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UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

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

Plaintiffs,

-vs-

Arthur Noot, et al.,

Defendants.

4-72 Civ. 451

MEMORANDUM OF UNDERSTANDING

The parties to this action enter into this Memorandum of Understanding that they will

- a) submit to the Court for approval a Consent Decree which shall incorporate the principles set forth below, and
- b) request that the Court defer any further trial in this action pending submission to the Court of that Consent Decree for approval no later than July 31, 1980,
- c) attempt to frame this decree so it will be enforceable on a system-wide basis.

Principles to be Incorporated
into a Consent Decree

Reduction in Population

By July 1, 1987 the population of mentally retarded persons in State Institutions shall not exceed 1,850. This population figure shall be calculated upon the same basis as used in reports which include the population of the Minnesota Learning Center.

The Consent Decree shall define benchmarks to be reached by the Department in reduction of the population. These benchmarks shall include both measures of process (i.e. efforts made to increase the availability of Developmental Achievement Centers) and actual reductions in population. It is agreed by the parties that an effective way to establish these benchmarks would be to consult with persons responsible for similar efforts to reduce institutional population in other states.

All persons discharged from the state hospitals shall be placed in either their family home or a licensed home or facility and provided with appropriate developmental or work programs (work activity, sheltered workshop or competitive employment). Preference shall be given to placement in small (less than or equal to 16) settings.

In the event that a state hospital resident, a parent or a guardian of a resident objects to a proposed community placement, an opportunity to appeal that placement shall be provided.

Within 60 days after a state hospital resident is placed into a community setting the hospital social worker shall visit the resident in the community placement and review the program to insure that (s)he is being provided with appropriate

programs. A report on the appropriateness of the placement shall be provided to the monitor and the county social worker.

Community placement efforts shall not exclude any particular identifiable group of state hospital residents such as physically-handicapped persons or persons with severe behavior problems.

ADMISSIONS

Children

Mentally retarded children (under age 18) shall be admitted to state institutions only when no appropriate community placement is available. Except in circumstances in which severe medical need may require Skilled Nursing Care, admission of children to a state institution shall occur only with an explicit understanding that the county agency has a fixed period during which an alternative community placement must be found or developed. The limitations stated in this paragraph do not apply to the Minnesota Learning Center.

Adults

As current law provides, it is understood that mentally retarded adults shall not be placed in state institutions unless there are no available appropriate community alternatives.

INSTITUTION STAFF

The present complement of state employees allocated to serve mentally retarded residents of the state hospitals shall not be reduced except in accordance with provisions of the Consent Decree which shall include the following:

a) The Consent Decree will govern persons employed in direct care (i.e., the HST career ladder classifications), professional and semi-professional staff, other positions for supervision of these employees, persons providing medical, dental, rehabilitation therapies to the residents, and other similar categories. All employees presently assigned to the mental retardation program of a multi-disability institution should be included.

b) Additional positions added during the 1980 Legislative Session shall be included in the "present complement figure." Also included are the FTE equivalent positions which could be funded as part of the "overcomplement" positions allowed by the Legislature.

c) The Consent Decree shall be framed in such a way as to provide, as much as possible, flexibility for CEO's to assign staff in accordance with programmatic needs and not in accordance with detailed ratios. The Consent Decree will provide that staffing patterns shall take into consideration the particular needs of physically handicapped residents and those who have significant behavior problems.

d) Funding for the staffing requirements of the Consent Decree shall not be achieved by reduction in funding for consultants providing special services for mentally retarded persons.

e) The staffing provisions of the Consent Decree shall incorporate the provisions of the Cambridge State Hospital Consent Decree for

1. RPS Supervisors, Professionals and Semi professionals
2. Recreation Services
3. Medical and Dental Services
4. Physicians
5. Registered Nurses
6. Corrective and Physical Therapists
7. Therapy Aides

in calculating the total staff complement which shall be provided prior to any reduction in existing staff.

f) The staffing requirements for RPS direct care, SPS Professional, Supervisory, and Semi-professional staff, and SPS direct care staff shall be calculated as follows:

Institution Staff (cont.)

f) Staffing formula:

1. Professional, Semi-professional and Supervisory staff shall be allocated at a ratio of 1:6.5 of the residents receiving educational services from the state hospital.

2. Direct care staff for the residential areas shall be allocated so that 10.55 staff are allocated per household. In determining the number of households for each state hospital, the total number of residents shall be divided by 15.

3. The direct care staff for SPS shall be allocated at a ratio of 1:5. In meeting this allocation, the department may deduct from the allocation ^{37.5%}~~45%~~ of the professional semi professional and supervisory staff described in §1 above. In meeting this allocation, the department may also deduct .5 positions per household as allocated for the residential direct care staff. ✓

The parties agree that some other precise formula for allocation can be used, but that such other formula will be one sufficient to maintain the staffing patterns which are contained in the formula described above.

It is the assumption of the parties that application of this formula will require fewer positions for the state hospitals in total than would the formulas of the Cambridge Consent Decree as applied on June 16, 1980. If this does not prove to be the case, the parties agree that the total staff requirement for the system will be 50 positions less than would otherwise be required by the Cambridge decree, and that an appropriate formula reflecting that allocation will be agreed upon by the parties. 7

MONITOR

A monitor shall be appointed with approval of the Court. The parties jointly may nominate such a person or each may submit up to three persons for consideration by the Court. The monitor shall be a person with experience in the field of mental retardation and with experience in community residential care.

