

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

- 0 -

Patricia Welsch, by her
father and natural guardian,
Richard Welsch, et. al., on
behalf of herself and all
other persons similarly
situated,

Plaintiffs,

-vs-

CONSENT DECREE

Edward J. Dirkswager, Jr.,
et. al.,

Mo. 4-72 Civil 451

Defendants.

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PART I

1. Unless otherwise specified, the actions required by this Consent Decree are the joint responsibility of the defendant Commissioner of Public Welfare and the defendant Chief Executive Officer of Cambridge State Hospital, their successors in office, agents, employees and all persons in active concert or participation with them.

PART II

DEFINITIONS

2. (a) The term "Residential Program Services" as used in this Consent Decree refers to that portion of the Cambridge State Hospital staff assigned to work with and provide services to residents of Cambridge State Hospital in the several buildings constituting the residential living areas. For purposes of this Consent Decree that term also includes the staff assigned to perform such functions in the South and East Wards of the Infirmary, although that staff is not classified under Residential Program Services by Cambridge State Hospital as of the time of this Consent Decree.

(b) The term "residential living areas" refers to those portions of the following buildings and wards at Cambridge State Hospital in which residents sleep, eat, and engage in leisure time activities:

Unit I	Unit VI
McBroom Hall	Cottage 1
	Cottage 3
<u>Unit II & III</u>	Cottage 4
Cottage 3	MHTS
Dellwood North	Cottage 14
Dellwood South	
Unit IV	Infirmary
Boswell Hall	South Ward
	East Ward
Unit V	
Cottage 9	
Cottage 11	
Cottage 12	

That term also includes any other buildings or wards at Cambridge State Hospital which may in the future be used for similar purposes. That term excludes any portion of the buildings or wards listed above used by staff of Structured Program Services or CADRE for classrooms.

(c) The term "Structured Program Services" as used in this Consent Decree refers to that portion of the Cambridge State Hospital staff responsible for instruction and training of residents of Cambridge State Hospital during the morning and early afternoon hours when the residents are away from the residential living areas.

(d) The term "CADRE" as used in this Consent Decree refers to the instructional program operated for Cambridge State Hospital residents under the auspices of the Cambridge Public Schools. Professional or semi-professional personnel employed by CADRE may, when appropriate, be considered in determining compliance with paragraphs 9 and 10.

(e) The term "supervisory staff" as used in paragraphs 3 and 6 of this Consent Decree refers to persons employed as Group Supervisors or Assistant Group Supervisors or, in the case of the South and East Wards of the Infirmary, persons employed with substantially similar responsibilities to those of Group Supervisors or Assistant. Group Supervisors.

(f) The term "professional staff" when used in this Consent Decree refers to persons who are Qualified Mental Retardation Professionals as that term is defined in 45 C.F.R. 249.12.(c) (3), 39 Federal Register 222S (January 17, 1974), as amended at 42 Federal Register 28702 (June 3, 1977); and other persons with a bachelor's degree and with training

or experience relevant to the care and training of persons who are mentally retarded, provided

(i) That persons who may qualify as "professional staff" as so defined above may not be considered in meeting both the requirements for professional staff of paragraphs 3 or 6 of this Consent Decree and the requirements for supervisory staff, social services staff, or medical and dental services staff stated elsewhere in Part III of this Consent Decree; and,

(ii) That physicians assigned to work in one or more of the residential living areas shall not be considered in meeting the requirements of paragraph 3 of this Consent Decree.

(g) The term "semi-professional staff" as used in paragraphs 3 and 6 of this Consent Decree refers to persons with education and experience greater than that required of direct care staff but lesser than that required of professional staff as defined in this paragraph of the Consent Decree.

(h) The term "social worker" as used in paragraph 12 of this Consent Decree refers to persons with at least a bachelors degree in social work from an accredited program.

(i) The term "direct care staff" as used in this Consent Decree includes only those persons employed at Cambridge State Hospital in Residential Program Services or Structured Program Services as human services technicians, human services technicians senior, human services specialists or human services specialists senior, subject to the following provisions:

(i) For purposes of determining compliance with

paragraph 4 of this Consent Decree persons employed by CADRE may be considered so long as they are working directly with residents in the residential living areas.

(ii) Other persons may be considered within the direct care staff for purposes of determining compliance with paragraph 4 and 7 of this Consent Decree if other portions of this Consent Decree specifically so provide.

(iii) Persons serving in a semi-professional capacity (such as a Certified Occupational Therapy Assistant) who are actually employed in one of the civil services classifications specified above may, in accordance with paragraph 6(c)' be considered direct care staff for purposes of paragraph 7 or may be considered to meet either the requirements of paragraph 3 or paragraph 4, but not both.

(iv) Persons employed as human services technicians pursuant to the Comprehensive Employment and Training Act may not be considered as part of the direct care staff until completion of a one month training, orientation and on-the-job training program unless the Chief Executive Officer of Cambridge State Hospital certifies in writing the the person so employed is qualified by reason of prior work experience, training, or ability (which must be described) to assume the responsibilities of that position without completion of all or a part of that program.

(v) Direct care staff shall not be considered "on duty" when away from the area to which they are normally assigned and not in contact with, directly responsible

for, or in a meeting concerning any resident or residents.

(j) The term "support staff" as used in paragraph 5 of this Consent Decree refers to persons employed in the residential living areas of Cambridge State Hospital as dining hall supervisors, food service workers, janitors and housekeepers.

