1987 WL 27104
Only the Westlaw citation is currently available.
United States District Court, N.D. Oklahoma.

HOMEWARD BOUND, INC., et al., Plaintiffs,
v.
HISSOM MEMORIAL CENTER, et al.,
Defendants.

No. 85–C–437–E. | July 24, 1987.

Attorneys and Law Firms

Raymond Yasser, Louis Bullock, Bullock & Bullock, Tulsa, Okl., Allen Mitchell, Sapulpa, Okl., Thomas K. Gilhool, Frank J. Laski, Judith A. Gran, Timothy M. Cook, Philadelphia, Pa., for plaintiffs.

Ralph Anderson, Bernice Anderson, Sapulpa, Okl., LaMoine and Ruby Fuller, Tulsa, Okl., R.F. Dobson, Muskogee, Okl., Mary Lynn Sherwood, Sapulpa, Okl., Howard Exendine, Mounds, Okl., Roberta Warner, Oklahoma City, Okl., Scott W. Bradshaw, Bradshaw & Bradshaw, A.M. Fuller, Tulsa, Okl., William Henry and Patricia A. Ryan, Pryor, Okl., intervenors.

David A. Cotter, Broken Arrow, Okl., for James and Carol King.

Joseph A. McCormick, Steven Andrew, Kevin Ikenberry, McCormick, Andrew & Clark, Tulsa, Okl., for Gatesway Found. and Ok. Assoc of Private residential fac. for the Mentally Retarded.

Dick Lowry, Mark W. Curnutte, Logan, Lowry, Johnston, Switzer, West & McGeady, Vinita, Okl., for Home of Hope.

Jerry Snider, Richard K. Holmes, Hanson, Holmes, Field & Snider, Tulsa, Okl., for Phyllis Randall.

Gordon Harness, Oklahoma City, Okl., for Propps, Inc.

Chuck Watson, Drumright, Okl., for Schickrams.

A. Langley Coffey, Sand Springs, Okl., Carol J. Russo, Tulsa, Okl., for Sharpton.

Michael C. Turpen, Atty. Gen., Robert A. Nance, Asst. Atty. Gen., Oklahoma City, Okl., for Nigh, Bartlett, Collins, Johnson, Sanders, Scales Wright & Folks.

Charles Lee Waters, General Counsel, Thomas H. Tucker, Roger Stuart, Richard Freeman, Assts. Gen. Counsel, Dept. of Human Services, Oklahoma City, Okl., for Hissom, Dept. of Human Serv., Barnes, Farha, Furr, Gilbert, Greer, Hartley, Orr, Walters, Ward, Fulton, Cooper, West and Teska.

Judith A. Finn, Tulsa, Okl., Guardian Ad Litem.

Opinion

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ELLISON, District Judge.

***1** The Court, upon conclusion of all of the evidence in the case, and in consideration of the testimony of the witnesses called, documentary evidence submitted, the briefs and arguments of counsel, does enter these findings of fact and conclusions of law.

FINDINGS OF FACT

I. ***Plaintiffs:***
The Court will first address its factual findings in regard to the Plaintiffs and then will address the balance of the certified class.

Most of the referrals to Hissom have been brought about by factors of family adjustment and lack of community services. Historically when parents have requested assistance from the Department of Human Services they discovered that services for the mentally retarded were only at Hissom.

A. Bridget Becker. Plaintiff Bridget Becker is a fourteen year old girl who is multiply handicapped. She is retarded, legally blind, deaf and suffers from cerebral palsy and epilepsy. Bridget now resides in building no. 15 at Hissom. Before she came to Hissom, Bridget lived at home where she enjoyed all family activities, attended public school and used recreational opportunities in the community. The time came when her parents were not able to care for her at home and sought a community living arrangement but were advised that the only alternative was Hissom, a segregated facility.

Bridget shares building no. 15 with thirty-one other retarded girls. Most of her time is spent in idleness sitting with other residents in a large day room. She does not receive appropriate habilitative services such as training in self care skills. She has little interaction with people who are not handicapped. The environment of building no. 15 is an institutionalized one.

Bridget has behavior problems resulting in self abusive actions such as banging her head against the walls.

She has physical disabilities which limit movements of her legs and her right arm. She has not received adequate physical therapy, occupational therapy and adaptive equipment; the failure to provide these supported services has resulted in unnecessary restraints on her movement and liberty. She has not been provided appropriate speech or communication services although she has been diagnosed as deaf.

Bridget has experienced severe regression since her admission to Hissom. She is no longer expressive and rarely smiles. Her foot has become more malformed since she has been at Hissom.

B. John Douglas Berry. Plaintiff John Douglas Berry is sixteen years old. Doug lives in building no. 18 at Hissom. He has moderate to severe retardation, visual, skeletal and motor impairments, and is non-verbal.

He lived at home until he was thirteen at which time his behavior problems became too difficult for his parents to manage. The parents looked for appropriate programs in Oklahoma and found none. They agreed to placement at Hissom which they considered their only option. Doug was originally placed in building no. 13 which he shared with severely retarded lower functioning children because his level of retardation was improperly assessed. When the mistake was discovered he was moved to another building but was moved back to building no. 13 for administrative reasons. In this environment he was repeatedly injured suffering deep bites, contusions and bruises. Doug has become aggressive to other children; he has learned to fight but is still receiving injuries from the larger stronger boys.

***2** He has regressed in communication skills. When he entered Hissom he was able to communicate by signing. The staff assigned to Doug's building are unable to read signs and as a result he has been discouraged from communicating. At the time of his admission to Hissom there was an individualized active treatment plan agreed to between the staff and Doug's parents; this plan has not been followed in any consistent manner.

C. Michael Brasier: Plaintiff Michael Brasier is eighteen years old. Michael lives in building no. 12. Michael has little residual hearing and can see only peripherally.

Because his parents were unable to receive any home support services the Brasiers requested the Defendant to provide community living arrangement and services for Michael. The only option available was Hissom.

Michael has developed severe behavior problems at Hissom. These include fits of screaming, fighting and insomnia. There has been no programming provided to correct these behavior problems.

Michael has suffered abuse and injury. These include bruises, bites on his arms, hands and back. He has been put under restraints on several occasions without his parents knowledge causing bruises on his arm.

Most of his time is spent in idleness. He had substantial sign language skills before being admitted to Hissom but these skills have now been lost. He is receiving no real active treatment.

D. Deminkyn Martin. Plaintiff Deminkyn Martin lives in building no. 13 at Hissom; he is fourteen years old, severely retarded, has a speech impairment, behavior problems and engages in self abuse. He was first placed in the home of Mary Ann Becker as a foster child.

When he was six years old he began displaying increased behavior problems. The State then placed Deminkyn in the segregated facility at Hissom where he has been for eight years.

He is congregated with fifteen other retarded boys in a noisy day room with little or no planned activities.

He has demonstrated his behavior problems by frequent tantrums and self abuse, which includes banging his head and fists. He has received injuries by crashing his head through a glass window. He has not received a structured habilitative program plan to assist his behavior problems.

E. Julie Paulson: Plaintiff Julie Paulson is a retarded child who resides at Hissom. Julie's parents cared for her at home until she was seven at which time she was placed in a private residential school when the state refused to provide respite care. Her parents found that they could no longer afford the private residential school and the only option given them was the segregated one at Hissom.

She needs year-round therapy in an integrated environment; however she receives little active programming during the summer months.

Julie has experienced regression at Hissom both in her personal hygiene and in her speech. She has not been provided with the speech therapy she needs.

F. Susan Thompson: Plaintiff Susan Thompson is an eighteen year old who lived at Hissom for two years from February, 1984 to February, 1986. She has a chromosome disorder and neurological damage. She is non-verbal and unable to walk and is labeled severely and profoundly retarded. When she was five and one-half years old before entering Hissom she used sign language and a Blissymbol board to communicate. She was capable of undressing herself and partly dressing herself. She could eat with a

spoon, brush her teeth and was partly toilet trained.

***3** When Susan lived at home she joined her mother in all sorts of activities in the community. She was friendly, outgoing, well-mannered and happy. She had a wheelchair and loved wheelchair dancing. She engaged in many activities that any normal child would engage in.

Her mother, Barbara Thompson, is a church secretary in Broken Arrow, Oklahoma and a single parent. Because of her own advancing age, ill health and concern about her capacity to care for Susan she admitted her to Hissom. Ms. Thompson visited her daughter regularly after she was admitted to Hissom and took her home every week-end and every holiday. A good portion of Susan's time at Hissom was spent sitting idle in the day room. She was denied opportunity to practice the skills she had when she entered the institution and as a result Susan regressed. During the time she was at Hissom Susan lost the ability to communicate with signs and the symbol board. She lost social skills, became withdrawn and slumped in her wheelchair and began to engage in self-stimulatory activity such as scratching her back until it became infected. Because of lack of physical therapy her body became stiff and unresponsive and she developed circulatory problems from being idle in a wheelchair so often.

Susan's mother placed her at Hissom only because no home and community based services were available and in July, 1985 when the Region II case management outpost opened she discussed with Defendants the services she would need to bring Susan home. Eventually Susan was assigned an in-home habilitation aide and Mrs. Thompson was able to bring her home in February, 1986.

The aides assigned by the State to Susan had little understanding of habilitation and little practical knowledge of how to care for a person with Susan's physical handicaps. Mrs. Thompson has asked the Defendants to provide a group home for Susie without result.

II. ***Plaintiff Homeward Bound:***
Plaintiff Homeward Bound, Inc. is a non-profit corporation incorporated under the laws of the State of Oklahoma. Its members include parents, relatives, guardians and friends of people residing at Hissom and of people in jeopardy of being segregated there by the State. The members of Homeward Bound have been attempting to obtain affective community based services for their children since 1977. By its actions Homeward Bound has sought to require Defendants to provide integrated services in the community for the retarded citizens of Oklahoma.

III. ***Plaintiff Class:***
The Plaintiff Class consists of "All persons who at the time of the filing of the complaint in this action were at Hissom and all persons who became clients of Hissom during the pendancy of this action; retarded persons residing at home who have been clients of Hissom within the past five (5) years and who may be returned to Hissom; and persons who have been transferred to skilled nursing facilities or intermediate care facilities, yet remain Defendant's responsibility." Approximately 450 members of the Plaintiff Class currently reside at Hissom.

IV. ***Other Individual Class Members:***
***4** A. Phillip Neighbors: Phillip Neighbors is a severely retarded nineteen year old male. He has lived at Hissom since he was twelve years old.

An employee used inordinate and excessive force in moving Phillip to the bathroom which resulted in a deep three inch cut in his scrotum.

Phillip Neighbors had developed skills before entering Hissom. He was pretty well poddy trained, could feed himself with a spoon, enjoyed people and swimming. He possessed some knowledge of sign language.

Phillip has been at Hissom seven years during which time he has regressed to where he has lost his toilet training. He is frightened of the bathroom and of taking a bath. He is afraid of going to bed at night. No group homes have been made available to Phillip nor have any options for foster care been made available.

B. Scott Maxey: Scott Maxey is a thirteen year old boy who lived at Hissom between January, 1980 and May, 1985. He has severe microcephaly and a multiple seizure disorder.

Scott lived in building no. 21–B while at Hissom, where his development regressed. He lost his progress toward toilet training and was placed in diapers. His mother testified that staff at Hissom refused to follow the medical orders of his neurosurgeon which endangered his life. During visitation she found him "tied to a wheelchair, slumped over, his feet ... turning blue."

There has been little programming for Scott at Hissom. His IQ dropped from 50 to 14 from the time he entered Hissom until he left.

C. Donald Cole: Donald Cole is a twenty year old male who is profoundly retarded, blind, quadriplegic and who has cerebral palsy. At Hissom he lives on Unit 2 North, an area where the "multi-handicapped" are segregated. He

shares space with approximately forty others which is in a large rectangular shaped room with steel heavy metal cribs on either side and a "program area" in the middle. It is a bare, sterile environment.

The residents of 2 North lie on the mats or in their beds or are strapped into wheelchairs. Donald and others in the multi-handicapped units are given the least amount of active programming at Hissom. Donald has suffered severe physical regression because of lack of proper positioning. His orthopedic reports indicate that at the age of 11 Donald was ambulatory with the assistance of braces; by 1983 when he was 16 he had lost completely the ability to ambulate. By 1978 he had begun to develop scoliosis; because his spine is curved to one side his pelvis is not level. He received surgery which helped level his pelvis but because staff did not position him properly that deformity is bound to recur.

V. ***Defendant Department of Human Services***

Defendant Department of Human Services has responsibility for the care and treatment of retarded persons as well as the administration and operation of Hissom and other state facilities. It is responsible for the care, support and training of persons with retardation and for contracting with private agencies to provide residential and other services to retarded persons in the community.

***5** This Defendant has the statutory duty to insure that all residents at Hissom are given humane care and treatment; that they receive no severe physical or emotional punishment; and that the rules and discipline at Hissom are designed to promote their well being. The Department is further charged by statute with insuring that the testing, diagnosis, care and treatment of residents is in accordance with the high standards accepted in private and public practice. The Department is responsible for seeing that adequate records are kept for each retarded child at Hissom and that the child's abilities and potential are assessed annually, and that children discharged from Hissom are placed in appropriate facilities.

The Defendant has the authority to enter into agreements with a county or a non-profit public or private agency for the operation of a Community Mental Retardation Complex where services for retarded persons may be provided.

The Department is responsible for enforcement of the provisions of Title XIX of the Social Security Act in Oklahoma. This Act requires independent review of the needs of persons placed in intermediate care facilities for the mentally retarded to insure that inappropriate placements are not made and further to identify such persons who may be inappropriately placed in such facilities. The Act also requires that an intermediate care facility be operated in conformity with a set of standards to be eligible for federal financial participation or reimbursement.

