appropriate District agencies.

d. Specific Outcome Criteria for Determining Compliance

- i. All MR/DD consumers for whom Restricted Control Procedures are used have individualized behavior support plans. Control procedures are used when alternative techniques have failed and only when they are determined to be the least restrictive alternatives. Such behavior support plans clearly identify the proactive, positive approaches that will be used to minimize and/or ameliorate the need for control procedures. No consumers are subject to PRN medication, seclusion, time-out, or use of aversives. If consumers are restrained, they will be checked every 30 minutes and a record kept contemporaneously with the check.
- ii. Defendants have developed and implemented a policy governing the safe administration and handling of medications.
- iii. When medication is used for sedation prior to medical appointments, desensitization plans describing the positive, proactive approaches that will be utilized to reduce the need for sedation, will be implemented.
- iv. All individualized behavior support plans will contain documentation, including a functional analysis of the target behavior and that adequate behavioral data was collected and considered prior to determining that Restricted Control Procedures are the least intrusive measures to address the specific behaviors, and authorizing the use of such procedures.
- v. In all cases where psychotropic medications are used, there is documentation in the record of a mental health diagnosis (DSM-IV), of the intended effects and side effects of the medication, informed consent or substituted consent, and a termination date for the prescription of not more than 30 days. The prescribing physician receives regular information regarding the effects of the medication to enable him/her to make a decision to reduce or discontinue the medication as warranted.
- vi. All persons who initiate the use of Restricted Control Procedures meet credentialing requirements and have met the training requirements in the policy.
- vii. All the direct care staff who support consumers for whom Restricted Control Procedures have been ordered meet the training requirements in the Restricted Control policy, and have been trained on the individual behavior management plans. All such staff have received training in positive means of managing behavior.

- viii. All cases in which Restricted Control Procedures have been initiated are reviewed quarterly by a Review Committee and the results of such review are sent to the Court Monitor and Quality Trust.
- ix. In all cases where Restricted Control Procedures are initiated, the Court Monitor and Quality Trust and the consumer=s family or guardian are notified of such usage immediately but no later than within 24 hours of the initiation.
- x. When monitoring uncovers noncompliance with the policies by providers, prompt corrective action is taken to remedy the noncompliance. In the event of noncompliance that threatens the safety or well being of a consumer, the defendants will take whatever immediate action is necessary to protect the consumer, and to correct the deficiency including, where necessary, imposing sanctions to assure compliance, and/or termination of provider agreements, contracts and licenses.

e. Standard of Compliance

High Compliance

f. Method of Assessing Compliance

- i. Document review of a random sample of 10 percent of the cases, or 25 cases, whichever is more (see footnote 17), in which Restricted Control Procedures were used, to determine compliance with the policy.
- ii. Interviews with case managers and advocates assigned to the sample cases in which Restricted Control Procedures were utilized.
- iii. Interviews of the persons in the sample for whom Restricted Control Procedures were used, including interviews with their residential and day program staff, parents or guardians, and the clinicians who ordered the use of the control procedure.

B. GOAL-- CONSUMERS MUST BE KEPT FREE FROM HARM (1978 FINAL JUDGMENT AND ORDER, SECTION I.2)

a. Related Court Orders

- i. Defendants shall ensure that consumers who require 1:1 staffing are provided with such coverage when needed. (1983 Consent Order, section III.7)***
- ii. Acts of physical or psychological abuse, neglect or mistreatment***

including but not limited to assaults, fractures, cuts, bruises, abrasions, burns, bites, lacerations, drug overdoses and verbal abuse are prohibited. (1978 Final Judgment and Order, section III.14.a)

- iii. Each and every alleged incident of abuse, neglect, or mistreatment shall be promptly investigated and a report made. The manner and mechanism of such investigation shall be developed and established by the defendants. A chronological compilation of the above reports shall be maintained by the defendants and made available to the Master and the parties. (1978 Final Judgment and Order, section III.14.a)*
- iv. The human-rights committee shall receive copies of all completed unusual incident reporting forms on a weekly basis. Defendants shall report to the committee all actions taken pursuant to any unusual incident report. (1983 Consent Order, section V.2)*
- v. Defendants shall submit to the Court Monitor for review and approval their unusual incident reporting form and the procedures undertaken by defendants pursuant to any unusual incident report. The Court Monitor shall provide recommendations to the defendants for revision, if any, on this form and of the defendant=s procedures, within thirty days after submission. (1983 Consent Order, section V.1)*
- vi. A community advisory board is to investigate, monitor and evaluate complaints. (1978 Final Judgment and Order)*

b. Necessary Tasks to Implement the Court Orders

- i. The defendants will develop and disseminate to all entities contracted with the District of Columbia to provide services and supports to consumers with mental retardation and developmental disabilities, including residential providers, day treatment programs, and community provider agencies, as well as MRDDA and Department of Health staff and the police written policies that define the types of incidents to be reported; specify how and when staff are to report and record the incidents properly and who is to be notified; specify how staff are to respond to immediately protect the consumers; ensure notification of consumer advocates, family members and court-appointed attorneys of serious incidents; and identify a floor of basic protections for consumers that cannot be breached (defined as abuse and neglect). Defendants shall provide plaintiffs and plaintiff-intervenor an opportunity to review and comment upon such policies and procedures before they are finalized and disseminated.
- ii. The defendants will develop and disseminate a uniform written incident reporting form to all entities contracted with the District of Columbia to

provide services and supports to consumers with mental retardation and developmental disabilities, including residential providers, day programs, and community provider agencies, as well as MRDDA and Department of Health staff and the police. Defendants shall provide plaintiffs and plaintiff-intervenor an opportunity to review and comment upon such form before it is finalized and disseminated.

- iii. The defendants will establish within the District of Columbia Government, and publicize to all entities or individuals that serve MRDD consumers, a 24-hour, 7-day a week telephone number for the reporting of consumer incidents wherever they occur, that will be staffed by personnel trained to handle unusual/serious and other incidents, and screen and refer matters promptly to appropriate persons and agencies.
- iv. The defendants will develop an adequate and appropriate intake process for incidents within MRDDA and an emergency response protocol.
- v. The defendants will develop a computerized system where all residential and day treatment providers can report incidents on-line.
- vi. The defendants will develop specific written protocols for the conduct of investigations of the category of incidents designated as ASerious@ in the policy. The written protocols shall provide for prompt, thorough investigations by trained personnel of these incidents and recommend what, if any, corrective or disciplinary action should be taken by whom and within what time frame. The written protocols shall designate the types of incidents that must be investigated by an independent entity as well as those types of incidents that internal trained personnel can investigate.
- vii. The written protocols shall designate one entity to be responsible for the independent investigation of serious incidents and the oversight of any other internal investigations. The written protocols shall specify the investigation protocol as well as the report format, including requirements for the implementation of corrective action recommendations, if any. The written protocols shall specify the responsibilities of case managers and other monitoring entities for timely follow-up monitoring of the situation and the corrective action steps, if any, required to ensure the safety and welfare of the consumers. The written protocols shall specify the timeframes for the completion of any investigation, the completion and filing of any investigation report, and the implementation of corrective and/or disciplinary action recommendations, if any. The written protocols shall specify that trained investigators shall conduct all investigations.
- viii. The defendants will develop a data system within MRDDA capable of aggregating information about consumer incidents, incident reporting, investigations, the investigation process and status, and the implementation of

corrective action recommendations and/or results of any investigation. The defendants will develop a written protocol that specifies the types of management reports that are to be generated by the data system to ensure that MRDDA, DHS and DOH administrators are provided with the aggregate data they require (on incidents, incident reporting, investigations, the investigation process and status, and follow-up steps for implementation of corrective action recommendations, if any) to inform decision-making and protect the consumers.

- ix. The defendants will provide an effective quality assurance system to ensure the regular, independent review of incident reporting, investigations, identification of the causes of and contributing factors to the incident, and implementation of any necessary corrective actions to protect consumers from harm. Such a system shall ensure that providers are made aware of problematic trends and that corrective action is taken on an individual consumer level, provider-specific level, as well as systemic level, when necessary. Processes shall be included to ensure that, when necessary, action is taken with regard to changing placements, providing additional training or technical assistance to staff, or regarding the providers' licenses and contracts to ensure the safety of consumers.
- x. The defendants will provide initial training on proper incident reporting to providers, direct care staff, administrators, investigators and case managers and periodically reinforce that training through case-specific continuing education.
- xi. The defendants will provide competency-based training to investigators and their supervisors on the proper conduct of investigations with respect to incidents that involve people with developmental disabilities, the proper writing and development of investigation reports, and the proper follow-up mechanisms with regard to promptly implementing corrective actions.
- xii. The defendants will develop cooperative agreements with entities such as the Police and Fire Departments, the Medical Examiner's Office, the Department of Health, the Adult Protective Services System, the Office of Inspection and Compliance, and other relevant entities with regard to incident reporting, the conduct of investigations, and the follow-up and implementation of corrective and/or disciplinary action recommendations, if any.
- xiii. Within seven days of completion, defendants will submit investigation reports and corrective action plans to the Court Monitor, the Quality Trust and the Human Rights Committee for review of the adequacy of the investigation and implementation of recommendations regarding corrective and disciplinary action.
- xiv. Each quarter, the defendants will disseminate to the Court Monitor and

the Quality Trust aggregate and specific information about the overall performance of the system in protecting the health and safety of MRDD consumers.

c. Time Frames for Implementation

Stage I B90 Days Following the Filing of the Plan with the Court

Paragraphs i-iv, vi-vii, & x.

Stage II B120 Days Following the Filing of the Plan with the Court

Paragraphs viii, xi-xiv.

Stage III B270 Days Following the Filing of the Plan with the Court

Paragraphs v & ix.

d. Specific Outcome Criteria for Determining Compliance

- i. All incidents (as defined in District of Columbia regulations and policies) are reported in accordance with the policy. Abuse, neglect and mistreatment are clearly prohibited by defendants= policies and procedures.
- ii. Family members and/or guardians, the Court Monitor and the Quality Trust are notified of all serious incidents (as defined in the District of Columbia policies) within 24 hours of the defendants becoming aware of such incidents.
- iii. All serious incidents are reported within the timeframe established by the policies, and thoroughly investigated by trained investigators. All other incidents are investigated in accordance with the policy requirements.
- iv. Investigation reports identify appropriate preventive, corrective and disciplinary actions needed to protect MRDD consumers from harm.
- v. All serious incident investigation reports are reviewed by quality assurance staff in MRDDA. All other incidents are reviewed for patterns and trends by quality assurance staff in MRDDA / and the Human Rights Committee.
- vi. For all serious incidents, case managers follow up on recommendations and ensure that there is prompt implementation of appropriate preventive, corrective or disciplinary action, and document their actions. For all incidents, case managers follow up to ensure that all consumers are safe and protected from harm. Based upon the quality assurance review of patterns and trends of consumer incidents, MRDDA shall ensure that there is prompt implementation

of whatever preventive, corrective or disciplinary actions are necessary to protect the consumers from harm.