(k) "Major tranquilizers" as that term is used in Part IV of this Consent Decree refers to medications which are phenothiazines, thioxanthines, and butyrophenones and other similar medications which would customarily be classified as antipsychotic agents. The term "major tranquilizers" specifically excludes medication administered solely for the purpose of seizure control and medications customarily classified as antianxiety agents such as barbiturates, benzodiazepines, diphenylmethane derivatives, and glycerol derivatives.

PART III

STAFFING REQUIREMENTS

Residential Program Services

Supervisory, Professional, and Semi-Professional Staff

3. No later than July 1, 1978, there must be employed in the residential living areas at Cambridge State Hospital a sufficient number of supervisory staff, professional staff, and semi-professional staff to allow consistent attainment of a ratio of 1:3 of such staff to the total number of residents at Cambridge State Hospital; provided, however,

(a) that no more than 25 percent of the full-time equivalent positions required to meet the ratio of 1:3 may be filled by semi-professional staff persons, and

(b) that all new positions required pursuant to this paragraph are intended to assure

(i) that supervisory staff are on duty in the residential living areas on both shifts on each day of the week, and

(ii) that no fewer than two supervisory staff in Residential Program Services are on duty on the night shift of each day of the week, and

(iii) that the supervisory, professional and semi-professional staff are employed so that to the maximum extent feasible an active program of training and guidance in the activities of daily living and in the development of self-help skills for maximum independence as well as an organized recreation program is available to residents of Cambridge State Hospital according to their particular needs in the late afternoon and

evening hours of weekdays and weekends.

Direct Care Staff

• 4. No later than March 1, 1973, there must be employed in Residential Program Services at Cambridge State Hospital sufficient direct care staff to allow consistent attainment of on-duty direct care staff-resident shift ratios in each living unit or household in the residential living areas of not less than 1:8 during the waking hours and 1:16 at night.

Support Staff

5. No later than July 1, 1973, there must be employed in the residential living areas at Cambridge State Hospital sufficient support staff to assure that the functions of such support staff are adequately performed without requiring the routine assistance of direct care staff during those times when all or most of the residents are in the residential living areas. This paragraph does not prohibit direct care staff from engaging in administrative duties (such as record keeping) as part of their responsibilities or from assisting in support work in unusual or emergency situations.

Structured Program Services

Supervisory, Professional and Semi-Professional Staff

6. No later than July 1, 1978, there must be employed in Structured Program Services at Cambridge State Hospital a sufficient number of supervisory, professional and semi-professional staff to allow consistent attainment of a 1:6.5 ratio of such staff to the total number of residents involved in Structured Program Services? provided, however,

(a) that no fewer than six supervisory staff persons must be assigned to Structured Program Services no later than July 1, 1978, provided, however, that if the organization of

Structured Program Services is changed from the present structure providing daytime activity centers in Boswell, Cottage 11, Cottage 5 and the Administrative Building, the Chief Executive Officer of Cambridge State Hospital may decrease the number of supervisory staff assigned so long as supervisory functions may be met in a manner comparable to that required as of July 1, 1978, by this subparagraph; and,

(b) that no more than 40 percent of the full-time equivalent positions required to meet the ratio of 1:6.5 may be filled by semi-professional staff persons; and,

(c) that professional and semi-professional persons employed pursuant to this paragraph may be considered in determining compliance with the Structured Program Services direct care staffing requirements specified in paragraph 7 when engaged in teaching or training of residents; and,

(d) that the professional and semi-professional staff required pursuant to this paragraph must be employed so that to the maximum extent feasible occupational therapy services, psychological services, and speech pathology and audiology services needed by residents involved in Structured Program Services are provided.

Direct Care Staff

7. No later than March 1, 1978, there must be employed in Structured Program Services at Cambridge State Hospital sufficient direct care staff to allow consistent attainment of on-duty direct care staff-resident shift ratios of not less than 1:5 in Structured Program Services classes; provided, however, that the number of hours of Structured Program Services training accorded the residents shall be in no way diminished from the amount currently programmed

for such training in an effort to comply with this Consent Decree.

Recreation Services

• 8. No later than July 1, 1978, there must be employed at Cambridge State Hospital a sufficient number of recreation aides responsible for implementing a program of organized recreation activities under the supervision of qualified professional or semi-professional persons in either Residential Program Services or Structured Program Services to allow consistent attainment of a 1:50 ratio of such recreation aides to the total number of residents at Cambridge State Hospital; provided, however, that the persons so employed may be considered in determining compliance with either paragraph 4 or paragraph 7 of this Consent Decree as may be appropriate.

Social Services

9. No later than July 1, 1973, there must be employed at Cambridge State Hospital a sufficient number of social workers (including the Social Services Supervisor) and social worker case aides to allow consistent attainment of 1:40 ratio of such persons to the total number of residents at Cambridge State Hospital, provided, however,

(a) that no more than 50 percent of such persons shall be employed as social worker case aides, and,

(b) that it is intended that such persons shall provide Cambridge State Hospital residents evaluation and counseling, referral to other community resources, and planning for community placement, discharge, and follow-up services.

