

APPENDIX "B"  
COMMUNITY STANDARDS

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## Definitions

For the purposes of this Appendix, the following terms are defined as follows:

1. "Plaintiffs" and "Defendants" refer to the parties named as plaintiffs and defendants in the caption hereof.
2. "Department" refers to the Department of Mental Health and Mental Retardation.
3. "Commissioner" refers to the Commissioner of the Department.
4. "Bureau" refers to the Bureau of Mental Retardation.
5. "Director" refers to the Director of the Bureau.
6. "Regional office" refers to the appropriate regional office of the Bureau.
7. "Regional Administrator" refers to the professional who heads the appropriate regional office.
8. "Pineland" refers to Pineland Center, Pownal, Maine.
9. "Superintendent" refers to the Superintendent of Pineland.
10. "The class" refers to all persons who were involuntarily confined residents of Pineland on or after July 3, 1975, or who were conditionally released from Pineland and in community placements on or after July 3, 1975, exclusive of those individuals admitted to Pineland for a specific medical service at Benda Hospital or for respite care for less than 21 consecutive days.
11. "Resident" refers to a member of the class who resides at Pineland.
12. "Client" refers to a member of the class who does not reside at Pineland.
13. "Competent client" or "competent resident" refers to a client or a resident 18 years or older not adjudged incompetent by a court nor determined to be incapable of making a particular decision as set forth herein. A determination that a resident or client is incapable of making a particular decision requires a finding by the client's interdisciplinary team and an independent finding by the appropriate advocate that the client does not understand the nature and consequences of the decision in question. Such a finding or determination shall have no effect on legal competence or on competence or capacity for any other purpose.

14. "Professional"  
Except as specifically provided otherwise in this appendix, "professional" refers to a person possessing appropriate licensure, certification or registration to practice his discipline in the community; and where licensure, certification or registration is not required, "professional" shall mean a person possessing a Master's Degree in the appropriate discipline or a person possessing a Bachelor's Degree in the appropriate discipline and three years experience in treating the mentally retarded or three years experience in a related human services field.
15. "Community service worker"  
refers to a person qualified in social work, psychology, or other relevant human services field. At least 75 percent of community service workers shall have professional qualifications.
16. "Interdisciplinary team" or "IDT"  
refers to a team of persons established, and whose meetings are conducted, in accordance with professionally accepted standards, and whose purpose is to evaluate a client's needs and to develop an individual prescriptive program plan.
17. "Prescriptive program plan"  
refers to a detailed written plan outlining a client's specific needs for education, training, treatment and habilitation services, along with the methods to be utilized in providing treatment, education and habilitation to the client. A prescriptive program plan shall be formulated by an appropriately constituted interdisciplinary team.
18. "PPP coordinator"  
refers to a prescriptive program plan coordinator.
19. "Programming" or "Program activity"  
refers to any activity specified in the client's prescriptive program plan that is individually designed and structured to increase the client's physical, social, emotional or intellectual growth and development.
20. "Community placement"  
refers to a residence in the community in a group home, foster care home, natural home, apartment, boarding home, or similar residential facility coupled with a program element adequate to meet the client's individual needs.
21. "Group home"  
refers to a community residence for no more than eight clients.

22. "Consultant" refers to a person, agency, firm or organization that is independent of the Department and of Pineland, though not necessarily independent of other state agencies or departments.
23. "Day" or "Days" Time periods referred to shall not include the day of the act or decision involved. If the last day of such a time period falls on a Saturday, Sunday or legal holiday, the period shall extend to the end of the next day which is neither a Saturday, Sunday nor legal holiday. When written notice of a decision is required, the notice shall be mailed within the specified time period.
24. "Correspondent" In the first instance, a correspondent is the client's legal guardian. If the client does not have a legal guardian, the correspondent is the client's parent. Where parents are deceased or their whereabouts cannot, with due diligence, be ascertained, and they have failed to designate an appropriate representative and there is not guardian, then the correspondent shall be defined as the relative, if any, in closest relationship with the client who has, at least once within the previous year, manifested interest in the client by communication with the Department regarding the client. If there is no legal guardian, parent or relative, as defined above, or if such person is unable to exercise his rights hereunder because of age, illness, distance, or some other compelling reason, the correspondent shall be a person designated by the Consumer Advisory Board (see Appendix A, Section T of this decree). The notices required by this decree to be sent to a correspondent shall inform the correspondent of his right to designate the Consumer Advisory Board to act for him if for the reasons stated above he is unable to exercise his rights. Any designation by the Consumer Advisory Board shall remain in effect until revoked by the legal guardian, parent or relative, as defined above.
25. "Persons concerned with the enforcement of this decree" refers to counsel for plaintiffs and defendants, any person designated by the Court to monitor enforcement and his agents.

## A. Community Placement and Client Movement

1. By July 1, 1979, Pineland shall be reduced to an institution of 400 or fewer beds to serve the needs of individuals who require institutional care. Within two years of the signing of this decree, Pineland shall be reduced to a maximum of 350 beds, and shall be maintained at that level or smaller.

### 2. Movement of residents

(a) As part of the individual evaluation required by Appendix A, Section D of this decree, each resident's Pineland interdisciplinary team shall determine whether placement in the community is appropriate, and, if so, shall make a community placement recommendation. Community placement will offer the individual a better opportunity for personal development and a more suitable living environment, and will result in placement in the least restrictive alternative appropriate for the resident.

(b) Following a determination, made in conformance with (a) above, that placement in the community is appropriate for a resident, a community service worker shall be assigned to that resident and the community service worker's name shall be recorded in the resident's file. The community service worker shall then locate and/or develop, in consultation with the resident and with the resident's correspondent (unless a competent resident objects to the correspondent's involvement), a community placement that is in conformance with the recommendations of the interdisciplinary team.

(c) Each resident shall be placed in a placement located as close as practicable to the area in which his correspondent lives. However, if the resident's interdisciplinary team specifically recommends in writing a placement in an area other than as described in this subparagraph and records its reasons therefore, the team's recommendations shall be followed.

(d) Any community placement located or developed by a community service worker must be reviewed by the Superintendent, and no resident shall be placed in a community placement unless and until the Superintendent finds that such placement complies with the criteria set forth in (a) above. The Superintendent shall note his finding in the resident's record.

(e) The procedures set forth in paragraphs 4-8 of this section shall apply to any movement of residents from Pineland into a community placement or into any other living arrangement.

### 3. Movement of clients.

(a) For clients in a community placement, as part of the individual evaluation required by Appendix B, Section B of this decree, each client's community interdisciplinary team shall determine whether movement to any other living arrangement is necessary to meet the client's needs. If so, the team shall make a placement recommendation. Placement decisions shall be based on a determination that the placement will offer the individual a better opportunity for personal development and a more suitable living environment, and will result in placement in the least restrictive alternative appropriate for the client.

3. (b) For clients in community placement for whom movement to another living arrangement is recommended, the client's community service worker in consultation with the client and the client's correspondent (unless a competent client objects to the correspondent's involvement) shall locate or develop a placement that is in conformance with the recommendations of the interdisciplinary team.

(c) For clients in the community, the placement must be reviewed by the appropriate Regional Administrator, and no client shall be moved unless and until the Regional Administrator finds that the placement complies with the criteria set forth in (a) above. The Regional Administrator shall note this finding in the client's record.

(d) The procedures set forth in paragraphs 4-8 of this section shall apply to any movement of clients from a community placement to any other living arrangement.

4. After an appropriate placement has been found and approved by the Superintendent/Regional Administrator, and prior to the resident's/client's transfer to that placement the Superintendent/Regional Administrator shall notify the resident/client, the correspondent and the appropriate advocate, of the proposed placement. No resident/client shall be transferred to any other living arrangement without prior notice and prior opportunity to challenge that placement pursuant to the procedures set forth in paragraphs 4-8 of this section, except:

(a) If the Superintendent/Regional Administrator states in writing with supporting reasons that an immediate placement is required to avoid serious harm to the health or welfare of the resident/client, the resident/client may be moved and opportunity to challenge may be given after such an emergency placement is effected, but in no case more than 10 days after such placement.