- vii. The appropriate licensing/contracting agency is informed of all serious incidents and of the outcomes and recommendations for preventive and corrective action from all investigations, and takes appropriate action for prevention and correction.
- viii. The Court Monitor and the Quality Trust receive incident reports of all serious incidents and all the final investigation reports, as well as all recommendations for preventive and corrective action. Each quarter, the Court Monitor and the Quality Trust receive aggregate reports on patterns and trends for all other incidents.
- ix. Incident reporting is on-line in 90 percent of residential and day treatment provider sites.
- x. In the event that private providers do not comply with these performance expectations, appropriate authorities within the District government will take whatever immediate actions are necessary to protect consumers, and take such further actions as may be necessary to correct the deficiency, including but not limited to the provision of training or technical assistance to provider staff, and/or the imposition of sanctions designed to assure compliance, including, where necessary, termination of provider agreements, contracts and licenses.
- xi. Class members are provided with one-to-one staffing when required by their ISP.

e. Standard of Compliance

High Compliance

f. Method of Assessing Compliance

- i. Review a 10 percent random sample of serious and other incident reports and the related investigations, Quality Assurance documents, Human Rights Committee minutes, reports to the External Monitoring Agency, documentation of case manager follow up of the implementation of recommendations, and documentation of the implementation of sanctions where warranted.
- ii. Interview case managers and advocates assigned to the consumers involved in the incidents in the sample above, regarding compliance with the policy.
- iii. Review documents and interview staff at 10 percent sample of residential and day program sites to ensure that all incidents are being reported in compliance with the policy.

C. GOAL-- SAFEGUARDING EACH CONSUMER=S PERSONAL POSSESSIONS (1978 FINAL JUDGMENT AND ORDER, SECTION II.7.G; 1983 CONSENT ORDER, SECTION VII)

a. Related Court Orders

- i. Defendants shall submit a plan to safeguard each class member=s personal possessions including money, including but not limited to provision for depositing each class member=s funds in an interest-bearing account and for withdrawal such funds. (1978 Final Judgment and Order, section II.7.G.)***
- ii. Defendants shall provide the Court Monitor and plaintiffs each year a report detailing status of the defendant=s plan for safe keeping the funds of all class members. (1983 Consent Order, section VII)***

b. Necessary Tasks to Implement the Court Orders

- i. Defendants, in consultation with plaintiffs and the plaintiff-intervenor, shall develop and implement an overall plan to safeguard consumer funds including to ensure that consumers eligible for benefits such as SSI funds actually receive them.**
- ii. In order to safeguard consumer funds, the District of Columbia will revise its policies and procedures related to the handling of consumer funds, including but not limited to the District's role as representative payee for consumers and its oversight of funds in that capacity, and private providers' role in the management of consumer funds. Defendants shall provide plaintiffs and plaintiff-intervenor an opportunity to review and comment upon such policies and procedures before they are finalized and disseminated. The policies will ensure that each ISP also contains an Individual Financial Plan (IFP). The policies and procedures will be disseminated to case managers, residential providers, families and consumers, as well as the Special Master, the Court Monitor, and counsel for plaintiffs and the plaintiff-intervenor.**
- iii. In all cases where the District is the representative payee for an individual, the District government shall consolidate all trust and investment consumer accounts managed by the District government for individual consumers into a single interest-bearing account and establish individual sub-accounts for each consumer. The defendants will be responsible for implementing the reforms.**
- iv. In all cases where there are community accounts where the District is the representative payee for an individual, the District shall eliminate the delay in depositing SSI personal allowance funds by making monthly electronic deposits of personal allowances into individual consumer accounts. Monthly statements for each imprest account will be sent to the Chief Financial Officer for the District of**

Columbia who will promptly approve individual expenditures recommended by MRDDA.

- v. In consultation with the plaintiff and plaintiff-intervenor, defendants will develop a plan to determine any amounts owed to consumers for a period of ten years from the date of the filing of this Plan, as well as the method of payment. Defendants shall compensate each consumer in full for all past-due interest owed them and for any funds never paid to any consumer.
- vi. Annual audits of all consumer accounts will be conducted hereafter at the defendants' expense by an auditor independent of MRDDA and DHS. Such audits will be sent to the consumers, the Court Monitor and the Quality Trust.
- vii. Defendants shall conduct an investigation into the burial accounts for all consumers, including an inquiry into whether these funds are properly accounted for and invested. The defendants shall report the results of this investigation to the Special Master, the plaintiffs and the plaintiff-intervenor.

c. Time Frames for Implementation

Stage I B120 Days Following the Filing of the Plan with the Court

Implement paragraphs i - iv above.

Stage II B210 Days Following the Filing of the Plan with the Court

Implement paragraphs v and vii above.

Stage III B360 Days Following the Filing of the Plan with the Court

Implement paragraph vi above.

d. Specific Outcome Criteria for Determining Compliance

- i. All consumers have individual consolidated, interest-bearing accounts.
- ii. All consumers' funds are deposited into their accounts monthly via electronic deposit.
- iii. Consumers are remunerated in full for all monies to which they are entitled.
- iv. Consumers' funds and personal possessions are safeguarded.
- v. All ISPs have an individual financial plan that accurately reflects each consumer's financial status and describes a plan for the use of existing and/or anticipated funds based on the individual's preferences. IFPs also describe the supports each consumer requires to manage his/her funds in the least restrictive manner possible.

- vi. All consumers have an identified accountable representative payee to manage social security benefits and personal allowances, if they are deemed incapable of managing their own finances. The ISP should specifically address the consumers' ability to manage their own finances, and make provision for a representative payee if one is needed.
- vii. Annual audits are performed of each consumer's account and the results forwarded to the Court Monitor and the Quality Trust.

e. Standard of Compliance

Significant Compliance

f. Method of Assessing Compliance

Review of relevant documentation for a random sample of 10 percent of the consumers' accounts, including ISPs and IFPs.

D. GOAL B MONITORING B (1978 FINAL JUDGMENT & ORDER, SECTION II.5.D)

1. Case Management

a. Related Court Orders

- i. Defendants shall maintain within the BCS enough case manager positions to insure a minimum of one case manager for every 60 clients. This ratio excludes case managers assigned to intake or supervisory positions. (1983 Consent Order, Section III.9) If the defendants should fail to provide sufficient case managers to come into compliance with the required ratio, the Court will levy a coercive civil fine of \$1,000 a day until defendants can establish that they are in compliance with the required ratio. (1996 Remedial Plan, section II)*
- ii. Defendants shall provide all necessary and proper monitoring mechanisms to assure that community living arrangements, programs and supportive community services of the necessary quantity and quality are provided and maintained. (1978 Final Judgment and Order, section II.5.d)*
- iii. Defendants shall recruit, hire and train a sufficient number of qualified community staff to prepare individual community habilitation plans for each consumer and upon completion of such*

plans to assist in the execution of the responsibility to create, develop, maintain and monitor the community living arrangements, programs and other services required. (1978 Final Judgment and Order, section II.7.c)

iv. Every three months, defendants shall submit to the Court Monitor the list of each case manager employed by or under contract with the MRDDA, and the names and/or other identifying indicia of the clients assigned to each case manager, including MRDDA clients who are not members of plaintiff class. (1996 Remedial Plan, section II)

v. Defendants shall obtain by September 30, 1996, the case management services that will be provided by at least four additional full-time case managers to bring the total to 29. (1996 Remedial Plan, section II)

vi. The defendants shall exert their maximum efforts to fill each staff vacancy at the Bureau of Community Services within sixty days from the time such vacancy occurs. Vacancies shall be filled with qualified personnel. (1981 Consent Order, section I.A)

vii. The defendants shall continually maintain a listing of staff vacancies which will be available to the parties and the Court Monitor. (1981 Consent Order section I.b) Defendants shall provide notice to the Court Monitor of a vacancy or new position within 10 days and give a status report on actions taken to fill them within 30 days. (1983 Consent Order, section III.4)

viii. If vacancies are not filled within 60 days, defendants shall make maximum efforts to secure equivalent services from Medicaid vendors or other qualified individuals. (1981 Consent Order, Section I.C.) If necessary, defendants shall seek re-programming of funds budgeted for vacant staff positions to cover the cost of contracts for such equivalent services. (Section I.E.) If the vacancy is filled by contract or Medicaid vendor agreement, the defendants shall inform the Court Monitor that such has occurred and shall specify the position the contracted-for employee has filled. (1983 Consent Order, section III.5)

ix. No recruitment hiring restriction of any kind shall be imposed upon staff vacancies within the Bureau of Community Services without prior or simultaneous notice to the parties, specifying the terms and duration of the restriction. (1981 Consent Order, section I.F.)

x. Defendants shall submit to the Court Monitor and the plaintiffs every thirty days a list of all positions in BCS, by job title, the name of the employee filling each position currently, and location of each assigned position. The defendants shall indicate on that list all vacant

positions, the service area to which the position is assigned, and the date such vacancy occurred. (1983 Consent Order, section III.3)

xi. Defendants shall request sufficient personnel to permit the expeditious processing of the contract documents and adhere to the time frames for processing contracts and request for proposals for supplies, equipment and services benefiting class members. (1981 Consent Order, section VI)

b. Necessary Tasks to Implement the Court Orders

i. MRDDA will develop procedures to ensure that case managers are informed of recommendations made as a result of all quality assurance/quality improvement activities including incident investigations, to enable them to monitor the implementation of the recommendations in the course of performing their duties.

ii. The MRDDA budget will provide for a case manager ratio of 1:30 and, within that ratio, may create lower ratios for individual case managers based on a determination of the intensity of needs for case management services by the consumers on the caseload. MRDDA will ensure that all case managers receive competency-based training to carry out their responsibilities prior to being assigned responsibility for individual consumers. (See Section A.3. d. *supra.*)

iii. MRDDA will require case managers to conduct a minimum of eight monitoring visits a year and file reports regarding compliance with ISPs and health/safety issues based upon these visits.

c. Time Frames for Implementation

Stage I B 60 Days Following the Filing of the Plan with the Court

MRDDA will develop criteria for lower caseloads for case managers based upon intensity of consumer needs, with the opportunity for the plaintiffs and the plaintiff-intervenor to review and comment upon the proposed criteria prior to its implementation.

