

7. Therapeutic Camps;
8. Public and Private Psychiatric Hospitals;
9. Centers for the Retarded;
10. Wright School;
11. District Court Judges;
12. Schools for the Deaf;
13. Schools for the Blind;
14. Developmental Evaluation Centers;
15. Those private child care institutions and residential treatment facilities agreed upon by the parties;
16. Division of Youth Services Facilities;
17. Those Community-Based residential treatment programs and group homes agreed upon by the parties; and
18. Division TEECH, UNC School of Medicine,

b. Persons and entities receiving the notice will be requested to respond themselves and to post it in appropriate places.

2. Said notice shall include the following information and request:

- a. A brief description of the status of the lawsuit.
- b. Specific criteria for identifying individual children as potential members of the class.

c. A request that the following information be provided for each child currently known to the person, agency or program who is considered to be a potential class member:

1. First name and last initial of the child.
2. Date of birth;
3. Description of handicapping condition, including diagnoses where available;
4. Description of assaultive or violent behaviors;
5. Identification of which category of class definition relating to institutionalization or placement is applicable;
6. The child's current placement; and the
7. Name, address and phone number of the person supplying the information.

d. Appropriate instructions for forwarding the information.

e. Instructions not to send the child's full name or other personally identifying information at this stage.

f. Instructions to forward the information for children currently known by November 10, 1980. State facilities shall forward this information to the Department of Human Resources (hereinafter referred to as DHR). Other facilities shall forward it to area mental health authorities (hereinafter referred to as Area Authorities).

g. Request that the same information be forwarded in the same form and manner for children identified in future.

3. The entity receiving the forms (DHR or Area Authority) shall review them to make certain that they are complete and to identify multiple referrals of the same child. All forms on the same child shall be retained together. If the information on the form is not complete, the person forwarding the form shall be contacted and requested to provide additional information.

4. The entity receiving the form (DHR or Area Authority) shall review each form by November 25, 1980, to determine whether the information contained thereon indicates that the child is a potential member of the plaintiff class. If the information reveals that the child is not a member of the class, the person who submitted the form shall be notified and the reason for the determination shall be stated. The forms on children determined not to be members of the class shall be retained and shall be available for inspection by the Review Panel, the parties and the Court.

5. Forms submitted to Area Authorities which identify children who are potential members of the class shall be forwarded to DHR by December 5, 1980.

6. DHR shall review all forms to identify children for whom there have been duplicate or multiple identifications and shall attach all forms referring to the same child to each other.

7. All forms received by DHR shall be available for inspection by the Review Panel, the parties and the Court.

8. The identification process shall remain in place and shall work as set forth above with respect to children referred as potential class members in the future.

9. The Review Panel shall have the responsibility and authority to review any and all aspects of the identification process and to make recommendations concerning modifications, additions or changes. The panel shall have access to any and all information it deems relevant in fulfilling this responsibility.

NOTICE TO POTENTIAL CLASS MEMBERS

10. Once the identification process as set forth above has been completed, DHR will provide to plaintiffs the names of potential class members, as coded, and identify the agencies and responsible persons who made the original referrals. Such information shall be provided to plaintiffs by December 12, 1980.

11. It shall be the responsibility of attorneys for the plaintiffs to contact the identifying agency for each potential class member to discuss the notice process and to provide them with formal notices to be given to the parent or guardian of each potential class member. The notice shall meet all applicable requirements of Federal Rule of Civil Procedure 23(d) and (e). DHR shall bear the expense of printing and distributing these notices.

12. After receiving the formal notices, staff members of the identifying agency will deliver these notices to the parents or guardians of each potential class member, will discuss with them the child's rights as a member of the class and will request necessary releases so that existing evaluative information can be released and additional evaluations can be performed as needed.

13. Each agency and person listed in Stipulation 1 above, shall receive copies of the formal notice to potential class members and shall post a copy of this notice in such place and in such manner as is reasonably likely to give notice of the lawsuit and its proposed settlement to individuals served by that agency.

EVALUATION OF POTENTIAL CLASS MEMBERS

14. Defendants agree to submit to the Review Panel a proposal for the process for evaluating and developing the statements of treatment needs for each of the potential class plaintiffs identified. This proposal shall be submitted to the panel by November 25, 1980.

15. The panel shall review the proposal and make recommendations to the defendants with respect to any revisions in the evaluation process needed to assure compliance with their obligations.

16. This proposal shall be developed and reviewed in light of the following requirements:

(a) Each potential member of the class shall have a current comprehensive evaluation, including but not limited to psychiatric and psychological assessments, physical examination, neurological evaluation, educational evaluation and any additional evaluations or assessments suggested by the child's history or general evaluation. Such evaluation shall be at least as current and comprehensive as those provided for in P.L. 94-142, Article 45 of Chapter 115, N.C.G.S., and implementing regulations thereto.

