

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	
	:	C. A. No. 3:86-cv-252 (EBB)
v.	:	
	:	
STATE OF CONNECTICUT, et al.,	:	
	:	
Defendants.	:	

REPORT TO THE COURT NO. 60:
HABILITATION

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Special Master

14 January, 2006

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SPECIAL MASTER'S REPORT TO THE COURT NO. 60: HABILITATION

The Special Master recommends that the Court release from active judicial oversight all outstanding Remedial Plan requirements regarding Habilitation.

The OPS/Habilitation Initiative, initiated by Defendants in 2002 pursuant to the Joint Committee convened by the Special Master, has now been implemented successfully.¹

One fundamental purpose of Southbury Training School is “training,” that is, the provision of Habilitation to its residents to improve and extend their functioning in everyday life, their independence and their well-being.² As the Court has stated, “Habilitation is recognized by all parties as an important component of the mission of Southbury Training School.”³

Habilitation means “measures taken to assist the individual to live a full and productive life...” and it is a “teaching or instructional model of service, with this didactic function included in order to enhance the skills and personal self-sufficiency of people with developmental disabilities.”⁴

Implementation of habilitation services is the focus of the activities of more staff at STS than any other discipline. Training takes place during the day and evening, is planned and monitored in formal annual and quarterly meetings, and is embodied in written plans and teaching strategies. It takes place in vocational programs and in residences.

¹ If this recommendation is accepted, the following will be released: CR 43, EC 3 and 4; CR 44, EC 1, 2 and 3; CR 52, EC 3 and 4; and CR 14, EC 2. The Special Master reviewed CR 14, EC 2, previously; based on the master’s consultant’s most recent review, the master concludes that Defendants are in compliance with this requirement.

² Youngberg v. Romeo, 457 U.S. 307 (1982), recognized the equivalence of “training” to “habilitation.” “The word ‘habilitation’ is commonly used to refer to programs for the mentally retarded because mental retardation is ... a learning disability and training impairment rather than an illness. [T]he principal focus of habilitation is upon training and development of needed skills.” 457 U.S. at 309, n.1 (1982) (quoting amicus brief for American Psychiatric Association).

³ Order of August 30, 2001.

⁴ Skarnulis, Habilitation Services at Southbury Training School at 9 (Nov. 12, 2005) (ellipses omitted), filed with the Special Master’s Order of November 15, 2005.

This report traces the status of compliance with court-ordered Habilitation requirements beginning with the 1996 contempt findings, through the 1998-2001 period when deficiencies were not adequately addressed by Defendants, and concluding with their successful and well-executed OPS/Habilitation Initiative from 2002 to 2005.

Some have objected on occasion to the duration of these proceedings. As the record shows, and this report summarizes, Habilitation is released from oversight just as soon as Defendants have fulfilled their obligation to the court.

While one might have hoped that it would not have taken so many years since the Remedial Plan for Defendants to accomplish this success, one must celebrate that they have now done so.

The Special Master recommends release from active judicial oversight of all outstanding Habilitation provisions of the Remedial Plan as set forth in this report.⁵

I. The 1996 Contempt and Failure to Provide Habilitation.

Although Defendants committed in the 1987 Consent Decree and the subsequent Implementation Plan to provide adequate habilitation to STS residents, they failed to do so and were found in contempt in 1996. United States v. State of Connecticut, 931 F. Supp. 974 (D. Conn. 1996), appeal dismissed, 1997 U.S. App. LEXIS 21006 (2d Cir., June 13, 1997).⁶ The court found that defendants' positive self-reports did not reflect reality. Id. at 983-84.

At the time of the contempt ruling, STS was writing individual programs for clients but they were often irrelevant or not effectively implemented. STS residents were almost never engaged in productive activities. Instead of engaging the residents in activities, staff members were watching TV, talking on the telephone, talking to each other, and involved in other miscellaneous activities. Defendants were administering behavioral medication in lieu of habilitation programs.