Stage II B 120 Days Following the Filing of the Plan with the Court

i. Additional case manager positions needed to meet the above ratios will be created and assigned.

ii. Additional case managers are hired, trained and deployed to meet the ratio of 1:30.

iii. Internal procedures are created for prompt filling of vacancies in order to maintain the ratio of 1:30.

d. Specific Outcome Criteria for Determining Compliance

- i. Case managers and their supervisors have successfully completed the required competency-based training. Case managers participate in the development of the ISPs for all consumers on their caseload.
- ii. Case managers ensure that the consumers on their caseload receive all of the services and supports identified on the ISPs, and where problems are encountered in obtaining access or in the quality or timeliness of the receipt of services and supports, that they document them, attempt to resolve them and, where appropriate, make prompt referrals to the Court Monitor and the Quality Trust for assistance in resolving the problem expeditiously.
- iii. In all cases where a consumer on their caseload has been the subject of an incident or a recommendation for corrective or preventive action, the case manager follows up to ensure implementation of appropriate actions for the safety and protection of the consumer.
- iv. Defendants maintain a case management caseload of 1:30. Defendants may create lower ratios for individual case managers based on a determination of the intensity of needs for case management services by the consumers on the caseload.
- v. When there are vacancies in case management positions that increase the case management ratio above 1:30, defendants will notify the Special Master and the parties of the vacancies and of the steps they have taken or will take to fill the vacancies.

e. Standard of Compliance

High Compliance

f. Method of Assessing Compliance

- i. Review the case manager roster to determine compliance with the caseload ratios and with criteria for assignment of individual case managers to lower ratios.
- ii. Review training logs to determine that all case managers have completed required training and demonstrated required competencies.
- iii. Review the records of a random sample of 10 percent of the consumers served to determine the adequacy of case manager services, interview the advocates assigned to these persons, as well as residential and day program staff and families/guardians.

2. Quality Assurance Program & Fiscal Audits

a. Related Court Orders

- i. Defendants are enjoined to provide all necessary and proper monitoring mechanisms to assure that community living arrangements, programs and supportive community services of the necessary quantity and quality are provided and maintained. (1978 Final Judgment and Order, section II.5. D.)*
- ii. Defendants shall prepare a plan for the creation, development and maintenance of mechanisms to monitor a system of community services to assure the community living arrangements, programs and other services of necessary quality and quantity are continuously provided to class members in the least separate, most integrated, least restrictive settings. The plan is to include, but not be limited to, the provision of advocates to assist in protecting the rights of the class. (1978 Final Judgment and Order, section II.7.d)*
- iii. Defendants shall retain the services of consultants to assist them in developing a system of monitoring community residences and day programs, utilizing standard evaluation instruments. (1998 Consent Order, section IX.6)*
- iv. The Bureau of Community Services and the Developmental Disabilities Professional shall regularly monitor each and every community placement to ensure that residential arrangements and programming are provided appropriate to the individuals need and shall document the results of such monitoring. (1981 Consent Order, section 4.D)*
- v. HCF auditors shall conduct desk audits of provider accounts at least once a year, and shall conduct field audits as required by federal regulations, every third year. Field audits may not be conducted more than every three years unless, in the professional judgment of HCF, circumstances indicate that and on-site, extensive audit is necessary to determine provider's reasonable costs. (1996 Remedial Plan, section 1.C)*

b. Necessary Tasks to Implement the Court Orders

The defendants will implement a quality assurance/quality improvement system for MRDDA consumers that is designed to monitor and ensure the safety and well-being of the consumers, assure that the services and supports provided to them are consistent with individualized service plans, and delivered on a timely basis by competent and well-trained staff and other providers. Defendants shall provide plaintiffs and plaintiff-intervenor an opportunity to review and comment upon each of the policies and procedures described below before they are finalized and disseminated. Specifically, MRDDA will:

- i. Monitor compliance with licensing/contract/accreditation/certification standards*

The defendants will develop and implement policies, procedures and protocols for

periodic monitoring of residential and day program providers for compliance with required licensing or certification standards, contract requirements, and financial reporting requirements, and ensure that adequate trained and qualified staff are assigned to perform these functions.

The defendants will develop a protocol for interagency sharing of critical information regarding the performance of providers which could affect the safety and well-being of consumers, in order to facilitate cooperative enforcement efforts between agencies bearing responsibility for oversight of provider operations.

The defendants will develop policies and procedures to protect consumers when there is an imminent risk of harm due to private providers= noncompliance with performance expectations. Such policies and procedures will provide for measures to correct the deficiency, including training and technical assistance for provider staff, and/or the use of sanctions to ensure compliance with standards including the termination of provider agreements, contracts and licenses.

The defendants will develop an annual plan for monitoring of specific areas of performance of providers (e.g., use of psychotropic medications).

ii. Incident reporting and investigation (see Goal B above)

iii. Complaints and grievances from consumers, families and advocates

The defendants will develop user-friendly procedures for the receipt and resolution of complaints and grievances from consumers, families and advocates.

The procedures will address the process for filing complaints and grievances, the time frame for investigation and resolution, the procedures for appealing the results, and involvement of advocates in assisting consumers and families.

A database of grievances and their resolutions will be maintained, and periodic reports prepared. A copy of such reports will be sent to the Court Monitor and the Quality Trust at least annually.

iv. Fatality review process

The defendants will require the reporting of all deaths as serious incidents.

Deaths of consumers will be investigated to determine the cause of death, the circumstances of the death and the factors which may have contributed to the death, as well as any preventive or corrective action that appears warranted to address any issues that may have been identified during the investigation. The investigations will result in written reports which include findings and recommendations.

The District will provide for an interdisciplinary Fatality Review Committee which includes the physicians, nurses and other clinical specialists, and include persons who are independent of the developmental disabilities service system. The Committee shall have access to the report of the investigation into the death and shall make such written

recommendations as may appear warranted based upon its review of the circumstances of death.

The District will adopt procedures to ensure that any recommendations emanating from a fatality review process are implemented, and are subject to follow-up monitoring by case managers.

v. Case management (see Goal D. 1. above)

c. Time Frames for Implementation

Stage I B 90 Days Following the Filing of the Plan with the Court

- i. Quality assurance/quality improvement policies, procedures and protocols are written/revised and adopted.
- ii. Quality assurance staff are assigned to their positions and receive necessary training.
- iii. Additional staffing needs and funding are identified for incorporation in the next year's budget request.
- iv. Paragraphs (b)(i) and (iv) are implemented.

Stage II B 180 Days Following the Filing of the Plan with the Court

- i. The additional staff and funding is made available, staff are trained and deployed.
- ii. The quality assurance program begins to produce reports as a result of the activities identified above.
- iii. Recommendations made as a result of the quality assurance activities are implemented and monitored.
- iv. An annual plan for quality assurance monitoring is developed and implemented.
- v. Paragraph (b) (iii) is implemented.
- vi. Desk and field audits of provider accounts are conducted to determine provider costs.

Stage III -- March 31, 2002

The quality assurance program has adequate and stable staff, and is able to identify and correct incipient problems.

d. Specific Outcome Criteria for Determining Compliance

- i. All deaths are reported to and reviewed by the Fatality Review Committee.
- ii. Recommendations from the Fatality Review Committee for preventive and corrective actions are followed up, implemented and documented.
- iii. An annual plan of monitoring is prepared and implemented, monitoring the safety, quality and effectiveness of services and supports to consumers. Quality Assurance recommendations for prevention, correction and improvement are implemented and documented.
- iv. Implementation of the Quality Assurance recommendations is monitored by quality assurance staff or case managers and is documented.
- v. When monitoring uncovers noncompliance with required standards by providers, prompt corrective action is taken to remedy the noncompliance. In the event of serious noncompliance that threatens the safety or well-being of consumers, the defendants will take whatever immediate actions are necessary to protect consumers. Such actions shall include measures to correct the deficiency, including training and technical assistance for provider staff, relocation of consumers to appropriate short-term respite facilities which can provide for individual support and service needs, and their health and safety, and/or the use of sanctions to ensure compliance with standards including the termination of provider agreements, contracts and licenses.
- vi. In addition, see the section on Protection from Harm and case management.

e. Standard of Compliance

High Compliance

f. Method of Assessing Compliance

- i. Review of Quality Assurance documents (i.e., aggregate reports, recommendations made by Quality Assurance staff and committees, documentation of follow up action for prevention and correction, Fatality Review Committee minutes and reports, etc.).
- ii. Review of the annual Quality Assurance plan and implementation activities.
- iii. Review of corrective and enforcement actions initiated as a result of Quality Assurance activities.
- iv. Interviews with case managers and advocates assigned to a random sample of 10 percent of the consumers, as well as consumers, families and guardians, regarding the Quality Assurance program.

3. External Monitoring

a. Related Court Orders

- i. Defendants shall identify and retain the expert full-time services of a Court Monitor to assist them and the Court in coordinating and carrying out the implementation of the provisions of this Order. The Court Monitor shall report directly to the director of the Department of Human Services who shall make available to the Court Monitor appropriate professional and other resources, including consultants as are necessary and appropriate to execute the Courts= Order. (1978 Final Judgment and Order, section II.6)*
- ii. The Bureau of Community Services and the Court Monitor shall regularly monitor each and every community placement to ensure that residential arrangements and programming are provided appropriate to the individuals need and shall document the results of such monitoring. (1981 Consent Order, section 4.D)*
- iii. The Court Monitor in conjunction with the defendants shall have the duty, obligations and responsibility to plan, organize, coordinate and monitor the implementation of this and any further order of the Court. The Court Monitor shall report every 90 days on the status and progress of the defendants in the implementation of the Court Orders. The defendants shall assist the Court Monitor in securing access to all premises, records, documents, class members and other necessary information to assure that the provisions of this Order are carried out. (1978 Final Judgment and Order, section II.6)*
- iv. The Court Monitor shall verify defendants= compliance with the Court=s Consent Orders by evaluating a random sample of at least 100 IHPs each year to determine whether such individual assessments and IHPs meet professional standards, as required by Court Orders. (1996 Remedial Plan, section III)*

b. Necessary Tasks to Implement the Court Orders

The parties have reached an agreement on a Court Order providing for the appointment and funding of an Independent Court Monitor to continue to monitor the implementation of the prior Orders in this case. The parties have also reached an agreement on the creation, structure and funding of a durable, independent External Monitoring agency, the Quality Trust, as well as the provision of legal services and lay advocacy for consumers. This agreement has been incorporated into a Consent Order and Settlement Agreement and filed with the Court on January 19, 2001. The substance of the agreement is as follows:

I. Structure of the Quality Trust

- A.** The parties agree to the creation of an independent, nonprofit organization to be named the AQuality Trust for Individuals with Disabilities, Inc.®

B. The Quality Trust is to be incorporated as an independent entity to insulate it from control by the parties.

C. The Quality Trust will provide, *inter alia*, monitoring, legal services and lay advocacy services for consumers²⁰ in the District of Columbia=s service delivery system.

