



MR-OK-002-004

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

HOMeward BOUND, et al.,

Plaintiffs,

v.

THE HISSOM MEMORIAL CENTER, et al.,

Defendants.

Case No. 85-C-437-E

CONSENT DECREE

Plaintiffs, representing the class of present and certain former residents of The Hissom Memorial Center (THMC), and defendants hereby agree to the entry of this Decree in settlement of this litigation, and in order to establish an agreed-upon framework for a community service system as an alternative to institutional care for class members.

BACKGROUND

Suit was filed on May 2, 1985, on behalf of THMC class, to secure relief from alleged unlawful treatment while in the care of the Department of Human Services. The Court entered certain interim orders pertaining to services provided at THMC. Findings of Fact and Conclusions of Law and a final

Order containing the Court Plan and Order of Deinstitutionalization ("1987 Order") were entered on July 24, 1987, and became effective upon the entry of judgment on October 21, 1987. Following an application for stay by defendants, the Court entered further Findings of Fact and Conclusions of Law and its Order denying a stay on May 20, 1988. By order dated May 20, 1988, the Court appointed a Monitor to facilitate implementation of the Decree.

Defendants have appealed the Court's 1987 Order to the United States Court of Appeals for the Tenth Circuit, which appeal is still pending. Pursuant to the Court's Decree, defendants have submitted a number of plans for carrying out various elements of the order.

At the direction of the Court in its May 19, 1989, Order, the Department of Human Services devoted substantial resources to the development of plans to secure for class members the relief of the Orders of the Court. This planning effort has resulted in a comprehensive series of detailed plans designed to afford the present and former residents of THMC quality habilitative care in community settings. In addition, the parties have now had almost two years of experience under the Court's 1987 Order, and based on that experience they have a much better understanding of the difficulties involved in the transition from a system of care for individuals who are mentally retarded based primarily on institutional treatment to a system based primarily on community

service, of the amount of time required to effect transitions of THMC population to community settings, of the resources that are available to support a service delivery system based primarily on community service, and of the costs involved in such a system.

The plaintiffs and defendants now desire to terminate the litigation concerning care and treatment of THMC class, including the pending appeal to the Tenth Circuit Court of Appeals, and to move forward under an agreed-upon structure for carrying out a service program that will provide appropriate relief to the class consistent with the deinstitutionalization goal of the 1987 Order. Accordingly, this Consent Decree is intended to supersede or modify the Court's 1987 Order and those orders that have been entered by the Court pertaining to implementation of the Decree.

This Consent Decree utilizes the dichotomy in the makeup of THMC class previously established by the Court. The "focus" class consists of all persons now extant who are presently residing at THMC or who were resident at THMC at any time after May 2, 1985. The "balance" class consists of all other members of THMC class.

I. PROVISIONS RELATIVE TO THE "FOCUS" CLASS

A. Discharge from THMC and Provision of Community Services and Supports

1. The central obligation on defendants imposed by this Decree is to adopt and implement a realistic program

for discharging residents from THMC and placing them in appropriate community settings, as defined below, and to provide or facilitate an appropriate regime of services and supports for the focus class in accordance with their Individual Habilitation Plans (IHPs). As part of this program, no new admissions will be made to THMC and all present residents will be discharged. The target date for completing the discharge of all present residents is October 1, 1993. Defendants' planning and implementation efforts will be designed to meet this target. After the discharge of all present residents, THMC will cease to operate as an ICF-MR facility.

2. In addition, there are approximately 100 persons now residing in Oklahoma who were residents of THMC at the commencement of the suit but who have since been discharged from THMC. The obligation to place class members in appropriate community settings applies to any of these persons who is not already placed in an appropriate community setting.

3. The following constitutes the minimum number of class members to be placed in appropriate community settings and provided services and supports identified by their IHPs:

- a. 80 persons during the first year ending October 1, 1990
- b. 100 persons during the second year ending October 1, 1991
- c. 120 persons during the third year ending October 1, 1992

- d. 130 persons during the fourth year ending October 1, 1993
- e. All remaining class members for whom community placements are required under this Decree during the year ending October 1, 1994

Notwithstanding these minimums, defendants will make every effort to meet the target date for discharge of present residents from THMC into appropriate community settings.