(b) If a community residence provider refuses to continue services to a client, or if a placement is otherwise terminated by other than Bureau action, the client may be placed in respite care, while a new placement is arranged.

(1) Before a client placed in respite care pursuant to this paragraph is relocated, the procedures set out in this section, including a team conference and a new or revised placement plan, shall be followed.

(2) No client shall be placed in respite care for longer than 30 days without movement being initiated and notice sent pursuant to this paragraph.

(3) The time limits governing the filing of an objection and time limits governing the procedures set forth in paragraph 8 of this section shall be reduced by half for clients to whom this paragraph is applicable.

5. The notice required by paragraph 4 of this section shall specify: (a) the standards (see paragraphs 2(a) and 3(a) of this section) pursuant to which all placements are made; (b) the date the placement is to be made; (c) a detailed description of the placement; (d) the resident's/client's and correspondent's right on a continuing basis to have access to all data on which the placement is based; (e) the name, address, and telephone number of a staff member at Pineland (when appropriate) and at the appropriate regional office who can be contacted to respond to questions from the resident/client or his correspondent or advocate; (f) the procedure for indicating agreement or disapproval of the proposed placement; (g) the procedures for challenge set forth in paragraph 8 of this section; (h) the name, address, and telephone number of an advocate whom the resident/client or correspondent may contact for assistance; and (i) the date by which any response must be received.



6. (a) Prior to placement, residents/clients shall have a right to a pre-placement visit to the new residence. Unless a competent resident/client objects, his correspondent and advocate shall be invited to accompany the resident/client on this visit. A record of the preplacement visit shall be kept in the resident's/client's file. Exceptions to this requirement may be made: (1) if a visit to the placement would require the resident/client to ride more than two hours each way; or (2) if the placement is an emergency placement as provided for in paragraph 4 (a) of this section.

(b) The Bureau shall offer to make arrangements for a visit to the placement by the correspondent, even in those cases in which a visit by the resident/client is not required.

7. Agreement to movement.

Following the provision of the notice required by paragraph 4 of this section:

(a) Competent residents/clients agreeing to the move may move immediately. Agreement need not be written, nor need it be verbal, in the case of a nonverbal resident/client.

(b) Incompetent residents/clients may move immediately if the resident's/client's correspondent agrees and if the appropriate advocate, after consultation with the resident/client, agrees that a challenge is not appropriate.

8. Procedures for challenges to placement.

(a) Any challenge to the proposed placement must be made in writing to the Superintendent/Regional Administrator or his designee within 10 days of the sending of the notice required by paragraph 4. Each resident/client shall be provided all necessary assistance in preparing his challenge.

(b) Residents/clients have a right to obtain all information on which the proposed placement is based. When such information is requested by the resident/client, his correspondent or advocate, the Superintendent/Regional Administrator's office shall furnish same within five days of receipt of the request. Requests for information need not be made in writing. If a request for information is made, the 10-day limit for challenging the placement shall be extended to five days following the date on which the requested data is furnished. If there is any disagreement about the data furnished, a hearing shall nonetheless be scheduled within 20 days of the receipt of the initial request for information.

(c) Upon receipt of challenge pursuant to paragraph 8(a), the Superintendent/Regional Administrator shall schedule a hearing to be held within 10 days. Notice of the time and place of the hearing shall be given to the resident/client, his correspondent and the advocate's office no less than eight days prior to the hearing. Such notice shall also specify the parties' rights and the procedures at the hearing.

(d) The hearing shall be held at or near the placement in which the resident/client is located at the time the challenge is made. The hearing shall be before an impartial hearing officer who has professional experience in developmental programs for the mentally retarded, and who is not employed either at the resident's/client's facility or placement or at the proposed new facility or placement. At this hearing the resident/client and/or correspondent shall have the right to be represented or assisted by a person of his choice, to present evidence, to question and cross-examine witnesses and, if necessary, to compel the attendance of employees of the

Department. The resident/client shall in all cases have the right to be present. The Superintendent/Regional Administrator or an appropriate representative shall attend the hearing and shall be prepared to answer any questions from the hearing officer or from the parties.

(e) The hearing officer shall have the authority to require the presence of any Department employee determined by the hearing officer to have relevant evidence.

(f) A record of the hearing shall be made and kept on file in the Superintendent/Regional Administrator's office for 12 months. It shall be available to any party for purposes of appeal.

(g) The hearing officer must determine if the Superintendent/Regional Administrator has proved, by a preponderance of the evidence presented at the hearing, that the placement challenged will offer the individual a better opportunity for personal development and a more suitable living environment and will result in placement in the least restrictive alternative appropriate for the resident/client.

(h) Within five days of the hearing, the hearing officer shall issue a written decision, setting forth the conclusion reached and the reasons therefor.

(i) The decision shall be communicated in writing to the resident/client, his correspondent and the advocate's office. Notice of the decision shall include notice of the right to appeal to the Director.

(j) An appeal by a resident/client, advocate, or correspondent shall be made in writing to the Director within five days of receipt of the decision of the hearing officer. The Director shall notify the resident/client, his correspondent and the advocate's office of the pendency of an appeal and the date by which a decision will be reached.

(k) The Director shall decide all appeals within ten days after receipt of the notice of appeal and base the decision exclusively on the hearing record. The Director shall decide only whether the decision of the hearing officer is supported by substantial evidence and whether proper procedures have been followed.

#### 9. Request for resident/client movement.

(a) A resident/client or, unless objected to by a competent resident/client, his correspondent may at any time initiate a request for transfer to a less restrictive setting. Following the receipt of such a request for transfer the appropriate inter-disciplinary team shall meet pursuant to the procedures set out in paragraphs 2 and 3 of this section. Within 30 days after receipt of such a request, the Superintendent/Regional Administrator shall respond in writing, accepting or rejecting the request and stating the reasons for any rejection. A request for transfer shall be rejected only because:

(1) Continuation in the current placement will offer the individual a better opportunity for personal development and a more suitable living environment and will offer the individual placement in the least restrictive alternative appropriate for that resident/client.

(2) Placement is not currently available because of space limitations. In this case, the resident/client shall be moved as soon as an appropriate placement can be found or developed.

(b) If the request for transfer is accepted, the procedures set out in paragraphs 4-8 of this section shall be followed.

(c) A letter of refusal must advise the person making the request that that person may within ten days demand in writing a hearing which shall be conducted pursuant to the procedures set out in paragraph 8 of this section. The letter of refusal shall comply with the notice requirements set forth in paragraph 5 of this section. If a hearing is sought, the hearing officer shall determine the validity of the reason for refusing the transfer.

10. Within 60 days following any resident/client movement, the resident's/client's interdisciplinary team shall meet and develop a new or amended prescriptive program plan as appropriate. If the transfer is from one community placement to another, the PPP coordinator shall decide whether a team meeting is necessary.

## B. Programming

1. Each client shall have by February 1, 1979, an individual plan of care, development and services referred to hereafter as a "prescriptive program plan". By September 1, 1978, half of the clients in the community shall have prescriptive program plans. The prescriptive program plan shall be prepared and re-evaluated at least annually by an interdisciplinary team which shall include the resident home operator, foster parent or other person responsible for the daily care of the client, the person responsible for the client's programming activities outside the residence, the client's community social worker and other appropriate professionals. The makeup of the interdisciplinary team shall be sufficiently broad such that each habilitation need of the client can be professionally assessed and appropriate remedial recommendations can be made. The client shall be asked to attend the interdisciplinary team meeting and shall be consulted in the development of his prescriptive program plan. Each client's correspondent and the client's advocate, unless a competent client objects, shall be asked to attend the team meeting. Notification shall be sent at least two weeks in advance of the meeting. Minutes of each team meeting shall be kept in the client's file and the minutes shall include the names of persons present; and in the case of professional team members, their respective disciplines.