D. The bylaws of the Quality Trust shall provide that the Quality Trust will have an independent Board of Directors and a body of non-voting members. The Mayor shall appoint the initial board from a list of nominees jointly developed by defendants, plaintiffs and plaintiff-intervenor. Each nominee on the list of proposed board members shall be agreed to by all parties. The Board shall thereafter be self-perpetuating. Specifically:

1. The composition and responsibilities of the Board will be established by the organization=s bylaws and will include the following:

a. Each director shall be a natural person of adult age. A director need not be a citizen of the United States. At least eight members of the Board must be residents of the District of Columbia.

b. The initial Board of Directors shall consist of the directors named in the Quality Trust=s Articles of Incorporation and shall hold office until their successors have been duly appointed and qualified.

c. At all times following the appointment of the first full thirteen member Board of Directors, the full Board of Directors shall consist of thirteen adult persons designated as follows:

i. Two family members of people with mental retardation and/or developmental disabilities. The initial terms of family members shall be two years, and all subsequent terms shall be three years;

²⁰ *THE TERM ACONSUMERS@ REFERS TO ALL RECIPIENTS AND APPLICANTS FOR SERVICES FROM THE DISTRICT OF COLUMBIA=s SERVICE DELIVERY SYSTEM FOR INDIVIDUALS WITH MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES. THE EVANS CLASS MEMBERS (I.E., THOSE INDIVIDUALS WHO HAVE AT ONE TIME RESIDED AT FOREST HAVEN) COMPRISE A SUBSET OF THIS OVERALL GROUP OF CONSUMERS. THE DEFENDANTS DESIRE NOT TO CREATE A BIFURCATED SYSTEM OF SERVICES FOR ITS CITIZENS WITH DEVELOPMENTAL DISABILITIES, AND THEREFORE, AGREE THAT THE QUALITY TRUST=s SCOPE OF ACTIVITIES SHALL INCLUDE REVIEW OF SERVICES TO CLASS MEMBERS AND NON-CLASS MEMBERS. THE EXTENSION OF THE QUALITY TRUST FUNCTIONS TO CLASS MEMBERS AND NON-CLASS MEMBERS DOES NOT EXTEND THE COURT=s JURISDICTION TO NON-CLASS MEMBERS.*

ii. Two non-legal advocates for persons who have mental retardation and/or developmental disabilities. The initial terms of the non-legal advocate members shall be two years, and all subsequent terms shall be three years;

iii. Three persons who have mental retardation and/or developmental disabilities. The initial terms of these members shall be one year, and all subsequent terms shall be three years;

iv. Two professionals with at least ten years background in a service delivery system for people who have mental retardation and/or developmental disabilities. The initial terms of professional members shall be three years and all subsequent terms shall be three years;

v. Two attorneys licensed to practice law. The initial terms of attorney members shall be three years, and all subsequent terms shall be three years; and

vi. Two citizens residing in the District of Columbia. The initial terms of citizen members shall be one year, and all subsequent terms shall be three years.

d. Following the initial term of each Board member, the remaining Board members whose terms are not ending will vote to replace the departing Board member. A majority vote of those remaining Board members is required to fill a vacancy. Further, the Board member must replace a departing board member with an adult person who fits the designated category (*e.g.*, family member, non-legal advocate, person with mental retardation and/or developmental disabilities, professional with ten years experience, attorney, citizen residing in the District of Columbia) of the departing Board member. A member may succeed himself or herself. A Board member may resign prior to the expiration of the full term. If a Board member resigns prior to the expiration of the full term, the other members shall replace that member for the remainder of the unexpired term through the voting process outlined in this section. Votes regarding the appointment, removal, or replacement of a member of the Board of Directors may not be delegated to a committee of the Board.

2. The Quality Trust will be a member organization with non-voting members. The non-voting members shall be District of Columbia residents with mental retardation, as well as people with other developmental disabilities, who are applicants for or are receiving protections, supports and services in the District of Columbia=s developmental disabilities service delivery system, and all Evans class members.

B. The Quality Trust=s scope of activities shall include review of services to all Evans class members as well as non-class members, who are applicants for or are receiving protections, supports and services in the District of Columbia=s developmental disabilities service delivery system. Pursuant to the Consent Order dated January 19, 2001, [hereinafter referred to as AConsent Order@] and the Settlement Agreement dated January 19, 2001, [hereinafter referred to as the ASettlement Agreement@] the Quality Trust will monitor the protections, services and supports provided to these individuals and offer legal services and provide lay advocacy services to these consumers.

II. Functions of the Quality Trust

In general, the Quality Trust shall advance the individual and collective interests of consumers with developmental disabilities, and in particular Evans class members; monitor the health, safety and welfare of these consumers; and monitor the services and supports provided to these consumers. The Quality Trust shall also provide for individual and/or collective legal services and lay advocacy services for consumers as set forth in greater detail below. The Board of Directors shall periodically determine how to apportion its resources among monitoring, legal representation services and lay advocacy or other strategies, consistent with the Quality Trust=s mission and functions, to advance the individual and/or collective interests of consumers with developmental disabilities, and in particular Evans class members. This process shall be informed by the Defendants= and/or the District of Columbia=s level of compliance with this Plan.

Monitoring

The Quality Trust shall create a Monitoring Unit which shall:

1. Develop an annual monitoring plan with input from the parties, consumers, families, providers and advocates.
2. Monitor the adequacy, safety and quality of consumers= residential and habilitation programs and supports.
3. Receive and review all serious incident reports and investigation reports of serious incidents, with regard to consumers from the District=s Mental Retardation and Developmental Disabilities Administration (AMRDDA@) or its successor, including deaths, and aggregate information regarding all incidents.
4. Write annual reports, and, in addition, such other periodic reports as the Quality Trust may determine to be necessary. Such reports are to be made public and provided to: (A) the Special Master and the parties= counsel of record (until this case is no longer subject to Court supervision); (B) the defendants and/or the branches of the District of Columbia, including the Departments of Human Services and Health (or their successors), the Chief Financial Officer and the Mayor; and (C) the District of Columbia Council. The reports shall make observations with regard to the adequacy of the protections, services, and supports provided to consumers and offer recommendations for any needed improvements. The defendants and/or the District of Columbia shall respond promptly to these reports in writing, including specific corrective action steps they will implement or have implemented, along with timelines if the actions have not been implemented, to address current problems.
5. Receive and review information with regard to the District of Columbia budget requests for MRDDA or its successor sufficient to permit its timely monitoring and comment about District of Columbia budget decisions affecting consumers.
6. Annually inform the defendants and/or the District of Columbia of the consumer needs, based on information collected during monitoring activities, in

a timely manner, to permit such information to be considered in developing the District of Columbia=s proposed budget for the service delivery system for individuals with developmental disabilities for the following Fiscal Year.

7. Apply at least the following standards in its monitoring and reviews: (A) the specific outcome criteria developed as part of the Evans 2001 Plan; (B) certification and private accreditation standards; (C) the District of Columbia=s own standards including licensing requirements; (D) Medicaid and Medicare regulations and conditions of participation; and (E) the District of Columbia=s performance standards in private provider contracts.
8. Be physically co-located with the Evans Independent Court Monitor so as to enhance communication regarding monitoring activities in order to avoid redundancy, until the Evans case is no longer subject to regular Court supervision. The Independent Court Monitor shall remain directly responsible to the Court, and not to the Quality Trust. As each Evans Order is vacated by the Court, monitoring of corresponding operations shall be transferred from the Independent Court Monitor to the Quality Trust, and shall no longer be subject to Court supervision.

III. Quality Trust=s Right to Access and Information

- A. The employees, contractors and consultants retained by the Quality Trust shall have full access to information that the Quality Trust deems reasonably necessary and appropriate in performing the monitoring and lay advocacy duties described in the Settlement Agreement. More specifically, the employees, contractors and consultants retained by the Quality Trust shall have full access to consumers, and their residences, facilities, buildings, programs, services, documents, records (including medical and departmental) and other materials that the Quality Trust deems reasonably necessary and appropriate in performing the duties of the Quality Trust=s monitoring and lay advocacy functions. The Quality Trust may obtain copies of the aforementioned documents, records, and other materials. The defendants and/or the District of Columbia shall provide the Quality Trust with information upon request relevant to individual supports and services provided in the District of Columbia=s service delivery system and the Quality Trust may request written responses from the defendants and/or the District of Columbia in this regard. Advance notice of any visit or inspection by the Quality Trust shall not be required. Representatives of the Quality Trust may conduct private interviews and meetings with any individual including employees, contractors or agents of the District of Columbia, as well as all provider staff. The defendants and/or the District of Columbia shall require its employees, contractors, agents, as well as provider staff, to cooperate with the Quality Trust representatives.
- B. Attorneys who provide direct legal representation of consumers under a contract or other arrangements with the Quality Trust shall have the right to access their clients= records and any and all information regarding their clients that flow from their attorney-client relationship. In litigation involving the defendants and/or the District of Columbia, attorneys shall comply with the applicable rules of discovery and procedure.

- C. The Quality Trust shall safeguard the information obtained pursuant to paragraph III.A, as required by all applicable laws and Court Orders protecting the confidentiality of such information.
- D. The defendants and/or the District of Columbia shall keep the Quality Trust informed in a timely fashion of relevant budgetary information regarding MRDDA or its successor. The areas about which the defendants and/or the District of Columbia shall provide information to the Quality Trust include the following:
 - 1. The portions of the budget that address specific consumer needs for residential and day program services, equipment, medical and clinical care, etc.;
 - 2. The portions of the budget that address system needs for managing, monitoring, and overseeing the system of services for consumers;
 - 3. The portions of the budget that address any capital appropriations that may be required to meet the needs of the consumers (*e.g.*, for construction or renovation of program sites, or residences);
 - 4. The amount of the appropriation being requested by the Mayor from the City Council to meet consumer needs;
 - 5. The final appropriation; and
 - 6. The District of Columbia Department of Health=s proposed and actual budgets which include the District of Columbia=s share of payments to Medicaid providers.

IV. Funding

The provisions of this section are subject to the Court=s approval of the Consent Order filed on January 19, 2001.