The Department does not exist only to operate institutions. It exists also to establish community based programs. Dr. Jean Cooper, the head of the Department's Division of Developmental Disabilities, has stated:

"The most fundamental value guiding program development for services to the mentally retarded is that all mentally retarded citizens deserve safe, healthy, positive, caring, learning centered programs and services and that these programs and services should be available in the least restrictive, most normalized and appropriate environment to meet each individual's identified needs."

Robert Fulton is Director of the Department of Human Services and as such is responsible for insuring that Hissom and other facilities for the retarded are operated in compliance with the policies and procedures of the Department. He is responsible for evaluating the professional and administrative activities at Hissom, reviewing them, for preparing and submitting to the legislature budget requests to enable Hissom to carry out its functions. He is responsible for approving the admissions for retarded persons to institutions within the Department. He is responsible for designing appropriate facilities for retarded people and for transferring residents of an institution when that person's welfare can more effectively be provided at another facility. The Director is also responsible for long-range planning concerning the care and treatment of retarded persons. He is also responsible for the provision of vocational rehabilitatie services to handicapped Oklahomans.

***6** Defendant Jean Cooper is the Assistant Director for Developmental Disability Services of the Oklahoma Department of Human Services. As such she has responsibility for planning, program development and evaluation of mental retardation services within the Department of Human Services.

Defendant James West is the Assistant Director for Rehabilitative Services of the Oklahoma Department of Human Services and as such has responsibility for insuring that severely handicapped Oklahomans, which include the residents of Hissom, receive vocational rehabilitation services to prepare such individuals for gainful employment to the extent of their capabilities.

Defendant Julia Teska is the Superintendent of Hissom Memorial Center. She has responsibility for the operation and administration of all phases of Hissom Memorial Center. She has responsibility for the custody, care, control of all persons admitted to Hissom. The Superintendent is responsible for ensuring the humane

management of Hissom; for enforcing its governing rules and regulations; for insuring adequate staff training; and for reporting abuse of residents to the local authorities. She is also responsible for admission of individuals to Hissom with the approval of the Director of the Department of Human Services; for discharge of residents; and for recommendations concerning a resident's transfer to another facility. She also has responsibility for notifying relatives of persons who have escaped from the institution.

VI. ***Intervenors' Sons and Daughters at Hissom***

A. Jacqueline Kay Braden: Jacqueline (Jackie) Braden is an eleven year old profoundly retarded child who resides in the Special Care Unit at Hissom. Intervenors Bill and Betty Braden are her parents. The Bradens are from Woodlawn, Texas.

During her first year of life because of aspiration pneumonia Jackie had a gastrostomy tube inserted in her stomach. The evidence shows that Jackie can eat solid foods well and is able to take liquids by mouth. In spite of this staff at Hissom have continued the use of the gastrostomy tube.

Jackie is able to walk with assistance. She uses a walker for ambulation during physical therapy but she is not allowed to use the walker in her living unit and staff had failed to assist her walking.

The evidence reflects that on one occasion Jackie's gastrostomy tube had not been secured to her clothing properly and that it had slipped and about one foot of it worked its way into Jackie's abdomen.

B. Martha Ann Eibeck: Martha Ann Eibeck is the daughter of intervenors John and Loretta Eibeck of Tulsa. Martha is sixteen years old and profoundly retarded. She lives in Unit 1 North, one of the areas at Hissom set aside for "multi-handicapped" people. She is non-verbal and non-ambulatory. She has severe spasticity and scoliosis and has been denied physical therapy because of insufficient staff. As a result of lack of physical therapy her right hip has become dislocated. When she lived at home her parents fed her normally. After she entered Hissom, however, a nasogastric tube was inserted so that she could be fed more quickly for staff convenience. This tube frequently becomes dislodged which results in Martha having nasal trauma and vomiting.

***7** C. Kimberly Randall: Kimberly is the only child of intervenors Terry and Phyllis Randall. She is twenty years old, profoundly retarded, non-verbal and non-ambulatory.

The evidence shows that although Kimberly's parents do live in Tulsa they seldom visit or inquire about her.

D. Charles Orton: Charles Orton is twenty-six years old, profoundly retarded and has severe cerebral palsy. He is the son of intervenors Carl and Mary Orton. Charles was admitted to Hissom when he was four years old and now lives in Building II North.

Charles used to eat orally with a nasogastric tube used only for occasional fluid intake. At this time Charles is fed through a gastrostomy tube.

A consulting gastroenterologist reported in 1983 that Charles appeared "malnourished" and that he showed evidence of dental cavities and poor oral hygiene.

E. Amy Rhoden: Amy is nineteen years old and is moderately retarded. Intervenors Jane and Harvis Rhoden are her adoptive parents. She was admitted to Hissom at the age of 12 "until the community special education program becomes better established when Amy could return to the community."

F. David Maule: David is sixteen years old, profoundly retarded, non-ambulatory and was admitted to Hissom when he was six years old. David currently lives in Building II North. David's parents are intervenors Donald and Mary Maule. The evidence shows that Mr. and Mrs. Maule seldom visit David and their involvement with him is minimal.

G. Alan Ray Best: Alan is twenty-five years old, profoundly retarded, non-ambulatory, non-verbal and has arrested hydrocephaly. He was admitted to Hissom when he was five years old and now lives in Unit I South.

In 1966 he was enrolled in a physical therapy program. His therapist was hopeful that ambulation would be obtained and he benefited from physical therapy. He learned to assume a side sitting position and made gains in motor development. However his program was discontinued in January, 1968 when it was felt he had reached his maximum motor development.

Alan began to deteriorate physically after physical therapy was discontinued. A 1973 report shows that his musculoskeletal deformities have increased with development of his scoliosis and that he did not sit as well in his wheelchair as previously. All the gains that Alan had made from physical therapy had been lost by 1975. Later reports chart regression in physical status and motor ability. During these later years Alan was not recommended to physical therapy "due to further regression and poor prognosis".

Hissom staff by 1984 again acknowledged that he needed physical therapy, but no therapy was provided due to lack of physical therapy staff.

Alan has also regressed in areas of social and cognitive skills. His records reflect that Alan experienced a decline in physical and mental functions since his admission to the institution. The evidence shows that Alan's parents are aware of the deterioration that he has experienced. They oppose community placement for Alan and want him to remain at Hissom.

***8** H. James Ray Janzen: James Janzen is a forty-three year old man who has been labeled profoundly retarded. James lives in Building No. 18 at Hissom. His parents are the intervenors Mr. and Mrs. Rudie Janzen who live in Bartlesville, Oklahoma and visit James about once a month. James was admitted as a child to Defendants' Enid institution and was transferred to Hissom in 1964. In 1968 he was transferred from Hissom to a nursing home and was readmitted to Hissom in 1971.

When he was a child James could talk and make short sentences. However by 1966 he no longer spoke. James reached the age of 21 and Defendants recommended to his parents that he be transferred to a nursing home because of the severity of his retardation. The parents were told that schooling was of little value to him and that he could not profit from speech therapy. James was placed at the Hayes Nursing Home in Nowata, Oklahoma. James lost all the skills he had except that of self-feeding. At the nursing home he was sedated with Thorazine, Librium and Valium. At Hayes he withdrew to the point of refusing to wear clothes or sit in a chair or bed preferring to assume a squatting position most of the time. He has never regained the ability to talk.

I. Charles Baldridge: Charles (Chuckie) Baldridge is 18 years old, moderately retarded, and lives in Building No. 20. Chuckie has appeared on the television show "Dallas" where he played a child with Down Syndrome. He has become something of a celebrity at Hissom.

J. Larry Anderson: Larry Anderson is 26 years old and has lived at Hissom since he was 24. He is the son of intervenor Diana Lambert. His IQ has dropped from 35 to 21 since he has been at Hissom. From the evidence it is clear that Mrs. Lambert feels that Larry has lived so long at Hissom that he would have a difficult time adjusting to any other location.

VII. The Segregation of Retarded People in Oklahoma

A. History:

The unhappy history of the official treatment of retarded people by governmental entities has been one of segregation and discrimination.

The Oklahoma statute authorizing the institutionalization of retarded people for the "welfare of the community" is part of that history. The evidence shows that historically prejudice was one of the reasons institutions for retarded were created. Sadly, the evidence reflects that our retarded citizens have been put in institutions to be put away from society.

Oklahoma, together with other states built retardation institutions with public funds in faraway places, hired staff, and then pressured people to put their retarded children there for the welfare of the community. Testimony in this case has shown that Hissom was built for a different time, for different needs, for different priorities, and for different perceptions.

B. Community Prejudice Against Retarded People Continues Today.

Testimony revealed that one of the reasons for the lack of understanding of the needs of retarded people and the lack of services for them in the community is that the state historically has actively encouraged communities to send their retarded citizens to state institutions. One problem in generating community support is the fact that the people in the communities have been brought up in a non-handicapped society because handicapped people were put away.

VIII. Segregation at Hissom Has Harmed Members of the Class

***9** A. *Unnecessary Use of Restraints.* Hissom, because of its institutional nature, has established schedules for clients for all activities in a regimented fashion.

Residents are awakened at a specific hour, bathed at a specific time when the staff says they can bathe, eat according to the needs of the institution with no choice in foods. People are provided with few choices in the work that they do. Often they are put to work without pay, doing tasks that should be performed by staff. The residents are not allowed to attend many recreational opportunities in the community. Community activities simply do not exist for most of the people at Hissom. Although current practices are an improvement over past practices, Hissom staff continues to subject people to unnecessary restraint. Such practices as strapping people into wheelchairs just to restrain them are still utilized. Many residents who know how to walk or who could be taught to walk are tied to keep them in a wheelchair in order to make them easier to take care of.

Many residents who are ambulatory are strapped or tied into wheelchairs.

Residents are also given unnecessary chemical restraints.

B. *Essential Physical Therapy and Occupational Therapy*

Is Denied to Members of the Class at Hissom.

Expert testimony in this case has unquestionably established that for developmentally disabled persons abnormal movement patterns and abnormal posture patterns create risks to health including osteoporesis, decline in respiratory capacity, pneumonia, kidney stones, urinary tract infections, and other medical problems. Failure of adequate physical therapy results in immobility which also causes sensory deprivation. When a severely physically handicapped person is left to lie alone for long periods of time he becomes desensitized to stimulation and therefore cannot initiate interaction with another. As a result, his cognitive ability decreases.

Deformity and its resultant health risk can occur throughout life, although young children are more susceptible to deformity.

Unit 1 is the multi-handicapped unit. Residents of this unit are those who most need physical therapy. These people have fewest options for movement and who will progress most rapidly in their deformities if left unattended. At the time testimony was presented in this case all 162 residents of the multi-handicapped unit needed physical therapy, but only 61 were receiving it.

Many residents are denied the equipment they need to be able to walk. Using a walker is a supervised hands-on activity and with the current staff ratio it apparently is not feasible to take the time to ambulate the clients.

The Court is aware that the State has during the pendancy of this action brought into Hissom Theraupedic Concepts, Inc. and its expertise has been addressed to client habilitation at Hissom. However, an effective physical therapy program has not yet been initiated nor have clients received well focused habilitations plans implemented by properly trained staff. Unfortunately the latest report received by the Court conducted in June of 1987 by Theraupedic Concepts, Inc. reflects that many residents spend the majority of their time engaged in non-purposeful or counterproductive behavior.

***10** C. *Members of the Class at Hissom are Subjected to Improper positioning.*

Expert testimony in this case shows that the lack of proper positioning at Hissom constitutes an emergency. Residents of the multi-handicapped units and the Special Care Unit are not being positioned to prevent contractures from happening or from worsening. The evidence shows that once contractures are developed they become irreversible. Testimony has shown that many of the deformities in Hissom residents could have been totally prevented with proper care.

In addition to improper positioning in wheelchairs residents of Hissom were also positioned improperly in bed.

All residents using wheelchairs should have shoes and a footrest. If they do not they develop toe and ankle deformities and other deformities throughout the body. Experts have testified that only a small minority of the residents surveyed were supplied with shoes and the use of footrests was inconsistent. There was abundant evidence of improper positioning for feeding which runs risks for aspiration and loss of life. The evidence demonstrates that Hissom staff needs basic training in anti-spasticity positioning and relaxation techniques, for proper wheelchair positioning, and for moving people into feeding or bathing positions. These positioning needs cannot be met without the Defendant providing adequate habilitative programming for the residents.

D. *Members of the Class at Hissom Have Been Subjected to Inadequate Medical Care.*

Hissom residents have been subjected to outbreaks of shigella, salmonella, influenza, hepatitus, lice, rashes and gonorrhea.

The medical recordkeeping has been grossly inadequate. It is difficult to determine from medical records why any particular medical intervention has been undertaken. The residents have gastrostomy and nasogastric tubes for no apparent reasons; these have been used on residents who could swallow without difficulty. The records are not problem oriented but source oriented, thus requiring a reading of the entire chart before one can make intelligent assumptions as to the management and care of a resident. Good documentation is an essential part of a quality system of health care delivery. Hissom often relies on outside medical consultants who have a particularly difficult time in trying to locate information in the records.

One of the Court's medical experts testified that the medical records cannot be relied upon to accurately report the patient's medical regiment. The medical records system at Hissom is totally unacceptable.

Partly as a result of the state of medical recordkeeping people have been fed through tubes unnecessarily for long periods of time. One resident placed on oral feedings only as a result of the Court expert ordering it had previously been fed through a nasogastric tube for two years for no documented reason. The expert testified that he:

"had some difficulty in ascertaining in each case the reasons that that tube was put down in the first place ... those tubes had been in there for a much too long a period of time ... It was not well documented in the charts at the time the tubes were placed. Some of them, in fact, it was difficult to find out how long they had had a nasogastric

tube."

***11** The process for review of deaths at Hissom is deficient in that it permits those who participated in the treatment of the decedent to pass judgment upon their own actions without the involvement of an independent review.

From all of the evidence presented it is apparent that there is no standard health care program of treatment and prevention at Hissom.

