



JI-CO-001-002

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

FILED  
MAY 26 1995

Civil Action No. 94-N-2816

E. R., a minor, by and through his Next Friend, L. R.; and A. W., a minor, by and through her Next Friend, J. W.; on behalf of themselves and all others similarly situated,

Plaintiffs,

FILED  
UNITED STATES DISTRICT COURT  
DENVER, COLO.

MAY 26 1995

v.

BARBARA McDONNELL, Executive Director of the Department of Human Services for the State of Colorado; F. JERALD ADAMEK, Director of the Division of Youth Services, Department of Human Services for the State of Colorado; VELVIA GARNER, Director of the Phillip B. Gilliam Youth Services Center, all in their official capacity; and SCHOOL DISTRICT NO. 1, COUNTY OF DENVER, STATE OF COLORADO,

JAMES R. MANSPEAKER  
CLERK

Defendants.

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SETTLEMENT AGREEMENT  
AND ORDER

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INTRODUCTION

This Settlement Agreement settles and resolves the issues in E.R., et al., v. McDonnell, et al., Civil Action No. 94-N-2816. The case is a federal civil rights action filed December 9, 1994, on behalf of youths detained at the Phillip B. Gilliam Youth Services Center ("Gilliam"), located in Denver, Colorado.

Plaintiffs' First Amended Complaint requested declaratory and injunctive relief from conditions and practices at Gilliam that have allegedly denied them due process of law, equal protection of the law, the right to privacy, the rights to free speech and free association, and access to the courts and counsel, guaranteed by the First, Fourth, Sixth, Ninth, and Fourteenth Amendments to the United States Constitution. Plaintiffs also set forth claims for declaratory

and injunctive relief from defendants' practices that allegedly deprive plaintiffs with disabilities of their right to a free and appropriate public education, guaranteed by Section 504 of the Rehabilitation Act of 1973, and the Individuals With Disabilities Education Act (IDEA).

By a Special Order of Reference from Judge Edward W. Nottingham, dated January 3, 1995, the parties participated in settlement discussions before the Honorable Donald E. Abram, Magistrate Judge.

### RECITALS AND REPRESENTATIONS

1. The parties agree that the terms of this Settlement Agreement constitute an appropriate resolution of plaintiffs' claims, and that this settlement is fair, reasonable and adequate to protect the plaintiff class within the standards of Federal Rules of Civil Procedure, Rule 23(e).

2. The parties enter into this Settlement Agreement in order to remedy conditions at Gilliam and to ensure that no youths at Gilliam will suffer deprivations of any federal rights. The terms of this Settlement Agreement extend no further than necessary to remedy the conditions at Gilliam that allegedly caused the deprivation of constitutional and statutory rights of the plaintiffs, and are the least intrusive means to remedy any violation of federal rights. The parties agree that the terms of this Settlement Agreement will not have an adverse impact on public safety or the operation of the criminal justice system. The parties also agree that the terms of this Settlement Agreement are adequate to remedy any alleged deprivation of federal rights.

3. This Settlement Agreement is entered into by plaintiffs' counsel on behalf of the named plaintiffs, by and through their next friends, and all youths who are now or will in the future be confined in Gilliam; counsel for the School District No. 1, County of Denver ("DPS Defendant") on behalf of the DPS Defendant; and the defendants Barbara McDonnell, F. Jerald

Adamek and Velvia Garner.

### JURISDICTION

4. This Court has jurisdiction of this action (28 United States Code §§ 1331, 1343(a)(3), 1343(a)(4), 2201, 2202, F.R.C.P., Rules 57, 65) and personal jurisdiction over the defendants.

### PARTIES AND THE SETTLEMENT CLASS

5. The plaintiffs in this action are the named plaintiffs, by and through their next friends, and the class of all youths who are now or will in the future be confined in Gilliam. This action is properly maintained as a class action under Federal Rules of Civil Procedure, Rule 23(a), and appropriately comes within the provisions of Federal Rules of Civil Procedure, Rule 23(b).