2. The client's community service worker, identified by name in the prescriptive program plan, in conjunction with the PPP coordinator, shall be responsible for reviewing and supervising the client's program progress, for ensuring service delivery and coordinating the input and assignments of other professionals and disciplines in the interdisciplinary team process.

3. The prescriptive program plan shall be reviewed by the client's community service worker and by those responsible for the daily care of the client at least quarterly. At the quarterly review, minor modifications in the plan may be made, and progress as well as problem areas shall be noted. The quarterly review team may reconvene the entire interdisciplinary team if they find that reevaluation of the client is necessary.

4. Each program plan shall describe the nature of the client's specific needs and capabilities, his program goals, with short-range and long-range objectives and timetables for the attainment of these objectives. The prescriptive program plan shall address each client's residential needs, medical needs, ADL skill learning needs, psychological needs, social needs, recreational needs, transportation needs, and other needs including educational, vocational, physical therapy, occupational therapy, and speech therapy, as appropriate. The prescriptive program plan shall include a clear explanation of the daily program needs of the client for the guidance of those responsible for daily care. The recommendations included in each client's prescriptive program plan, both as to residential and programming placements,

shall in all cases be the least restrictive placements suited to the client's needs. The recommendations of the prescriptive program plan shall be based on the interdisciplinary teams' evaluation of the actual needs of the client rather than on what programs are currently available in the community. In cases where the services needed by a client are unavailable, the IDT shall so note in the prescriptive program plan and shall recommend on interim program based on available services which meet, as nearly as possible, the actual needs of the client. The number of clients in need of a service which is not currently available and the type of program or residential placement each needs shall be compiled and these figures shall be used to plan for the development of new programs and residential placements. See Appendix B, Section C, paragraph 14.

5. Each prescriptive program plan shall be carried out pursuant to a written service agreement. Each service agreement shall include at least the following information:

(a) It shall specify the respective responsibilities of the client, the family, correspondent or legal guardian of the client, the regional office, the facility, and each public and private agency which intends to provide services to the client. It shall include a specific description of the client's daily activities with an explanation of how they will contribute to the achievement of the client's program goals.

(b) It shall identify by job classification or other specific description each individual who is responsible for carrying out each portion of the prescriptive program plan.

6. At the first interdisciplinary team meeting held on behalf of a client under the terms of this decree, any regressive or self-abusive behavior which has been exhibited by the client shall be noted. The prescriptive program plan shall address in detail the programs and services which must be provided to the client so that such behavior can be reduced, controlled or eliminated as quickly as possible. One-to-one training shall be an option considered by the interdisciplinary team.

7. (a) It is the goal of the Bureau to provide the programming recommended by the client's interdisciplinary team and, to encourage integration with the community, to provide such programming outside the client's residential setting.

(b) Each client's prescriptive program plan shall provide for a minimum of four scheduled hours of program activity per week day, and each client shall receive this programming. This program activity shall be designed to contribute to the achievement of objectives established for each client in his prescriptive program plan.

(c) In addition to the four hours of programming required by subparagraph (b) above, each client shall receive training in his residential setting in everyday living skills, including, as appropriate:

- (1) care of individual living area;
- (2) management, preparation and service of well-balanced meals;
- (3) selection, purchase and appropriate use of clothing;
- (4) development of grooming and hygiene;
- (5) preventive health and dental care;

- (6) use of telephone;
- (7) safety skills; and
- (8) use and management of money.

Such training shall be monitored by the appropriate regional office staff.

(d) Each client shall receive the programming required by subparagraph (b) outside the client's residential setting with the following exceptions:

(1) clients who at the time of the signing of this decree reside in ICF-MR facilities (Klearview, Pinkham, Northland and Houlton Residential Facility);

(2) in the first year following the signing of this decree, 100 clients;

(3) in the second year following the signing of this decree, 50 clients.

(e) In cases where programming outside the residential setting is unavailable and moving the client would be inappropriate, the interdisciplinary team shall develop an interim plan pursuant to paragraph 4 of this section. This interim plan shall include an alternative plan for integration into the community which shall require frequent participation in social functions, shopping trips, athletic events, meals out or other similar activities in the community. Activities of this sort shall take place at least twice weekly. In reporting to the master pursuant to paragraph 9 (b) of this section the defendants shall cite this provision.

8. A client may receive programming in the residence and/or receive fewer than four hours of program activity per week day if:

(a) a physician certifies in writing that four hours of activity outside the residential setting would be medically harmful to the client. Any such decision shall be reviewed quarterly and shall be subject to challenge as part of the client's prescriptive program plan.

(b) A client who is competent for the purpose of making this decision shall be permitted to choose to engage in fewer hours of programming a day or to engage in programming in his residence. The client shall be asked to reaffirm this decision quarterly.

9. The defendants shall provide or insure that each client is provided the services recommended by the client's prescriptive program plan within 45 days of the client's placement in the community, or for those class members already in community residences, within three months of the preparation of the client's first prescriptive program plan, and for subsequent plans within 45 days. If the recommended services are not available in the community within the applicable period set out herein;

(a) the client shall be placed in the interim program recommended by the client's prescriptive program plan; and

(b) the Bureau shall submit to the master for his approval either a plan including a time schedule, for the development of an appropriate program or a statement that the program will not be developed with accompanying documentation demonstrating that the service or program is not required by professionally accepted standards of habilitation or care.

10. Each client's correspondent shall be kept informed on a semi-annual basis (unless the correspondent requests quarterly reports) of the client's educational, vocational and living skills progress, and medical condition, and shall be allowed access to the client's records, unless a competent client objects. Each client shall have access to his own records, unless the IDT determines that serious harm might result and, in such cases, access may be denied to harmful portions of the record.

11. The Bureau shall offer those clients who are living independently or with their family (natural or adoptive) all services under this decree.

12. Any client, either independently or with the aid of an advocate or his correspondent, may invoke the procedures set forth in paragraphs 15-17 of this section when he disagrees with his prescriptive program plan. Subject to objection to such representation by a competent client, the client's correspondent may invoke the procedures set forth in paragraphs 15-17 of this section when the correspondent disagrees with the client's prescriptive program plan.

13. All clients and their correspondents shall receive notice of their right to object to and to appeal the prescriptive program plan, in connection with all reports required by paragraph 10 of this section. The notice shall explain the procedure for objection and appeal and shall identify, giving name, address and telephone number, an advocate whom the client or correspondent may contact for assistance.

14. The new prescriptive program plan shall be implemented while an objection is being pursued unless the Bureau and the objecting client or correspondent agree otherwise.

15. Informal objections

(a) Informal objections to the prescriptive program plan, which need not be in writing, shall be conveyed to the client's community service worker, who shall immediately attempt to resolve such objections. Such objections shall be noted in the client's permanent record.

(b) If the community service worker is unable to resolve the objection to the client's or correspondent's satisfaction, the community service worker shall explain to the client or correspondent his right to invoke the formal objection and appeal mechanism outlined herein, and shall inform the client or correspondent of his right of access to the client's program plan and other relevant records and to all papers submitted at all stages of the proceedings. The community service worker shall notify the appropriate advocate of any unresolved objection.

16. Formal objections

(a) Formal objections may be made only after the informal procedure set forth in paragraph 15 above has been exhausted. The informal procedure shall be deemed to be exhausted if no resolution has been reached within 20 days after an informal objection is made.

(b) All formal objections must be in writing, must state the basis for the objection, and must be addressed to the Regional Administrator.

(c) Upon receipt of a formal objection, the Regional Administrator, after notice to the client, correspondent, and advocate's office, shall call a conference with the client's community service worker and the objecting client or correspondent. This conference shall be called within 10 days. The conference shall be conducted in an informal manner, in such a way as to receive all relevant written and oral evidence. The particular procedure to be used shall be determined by the Regional Administrator. The client shall in all cases have the right to be present and to be represented by an advocate. Persons who do not desire to participate in this conference may submit papers in support of their position.