The court in 1996 found that the deficiencies at STS were causing clients to die and to suffer other injuries. Noting that "some of the most compelling evidence came from the

⁵ The following elements are not addressed in this report a) the Communication Services aspect of Habilitation which is pending before the Court, and b) behavior planning and services which were not covered in the most recent review by the master's consultant.

Also, neither this report nor the recent consultant's report addressed the adequacy of Habilitation and other programs at STS as compared to, or with regard to, community placement and services outside the institution. This report should not be construed to affect any aspect of the community placement issues pending before the Court in another matter.

⁶ Courts have inherent power to enforce compliance with an order, including a consent decree, through civil contempt. Shillitani v. United States, 384 U.S. 364, 370 (1966); United States v. City of Yonkers, 856 F.2d 444, 454 (2d Cir. 1988). The power is an ancient one. Ex parte Robinson, 86 U.S. 505 (1874). See Fox, History of Contempt of Court (1927); Beale, Contempt of Court, 21 Harv. Law. Rev. 161, 169-70 (1908).

Defendants own experts,” the Court found STS to be a dangerous environment for its vulnerable residents, subjecting them to serious harm, and concluded that Defendants were in contempt:

Indeed, STS's systemic flaws have caused many residents to suffer grave harm, and, in several instances, death.

931 F.Supp. at 983-984 (footnotes omitted). The Special Master was appointed to formulate a remedy, and to monitor and report on Defendants’ compliance.

II. The Remedial Plan’s Habilitation Provisions.

The Special Master submitted the Remedial Plan with the consent of the parties. The Plan was adopted by the Court’s Order of April 21, 1998. The 313 page comprehensive plan contemplated a transformation of STS. It addressed Habilitation in detail, both directly and indirectly. At Court Requirements 43, 44 and 52, the Remedial Plan required adequate Habilitation.⁷

Court Requirements 43, 44 and 52, mandate that:

- Clients’ “individual and group training and programs” must be evaluated at least annually. CR 43, EC 3.
- All clients must be provided the Habilitation programs defined in their individual Overall Plan of Service. CR 43, EC 4.
- All clients who need a day program must be in a day program which “meet[s] each client’s needs.” CR 44, EC 1 and 2.
- Work programs must be provided to “all individuals in need of” a work program. CR 44, EC 3.
- There must be “consistent implementation” of Habilitation programs. CR 52, EC 3.
- Habilitation programs must be “available” and clients must be referred to them. CR 52, EC 4.

III. Defendants’ Non-compliance Continued in 1998-2001.

In 1998, 1999 and 2001, Defendants were found to be in continued non-compliance with Habilitation requirements.

Defendants were found to be in non-compliance with the Habilitation requirements in the master’s preliminary 1998 Compliance Review. Again, non-compliance was found in the

⁷ Many other provisions relate to Habilitation as well, e.g., those on behavior plans, psychotropic medication, restraints, case management, and those which on structural elements such as professional and direct care staffing. Those provisions have previously been released from active judicial oversight.

1999 Compliance Review by a national team of experts.⁸ Defendants did not request an evidentiary hearing to contest those fact findings and they were accepted.⁹

Several months after the experts' report the master noted that Defendants' own report on CR 43 "corroborates the existence of compliance issues in the area of habilitation," showing both low rates for client engagement and also lower than desired compliance for CR 43, EC 4 (clients receiving OPS-mandated training).¹⁰

In 2001, another national expert compliance review took place.¹¹ The Special Master proposed a team of ten (10) consultants to review CR 43, 44 and 52 on Habilitation (he soon after revised the number to nine (9)). Defendants' objection to the size of the team was overruled by the Court by Order of August 30, 2001, finding: "The court is persuaded that the Special Master's proposal is reasonable and that a reduction in the number of reviewers would result in a longer period of review with very little effect on the cost of the review." The Habilitation Review site visit occurred on October 15 – 19, 2001.