Medical and Dental Services

10. No later than May 1, 1978, there must be employed at Cambridge State Hospital

(a) Sufficient personnel to provide the dental services specified in 45 C.F.R. 249.12(c)(4)(i), 39 Federal Register 2226 (January 17, 1974); provided, however, that so long as the resident population of Cambridge State Hospital does not exceed 535 employment of at least one full-time dentist, one full-time dental hygienist, and two full-time dental assistants, or the equivalent thereof, shall be deemed to be sufficient personnel to provide the required services, and,

(b) Sufficient physicians licensed to practice in the State of Minnesota to assure consistent attainment of a ratio of 1:175 of such persons to the total number of residents at Cambridge State Hospital; provided, however, that consulting services provided by physicians licensed to practice in the State of Minnesota shall be considered in determining compliance with this requirement, and,

(c) A sufficient number of registered nurses to allow consistent attainment of a ratio of 1:45 of such nurses assigned to the residential living areas at Cambridge State Hospital to the total number of residents at Cambridge State Hospital, and,

(d) A sufficient number of physical and corrective therapists to allow consistent attainment of a ratio of 1:50 of such physical and corrective therapists to the total number of handicapped residents (e.g. residents of McBroom, Boswell, North and East Wards of Cottage 11, South and East Wards of the Infirmary and such other buildings or wards as may from time to time have residents who are physically handicapped), and

(e) A sufficient number of persons to assist physical

and corrective therapists to allow consistent attainment of a 1:30 ratio of such persons to the residents specified in

- subparagraph 10(d), above.

Standard of Compliance

11. For purposes of determining compliance with the staffing provisions of this Consent Decree, when the stated ratios would require filling of a portion of a full-time equivalent position, the number of full-time equivalent positions required may be rounded off to the nearest half full-time equivalent position.

Reporting of Recruiting Difficulties

12. In the event that the Chief Executive Officer of Cambridge State Hospital is consistently unable to fill a position or positions required by this Consent Decree, a report shall be made and submitted in accordance with Part IX of this Consent Decree detailing efforts made to recruit for such position or positions.

Transfer of Positions

13. No later than May 1, 1978, the defendant Commissioner of Public Welfare must assign to the complement of Cambridge State Hospital 95 of the complement positions assigned to Hastings State Hospital; provided, however, that this number may be reduced to the extent necessary for the defendant Commissioner to comply with the provisions of Section 17 of Chapter 453 of Minnesota Laws, 1977.

Total Cambridge State Hospital Complement

14. Effective May 1, 1973, the total complement assigned to Cambridge State Hospital must be 822.9 full-time equivalent positions consisting of the 621 state complement positions assigned as of the date of this Consent Decree, 60.9 state funded full-time equivalent positions assigned pursuant to paragraph 13, above, to meet the requirements of this Consent Decree, and such additional

regular complement positions assigned pursuant to paragraph 13, above, or additional positions assigned pursuant to the Comprehensive Employment and Training Act as are necessary to meet that total; provided that up to eleven positions in addition to that total will be assigned to fulfill the requirements of paragraph 2(i)(iv). Thereafter the total number of positions may be reduced if reduction in the resident population at Cambridge State Hospital should require a lesser number of positions in order to meet the staffing requirements of this Consent Decree. If the direct care staff-resident ratios required by paragraph 4 are met with a lesser number of staff persons either prior to or after May 1, 1978, the total number of positions required by this paragraph may be reduced accordingly.

PART IV

REQUIREMENTS WITH RESPECT TO INDIVIDUAL RESIDENTS

Individual Habilitation Plans

15. Each resident at Cambridge State Hospital must be provided with an individualized habilitation, or program, plan and programs of training and remedial services as specified in Department of Public Welfare Rule 34 (November 17, 1972) and these plans shall be periodically reviewed, evaluated, and, where necessary, altered to conform to the condition of the particular resident.

Adapted Wheelchairs

16. Each resident who requires a wheelchair must be provided one adapted to his size and personal positioning needs.

Physical Restraints

17. Physical restraints may be employed only in accordance with and subject to the limitations specified in Minnesota Department of Public Welfare Rule 34 (November 17, 1972).

Seclusion

13. Seclusion, defined as placing a resident alone in a locked room, shall not be employed at Cambridge State Hospital except in Cottage 14, the Mental Health Treatment Service, and then only in accordance with the following procedures:

(a) Seclusion may be employed only in circumstances in which the threat of physical harm by the resident to be secluded to himself, to other residents, or to staff is so severe that the only alternative to placing the resident in seclusion would be transfer of the resident to a more secure institution such as the Minnesota Security Hospital.

(b) The use of seclusion shall be limited to those

residents authorized to be placed in seclusion when necessary by the Unit Director of the Mental Health Treatment Service, the Unit Registered Nurse of the Mental Health Treatment Service, and the Medical Director of Cambridge State Hospital. This authorization shall be limited to a three-month period.

(c) The basis for the authorization of the use of seclusion made by the persons specified in subparagraph (b), above, shall be stated in detail in the resident's record and shall include specific reference to the resident's action or actions (including the date, time and location of the action or actions) which, in the judgment of the persons authorizing seclusion, rendered the use of seclusion necessary in accordance with the standard set forth in subparagraph (a) above.

(d) None of the residents for whom the use of seclusion is authorized, pursuant to subparagraph (b), above, shall actually be placed in seclusion at any particular time except with the written approval of the Mental Health Treatment Service Unit Director, the Mental Health Treatment Service Unit Registered Nurse, or the area supervisor when either of the aforementioned individuals are not on duty.