4. The range of residential options to be considered for each client includes independent living, natural home, adult companion program, shared living arrangements, foster home, supported living arrangements, small group homes and small ICFs-MR (up to six residents). A placement will be arranged in one of these options, preferably in an apartment, home, or a shared living arrangement, where the clients agree to share a residence.

B. Safety Net Provisions

1. At any time after an exit IHP has been prepared, including cases where clients are in community placements, if a client or parent/guardian believes that placement in a different setting (other than THMC) (such as an ICF-MR of more than six beds) would be most appropriate for the class member, the client or the parent/guardian may request an exception to the approved residential options listed in paragraph I.A.4. above. The Hearing Officer, in accordance with the procedure outlined below, shall decide all requests for residential exceptions.

2. Nothing in this Decree prohibits the use of generic services (such as hospitals, rehabilitation centers or psychiatric facilities) on a temporary basis for a class member to treat a specific medical or emotional condition or episode.

3. Additional safeguards are set forth in the 1989 Plan objectives referred to below.

C. Placement Process

1. Upon the adoption of an exit IHP by the Inter-disciplinary Team (IDT) for a particular client and following departmental review and approval, the exit IHP shall be submitted to the parties and the Review Panel (established by this Decree) for certification recommendation. The parties and review panel shall be asked to respond by recommending:

- a. Approval;
- b. Approval on the condition that listed issues be addressed at the 30-day IHP review;
- c. Conference; or
- d. Non-approval and request for a hearing before the Hearing Officer.

The client and parent/guardian will be given notice of the conference or hearing and will have an opportunity to attend and fully participate. An exit IHP shall be deemed certified automatically in the absence of a response within five working days of receipt by the parties and the review panel. Placement

may proceed upon certification of the exit IHP (either automatic, or after approval by the Review Panel or decision by the Hearing Officer).

2. The parties and the Review Panel shall meet for the purpose of identifying all issues which must be addressed in an exit IHP for certification.

3. No class member shall be discharged from THMC merely to meet a placement timetable. First priority for discharge from THMC shall be given to class members who request, or whose parents or guardian request, placement in community settings.

4. On or before January 15, 1990, defendants shall - provide community placements, as defined above, to all named plaintiffs still residing at THMC.

*4 still at THMC
Done by 12/15*

D. Case Management

1. Defendants agree to utilize a system of independent case management in carrying out this Decree, whose duties and responsibilities shall be those described in the Plan attached hereto and the Court's 1987 Order. All focus class members shall have a case manager on or before June 30, 1990. All case managers will be QMRP qualified within one year of the effective date of this Decree. DHS shall review the salary scale to ensure that sufficient numbers of qualified case managers are available.

11/15/89

2. Defendants will follow a caseload standard during a class member's transition process, and for at least

one year thereafter, of one case manager for every ten class members. At such time as a class member has been in his/her community setting and his/her program has been stabilized for at least one year, he/she will be subject to a caseload standard of one case manager for every twenty class members. After one year from the effective date of this Decree, the parties with approval of the Court may agree to modify the point in time at which the standard increases from ten to twenty class members per case manager. The standard for supervisors will be no more than eight case managers for each supervisor.

E. Focus Class Members Discharged From THMC Since Commencement of Suit

1. Focus class members now residing in Oklahoma who were residents of THMC at the commencement of the suit but who have since been discharged from THMC shall have case managers in accordance with the caseload standards set forth above. IHPs shall be developed for these class members on or before June 30, 1990. Services and supports are to be provided in accordance with the IHPs.

II. PROVISIONS RELATIVE TO THE "BALANCE" CLASS

A. Identification and Assessment

1. The members of THMC class have been identified in a submission to the Court dated August, 11, 1989. Within thirty (30) days of the effective date of this Decree, all class members shall be designated as either focus or balance and the Court shall then certify the list of class members as

*Submitted to
St. by 11/15/89*

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so designated. Balance class members should further be categorized as (a) residing in a private ICF-MR, (b) residing in an institutional setting other than a private ICF-MR, or (c) residing in community settings.