On January 8, 2002, the Special Master disseminated the consultants' report on the 2001 review. The report found non-compliance with all habilitation requirements, except that the consultants found compliance with Court Requirement 44, EC 1 (all clients who need a day program must be in a day program).¹²

Defendants' data corroborated this negative conclusion in an important dimension. A vital measure of Habilitation is adequacy of the day/vocational programs provided to STS residents. About the time of the master's expert team review, Defendants acknowledged serious problems in providing consistent day/vocational programs. Defendants describe these programs as a "vital component of the department's mission."¹³ Court Requirement

⁸ The 1999 Compliance Report was provided to the parties by Special Master's Order of February 11, 2000.

⁹ Special Master's 11th Quarterly Report to the Court at 14-16 (May 10, 2000) details the several occasions at which Defendants declined to request an evidentiary hearing.

¹⁰ Special Master's 12th Quarterly Report to the Court at 15-16 (Sept. 25, 2000).

¹¹ There was no comprehensive review in Fall 2000 because the process established by the Order of July 6, 2000 required Defendants to take the initiative to seek release from oversight.

¹² Remedial Plan at 233; Habilitation Review 2001 (January 8, 2002) at 21.

¹³ Court Requirement 44: Day/Vocational Programs:

The availability of day programs for persons who are mentally retarded is a vital component of the department's mission. Like residential settings, day programs must be developed to meet individual client needs. Therefore, the department is committed to the development of programs designed to promote client growth and independence and to provide an array of day program opportunities, emphasizing employment, coupled with the necessary support to increase and maintain living skills.

44, EC 2, mandates that “all of these Day Programs meet each client’s needs.” These individualized programs are intended to “promote client growth and independence.”¹⁴ At the end of 2001 and beginning of 2002, STS “acknowledged, and was seeking to address, a very high and unacceptable rate of STS-based day service cancellations.”¹⁵ “Nearly all of the 630 STS clients attend a day or vocational program. From April to December, 2001, on a monthly basis, 14% to 24% of individual clients’ ‘day services’ have been cancelled.”¹⁶ STS’ own “goal” or acceptable rate of cancellations was 5%. Thus, the 14% to 24% cancellation rate was grossly unacceptable.

IV. The Joint Committee Adopts the 2002 OPS/Habilitation Initiative

In their January 29, 2002 joint report, the parties agreed “not to engage in a detailed analysis of the consultants’ [2001] various findings” and Defendants “expressed a willingness to address [the concerns raised in the Habilitation Report.]”¹⁷

On May 1, 2002, the parties met with the Special Master, Dr. Guy Caruso, one of the writers of the Habilitation Report for the master, and Maria Laurence, expert for the United States. During the meeting, the parties agreed that the Special Master would convene a “Joint Committee” to make “specific proposals” for “improvement” of habilitation at Southbury Training School.¹⁸ The parties agreed that Guy Caruso, Maria Laurence and various staff from STS, including Kathy Hanewicz, Director of Family Support Services, and Kevin McCullough, Assistant Director of Clinical Services, would constitute the Joint Committee.

The Special Master on May 6, 2002 postponed compliance determination proceedings on Habilitation to permit the Joint Committee to come to the table with remedial proposals.

The Joint Committee’s issued its report August 7, 2002.¹⁹ It adopted an unprecedented initiative to be implemented by Defendants, an effort later to be described as a “sea change” by Defendants’ expert, and a “cultural change” by a Defendant official. Among the steps in the initiative were:

1. Introduction and utilization of a revised personal assessment in the OPS process.

Remedial Plan at 233.

¹⁴ Ibid.

¹⁵ Special Master’s 17th Quarterly Report to the Court at 12 (Mar. 2, 2002).

¹⁶ Special Master’s 17th Quarterly Report to the Court at 12-13 (Mar. 2, 2002).

¹⁷ Ibid. at 2-3. Defendants filed a separate response regarding the Habilitation Report on February 8, 2002. See Defendants’ Response to “Habilitation Report.” (February 8, 2002).

¹⁸ Special Master’s Order of May 6, 2002 at 1, n. 1.

¹⁹ The Joint Committee Report is Attachment F to the Special Master’s 19th Quarterly Report to the Court (Sept. 10, 2002).

2. Modifications to the OPS meeting process and the OPS documentation.
3. Introduction and utilization of additional QA process for the OPS meeting and OPS documentation.²⁰

Defendants' plan projected a completion date of January 31, 2004 to "expand the pilot" throughout STS. The plan came to be known as the OPS/Habilitation Initiative.