- A. The defendants and/or the District of Columbia agree to pay the sum of eleven million dollars for deposit into an interest-bearing fund for the exclusive use of the Quality Trust.
- B. Within 30 days of the filing of the Settlement Agreement signed by the Quality Trust, as their initial annual payment, defendants and/or the District of Columbia shall provide the Quality Trust with annual operating funds in the amount of two million dollars, prorated for the balance of the District of Columbia=s Fiscal Year 2001 which ends on September 30, 2001. On or before October 1, 2011, defendants and/or the District of Columbia shall provide the Quality Trust with the difference between two million dollars and the prorated amount paid in Fiscal Year 2001 pursuant to the terms of this paragraph (in Year 2000 dollars).

- C. Commencing October 1, 2001, for a period of five years, or until September 30, 2006, the defendants and/or the District of Columbia shall provide the Quality Trust with annual operating funds of no less than two million dollars per year (all in Year 2000 dollars).
- D. Commencing October 1, 2006, for a period of five years, or until September 30, 2011, the defendants and/or the District of Columbia shall provide the Quality Trust with annual operating funds in the amount of 1.9 million dollars in Year 2006, 1.8 million dollars in Year 2007, 1.7 million dollars in Year 2008, 1.6 million dollars in Year 2009, and 1.5 million dollars in Year 2010 (all in Year 2000 dollars).
- E. The defendants and/or the District of Columbia shall provide annual operating funding to the Quality Trust on or before October 1 of each Fiscal Year for which the funds are intended (Fiscal Years 2001 to 2011), or as soon thereafter as the budget process will allow.

Nothing in this Plan is intended to preclude any party or the Board of Directors of the Quality Trust from advocating for funds to increase those available to the Quality Trust above two million dollars in Year 2000 dollars in any given year.

The District may seek to recoup expenditures for these programs to the extent authorized by law from the Medical Assistance program (Title XIX of the Social Security Act).

c. Time Frames for Implementation

Stage I -- 30 Days from the Filing of the Plan with the Court

Within 15 days of the entry of the Consent Order, the Quality Trust shall be incorporated as a nonprofit, 501(c)(3) corporation under the District of Columbia Nonprofit Corporation Act, approved August 6, 1962 (76 Stat. 265; D.C. Code ' 29-501 et seq.).

Stage II -- 90 Days from the Filing of the Plan with the Court

- i. The initial board of directors of the Quality Trust will be appointed by the Mayor from a list jointly developed by the parties.
- ii. Defendants and/or the District of Columbia will pay the sum of eleven million dollars into an interest-bearing fund for the exclusive use of the Quality Trust.
- iii. Within the specific timeframes established in the Consent Order, the defendants and/or the District of Columbia will transfer annual operating funds in the amount of two million dollars, prorated for the balance of the District of Columbia=s Fiscal Year 2001 which ends on September 30, 2001.
- iv. The Board of Directors of the Quality Trust establishes qualifications and salaries for the Executive Director and other positions to be filled permanently.

Stage III -- 180 Days from the Filing of the Plan with the Court

- i. The Quality Trust Board will hire an Executive Director.
- ii. The Quality Trust Executive Director and Board will develop a budget for operations and commence hiring staff.
- iii. The Quality Trust will commence monitoring responsibilities.
- iv. The Quality Trust will determine whether to directly provide or contract for lay advocacy services.
- v. The Quality Trust will commence negotiations with an appropriate legal service provider for the provision of legal representation services for consumers.

d. Specific Outcome Criteria for Determining Compliance

- i. Creation of the Quality Trust and payment of \$11 million plus an annual contribution for operating funds as specified in the Consent Order.
- ii. Appointment of a board of directors by the Mayor from a list jointly developed by the parties.
- iii. Enactment of legislation as needed to empower the Quality Trust, the legal representation service and the lay advocacy program to carry out the functions, powers and duties described in this Plan, or the accomplishment of the objectives of such legislation by alternative means.
- iv. The Quality Trust and its components have access to the facilities, people and information required to carry out their functions.
- v. The parties will ensure that the Quality Trust complies with the Settlement Agreement filed on January 19, 2001.
- vi. The defendants and/or the District of Columbia respond promptly in writing to the reports of the Quality Trust, including specific action steps they have implemented or will implement, if any. After appropriate investigation, if the defendants and/or the District of Columbia do not intend to take remedial action, they shall inform the Quality Trust of the reasons for their decision. If the defendants and/or the District of Columbia determine that they will take remedial action, they shall inform the Quality Trust of the timelines for taking such action.

e. Standard of Compliance

Full Compliance

f. Method of Assessing Compliance

- i. Verify that the Quality Trust has been created, staffed, funded as required by the Consent Order and adequately empowered by law to carry out its functions.
- ii. Interview a sample of staff of the Quality Trust, the lay advocacy program and the legal representation service to ascertain that they have adequate access to facilities, people and information to perform their functions.

E. GOAL --ADVOCACY FOR CONSUMERS -- (1978 FINAL JUDGMENT & ORDER, SECTION II.7.D; COURT ORDER, FEBRUARY 10, 1999)

a. Related Court Orders

- i. Defendants shall request each attorney representing class members to report any deficiencies found in the implementation of their clients= IHPs to the clients= case managers at MRDDA and to the Court Monitor. (1996 Remedial Plan, section III)*
- ii. Defendants shall inform attorneys appointed to represent class members in Superior Court commitment proceedings that they are responsible for representing their clients= rights under the Evans Consent Orders and any applicable District of Columbia legislation. (1996 Remedial Plan, section III)*
- iii. Defendants will create, develop and maintain mechanisms to monitor the system of community services to assure that community living arrangements, programs and other services of the necessary quality and quantity are continuously provided to consumers in the least separate, most integrated, least restrictive community settings, which plan shall include, but not be limited to, the provision of advocates to assist in the protection of the rights of each consumer. (1978 Final Judgment and Order, section II.7.d)*
- iv. The Special Master Y shall develop and recommend to the Court a plan Y which shall include Y individual and community advocacy. The steps necessary to coordinate existing mechanisms and to develop needed mechanisms for the advocacy of the interests of the class members, on an individual and community-wide basis, in compliance with Court-ordered requirements, including but not limited to the use of court-appointed attorneys, guardianships, and medical decision-making procedures for class members. (February 10, 1999 Court Order)*

b. Necessary Tasks to Implement the Court Orders

i. Legal Representation Services

The Quality Trust shall not provide direct legal representation to any individual but may contract with or otherwise arrange for legal representation services for consumers from other

independent legal service providers. The scope and content of the contract or other arrangement will be negotiated by the Quality Trust and the provider. The Quality Trust shall oversee the performance of the provider under the contract or other arrangement to ensure that consumers are getting the legal representation services they require. The Quality Trust shall:

1. Make legal representation services available to any consumer who is need of representation. The Quality Trust=s legal representatives are authorized to take whatever steps are necessary and appropriate to represent their clients, including but not limited to negotiations, litigation, advocacy or otherwise resolving the consumer=s concerns to the satisfaction of the consumer or his/her legal representative.
2. Work to raise the level of advocacy amongst court-appointed attorneys by, for example, providing training, drafting model pleadings and developing in-house appellate advocacy capacity. The Quality Trust=s legal representatives will supplement (not replace) the existing pool of attorneys appointed by Superior Court and will seek to be appointed in cases of Evans class members who have heretofore been deprived competent representation.

ii. Lay Advocacy

Because some of the advocacy needs of the consumers do not require the services of an attorney and can be provided more effectively and less expensively through the availability of lay advocates, the Quality Trust will create a lay advocacy program which shall provide the following services:

1. Attend ISP and other team meetings for consumers for whom they are responsible and advocate for the needs and choices of the consumers at these meetings. The advocates will attempt at all times to facilitate the consumer=s self-expression, or in the alternative, will consult with duly appointed representatives or surrogate decision-makers, where appropriate.
2. Regularly interact with the case managers of the consumers on their caseloads to keep abreast of any issues impacting on the protections, services and supports provided to consumers.
3. Receive and review serious incident reports and investigation reports for consumers for whom they are responsible, and advocate for the consumers= safety and well-being in the course of such investigations.
4. Receive and review all monitoring reports related to the consumers on their caseloads and follow up to ensure that necessary corrective action is taken.
5. Periodically visit consumers receiving residential and day treatment services to ensure that consumers are safe and satisfied with the services and supports they are receiving and that the services and supports are adequate to meet the individualized needs of the consumers.

6. Advocate on behalf of individuals and/or groups of consumers to ensure that their complaints are investigated in a timely fashion and that the consumers are satisfied with the resolution. In the event that the time frames required for resolution are not complied with or that the proposed resolution is otherwise unsatisfactory, the advocate shall consult with the consumer(s), or other appropriate decision-maker, to determine the appropriate course of action.
 - a. The lay advocacy program and the legal services component shall establish a program to facilitate the immediate referral and coordination of cases requiring the assistance of an attorney.
 - b. Consumers may seek immediate referral to the legal services component from the lay advocacy program.
7. Attend court hearings for the consumers on their caseloads and work with the assigned attorneys in ensuring that consumers' needs for protections, services and supports are met.
8. Some consumers will have family members, guardians or friends who will serve as their advocates while others will rely on the services of paid lay advocates. The advocacy program will provide training not only to the lay advocates, but also to such volunteer advocates.
9. This advocacy program will supplement (not replace) the existing pool of advocates acting on behalf of family, friends, or those appointed by Superior Court or appointed pursuant to existing Orders in this case. The lay advocacy program will prioritize cases of consumers who heretofore have not received advocacy services.

c. Time Frames for Implementation

Stage IC180 Days from the filing of the Plan

- i. The Quality Trust will determine the scope of the contract for legal representation services and commence negotiation with qualified providers of legal services.
- ii. The Quality Trust determines the staffing and organization of the lay advocacy program.
- iii. Legislation needed to implement the legal representation and lay advocacy programs is developed cooperatively by the parties (other than the plaintiff-intervenor) and submitted to the City Council.

Stage II B240 Days from the filing of the Plan

- i. The Quality Trust determines whether to directly provide or contract for lay advocacy services. The Quality Trust or the contractor commences hiring of lay advocates.

- ii. The Quality Trust develops a training program for the lay advocates which will also be available to advocates appointed by the Superior Court as well to family members and others who serve as volunteer advocates.
- iii. The Quality Trust identifies class members and other consumers who do not have access to advocates and legal representatives and brings this need to the attention of the Superior Court.
- iv. The Quality Trust enters into a contract for legal representation services.
- v. Necessary legislation is enacted, or the accomplishment of the objectives of such legislation by alternative means.