6. The defendants are Barbara McDonnell, in her official capacity as Director of the Colorado Department of Human Services ("DHS"); F. Jerald Adamek, in his official capacity as Director of the Division of Youth Services ("DYS"), Colorado Department of Human Services; Velvia Garner, in her official capacity as Director of the Phillip B. Gilliam Youth Services Center ("Gilliam") (collectively, "State Defendants"); and the School District No. 1, County of Denver ("DPS Defendant").

7. This Settlement Agreement is binding on all defendants, their successors, officers, agents, employees, and all other persons acting in concert or participation with them. It applies to the named plaintiffs, and all youths who are currently or in the future may be confined in Gilliam.

## NOTICE TO THE CLASS AND POSTING OF SETTLEMENT AGREEMENT

8. Pursuant to Federal Rules of Civil Procedure, Rule 23(e), the defendants shall, within fourteen (14) days after the Court's approval of the proposed notice to the class,<sup>2</sup> post the notice in the form approved by the Court in conspicuous places in living, school, and visiting areas at Gilliam. Members of the class shall have thirty (30) days after such posting within which to submit to counsel for the plaintiffs any objections or inquiries they may have. Plaintiffs' counsel shall promptly forward copies of such objections or inquiries to defendants' counsel and to the Court. On the copies submitted to the defendants, if the youths request, their names will be deleted. Following the expiration of the time for submitting objections, the Court will schedule and hold a hearing to consider approval of the Settlement Agreement. Within fourteen (14) days of the Court's approval of the Settlement Agreement, the defendants shall post copies of the general terms of this Settlement Agreement in housing, school and visiting areas of Gilliam. Thereafter, staff shall make reasonable, good faith efforts to maintain the posting of the Settlement Agreement in those areas for as long as it is in effect.

## PURPOSE STATEMENT

9. This Settlement Agreement is intended to assure that youths who need to be detained in secure confinement will be held under constitutional, safe, sanitary and humane conditions, and will receive care and treatment in accordance with their individual needs.

10. The parties accept this Settlement Agreement knowing that future federal legislation could place limitations on consent decrees in institutional litigation. The parties intend that this Settlement Agreement remain in full force and effect if such legislation is

enacted. The parties further intend that, if any provisions of this Settlement Agreement are affected by such legislation, such provisions are severable and the surviving provisions will remain in full force and effect.

## DEFENDANTS' OBLIGATIONS

### ENFORCEMENT OF POLICIES AND PROCEDURES

11. The State Defendants shall enforce compliance with all policies and procedures in the Division of Youth Services Policies and Procedures Manual and the Gilliam Implementing Procedures Manual, and any addenda thereto. Many of the issues raised in this lawsuit are already referenced in those policies. To clarify and further supplement these policies the parties agree as set out below. If any such policies and procedures are inconsistent with this Settlement Agreement, the Settlement Agreement is the controlling authority. During the term of this Settlement Agreement, those policies shall not be changed without good cause, and only in a manner consistent with this Settlement Agreement.

### POPULATION AND MANAGEMENT

12. The State Defendants shall confine no more than seventy-eight (78) youths in Gilliam. The State Defendants shall have ninety (90) days after approval by the Court to implement this population limit.

13. Youths shall not be detained within Gilliam solely because they are abused or neglected. Except with respect to youths accused of violations involving the possession or use of a handgun or other deadly weapon, status offenders shall not be detained within Gilliam absent a judicial finding of violation of a valid court order.

14. Because no more than 78 Denver youths can be housed at Gilliam pursuant to

this agreement, any other youths under the jurisdiction of the Denver Juvenile Court may be placed, pursuant to court order for detention or sentence, at new facilities provided by Denver and the State Defendants.

### CLASSIFICATION AND DETENTION SCREENING

15. The State Defendants shall require adherence to detention criteria at intake, as provided by C.R.S. § 19-2-1601 et seq. (Supp. 1994); and the State Defendants shall provide alternatives to secure detention for appropriate youths.

16. The State Defendants shall adhere to a classification system to meet the individual needs of confined youths, based, inter alia, on their offense, age, size; separating violent, aggressive youths from vulnerable youth; and addressing the needs of youths with particular medical or mental health conditions, or other special housing needs.