V. The Special Master Accepts the OPS/Habilitation Initiative.

The Special Master accepted what he described as the "dramatic and sweeping" OPS/Habilitation Initiative in his 19th Quarterly Report to the Court (Sept. 10, 2002).

Defendants have launched a dramatic and sweeping revision of the habilitation planning and implementation processes, one so extensive that Defendants understandably expect it will not be expanded to all STS residents until January 2004.²¹

A pilot for six residents was in place by that time. The master stated that, "It is hoped that this initiative will remedy the deficiencies identified by the consultant team almost a year ago."

The master concluded: "This Habilitation Plan is perhaps the most significant undertaking by Defendants (apart from quality assurance) since the appointment of the Special Master."²²

VI. STS Layoffs Delay the Habilitation Hearing.

Subsequently, a hearing on compliance with the Habilitation requirements was scheduled, and then continued, numerous times, generally on the request of one or both parties.²³ To expedite the process, and shorten the hearing, the master ordered that the scope of the hearing would be limited to the new Initiative and the results of the 2001 compliance review.²⁴

At that point, an unexpected event occurred which threatened to derail the progress which was being made. Beginning December 6, 2002, Defendants notified the Special Master of the Governor's decision to lay off several thousand state employees, including nearly 100 STS employees. The Governor is a named Defendant. The Court and master concluded

²⁰ Ibid.

²¹ Special Master's 19th Quarterly Report to the Court at 17 (Sept. 10, 2002).

²² Special Master's 19th Quarterly Report to the Court at 18 (Sept. 10, 2002) (emphasis added).

²³ See, for example, Special Master's 20th Quarterly Report to the Court at 9-10 (Dec. 19, 2002).

²⁴ Defendants contended that, apart from the then-limited Initiative, no relevant improvements had been made in Habilitation since the 2001 expert review. Therefore, they were precluded from contending that 2001 conditions no longer prevailed. See Special Master's Order of November 27, 2002 at 3 note 5.

that Defendants' layoff plans raised serious compliance concerns and urged Defendants to reconsider the layoffs.²⁵ During a status conference with the parties on January 21, 2003, it was decided to postpone the habilitation hearing so that the effect of the layoffs might be considered.

In its Order of February 25, 2003, the Court stated: "It is regrettable that Defendants would choose to make cuts of important staff who are responsible for some of Defendants' most fundamental obligations, thereby potentially delaying the conclusion of this case." The Court directed the Special Master to consider the effect of the layoffs in making future compliance determinations and to reconsider "any related prior compliance determinations in light of the layoffs." This direction applied to "any remedial orders which the Special Master may ascertain are affected by the layoffs, even if there was previously a determination of compliance."²⁶

The Court on February 25, 2003 acknowledged that its order would require the master to reschedule proceedings and conduct supplemental compliance reviews with the relevant consultants. On February 25, the master continued the Habilitation Hearing until May 21, 2003 to permit consideration of the effect of the layoffs. The Court overruled Defendants' motion to reverse the order.

In response to the Court's order, the master invited the parties to send representatives to a Monday, March 10, 2003 meeting of independent consultants to consider the possible effects of the layoffs on compliance.²⁷ On Friday afternoon, March 7, Defendants informed the master that they would not participate in the meeting.

VII. The Master's Consultant Rates the OPS/Habilitation Initiative Positively.

In mid-January, 2003, Jaylon Fincannon submitted his report on the Habilitation Initiative, finding that the Initiative's strategies were "comprehensive and if implemented as stated, will result in the successful implementation of a more person-focused approach to the provision" of habilitation at STS.²⁸ Defendants themselves found that the Initiative

²⁵ See Special Master's January 7, 2003 memorandum to Defendants, Attachment C to the Special Master's 21st Quarterly Report to the Court (Mar. 20, 2003).

²⁶ Ruling of March 11, 2003 at 2 (denying Defendants' motion for clarification and reconsideration of Order of February 25, 2003 on the layoffs).