Stage III -- 360 Days from the filing of the Plan

- i. The legal representation service and the lay advocacy program are funded, staffed and operational.
- ii. All lay advocates employed by the Quality Trust have received training to perform their duties.
- iii. The Quality Trust has advocated with the Superior Court for the steps necessary to ensure that every consumer who has the right to legal representation has access to such representation, and that a lay advocacy program is available to provide such advocacy to each consumer who has a right to such advocacy.

d. Specific Outcome Criteria for Determining Compliance

- i. Creation of the Quality Trust and payment of \$11 million plus an annual contribution for operating funds as specified in the Consent Order filed on January 19, 2001.
- ii. Legislation needed to empower the legal representation service and the lay advocacy program to carry out the functions, powers and duties described above is enacted, or the accomplishment of the objectives of such legislation by alternative means.
- iii. The Quality Trust and its components have access to the facilities, people and information required to carry out their functions.
- iv. The parties will ensure that the Quality Trust complies with the Settlement Agreement filed on January 19, 2001.
- v. The defendants and/or the District of Columbia respond promptly in writing to the reports of the Quality Trust, including specific action steps they have implemented or will implement, if any. After appropriate investigation, if the defendants and/or the District of Columbia do not intend to take remedial action, they shall inform the Quality Trust of the reasons for their decision. If the defendants and/or the District

of Columbia determine that they will take remedial action, they shall inform the Quality Trust of the timelines for taking such action.

e. Standard of Compliance

High Compliance

f. Method of Assessing Compliance

- i. Verify that the Quality Trust has been created, staffed, funded and adequately empowered by law.
- ii. Verify that the Legal representation service and lay advocacy programs have been created, funded, staffed and legally empowered to perform the functions described in the Plan.
- iii. Interview a sample of staff of the Quality Trust, the lay advocacy program and the legal representation service to ascertain that they have adequate access to facilities, people and information to perform their functions.

F. GOAL -- ADEQUATE BUDGET B (1981 COURT ORDER, SECTION 2.D)

a. Related Court Orders

- i. Each fiscal year, the defendants shall submit to the parties and the Court a report which shall detail the resources affecting class members (including the numbers and types of staff, the amounts and types of supplies and equipment, the numbers and types of vehicles, and all other resources provided for in the budget submission) which the budget would provide if fully funded. The report shall be accompanied by the most recent needs assessment and shall be in a format which permits ready comparison of resources needed versus the resources sought. If the budget seeks less resources than needed by class members, the report shall explain the reason therefor and how and at what future date the defendants propose to obtain the additional resources required. Nothing herein shall preclude the plaintiffs from contending at any time that defendants are required, at that time, to seek sufficient resources to meet all identified needs. (1981 Court Order, section 2.d.)*
- ii. If the plaintiffs or the Court Monitor believe that the report is not complete, the defendants must re-submit the report in an agreed-upon fashion within fifteen days. (1983 Consent Order, section II.3.)*

iii. Every six months, MRDDA shall compile and shall submit to the parties, the Court Monitor and the Special Master: 1) an overall assessment of MRDDA's aggregate client habilitation needs; 2) a recitation of the kind of services required to meet the habilitation needs of the MRDDA clients, as indicated in their IHPs; and 3) a listing of all habilitation needs indicated in the IHPs of MRDDA clients for which service has not been provided or is not available. (1996 Remedial Plan, section III)

b. Necessary Tasks to Implement the Court Orders

The defendants will keep plaintiffs, the plaintiff-intervenor, the Court Monitor, the Special Master and the Quality Trust informed in a timely fashion about at least three different types of the budget information, in order to provide them with the opportunity to advocate on behalf of the needs of consumers before appropriate officials in the Executive and Legislative branches of the District government.

A. The portions of the budget that address specific consumer needs for residential and day program services, equipment, medical and clinical care, etc. These specific consumer needs should be identified in the ISP process, and aggregated in order to enable the defendants to determine the appropriations that would be required to meet the identified needs of consumers. (See Goal A (1) above.) For budgetary purposes, it is important that the aggregation of needs occurs early enough in the budget cycle so that the parties can be informed of the amount of the appropriation that will be required to meet the identified needs of the consumers.

B. The portion of the budget that addresses system needs for managing, monitoring and overseeing the system of services to consumers. These needs would include appropriations for the support of staff who perform quality assurance, investigations, management information, and monitoring and case management functions. The determination of needs should be based upon agreed-upon staffing ratios for these functions, similar to the ratios for the case management function. Such ratios would permit an objective process of determination of need, and permit external review of adequacy of the budget using objective criteria, by the Court Monitor, plaintiffs, plaintiff-intervenor and by the Quality Trust and its lay advocacy program. Also included would be the staffing needs of the MRDDA Administrator=s office to perform the various policy-making and policy-executing functions of the office, as well as other administrative needs.

C. The portion of the budget that addresses any capital appropriations that may be required to meet the needs of the consumers (e.g., for construction or renovation of program sites, or residences).

Specifically, the plaintiffs, plaintiff-intervenor, Special Master, and Court Monitor will be informed of:²¹

1. The total amount of the appropriation that would be required under paragraphs A, B and C;

²¹ *THE QUALITY TRUST=S ACCESS TO BUDGET INFORMATION IS ADDRESSED EARLIER IN THE PLAN UNDER GOAL D.3.B. SECTION III.D ON P. 47.*

2. The amount of the appropriation that will be requested by the MRDDA in its budget request within the Department of Human Services, prior to the submission of the MRDDA budget request;
3. The amount of the appropriation being requested from the Mayor=s Office of Management and Budget by the Department of Human Services and other units of the District Government for services to MRDDA consumers;
4. The amount of the appropriation being requested by the Mayor from the City Council to meet the needs identified in paragraphs A, B, & C; and
5. The final appropriation that will be available to meet the needs identified in paragraphs A, B, & C, as well as the means that will be used to meet these needs if the appropriation is less than that initially determined to be necessary.

c. Time Frames for Implementation

Stage I B 120 Days from the Filing of the Plan with the Court

- i. Defendants will develop a set of data driven criteria for the staffing needs described in paragraph B.
- ii. Defendants will develop a fiscal calendar to implement this process in the next budget cycle.

Stage II B 180 Days from the Filing of the Plan with the Court

The budget information will be forwarded to the Quality Trust and advocacy agencies as well as the plaintiffs and plaintiff-intervenor.

Stage III B 240 Days from the Filing of the Plan with the Court

The budget information should be sent to the Quality Trust and advocacy agencies, phasing out the plaintiffs= and plaintiff-intervenor=s routine receipt of this information as the Court Orders are vacated and dismissed.

d. Specific Outcome Criteria for Determining Compliance

- i. Defendants will develop the objective criteria for determining staffing needs for various functions in paragraph B, and will utilize these criteria in formulating budget requests.
- ii. The computerized ISP process will be used to aggregate consumers= needs for the purposes of planning and budget making, and these needs will determine the budget requests for services and supports required.

iii. The defendants will develop a Fiscal Calendar which identifies the dates or time periods within which information about the budget process will be provided to the Special Master, Court Monitor, plaintiffs and plaintiff-intervenor or their successors as described above.

e. Standard of Compliance

Full Compliance

f. Method of Assessing Compliance

Actual provision of this information to the Special Master, Court Monitor, plaintiffs and plaintiff-intervenor or their successors as described above for two successive years, demonstrating that the staffing ratios and computerized ISP process are being utilized to determine the budget for the support of MRDDA consumers.

G. GOAL -- TIMELY PAYMENT OF VENDORS B (1983 CONSENT ORDER, SECTION IX.10; 1996 REMEDIAL PLAN, SECTION I.B)

a. Related Court Orders

- i. Defendants shall submit to the parties and Court a report indicating the time frame within which they propose to process contracts and requests for proposals for supplies, equipment, and services benefiting class members. Defendants shall exert their maximum efforts to adhere to the time frames adopted and shall make available to counsel for the plaintiffs copies of all requests for proposals at the time issuance, and copies of all contracts at the time of execution. (1981 Consent Order, section 6)*
- ii. The City Administrator shall establish a process for the negotiation and final conclusion of contracts with all vendors providing services to class members, so that all class providers have contracts of at least one year's duration with the District government. If the defendants fail to conclude all outstanding contract negotiations or submit unconcluded contracts to binding arbitration by October 31, 1996, defendants shall be fined \$1,000 per day for each vendor providing services to class members without a contract (not including temporary contracts). Fines shall be deposited with a Clerk of the Court in the defendants' civil fines account. (1996 Remedial Plan, section I.E)*
- iii. Defendants shall insure the all vendors are paid for goods and services no later than thirty days following their submission of acceptable vouchers. (1983 Consent Order, IX.10; 1996 Remedial Plan, section I.B)*

- iv. *On or before October 31, 1996, defendants, in conjunction with the plaintiffs and the Special Master, shall submit to the Court a proposed Order for the timely, predictable payment of Evans class providers. (1996 Remedial Plan, section 4)*

Non-Medicaid payments

- v. *The defendants shall insure that all vendors are paid for goods and services no later than thirty days following their submission of acceptable vouchers. (1983 Consent Order, IX.10) MRDDA shall reject or accept and present to the Controller of the Department of Human Services all undisputed payment invoices within seven working days of submission by the provider. The DHS Controller shall accept or reject such invoices (except that the Controller may not reject such invoices due to the unavailability of funds), assign voucher numbers to the invoices, and present the accepted vouchers to the District of Columbia Treasurer for payment, within five working days of their submission to the Controller by MRDDA. The DC Treasurer or the Chief Financial Officer shall pay all vouchers submitted by MRDDA and accepted by the DHS Controller within eight working days thereafter. (1996 Remedial Plan, section I.B)*
- vi. *The Director or Controller of the DHS, or the Chief Financial Officer, or his or her designee, shall submit to the Court (with copies to the Court Monitor and the Special Master), no later than the last day of each month, a signed statement made under oath, containing each of the following:*

A list of class care providers to whom payment has not been made within thirty calendar days of their submission of acceptable invoices to the MRDDA, or any other agency of the District of Columbia.