**B. Balance Class Members
Residing in Private ICFs-MR**

1. Case managers shall be assigned to all balance class members residing in private ICFs-MR by December 31, 1989. IHPs shall be prepared for these class members by October 1, 1990.

2. Balance class members residing in private ICFs-MR shall be offered the opportunity to transfer to community settings. For those electing such transfer, defendants will provide appropriate assistance utilizing the placement process described in paragraph I.B.1. above. Community placement of all balance class members residing in private ICFs-MR who elect community placement will be completed within the schedule established in paragraph I.A.3. above.

3. For balance class members residing in private ICFs-MR who do not elect community placement, there shall be no obligation on defendants under this Decree to effect community placement. However, these class members, or representatives acting on their behalf, will be entitled to seek supplementary relief from the Court based on a showing that the care and treatment provided to them by their private ICF-MR violates applicable constitutional or statutory requirements. In any such supplementary proceeding, plaintiffs will bear the

*make sure
it has been done
this is not an
IHP. only need
to be filed - not
the IHP.*

burden of proof. Such supplementary proceedings may be initiated at any time after April 1, 1992, provided that no relief with respect to community placement of ICF-MR residents will be effective prior to three years from the effective date of this Decree.

C. Balance Class Members Residing
in Institutional Settings Other
Than Private ICFs-MR

1. Case managers shall be assigned to all balance class members residing in institutional settings other than private ICFs-MR by December 31, 1989. IHPs shall be prepared for these class members by October 1, 1990.

2. Balance class members residing in institutional settings other than private ICFs-MR will be placed in community settings, as defined in paragraph I.A.4., subject to the provisions of section I.B. Transfer of these class members to community settings will be completed by October 1, 1994.

3. At any time after an exit IHP has been prepared for a class member in this category, including cases where clients are in community placements, if a client or parent/guardian believes that placement in a different setting (other than THMC) (such as an ICF-MR of more than six beds) would be most appropriate for the class member, the client or the parent/guardian may request an exception to the approved residential options listed in paragraph I.A.4. The Hearing Officer, in accordance with the procedure outlined below, shall decide all requests for residential exceptions.

*All class members
have C.M's by
me
12/31/89*

*This will be done by
MRA - 67 clients*

4. The placement process for these class members shall follow that set out in paragraph I.C.1. above.

D. Balance Class Members Residing
in Community Settings

1. Case managers will be assigned to all balance class members residing in community settings by December 31, 1989. IHPs for class members shall be completed by October 1, 1993.

2. For class members in this category whose assessment indicated a need for community service and/or supports, defendants will develop and implement a plan for such services and supports within the schedule existing in paragraph I.A.3 above.

E. Case Management

1. Defendants agree to utilize a system of independent case management for the balance class in conformity with the provisions of paragraph I.D.1. above.

2. The caseload standard for balance class members residing in institutional settings shall be one case manager for every twenty class members, provided that during a class member's transition process to community placement, and for at least one year thereafter, the standard shall be one case manager for every ten class members. This standard shall be maintained until the client's program has been stabilized for at least one year. After one year from the effective date of this Decree, the parties may with Court approval agree to modify the point in time at which the standard increases from

ten to twenty class members per case manager. The standard for supervisors will be no more than eight case managers for each supervisor.

III. GENERAL PROVISIONS RELATIVE TO ENTIRE CLASS

A. Role of Parents and Families

1. Parents and guardians of clients will be members of the Interdisciplinary Team and will be actively involved in all team decisions. The IDT process will be utilized to develop an IHP for each class member. Clients, parents and guardians are expected to play significant roles in the IDT process, in the development of an exit IHP, and in the selection of the residential setting, services and supports for the particular client. The parties recognize that the development and implementation of effective IHPs requires the meaningful consultation with, input from, and participation by the individual class member, his or her parents, or guardian. Professional judgments on individual programs and community placement alternatives under this Consent Decree should reflect whenever possible the views, preferences and advice of the individual, his or her parents or guardian.