(e) A written order of a physician licensed to practice in the State of Minnesota must be obtained if one of the residents for whom seclusion is authorized pursuant to subparagraph (b), above, and for whom seclusion is ordered pursuant to subparagraph (d), above, is to remain in seclusion for more than 15 minutes. Prior to

requesting such an order, the person approving seclusion in accordance with subparagraph (d), above, and one other staff person must evaluate the resident's condition and need for continued seclusion. Both these individuals must chart, in the nursing notes of the resident's medical record, the reasons for their decision that continued seclusion is necessary.

(f) In each instance in which seclusion is employed, the person approving the use of seclusion pursuant to subparagraph (d), above, shall record in the resident's medical record:

- (i) A detailed description of the precipitating behavior;
- (ii) The expected behavioral outcome;
- (iii) The time when the resident was secluded;
- (iv) The time when the resident was released;
- (v) The actual behavioral outcome.

(g) Any resident placed in seclusion in accordance with the procedure set forth above shall be checked at ten minute intervals. These checks shall be documented in the resident's record at least every hour, but the record made must reflect the resident's condition at each of the ten minute checks.

(h) The Chief Executive Officer of Cambridge State Hospital must submit a report in accordance with Part IX of this Consent Decree incorporating the following information:

- (i) A list of the names of residents for whom the use of seclusion is currently authorized pursuant

to subparagraph (b), above, together with copies of the statements recorded in the resident's record pursuant to subparagraph (c), above. Copies of those statements may be deleted from the monthly report if a statement is made in that report that such copies have previously been submitted.

(ii) A list of all residents secluded during the previous month together with copies of all portions of the resident's record necessary to demonstrate compliance with subparagraphs (d) through (g) above.

Use of the Tunnels

19. Use of the tunnels by residents at Cambridge State Hospital shall be limited in accordance with the policy attached as Appendix A to this Consent Decree.

Limitations on the Use of Major Tranquilizers

20. (a) Major tranquilizers must not be administered to residents of Cambridge State Hospital for punishment, for the convenience of the staff, or as a substitute for program.

(b) Major tranquilizers may be used for control or modification of behavior of residents of Cambridge State Hospital only when necessary to prevent injury to the resident or others, or when the behavior involved has been found to be a substantial impediment to implementation of the plan for habilitation of the resident.

(c) Major tranquilizers must not be used for the purpose of controlling or modifying behavior of residents of Cambridge State Hospital unless a physician licensed to

practice medicine in the State of Minnesota has prescribed medication for that purpose. Physicians employed by Cambridge State Hospital must insure that the target or objectionable behaviors to be modified are specified in the resident's medical records.

(d) Major tranquilizers must not be used for the purpose of controlling or modifying behavior of residents at Cambridge State Hospital unless records based upon direct staff observation are consistently maintained with the frequency and according to the procedures specified in the medical record by the physician who has prescribed the major tranquilizers. Such records must show the number of times the target or objectionable behavior specified in accordance with subparagraph (c), above, has occurred. Major tranquilizers must not be used unless the determination to prescribe or to continue the prescription of such medication and the determination of the dosage of such medication to be administered is based upon evaluation of the efficacy of the medication in controlling or modifying the specified behavior as demonstrated by the incidence of target or objectionable behaviors recorded in accordance with this paragraph, provided, however, that

(i) Random surveys, which shall include daily samples, may be used in preparing such records; and,

(ii) So long as the use of major tranquilizers for the purpose of controlling or modifying behavior will be supervised and monitored in accordance with this paragraph no later than July 1, 1978, for all residents of Cambridge State Hospital receiving such medication, a plan for gradual implementation of the

requirements of this paragraph (which shall be prepared in writing no later than February 1, 1978, and submitted in accordance with Part IX of this Consent Decree) may be adopted; and,

(iii) No later than February 1, 1979, each resident of Cambridge State Hospital receiving major tranquilizers for the purpose of controlling or modifying behavior shall have been provided a period free from administration of such medication of no less than twenty days during which the incidence of the target or objectionable behaviors specified in accordance with paragraph 3, above shall be (or have been) recorded; the determination thereafter to continue use of such medication or to alter the dosage of such medication shall be based upon the incidence of the specified target or objectionable behaviors during both the period when medication was administered and the period when the resident was free from such medication; and,

Civ) Nothing in this paragraph shall be construed to prevent the Medical Director of Cambridge State Hospital from prescribing the administration of major tranquilizers to a resident at Cambridge State Hospital in a manner inconsistent with the provisions of this paragraph so long as the basis for the clinical judgment to do so is recorded in the resident's medical record and copies of all portions of the resident's file which are pertinent to that decision are submitted in accordance with Part IX of this Consent Decree.

(e) The monitor appointed pursuant to Part VIII of this Consent Decree shall retain a consultant (who shall be

a physician licensed to practice in one of the several states and who shall be knowledgeable in the objective evaluation of use of major tranquilizers for the control or modification of behavior of mentally retarded persons) for the purpose of periodic analysis of the files of Cambridge State Hospital residents who are receiving major tranquilizers for control or modification of behavior. After each such evaluation, this consultant shall report to the monitor and counsel for the parties on the extent to which the defendants have complied with this paragraph.

(f) The Medical Director of Cambridge State Hospital must insure that the medical records of all residents of Cambridge State Hospital who receive major tranquilizers are reviewed prior to July 1, 1978. If during such review the medical record of a resident does not contain documentation necessitating prescription of a major tranquilizer for the purpose of controlling or modifying behavior, the medication must be discontinued on a trial basis.