A statement that, to the best of his or her knowledge, the affiant has made a concerted and good faith effort to determine the payment status of all provider invoices. (1996 Remedial Plan, section I.C)

- vii. *With respect to non-Medicaid payments found to be overdue, defendants shall be assessed a coercive fine of twice the amount overdue. (1996 Remedial Plan, section I.D)*
- viii. *Coercive fines shall be paid to the Clerk of the Court and placed in a segregated account from which the Court, at the recommendation of the Special Master, may order payment to providers. (1996 Remedial Plan, section I.D)*

Medicaid payments

- ix. *With respect to Medicaid payments submitted by class providers on or before the fifth day of each month, claims are to be processed by the 15th of that month so that the Medicaid check register may be transferred to HCF by that date. HCF shall submit the Medicaid check register to the DC Treasurer within seven days of its receipt. The DC Treasurer or the Chief Financial Officer shall mail checks to the providers listed on the Medicaid check register as eligible for Medicaid reimbursement, for the full amount of the reimbursement (or that amount which is undisputed, for reasons other than the*

unavailability of funds), no later than the fifth day of the next month. (1996 Remedial Plan, section I.B)

- x. *The Director or Controller of the DHS or the Chief Financial Officer shall submit to the Court, with copies to the Court Monitor and the Special Master, no later than the last day of each month a signed statement, made under oath and notarized, containing each of the following:*

A list of care providers of the class who have not been paid full Medicaid reimbursement within 30 calendar days after the submission of their invoices to the processing contractor.

A statement that to the best of his or her knowledge, the affiant has made a concerted and good faith effort to determine the payment status of all provider invoices. (1996 Remedial Plan, section I.C)

- xi. *At the end of the first month in which defendants report that there are outstanding Medicaid payments not paid within thirty days of submission of an acceptable invoice, defendants shall be assessed a coercive fine of \$5,000 a day, until the overdue payments are made. Civil fines shall be paid to the Clerk of the Court and placed in the segregated account from which the court, at the recommendation of the Special Master may order payment to providers. (1996 Remedial Plan, section I.D.)*

- xii. *If the DHS controller, or the City Administrator, is unable to bring about compliance of the defendants with this Remedial Plan, he or she shall identify by name and position those individuals in the District of Columbia government whose action or inaction precludes defendants' compliance. Such information shall be provided in a report to the Court, with copies to the parties, the Special Master, and the Court Monitor, within 30 days of each instance of noncompliance. (1996 Remedial Plan, section IV)*

- xiii. *The Special Master may hear the claim of any class care provider whose undisputed or accepted claim has not been paid by the defendants within thirty days of the date of submission to the appropriate agency. The Special Master may then recommend to the Court findings of fact and conclusions of law regarding whether the claimant-provider should be paid with funds from the civil fines account. (1996 Remedial Plan, section I.D.)*

- xiv. *Defendants shall maintain their vendor hotline and shall provide accurate, current information to care providers about the status of the invoices on the vendor hotline to the greatest extent possible, until defendants demonstrate to the Court that maintaining the vendor hotline is no longer necessary. (1996 Remedial Plan, section I.B)*

b. Necessary Tasks to Implement the Court Orders

The defendants continue to report monthly on the timeliness of the Medicaid and non-Medicaid payments, with copies to the Special Master, the Court Monitor and plaintiffs and the plaintiff-intervenor (and when the Quality Trust is created, to the Quality Trust and its lay advocacy program). The report should clearly indicate the payments that have not been made on a timely basis, based on the date of submission of vouchers by vendors.

Defendants will comply with the contracting provisions of the Court Orders.

c. Time Frames for Implementation

This obligation is immediate and continuing.

d. Specific Outcome Criteria for Determining Compliance

- i. Defendants comply with the provisions regarding budgeting.
- ii. All payments are made on a timely basis for two consecutive years as required by the Court Orders.
- iii. Defendants comply with the contracting provisions of the Court Orders.

e. Standard of Compliance

Full Compliance

f. Method of Assessing Compliance

- i. Review of a 10 percent random sample of vouchers/requests for payment by Medicaid and non-Medicaid providers.
- ii. Interviews with representatives of 10 percent of the providers selected at random.

H. ESSENTIAL SYSTEMIC CONDITIONS

In addition to the specific actions described above, the parties also discussed several other actions that would assist the District in developing additional options for the cost-effective implementation of the goals of this action -- individualized services in the least restrictive environment to the persons served by the mental retardation and developmental disabilities service delivery system.

A. Medicaid Reforms

As the Committee reviewed the present mental retardation and developmental disabilities service system, it became clear that there are significant opportunities to expand the range of services and supports available to consumers and others in need of assistance from MRDDA, while offsetting the cost of this expansion to the District. The vehicle for achieving this result is an amendment to the District's Medicaid plan to take fuller advantage of options under the Medicaid waiver program. The current Medicaid waiver is narrowly drawn and has thus far served a very limited number of consumers. Unlike almost every state where Medicaid waiver funded services serve more than half of the persons with mental retardation and developmental disabilities, in the District, waiver-funded services account for only a small

handful of consumers. At the same time, the cost of some of the existing programs that could be eligible for Federal Financial Participation is borne entirely by the District. Thus, the committee deems it important that the District take fuller advantage of the opportunities available under the Medicaid waiver.

1. Medicaid waiver to provide adequate funding of implementation of the Plan

The Planning Committee agreed that the District would directly or through contract:

- (a) Articulate policy options for the District to carry out purposes of Home and Community Based Services (HCBS) and will propose changes in the waiver to maximize reimbursement and the provision of services and supports in the least restrictive, most integrated, community-based settings.
- (b) Conduct quality reviews of the provider network to evaluate appropriateness and timeliness of care and recommend procedures for Medicaid compliance, potential quality improvement and improved access to services.
- (c) Recommend criteria to assess consumers' level of functioning in order to determine the appropriate utilization of ICF/MR facilities.
- (d) Assess Community Residential Facilities= (CRFs) current compliance with Medicaid HCBS standards and recommend a plan for qualifying CRFs for Medicaid reimbursement under the HCBS waiver.
- (e) Evaluate first year of HCBS implementation, consumer screening, utilization management and access to services in order to:
 - (1) Identify target population and define eligibility criteria;
 - (2) Assess needs of the population and identify alternative residential and day programs needed;
 - (3) Develop billing documentation necessary for waiver
 - (4) Identify consumers who can stay in their current residential settings, receive the quality of service currently provided and qualify for waiver reimbursement, (e.g., CRF residents receiving appropriate quality of care);
 - (5) Identify consumers who can stay in their current residential settings and qualify to receive waiver reimbursable services when Medicaid waiver quality standards of care are achieved;
 - (6) Identify consumers currently residing in ICFs/MR who, in light of available HCBS, do not need ICF/MR level of care and recommend a plan for the development of new less intensive programs or the conversion of existing ICF/MR programs to less restrictive service models;
 - (7) Recommend optimal organizational structure and management policies for implementation of the waiver; and
 - (8) Develop options regarding the schedule for obtaining federal

2. Day Treatment

The defendants will:

- (a) modify the definition of day treatment program for purposes of Medicaid reimbursement so as to permit habilitation services to be

provided in the least separate, most integrated and least restrictive community setting appropriate to the needs of each consumers; or

(b) modify the Medicaid waiver so as to include day treatment programs in such settings.

The District will allocate funds for the performance of these functions directly or through a contract with an appropriate vendor. Funds necessary to implement the Medicaid recommendations that are adopted by the D.C. government will be secured through MRDDA and MAA appropriations. Funds necessary to provide waiver reimbursable services will be secured through Medicaid.

3. Completion dates

Stage I B 90 Days from the Filing of the Plan with the Court

1. Produce plans of improvement for HCFA compliance.
2. Recommend a plan for quality improvement, performance indicators and outcome measures.

Stage IIB 180 Days from the Filing of the Plan with the Court

1. The District will conduct and report findings of an evaluation of the programmatic effects and the fiscal impact of the reformed waiver.
2. Defendants will:
 - (a) Transfer a minimum of 75 people to the waiver and develop a phase-in schedule for complete implementation and authorize and complete service plans for people in CRFs who meet levels of care and service quality criteria and transfer them to the waiver.
 - (b) Assist providers to convert to HCBS programs and provide technical assistance, business plans and improvement plans.

Stage III B 240 Days from the Filing of the Plan with the Court²²

Evaluate and expand the waiver to create opportunities for provision of services and supports in the least restrictive environment.

B. Legislation

The parties recognize that many of the existing statutes governing services and supports to persons with mental retardation and developmental disabilities require revision and updating to reflect contemporary approaches to the provision of services and supports. The parties have, through discussion, developed a set of Legislative Principles to guide them through the process of developing and proposing legislation (see Appendix). To this end, the parties intend to work cooperatively to develop and propose legislation as follows:

1. Steps needed to effectuate the Plan:
 1. Access to services (class members exempted from fund availability condition);

²² *THE PLAINTIFF- INTERVENOR, UNITED STATES, TAKES NO POSITION WITH REGARD TO THE DEVELOPMENT OF LEGISLATION AS REFERENCED IN THE PLAN OR TO THE LEGISLATIVE PRINCIPLES APPENDED TO THIS DOCUMENT.*

2. Service planning B ISP;
3. Follow up and tracking;
4. Needs assessment;
5. Confidentiality; and
6. Guardian/conservatorship/representative payee provisions.

2. Funds needed:

The Special Master will hire experts to draft proposed legislation.

3. Completion dates

Stage I-- January 1, 2000

Identify legislation to be proposed and amended.

Statement of Principles by 12/15/99.

Identify experts for discrete drafting projects.

Special Master will hire experts.

Stage II B60 Days From the Filing of the Plan with the Court

1. Experts to submit drafts to Committee as completed along with short descriptive rationale for the proposed changes.

2. Committee to review submitted drafts.

3. Defendants to find legislative sponsors.

Stage III B90 Days From the Filing of the Plan with the Court

1. Defendants will write statements setting forth the rationale for each proposed legislative change.

2. Sponsors will introduce legislative proposals.

3. Defendants will support proposals through written and oral testimony, responses to information requests and otherwise.

Pursuant to the Court's February 10, 1999 Order and with agreement of the parties to this action indicated below, the Special Master and the parties submit and recommend approval of the foregoing 2001 Plan for Compliance and Conclusion of *Evans v. Williams*.

Respectfully submitted,

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Appendix --EVANS LEGISLATIVE PRINCIPLES

FUNDAMENTAL RIGHTS

1. People with disabilities have the same rights as all other citizens and residents. They will establish, with assistance when necessary, where they want to live, with whom they want to live, and how their time will be occupied.

2. All recipients shall enjoy fundamental rights relative to the provision of services and supports. These fundamental rights, consistent with personal choice, include the right to:

- A. Be treated with respect and enjoy personal privacy;
- B. Worship in accordance with the individual's beliefs;
- C. Manage one's own financial affairs and assets and if unable to do so, receive regular accounts of all funds belonging to the individual that are held or administered by others;
- D. Normal living conditions, including the areas of dress, grooming, movement, sexual expression and relationships, and use of personal time;
- F. Be taught skills needed for the tasks of daily living;
- G. To have reasonable visits, exercise, communication, diet and nutrition;

H. Receive all services and supports identified in an individual plan for services and supports within a reasonably prompt period of time, including medical, dental, adaptive equipment and other health related services, in a manner which insures accessibility, quality and continuity of care.