²⁷ Defendants' request to delay this meeting was denied as moot. Ruling of March 11, 2003 at 4, n.4.

²⁸ Fincannon, Person-focused Overall Plan of Service Enhancement Initiative (Jan. 13, 2003) at 4, filed with Special Master's Order of January 17, 2003.

The Special Master's independent consultants on June 2, 2003 completed a review of the impact of staff reductions on Habilitation and Case Management. Special Master's Order of June 10, 2003 Filing Consultants' June 2, 2003 Report, Impact of Staff Reductions on Habilitation and Case Management. The layoffs, it was determined, were problematic with regard to compliance with the remedial orders.

imbued STS with an “enhanced sense of meaning and purpose” and the individual planning process was now “infused with a new ‘energy.’”²⁹

On October 28, 2003, after an extensive hearing on case management, the Special Master applauded the OPS/Habilitation Initiative. He found that Defendants were “providing person centered plans to STS residents pursuant to the OPS Initiative, which is the vehicle Defendants have chosen for the mandatory person centered planning” under the Case Management Plan.”³⁰ However, at that point, with implementation slow, less than 100 of the then approximately 600 STS residents had had the benefit of the Initiative and Defendants were reporting that it would take two years, not one year, to bring the Initiative to all STS residents.³¹

VIII. Compliance Resolution Is Delayed.

On June 5, 2003, the parties provided the Special Master with an agreement “to resolve disputes” regarding Habilitation. The agreement called for at least two further reviews of the Habilitation Initiative by Jaylon Fincannon (who had been appointed by the master as a consultant). Rather than settle the dispute, the proposed Agreement actually put off the merits of this litigation indefinitely. It provided no timeline and did not require review of actual compliance. The master permitted the parties to resubmit an agreement³² and they informed him that they would keep him informed of any progress.

In light of the above, the hearing was continued again to June and then July, and then to September 8, 2003, and then continued sine die without objection from the parties and after extensive discussion with them.³³ The parties informed the Special Master at the September 11, 2003 parties’ meeting that they had agreed on November 17, 2003 as the date to start the Habilitation hearing. The Special Master concurred. The parties requested yet another delay and the master continued the Habilitation hearing sine die on November 20, 2003, ordering a status report from the parties in 2004.³⁴

²⁹ Special Master’s 22d Quarterly Report to the Court at 11 (July 8, 2003) (quoting Defendants May 28, 2003 assessment of the OPS/Habilitation Initiative).

³⁰ Special Master’s Report to the Court No. 52 at 31 (Oct. 28, 2003) (decision on Case Management Plan compliance).

³¹ Special Master’s Report to the Court No. 52 at 31 (Oct. 28, 2003) (less than 100 new OPSs). Between the summer of 2002 and the April 14, 2003 parties’ meeting, Defendants reported that just 20 people had the personal assessments for the new OPS, including the 6 in the pilot. Special Master’s 22d Quarterly Report to the Court at 10-11 (July 8, 2003).

³² June 10, 2003 Special Master’s Order on the June 5, 2003 Parties’ Joint Agreement to Resolve Disputes Concerning the Court Requirements on Habilitation.

³³ Special Master’s Order of May 13, 2003; Special Master’s Order of June 23, 2003. At the parties’ request, the hearing was later continued sine die and the parties requested to provide suggested dates. Special Master’s Order of September 2, 2003.

³⁴ Defendants at first objected to a delay beyond January 2004, but later withdrew their objection.

On February 17, 2004, the parties proposed an agreement to the Court to end the Remedial Plan compliance proceedings without further Court adjudication or determinations by the Special Master. As to Habilitation, the parties again proposed that Jaylon Fincannon conduct another review and report to them. The Habilitation hearing before the master (and other proceedings which might require hearings) were held in abeyance by the master pending decision by the Court on the “agreement” which ultimately was revised several times and never quite finalized.