E. *Members of the Class at Hissom Have Not Been Provided Adequate Clothing.*

Personal clothing is often lost and persons at the institution are frequently required to wear improperly fitting, unseasonable and dirty clothing. Residents are denied the right to choose from a decent selection of appropriate clean, fitting seasonable personal clothing and to present an appearance similar to other citizens.

F. *Members of the Class at Hissom Have Been Subjected to Numerous Harmful and Unsanitary Environmental Conditions.*

Mr. Sam Hoover, Plaintiff's sanitation expert with 35 years of experience as a professional sanitarian, most of which was as a commissioned officer with the U.S. Public Health Service, testified as to environmental and sanitation conditions at Hissom.

Numerous polyurethane mattresses were discovered at Hissom. Poisonous hydrogen cyanide is produced when that substance catches fire. Mr. Hoover testified that polyurethane has been almost totally discredited from institutional use because of multiple deaths in nursing homes, penal institutions and others. Defendant has taken steps to replace these mattresses during the pendancy of this action.

As a result of Mr. Hoover's inspection many materials that were to be kept sterile were found to be stored improperly subjecting them to the possibility of contamination. An example is tracheotomy tubes. Numerous deficiencies were discovered in the kitchen area which could give rise to contamination of food with resultant disease.

Procedures at the laundry created potential for crossover contamination.

Air handling systems for several of the living units were found to be compromised because screening vents were located with a tremendous amount of dust, lint and soil. These conditions were found in rooms that housed residents who were using respirators and who had tracheotomies. This condition created an imminent hazard for these residents.

Many of the sanitation problems discovered by Mr. Hoover are more difficult to avoid in an institutional setting than in a family setting.

G. *Members of the Class at Hissom are Frequently Injured.*

Evidence presented during the course of the trial indicates that accidents and abuse are prevalent at Hissom. Former Hissom Ombudsman Donovan testified to serious injuries that were never reported.

According to him no one can spend any significant amount of time at Hissom without suffering risk of serious injury.

H. *Members of the Class at Hissom Frequently Have Been Subjected to Abuse.*

The evidence reflects a great deal of fighting, sometimes between staff and clients, at other times among clients. A great deal of the violence at the institution is caused by people confined there being forced to reside in close proximity to people not of their own choosing. Violence between residents is common at Hissom.

***12** I. *Members of the Class at Hissom Have Been Deprived of Privacy.*

The DHS' 1983 plan of correction stated that hosing down had been eliminated and that bathing residents en masse had been replaced by bathing clients individually. It further represented they are not disrobed before being taken to bathe. However, Mrs. Becker testified that these practices still occur in the multi-handicapped units. There is additional testimony from Plaintiffs indicating that the girls are still lined up naked to use the showers which has resulted in embarassment to the children.

J. *Members of the Class at Hissom Have Not Been Provided Adequate Programming.*

1. Staff Are Poorly Trained and Inadequate in Number

The evidence shows that Hissom requires substantial numbers of additional professional staff to begin to provide the programming and therapies required by the residents. Although Hissom staff have been assigned to individual living buildings pursuant to a unit system developed in 1985, they frequently "float" to different units with residents they do not know.

Qualified professionals are forced to give priority to the needs of the institution over the needs of the people. Psychologists spend most of their time doing paper-work projects. One psychologist testified that she preferred to

work directly with the people rather than do paperwork, but resigned from Hissom because its paperwork requirement did not permit her to meet minimal standards for the provision of services according to the ethics of her profession.

2. The evidence shows that assessments often have failed to identify major needs of the client. Past assessment procedures have not tailor made a program for an individual client but have often simply addressed problems for multiple clients.

3. Persons who are segregated at Hissom are deprived of equipment and services necessary to enable them to communicate. Often the staff at Hissom ignore audiology, opthamology and speech evaluations. In order to progress, residents must improve their skills. They can improve their skills only if direct care staff assists them in communicating through signs or Blissymbol boards or other means of communication.

4. Active programming for the people segregated at Hissom is meager or nonexistent. All parties agree that the residents at Hissom would benefit from appropriate training and active treatment. However, for many of the residents, active daily programming is at most three to three and one-half hours and far less for many others. People with severe handicaps are left alone; there is just nothing for them to do. The evidence shows that residents engage in meaningless, repetitive, self-stimulatory activity to fill their time. The testimony clearly shows that the development of programs for most Hissom residents who need them is still in the data-gathering stage.

There was evidence that numerous residents were taken on bus rides to nowhere.

The Court's expert, Stephen J. Adelson, M.D., described the program called "multi-skill development" as merely "standing around, or in modern-day adolescent terms, hanging out. Nothing useful seems to occur during that time as far as I could see ... The term multi-skill development is given to a very large proportion of the class time when absolutely nothing occurs."

***13** It is clear that idleness leads inevitably to physical and mental deterioration. When handicapped people do not learn to do things, their bodies do not work well, and they are deprived not only physically but they are deprived in a sensory way and they suffer relationship deprivation, social deprivation and intellectual deprivation.

Plaintiff's expert Lynn Rucker testified that "What you're basically attending to here is input/output feeding and toileting. ... The focus is on the body as a functional object, that is, you feed it and you clean up after it. And otherwise nothing is happening."

When needed programming is not received people at Hissom not only stop developing but may also regress, and evidence shows that that process is not automatically reversible.

The evidence shows that educational and training programs at Hissom do not honor the learning characteristics of the severely handicapped. Experts testifying at the trial established that educational programs for severely handicapped persons should teach functional skills; they should teach handicapped people to do things for themselves.

At Hissom there is little learned in the way of functional skills. There is very little adaptive equipment and programs are segmented and uncoordinated.

K. *Members of the Class at Hissom have Not Received Meaningful Vocational Rehabilitation Services.*

Evidence shows that many Hissom residents could engage in real jobs and that their exclusion from vocational rehabilitation services is a serious problem. The Defendant's Division of Vocational Rehabilitation has failed to provide any meaningful services for Hissom residents even though it is clearly needed.

L. *Many Class Members at Hissom Experience Regression.*

All people, including retarded people, learn throughout their lives, but they may be more open to receive more information at a more rapid rate during their formative years. By limiting Hissom residents to only other retarded people they are limited to what can be learned from the people they are observing. In the segregated setting of Hissom the residents learn appropriate behavior at a diminished rate and learn a great deal of inappropriate behavior. Retarded people like all other people need consistent involvement with others who will relate to them on a human emotional level. In order to prevent regression people at Hissom need immediate attention which they are not now receiving.

M. *Hissom Class Members Are Unnecessarily Segregated.*

The evidence establishes that people at Hissom are rarely permitted to leave the grounds of the institution. There are three students who received part of their active programming at a community school. All other Hissom residents receive their programming in segregated settings.

People are harmed educationally if they are kept in an unnecessarily segregated environment. Segregation is harmful to retarded persons; it leads to reduced learning,

reduced freedom and reduced growth.

N. *Class Members Have Not Been Provided with Independent Professional Reviews Of Programming.*

***14** There has been a failure of independent professional review. Expert testimony shows that there are many people at Hissom who are inappropriate for that level of care and who are being harmed by their continued stay. Independent professional reviews would prevent such a situation.

O. *Discrimination is Practiced at Hissom on the Basis of Severity of Handicap.*

Evidence establishes that over 70% of the people at Hissom are severely or profoundly retarded. Numerous others have severe physical handicaps and severe behavior problems. As of August 1985 the Defendant acknowledged that it had failed to even consider providing community homes and programs for the severely handicapped people at Hissom. The Defendants, by failing to plan for the most severely handicapped, guarantee that these children will continue to be admitted to Hissom because there are no alternatives being created in the community. This prevents this class of people at Hissom from going into the community and will insure that children living in the community if they are unable to continue to live at home will go to Hissom because there are no alternatives. People at Hissom are assigned to living units according to the severity of their handicaps. In the past there has been a policy of denying therapy to the most severely handicapped, which has resulted in severe and permanent contractures and deformities.

IX. ***Institutional Care Makes the Conditions at Hissom Inevitable.***

Dr. Adelson, the Court's expert, testified that "Hissom does not provide services for the retarded which enable the retarded to develop to their full potential. All institutions stifle that development." He stated further "the general environment is unresponsive. It can't individualize to the degree needed."

The very nature of the institution, the size, the numbers of staff and residents, the volume of people in one room makes it difficult to supervise staff or clients. It is difficult to coordinate professional services provided at Hissom. Testimony shows that the consistency of staff which can exist in smaller settings is important in learning and therapy for retarded people. A person who has known the client for a long time and has been able to establish an emotional bond with him gets to know him and can elicit things that another person cannot. In an institution consistency of staff attention is extremely difficult to obtain. This consistency is essentially critical for the severely handicapped whose communication is non-verbal.

X. ***Alternatives Provided by Defendants.***

A. *Nursing Homes.*

It was the Department's policy in the past to move residents of state retardation institutions to general nursing homes when they reached adulthood. Some 1,100 of our retarded citizens currently live in nursing homes or general intermediate care facilities. They receive no developmental services.

Current regulations forbid the placement of retarded persons in nursing homes unless the home is able to meet that retarded person's developmental needs. Any failure to comply with the rule could jeopardize federal reimbursement for the facility. Any failure could also affect the approved status of a state's Title XIX plan. Testimony shows that if Title XIX payments were disallowed for retarded persons in Oklahoma's ICFs who are not receiving developmental services, Oklahoma could lose $40 million dollars in federal funds over the next five years.

***15** B. *Large ICFs/MRs.*

Some 1,600 retarded Oklahomans live in 16 large Intermediate Care Facilities for the Mentally Retarded (ICFs/MR). Most of these facilities were built as general nursing homes and in 1985–86 were certified as ICFs/MR by the Department of Human Services.

Because of the number served, these private ICFs/MR are small institutions with many of the problems of large institutions. The evidence shows that no one who could live in a foster home or group home should be kept in this type of facility. It is clear that the placement of Hissom residents in large ICFs/MRs would not be appropriate.

C. *Large Group Homes for Adults who are Mildly or Moderately Retarded.*

Oklahoma has 68 large group homes serving approximately 560 mildly and moderately retarded adults. These homes average nine to ten residents supervised by one staff member. At the time of trial, these homes were funded at a reimbursement rate of $21.93 per day; this rate covers the cost of supervision, food, shelter and transportation. All such group homes have been funded exclusively with state money. There are available funds under Title XIX waiver to cover costs of staffing and support services for the mentally retarded; however Oklahoma has not applied for such funds.

D. *Waiver to use Title XIX Funds.*

Oklahoma in 1984 made application to the Federal Health Care Financing Administration for a waiver to use Title XIX funds for home and community based services. This application received approval in January, 1986. Oklahoma officials made a choice not to apply for funds to develop a program of community residential services although this option was available to them. Oklahoma did not option to apply for Title XIX funds under the waiver for the purpose of placing Hissom residents into the community.

The evidence reflects that the State has not effectively delivered the services funded under the waiver. In July 1985 the Region II outpost was established. Its functions include case management, evaluation, information and referral, recruits providers and recommends eligibility for waivered services to the Department of Human Services. Region II serves the Hissom area, that is Tulsa and the surrounding 18 counties. Region II has not demonstrated an ability to respond to the needs of families with retarded children.

XI. *The Continued Segregation of Severely Handicapped People from the Community.*

The evidence is clear that the Department of Human Services has never followed the recommendation of the Sullivan Report commissioned by it in 1983 which recommended a balanced deinstitutionalization strategy. Oklahoma's institutional population has been exclusively a reduction in the number of mildly and moderately retarded people.

The Department has done very little to begin to create group homes for severely handicapped residents of Hissom. There have been no model programs developed to demonstrate technology of serving severely handicapped persons in the community. No contracts have been signed with providers to develop group homes for the severely handicapped. In addition, there has been no planning by the Department for in-service training programs in developmental disabilities for community professionals such as physicians, nurses and physical therapists.

***16** The Department has expended massive effort on its institutions during the last several years but its efforts to establish services in the community have been minimal. Evidence presented by Defendant's expert David Braddock reflects that Oklahoma ranks last among the states by percentage of personal income spent on community services. In the year 1986, of its budget for mental retardation, 97% was spent on institutional care; very little of the remaining 3% was spent on community services for the severely and profoundly retarded and multi-handicapped.

XII. *Placement in Homes, Foster Homes or Small Family Type Homes is Necessary to Prevent and Remedy the Harm Experienced by People Who Have Been Segregated at Hissom.*

Dr. Steven J. Adelson, M.D., independent expert appointed by the Court, in his report to the Court of November 3, 1986 stated: "There is no question in my mind that all of the individuals at Hissom could be cared for, medically as well as socially, more effectively in a small home or foster home. ... Living in the community, with professional services provided in the community instead of the institution, makes an incredible difference."

The evidence is overwhelming that small is better. It is also clear that the first choice for children would be their own home where parents could receive the necessary support services heretofore denied to them. If that were not possible a foster home would be the next choice because in this environment the child could experience the love and affection of a normal environment. As an alternative a small family size group home in the community allows a development of potential which is denied by the very nature of institutional care. Former Hissom resident Dennis Gray now living in a community home described the advantage to him of moving into the community.

"It has done a whole lot for me ... I improved a lot ... my whole life has changed a lot. I've got a lot more freedom to myself, I can do what I want to ... My life has all changed since I have been out in the community, all the way round it changed. ... I can see people I want to see, my friends, like that. At Hissom you couldn't do that ... I got a job, it pays good money. ... I got a lot of friends in the community I go talk to sometimes if I have a problem and I see them right away if I need to talk to them. ... I hope to get married someday. I hope to get me a better job making better money, a place of my own where I can be on my own, more independent living. I hope to get a lot more friends in the future out in the community, a lot more friends than I've got now, more friends."

The evidence shows that the State's attempt to create a specialized segregated center for the purpose of clustering quality services does not work.