(d) Within five days, the Regional Administrator shall issue a written decision with regard to the formal objection which shall fully state the basis therefor, and shall (if the decision upholds the objection) recommend a resolution of the issues presented.

(e) If the decision of the Regional Administrator upholds the objection, it shall allocate responsibility to named individuals for carrying out the recommended resolution within 45 days of the date of the decision.

(f) The decision of the Regional Administrator shall be communicated in writing to the client, the client's correspondent, the client's community service worker, and the advocate. Notice of the decision to the client and the correspondent shall include notice of their right to appeal to the Director.

#### 17. Appeals

(a) Notice of an appeal shall be filed with the Director within ten days of receipt of the decision of the Regional Administrator. The Director shall cause copies of this notice to be sent out to the client, the client's correspondent, the client's community service worker, the advocate and the Regional Administrator. Within ten days of the filing of the notice of appeal, persons receiving notice of the appeal shall submit to the Director and to each other all information deemed pertinent to the Director's review.

The Director shall render a decision solely on the basis of the papers so submitted. In the event that the Director requires further information, the Director may call a conference with notice to all persons receiving notice of the appeal. The client shall in all cases have the right to be present and to be represented by an advocate.

(b) Within ten days of receipt of all information necessary to a decision, and in no case more than 20 days after receipt of the notice of appeal, the Director shall consider the appeal and make a decision either upholding the decision of the Regional Administrator, recommending a new or different resolution, or dismissing the objection.

(c) Notice of the decision shall be communicated to the client, the client's correspondent, the client's community service worker, the advocate and the Regional Administrator.

(d) If any resolution is recommended, the decision shall allocate responsibility to named individuals for carrying out the recommended resolution within 45 days of the date of the decision.

### C. Development of Community Placements

1. The Bureau of Mental Retardation shall maintain at least six regional offices which shall be responsible for the development of appropriate residential and program placements to meet the needs of the plaintiff class.
2. (a) Each of the regional offices shall be staffed by at least one full-time person specializing in the development of foster, adoptive and natural homes, group homes, sheltered workshops, vocational training programs and other day activity programs. The Regional Administrator in each region shall also devote substantial time to the development of community placements. If at the end of one year the minimum goals set forth in this decree for the creation of community placements have not been met, and other causes explaining this failure cannot be documented, at least one additional full-time person shall be hired in each region where needed to develop such placements.  
  
(b) One full-time professional who possesses the skills, knowledge and demonstrated ability to oversee planning and development of community resources shall be hired at the central office to coordinate the staff described in (a) above. This professional should have a graduate degree and two to three years' experience running a successful program for developing community placements for the mentally retarded or other disadvantaged groups.
3. A staff member in the Central Office shall spend at least two-thirds of his time preparing public education materials and working with the media to encourage the development and acceptance of community facilities and programs for the mentally retarded.
4. The Bureau shall take all steps necessary to develop community placements including regular advertising; distributing appropriate pamphlets in libraries, schools, town offices, and other public places; speaking to community groups for the purpose of encouraging their involvement; displaying appropriate posters in public places; and making appropriate radio announcements and public service announcements on television. The Bureau shall prepare a booklet discussing the need for group homes and describing the availability of funding and services to help in establishing a group home. A similar booklet shall be prepared for potential foster families. These booklets shall be completed within three months of the signing of this decree. Copies shall be provided to counsel for the plaintiffs.
5. The regional office staff and Bureau staff shall provide technical assistance in the following areas to local groups, agencies or individuals interested in developing community programs or community facilities: selecting, acquiring and preparing a facility; identifying sources of funding and applying for funding; budgeting; assessing zoning requirements and requesting rezoning or exemptions if necessary; obtaining fire, health and building inspections; completing the licensing process; coordinating services provided by various agencies; training staff and preparing required proposals, forms and records. Legal assistance shall be provided where zoning or other legal difficulties arise.
6. Start-up funds shall be available in sufficient amounts and shall be utilized to fund construction or renovations of existing facilities, equipment purchasing costs, program implementation costs and other expenses necessary to set up a viable facility or program. The Bureau shall promulgate written guidelines detailing the process and criteria for the application and awarding of these funds. Records shall be kept of the Bureau's decisions and shall be made available to those concerned with the enforcement of this decree.



7. When a community agency, group or individual first expresses interest in developing a community facility or program, a specific individual in the regional office shall be assigned the responsibility for coordinating the development of the program or facility. In most cases, this person shall be the resource developer.

8. (a) By July 1, 1979 the defendants shall cause to be developed and operated at least 130 residential placements in group homes (608 bed homes), boarding homes, foster homes, natural or adoptive homes, and independent or semi-independent apartment placements. Approximately 70 of these placements shall be in group homes (6-8 bed homes), 20 in foster homes, 10 in apartments and 30 in boarding homes. At least 100 of these placements shall be provided to members of the class.

(b) Each year after July 1, 1979 the Bureau shall maintain the level of newly created community placements and, as the needs of the class demand, shall develop a minimum of 62 new community placements every six months until the needs of the class are met. The type and number of placements developed shall be dictated by the needs of the class and the provisions of this decree, and shall be consistent with the principles of normalization and least restrictive alternative. Quarterly progress reports will be provided to those persons concerned with the enforcement of the decree.

(c) The community placements in (a) and (b) of this paragraph refer to newly created beds in newly developed facilities or to beds not previously used for the mentally retarded. Placements created by increasing the population of existing facilities to over eight clients will not be counted for purposes of this paragraph.

9. No residential facility shall be developed for more than 15 clients, except facilities which meet ICF-MR standards, limited to a maximum of 20 beds each.

10. Defendants shall not place clients in and shall remove clients from those facilities that fail substantially to meet the environment, care and programming standards included in this decree or set by the defendants by contract or in statutes, regulations or guidelines.

11. For any client who resides in a facility of over 15 beds, except for (1) independent apartments clustered together where the total population does not exceed 20 clients, (2) 20-bed ICF facilities and (3) the Houlton Residential Facility, the interdisciplinary team shall give special scrutiny to the continued appropriateness of the client's residential placement and shall note their findings and the reasons therefor in the prescriptive program plan. The Regional Administrator shall review these findings.

12. Community facilities shall be integrated into the community.

(a) Community residences -- Sites shall be chosen in residential settings normal for the community in which they are located and with ample opportunity for interaction with the community. Preferably placements shall have easy access to shopping facilities and be within a reasonable commuting distance from programs attended by clients during the day.

(b) Program facilities -- Sites shall be chosen in or close to a population center. Programs shall be located in areas appropriate to the training purposes of the program. For example, workshop programs should be developed in business areas.

13. Defendants shall prepare a directory of all available day and residential programs whose principal client population is the mentally retarded in the state,

which shall include a brief description of each program and of the procedures for obtaining services from each program. The initial volume shall be prepared and distributed before October 1, 1978, and the directory shall be updated annually thereafter.

14. Defendants shall develop a data system of client needs and of availability of services in the community. An annual report shall be prepared listing the number and type of placements made during the year, the number of clients currently in need of service and the type of program each needs, the total number of clients served in each type of program and the number of openings available in each program, if any. The needs of residents of Pineland for community services or placement shall be included in these totals. The confidentiality of records identifying individual clients shall be protected.

## D. Professional Services

### 1. General

(a) Two resource centers shall be established, fully staffed, and in operation by September 1, 1978. The professional staff of each resource center shall include, at a minimum, one psychologist, one physical therapist, one occupational therapist, one registered nurse, one speech pathologist, one special education teacher, one social worker, one advocate, and four mental health workers. A director and appropriate clerical and secretarial staff shall also be provided. Where area conditions dictate, staffing patterns may vary provided that there is no reduction in the number of professional level staff.