The Court disapproved the agreement by Order of July 21, 2005, finding that it had occasioned needless delay:

The parties’ machinations over the last 17 months has done little to advance the process begun under the Remedial Plan to purge the finding of contempt against the Defendants and has done little to advance the interests of Southbury Training School (“STS”). The Court is confident that, had the process continued without the hiatus occasioned by the parties’ representation that a settlement agreement was forthcoming, mot, if not all, of the remaining requirements would have been released by now.³⁵

The Court that day also directed the master to proceed to make all outstanding compliance determinations.

IX. The 2005 Compliance Evaluation.

On Habilitation, the master appointed the parties’ repeatedly chosen expert, Mr. Fincannon, to conduct the review, but Defendants objected, claiming that he might be unfair to them.³⁶ To move the matter forward, the Court accepted another suggestion of the parties to serve as the Special Master’s retained consultant. He was Dr. Edward Skarnulis, a developmental disabilities expert who had served the Court in an STS-related matter. The Special Master has known Dr. Skarnulis professionally for many years and was confident in his ability to assess the results of the OPS/Habilitation Initiative.

The report by Dr. Edward Skarnulis, Habilitation Services at Southbury Training School, was filed with the Special Master’s Order of November 15, 2005.

With the OPS/Habilitation Initiative now implemented across STS, the consultant review found compliance with the Habilitation requirements. The Special Master agrees.

³⁵ Defendants appealed the Court’s ruling. This is the first appeal filed since the approval of the Remedial Plan.

³⁶ Special Master’s Order of September 6, 2005 (appointing Mr. Fincannon); Order of September 30, 2005 (sustaining objection); Special Master’s Order of October 7, 2005 (appointing Dr. Skarnulis).

Defendants’ allegations against Mr. Fincannon were hardly credible since Defendants had repeatedly endorsed and suggested Mr. Fincannon, and had urged the Court to appoint him as someone who would render a fair acceptable judgment.

The report emphasizes that Habilitation encompasses a productive and active approach, one called “active treatment” under the requirements of the federal-state ICF/MR program which funds STS. Habilitation means “...measures taken to assist the individual to live a full and productive life...” *and* it is a “... *teaching or instructional* model of service, with this didactic function included in order to enhance the skills and personal self-sufficiency of people with developmental disabilities.”³⁷

Dr. Skarnulis reviewed and observed a sample of 49 residents (close to 10% of the population), 23 female and 26 male. The youngest was 40 and the oldest was 82 years old. The median age was 56 and the mean age was 58. Only 11 of the 49 were in their 40s. In both age and other characteristics, the sample mirrored the STS population as a whole.

The report found that the required person centered planning was reflected in residents’ daily lives.

We were concerned that their OPS’s reflected individuality and uniqueness rather than all having been prepared in ways that made them indistinguishable from one another. What we found was that the level of cognitive or physical ability didn’t translate into “cookie cutter” Plans. Each was unique and reflected individual strengths, abilities, needs and wants, which in turn were translated into individualized goals for the coming year.³⁸

There were no waiting lists for programs. Echoing the Remedial Plan’s attention to the aging of STS residents, Dr. Skarnulis noted the special attention which is merited in the Habilitation provided to these residents.³⁹

While STS programs are not cutting edge or innovative,⁴⁰ they are focused on the individual and, through the OPS/Habilitation Initiative, the programs generally (though

³⁷ Skarnulis Report at 9.

³⁸ Skarnulis Report at 12.

³⁹ The Remedial Plan required an Aging Plan in light of the fact that admissions to STS are, and will be, closed, and that services for elder people with developmental disabilities is especially challenging. Dr. Skarnulis commented:

The age of the population correlates directly with issues involving habilitation, both currently and in the future. With advancing age, health becomes more central to program planning. The ability to do strenuous physical labor is reduced. Reduced stamina, vision and hearing need to be considered in individual plans. OPS documents reflect team consideration of these issues. Some clients have chosen to retire and some have a reduced number of hours of day programs provided by staff that go to their residential settings.

Report at 12.

⁴⁰

not universally) are meeting the needs of the residents of STS as detailed in the Remedial Plan's Habilitation requirements.⁴¹

X. Conclusion

Defendants were adjudicated in contempt in 1996 for failure to meet the Habilitation requirements (among others) of the 1986 Consent Decree. They made a renewed commitment to specific Habilitation requirements in accepting the 1998 Remedial Plan.