### STAFFING

17. The State Defendants shall provide staffing at a ratio of at least one (1) child careworker per nine (9) youths during waking hours, and one (1) child careworker per sixteen (16) youths during sleeping hours. At least one staff person shall be physically present in each living unit whenever children are present in the living unit.

### GENERAL CONDITIONS

18. Each child confined in Gilliam shall be provided a bed off the floor.

19. The State Defendants shall allow youths to have personal items in their sleeping rooms. These items include but are not limited to photographs, writing or art materials and journals. The State Defendants shall provide youths with secure storage space in the living units to place such materials. The State Defendants may restrict the possession of certain

items based on legitimate security concerns.

20. The State Defendants shall cease the use of lockdowns (including "half-in-half-out"), except as needed in emergencies where the safety and security of youths are in immediate jeopardy. The State Defendants shall develop and implement procedures, programming and staffing patterns to assure that youths are out of their rooms for a significant amount of time when they are not in school, eating or sleeping.

21. Any youths detained in Gilliam for more than fourteen (14) days following commitment or placement order shall immediately be provided all treatment and program services mandated for youths held within long term treatment facilities for committed or placed youth.

22. The State Defendants shall assure that youths in rooms lacking toilets are provided immediate access to toilet facilities upon request.

23. The State Defendants shall increase visiting hours for relatives and shall allow relatives to visit daily.

24. The State Defendants shall correct all deficiencies identified as health or sanitation priority items in inspections by the Colorado Department of Public Health and Environment (and any other agencies charged with inspecting Gilliam on health, sanitation, fire safety and emergency response). Priority (critical) items shall be corrected within thirty (30) days and non-priority item in ninety (90) days, unless the time periods are extended by the inspecting agency. Copies of all such reports or inspections issued during the jurisdictional period of this Settlement Agreement shall be sent to plaintiffs' counsel, together with reports or records of corrective action.

## MEDICAL, DENTAL AND MENTAL HEALTH

25. The State Defendants agree that a medical professional or qualified health trained staff shall provide medical and dental screening for youths admitted to the facility. There shall be immediate referral for further diagnosis and treatment for medical conditions or illness discovered during screening. All screening records executed by qualified health trained staff shall be reviewed by a medical professional within twenty-four (24) hours.

26. At least one (1) time per week the supervising physician shall make a regularly scheduled on-site visit to Gilliam. The State Defendants shall provide at least sixteen (16) hours per day on-site medical coverage by trained medical professionals.

27. The State Defendants agree that a mental health professional, a medical professional trained by mental health professionals, or qualified staff trained by mental health professionals shall provide mental health, suicide risk, intoxication and withdrawal screening for youths admitted to the facility. There shall be immediate referral and provision of mental health services by qualified mental health professionals for conditions discovered during screening.

28. To meet the needs of the youths at Gilliam who require mental health services, the State Defendants shall assure that there is at least one (1) full-time psychiatric nurse, psychiatrist, psychologist, or licensed social worker provided by the community mental health center on-site. The State Defendants shall develop and implement policies and procedures specifying the responsibilities of mental health staff, including but not limited to responsibility for referral services; emergency services and ongoing treatment for youths who are suicide risks or who have mental health or emotional problems; administration and monitoring of



psychotropic medication (in coordination with medical staff); staff training on mental health issues and suicide risks; mental health aspects of crisis intervention (including approval/monitoring of restraints and monitoring of youths in isolation or transfer of youths to mental health facilities); and the development of special programs for youths having problems in regular living unit programs.

29. The State Defendants shall develop, implement and enforce policies assuring that youths on suicide status in seclusion rooms, or youths on suicide status in living units, are monitored at least every four (4) minutes, and that youths determined to be at very high risk for suicide shall be on one-to-one supervision until they are assessed by a mental health professional. Youths on suicide status shall immediately be evaluated by a mental health professional or a medical professional trained by a mental health professional.

30. The State Defendants shall develop, implement and enforce policies to assure that youths confined in seclusion rooms or youths confined in rooms on living units for out-of-control behavior shall be monitored every 15 minutes or such lesser time as may be determined by a medical or mental health professional. Youths placed in mechanical restraints shall be monitored at least every four (4) minutes or on one-on-one supervision, as determined after consultation with a medical or mental health professional.