(g) At any time after October 1, 1973, the plaintiffs may seek modification of this paragraph of this Consent Decree to further clarify the use of major tranquilizers at Cambridge State Hospital upon a showing that the actual practice of administration of major tranquilizers at Cambridge State Hospital has been inconsistent with the provisions of this paragraph or that the information charted pursuant to subparagraph (d) above does not establish either the behavioral basis for prescribing or the efficacy of using major tranquilizers. This issue shall initially be presented to the monitor pursuant to paragraph 40(e) of this Consent Decree; provided, however, that either party may request that all or part of the issues of fact presented be heard by the Court.

PART V

PHYSICAL PLANT, EQUIPMENT, FURNISHINGS

Air Conditioning

21. (a) Plans for the remodeling and renovation of McBroom Hall and Boswell Hall roust provide for central air conditioning in all bedrooms, dayrooms, and household dining rooms in those buildings.

(b) Pending completion of remodeling and renovation of McBroom Hall, all bedrooms and dayrooms in McBroom Hall must be provided with portable air conditioning units capable of maintaining a room temperature of no more than 78° during the summer months; provided that the temperature maintained in such rooms shall not be less than that permitted by state or federal law or regulation applicable to hospitals or facilities for the mentally retarded. These air condition, units must be in place no later than May 15, 1973.

Carpeting

22. (a) Carpeting must be installed in dayrooms, bedrooms, stairwells, corridors, and activity rooms in all residential living areas at Cambridge State Hospital; provided that fifty percent (50%) of those areas which would otherwise be required to be carpeted and which are primarily used by non-ambulatory residents may be covered with an alternative surface which will significantly absorb noise and cushion the impact of a person falling upon it. Carpeting must also be installed in all program areas unless the nature of the programmed activities conducted there reasonably dictates that carpeting not be used.

(b) Carpeting, or the alternative surface for handicapped residents, is to be installed at Cambridge State Hospital as follows:

<u>Building</u>	<u>Installation Completion Date</u>
<u>Group 1</u>	
Cottage 5, 9, 12 Cottages 3 and 4 (upstairs area)	June 30, 1973
Boswell Cottage 11 Infirmary	December 31, 1973
<u>Group 2</u>	
Cottages 3 and 4 (downstairs area) Cottage 8	August 31, 1979
McBroom, Program Areas (Main Building) Cottages 1, 14	December 31, 1979

(c) If any building in Group 1 will not be structurally remodeled or upgraded by three months before the installation completion date, the Chief Executive officer of Cambridge State Hospital must provide advance notice of that fact in accordance with Part IX of this Consent Decree and either

(i) Complete installation of the required floor covering in that building no later than three months after the installation completion date, or,

(ii) Complete installation of a similar amount of floor covering in one or more of the buildings in Group 2 by the installation completion date specified for the Group 1 building, in which case the installation completion date for the Group 1 building will become that applicable to the Group 2 building or buildings.

(d) Installation of floor covering in buildings in Group 2 must not be delayed more than one year beyond the specified installation completion date to allow completion of structural remodeling or upgrading unless the provisions of subparagraph (e), below, or paragraph 24 apply.

(e) The installation of floor covering for the buildings in Group 1 is mandatory; the installation of floor covering for the buildings in Group 2 is contingent upon the appropriation of the necessary funds by the State Legislature. If the monitor, pursuant to paragraph 40(e) of this Consent Decree, finds that defendants have not been allocated sufficient funds to install floor covering for Group 2 facilities by the indicated installation date, plaintiffs may **seek** a modification of this Consent Decree to obtain mandatory installation without further delay.

(f) The Commissioner of Administration must take all necessary steps to cooperate with the Commissioner of Public Welfare and the Chief Executive Officer of Cambridge State Hospital to assure that the provisions of this paragraph are met.

Furnishings and Equipment

23. Each resident of Cambridge State Hospital must be provided, by October 1, 1978, with private storage space for clothing and personal belongings (which must be accessible to the resident, including mobile non-ambulatory residents); individual furniture, such as a chest of drawers, table or desk; and an individual closet with clothes racks and shelves.

Exemption From Required Physical Improvements

24. No changes in the physical plant of a building at Cambridge State Hospital involving substantial remodeling, renovation, or the installation of any floor covering are required if the Commissioner of Public Welfare certifies within 12 months of the date of this Consent Decree that the building will not be routinely used for residents after January 1, 1981.

Window Coverings

25. Heavy wire mesh (not including security screens) may not be used on first story windows in residential living areas and program areas at Cambridge State Hospital.

PART VI

ADMISSION, DISCHARGE AND PLACEMENT OF RESIDENTS

Admissions

26. No mentally retarded person shall be admitted to Cambridge State Hospital following a judicial order for civil commitment if services and programs in the community can afford adequate habilitation to such person.

27. No person classified as borderline, mildly, or moderately retarded, in accordance with standards which have been applied for classification of residents at Cambridge State Hospital, shall be admitted to Cambridge State Hospital following a judicial order for civil commitment unless that person suffers from such emotional or psychiatric disorders in addition to being retarded to make it appropriate for that person to be treated at the Mental Health Treatment Service or an equivalent program at Cambridge State Hospital.

Discharges and Transfers

28. No resident may be placed in a community residential facility unless it has been duly licensed by the Department of Public Welfare, pursuant to Rule 34, and by the Minnesota Department of Health. No resident may be placed in a foster care arrangement unless the resident will be provided appropriate daytime activity programs and adequate supportive services are available. In no case may the institution return a resident to his natural home unless the parent or other relative is willing and, in the judgment of the institution's staff, capable of caring for the resident.