2. Clients and their families will have the right to select all service providers from the State-approved provider lists to implement IHPs.

3. Any client, parent, guardian, team member or party to this action who disagrees with an IDT determination

as to placement or services may seek review of the determination by the Hearing Officer, in accordance with the procedures outlined below.

B. Safeguards and Advocacy

1. A system of safeguards as outlined in the attached 1989 Plan shall be implemented. The defendants will secure outside technical assistance from a person chosen by the parties to assist in the development and implementation of the quality assurance program, including those provisions relative to compliance with ACDD standards.

2. The office of the Guardian Ad Litem shall continue to carry out its advocacy functions in accordance with the Court Order of December 23, 1988, until such time as the parties and Review Panel, with approval of the Court, agree that the needs of the class members no longer require this office. All annual budgets for the office shall be submitted to the parties for review and to the Court for approval.

C. Training

1. In order to accomplish the goals of this Consent Decree, training of staff at THMC and in the community, including case managers and contract service providers, must continue. Upon completion of the review presently being performed by TCI, the defendants will prepare a training plan for review by the parties, recommendation by the Review Panel, and approval by the Court.

D. Model Placements

1. The Court Monitor's Model team program shall continue for the period specified in the Court Order of October 14, 1988, subject to the terms of that Order. The responsibility of the Monitor under that Order for recommending the transition of Model placements into the defendants' service system shall be discharged by the Administrator of the Developmental Disabilities Division, consistent with paragraph 3 below.

2. An independent review of the Model program and placements shall be performed by a person selected by the parties utilizing criteria and standards approved by the parties. A written report shall be filed with the parties, the Review Panel and the Court.

3. It is the intention of the parties that the termination of the Model not adversely affect the programs of those persons served by the Model. To that end, upon the termination of the Model, if requested by the clients and/or parents/guardians, the defendants shall contract with the service providers who are providing services to the class members in the Model, or such other providers selected by the client or a parent/guardian, subject to reasonable terms and conditions, to continue those services. Prior to the termination of the Model the defendants shall file with the Court the signed provider agreements between DHS and the service providers. In the event that the defendants are unable to contract with

the providers selected by/for the Model participant, they shall notify the Court in writing why they are unable to contract with the provider and identify what providers are available to assume the program. The Model program for any Model participant shall not terminate until the defendants have assumed the responsibility for the Model placement, and the Court has approved the transition IHP.

E. Services at THMC Pending
Discharge of Residents

1. As long as class members are residents at THMC, it is the defendants' obligation to maintain and operate the facility in accordance with state and federal ICF-MR requirements. Defendants are required to ensure a safe living environment to all residents, to provide proper medical care, and to provide habilitation services to residents prior to their discharge in accordance with IHPs developed through the IDT process.

2. Defendants may make reasonable expenditures for renovation, repair or capital construction at THMC pending discharge of residents, which they believe are necessary to maintain the integrity of the physical plant, and adequately to provide for the remaining class members at THMC pending their transition to community placements.

3. Defendants will comply with the orders and stipulations of the parties previously entered, with respect to the following supports and services at THMC:

- a. The Feeding Assistance Program
(Stipulation of May 30, 1989)
- b. Progressive Therapeutic Technologies,
Inc. (PTT) (Order of August 27, 1986)
- c. Therapeutic Concepts, Inc. (TCI)
(Order of February 11, 1987)

In the event the defendants can ensure timely payment for the Court-ordered remedial services at THMC, DHS may enter into contracts with PTT and TCI, and the Trustee's fund presently utilized will be discontinued. The parties to these contracts may agree to modify any of the obligations imposed in the above-referenced orders.

4. Defendants will continue to take those efforts presently in effect for staff recruitment programs and outside medical and therapeutic experts who provide support services at THMC.