(b) The resource center staff shall provide diagnosis and evaluation services and prepare prescriptive program plans for community clients. The resource center professional staff, in addition to their diagnosis and evaluation and prescriptive program plan duties, shall provide a crisis intervention team, shall help identify and evaluate professional services available in the community, link clients with the professional services appropriate to meet their needs, and monitor the services provided. They shall also serve as consultants to professionals and programs which are providing treatment.

(c) The Bureau shall provide the services of at least one half-time qualified professional physical therapist, occupational therapist, psychologist, and speech therapist in each of the six regions, in addition to the professionals at the resource centers. The qualified professionals who provide these services need not be employees of the defendants. Additional professional services shall be obtained as necessary to provide the habilitation, programming and therapy specified in each client's prescriptive program plan.

(d) One PPP Coordinator shall be employed in each of the Bureau's six Regional Offices.

### 2. Medical and Dental Services

(a) Each client who has not had a complete medical and dental examination within the past year shall have such examinations during the first year after the signing of this decree. Subsequently, each client shall have at least annually a medical and dental review. Each client shall have included in his prescriptive program plan a medical and dental plan which may require, based on need, a medical examination, including an eye examination, on an annual basis. Complete medical and dental examinations shall be provided, at a minimum, every three years.

(b) Glasses shall be provided if a client cannot pay.

(c) Medical and dental services and diagnosis shall be closely integrated with the client's prescriptive program plan.

(d) The interdisciplinary team shall monitor the quality of medical and dental care the client receives and where continuing problems arise, shall seek a second professional opinion or take other appropriate action.

(e) Psychotropic medication shall be used only as an integrated part of the client's prescriptive program plan. Continued use of psychotropic medication shall be reviewed by the client's interdisciplinary team.

(f) When a regimen of psychotropic medication is approved, the interdisciplinary team shall ensure:

(1) that appropriate persons responsible for the client's habilitation, education, care and other treatment are informed as to the significant potential effects of the medication and record their observations thereof, including effects on the client's progress in habilitation and education programs and his participation in other activities and any significant adverse effects; and

(2) that appropriate laboratory tests are performed and analyzed; and

(3) that repeated administration of an anti-psychotic or anti-anxiety medication, including substitution of a medication of the same class, does not cumulatively exceed one year without the attending physician effecting a carefully monitored withdrawal of the medication. This periodic drug withdrawal shall be used to determine the need for continuing medication and the prescribed dosage. During such withdrawal, the results shall be noted in the client's medical record. Medication may be resumed only if there is a clear documentation of benefit derived from its use. Such a drug withdrawal program shall be repeated on an annual basis.

(g) Defendants shall maintain or require home operators to maintain written agreements for the provision of acute medical care with accredited hospitals. Emergency treatment by a physician on a 24-hour, seven-days-a-week basis shall be available.

(h) Emergency dental care shall be available on a 24-hour seven day-a-week basis.

(i) The client's need for training or assistance in tooth brushing and oral hygiene shall be considered by the interdisciplinary team. Any necessary training or assistance shall be provided under the supervision of the registered nurse at each resource center.

### 3. Crisis Intervention

The defendants shall provide crisis intervention services in emergency situations which threaten a client's program or residential placement. Resource center staff with skills in crisis intervention and behavior programming shall provide intensive intervention at the community placement. Only if intervention at the community placement fails or if the crisis intervention team, after seeing the client, determines that immediate movement is necessary shall the client be moved to a respite care facility or other appropriate treatment facility. Any time crisis intervention services are required, an interdisciplinary team meeting shall be convened as soon as possible thereafter to review the client's prescriptive program plan, and in no event more than 10 days after the event requiring the crisis intervention.

### 4. Respite Care

(a) Respite care or temporary residential assistance shall be available to clients by December 1, 1978. When respite care is reasonably needed, it shall be provided in community facilities. Pineland may be used for respite care purposes of a specialized nature only.

(b) Before a client is provided with respite services, a written agreement with the client's family or guardian specifying length of stay shall be reached. The maximum length of stay agreed to by defendants shall be 21 days at a time and shall not exceed 60 days during any twelve months.

(c) Clients receiving respite care shall, whenever possible, continue to attend day programs they have been attending. They shall be involved in appropriate recreational and program activities in the respite care facility as well.

#### 5. Education

(a) Defendants shall attempt to ensure and shall advocate for the provision of appropriate education to all members of the class. Defendants shall document their efforts in this regard and shall submit this documentation to persons concerned with the enforcement of this decree.

(b) Defendants shall, by July 5, 1978, advise the appropriate public school systems of the number of persons under the age of 21 who are members of the class and who currently are out of school or who are inappropriately placed. This information also shall be provided to the Commissioner of the Department of Education and Cultural Services.

(c) In addition, defendants shall advise the appropriate public school systems of the number of school-age Pineland residents being prepared for transfer to their community, and shall supply the appropriate public school with a projected timetable for the transfer of such residents to the jurisdiction of such schools. This information also shall be provided to the Commissioner of the Department of Education and Cultural Services.

(d) Defendants shall offer consultation services, offer training programs, and in general assist the public school to provide appropriate education services to mentally retarded children.

(e) Defendants shall assist parents, guardians and/or advocates in enrolling class members in appropriate education programs.

#### 6. Transportation

The defendants shall ensure that sufficient transportation is available so that clients can attend all recommended program activities and professional services, and so that recreation, shopping and other community activities are reasonably accessible to each client. School transportation shall be provided by the appropriate school district, as required by state and federal law.

#### 7. Family Support Services

(a) Defendants shall provide by October 1, 1978, a full range of support services for the families of all those clients living with their natural, adoptive or foster family.

(b) All services available to residents of group homes or other community placements shall be available to clients living at home.

(c) The Bureau shall provide the services of child development workers and community service workers for every client, adult or child, who needs such services. The worker shall regularly visit clients' homes and assist the family in meeting the developmental needs of the mentally retarded family member. Child development workers shall teach self-help skills, communication skills, motor de-

velopment, socialization skills, and/or other skills as appropriate. Community service and child development workers shall be provided support by the professional staff of the resource centers.

(d) The Bureau shall assist in securing homemaker services to a client's family when needed to enable the family to adequately care for the client. The homemaker shall assist with and teach health care, meal planning, marketing, budgeting, and housekeeping. Assistance shall be provided, when appropriate, with the training program of the client.

(e) The Bureau shall make available training in caring for the retarded for sitters and homemakers. The Bureau will facilitate the provision of these services where needed.

(f) Defendants shall provide counseling and instruction which will enable a family to better care for the mentally retarded client at home.

#### 8. Psychology Services

(a) Psychology services shall be provided and shall include at least a psychological evaluation every three years and in years when no evaluation is performed, a psychological review conducted as part of each client's prescriptive program plan pursuant to Appendix B, Section B. Such reviews and evaluations shall include personal interaction with the client.

(b) One-to-one training programs supervised or administered by a qualified psychologist shall be available, where appropriate, to treat chronic or aggravated behavior problems which are a potential threat to the client's program or residential placement or which prevent the client from moving to a less restrictive placement.

(c) When appropriate, psychologists shall instruct care providers in the behavior management techniques specified in the client's prescriptive program plan.

#### 9. Speech and Hearing Services

(a) Speech and hearing services shall include a hearing screening once during the first two years of this decree which shall be conducted as part of each client's prescriptive program plan pursuant to Appendix B, Section B. Treatment and/or further evaluation shall be provided to those clients who require such services by sufficient qualified speech and hearing professionals.

(b) Hearing aids will be provided as needed and shall be maintained in good working order.

(c) Where appropriate, deaf, hearing impaired, and/or clients with neurological or physical damage precluding the acquisition of speech will be taught sign language or an alternate communication system. The Bureau shall make available to parents, relatives, and other persons working with the client, training in language-stimulation skills or in the use of an alternative communication system.

## 10. Social Work Services

(a) Each regional office shall employ an adequate number of community services workers to perform the following types of services for each member of the class residing in the community:

(1) Case management-The coordination of service provision to each client including insuring that the services recommended in the client's prescriptive program plan are being provided.