From 1998 to 2001, however, Defendants remained in non-compliance with regard to Habilitation although, by the end of that period, they were willing to discuss alternative approaches to achieving compliance.

In 2001, the Special Master suggested that a Joint Committee with representatives of the master and the parties might formulate a successful strategy. The parties agreed and, in early 2002, after amicable and thoughtful work, the Joint Committee recommended the OPS/Habilitation Initiative as a means to transform Habilitation planning and implementation at STS.

Describing it as a "dramatic and sweeping" and "perhaps the most significant undertaking by Defendants (apart from quality assurance)," the Special Master endorsed the OPS/Habilitation Initiative which, at the time, was expected to be complete by January

None of the campus-based programs observed is what might be considered "cutting edge" or innovative. Workers at the Farm are doing pretty much what was being done during the early years of institutions (circa 1860-present). Similarly, restaurants such as Leonardo's and the Gatehouse [at STS], were being operated in Kentucky, Oklahoma, Pennsylvania, Nebraska and other states as early as the 1970's. It should be noted, however, that there is one significant difference between the examples noted above and STS. Historically, farms, restaurants, work crews, work stations in industry and other places of employment employed people who were classified as mild, or "borderline" intelligence (a classification level abandoned by the AAMD in the mid-1970's)). In other words, they were very capable individuals who required relatively little supervision. However, many of the individuals employed in such settings by STS fall into the moderate to severe ranges of mental retardation and receive much more supervision by STS and community agency staff.

Report at 18-19.

⁴¹ Dr. Skarnulis' work papers show that he evaluated Defendants to be in compliance for the vast majority of requirements for the vast majority of the clients in his sample. There were few exceptions. The Remedial Plan does not demand perfection. The Special Master makes a positive compliance determination when clients are not harmed and there is an absence of uncorrected systemic issues, even in instances of spotty insignificant deficiencies. Remedial Plan at 8.

2004.⁴² It took Defendants until about September, 2005 -- more than a year and a half longer -- to expand the initiative fully to all STS residents.⁴³

It is a pleasure to report that, finally, with Defendants having taken 3 ½ years in its development and implementation, the OPS/Habilitation Initiative benefits all the residents of STS. The Initiative's vision impressed the Special Master when it was adopted in 2002, was applauded by the master's consultant in its infancy in 2003, and now in its maturity is found to have successfully transformed care at STS.

The Court has noted that "[t]he OPS/Habilitation Initiative is designed to move from "deficit driven plans to planning from peoples' strengths and preferences, ... to a person-focused model."⁴⁴ It represents what Case Management Director Kathy Hanewicz described as a "culture change" for STS; Ms. Hanewicz explains that "we are attempting to get a total different mind-set in people."⁴⁵ The master is hopeful that this change will be sustained.

Recommendation. For the above reasons, the Special Master recommends that the Court release from active judicial oversight all outstanding Remedial Plan requirements regarding Habilitation.

The OPS/Habilitation Initiative has now been implemented successfully.

The following Remedial Plan requirements are due for release: CR 43, EC 3 and 4; CR 44, EC 1, 2 and 3; CR 52, EC 3 and 4; and CR 14, EC 2.

Respectfully submitted,

David Ferleger
Special Master
January 13, 2005

⁴² Special Master's 19th Quarterly Report to the Court at 17-18 (Sept. 10, 2002).

⁴³ In late 2003, about 100 residents were covered by the Initiative. This number had increased to 465 of 572 residents by June 30, 2005, and to 508 of 568 residents by August 31, 2005. See Court's Order of November 22, 2005 at 23.

⁴⁴ Court's Order of November 22, 2005 at 23.

⁴⁵ Cited at Special Master's Report to the Court No. 52: Case Management at 27-28 (Oct. 28, 2003).

Ms. Hanewicz deserves special mention and praise here. She was responsible for the thoughtful yet energetic expansion of the Initiative across STS, insisting at all times on quality, rather than mere numerical or paper success.