5. Defendants will prepare a phase-down plan for THMC within ninety (90) days from the effective date of this Consent Decree. The phase-down plan will include, but not be limited to, the following issues: medical care, health and sanitation, staffing (professional, direct care and support), training and programming. In closing living units on campus, consideration shall be given to limiting the number of on-campus moves prior to transition into the community, and moving clients with identified community living companions. The plan will be submitted to the parties and the Review Panel. The parties and the Review Panel will have fifteen (15) working days to comment in writing on the plan. The parties and the

Review Panel shall meet and attempt informally to resolve any differences. The plan will then be filed with the Court for approval. Any disputes as to the plan will be resolved by the Court following an evidentiary hearing.

IV. PROVISIONS RELATIVE TO OVERSIGHT
AND DISPUTE RESOLUTION

A. Informal Dispute Resolution

1. The parties agree to use their best efforts to resolve differences on an informal basis. However, in the event that the plaintiffs or parent-intervenors believe that the defendants are failing adequately to carry out this Consent Decree or any other Orders of the Court, they may give written notice of such alleged non-compliance to all parties and the Review Panel specifying with particularity the facts and grounds relied upon to demonstrate such failure. The Review Panel may on its own motion also initiate such a notice.

2. Within twenty (20) days from receipt of the notice of alleged non-compliance, the defendants shall serve a response to the notice of non-compliance on all parties and the Review Panel. The parties should make every attempt to resolve the issue through informal discussions, with the assistance of the Review Panel as appropriate. If, after a reasonable period, plaintiffs, parent-intervenors or the Review Panel believe that defendants have not either cured the alleged default or made a good faith effort to implement procedures to correct the alleged default, the issue, if it involves a system issue affecting more than one individual

class member, will be heard and decided by the Review Panel. In the event that the issue involves only an individual class member, the issue will first be presented to the Hearing Officer, in accordance with the procedures outlined below. In either case, any party dissatisfied with the resolution by the Review Panel or Hearing Officer may bring the matter before the Court.

3. No effort by the defendants to resolve a claim of non-compliance shall be construed to limit the defenses available to the defendants, in the event the matter is brought before the Court.

B. Homeward Bound Review Panel

1. There shall be established a panel of three persons, who will have primary responsibility for assisting the Court and the parties in carrying out the purposes of this Consent Decree. It is intended that the panel and its staff will pursue a problem-solving policy to the end that litigation, argument and fault-finding can be minimized and the energies of all interested persons focused on the task of meeting the needs of class members.

2. Within thirty (30) days of the effective date of this Consent Decree, the plaintiffs and defendants shall submit to the Court a recommended list of Review Panel members for appointment by the Court. One person shall be selected by the plaintiffs, subject to approval of the defendants. One person shall be selected by defendants, subject to approval of the

plaintiffs. The third person shall be jointly selected by the parties, or if they cannot agree, by the first two Panel members. The advice of the parent-intervenors shall be sought and considered in the selection of the Review Panel members. The Panel appointees should be recognized experts in the field of mental retardation. Upon the inability of any of the Panel members to continue to serve, his or her replacement shall be selected in the same manner as the person to be replaced.

3. The Panel will function as follows:

(a) The Panel should operate informally and should meet whenever it deems it appropriate. The Chair of the Panel will rotate among the members.

(b) The Panel is authorized to hire up to three staff members with appropriate experience in mental retardation and/or community or institutional administration. The Panel is further authorized to hire up to two clerical staff members.

(c) The function of the Panel is to oversee and facilitate defendants' compliance with this Consent Decree and the 1989 Plan attached thereto, as well as earlier Orders of the Court referenced in this Decree. The Panel should become sufficiently informed about the program and sufficiently familiar with the defendants' implementation and the results thereof to provide meaningful assistance and resolve any issues of compliance that may arise. To that end, the Panel shall develop a plan for oversight covering client services at THMC, review of community placements, and implementation of this

Consent Decree. The Panel should invite any party to submit recommendations on how it should carry out its oversight function. The Panel may from time to time modify its methods of oversight as appropriate in light of experience and the stage of implementation of this Decree, and any party may at any time recommend such modification to the Panel.