The Pennhurst Longitudinal Study: Combined Report of Five Years of Research an Analysis, Executive Summary was received in evidence during the trial. This study clearly shows that residents of Pennsylvania's Pennhurst Institution, when moved into the community were better off in every way measured.

***17** This study found that former Pennhurst residents who had been labeled "profoundly retarded" gained the most in adaptive behavior when moved into small community homes ... about 25% on a standardized scale." The author commented:

"For many years I have heard a lot of reasons why people need to remain in a large congregate care facility ... But this is one, people being low functioning, that I just have to question now scientifically. It no longer seems valid to me. The people who have benefited the most are those who are labeled profound."

The study shows that more services were rendered to those who moved to the community. There were more day programs than they had received at Pennhurst. In the community they received ten hours a day of active developmentally oriented programs compared to 5.8 hours in the institution. However, the cost of the community programs was less than the cost of the institutional programs.

The totality of expert opinion received in evidence confirms that retarded persons gain skills when they leave the institution for the community and those labeled profoundly retarded are the ones who gain the most.

XIII. *Very Few, If Any, People at Hissom Could Not be Served in the Community.*

A. *Experience in other states.*

Expert testimony reflects that in the long run there is no need for institutions and better alternatives can be provided in the community. Facilities to serve as a safety net for emergency placement either exist already in the community or can easily be created for those occasions when they might be needed. Expert testimony shows that other states use specialized crisis management teams to deal with problems which the retarded may have in community residences and that this procedure is clearly preferable to placing the person back in the institution. The institution is not needed as a location for placements that have "failed".

The state of New York provides community services for individuals having as many multiple handicaps as the individuals at Hissom.

Arkansas serves people who are profoundly retarded and without verbal skills in family-like settings in the community. These community homes are integrated into neighborhoods and residents go to educational and treatment programs during the week and spend their weekend time as normal people do.

The state of Michigan has created a wide range of options for retarded people.

California has established thousands of community homes for all levels of handicapped people, although they have retained some institutions.

Nebraska's Region V has a total population approximately the same as Tulsa and serves 608 retarded people in a wide variety of community services which include respite care, foster homes, group homes and vocational services. In this Region retarded persons with a variety of handicaps live in small family-size group homes and foster homes. Among these people are those with complex medical needs such as gastrostomy feeding, shallow suctioning, severe seizure disorders and tracheotomies.

***18** B. *The Defendants recognize the need for community placement.*

The Bellmon Report, published in 1983 was written by former Senator (now Governor) Henry Bellmon and Robert Fulton. In it the Department committed itself to the goal of "helping all of the people it serves to live as normally as possible."

For all those helped by DHS, ... the DHS goal should be to do all it can to help make community and family living possible. Only when the family and the community settings are unable to provide proper care or support should institutionalization be considered. This policy is now mandated by law in the area of juvenile services. It is both the humane and common sense policy to apply in all parts of DHS operations.

The DHS service system presently overemphasizes the institutional side. It is underdeveloped at the community level. A substantial redeployment of resources over the next few years is essential.

Unfortunately, the evidence reflects that this policy has not been carried out by the Defendants, and there is no likelihood of it being carried out without the Court's intervention.

CONCLUSIONS OF LAW

The Court, upon consideration of its Findings of Fact has determined that the Defendants have violated the rights of Plaintiffs in the class as secured by federal statutes and certain provisions of the United States Constitution.

I. *Violations of Title XIX of the Social Security Act, 42 U.S.C. §§ 1396, 1396a and Regulations Promulgated Thereunder, 42 C.F.R. § 435.1009; 42 C.F.R. Subparts E, G.*

The evidence before the Court demonstrates that the following violations of Title XIX and the regulations promulgated thereunder have occurred:

A. Violation of 42 C.F.R. § 435.1009, § 442.463(d) in that they have failed to provide adequate amounts of active treatment, training, and habilitative services, year-round, and instead have subjected Plaintiffs and the Class to ubiquitous idleness.

B. Violation of 42 C.F.R. § 442.454 in that the Defendants have failed to provide Plaintiffs and the class "professional and special programs and services ... based upon their needs."

C. Violation of 42 C.F.R. § 435.1009(b) in that the Defendants have failed to provide adequate active treatment, training, and habilitative services that provide Plaintiff and the class functional skills, "to help the individual function at the greatest physical, intellectual, social, or vocational level he can presently or potentially achieve."

D. Violation of 42 C.F.R. § 442.472 in that the Defendants have failed to provide Plaintiffs and the class with systematic training to develop appropriate eating skills and have failed to train direct-care staff in proper feeding techniques and failed to insure they eat in an upright position.

E. Violation of 42 C.F.R. § 442.463(a) in that the Defendants deprived Plaintiffs and the class of training and habilitative services on the basis of their degree of retardation.

F. Violation of 42 C.F.R. § 442.463(a) in that the Defendants have deprived Plaintiffs and the class of training and habilitative services on the basis of their ages and their accompanying physical disabilities or handicaps.

***19** G. Violation of 42 C.F.R. § 442.486–.488 in that the Defendants have failed to provide adequate physical therapy and occupational therapy to Plaintiffs and the class.

H. Violation of 42 C.F.R. § 442.496–.498 in that the Defendants have failed to provide adequate speech pathology and audiology services to Plaintiffs and the class.

I. Violation of 42 C.F.R. § 442.404(2), 442.450(a)(2) in that the Defendants have failed to provide Plaintiffs and the class individual privacy including toilets, bathtubs, and showers.

J. Violation of 42 C.F.R. § 442.433(c) in that the Defendants have failed to insure that living unit staff from all shifts participate in the planning, initiation, coordination, implementation, follow through, monitoring, and evaluation of Plaintiffs and the class.

K. Violation of 42 C.F.R. §§ 442.487 and 442.489 in that the Defendants have failed to perform adequate individual interdisciplinary assessments of Plaintiffs and the class.

L. Violation of 42 C.F.R. § 442.404(f) in that the Defendants have allowed Plaintiffs and the class to be subject to physical abuse.

M. Violation of 42 C.F.R. § 442.404(j) in that the Defendants have failed to permit participation by Plaintiffs and the class in community activities.

N. Violation of 42 C.F.R. § 435.1009(d) in that the Defendants have failed to develop discharge plans for non-institutional settings for Plaintiffs and the class who do not need institutional settings.

II. *Violations of Constitutional Rights*

A. *Equal Protection Clause Violations:*

The Equal Protection Clause of the Fourteenth Amendment provides that no State shall deny to any person within its jurisdiction the equal protection of the laws. Thus, all persons similarly situated must be treated alike, and any legislation or practice of the State which classifies some persons differently than others must be rationally related to a legitimate state interest. *City of Cleburne, Texas v. Cleburne Living Center,* 473 U.S. 432, 105 S.Ct. 3249, 87 L.Ed.2d 313 (1985); *Schweiker v. Wilson,* 450 U.S. 221, 901 S.Ct. 1074, 67 L.Ed.2d 186 (1981).

Segregation is a component of discrimination prohibited by the Equal Protection Clause of the Fourteenth Amendment. *Brown v. Board of Education,* 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954). Legislation which segregates mentally retarded persons from the community runs afoul of the Equal Protection Clause if the segregation is not rationally related to a legitimate state interest. *City of Cleburne, Texas v. Cleburne Living Center, supra.*

Here, the evidence before the Court indicates that Defendants have violated the rights of the Plaintiffs and the class secured by the Equal Protection Clause by establishing, encouraging, subsidizing, and sanctioning programs and practices that have excluded, separated and segregated retarded persons from the rest of society without any rational basis.

B. *Due Process Clause Violations:*

The Due Process Clause of the Fourteenth Amendment protects an individual against deprivation of life, liberty, and property by state action. A person who is committed to the custody of the State has liberty interests protected by the Due Process Clause in receiving adequate food, shelter, clothing, and medical treatment. *Youngberg v.*

Romeo, 457 U.S. 315, 102 S.Ct. 2452, 73 L.Ed.2d 28 (1982).

***20** The person also has a liberty interest in safe living conditions and freedom from unnecessary bodily restraint. *Youngberg v. Romeo, supra.* Retarded persons, as well as normal citizens, are protected by the Due Process Clause. *Youngberg v. Romeo, supra; Society for Good Will to Retarded Children v. Cuomo,* 737 F.2d 1239 (2nd Cir.1984). Freedom from bodily restraint includes the right to be free from confinement in an institution where such confinement is shown on a factual basis to be unnecessary. *Youngberg v. Romeo, supra.*

Furthermore, the liberty interest in personal safety and freedom from restraint includes a right to training reasonably necessary to insure the person's safety and to facilitate his ability to function free from bodily restraints. *Youngberg v. Romeo, supra.* The training required by the Due Process Clause includes training which enables a person to maintain minimum self-care skills such as feeding, bathing, dressing, self control, and toilet training. *Association for Retarded Citizens of North Dakota v. Olson,* 561 F.Supp. 473 (D.N.D.1982), aff'd 713 F.2d 1384 (8th Cir.1983).

Under the evidence presented to the Court the Defendants have denied the rights of Plaintiffs and the class to the liberty interests under the Due Process Clause.

1. Plaintiffs and members of the class have sustained harm and injury in the institutional setting which include abuse, injuries from accidents and neglect, improper positioning, regression, and other harms arising from segregation and confinement.

2. Plaintiffs and members of the class have been denied adequate food, clothing, medical care and shelter. The types and service of food have been inadequate. More importantly class members have been unnecessarily fed through feeding tubes and have been placed in improper feeding positions.

3. The facilities at Hissom are the most isolated and restricted setting in which a person can live. Residents must conform to the schedule of the institution. They are without privacy, sleeping in large wards and spending their days together in day rooms and eating in large groups. At Hissom members of the class in wheelchairs are tied in their chairs for long periods of time for the convenience of the staff.

4. Substantial numbers of Hissom residents have suffered loss or reduction in skills and loss of physical movement due to neglect.

III. *The Right to Effective and Integrated Services Under § 504 of the Rehabilitation Act of 1973.*

Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 provides that no otherwise qualified handicapped individual ... shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. Regulations promulgated pursuant to this statute are located at 45 C.F.R. § 84.1–84.54.[*]

Section 504 recognizes the parallels between discrimination suffered by our handicapped citizens and other minority groups. This discrimination is manifested through their segregation from the rest of society. Legislative history concerning § 504 demonstrates that Congress sought to combat the problem of isolation from the community entailed by institutionalization. *Halderman v. Pennhurst State School and Hospital,* 612 F.2d 84 (3rd Cir.1979) at 108 and note 30; *Garrity v. Gallen,* 522 F.Supp. 171 (D.N.H.1981). Section 504 prohibits unnecessarily segregated services for retarded persons. *Association of Retarded Citizens of North Dakota v. Olsen, supra* at 493.

***21** The evidence before the Court indicates as follows:

A. Plaintiffs and the class have not been provided by the Defendants with federally assisted services that are effective and meaningful and that are delivered in less separate, more integrated settings.

B. Plaintiffs and the class have been denied by the Defendants of the benefits of federally assisted training, habilitation, and other programs on the basis of the severity of their retardation or other handicaps.

C. Federally assisted retardation services for severely retarded people and for retarded people with physical or behavior disabilities have been provided by the Defendants only in segregated settings.

D. Severely handicapped residents of Hissom have not received vocational rehabilitation services on a priority basis in order to prepare them for and assist them in gaining gainful employment to the extent of their capabilities.

This underdevelopment of a community services system by the Defendants constitutes a continuation of the original and continuing discrimination practiced by the State against retarded people; the affirmative development of community services is necessary to remedy this effect.
45 C.F.R. § 84.6(a) provides:

§ 84.6 Remedial action, voluntary action, and self-evaluation.

(a) Remedial action. (1) If the Director finds that a recipient has discriminated against persons on the basis of handicap in violation of section 504 or this part, the recipient shall take such remedial action as the Director deems necessary to overcome the effects of the discrimination.

(2) Where a recipient is found to have discriminated against persons on the basis of handicap in violation of section 504 or this part and where another recipient exercises control over the recipient that has discriminated, the Director, where appropriate, may require either or both recipients to take remedial action.

(3) The Director may, where necessary to overcome the effects of discrimination in violation of section 504 or this part, require a recipient to take remedial action (i) with respect to handicapped persons who are no longer participants in the recipient's program but who were participants in the program when such discrimination occurred or (ii) with respect to handicapped persons who would have been participants in the program had the discrimination not occurred.

Thus, Section 504, as amplified by the regulation, requires both the change of policies or practices that do not meet the section's requirement, and also requires the taking of "appropriate remedial steps to eliminate the affects of any discrimination that resulted from adherence to these policies and practices." 45 C.F.R. § 84.6. This regulation has the force of law so long as it is "reasonably related to the purposes of the enabling legislation". *Mourning v. Family Publication Service, Inc.,* 411 U.S. 356, 93 S.Ct. 1652, 36 L.Ed. 318 (1973).

SUMMARY

The Court is aware of the concern of the Third Circuit in *Pennhurst, supra* for the evaluation of discrete needs of individual residents when it remanded the case to the trial court for individual determination as to the appropriateness of a community placement for each resident.

***22** This Court's plan, however, requires individual assessment *and* certification of the appropriateness and quality of the new environment before a transfer can be made.

The Third Circuit held in *Pennhurst, supra,* that the constitution does not preclude resort to institutionalization of patients for whom life in an institution has been found to be the least restrictive environment in which they can survive. However, in 1979 that court recognized:

Of course, deinstitutionalization is the favored approach to habilitation. The federal statutory material makes that clear and we acknowledge that constitutional law developments incline in that direction as well. Thus, on remand, the court or the Master should engage a presumption in favor of placing individuals in CLAs. But the special needs and desires of individual patients must not be neglected in the process.

Pennhurst, supra, at 115.

This trial Court, sitting in Oklahoma in 1987, upon consideration of the overwhelming evidence that the institution cannot be the least restrictive environment for any retarded person in the class, must conclude that constitutional and federal statutory requirements now dictate removal of the institution as a choice of living environment for such individuals.