#### **DISCIPLINE, SECLUSION & RESTRAINT**

31. The State Defendants shall develop, implement, and enforce procedures assuring that youths will not be placed in seclusion rooms for safety and security reasons for longer than one (1) hour unless the supervisor or person in charge personally meets with the youth and assesses the need for continued seclusion. Youths in temporary seclusion shall be

monitored as directed by medical or mental health professional staff, and must be released as soon as they have regained control. The State Defendants shall provide administrative review after youths are placed in temporary seclusion for out-of-control behavior.

32. No juvenile shall be placed in seclusion as a disciplinary sanction until a due process hearing has been conducted. The hearing will be held within seven (7) days after the offense with 24 hours notice to the juvenile. The juvenile may waive the 24-hour notice requirement so that the hearing may be conducted more quickly. The maximum time a child may be confined for any single disciplinary offense shall be five (5) days; there must be supervisory review of any seclusion lasting more than a day, and youths must receive counseling. The State Defendants shall provide all youths with a rule book describing all punishable behaviors, setting out the range of penalties for each offense.

33. The State Defendants shall not use seclusion rooms for general housing of youth. Seclusion rooms are to be used only for short term confinement of youths exhibiting out-of-control behavior, or for short term disciplinary confinement, consistent with the maximum time limits imposed by institutional policies and procedures. The State Defendants agree not to use consecutive periods of confinement to extend periods of confinement beyond the maximum allowed in policies and procedures. The State Defendants shall ensure that special programs for youths having problems in the regular living units are developed with the assistance of mental health staff.

34. The State Defendants shall not permit employees to restrain youths to fixed objects.

35. The State Defendants shall enforce existing policies and procedures that govern

the use of mechanical restraints for out-of-control behavior, imposing strict time limits and permitting use of restraints only as a last resort and requiring prior review and authorization by supervisory staff. The State Defendants shall impose a maximum time limit of one hour for restraint use, and shall refer for a mental health screening youths who have not regained sufficient control to be released within such time limit. Youths in restraints shall be monitored as directed by medical or mental health professional staff, and must be released as soon as they have regained control. Youths shall meet with a medical or mental health trained counselor immediately after release and shall meet with a medical or mental health professional within sixteen (16) hours after release. Restraint incidents shall be carefully reviewed by medical or mental health and administrative staff.

#### ATTORNEY COMMUNICATIONS

36. Youths shall be provided with reasonable access to their attorneys and the courts, including private interview areas prior to their detention hearings. Youths shall be allowed to keep legal materials in their living units. Youths shall be permitted to complete telephone calls to their attorneys.

#### RECREATION AND PROGRAMMING

37. The State Defendants shall not deny youths exercise because of staff absences or youths' disciplinary status.

38. The State Defendants shall provide an on-site social services program administered and supervised by a person trained in the social or behavioral sciences. That person shall be in addition to the clinician identified in paragraph 28. The on-site program shall provide individual and group counseling; drug and alcohol services; and other supportive

services.

## TRAINING

39. Prior to posting staff on duty, all staff with responsibility for care and custody of youths in the facility (including as-needed, probationary, or temporary staff) shall receive training in safety and emergency procedures, crisis intervention, suicide risks and precautions, behavior management, use of restraints and seclusion, youths's rights, the provisions of this Settlement Agreement and the controlling policies and procedures of the Department of Human Services and the Division of Youth Services, in place of the curriculum described in DYS Policy 4.1. Curriculum subjects described in Policy 4.1 that are not included here will be provided during the employee's first year of service.

## EDUCATION

40. The DPS Defendant, as required by law or as may be voluntarily undertaken by said defendant, shall provide all detained youths with an education program immediately following the detention hearing, but in no event later than three (3) days following the date of detention. The education program shall meet minimum state requirements for public school youths.

41. The DPS Defendant agrees that detained youths, with previously identified disabilities, shall be provided with a free appropriate public education, including special education and related services. The DPS Defendant shall meet applicable legal requirements governing assessment, identification, development or modification of Individualized Education Programs, and the provision of special education and related services to eligible youths. The DPS Defendant shall also ensure that procedural safeguards mandated by the Individuals With

Disabilities Education Act (IDEA) and federal regulations, are provided.