(2) Follow-up and Follow-along - The maintenance of regular contact with each client and the provision of social work services as needed by each client.

(3) Record-keeping - See paragraph 10 (e), (f) and (g) below.

(b) In addition, there shall be one community service work supervisor for each regional officer. Supervisors shall be qualified professionals.

(c) The standards in subparagraphs (a) and (b) of this paragraph shall be met within 60 days of the signing of this decree.

(d) All program and residential facilities shall be visited by a community service worker or other designee with regular responsibility for the clients at least once a month and more frequently when necessary.

(e) There shall be a uniform system of records kept by the regional office for each client, developed and maintained under the supervision of the community service worker assigned to each client. The community service worker shall review the records at least monthly. The client's residential facility and program placements shall have a copy of those portions of an individual's records relevant to the programming and the health and safety of the client. Information shall be incorporated in the client's record in sufficient detail to enable those persons involved in the client's program to provide the effective, continuing services. All entries in the client's record shall be legible, dated, and have the signature and identification of the individual making the entry. The confidentiality of any records identifying individual clients shall be respected.

(f) These records shall include:

(1) Identification data, including the client's legal status;

(2) Relevant family data, including family visits and contacts, educational background, and employment record;

(3) Complete medical record, including medication history and status;

(4) An inventory of the client's life skills;

(5) A copy of the individual's prescriptive program plan, and any modification and evaluations thereof, with an appropriate summary to guide facility and program staff in implementing the plan;

(6) The findings made in periodic (at least quarterly) reviews of the individuals' response to his prescriptive program plan, with directions as to modifications prepared by a professional involved in the client's program;

(7) A record of activities outside the residential facility and the amount of time each client spends outside the residential facility;

(8) A physical description of the client.

(g) Progress toward prescriptive program plan goals, observations on the quality of the program being provided, and any problems identified shall be noted in the client's records by the community service worker at each monthly visit.

(h) Regulations and forms for use in regional offices, and community facilities and programs incorporating the requirements of subparagraphs (e), (f), and (g) of this paragraph, shall be developed by the Bureau within three months of the signing of this decree.



E. Program Administration

1. Defendants are responsible for monitoring the quality of services delivered to all clients in the community.

2. Employees of the defendants or a consultant retained by defendants shall be responsible for monitoring the provision of services at each community placement facility. Defendants shall evaluate the quality of prescriptive program plans, assess the extent to which recommended services are being provided, and evaluate the adequacy of services, facilities and programs. Records of such evaluations shall be forwarded to the Director.

3. (a) Prior to placement of class members in any facility or program, defendants shall reach a written agreement with the operator of the facility or program. This agreement shall:

(1) require that the facility or program comply with all the applicable terms of this decree and with all applicable statutes, rules and regulations promulgated by the United States, the State of Maine, the Department, and the Bureau;

(2) reserve the right of employees and contractees of the Bureau to have reasonable access to the facility or program and to its records to audit the facility or program, to provide services to clients, and for other reasonable purposes;

(3) specify all charges and the sources of payment for a client's program, room and board and any other expenses;

(4) require the participation of the facility or program operator (or an appropriate representative) in the prescriptive program plan process for each client placed in the facility or program;

(5) require compliance with the requirements of each client's service agreement.

(b) Sanctions for failure to comply with the provisions of the agreement shall be included in the agreement. Sanctions shall include, but are not limited to, the termination of the agreement and the removal of the client from the placement.

(c) The agreement shall be limited to one year. Prior to renewal, the defendants shall audit the service provider's compliance with the terms of the agreement.

## F. Standards for Community Residences

### 1. Daily living and clients' rights

(a) Clients have a right to habilitation, including medical treatment, education, training and care, suited to their needs, regardless of age, degree of retardation or handicapping condition. Each client has a right to a habilitation program which will maximize his human abilities, enhance his ability to cope with his environment and create a reasonable expectation of progress toward the goal of independent community living.

(b) Each client shall be provided with the least restrictive and most normal living conditions appropriate for that client. This standard shall apply to dress, grooming, movement, free time, personal funds, and contact and communication with the outside community, including access to educational, vocational, recreational and therapy services in the community. Clients shall be taught skills that help them learn how to manipulate their environment and how to make choices necessary for daily living. Restrictions on client activities shall be noted in the client's records with the reasons therefor stated.

(c) Clients shall be prepared to move from: (1) living and programming segregated from community to living and programming integrated with the community; (2) more structured living to less structured living; (3) larger living units to smaller living units; (4) group residences to individual residences; (5) dependent living to independent living, as appropriate for the individual client.

(d) Living groups shall not ordinarily contain unrelated residents differing widely in age level (e.g., young children and adults) or development level or social needs. Exceptions shall be recommended by the IDT, accompanied by written reasons, and approved by the Regional Administrator. Blind or deaf clients shall not be grouped with lower functioning clients solely because of their blindness or deafness. To the maximum extent possible, physically handicapped clients shall be integrated with their nonphysically handicapped peers.

(e) The facility's activities, routines and rhythms shall conform with practices prevalent in the community and the client's age. For example, older clients ordinarily shall not be expected to live according to the timetable of younger children; meals shall be served at hours typical for the community.

(f) No client shall be denied the right to vote because of mental impairment, unless the client is under guardianship.

(g) Clients shall have the right to religious freedom and practice.

(h) Clients have a right to private communications.

(1) Each client shall be allowed to receive, send and mail correspondence. Mail shall not be delayed, censored or opened without the consent of the client or, where appropriate, his legal guardian.

(2) Clients shall have an unrestricted right to visitations during reasonable hours. This provision shall be implemented with sensitivity to other clients' right to privacy.

- (3) Clients shall be afforded a reasonable opportunity to use a telephone.
- (i) Each client has the right to the possession and use of his own clothing and personal effects. When necessary to protect the client or others from imminent injury, the director of a day program or a residential facility may take temporary custody of clothing or personal effects, provided they are immediately returned when the emergency ends.
- (j) Clients shall be assisted in obtaining, and, if necessary, provided with adequate, fashionable and seasonally appropriate clothing, including shoes and coats. Each client shall have sufficient clothing for rainy weather, snow and extreme cold. Where necessary special or adaptive clothing shall be provided. Each client shall be involved to the extent possible in the selection of his clothing.
- (k) Unless otherwise ordered by a court, each client shall have the right to manage and spend personal funds, including the right to maintain an individual bank account.
  - (1) Any funds deposited with the head of a community program or residence shall be subject to the following provisions: Such custody shall be promptly recorded in the client's record; a receipt shall be given; a record shall be kept of every deposit or withdrawal of funds, including the date and the amount received or disbursed; an accounting shall be provided on demand; deposited funds shall be used in accordance with the client's desires.
  - (2) Where the client has deposited funds in excess of \$200 with the head of a community program or residence, an individual interest-bearing bank account shall be maintained. Interest shall be property of the client. Withdrawal of funds shall require the authorization of the client or the client's guardian. The requirements of (1) above shall apply.
  - (3) The head of the client's community residence or program shall not act as representative payee for the client. A representative payee, independent of the residence or program shall be designated, and shall be required to make at least an annual accounting of the client's funds. A copy of this accounting shall be kept in the client's record.
- (l) A summary of the clients' legal and civil rights shall be available in all community programs and residences. For this purpose, the Director shall prepare a comprehensive summary of clients' rights in lay language. This summary shall be submitted for comment to all persons concerned with the enforcement of this decree within 60 days of the signing of the decree.

## 2. Environment

(a) Defendants shall ensure that community living facilities afford clients privacy, dignity, comfort, sanitation and a home-like environment. This shall include, but is not limited to:

- (1) individual bed, dresser and storage place;
- (2) attractive, comfortable and spacious living and sleeping areas;
- (3) privacy in bathroom areas;
- (4) normal temperature and adequate ventilation, comparable to that found in private homes.