Upon consideration of all of the evidence and upon application of the principles of law discussed herein in order to remedy the intentional and unconstitutional discrimination inflicted upon retarded people by the official actions of the State of Oklahoma, this Court will supplement these Findings of Fact and Conclusions of Law with its Plan and Order of Deinstitutionalization.

APPENDIX

COURT PLAN AND ORDER OF DEINSTITUTIONALIZATION

INTRODUCTION, VALUES, AND GUIDING PRINCIPLES

The Court has entered its Findings of Fact and Conclusions of Law which reflect the factual and legal basis of its intervention into the state system for delivery of care to the mentally retarded, (hereinafter referred to as "State").

The Court recognizes and appreciates the responsibility of the State to administer its own policies and programs. It is the intent of the Court that the State exercise its natural leadership role in the implementation of this Order. Should the State not actively and in a timely manner fulfill the terms of this Order, the Court will be prepared to immediately intervene on behalf of the members of the class to fulfill such terms of the Order.

This Plan of Community Integration establishes how the members of the class will be moved into the life of the

community. The conflicts before the Court deal with complex systems, detailed public policy and conflicting administrative remedies. This case brings into full public and judicial view the conflict which occurs when bureaucratic remedies to human problems violate societies' legal, moral and ethical values.

As Americans and citizens of Oklahoma, we believe in rugged individualism, the sanctity of the family and in taking care of our own. We grow from the experience of living together in the community. We admire those who work and we work hard so that our children can have the best life and education possible. We have sacrificed to maintain our freedom and a life which is nonrestrictive. These values are our heritage which we preserve so that it can be passed down to our children—all of our children.

***23** The qualify of life made available in the United States as a result of this value base is the best in the world for those who are allowed to share in it. The "American Dream" rests at the foundation of the values we defend.

From the evidence presented it is apparent that these values have been denied to that portion of the citizens of Oklahoma who carry the label of "mental retardation". Therefore, this Order shall include "Guiding Principles" which are intended to direct the remedy developed by the parties as they create community alternatives for persons with mental retardation in Oklahoma. These guiding principles are as follows:

* All persons are capable of growth and development.

* All persons deserve to be treated with dignity.

* All persons have value.

* All persons must be involved in and carry the primary responsibility for the decisions which affect their lives.

* All persons should live and work in the most natural settings.

* All children should live with families.

* All children have the right to a free and appropriate education.

* All persons should live in and be a part of the community.

* All citizens have the right to fully exercise their rights as guaranteed by the Constitution of the United States.

CLASS FOCUS OF THIS ORDER

For the purposes of this initial Order, the focus shall be on all persons who at the time of the filing of the complaint were at The Hissom Memorial Center (hereinafter referred to as "Hissom") and all persons who become clients of Hissom during the pendency of this action.

The Court wishes to make it known to all persons with mental retardation, their families, and the parties that the entire class as certified in the Court's Order of August 1, 1986 are of great and equal concern to the Court.

The record shows that a sense of great urgency exists with respect to the class members residing at Hissom. Therefore, this Order primarily addresses the needs of those individuals. The Court will issue other Orders which will directly affect the remaining class members.

This Order should not be construed to prevent the State from implementing the same supports and services for all of the persons in the class. All Oklahoma citizens with mental retardation deserve such consideration. It is the Court's hope that this Order will act as a positive stimulus as the State strengthens its leadership role in the development and design of supports and services to persons with mental retardation throughout Oklahoma.

FAMILY FOCUS DEFINED

For the purposes of this Order, family for children shall mean the natural/biological family, an adoptive family or a surrogate family with specific responsibilities to love and nurture the child as if he/she were their own.

For the adult person with mental retardation, family shall mean that (those) significant other(s) with whom an adult chooses to live.

GENERAL TERMS AND TIMETABLES

The time period for the accomplishment of the terms of this Order shall be four years. The first year of this four year period shall begin the date Judgment is entered in this case.

***24** During the next four years, persons with mental retardation who are the focus of this Order shall be placed into an appropriate community alternative at the following rates:

Year I 75 persons shall be placed into the community

Year II 125 persons shall be placed into the community

Year III 125 persons shall be placed into the community

Year IV 125 or the remaining persons shall be placed into the community

Individual class members or their families who wish to volunteer to move to the community shall be placed first.

During each year of this Order, individuals with all levels of needs shall be placed into appropriate supports and services in the community. This includes individuals who are multiply handicapped, have medical needs or who have positive behavioral skill acquisition needs (behavioral problems).

Individuals will be placed only if the appropriate services and supports are available as outlined in their Individual Habilitation Plan (hereinafter referred to as "IHP"). The Court's Representative will review and determine appropriateness and adequacy of each individual's IHP as developed and designed by the Interdisciplinary Team (hereinafter "IDT").

From the date of this Order, no further admissions shall take place at Hissom.

From the date of this Order no further capital construction or renovation shall take place at Hissom without approval from the Court in advance.

Existing State regulation which would serve as a barrier to this Order will be brought to the attention of the Court for remedy.

Any plan called for in this Order shall, at a minimum, include provision for staffing, training, contracting for services, administration and support adequate to meet the terms of the Order.

Any plan called for in this Order shall include specific attention to a system of internal and external safeguards which will be designed to successfully implement that plan. These shall include consumer, family and community participation at each level.

Any plan called for in this Order shall include provision for emergency procedures and protocols to be utilized on behalf of the class members served in the plan.

The Court is aware of approximately one hundred individuals who were living at Hissom at the time this action was filed but who have left the institution during the pendency of this action. It is the order of the Court that the State of Oklahoma:

1. Develop a plan to serve all one hundred of these individuals during this four year time period.

2. This plan shall be submitted to the Court within thirty days of the entry of Judgment in this case.

3. This plan shall specify the exact numbers to be served during each of the four years. Some individuals must be served each year beginning with the first year until all of these persons have been served.

4. All relevant assessments/evaluations shall be completed on all one hundred individuals the first year.

5. All one hundred individuals shall have case managers at the Ordered ratio of 1:10 the first year of this Order.

***25** 6. All Interdisciplinary Teams shall meet and develop Individual Habilitation Plans for these approximately one hundred individuals during the first year of this Order.

7. If any of these individuals are at home, in-home and family supports shall begin within ninety days of the entry of Judgment in this case.

The Court is also concerned with the identification, location, and needs assessment of the balance of the class members. Such balance of class members has been defined, in this Court's Order of August 4, 1986, as persons who have been transferred to skilled nursing facilities or intermediate care facilities, yet remain Defendants' responsibility.

Accordingly, the State shall immediately proceed to identify and locate these class members and shall develop a plan to serve these individuals. Such plan will include provisions for assessment and placement in conformity with the principles contained in this Order and shall propose an adequate time table to insure expeditious placement. Such plan shall be filed with the Court no later than March 1, 1988 and shall include all information gathered regarding the identity and location of all such class members.

COURT MONITORING

The amount of monitoring necessary to assure compliance with the Court's Order will be decided by the behaviors of the parties involved. The Court will initially take a *de minimis* approach to such monitoring. A Court Representative will be appointed to act as "eyes and ears" in assisting the Court to monitor the progress being made in implementing the Court's Order. The Court Representative will secure and assist the Court in reviewing reports from the State on such topics as:

1. The first-year operational plan with appendices relating

to (a) finding, assessing, and providing services to the 100 Hissom class members who have been discharged since the complaint was filed and (b) development of an adequate administrative infrastructure, staffing, and training to implement the Court's Order.

2. Monthly reports on hiring and assignment of Case Managers at a 1:10 ratio to the 550 designated Hissom class members.

3. Monthly reports on the conduct of the IDT assessments.

4. Monthly reports on finding all other Hissom class members located at home, in ICFs/MR, or in ICFs and IDT assessment of their needs.

5. Reports on the number of community placements by type of placement, within 10 days of each such placement.

6. Reports on all allegations of abuse or deaths that may occur among Hissom class members, with such reports to be made within 24 hours of such alleged incident.

7. Reports to be provided to the Court's Representative by the State upon reasonable request of such Representative, regarding such areas in which additional information would prove helpful to the Representative.

The Court Representative would also assist in educating the parties to the complaint and general public about the components of the Court's Order, the policy behind such Order, and such other details as the Court may deem relevant.

***26** If events dictate that the Court must increase its monitorization, the Court's Representative will assume greater monitoring responsibilities over the details of the State's activities on behalf of Hissom class members. If necessary additional staff will be hired to assist the Court-appointed Monitor. More detailed reporting will be required, specific IDT assessments will be reviewed against the placements that are made, and certification by the Court that each such placement is in the best interest of the individual will be required. At this point, the Court would increasingly draw on outside expertise in judging the appropriateness of the State's activities on behalf of individual class members.

In the event that this intermediate level of monitoring proves insufficient to secure compliance with the Court's Order, the Court would appoint a Master–Receiver to manage those Court initiatives necessary to bring about such compliance. At this juncture, the Court would move from the role of advising the parties and resolving differences among them to one of taking the initiative for the planning and direction of the State's programs as they affect Hissom class members. In essence, everything would be accomplished under the direct authority of the Court, including design of the operational details of the deinstitutionalization plan.

In securing, as the case may be, a Court Representative, Monitor, or Master–Receiver, the Court will request from all parties the names of persons with successful experience in organizing and delivering community based services to persons with mental retardation. The Court would then make its selection of the best candidate.

PREVENTION AND EARLY INTERVENTION

Mental retardation can be prevented in many instances. Technologies and information exist which can, if generally used, prevent its occurrence. Intervention strategies are available to minimize its impact in early childhood.

Because of the Court's concern for those persons who without prevention strategies might someday be class members, the Court orders the State to develop and present to the Court, within one year of the entry of Judgment in this case, a plan for prevention and early intervention. It is the Court's hope that the State will enlist in this planning effort all persons with pertinent expertise and interest including members of the Oklahoma medical community. Such plan shall include, but not be limited to, the following strategies:

* genetic screening and counseling;

* education designed to prevent teenage pregnancy;

* education regarding the effects of the use of alcohol during pregnancy;

* measures designed to prevent communicable diseases which can result in mental retardation;

* mechanisms to insure that pregnant women who are at high risk of having a child with mental retardation will receive adequate medical support during pregnancy;

* screening and intervention immediately after birth for metabolic disorders;

* early intervention designed to minimize the impact of the child's mental retardation;

***27** * parent to parent support for parents of newborns with mental retardation; and

* in-home educational services designed to assist with the

child's development and train the family to assist in the developmental processes of the child.

IN HOME AND FAMILY SUPPORTS

Historically the public policy of Oklahoma has been that persons with mental retardation will only receive support in living environments if the individual leaves home and moves to a state operated institution. The State has provided little or no resource to assist a person to stay at home, but has consistently provided immense financial resource to house people away from their own homes.

The result has been that families have become frustrated with their inability to respond to the family member's needs. Institutionalization became the only option. Families have experienced severe pain at having to separate their child from home and family. For adults with mental retardation, this has meant very little or no ability to control their own environment, life or pattern of living.

This is further complicated by the Court's finding that institutions, and in this instance Hissom, are the least likely settings in which to achieve individual growth and development. The evidence before this Court is clear that the home, with appropriate supports, is the most likely setting in which to achieve individual growth and development.

Therefore, the Court concludes that:

1. A gatekeeping mechanism must be implemented to insure that persons will not be removed from their natural home except in extreme circumstances.

2. All necessary supports and services must be provided to the home so that it can be the living environment most likely to provide for individual growth and development.

3. These provisions must apply in the Hissom service area to all children with mental retardation from the date of birth or diagnosis.

To effect these ends, within six months of the date of entry of Judgment in this case, the State shall develop and submit for the Court's approval a plan implementing the above referenced conclusions. Such plan shall include but not be limited to the following additional provisions:

1. In home and family support services shall not cost the family any more than would be the cost of raising a child without mental retardation.

2. Necessary and reasonable architectural modification shall be allowed to insure that the home is adequately safe and barrier free.

3. Respite, including emergency, occasional and regular respite, as well as in home workers shall be available, as needed, to maintain a balanced, nurturing and supportive home environment.

4. Specialized services shall be available, as needed.

5. Adaptive and augmentative equipment, including medical equipment, shall be available as needed.

6. Parent/family training will be provided on any issue pertinent to positively maintaining the child at home or the adult in his/her own home.

7. Intrusion into normal home life shall be minimized and no more support or service shall be provided than is required.

***28** 8. Normal recreation and leisure opportunities shall be available for the individual with mental retardation and his/her family.

9. Transportation shall be adequate to allow involvement in community life and activities.

10. Case management will be provided to insure access to and coordination of supports and services, including participation in education services.

SYSTEMS SAFEGUARDS

It is the desire of the Court that every community placement be a successful one. To ensure such success, the community system must have appropriate safeguards built into it.

The Court directs the State of Oklahoma to present a plan for the development and implementation of an on-going system of safeguards which will assure quality services. This plan shall be submitted for Court approval ninety days after the date of entry of Judgment in this case and shall include precise details of a system of safeguards for persons residing in Hissom during the pendency of this action.

This Plan shall include the establishment of goals in areas pertaining to:

1. Regulation. Particular attention shall be paid to licensure, policies and procedures of the programs, supports and services which currently exist or those which will be developed. If there are conflicts in regulation or if there are regulations which would hamper the swift and

effective implementation of this Order, such regulations should be identified and modified.

2. Accreditation. The State has indicated its desire to become accredited by the Accreditation Council on Services for People with Developmental Disabilities. The Court commends the State for its leadership in this area and would request quarterly reports on its progress in becoming so accredited.

3. Systematic Communication. Advisory committees, client advisory boards, human and legal rights committees, behavior intervention teams, management teams, independent auditors and others have a very important role to plan in any quality safeguard system, and communication should be openly maintained among all such groups.