42. The State Defendants and the DPS Defendant will cooperatively develop and implement procedures governing education services to youths at Gilliam, including, but not limited to, educational assessment at intake, facilitating access to youths by school personnel, and the provision of education services to youths on disciplinary status.

43. The DPS Defendant agrees that all education and special education obligations and responsibilities set forth in this Settlement Agreement and all necessary policies and procedures shall be fully implemented within six (6) months from the date of the entry of the Settlement Agreement.

#### **LIBRARY**

44. The State Defendants, in consultation with the DPS Defendant shall maintain a library with a broad range of reference materials, books, and magazines, and shall assure that all detained youths have reasonable access to the library. The State Defendants shall survey detained youth about library needs at regular intervals and shall evaluate the library program on an annual basis.

#### **ATTORNEYS' FEES**

45. The parties agree that pursuant to 42 U.S.C. § 1988, 29 U.S.C. 794a, and the IDEA the State Defendants shall pay plaintiffs' attorneys' fees and costs of \$80,000.00 and the DPS Defendants shall pay plaintiffs' attorneys' fees and costs of \$14,000.00. The parties agree that such fees and costs are directly and reasonably incurred in proving an actual violation of plaintiffs' federal rights, and proportionally related to the relief ordered for that violation. Such fees and costs shall be paid by the defendants within fourteen (14) days of

the signing of this Settlement Agreement.

### COMPLIANCE AND CONTINUING JURISDICTION

46. The defendants shall develop and implement a comprehensive plan for remediation of the conditions of confinement and implementing the provisions of this Settlement Agreement. Unless otherwise specified in this Settlement Agreement, the provisions of this Settlement Agreement shall be implemented within ninety (90) days from the date it is signed by the Court.

47. The parties recognize that the Court must approve this Settlement Agreement before its terms become effective and binding upon any party. The parties also acknowledge that the State Defendants must obtain necessary funding from the State Legislature in order to carry out the commitments specified above on or before May 31, 1995. State defendants warrant that they shall seek the necessary funding during the 1995 legislative session. Therefore, the parties agree that the provisions of the Settlement Agreement which require additional funding are contingent upon the approval of the Court and the approval of any necessary funding by the Colorado Legislature. If the Court fails to approve the Agreement in its entirety, or if the State Legislature fails to approve any necessary funds for DYS for the commitments specified above, upon proof thereof, no later than June 5, 1995, any party may withdraw its consent to be bound by this Settlement Agreement. If any party exercises its right to withdraw, this document may not be offered or received into evidence or otherwise used in any proceeding against any party without that party's consent.

48. If any of the parties withdraw from this Settlement Agreement pursuant to the terms of paragraph 47, the parties agree to submit to the Court a proposed Scheduling and

Discovery Order within ten (10) days thereof.

49. After court approval of this Settlement Agreement, the Court's jurisdiction over the Gilliam facility under the present proceeding, Civil Action No. 94-N-2816, shall be limited as set forth herein. Specifically, the Court shall retain jurisdiction only to ensure that defendants have fulfilled the obligations undertaken in this Settlement Agreement. If plaintiffs have reasonable cause to believe that defendants have failed to perform any obligation undertaken in the Settlement Agreement, after providing defendants with notice and opportunity to immediately correct the non-compliance, they may apply to the Court for a hearing regarding defendants' compliance. The Court may refer the matter to a Magistrate Judge for informal resolution or recommendation. At any hearing regarding the issue of defendants' compliance with the terms of this Settlement Agreement, plaintiffs shall have the burden of proving that defendants have failed to comply. If, after hearing, the Court finds that defendants have failed to comply, the sole remedies available to the Court shall be an order directing specific performance of the agreements herein, and, if appropriate under applicable legal principles, the issuance of contempt for failure to comply with the Court's order of specific performance. Isolated or minor incidents of noncompliance will not be regarded as a failure to comply with this Settlement Agreement for purposes of any enforcement action.