The monitor's rights and responsibilities shall be limited to those specified in the Consent Decree.

The monitor shall serve two primary functions. First, to report to the parties and the Court the extent of compliance with the Consent Decree. Secondly, to resolve disputes which may arise between the parties regarding implementation of the Consent Decree.

The monitor shall follow the principle that instances of non-compliance with Consent Decree would be brought to the attention of the Department and of the affected institution or facility and an opportunity to remedy the deficiency be provided before any formal action was taken.

The monitor shall have reasonable access to state institutions and records (including individual records) as well as to community placement settings to assure that the functions stated above may be effectively undertaken.

The funds provided for the monitor for the first year shall be \$55,000. Increases in subsequent years shall be on the same basis as cost-of-living increases provided state employees. The monitor shall be entitled to retain such consultants and other persons as may be necessary to fulfill his or her functions so long as the budgeted amount is not exceeded.

The monitor shall establish and confer with, on a regular basis, an advisory group composed of representatives of state hospital parent groups, organizations such as the various associations for Retarded Citizens, MinnDACA, ARRM, and other interested persons.

Physical Plant Changes

1. After the Adult Achievement Center at Fergus Falls State Hospital has completed its transfer to a renovated area, the residential areas for the Achievement Center for the Physically Handicapped will be altered to provide at least three households.

2. Contingent upon legislative appropriation of funds,

a) the space used for the households for the Achievement Center for the Physically Handicapped at Fergus Falls shall be airconditioned unless an alternative form of ventilation is found to be more appropriate for the health and well being of the residents, and

b) carpeting or an alternative floorcovering shall be installed in all areas which will be in use for mentally retarded residents in 1986, in accordance with a plan to be devised by the Department by July 1, 1983,

provided, however, that if legislative approval has not been obtained for the airconditioning or alternative form of ventilation by May 1, 1983 or the carpeting or alternative floor covering by May 1, 1984 the plaintiffs will in each instance be allowed to seek further relief from the Court for those items.

3. Toileting and bathing areas in all the institutions shall be modified as necessary to insure privacy no later than July 1, 1981.

Legislative Proposals

The legislative proposals submitted by the Department of Public Welfare to the 1981 Legislature shall include measures necessary for implementation of the provisions of the Consent Decree. These proposals shall include, but need not be limited to, provisions for funding of Developmental Achievement Centers, for funding of start-up costs for community facilities, for elimination of fiscal disincentives to placement in the community, and for funding of the family subsidy program. These proposals shall be developed in consultation with the parties and with groups representing the interests of the mentally retarded residents of state hospitals affected by the Consent Decree.

DETERMINATION OF NEED

With respect to Determination of Need, the Proposed Rule 185 contained in the State Register of Monday, June 23, 1980, covers criteria for determination of need and clarifies the Commissioner's role in the determination process, both of which the parties agree upon.

The parties agree that the Commissioner will propose an additional section for Rule 185 describing the appeal process available if a determination of need is denied by the Commissioner. Notice of such appeal procedure shall be sent to any provider who receives a denial of a request for a determination of need.

In-Service Training

In-service training at the state institutions shall include increased emphasis on proper care of physically handicapped persons, proper implementation of behavior management programs, and effective implementation of communication programs.

LICENSORS

Training shall be provided to the Department licensors of residential and day programs for the mentally retarded in the following areas to enable them to determine whether community settings are providing appropriate care: program planning for mentally retarded persons, behavior management, communication and the needs of physically handicapped persons.

The Consent Decree shall contain provisions similar to those contained in the Cambridge State Hospital Consent Decree relating to

- a) physical restraints
- b) use of anti-psychotic medication (for Moose Lake State Hospital only)
- c) adaptive equipment
- d) seclusion

Technical Assistants

Three staff positions under the jurisdiction of the Department of Public Welfare shall be reassigned to provide technical assistance to developers of community placements.

Costs and Attorneys' Fees

The Consent Decree will provide for an award of costs and attorneys' fees to Central Minnesota Legal Services in the amount of \$100,000.

Continuing Jurisdiction

The court shall retain continuing jurisdiction over this action until July 1, 1987. On that date jurisdiction of the Court over this action shall end if the defendants have substantially complied with the terms of the Consent Decree.

DEFENDANTS' OPTION TO LIMIT CONSENT DECREE

At Defendants' option, the consent decree in this matter will be drafted to apply only to the five state hospitals which are defendants in the action. If Defendants choose to so limit the decree, the population of mentally retarded persons at the five state hospitals shall by July 1, 1987, be no more than the number which bears the same proportionate relationship to the total population of retarded persons at such hospitals as the number 1850 bears to the total population of mentally retarded persons at all state hospitals. The computation will be made based upon population data for July 1, 1980. The parties assume that the reduction will be in the neighborhood of 30%.

Transfers by the defendant state hospitals to non-defendant state hospitals shall not be counted in determining compliance with the population reduction required by the decree.

This Memorandum of Understanding contains general principles for formulation of a more detailed Consent Decree. It is understood by all parties that further refinement of these principles will be required. Not subject to change are the essential bases of this agreement-- that institutional population will be reduced to 1850, that staffing formulas will be calculated in accordance with the formulas specified, and that a monitor will be appointed with the funding specified. Any other changes or additions would be made in good faith by the parties in accordance with the general principles stated in this memorandum.

Signed this 12th day of July, 1980. 2:04 A.M.

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