(d) The Panel shall compile semiannual written reports on the degree of progress with respect to the implementation of this Decree and the attached 1989 Plan, client services at THMC, and community placements, and provide recommendations to the defendants concerning the steps deemed necessary to maintain compliance with the terms of this Decree or other referenced Court Orders. All such reports shall be submitted to all parties and the Court.

(e) Members of the Panel and its staff shall have reasonable access to all information, records, buildings and areas, including those of providers, and shall be permitted to interview any member of the class, employee of the defendants or employee of a provider, at reasonable times and places, to the extent necessary to discharge their duties under this Decree.

(f) The Panel and its staff may conduct any additional and reasonable inquiries they deem necessary or appropriate with respect to matters to be covered by the semi-annual reports and, where appropriate, may draw upon and employ experience of recognized experts, within the limits of the

annual budget. The parties will be advised in advance of any such employment, and will be permitted to attend any exit conferences and receive copies of any written reports.

(g) The parties strongly encourage the Panel members and staff to make informal suggestions to the defendants, in whatever form they deem appropriate, which in their opinion will facilitate compliance with this Decree.

(h) Any class member or his/her representative, parent, foster parent, guardian, or employee may bring a situation or disagreement related to the provisions of this Decree or other referenced Court Orders, or individual program, to the staff of the Panel for guidance, interpretation, or resolution by the staff or by the Panel. Efforts should be made to resolve any such matter informally, including resort to available administrative processes.

(i) The Review Panel shall provide to the parties all information provided to the Court by the Panel or its staff, in any form.

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

*Panel will
be assisting*

(k) Within thirty (30) days of the appointment of the full Panel, the Panel shall prepare and submit to the parties and the Court an annual budget which describes in sufficient detail the proposed expenses for the operations of the Panel. The annual budget for the Panel shall be approved by the Court.

4. The Review Panel and the parties shall meet on a regular basis with the Court, monthly at the outset. The Court, Review Panel, or parties may request a meeting at any time, and may request discussion on any issue by providing a written request at least five (5) days prior to the conference. The purpose of these conferences will be to facilitate communication and problem-solving.

C. Hearing Officer

1. A Hearing Officer shall be appointed by the Court, upon the recommendation of the parties, who shall have the responsibility to resolve disputes concerning individual placement and services, subject to Court review. The Hearing Officer shall be an attorney, who will be trained in and sensitive to the needs of class members and their families. The Hearing Officer shall be independent of the Review Panel, but may seek the advice of the Review Panel if he/she deems it appropriate.

2. It is anticipated that the Hearing Officer will not be required to devote full time to his/her responsibilities

under this Decree. The Hearing Officer shall receive appropriate compensation from defendants for such time as he/she does devote to matters under this Decree, on a monthly basis, and shall promptly be reimbursed by defendants for reasonable out-of-pocket expenses incurred in performing his/her duties.

D. Resolving Disputes About
Placement or Services

1. Whenever a class member, his/her representative, or a parent/guardian disagrees with an IDT decision as to placement or services, or is dissatisfied with any service or support provided by defendants pursuant to this Decree or the referenced Court Orders, he/she must first utilize whatever administrative appeal and review procedures that defendants have made available in an effort to resolve the difference amicably and without the need to resort to hearing procedures.

2. If after utilizing the procedures referred to in the previous paragraph, or after the passage of a reasonable time without any response from defendants, a class member, his/her representative, or a parent/guardian may apply to the Hearing Officer for a hearing to resolve the dispute. Upon receipt of a request for a hearing, the Hearing Officer shall immediately notify the class member, his/her parent/guardian, the Review Panel, and the parties of the date for the hearing, which hearing will commence within ten (10) working days from the date on which the hearing request is received.

3. The Hearing Officer shall have the power to fix the time and place for beginning and closing the hearing, and

*These issues
will develop*

shall conduct the hearing in as informal a manner as possible consistent with protecting the rights and needs of the class member.