29. No resident may be transferred to other State institutions to facilitate compliance with this Order. All future transfers between Cambridge State Hospital and other State institutions shall be reported in accordance with Part IX of this Consent Decree. The

report shall contain the name of each of the residents to be transferred, the Unit in which the resident resides, the institution to which each transfer is being made, and the reason for each such transfer.

30. No later than July 1, 1978, the Chief Executive Officer of Cambridge State Hospital must cause a written determination to be made of the eligibility of each resident at Cambridge State Hospital for community placement, and for those determined not to be qualified for such placement the written report must specifically state the reasons why the resident is incapable of placement and what additional steps, if any, must be taken before the resident will be ready for such placement. A redetermination of eligibility for community placement shall be made at least annually. Copies of written reports made pursuant to this paragraph which state that a resident is incapable of placement must be submitted in accordance with Part IX of this Consent Decree.

31. The Commissioner of Public Welfare and the Chief Executive Officer of Cambridge State Hospital must take appropriate action to assure that persons acting under their supervision and control actively seek to train residents at Cambridge State Hospital for appropriate community placements and, on behalf of Cambridge State Hospital residents who have been determined eligible for community placement pursuant to paragraph 30, above, encourage development of community placement facilities and services for them.

32. No later than July 1, 1978, the parties to this action shall submit in accordance with Part IX of this Consent Decree a statement of actions deemed necessary in their judgment to assure rapid progress in the discharge of residents of Cambridge State Hospital to community based facilities licensed by the Department of Public Welfare.

PART VII

REQUIREMENTS RELATING TO OTHER INSTITUTIONS

33. No additional positions may be allotted to the state complement of Cambridge State Hospital from that portion of the complement assigned to provide care, training, and treatment of mentally retarded residents of any other state hospital (with the exception of Hastings State Hospital) in order to meet the requirements of this Consent Decree unless such state hospital is closing, or the function of providing services to persons who are mentally retarded is being terminated at such state hospital, or the number of persons who are mentally retarded at such state hospital has been so reduced that staffing requirements substantially the same as those imposed by Part III of this Consent Decree would still be met at such state hospital.

34. By January 15, 1978, the Commissioner of Public Welfare must submit a written recommendation to the Governor of the State of Minnesota that he make a written request of the Legislature of the State of Minnesota by February 1, 1978, for appropriation of such additional funds as may be required to enable the staffing standards set forth in Part III of this Consent Decree to be implemented in full by October 1, 1978, for all mentally retarded residents of the several state hospitals operating under the direction of the Commissioner of Public Welfare.

35. By January 15, 1978, the Commissioner of Public Welfare must submit, in accordance with Part IX of this Consent Decree, a detailed statement of the basis upon which the staffing requirements for the other state hospitals were determined for purposes of the recommendation made pursuant to paragraph 34, above.

36. No later than February 3, 1978, the Commissioner of Public Welfare must submit, in accordance with Part IX of this Consent Decree, a copy of any request which the Governor of the State of Minnesota might submit to the Legislature in accordance with paragraph 34, above.

37. Counsel for the plaintiffs shall not commence formal discovery proceedings or procede in any other manner with respect to the other state hospitals involved in this action until six weeks after adjournment of the 1978 session of the Minnesota Legislature.

38. The limitation on discovery imposed by paragraph 37, above, shall not apply in the event that the Governor of the State of Minnesota does not request the Minnesota State Legislature by February 1, 1978, to appropriate the funds referred to in paragraph 34 of this Consent Decree.

PART VIII

APPOINTMENT AND RESPONSIBILITIES OF A MONITOR

39. (a) Within fifteen (15) days of the date of this Consent Decree counsel for the parties shall, if they are able to agree, submit to the Court the name of a person qualified to serve as a monitor of the implementation of this Consent Decree and stating that person's qualifications.

(b) In the event that the parties cannot agree, counsel for the parties shall submit to the Court within that time the names of persons who are expert in the fields of law, business or government administration or health planning and shall state in detail these person's qualifications.

40. When approved by the Court, the monitor shall be appointed to perform the following functions in his or her professional capacity as a neutral officer of the Court:

(a) To review on a regular basis the extent to which the defendants have complied with this Consent Decree;

(b) Subject to approval by the Court, after due notice to counsel for the parties, to employ such qualified consultants and support personnel as are necessary for adequate review of compliance by the defendants with this Consent Decree;

(c) To submit to the Court and counsel for the parties on a quarterly basis a written report stating the extent to which the defendants have complied to that time with actions required by this Consent Decree; provided, however, that every second such quarterly report shall incorporate

in greater detail findings based on the observations and conclusions of consultants retained by the monitor of the extent to which the standards for use of the staff required by Part III and by paragraph 31 of this Consent Decree have been met.

(d) Upon request by counsel for any party, to meet with counsel for the parties and, if deemed necessary and appropriate by the monitor, with any parties to this action to seek to resolve problems encountered in compliance with this action;

(e) Upon request by any party and if, in the judgment of the monitor, it would be of assistance in the resolution of disputes regarding the implementation of this Consent Decree, or upon Order of this Court, to conduct evidentiary hearings involving matters relating to the implementation of this Decree and, within twenty (20) days after completion of these hearings, to file with the Court and submit to counsel for the parties recommended findings of facts based upon the evidence presented.