4. Procedural Protections. Independent case management, internal investigation procedures, self advocacy training, interdisciplinary team planning, trouble-shooting which identifies problems before they become harmful, incident/death reviews/reports, policy and procedural manuals for all program functions are only a few of the procedural protections which make an open efficient system work. Such protective mechanisms should be abundantly detailed in the State's plan.

5. Quality Assurance Mechanisms. Case file reviews, service evaluations by clients/parents/guardians, public education, employee evaluation, management information systems, client fund audits, and health and safety reviews are necessary parts of a comprehensive, annual audit which should be conducted of all service providers.

6. First Line Problem Solving. All staff and the management structure should allow for immediate problem resolution. Staff must be made to understand that they carry certain authority along with a great deal of responsibility.

***29** Safeguards, as a mere means to an end, are effective only when the governing authority, advisory groups, staff and clients are committed to an open, responsive system. If that commitment should lapse, no methodology this Court could devise will achieve a safe service system.

1. Internal Safeguard Mechanisms: These must provide for the systematic assurance of human and legal rights, along with programmatic and systems protections for all persons who have mental retardation.

a. The State shall require the establishment of internal mechanisms including policies, procedures, and committees as required by the regulations set forth in the Accreditation Council on Services for People with Developmental Disabilities and all other applicable local, state, and federal regulations.

b. All of these policies and procedures must be written, compiled and available to all interested persons in administrative policy/procedures manuals.

c. Mechanisms must be established which provide for the routine monitoring of these policies and procedures and which provide for periodic review and revision. These monitoring and reviewing mechanisms should include the participation of consumers, parents/guardians and community representatives.

2. Education and Training: The State should provide for a systematic education and training process which will educate consumers, parents, staff, advisory committees, and governing board members on the rights of persons with mental retardation as well as applicable local, state and federal regulations, including the terms and protections of this Court's Order.

a. The State shall safeguard the rights of individuals, families and staff by providing a written summary of rights and instruction in how to exercise them in a simple and understandable form.

b. The State shall insure that policy manuals are written and available through every service provider, and that the terms of those manuals are in compliance with this Court's Order.

c. The State shall insure that each person with mental retardation receive citizenship training which shall include training on voting rights and responsibilities, consumer rights and responsibilities, organizational membership and participation, and awareness and utilization of advocacy services.

3. External Safeguard Mechanisms: These must provide for the assurance of exercising human and legal rights for all persons with mental retardation by supporting external mechanisms which enable individuals to access assistance in securing their rights.

a. The State shall support the development of "self advocacy" organizations for persons with mental retardation who are class members.

b. The State shall support the membership of parents, families and interested citizens in "group advocacy" organizations such as the local Association for Retarded Citizens.

c. The State shall provide assistance to persons with mental retardation in obtaining legal counsel, legal advocacy services, and/or protection services as the need arises.

***30** d. The State shall support the development of systems

advocacy groups, such as legislative action committees, which will pursue necessary review and revision of legislation pertaining to rights of retarded citizens.

General Principles

Integration: The safeguard system should be an integral part of the service delivery system, not a separate procedure. Whenever feasible, it should use existing structures and procedures, so that maintenance of service quality is a constant effort.

Openness: A safeguard system should deliberately involve clients, parents, interested professionals and community representatives in monitoring service quality. It should involve staff at all levels.

Commitment of Improvement: The stance of the service delivery system must be an eagerness to improve. This involves a willingness to correct problems. By incorporating a variety of safeguards, and by channeling findings to management, a good system is able to correct problems in a timely way.

Internal Approach: The system must scrutinize and correct its own service problems. Procedural protections and first line problem solving are two important internal safeguards components.

External Approach: The system must involve outside agencies or organizations in evaluation of all or part of the service system. Regulation and accrediation are two external components.

The key to both of these approaches is an open system in which service delivery involves a wide variety of people in solving problems. Through internal evaluations and systematic communication, first hand knowledge is combined with external objectivity.

DEVELOPMENT OF COMMUNITY SUPPORTS/INVOLVEMENT

Traditionally, persons with mental retardation have not had the opportunity to live, work, and spend leisure time as participants in their communities. Instead, they have been isolated and made the objects of pity at best and fear and ridicule at worst. The State's response has reinforced these perceptions. Hissom has been a place where incapable, dependent people are "taken care of", rather than being a place for the enhancement of human potential.

Therefore the Court's Order must include provisions which will assist in the development of positive community supports and involvement. Though the Court cannot require the citizens of Oklahoma to interact with their fellow citizens with mental retardation in a positive, supportive way, it can require the State to implement strategies designed to bring Oklahomans voluntarily to that same conclusion.

This is an area that needs the energy and commitment of the highest leadership of Oklahoma, for it is this leadership which shapes public attitudes. The assistance of such leadership would prove invaluable to a group of people who have long and systematically been devalued.

Strategies for public involvement/education should be both simple and complex. Simple strategies include assisting persons with mental retardation to get to know their neighbors and be positive additions to the neighborhood in which they live. More complex responses should include the development of community advisory groups at all levels, speaker's bureaus to work with civic groups, and the building of positive relationships with the media.

***31** Maximum benefit will be derived from involving the community itself in the public education program. Chambers of Commerce in communities which will benefit from the infusion of new jobs should become the primary local spokespersons. Business leaders who will benefit from the employment of persons with mental retardation should be invited to recruit other business and industry leaders.

The basic principle that should guide the development of community involvement and education is involvement of as much of the community as is possible. The focus should be on presenting people with mental retardation in positive ways as sharing our values, beliefs and desires. The more the system gives away and invites community support and participation, the more it will receive back in support and assistance.

Therefore the Court directs the State, consistent with the foregoing, to design and implement within six months from the date of entry of Judgment in this case a plan for community involvement and education.

INFRASTRUCTURE

The development of a complex and comprehensive community service delivery system requires extensive administrative, programmatic, professional, and support staff if services are to be developed in a timely, efficient and effective manner and if supervision, monitoring, and evaluation is to be done effectively.

Staff must be available to provide the planning, service development, reporting, monitoring, and evaluation requirements contained in this Order of the Court and in all subsequent orders. To insure such staff availability, the State shall take the following action:

1. The Department of Human Services shall within thirty days of entry of Judgment in this case develop plans for the assignment or acquisition of staff to provide the following services:

a. Case Managers for all 550 Hissom class members with a ratio of one Case Manager for ten class members and one supervisor for ten Case Managers. The Department shall develop alternate plans for the development of Case Manager programs. One plan will involve a state organization and the other will maximize the use of contracts with independent contractors. Each plan will provide organizational charts reflecting lines of authority.

b. Administrative staff to systematically locate other class members.

c. Case Managers and area professional assessment teams will begin to evaluate and identify needs of other class members within the period of ninety days after entry of Judgment in this case. If estimates of the number of class members are accurate, three to five assessment teams will be required and fifteen to twenty Case Managers will be required.

d. Staff in the State office to develop plans required by this Order.

e. Staff in the State office and area office for contracts administration.

f. Staff in the State office and area office for resource development.

g. Staff in the State office for developing and implementing a system for program and fiscal audits.

h. Staff in the State office and area office for program monitoring and quality assurance programs.

***32** i. Professional specialists in the State office and area office for development of new program initiatives.

j. Administrative staff in the State office and area office for timely processing of client evaluations, plans of care, contracts, billing and processing of applications.

k. Staff in the State office and area office for community education and staff/provider training.

l. Staff in the State office and area office for development and maintenance of information systems, evaluation systems, and client tracking systems.

2. The Department of Human Services shall secure space, equipment, clerical support, and operational funds for staff activities described above.

3. The Department of Human Services shall maintain sufficient staff/providers to assure that staffing ratios and service levels are not reduced from projected levels for clients remaining at Hissom.

4. All staff training and development activities necessary to carry out the Court's Order shall be provided by contract services to insure the expertise requisite to a high quality program.

CASE MANAGEMENT

An active, resourceful and independent Case Manager is the single most important component of the system. Case management is a system in which the responsibility for locating, coordinating and monitoring services needed by the person with mental retardation rests with a designated individual. Specific services and activities of the Case Manager include:

1. Serving as the primary staff advocate for the individual with mental retardation to secure services, assisting in the exercise of rights, choices, and responsibilities, and providing needed support services that enable the individual with mental retardation to engage in independent activity.

2. Linkage of the person with mental retardation with appropriate community resources.

3. Responsibility for ensuring the development, implementation, monitoring, and modification of the IHP through an Interdisciplinary Team process.

4. Serving as chairperson/facilitator for the IDT.

5. Coordination of service providers responsible for furnishing services to the person with mental retardation.

6. Monitoring of services and programs included in the IHP to determine effectiveness as it relates to individual progress as well as determining if the individual's well-being, health and safety are assured.

7. Accessing the IDT to revise or change services and programs as needed or requested by the individual with mental retardation.

8. Providing information, referral, follow-up and periodic services to individuals with mental retardation who may not require specialized services of the service delivery system.

General Principles

1. Case Managers must be independent so that they may be free to advocate for the needs of the individual with mental retardation.

2. Case Managers function in the most fundamental and essential monitoring role because they focus on the total needs, response, and well-being of the person with mental retardation.

3. Case Managers must have the authority to convene Interdisciplinary Team meetings if the needs and desires of the person with mental retardation indicate that changes are needed.

***33** 4. Case Managers should live in the same community as the person with mental retardation so as to facilitate quick response to client needs.

5. Case Managers must have the authority to access emergency or specialized intermittent services and be immediately accessible to their clients as the need arises.

6. Case Managers must have the authority to access or procure services and equipment as specified by the IDT.

7. The Court's view of the appropriate job description for Case Managers is attached as Exhibit "A" to this section.

Court Objectives

The State shall insure the following:

1. Case management services will be provided to class members by either staff of the division of developmental disability services of the Department of Human Services or by contractually employed independent professionals, depending upon the Court's approval of one of the two plans submitted by the State pursuant to the requirements outlined in Infrastructure § 1(a), *supra.* In the event the Case Managers are staff of DHS, these staff will have no other duties and will serve a specific caseload of individuals with mental retardation.

2. Case Managers will be assigned to all 550 class members with a ratio of one Case Manager to ten clients. This ratio may be increased over time, upon approval by the Court, after successful implementation of the Court's Order and development of the initial set of supports and services.

3. The Department of Human Services shall develop policies and procedures that provide the Case Manager with the authority to access emergency services, be on-call and available to clients, and access the IDT when changes in client program and placement may be indicated.

HOME AND COMMUNITY SUPPORTS AND SERVICES

Each person who is the focus of this Order shall, within the time frame outlined, be provided home and family life in the community. Supports and services shall be provided for each person adequate to allow full participation in normal home and community life. The State shall develop and present to the Court, within sixty days of entry of Judgment in this case a plan which will accomplish this section of this Order, consistent with the following principles:

1. Supports and services shall be provided for each adult or child in his/her home to the extent that such are needed to maintain and nurture the individual in home and community. Supports and services shall include but not be limited to:

a. Respite as needed;

b. In home workers;

c. Family training;

d. Reasonable architectural modification;

e. Behavioral management;

f. Family counseling;

g. Adaptive and augmentative equipment, prothesis; and

h. Transportation assistance.

2. Supports and services shall be no more intensive than is necessary to achieve success. Individuals shall receive no more support, service or other intervention than is necessary in order to allow the individual to participate in home and community.

3. A person's place of residence is his/her home. The State shall advocate that he/she may not be arbitrarily removed from the home for reasons relating to his/her mental retardation, behavior or medical condition. The only exceptions should be removal for periods of intensive medical or behavioral treatment at which time

resources and facilities shall be used which are the same as those used by the general public.

***34** 4. Adults shall live with people of their choice. Whenever possible, the building in which adults live shall be either purchased or rented by the persons residing in it.

5. Consistent with normal adult living, no more than six adults shall live together.

6. Individual living planning and home selection shall focus on the individual, his or her home, and affiliation needs, not on any approach which is "facility", "slot", or "bed" based.

7. Given the inherent rights of the self advocate, the parent/guardian, the IDT and all due process rights afforded by law, for children, home shall be the natural family. As is generically true, if the family has received any necessary supports and services but is no longer able to respond to the needs of the minor child with mental retardation and requests placement outside of the home, there shall be arranged a foster family which shall act in the place of the natural family. In all instances, supports and services shall be equally available. This provision shall be restricted so that foster families may receive no more than three children with mental retardation. That number may be further restricted if the home already has other children. If the home already has other children of a foster or adoptive nature, a full evaluation and review by the IDT will be required prior to placement to insure compatibility and appropriateness.

8. Before an individual moves from his/her home to a more restrictive or less normal environment, the individual's Case Manager shall insure that such more restrictive or less normal environment is required and that the individual has been served but cannot presently be served in the normal home environment. Such subsequent placement plan shall be reviewed and approved initially by the IDT and then by the Court's Representative.

9. The plan shall insure that all providers of home and community supports and services are free from conflict and independently able to respond to the individual's interests in being a part of the community. Providers who through any arrangement are providing service to more than one individual must agree to receive persons of any level of need or involvement. All providers must agree to not remove a person from home and community supports and services without approval of the IDT.

10. The plan shall include a section on safeguards that will guarantee both internal and external controls and review, including consumer monitoring.

11. The plan shall insure that each person shall benefit from home and community experiences designed to enhance quality of life including normal friendships and affiliations, recreation and leisure activities, and access to the community resources.

12. All determinations relative to home and community living and supports shall be subject to the appropriate due process procedures.

13. The plan shall insure that all Case Managers are free from conflict and independently able to respond to the individual's interest in being a part of the home and community.

***35** 14. For purpose of the plan and subsequent service development the Court considers the following to be a sequence from least to most restrictive home settings for an adult: independent living, independent living with in home and family supports, extended family living, adult family (foster) homes, supervised apartment living, supervised small group homes of 2–3 persons and supervised group homes of 4–6 persons.

15. The plan will provide for the State to advocate for the least restrictive, most normal environment for all class members.