(b) All diagnostic and evaluative information currently available on each potential class member shall be reviewed to determine the adequacy and completeness

of the information. Any necessary evaluative work which has not previously been done or for which there is reason to question the current relevance or accuracy of existing evaluations will be performed at the expense of defendants.

(c) All diagnoses and evaluations will be done by persons with sufficient training and expertise to provide complete and accurate assessment of the individual potential class member's problems and needs.

(d) A statement of needs in the form of treatment and education shall be developed for each potential class member. This statement of need shall address both short term and long term needs of the individual. For a potential class member enrolled with a local board of education, the individualized education plan required by P.L. 14-142, Article 45 of Chapter 115, N.C.G.S., and implementing regulations thereto shall as to education be sufficient unless the panel in a particular case concludes otherwise.

(e) Such statements of need will be developed in accordance with the goals and principles set forth in Paragraphs 4 - 9 of the parties' Second Set of Stipulations, which govern the defendants' obligations. The statement of needs shall set forth all services actually needed by the individual and shall not be limited to those services currently available.

(f) The statement of needs shall identify resources currently available to meet the identified short term and long term needs of the potential individual class member. The statement shall also include a description

of services which the child is presently receiving and/or the program in which the child is presently placed.

17. All evaluation data and statements of treatment needs for individual potential class members shall be collected, compiled and made available to the review panel upon its request. All evaluations will be completed within the time set by the evaluation plan developed according to these stipulations.

18. After all evaluations have been completed, all data available on each potential class member will be reviewed by DHR and a determination shall be made as to whether an individual meets all criteria for inclusion in class, including a determination as to whether the child is currently receiving appropriate services as defined by the stipulations. Provided that for a potential class member enrolled with a local board of education the above determinations will be made jointly by DHR and the Superintendent of Public Instruction.

19. Any potential class member who is determined not to meet the criteria for inclusion or who is determined to be receiving appropriate services shall not be included within the class. The agency making the original identification and referral of such potential class members shall be informed as to the final decision to include or exclude each individual and as to the reason for any exclusion. All information relating to potential class members and determinations as to membership in the class shall be available for inspection by the Review Panel, the parties and the Court.

20. The process developed by defendants for identifying potential class members and evaluating their treatment needs shall be a continuing process and shall include procedures for evaluation of potential class members identified in the future.

REVIEW PANEL

21. The Review Panel shall be constituted as follows:

a. The panel shall consist of five members, at least one of whom shall be a psychiatrist or a psychologist and one of whom shall be an educator.

b. Two members shall be selected by plaintiffs and two members shall be selected by DHR. Plaintiffs and DHR shall attempt to agree on the selection of the fifth member. If such parties cannot agree on the fifth member of the panel within seven days after the other four members have been identified, the Court shall appoint the fifth member from a list of candidates jointly prepared by the parties.

c. The Court may terminate or replace any panel member at any time for good cause. Upon resignation, termination, removal or inability of any member to continue to serve on the panel, a replacement shall be appointed in the manner in which that member was originally selected.

d. Panel members shall be independent so that their judgment will be unaffected by any relationship with the parties. Limited present and past association between the proposed panel member and a party shall not preclude membership of the panel. State University faculty and personnel and local boards of education faculty and personnel are not precluded from the panel. If either party objects to a member proposed by the other party on grounds of perceived lack of independence,

and if that objection cannot be reconciled by the parties, the question shall be settled by the Court. The member of the panel selected by agreement of the parties or by the Court shall be presumed independent.

e. Four members shall constitute a quorum of the panel.

22. Fees for each panel member and guidelines for reimbursement for expenses shall be agreed upon prior to the appointment of the member. Each member shall receive fees which reasonably reflect his qualifications and experience. Each member shall also be entitled to receive reimbursement for all reasonable expenses incurred in connection with performance of his duties as a member of the panel. If a panel member and the parties cannot agree on a reasonable fee or reasonable expenses, the fee or expenses shall be set by the Court.

23. The panel shall employ an administrator with appropriate experience and training to assist in performance of its duties.

24. The Department of Human Resources will provide the panel with a conference room for its meetings. Additionally, the Department of Human Resources will provide the panel such clerical staff, and equipment and normal elements of support (e.g., telephone service, utilities, postage, copying, travel and maintenance), as are necessary to carry out the responsibilities of the panel.

25. Upon request, defendants shall furnish the panel such professional consultation and technical or expert assistance as the panel deems necessary to assist it in the performance of its duties. This consultation and assistance shall be furnished promptly by the defendants. If the necessary consultation and

assistance is not available within the resources of the defendants it shall be obtained by the defendants from outside sources. If there is any disagreement between the panel and the defendants as to the persons to provide such consultation and assistance, or the necessity, adequacy or timeliness of such consultation and assistance, that disagreement will, upon request, be resolved by the Court.