41. No enforcement action shall be commenced by the plaintiffs unless a conference with the monitor has been held pursuant to paragraph 40(d), above.

42. (a) Recommendations made by the monitor shall not be implemented except on motion by either of the parties or by the Court, after notice and an opportunity for all parties to be heard by the Court.

(b) Reports, recommendations, and findings of fact

made by the monitor may be received in evidence in any further proceedings in this action.

. 43. The monitor shall be provided access to the grounds, buildings, and all pertinent records at Cambridge State Hospital; similar access shall be provided persons serving as consultants pursuant to paragraph 40(b); the monitor shall also be provided access to pertinent records and information at the Department of Public Welfare, including access to information which employees of the Department of Public Welfare must retrieve from data processing systems.

44. Reasonable advance notice shall be provided by the monitor to the Chief Executive Officer of Cambridge State Hospital or, in his absence, other senior administrative staff persons of the intent to exercise the rights specified in paragraph 43; provided, however, the monitor may, if it is deemed essential, make observations at Cambridge State Hospital together with an authorized consultant without advance notice so long as the Chief Executive Officer or, in his absence, other senior administrative staff persons are informed of their presence upon their arrival at Cambridge State Hospital.

45. The monitor shall be appointed to serve at the pleasure of the Court for a period of 18 months, unless the Court, for good cause shown after notice to all parties and an opportunity to be heard, shall reduce or extend the appointment.

46. Any replacement for the monitor shall be appointed in accordance with procedures similar to those provided in paragraph 39, above.

47. The monitor, and all consultants or support staff employed by the monitor, shall be paid for their time and expenses

in an amount consistent with their experience and training, out of funds provided by the defendants, which are hereby assessed as part of the costs of this action to be paid out of funds other than those provided for Cambridge State Hospital, in such a manner as will be provided by further order of this Court; provided, however, that neither the monitor nor consultants or support staff retained by the monitor shall be deemed to be employees of the State of Minnesota, the United States of America, Central Minnesota Legal Services, or the Legal Aid Society of Minneapolis; provided, further, that the sum assessed for such payment shall not exceed \$15,000 for the period of 18 months from the date of this Consent Decree.

48. The monitor shall account for all expenses incurred in such a manner as is directed by further order of this Court.

PART IX

REPORTING REQUIREMENTS

Submission of Reports

49. Copies of all reports and certifications required to be made pursuant to this Consent Decree and copies of all documents referred to in this Part shall be

- (a) submitted to counsel for the plaintiffs, and
- (b) submitted to the monitor appointed pursuant to paragraph 40, above.

Format of Reports

50. The parties shall confer with the monitor no later than January 31, 1978, to establish the format for reports required pursuant to this Consent Decree. To the extent feasible, internal management reports already developed or which may be developed at Cambridge State Hospital shall be used. Documents or other reports providing the information required shall freely be used in lieu of a separate report prepared for purposes of such reporting requirements.

Direct Care and Support Staff Reports

51. For the week of March 5-11, 1978, and for one full week in each month thereafter, the defendants must submit a report in such a form that compliance with the requirements of paragraphs 4, 5, and 7 of this Consent Decree can accurately and readily be determined. This report shall be submitted no later than the 15th day of the following month. The source data upon which each report is developed shall be retained for a period of at least three months after the report is submitted.

Other Staffing Reports

52. On or before the 15th day of May, 1978, on or before the 15th day of each month thereafter in 1978, and on or before the 15th day of each quarter in 1979 and thereafter, the defendants must submit reports in such a form that compliance with the requirements of paragraphs 3, 6, 3, 9 and 10 of this Consent Decree can accurately and readily be determined. Such reports shall include information from which it can be determined that the qualifications for the various professional and semi-professional positions specified in those paragraphs are in fact met by the persons so employed in those positions. Once such information is provided for an individual, it may be incorporated by reference in subsequent reports.

Reports Regarding Physical Plant Matters

53. On or before the 15th day of March, 1978, and on or before the 15th day of each month thereafter the defendants must submit a report stating the actions taken during the previous month to achieve compliance with the provisions of Part V of this Consent Decree. This report shall be in sufficient detail to allow an accurate determination to be readily made with respect to the extent compliance has been achieved with those provisions. Documents or reports prepared for other purposes may be submitted in lieu of a narrative report.

Other Periodic Reporting Requirements

54. On or before the 15th day of January, 1978, and on or before the 15th day of each month thereafter, the Chief Executive Officer of Cambridge State Hospital must

- (a) Submit all reports or certifications which are required pursuant to this Consent Decree which were due or were prepared during the previous month including

(i) Certifications exempting persons employed pursuant to the Comprehensive Employment and Training Act from the requirements of paragraph 2(i)(iv); and

(ii) Any report regarding recruitment difficulties in accordance with paragraph 12, which shall, for any particular position, be updated no less than quarterly; and,

(iii) Reports with respect to seclusion of particular residents in accordance with paragraph 18(h); and,

(iv) Reports with respect to the use of major tranquilizers in accordance with paragraph 20(d)(iv); and,

(v) Reports with respect to transfer of residents in accordance with paragraph 29; and,

(b) Submit the following documents or reports which were prepared or received during the previous month

(i) Cambridge State Hospital weekly census reports; and,

(ii) Cambridge State Hospital admission and discharge reports; and,

(iii) Cambridge State Hospital seclusion and restraint reports; and,

(iv) Memoranda or letters regarding allocation of staff to or limitations on employment of staff at Cambridge State Hospital; and,

(v) Memoranda or letters regarding allocation of funds to or limitations on expenditures at Cambridge State Hospital; and,

(vi) Reports or documents describing changes in the organization of the staff at Cambridge State Hospital; provided, however, that such documents shall be submitted

forthwith in the event that the action proposed or required by the document could reasonably be expected to have an immediate and substantial adverse effect on the implementation of this Consent Decree.