4. The class member, parent/guardian, the Review Panel and parties shall have the opportunity to present such evidence as the Hearing Officer may determine relevant to the issues. The Hearing Officer may question witnesses and request additional information, if he/she deems it necessary. A court reporter will be available, if requested by any party; otherwise, the proceedings will be tape recorded. Attendance of witnesses at the hearing may be procured by the issuance of subpoenas, as provided in the FRCP. The Hearing Officer may attempt to mediate the dispute, or otherwise encourage resolution by agreement of the parties, before issuing his/her decision.

5. Within ten (10) working days from the completion of the hearing, the Hearing Officer shall serve on the parties and file with the Clerk of this Court a written report setting forth the decision with findings and reasons. In preparing the report, the Hearing Officer shall take such measures as may be necessary for the protection of the class member's privacy.

6. In the event any party to the hearing wishes to seek Court review of the Hearing Officer's decision, exceptions must be filed with the Court within ten (10) working days from the date the Hearing Officer's report is filed with the Court.

7. In the event of Court review, any party may submit additional evidence or arguments to the Court and shall not be precluded from doing so because of failure to present the evidence or arguments to the Hearing Officer.

E. Court Monitor Transition Provisions

1. The parties acknowledge the positive contribution of the Court Monitor, Mr. Powell. In light of this agreement, the development of plans as a result of the Court's May 19, 1989, Order, and the establishment of a Review Panel and Hearing Officer to assist the Court and parties to implement the Consent Decree, there is a need for transition from the existing Monitorship to the Review Panel and other monitoring processes established herein. Therefore, the Court Monitor shall continue to exercise his powers and fulfill his obligations until the Review Panel has been appointed and has commenced functioning. At that time the obligations and powers of the Court Monitor shall terminate.

2. Within thirty (30) days of the termination of the monitorship, the Monitor shall settle all affairs of the office. The defendants shall continue to fund the office until such affairs are settled. The Court Monitor, with notice to the parties, may apply to the Court for such orders as may be necessary to settle the affairs of the office.

V. FINANCIAL PROVISIONS

This Decree does not require the expenditure of more funds on an average per-capita basis to maintain and serve

clients in community settings than is currently being spent to maintain and serve clients on an average per-capita basis at THMC. This standard shall apply on an aggregate basis to expenditures for all clients, rather than on a case-by-case basis.

VI. MISCELLANEOUS PROVISIONS

A. Access to Record, Facilities and Information

1. The parties shall have reasonable access to class members' records, residential and employment sites and information in the possession of the defendants. Access to private residence or private sector employment site shall be subject to consent of the class member. Within thirty (30) days of the effective date of this Consent Decree, the parties shall meet for the purpose of determining what documents and information will be provided on a regular basis. The parties will periodically reassess the need for documents and information production.

B. 1989 Plan

1. Attached to this Consent Decree is a set of plans (referred to as the 1989 Plan) to be used by defendants in carrying out their obligations under this Decree. The plans are the goals and objectives developed by the Planning Committee formed pursuant to the Court's Order of May 19, 1988, refined based on the modifications to defendants' obligations effected by this Consent Decree. The Planning Committee also developed detailed action steps for implementing

the goals and objectives. The action steps are not part of the plan appended hereto and defendants are not obligated to fulfill their obligations by adherence to the action steps (although defendants anticipate that the action steps will provide significant guidance in their implementation of the appended plans). Nevertheless, the action steps help to elaborate the outcomes intended by certain of the objectives, and to that extent are relevant in interpreting the objectives.

2. Defendants will carry out the objectives set forth in the 1989 Plan. In the event any party believes that defendants have failed to do so, he/she may invoke the dispute resolution process set forth in section IV.A. above, in which case the standard for decision shall be whether the defendants are in substantial compliance with the objectives taken as a whole.

3. Defendants will report quarterly to the parties, the Review Panel and the Court on the status of their accomplishment of the objectives contained in the 1989 Plan. In any case where an objective has not been accomplished, or has been significantly delayed, defendants will also report on the extent to which their implementation has differed significantly from that envisioned by the action steps, and how the defendants intend to deal with the situation. The reports should be developed in a manner that least interferes with continued implementation of the 1989 Plan and progress toward meeting the obligations of the Decree.