26. A budget reflecting estimated costs of the above-described expenses and support of the panel during the remainder of the current fiscal year shall be agreed upon by the plaintiffs and DRH. The panel will prepare proposed budgets for succeeding fiscal years. Panel members shall receive compensation and reimbursement for expenses on a monthly basis. Disbursements for these purposes shall be made in a manner agreed upon by the plaintiffs, DHR and the panel. If agreement cannot be reached on any of the foregoing matters, the Court shall resolve the matters in dispute.

27. The panel shall have the authority to obtain all information it deems necessary to perform its duties. The panel may request that information be provided in such form as it deems most useful. All written information to be presented to the panel shall identify its author and the date on which it was prepared.

28. The panel shall have access to all services, program areas and facilities under the direct or indirect control of defendants.

29. The panel shall be permitted to interview any person affected by this action or involved in the performance of defendants' obligations pursuant to this action. The panel

shall have the authority to adopt such interview rules and procedures as it deems necessary for performance of its duties.

30. The panel shall direct all requests for services and support to be provided by defendants to the Secretary of Human Resources or her designated representative.

31. The Review Panel shall adopt such internal procedures as it deems appropriate to the performance of its duties by December 1, 1980.

32. The Review Panel shall be responsible to the Court and is created for the purpose of reviewing defendants' compliance with the decree entered in this action. The panel shall have such duties as are specified herein and such other duties as may be determined by the parties and/or the Court in the future.

33. The panel's duties shall include:

a. Review of the individual habilitation plan and program placement for each of the named plaintiffs.

The panel shall determine whether the plan, placement and services actually being provided constitute appropriate treatment to which each child is entitled pursuant to the parties' Second Set of Stipulations.

If the panel determines that appropriate habilitation is not being provided or that appropriate plans for habilitation which will be needed in the future have not been made, the panel shall recommend modification of existing plans, programs and placements or the creation of such placements and services as the panel believes are actually needed by the child.

b. Review of identification of potential class members. The panel shall review the procedures for such identification, review their implementation and

recommend such modifications or changes in the procedures or their implementation as it deems appropriate.

c. Review of procedures for evaluation of needs of potential class members. The panel shall review the plan prepared for evaluation of potential class members and monitor the implementation of the evaluation process. It may recommend modification in the over-all plan for evaluating the needs of potential class members and the implementation thereof. The panel may review and make recommendations with respect to individual evaluations to the extent that it deems appropriate.

d. Review of determinations as to membership in the class to the extent the panel deems necessary. The panel may review information relating to individuals excluded from the class and determine whether the criteria for class membership are being consistently and accurately applied to decisions regarding class membership. The panel may make recommendations with respect to the process for determining class membership if necessary to assure compliance with the stipulations.

e. Review of programmatic responses to needs of the plaintiff class. Programs operating prior to constitution of the panel shall be reviewed to determine to what extent they offer appropriate treatment and education for members of the plaintiff class. The defendants shall present any proposed programs designed to meet the needs of the members of the plaintiff class to the panel for review a reasonable period of time before the proposed implementation date. At

the same time, defendants will also provide the panel with sufficient information necessary to enable it to review the proposed programs. The panel shall review such proposed programs and may make recommendations on them prior to the proposed implementation date. In addition, the panel may recommend such alternative programs and services as it deems necessary to fulfill defendants' obligations to the members of the plaintiffs' class as set forth in the parties' second set of stipulations.

f. Review of implementation of programs and services for the plaintiff class.

g. The panel shall report in writing to the Court and the parties within three months of its appointment and at least quarterly thereafter. Such reports shall summarize the panel's activities, including issues considered, information received, comments and recommendations made and any problems encountered by the panel in performing its duties. Such reports shall summarize progress made by the defendants toward fulfilling their obligations to the named plaintiffs and members of the plaintiff class.

34. The need for the panel shall be reviewed by the parties and the panel annually beginning in October of 1982. The results of such reviews shall be reported to the Court, which shall resolve any disputes as to the need for continuation of the panel.

PARTIES' RIGHTS AND OBLIGATIONS

35. Each party shall cooperate fully with panel in all matters relating to the performance of its duties.

36. Each party shall have the right to present any matter within the panel's duties for consideration by the panel and shall have the right to request that the panel make specific recommendations. Upon the panel's failure or refusal to consider a matter presented by a party or make a recommendation requested by a party within a reasonable period the party shall be entitled to apply to the Court for appropriate relief.

37. Defendants shall submit periodic reports to the panel setting forth all activities and information related to efforts to fulfill their obligations. If requested by the panel, such reports shall include the following:

a. Information summarizing implementation of the procedures for identification of potential class members and those identified since the last report;

b. Information summarizing implementation of the evaluation procedures developed pursuant to these stipulations and of the information gathered through such procedures since the last report;

c. The number of potential class members determined to be members of the class and the number determined not to be members of the class since the last report;

d. The status of the named plaintiffs;

e. Information summarizing the development and implementation of services and programs for members of the plaintiff class; and

f. Information summarizing efforts by defendants to identify, request and secure funding necessary to implement needed services and programs for the named plaintiffs and members of the plaintiff class.