Privileged Communications

55. Documents prepared solely for privileged communication between the defendants and their attorneys are excluded from the reporting requirements of paragraph 54, above.

Nondisclosure of Information

56. Counsel for the parties and the monitor shall not disclose information obtained pursuant to the reporting requirements of this Consent Decree regarding individual residents of or employees at Cambridge State Hospital except to persons directly associated with them in the prosecution of this action (who shall be subject to similar limitations on disclosure) or except when necessary in proceedings before this Court.

PART X

GENERAL PROVISIONS

57. It shall be considered sufficient cause for modification of the staffing requirements of Part III of this Consent Decree that substantial reorganization of the staff at Cambridge State Hospital or a significant reduction in the resident population of Cambridge State Hospital requires a greater or lesser number of staff or of a particular type of staff in order to provide a minimally adequate program of habilitation for each resident there.

58. The defendant Commissioner of Administration and the defendant Commissioner of Finance, and all persons in their employ or acting under their direction or control shall not knowingly take any action or issue any policy statements, guidelines or other written or verbal directives regarding employment of persons by the State of Minnesota which shall in any way interfere with or impede compliance by the defendant Chief Executive Officer of Cambridge State Hospital and the defendant Commissioner of Public Welfare with all provisions of this Consent Decree.

59. The defendant Commissioner of Public Welfare and the defendant Chief Executive Officer of Cambridge State Hospital must not comply with any executive or administrative order or directive which in any way interferes with or impedes compliance by them with all provisions of this Consent Decree.

60. Counsel for the plaintiffs and others with their authorization must be allowed reasonable access to the grounds, buildings, and pertinent records at Cambridge State Hospital for purposes of observation and examination until further Order of this Court.

61. A copy of this Consent Decree shall be posted in a

prominent place in each building used by residents at Cambridge State Hospital.

62. Effective as of the date of entry of this Consent Decree the Orders of this Court dated October 1, 1974, as amended, and April 15, 1976, are dissolved.

63. The provisions of this Consent Decree shall not constitute an admission by the defendants as to either their liability or the appropriate standard of care with respect to any of the other institutions involved in this action and shall not bind or limit any party to this action with respect to the scope or form of relief, Constitutional or otherwise, which might be given as a result of further action with respect to those institutions.

64. This Court shall continue to maintain jurisdiction over this action.

/s/ Earl R. Larson
United States Senior District Judge

DATED: December , 1977.

APPENDIX A

CAMBRIDGE STATE HOSPITAL

USE OF TUNNELS

In keeping with the spirit of the order in Welsch vs. Likins, and the philosophy of normalization at Cambridge State Hospital, as well as for the physical well-being of the residents, this policy for use of the tunnels has been adopted.

In the past, the tunnel system was routinely used in escorting residents from place to place on campus. This often prohibited the residents from getting outside for long periods of time. In order to insure proper use of the tunnels, and minimize its routine use, the following policy has been adopted:

ALL EMPLOYEES AT CAMBRIDGE STATE HOSPITAL SHALL TRAVEL WITH RESIDENTS BY OUTSIDE ROUTES, with the following exceptions;

1. Exceptions for tunnel use by ambulatory residents:
 - A. Heavy rains.
 - B. Blizzard conditions.
 - C. Temperatures of 10 (ten degrees) Farenheit, or colder.
 - D. Hazardous walking conditions due to sleet and/or ice.
 - E. Darkness: When the well-being and safety of the residents are involved due to the danger of having a resident wander away during darkness, tunnels may be used.
 - F. Voluntary Use: If a resident makes an unsolicited request to use the tunnel to go to another place on campus, and has the option of using the outside route or the tunnel, staff may grant these requests.
 - G. Other reasons due to unforeseen circumstances: Exceptions for using the tunnel may occur that are not listed above. It will be up to the discretion of the staff in these rare instances as to the appropriateness of using the tunnel.
- II. TUNNEL USE FOR PHYSICALLY HANDICAPPED RESIDENTS
 - A. Independent Mobility: For those residents in walkers and wheelchairs who have been evaluated by the doctor and/or physical therapist as being independently mobile, all of the conditions listed above in Part I shall apply.
 - B. Dependent Mobility: For those residents in wheelchairs, walkers and prone carts, who are dependent upon others for mobility, it is realized that transportation is more difficult. However, every effort should be made to travel with these residents by outside routes.
- III. MEDICAL AND HEALTH REASONS FOR USING THE TUNNELS
 - A. Minor Illness or Injury: All transportation to the clinic for minor injuries or illnesses will be made by outside routes, unless conditions listed in Part I are occurring.
 - B. Major Illness or Injury: For illnesses and injuries of a greater magnitude, use of the tunnel shall be up to the discretion of the Doctor or Nurse involved.
 - C. If the Doctor or Nurse determines that going outdoors for certain periods would be detrimental to the health of a certain resident, the reason and duration of this decision must be documented on the DPW-Form 1035 and reviewed at least weekly.

October 31, 1974.