4. Any party not satisfied with the defendants' report may invoke the dispute resolution process set forth in section IV.A. If the parties are unable to resolve the matter, the Review Panel shall issue recommendations to defendants for resolving the matter. Defendants agree to carry out the Review Panel's recommendations. Any party may appeal the Review Panel's disposition to the Court, in which case the defendants may defer carrying out the recommendations pending decision by the Court.

C. Termination Provisions

1. Within three (3) months following advice from defendants of the placement in community living arrangements of the last focus class member and the last balance class member required by this Decree to be transferred from an institutional setting, the Review Panel shall file with the Court and the parties a final report, which will evaluate community placements and compliance with this Decree. The Review Panel may include any recommendations to defendants concerning continued steps to maintain the purposes of this Consent Decree following termination of the Decree. Any party may comment on the report of the Review Panel, and may raise any question about compliance with any aspect of this Decree or other referenced Court orders. If, upon review of the report and any comments of the parties, the Court is satisfied that defendants have complied with the Decree, including

substantial compliance with the 1989 Plan objectives, it shall terminate its active supervision at that time.

2. The provisions of this Decree pertaining to the maintenance of a system of community services and supports shall remain in effect as long as the Department maintains a program of assistance for the mentally retarded.

3. Any class member who permanently moves or is transferred permanently out of the State of Oklahoma at the request of the class member, his/her representative or parent/guardian shall no longer be considered a member of the plaintiff class.

D. Definitions

For purposes of this Consent Decree, the following definitions apply:

1. "Parties" refers to the Plaintiffs, Guardian Ad Litem, Parent-Intervenors, and Defendants.

2. "Stabilized" means a continuing program providing an appropriate level of services necessary to achieve the habilitation goals in the IHP.

3. "Effective Date" of this Decree shall be the date on which the Court enters it as an Order of the Court.

E. Legal Provisions

1. The following provisions of the 1987 Order have been superseded by the provisions of this Consent Decree: Introduction and Class Focus of This Order, pp. 1-4; General Terms and Timetables, pp. 4-7; Court Monitoring, pp. 7-10;

Systems Safeguards, pp. 13-19; Development of Community Supports/Involvement, pp. 19-21; Infrastructure, pp. 21-23; Case Management, pp. 24-27 and Exhibit A; Home and Community Supports and Services, pp. 27-30; Hisson Services Pending Closure, pp. 31-32; Employment Services, pp. 38-43. The following provisions of the 1987 Order shall be regarded as vacated: Prevention and Early Intervention, pp. 10-11; In-Home and Family Supports, pp. 11-13; Budget Plan, pp. 43-53; Financing Questions, pp. 54-58. The Orders appointing and funding of a Court Monitor are vacated, subject to the provisions of this Decree concerning termination of the monitorship and to the full compensation of the Monitor and his staff. The Order of October 14, 1988, authorizing the Model program is modified to the extent required by this Consent Decree. The Order of May 19, 1989, is vacated.

2. The Findings of Fact and Conclusions of Law entered on July 24, 1987, and on May 20, 1988, are withdrawn, to the extent that they may not be utilized as res judicata, stare decisis or collateral estoppel, except as between the parties in this action. They may be used in interpreting this Consent Decree and as a basis for this Consent Decree should any party seek to vacate or amend its terms.

3. Except as provided in paragraph 2 above, the defendants shall not be bound by any of the Findings of Fact and Conclusions of Law previously entered by the Court in this

case with respect to any other lawsuit or proceeding involving any person who is not currently a member of the THMC class.

4. All prior plans submitted by defendants in compliance with the Orders of this Court are superseded by this Consent Decree, and defendants shall be under no further obligation to carry out the superseded plans.

AGREED TO:

Counsel for Plaintiffs

Counsel for Defendants

ORDERED this ____ day of _____, 1989.

U.S. District Judge