(b) Each facility must provide for all the functions characteristic of a normal home, including a kitchen, living room, dining area, bedrooms and bathrooms of normal residential design.

(c) The dining area shall be of sufficient size to permit staff and clients to eat meals together.

(d) Hallways and circulation space must be comparable to that found in typical private homes and apartments.

(e) Exceptions to (b), (c) and (d) may be made only when necessary to meet special needs of clients.

(f) No more than three clients shall occupy one bedroom. No facility developed after January 1, 1978 shall have more than two clients in any bedroom.

## 3. Food and Nutrition

(a) There shall be at least three meals a day provided at normal times, and in a manner as close to normal family-style dining as possible. Clients shall be taught to eat in leisurely family style and to choose their own quantities and items according to individual tastes and preferences.

(b) A nourishing, well-balanced, nutritionally adequate diet shall be provided. Clients shall have liquids available throughout each meal.

(c) There shall be sufficient dishes and utensils for all clients, which shall be thoroughly cleaned between uses.

(d) A medical order shall be required for clients served other than a normal variety of foods. Such orders shall be reviewed quarterly by the client's physician.

(e) Denial of a nutritionally adequate diet shall not be used as punishment, or as part of a behavior modification program.

## 4. Staffing

(a) All community residences -- Sufficient staff shall be on duty in each residential placement to meet each client's programming needs as set out in the client's prescriptive program plan.

(b) Group homes -- In group homes, the staff-to-client ratio of direct care staff actually present and on duty during hours when clients are awake and at home shall be 1:8. During sleeping hours, at least one staff person shall be at the facility.

(c) Facilities with more than 8 beds

(1) These facilities shall comply with the staffing ratios included in the relevant Maine licensing regulations and with applicable federal law or regulations.

(2) Staffing shall be scheduled so that maximum staffing levels occur during the hours clients are in the residence and awake.

5. Medication

(a) No prescription medication shall be administered except upon written order of a physician. Behavior-modifying medication shall be administered only as an integrated part of the client's prescriptive program plan.

(b) Notation of each individual's medication shall be kept in records available in the client's community placement.

(c) Clients shall have a right to be free from unnecessary or excessive medication.

(d) All drugs shall be stored under proper conditions of sanitation, temperature, light, moisture, ventilation, segregation and security.

(e) All drugs shall be stored in secure and locked areas.

(f) Poisons, drugs used externally, and drugs taken internally shall be stored on separate shelves or in separate cabinets within the locked areas.

(g) Medications that are stored in a refrigerator containing things other than drugs shall be kept in a separate compartment with proper security.

(h) A perpetual inventory shall be maintained of each narcotic drug in the facility.

(i) Discontinued and outdated drugs, and containers with worn, illegible, or missing labels, shall be returned and properly disposed of.

(j) During the course of administration of psychotropic medication, the staff of the client's community placement shall carefully monitor and record the client's progress and response to the treatment. Persons responsible for the client's habilitation, education, care and other treatment regularly shall record their observations of the effects of the medication, including effects on the client's progress in habilitation and education programs and his participation in other activities.

(k) Medication errors and drug reactions shall be recorded and reported immediately to the physician who ordered the drug.

(l) Medication shall not be used as punishment, for the convenience of staff, as a substitute for program, or in quantities that interfere with the client's program or work.

## 6. Labor

Client labor in privately-operated community facilities shall be governed by the requirements of the Fair Labor Standards Act, 29 U.S.C. section 201 et seq. and the regulations promulgated thereunder. Client labor in State-operated community facilities shall be governed by the standards set out in subparagraphs (a) - (e) herein or by the provisions of the Fair Labor Standards Act, 29 U.S.C. section 201 et seq. and the regulations promulgated thereunder at the option of the Director.

(a) Operation and maintenance of program or facility: No client shall be required to perform labor which involves the operation and maintenance of the program or facility or the regular care, treatment or supervision of other clients. Clients may voluntarily perform any work available to them, provided they are compensated in accordance with sub-paragraph (d) below.

(b) Training tasks: A client may be required to perform vocational training tasks not involving the operation or maintenance of a program or facility, subject to a presumption that an assignment of longer than four months to any task is not a training task, and provided that the specific task or any change in assignment:

- (1) does not involve the operation and maintenance of the facility or program;
- (2) is an integrated part of the client's prescriptive program plan and has been approved as a program activity by a professional responsible for supervising the client's program; and
- (3) is adequately supervised.

(c) Personal housekeeping: Clients may be required to perform tasks of a personal housekeeping nature as the making of their own beds.

(d) Clients who are employed to perform work of economic benefit to the employer shall be paid wages which are commensurate with those paid nonhandicapped workers at the facility or at businesses in the vicinity for essentially the same type, quality and quantity of work. The applicability of this standard does not depend on whether or not the work is of therapeutic value to the client.

(e) Each workshop or other employer shall maintain, and have available for inspection, records of:

- (1) the productivity of each client to be reviewed at quarterly intervals;
- (2) the prevailing wages paid nonhandicapped workers in the facility or in businesses in the vicinity for essentially similar work to that performed by clients; and
- (3) the production standards for an average nonhandicapped worker for each job being performed by a client.

(f) Every effort shall be made to find compensated employment for clients who are willing and able to work.

(g) Clients shall be allowed to keep amounts earned under this paragraph.

## 7. Restraints and Abuse

(a) Mistreatment, neglect or abuse of clients in any form shall be prohibited. The routine use of all forms of restraint shall be eliminated. Restraint shall be employed only when absolutely necessary to prevent a client from seriously injuring himself or others. Restraint shall never be employed as a punishment, for the convenience of staff, or as a substitute for programs and shall be applied only after other means of controlling behavior have been tried and have failed. Documentation of the failure of these alternative techniques shall be included in the client's records and be available for inspection.

(b) The permissible forms of restraint thereafter shall be physically holding the individual for a maximum of one hour, placing the individual in a room with an attendant for a maximum of one hour, or placing the individual alone in an unlocked room with an attendant outside for a maximum of one hour. If these types of restraint prove inadequate, chemical restraint may be used. Each use of a chemical restraint shall be ordered by a physician. Such order shall be reviewed by the physician as soon as possible after use of the drug and the physician's findings shall be noted in the client's record. Strait-jackets and camisoles shall never be used, nor shall any resident be tied to a bed or subject to corporal punishment, degradation, or seclusion (seclusion is hereby defined as placing a client alone in a locked room, which he cannot leave at will).

(c) Use of restraints by the crisis intervention team shall be governed by the provisions of Appendix A, Section N, rather than by the provisions of this section. The duties of the Superintendent shall be performed by the Regional Administrator.

(d) Alleged instances of mistreatment, neglect or abuse of any client shall be reported immediately to the Regional Administrator and the advocate's office, and there shall be a written report documenting that the allegation has been thoroughly and promptly investigated (with the findings stated therein). Copies of such reports shall be made available to persons concerned with the enforcement of this decree along with a report indicating the action taken.

(e) A client's correspondent shall be notified in writing whenever an instance of mistreatment, neglect or abuse occurs.

(f) The use of aversive conditioning shall not be permitted unless positive reinforcement procedures and other less drastic alternatives have been tried and failed (this failure shall be documented) and approval has been obtained:

- (1) from the client's interdisciplinary team; and
- (2) from the client, if he is capable of giving informed consent or from the client's correspondent if the client cannot give informed consent; and
- (3) from a three-person special committee on aversive conditioning, designated by the Director, which shall include the client's advocate and one designee from the Consumer Advisory Board.

(c) Work training programs: In work training programs there shall be at a minimum the following staff:

(1) a full-time or part-time Director who has professional qualifications in a relevant field or experience in a relevant field including administrative experience;

(2) a full-time professional staff member for the first 20 (or fewer) clients;

(3) one half-time staff member for each 10 additional clients.

### 3. Food and Nutrition

Where a meal is provided by a program facility, the meal shall be nourishing, well-balanced and of normal variety unless medically contraindicated for specific clients.