HISSOM SERVICES PENDING CLOSURE

The Court is deeply concerned for persons who will continue to reside at Hissom pending closure. Unfortunately it is reasonable to expect that without intervention persons remaining there will be in greater jeopardy since staff, particularly those with the greatest skill, will leave to seek other employment. This will leave Hissom with an even more greatly diminished ability to respond to the needs of its residents.

Therefore the Court requires that the State take all necessary steps to insure that residents of Hissom receive appropriate habilitation services prior to their movement from Hissom. The Court requires that Hissom residents be guaranteed a safe living environment pending their departure from Hissom.

With regard to Hissom's ongoing personnel needs, the Court orders the State to develop and present within twenty days of entry of Judgment a plan which will insure that the necessary personnel support is maintained so that residents will receive appropriate habilitative services prior to their movement from Hissom. Such plan may include incentive payments for employees who stay at Hissom, arrangements for contracting for professional services with experts, and any other means to insure adequate staffing. Such plan shall also include derivation of maximum benefit from the professionals employed by

Progressive Therapeutic Technologies, Inc. and Therapeutic Concepts, as has been previously directed in this Court's Order of January 1987. Such plan shall address the following:

1. Interdisciplinary teams able to integrate services based on measurable behavioral objectives.

2. An administrative structure which supports the IDT and professional services.

3. Personnel needed to provide effective IDTs.

4. Documentative systems standardized to meet clients' needs.

5. Implementing and monitoring of physical management and positioning programs.

6. Appropriate full day education/day programs for all clients.

7. Medical and health issues which need to be addressed.

8. Providing physical management, positioning and other programmatic and care needs for clients who require hospitalization.

To insure that limited resources are not wasted, the Court directs that, effective the date of this Order, there shall be no further capital construction at Hissom. If the State at any time identifies any capital construction which it feels is required to insure resident safety, it shall file a motion to allow specific capital construction along with evidence substantiating its request, including cost figures.

EDUCATION

***36** Although the State Board of Education is not presently a party to these proceedings, the community placement of class members will of necessity involve action on the part of the state and local boards of education to meet their respective obligations under federal law.

In meeting these educational needs of each eligible class member, full compliance by the State and its duly-authorized educational representatives with the legislative intent and guidelines promulgated in Public Law 94–142, the Education of the Handicapped Act and Public Law 99–457, a 1986 Amendment to such Act, will be required. Such law provides, in substance, that each person within the chronological age of 3–21 years shall be provided a free, appropriate publicly-supported education in the least restrictive, most normal environment commensurate with his/her needs and abilities.

The State should now commence planning for educational supports and services to be delivered to each eligible class member in such a manner as to allow each member to be educated in regular public schools in the community setting. Such planning should accomplish the education of the class members in a manner which is consistent with the following principles:

1. Educational supports and services should be provided in such a manner and extent for each eligible class member so as to allow him/her to receive those supports and services in the regular public schools in the community setting, given the following service delivery options:

a. Regular classroom with no special supports and services;

b. Regular classroom with modified materials, equipment, and instructional procedures;

c. Regular classroom with consultant services;

d. Regular classroom with itinerant services;

e. Regular classroom with resource classroom services;

f. Regular classroom with part-time special classroom; and

g. Full-time special classroom.

2. Educational supports and services for each class member should include but not be limited to the following:

a. Reasonable but sufficient architectural modifications in the regular public school that will provide each eligible class member access to all program opportunities afforded students without handicaps who attend that school;

b. Behavioral programming;

c. Psychological services, physical therapy, occupational therapy, and speech/language therapy;

d. Adaptive and augmentative equipment;

e. Transportation assistance; and

f. Family training.

3. Educational curriculum content, which is based solely on individual needs for each class member should reflect functional contexts while addressing each of the following curriculum areas on the class member's

Individual Educational Plan (hereinafter referred to as "IEP").

a. Self care skills;

b. Communication skills;

c. Prevocational/vocational skills;

d. Preacademic/academic skills;

e. Recreation/leisure skills;

f. Motor skills;

g. Social skills; and

h. Adaptive behavior/independent living skills.

4. The yearly duration of educational supports and services should be based on each individual class member's demonstrated need for such supports and services. Each eligible class member should be afforded access to an extended school year of a length commensurate with the summer school program provided to students without handicaps.

***37** a. No eligible class member should be denied access to an extended school year due to inability to pay additional fees or lack of transportation.

b. Extended year programs for eligible class members should provide extended year IEPs which reflect specific, measurable, instructional goals and objectives for that period and the quality assurance means for determining the efficiency of the program relative to accomplishing those goals and objectives.

5. The delivery of educational supports and services to each eligible class member should reflect instructional methods and materials which are community-referenced, culturally normative and age appropriate.

a. The least restrictive model of treatment/alternatives should be employed consistent with the developmental needs and the acceleration/deceleration target objectives of each eligible class member. The State Educational Agency should provide the receiving local education agencies policies and protocols to carry out this treatment model.

b. Both the developmental model and the functional/remedial model should serve as valid models of treatment for the accomplishment of this standard.

6. The State should, through the State Education Agency and local education agency, work toward plans that would enable every eligible class member to receive, at least during his/her last five (5) years of publicly-supported education, specific and appropriate programming efforts to aid in his/her transition from school to work and adult life in the community. These transition plans should proactively avoid waiting lists for services in the community, and client isolationism, while producing a quality of adult life in community work and residential programs which foster meaningful wages, as well as social and physical integration for all Hissom class members.

7. The formulation of each eligible class member's IEP, including the content, amount, extent, and duration of related services and supports should be determined on the basis of the individual's need for said services and supports.

a. The rights of the parent/guardian to fully participate in the development and the subsequent decisions relative to these services and supports are protected by law and must be carefully maintained.

b. The Case Manager should fully participate in the development and the subsequent decisions relative to these supports and services.

c. The local education agency should undertake a systematic effort to fully educate and train parents/guardians and Case Managers in their rights and respective roles relative to the IEP process.

8. In order to ensure that the eligible class members receive the educational supports and services commensurate with their needs and in accordance with federal law, the State should consider developing a plan that will produce a cooperative agreement between the State and an institution of higher education for said institution to develop, implement, and sustain a fully-funded preservice and inservice teacher education program to serve persons with severe/profound mental retardation and/or multiple disabilities.

***38** a. The State, if such a cooperative agreement is developed, should ensure through its licensure policies and practices that teachers of the eligible class members are duly certified to instruct persons who possess severe/profound mental retardation and/or multiple disabilities.

EMPLOYMENT SERVICES

The Court is cognizant of the radical change which the perception of employment capabilities of persons with severe disabilities has undergone in the past several years. Whereas sheltered workshops and work activity centers

were previously considered the only possible place in which to employ people with disabling conditions, now many professionals consider these places the last resort when every other employment option has failed. The Court is similarly cognizant of the 1986 Amendment to the Rehabilitation Act of 1973 (Public Law 99–506) which creates a new formula grant to assist states in developing supported employment options for persons who are unable to function independently in employment without on-going support services for the duration of their employment. Such change in the perception of employment possibilities and the corresponding federal legislation afford Hissom class members substantial opportunities for meaningful employment in an integrated work setting.

The Court directs that all Hissom class members are to receive prevocational and vocational services commensurate with his/her need. This will necessitate that the State accelerate and perhaps redirect its efforts to create employment options for persons with severe disabilities. The State will have to overcome resistance to employment of such persons based on the conventional arguments that limitations in physical and mental fitness lessen their ability to produce on the job and that employers prefer able-bodied workers, even if disadvantaged, to workers with disabilities. The State will have to engage business in a partnership to create a variety of supported and transitional job options for all Oklahoma citizens with severe disabilities who wish to work. In doing so, the Court directs the State to use the Medicaid waiver budget applicable to the Hissom class to assure that each member receives the kind and amount of prevocational and vocational services which the IDT assessment deems appropriate.

Court Objectives

1. All Hissom class members are to receive prevocational and vocational services commensurate with his/her need.

2. Each IDT assessment will specify the kind and amount of prevocational and vocational services that appear appropriate for the individual class member.

3. Children 14–17 years old are to receive prevocational services as part of their Individual Educational Plan (IEP) if possible; otherwise, Medicaid waiver funds are to be expended to this end.

4. The full array of supported and transitional employment options capable of meeting the needs of Hissom class members with varying levels of disability are to be engineered in recognition that replicable models exist to meet the needs of persons across the entire severity spectrum.

***39** 5. Sheltered workshops and work activity centers are to be encouraged and assisted to develop supported and transitional employment options for Hissom class members, with the assistance of the State.

6. The State Vocational Rehabilitation Agency is to be engaged in the development of supported and transitional employment options for Hissom class members in recognition of its responsibilities for doing so pursuant to the 1986 Amendment to the Rehabilitation Act of 1973 (P.L. 99–506).

7. The supported employment definitions and coordinating mechanisms proscribed by the federal regulations governing implementation of the new state formula grant are to be followed to assure not only compliance with the federal law but also cost-effective use of all employment service expenditures on behalf of Hissom class members.

General Principles

1. The IDT assessment should avoid stereotyping the employment capabilities of individuals with severe disabilities and rely instead on state-of-the-art knowledge in this regard.

2. Officials of the State of Oklahoma should set aside sufficient funds to bring in experts and trainers from the university centers (e.g. the University of Oregon, Virginia Commonwealth University, and University of Maryland) that have been established by the U.S. Department of Education to provide technical assistance to states in building supported employment programs.

3. Officials of the State of Oklahoma should place emphasis on coordinating expertise and funding sources as prescribed by the federal regulations governing implementation of the new state supported employment formula grant, taking advantage of the substantial leveraging opportunities that Medicaid waiver funds afford in this regard. Clarification should be sought from the U.S. Departments of Education and Health and Human Services about which dollar will be considered the "first dollar" spent for purposes of obtaining the maximum leverage effect of Medicaid waiver funding.

4. Training efforts at all levels should include orientation to the provisions of the 1986 Amendment to the Social Security Act, entitled "Economic Opportunities for Disabled Americans Act," which remove the substantial work disincentives that formerly existed in the Supplemental Security Income (SSI) and Medicaid programs. Earnings above the substantial gainful activity (SGA) level of $300 per month no longer cause loss of SSI and Medicaid benefits.

5. Sheltered workshop and work activity centers should be recognized as having a role to play in creating needed supported and transitional employment options for Hissom class members as well as resources that can be reconfigured over time to embrace more supported and transitional employment options and less sheltered work and work activities.

6. The Specialized Training Program (STP), developed by the University of Oregon, should be recognized not only for its potential to serve persons at the severe and profound levels of disability but for its applicability for transforming the operations of sheltered workshops and work activity centers into a more productive work environment for such persons.

***40** 7. Concentration on development of a single kind of employment option for Hissom class members should be avoided in favor of attempts to create the full array of options—job coaches for competitive employment, shared jobs in the transitional employment program (TEP), the specialized training program (STP), mobile work crews, sheltered enclaves in industry, etc.

8. By requiring spending on prevocational services for children 14–17 years old, the Court is attempting to avoid the documented problems with federal and state policy in addressing the vocational education needs of persons with disabilities while in school. The failure to provide suitable vocational education to school age persons with disabilities represents an opportunity cost not only for the individual student but also for society which may have to spend more later to make up for the indifference of the past.

9. High priority should be directed toward development of a partnership with the business community to educate and obtain the assistance of not only the leadership but also rank and file workers in creating integrated employment options for persons with severe disabilities, including Hissom class members.

BUDGET PLAN

The Court recognizes that adequacy of fiscal resources is a major determinant in assuring that members of the Hissom class receive in a timely fashion quality services in the least restrictive and most integrated environment. Accordingly, the Court provides the following budgetary guidance to the State in the form of (a) the Court's specific fiscal objectives, and (b) general principles governing how fiscal resources are to be used. The Court also provides budget estimates of how much the State of Oklahoma should anticipate spending to satisfy the Court's Order. The Court's budget estimates are based on the service definitions and average cost figures contained in the Oklahoma Department of Human Services Medicaid waiver renewal application to the U.S. Department of Health and Human Services, Health Care Financing Administration, entitled "Oklahoma Home and Community Based Waiver for the Mentally Retarded," June 22, 1987.

The Court's budget estimates do not constitute an operational budget, detailing how much will be spent quarterly on which kinds of personnel, programs, and services to achieve the annual numerical goals for removing designated class members from Hissom. The Court understands that the rate of spending on a quarterly basis will vary as a function of (a) creation of the necessary administrative infrastructure to implement the Court's Order, (b) development of appropriate community alternatives for Hissom class members, and (c) actual placement of class members into the alternatives and payment for services therein. Nonetheless, it is the firm expectation of the Court that the Court's annual numerical goals for placement are to be met on time.

The State's first-year operational budget should explain to the Court how annual fiscal resources will be spent on a quarterly basis to achieve the Court's annual numerical goals. The State is to supply such an operational budget for the first year within thirty days of entry of Judgment in this case making use, if possible, of a cost model reflecting Oklahoma's organizational structure that provides detail comparable to the Touche Ross & Co. "Standard Cost Model for the Nebraska Community Based Mental Retardation Programs." The Court attaches a list of financial questions to assist the State in constructing the first-year operational budget.

Court Objectives

***41** 1. The approximately 450 persons now residing at Hissom are to be placed into appropriate community care alternatives according to the following schedule: 75 in the first year; 125 in the second year; 125 in the third year; and 125 or the remaining number in the fourth year.

2. The approximately 100 persons who were at Hissom when the complaint was filed but since discharged are to be (a) located, (b) assessed by an IDT, and (c) served according to that IDT assessment. The State's operational budget for the first year should specify in an addendum how much is to be allocated to finding, assessing, and serving these 100 persons in the course of the four years.

3. Case managers at a ratio of 1:10 are to be provided from year one to the 450 persons now residing at Hissom and to the 100 persons who have been discharged since the complaint was filed.