50. The State Defendants agree to hire an independent juvenile institutional expert, and DPS agrees to hire an independent education expert, both of whom shall be jointly selected by the parties to evaluate compliance with all of the terms of this Settlement Agreement. The experts shall have the right to inspect the facility, the right to interview

staff, subcontractors, agents, employees, youths and legal counsel privately, as needed, in order to evaluate compliance; and the right to review reports, policies, log books, files and all other relevant documents to evaluate compliance with this Settlement Agreement. Said experts shall submit compliance reports to the Court, and plaintiffs' and defendants' attorneys, in accordance with paragraph 52.

51. The defendants shall reimburse the experts for all reasonably incurred costs, including compensation for the time spent in monitoring and evaluating compliance and travel expenses.

52. The independent juvenile institutional expert shall conduct semi-annual evaluations and compliance reviews for the first two (2) years of the terms of this Settlement Agreement. The initial review shall be accomplished within three (3) months of the Court's signing of this Settlement Agreement. Thereafter the expert shall conduct annual reviews until the Settlement Agreement is terminated.

53. The independent education expert shall conduct three (3) compliance reviews, for a maximum of two (2) days per visit, during the period of the Settlement Agreement. This includes an initial, intermediate and final review.

54. Within thirty (30) days after receipt of each compliance review or evaluation (whether performed by the joint expert(s) or defendants' own staff or contractors), plaintiffs' attorneys and their representatives, together with any experts retained by plaintiffs, have the right to inspect the facility, the right to speak privately with any child, contractor or employee at the facility and the right to inspect reports, internal audits, policies, log books, files or other relevant documents to assure compliance with this Settlement Agreement. The defendants



shall pay for plaintiffs' reasonable attorneys fees, costs, and out-of-pocket expenses incurred in monitoring, evaluating or assuring compliance with the terms of the Settlement Agreement.


55. The defendants agree that the Court will retain jurisdiction over the defendants for a period of three (3) years after the date of approval of this Settlement Agreement. The experts' final reports shall be prepared sufficiently before the end of the Settlement Agreement to allow plaintiffs to move for sanctions in the event of noncompliance.

56. This Settlement Agreement is not intended to be nor will it be alleged to constitute evidence or be an admission by any party of any liability, omission or wrongdoing of any kind whatever, which the defendants deny.

57. This Agreement sets forth all of the representations, promises, and covenants that comprise this Agreement and there are no other representations or promises between the parties or their counsel which have been made or have caused either party or its counsel to enter into this Agreement, except as follows: If H.R. 667, Title III "Stop Turning Out Prisoners Act" (S. 400), or any similar federal legislation, becomes effective during the term of this Settlement Agreement, in a form that would apply to this Agreement and limit or effect its terms, the parties will amend paragraphs 2 and 56 in the form contained in the Memorandum of Agreement to Amend Settlement Agreement executed by the parties. This provision is material to the agreement of the parties who, upon the occurrence of the event effectuating this contingency, here stipulate to the factual basis for the Court finding set out in the Memorandum of Agreement.

Dated this 25<sup>th</sup> day of May, 1995.

For the Plaintiffs:



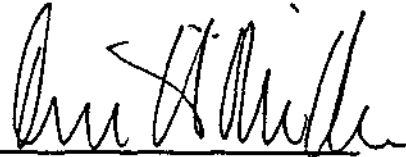
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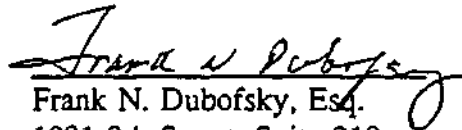
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ATTORNEYS FOR THE SCHOOL  
DISTRICT DEFENDANT

THE TERMS OF THIS SETTLEMENT AGREEMENT ARE APPROVED BY THE COURT, AND THE PARTIES ARE HEREBY ORDERED TO PERFORM AND COMPLY WITH THE TERMS STATED HEREIN:

MADE AN ORDER OF COURT AND ENTERED this 26 day of May, 1995.

  
Edward W. Nottingham  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 94 N 2816

CERTIFICATE OF MAILING

I hereby certify that a copy of the Settlement Agreement and Order signed by Judge Edward W. Nottingham on May 26, 1995, was mailed to the following on May 30 1995:

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Magistrate Judge Donald E. Abram

JAMES R. MANSPEAKER, CLERK

By Del Hansen  
Deputy Clerk