### 4. Recordkeeping

(a) Each program shall keep a record of each client's progress toward the prescriptive program plan goals for which the program is responsible, recorded on a weekly basis.

(b) Each program shall cooperate with the Bureau in collecting other necessary data.

(c) These records shall be available to the regional office staff and to all persons concerned with the enforcement of this decree.

### 5. Restraints and Abuse

Community programs shall comply with Appendix B, Section F, paragraph 7 (Restraints and Abuse).

### 6. Labor

Community programs shall comply with Appendix B, Section F, paragraph 6.

### 7. Medication

Those programs which administer medication shall comply with the standards set forth in Appendix B, Section 7, paragraph 5.



(g) The Director shall be advised when a decision has been reached and approved to utilize such aversive conditioning. Aversive conditioning techniques shall be employed only under the supervision of a psychiatrist or psychologist licensed to practice in the State of Maine who has had proper training in the use of such techniques, and who is specifically authorized by the Director to conduct aversive conditioning. The Director shall at all times maintain a list of all persons authorized to conduct aversive conditioning.

(h) Research or experimentation of any sort shall be conducted only after approval has been obtained as set forth in paragraph (f) above except research limited to review of client records, provided that confidentiality is adequately protected.

## 8. Recordkeeping

(a) Each facility shall keep a record of the client's progress toward the prescriptive program goals for which the facility is responsible, recorded at least monthly, and recorded on a weekly basis for skill acquisition programs.

(b) Each facility shall cooperate with the Bureau in collecting other necessary data.

(c) These records shall be available to regional office staff and to all persons concerned with the enforcement of this decree.

## G. Standards for Day, Social, Pre-vocational and Work Training Programs.

### 1. Client's Rights

Clients shall be treated with dignity and respect. Programming shall be provided consistent with the requirements of the client's prescriptive program plan and in the least restrictive and most normal setting possible.

### 2. Staffing

(a) Sufficient staff shall be on duty in each program placement to meet each client's programming needs as set out in each client's prescriptive program plan.

(b) Social/prevocational programs: In Social/prevocational programs; there shall be at a minimum the following staff:

(1) a full-time or part-time Director who has professional qualifications in a relevant field or experience in a relevant field including administrative experience;

(2) one full-time staff member for the first 10 (or fewer) clients and an additional half-time staff member for each additional 15 clients.

(3) Where neither the Director nor a full-time staff member is a professional, the Bureau shall semi-annually provide the services of a professional consultant who shall make recommendations to the program and to the Bureau for improving client services. A copy of these reports shall be made available to persons concerned with the enforcement of this decree.

H. Management

1. The Bureau shall maintain a meaningful table of organization, clearly defining areas of responsibility and accountability by position. There shall be regular outside evaluation of management and of all major program elements covered by this decree.

2. A current and meaningful policies and procedures manual shall be developed by defendants for community service workers and staff and for resource center and regional office personnel incorporating policies and procedures to be followed in providing client care. It shall include all relevant provisions of this decree. At least one copy of the manual shall be readily available at each regional office, resource center and at each State-operated facility or program serving clients of the Bureau.

3. Consultants shall be used purposefully and on a regular basis. Whenever consultants or outside evaluators are utilized, they shall prepare written reports and evaluations which shall be forwarded to the Director and made available to persons concerned with the enforcement of this decree.

4. The Director's office shall be familiar with all sources of government and private monies for which community programs are eligible and shall, when appropriate, apply for such funding.

5. The Commissioner shall prepare a budget request which is calculated to meet all deficiencies in meeting the terms of this decree. A copy of all portions of the governor's budget applicable to this decree shall be sent to all persons concerned with the enforcement of this decree when the budget is sent to the legislature, and a copy of the final budget approved by the legislature shall be sent to persons concerned with the enforcement of this decree immediately following approval of the budget. This section shall apply to any supplemental budget requests.

## I. Personnel

1. Defendants shall actively recruit qualified staff. Salaries and benefits offered shall be adequate to attract qualified staff.

2. All job applicants shall be carefully screened. At least two existing professional staff will interview each candidate for professional jobs. At every level of employment every attempt will be made to screen out those individuals who might pose a danger to clients or fail to work in their best interests.

3. There shall be full staff orientation and training programs to increase employees' skills and interest in achieving the program goals of the clients. Training programs shall be mandatory for regional office and resource center employees. Operators or managers of any community facilities or programs which serve a preponderance of mentally retarded clients shall be provided training by formal program or by other means. Training programs shall be available to all on a quarterly basis.

(a) Orientation training shall consist, at a minimum, of 20 hours of training provided within three months of the hiring or contracting date. Persons who have not had such training or equivalent training shall be provided it within one year of the signing of this decree.

(b) By October 1, 1978, defendants shall prepare and submit for comment to all persons concerned with the enforcement of this decree a plan to improve orientation and in-services training programs, which plan shall specify the proposed staffing, curricula and duration of such programs.

(c) At least the following areas shall be addressed in orientation and in-service training programs: introduction to mental retardation; principles of normalization; human and legal rights; fire protection; safety; health care; emergency care; growth-oriented programming; behavior shaping; education; relationships with natural families; leisure time and recreation; administrative responsibilities; human sexuality; vocational training and counseling; and methods of insuring compliance with the provisions of this decree.

(d) Records shall be kept of all persons receiving training and such records shall be available to all persons concerned with the enforcement of this decree.

4. Supervisors shall be responsible under appropriate laws and regulations for the regular review and assessment of the job performance of their subordinates, particularly of their success in meeting program objectives. The Bureau shall be responsible for pursuing every procedure and method provided by law or regulation in the termination or reassignment of Bureau employees whose performance is found unsatisfactory. In addition, the Bureau shall terminate contracts or fail to renew them where job performance of contractees is unsatisfactory.

5. Personnel policies shall be designed to maximize use of individual employees' skills and to enhance effective programming for clients and working conditions for employees. In order to improve personnel policies, personnel terminating employment shall be interviewed if the employee consents. Summaries of these interviews shall be reviewed by the Director and by other appropriate persons, to determine any causes of employee dissatisfaction and instances of dehumanizing or abuse practices and

other relevant information, including the determination of appropriate criteria for hiring and screening new employees. Such summaries shall be made available to all persons concerned with the enforcement of this decree.

6. Staff shall be actively involved by the administration in the development and assessment of Bureau policies.

7. Volunteers will be eligible to receive appropriate orientation and in-service training on terms identical to those of regular staff. Volunteers will be encouraged to make use of these opportunities by their supervisors. Each volunteer will be provided a person who will provide direct supervision to the volunteer on a regular basis. One person in the Bureau central office shall be assigned the responsibility of recruiting volunteers and seeing to their maximum effective utilization.

J. Miscellaneous

1. Unless otherwise specified, steps, standards and procedures contained herein shall be achieved, and thereafter maintained, within 12 months from the date of the signing of this decree.
2. No care, treatment, placement, program or service necessary to implement the requirements of this decree shall be denied to any client because of the client's inability to pay.
3. All correspondents, advocates and persons concerned with the enforcement of this decree shall have an obligation to keep personally identifiable records and other information concerning clients confidential, consistent with the provisions of the relevant Maine law on confidentiality.
4. A copy of this decree shall be available in each regional office.
5. Defendants shall ensure that an advocacy system adequate to meet clients' needs is in place.
6. The Chief Advocate within the Department shall upon request have access to any information made available to persons concerned with the enforcement of this decree.
7. Defendants shall make every effort to ensure that a person in the governor's office will be responsible for being knowledgeable about the terms of this decree and for lending all appropriate assistance of that office to the full implementation of the decree.
8. This decree shall be interpreted in a fair and reasonable manner so as to attain the object for which it was designed and the purpose to which it is applied.
9. Where implementation of steps, standards and procedures contained herein requires the cooperation of persons, facilities, programs or departments not a party to this litigation and not under the direct or indirect control of defendants, defendants shall work actively to ensure compliance within their prescribed administrative authority.