4. As much of Hissom class member needs as possible is to be met through expenditures under the Medicaid waiver in order to optimize cost sharing between state and federal revenue sources.

5. Hissom class member needs that cannot be met through intergovernmental cost sharing are to be paid for by the State of Oklahoma in discharge of its ultimate responsibility in this regard. The Medicaid waiver defined services and cost levels are expected to suffice in most instances.

6. Each of the designated 550 Hissom class members covered by the Court's four year plan are to receive the following services as defined by an annual IDT assessment:

a. Case management at a 1:10 ratio;

b. Habilitative services;

c. Community residential placement and support services;

d. Employment services, if adult (18 years or older);

e. Educational services, if of school age;

f. Prevocational services, if a child 14–17 years old.

7. Independent annual fiscal and program audits are to be conducted and received by the Court on each program into which Hissom class members are placed or from which they receive services, making known the quantity, quality, and cost of the services received by each Hissom class member. Such independent audits are to follow the principles and procedures set forth by the Comptroller General of the United States.

General Principles

1. Placement of Hissom class members will be in the least restrictive and most integrated environment commensurate with meeting each member's needs.

2. Resources will be expended on a first priority basis to provide whatever support services are necessary to sustain, where possible, natural families in their efforts to maintain a disabled member at home with fullest possible participation in community life.

3. The second priority is to create foster care placements for children whose developmental needs are best met within the nurturing environment of a foster family with fullest possible participation in school and community life.

4. The third priority is to create supervised apartments and other residential options that provide maximum possible choice, independence, and community participation for adolescent and adult class members.

***42** 5. Creation of adult group residences (defined in the section entitled Home and Community Supports and Services, *supra,* as having less than seven beds) that offer a home-like environment and fullest possible participation in community life are considered a backup option to cover class members for whom a better option cannot be developed.

6. The Court directs that development of the services in their indicated priority will take place simultaneously rather than sequentially in order to avoid bottlenecks resulting from uneven response from class member families and/or potential providers.

7. The IDT assessment for each class member, not so-called economies of scale, should dictate how many of each type of out-of-natural-home placements are developed. To encourage development of preferred options, the Court's budget estimate for residential placements is based on the Oklahoma Department of Human Services waiver renewal application's rate for specialized foster care. This rate is sufficient to support creation of whatever number of small group residences are necessary to meet the needs of class members who cannot be maintained and served in their own homes or in foster care.

8. Habilitative services are to be offered to all class members in the kind and amounts defined by the IDT assessment, including purchase of adaptive aids and equipment and whatever transportation and personal care assistance is necessary to assure fullest possible participation in school, work, and community life in the least restrictive, most normal environment.

9. All class members of school age are to receive a free and appropriate public school education in the least restrictive, most normal environment as mandated by the Education for the Handicapped Act (P.L. 94–142), with such funds as necessary provided by the federal, state, and local educational authorities responsible for assuring this entitlement. The Court's budget estimate does not include funding of each class member's IEP, as defined by P.L. 94–142.

10. All adult class members are to receive employment services in the least restrictive, most normal environment as defined by the IDT assessment, and all children 14–17 years old are to receive pre-vocational services in the least restrictive, most normal environment as part of their IEP if possible.

11. The Court does not construe average cost estimates as upper limits or "caps" on expenditures for either specific

items of expenditure or for total expenditures for individual class members. By definition, variability surrounds any average. Thus, no individual class member is to be denied a specific kind or amount of service, defined as needed by the IDT assessment, merely because some hypothetical limit would be breached, e.g., the average per diem cost at Hissom. In the event that spending more than some hypothetical limit permits would cause loss of intergovernmental cost-sharing, the Court expects the State of Oklahoma to bill the cost-sharing source up to the prescribed limit but pay from its own budget for any excess costs that may accrue in meeting the individual class member's true need.

***43** 12. The Court expects fullest public accountability for expenditures made on behalf of Hissom class members according to the principles and procedures set forth by the Comptroller General of the United States. Accordingly, independent audits of expenditures made on behalf of class members are to be conducted annually of all programs and agencies receiving funds for this purpose. Such audits will be conducted either by State of Oklahoma auditors or by contractors under their supervision.

13. The Court recognizes the importance of developing an adequate administrative infrastructure and staffing to plan, organize, manage, and directly provide services to Hissom class members. Accordingly, the Court expects the State of Oklahoma to create an adequate administrative infrastructure and to staff it with trained personnel. The Court's budget estimate does not include funding for this purpose. Therefore, the State is expected to provide in its first-year operational plan an addendum which explains what fiscal resources will be required to create an adequate administrative infrastructure, hire the necessary staff, and train them to implement the Court's Order.

FOUR YEAR BUDGET ASSUMING INDICATED PLACEMENTS

PER YEAR WITHOUT INFLATION FACTOR

	ITEM	YEAR 1	YEAR 2	YEAR 3	YEAR 4
1.	Case Management at 1:10 at $5,475.00	75 total	125 total	125 total	125 total
		410,625.00	410,625.00	410,625.00	410,625.00
			684,375.00	684,375.00	684,375.00
				684,375.00	684,375.00
					684,375.00
		410,625.00	1,095,000.00	1,779,375.00	2,463,750.00
2.	Foster care for children, 0–17 at $14,600.00	29 children	49 children	49 children	49 children
		423,400.00	423,400.00	423,400.00	423,400.00
			715,400.00	715,400.00	715,400.00

				715,400.00	715,400.00
					715,400.00
		423,400.00	1,138,800.00	1,854,200.00	2,569,600.00
3.	Foster care for adults, 18 + at $14,600.00	46 adults	76 adults	76 adults	76 adults
		671,600.00	671,600.00	671,600.00	671,600.00
			1,109,600.00	1,109,600.00	1,109,600.00
				1,109,600.00	1,109,600.00
					1,109,600.00
		671,600.00	1,781,200.00	2,890,800.00	4,000,400.00
4.	Employment services for adults, 18+ at $4,931.00	46 adults	76 adults	76 adults	76 adults
		226,826.00	226,826.00	226,826.00	226,826.00
			374,756.00	374,756.00	374,756.00
				374,756.00	374,756.00
					374,756.00
		226,826.00	601,582.00	976,338.00	1,351,094.00
5.	Interdisciplinary assessments at $1,260 first year and $630 each subsequent year for 450 persons	567,000.00	283,500.00	283,500.00	283,500.00
6.	Habilitative services at $16,120	1,209,000.00	1,209,000.00	1,209,000.00	1,209,000.00
			2,015,000.00	2,015,000.00	2,015,000.00
				2,015,000.00	2,015,000.00

					2,015,000.00
		1,209,000.00	3,224,000.00	5,239,000.00	7,254,000.00
7.	TOTAL	3,508,451.00	8,124,082.00	13,023,213.00	17,922,344.00
8.	Annual Hissom State School cost per person at $45,625 ($125 per day)	3,421,875.00	3,421,875.00	3,421,875.00	3,421,875.00
			5,703,125.00	5,703,125.00	5,703,125.00
				5,703,125.00	5,703,125.00
					5,703,125.00
		3,421,875.00	9,125,000.00	14,828,125.00	20,531,250.00
9.	Difference between Number 8 and Number 7	(86,576.00)	1,000,918.00	1,804,912.00	2,608,906.00
10.	Difference between Number 8 and Number 7 with 1:10 ratio Case Managers for 450 persons from first year at $5,475.00 (2,463,750.00)	(2,139,701.00)	(367,832.00)	1,120,537.00	2,608,906.00

FINANCING QUESTIONS

***44** Development of a financial plan capable of supporting the Court's Order regarding *Homeward Bound, Inc., et al. v. Hissom Memorial Center, et al.,* Case Number 85–C–437–E, will hinge on answers to several sets of questions. Such sets of questions relate to: (1) the permissible types and number of individual community care plans that will be funded; (2) the scheduling of individual care plans; (3) administrative infrastructure design, staffing, and staff development requirements; (4) the preferred financing model; (5) sources of revenue and projected growth; and (6) intergovernmental cost-sharing formulae.

Types of Community Care Plans

1. How many types of community care plans are envisioned, e.g., natural family subsidies, specialized foster care, adult family care, extended family care for children, extended family care for adults, group homes? (The "community care plan" is seen as encompassing a place of residence, necessary supervision and support services, adaptive aids, educational and habilitative services, employment services, and whatever transportation is needed for community participation, including employment.)

2. Given the varying characteristics of the class members, how many community care plans of each type will require funding to meet the needs of the entire class?

3. What is the anticipated average cost and permissible range of costs for each type of community care plan, e.g., $6,000 average annual natural family subsidy with a

permissible maximum of $10,000?

Scheduling

1. What is the total time frame within which the individual community care plans for all members of the class will be implemented? The Court has decreed a maximum time frame of four years.

2. How many of each type of community care plan will be scheduled for implementation in year one, year two, etc.?

3. How much of the required administrative infrastructure needed to assure proper discharge of the major functions prescribed by the Order will be scheduled for implementation in year one, year two, etc.?

Infrastructure

1. What will be the administrative infrastructure design to assure proper discharge of the major functions prescribed by the decree, e.g., assessment, resource planning and development, case management, contract administration, community care plan monitoring/safeguards, financial and program audit, backup direct service delivery, etc.?

2. What will be the total staffing requirement to discharge each of these major functions?

3. What will be the staff development requirement to assure attainment of the necessary levels of competence to discharge these major functions?

4. How many existing staff can be laterally reassigned and trained in meeting the total staffing requirement?

5. How many new staff must be recruited and trained in meeting the total staffing requirement?

6. Given the levels of responsibility involved, how much in salaries must be budgeted for needed new staff? How much must be budgeted to train new and existing staff to discharge their assigned responsibilities?

Preferred Financing Model

***45** 1. What will be the preferred financing model for paying for the individual community care plans, e.g., uniform capitation rate for all class members, negotiated reasonable cost reimbursement to contractors, prospective reimbursement to contractors based on objective assessment of the intensity of services needed by each class member?

Revenue Sources and Projected Growth

1. Given the projected level of annual expenditures based on answers to the aforementioned questions, what are the anticipated amounts of revenues by source, e.g., the federal SSDI, SSI, Medicare, Medicaid, and Title XIX Social Services programs, state, local, and family (including private insurance)?

2. What budgetary growth factor should be used to anticipate (a) additional outlays in response to the annual incidence of mental retardation and developmental disabilities in the Hissom catchment area, (b) merit salary increases, and (c) inflation?

3. Assuming that Hissom's budget cannot be reallocated to pay for anticipated start-up costs in the first or even second year, how much revenue must be placed in a revolving fund account to meet these costs until reallocation of the Hissom budget becomes possible? (As residents are discharged from Hissom into the community alternatives, the budget savings from reduced staffing and building maintenance can be placed into the revolving fund to offset the initial deposit into that account.)

Intergovernmental Cost Sharing

1. What are the cost-sharing formulae that determine what share of the cost of given individual community care plans will be borne by the federal, state, and local governments, e.g., 56 percent federal match for Medicaid expenditures, "x" percent local match, "y" percent state match, and "z" percent federal match for P.L. 94–142 covered special educational services?

2. Are there any perverse incentives in the cost-sharing formulae that stand in the way of implementing the individual community care plans, e.g., resistance to community placement resulting from the requirement that the local community pay a share of P.L. 94–142 covered services versus no such requirement for educational services reimbursed under the Social Security Act Title XIX ICR/MR program at Hissom?

3. What steps can be taken to offset the influence of the identifiable perverse incentives, e.g., additional legal action in the event of resistance to P.L. 94–142 requirements?

EXHIBIT "A"

CASE MANAGER—JOB DESCRIPTION

To briefly summarize, a Case Manager performs responsible, professional work involving the planning, coordination, provision and monitoring of services for persons with mental retardation in a variety of community settings. The specific responsibilities include:

1. Establishing a positive relationship with the client and his/her family through regular contact to serve as a client's professional advocate in the agency and the community;

2. Working with referred individuals with mental retardation, the individual's family, and community resources to secure and/or maintain employment and appropriate support services in natural settings so that intake into services is not completed unless investigation clearly determines that generic community services cannot meet the needs of the individuals;

***46** 3. Documenting all significant information involving a client by maintaining a client file. Such a file should provide a comprehensive, up-to-date picture of the client's progress and needs and assure compliance with all applicable accrediting and licensing standards;

4. Evaluating of the needs of the client by scheduling, chairing and serving as a team member of the Individual Program Plan (IPP) meeting with all involved persons to plan for the implementation and coordination of necessary services and support;

5. Serving as a liason between all persons involved with the client to coordinate services and to promote coordination;

6. Attending to medical, mental, psychological and psychiatric needs of the client by identifying those needs, making referrals and scheduling appointments. The Case Manager should also accompany the client as needed in order to work cooperatively with the practitioner and to request the most comprehensive and least restrictive treatment;

7. Monitoring services received by the client through whatever means are necessary to insure implementation of the IPP.

8. Assisting client financially by securing benefits, reporting to funding sources, and aiding with or totally managing client accounts. The Case Manager should also monitor compliance with state and federal regulations to insure that benefits are rightfully received;

9. Securing legal assistance for representation in court, consultation or any service necessary to safeguard the client's legal rights. The Case Manager must maintain ongoing involvement in the judicial process to insure the implementation of an individual's justice plan;

10. Providing training and assistance in daily living needs to those clients who have no programmatic services available to them;

11. Maintaining an awareness of currently available community services through consistent contact with generic and public agencies to offer and obtain a wide range of services;

12. Performing outreach and intake duties by accepting referrals, analyzing needs and completing the intake process or securing alternative placement as needed to facilitate provision of services and/or supports;

13. Serving as a member of the Behavior Management Team and the Crisis Team;

14. Attending staff meetings, in-service programs and training conferences to maintain awareness of policies and procedures and to improve job performance;

15. Performing duties on call as assigned to attend to client emergencies;

16. Performing other duties as assigned.