FREEDOM FROM HARM

3. Individuals shall be free from mental and physical abuse, seclusion and other harm, including clinically inappropriate physical restraint.

4. Chemical restraints shall not be administered on an as needed basis (PRN), and shall be considered a controlled procedure subject to review under District policy governing controlled procedures.

5. Upon reasonable belief that a recipient is at imminent risk of serious harm due to his or her circumstances or situation, the District shall take all steps necessary to immediately protect the individual.

6. Any individual or entity who subjects an applicant or recipient of services to harm or otherwise violates the fundamental rights of an individual with developmental disabilities shall be subjected to the imposition of civil fines or other appropriate sanctions.

7. The District must refer abuse and neglect to appropriate law enforcement agencies for prosecution under law and shall recommend the enactment of such penal statutes as may be necessary to protect vulnerable adults.²³

INDIVIDUAL CHOICE

8. The needs and desires of the individual shall govern the development of all plans of services and supports. To that end, all District agencies must establish a structure that enables them to coordinate their efforts to facilitate the provision of services appropriate according to the individual=s needs and desires. Coordination contemplates the removal of administrative obstacles for the provision of services for an individual, as well as the transition from one agency=s service system to that of another.

9. All recipients shall receive services and supports in the least restrictive environment, least separate, most integrated that is appropriate to an individual=s needs. Toward this end, each individual shall be offered a choice of services and supports:

(A) in less rather than more structured settings;

²³ *THE FOLLOWING HAS BEEN PROPOSED AS LANGUAGE TO BE INCLUDED IN SUCH PENAL STATUTES:*

A. ANY PERSON WHO KNOWINGLY OR WILLFULLY OR THROUGH CULPABLE NEGLIGENCE, FAILS TO DISCHARGE A DUTY TO PROVIDE CARE AND SERVICES NECESSARY TO MAINTAIN THE PHYSICAL AND MENTAL HEALTH OF A VULNERABLE ADULT (AS DEFINED IN STATUTE) THAT A PRUDENT PERSON WOULD DEEM ESSENTIAL FOR THE WELL-BEING OF THE ADULT IS GUILTY OF CRIMINAL NEGLIGENCE OF THE VULNERABLE ADULT.

B. ANY PERSON WHO INTENTIONALLY OR KNOWINGLY ASSAULTS OR THREATENS TO ASSAULT, UNREASONABLY CONFINES OR INVOLUNTARILY SECLUDES A VULNERABLE ADULT (AS DEFINED IN STATUTE) IS GUILTY OF CRIMINAL ABUSE OF THE VULNERABLE ADULT.

- (B) in smaller rather than larger living homes;
- (C) in independent rather than dependent living situations;
- (D) in integrated community settings;
- (E) that are consistent with and based upon an individual=s voluntary and informed choices and preferences;
- (F) that are culturally and linguistically competent.

10. Each individual shall be presumed to be competent (irrespective of commitment status) and to have capacity to make choices and decisions. An individual with developmental disabilities who lacks cognitive, communicative and educational capacity to make autonomous decisions shall be provided with assistance in making decisions and/or expressing consent.

SUBSTITUTED JUDGMENT

11. In the event that an individual lacks capacity to make decisions:

- A. Assistance in decision making should be the least restrictive intervention and for
- B. Surrogate decision makers must use the substituted judgment standard rather than the best interests standard (i.e., the decision should be based on what the person would have decided if the person had capacity, rather than what the surrogate believes to be in the person=s best interest);
- C. Limited guardianship is preferable to plenary guardianship;
- D. Guardians and other surrogates shall be required to have regular training about the rights, roles and responsibilities of a substitute decision maker;
- E. No individual who operates or is an employee of an entity in which an incapacitated person receives treatment, support and services can serve as guardian for the incapacitated person;
- F. Guardianships will be reviewed at least semi-annually at which point the guardian will make a report in writing to the Court.

TRAINING

12. Any entity or individual C including administrative and community support staff -- providing supports and services will receive training and will be, consistent with this training requirement, demonstrably competent and knowledgeable prior to providing supports and services and at all other times.

13. Any individual providing supports and services shall have demonstrable knowledge of the needs of the individual to whom they provide service and supports, including but not limited to the contents of the individual service plan, the medical needs of the individual and

other critical information. Persons providing itinerant services (e.g., transportation) will have demonstrable knowledge of relevant medical and other health related needs of those individuals to whom services are provided.

14. All District staff with oversight, certification, case management and investigative responsibilities must demonstrate competence in the areas enumerated above in Principle #12.

SERVICES AND SUPPORTS

15. All services required by a recipient shall be identified in full in all assessments and plans of services and supports, whether or not such services are currently available. The District [Administration], moreover, must provide each recipient all supports and services identified in that person=s plan of supports and services within a reasonably prompt period of time.

16. Applicants for services and supports shall be deemed presumptively eligible for services if they have previously received or been identified as eligible for services and supports as a consequence of their developmental disability by a unit of government, including services for special education, rehabilitation services or other vocational rehabilitation services.

17. The Developmental Disabilities Agency under the Department of Human Services is the single point of entry for services for persons with developmental disabilities. It is the lead agency for the provision of all human services for this population. However, statutorily mandated administrative linkages must be created to include coordination between the developmental disabilities agency and:

- A. the Commission on Mental Health Services;
- B. Adult Protective Services;
- C. the Licensing and Regulatory Administration;
- D. the Medical Assistance Administration;
- E. the Rehabilitation Services Administration;
- F. District of Columbia Public Schools; and
- G. Child and Family Services Administration.

18. Each person applying for services and supports has the right to notice of eligibility or rejection of their completed application within 30 days, or sooner if reasonably necessary in emergent circumstances. In order to ensure this notification is timely, each applicant will be assigned a lay advocate upon requesting an application or seeking to apply. Denial of an application or a failure to act in a timely fashion upon an application shall trigger the access for the applicant to the grievance procedures, including appeal rights.

19. Any person who was a resident of Forest Haven is entitled to supports and services in perpetuity.

20. To be eligible for supports and services from the District, an individual (other than former residents of Forest Haven) must have a developmental disability, which means a severe and chronic disability of a person which:

- A. Is attributable to a mental or physical impairment or combination of mental and physical impairments;
- B. Is manifested before the person attains age 22;
- C. Is likely to continue indefinitely;
- D. Results in substantial functional limitations in three or more of the following areas of major life activity:
 - 1. Self-care,
 - 2. Receptive and expressive language,
 - 3. Learning,
 - 4. Mobility,
 - 5. Self-direction,
 - 6. Capacity for independent living,
 - 7. Economic self-sufficiency;
- E. Reflects the person's need for combination and sequence of special interdisciplinary, or generic care, treatment, or other services which are of long or extended duration and are individually planned and coordinated.

ADVOCACY AND MONITORING

21. The Lay advocacy program, External Monitor and any legal representative shall have unfettered access to all entities providing services and supports. They shall also have unfettered access to all relevant information and documents (and shall receive copies upon request) related to the supports and services, including but not limited to individual consumer's incident reports, medical and other records, and non-privileged quality assurance records.

22. The following entities and individuals shall be promptly informed of any serious incidents:

- A. The individual's guardian and conservator;
- B. The Lay advocacy program;
- C. The legal representative, when applicable;
- D. The independent, external monitor;
- E. Any governmental agency as required by policy or law.

23. The Lay advocacy program shall be promptly provided the names and contact information of all applicants to assist them with the application process.

24. The Lay advocacy program [and the External Monitor] shall receive notice of all complaints filed with the District's office assigned to receive and resolve grievances.

25. A competent, comprehensive, and independent external monitoring system shall be developed and fully endowed to monitor compliance with local and federal standards, the

Orders and decrees of Evans v. Williams, the 2001 Plan for Compliance and Conclusion of Evans v. Williams, and these principles. The review shall monitor on a regular basis the availability of services, continuity and coordination of care, coverage and authorization of services, consumer rights, grievance system, sub-contractual relations and delegation, etc.

26. All applicants for services and supports and recipients of services and supports are entitled to the assistance of a lay advocate. A list of applicants will be sent to the Lay advocacy program weekly so that office can assure all applications are completed and that applicants are aware of their rights. Any applicant appealing the denial of, or failure to act in a timely fashion upon, an application for services and supports can access legal representation through the Lay advocacy program. All applicant appeals must originate in the Lay advocacy program.

27. Any recipient of services is entitled to legal representation at any time.

GRIEVANCE SYSTEM

28. The District shall create a grievance system administered by an independent office that meets the following requirements:

A. An applicant for or recipient of supports and services may file a complaint, or, alternatively, any interested party may file a complaint on behalf of an applicant or recipient;

B. Personnel from the independent office shall investigate the substance of the complaint and, to the maximum extent possible, attempt to resolve the matter. A representative from the independent office shall respond in writing to the person filing the complaint within ten days of the filing;

C. The District of Columbia, its agents, contractors and licensees may not subject an individual to discipline, harassment, or retribution for filing or being the subject of a complaint or, in cases when a complaint is substantiated, obtaining corrective action through the grievance system;

D. Although persons making complaints may do so orally, by telephone, or in writing, personnel from the independent office must document all complaints and responses in order to, among other things, demonstrate patterns of rights violations.

29. If the government fails to implement a recipient's plan of services and supports, or violates any other right under the aggrieved individual may obtain appropriate relief, including the enforcement of the plan, on an expedited basis, through an informal or formal hearing by filing a petition in the Mental Retardation Branch of the Family Division of the Superior Court of the District of Columbia. An aggrieved individual is not required to exhaust any administrative remedies (*e.g.*, filing a complaint with the independent office) prior to petitioning for relief in the Superior Court.

30. A hearing officer or judge presiding in a proceeding in the MR Branch of the Superior Court is authorized to issue appropriate relief, including enforcement of an

individual's plan of services and supports. A hearing officer or judge who finds in favor of the individual shall Order reasonable and appropriate relief in the following form:

A. By directing the District to pay an entity that has provided, is providing, or will provide such services and supports, provided that the relief the Judge or Hearing Officer orders is limited to services available under the District of Columbia Medicaid State Plan or any waiver thereto; and

B. Any other additional relief that is appropriate.

ASSESSMENTS OF NEEDS

31. The Administration will issue an annually public report documenting all individuals served by the developmental disabilities system, broken down by type of services and supports received as well as the number of individuals seeking services, their disabilities and the types of services sought. The assessment must also identify the number of recipients awaiting dental or vision care, medical treatment or equipment.

32. The budget for the Administration must be sufficient to meet the needs identified in the needs assessment.