

Wayne Greenleaf, Regional Administrator, Office of Mental Retardation and Developmental Disabilities, and are sued in their respective official capacities.

6. The Defendants have authority and responsibility for the operation of the Metropolitan Developmental Center, Belle Chasse, Louisiana and are officers of the Executive Branch of the State of Louisiana.

7. On November 30, 1984, the Attorney General of the United States, through Assistant Attorney General, William Bradford Reynolds, Civil Rights Division, notified the Governor of Louisiana, the Attorney General of Louisiana, the Secretary of the Department of Health and Human Resources, and the Superintendent of the Belle Chasse State School of his intention to commence an investigation, pursuant to the Civil Rights of Institutionalized Persons Act, 42 U.S.C. §1997, of allegations of unlawful conditions at the Belle Chasse State School, Belle Chasse, Louisiana.

8. Following a thorough investigation, the United States Attorney General, by and through the Assistant United States Attorney General, on January 16, 1986, informed the Governor of Louisiana that the Attorney General had reasonable cause to believe that persons residing in or confined to Belle Chasse State School were being subjected to egregious and flagrant conditions that deprived them of their rights, privileges, and immunities secured by the Constitution and laws of the United States. Officials of the State of Louisiana extended their full cooperation throughout the course of the investigation.

9. The Belle Chasse State School has been renamed the Metropolitan Developmental Center (MDC).

10. The parties agree that the residents of MDC have rights to care and training that are secured and protected by the Constitution of the United States. The parties entering into this Consent Decree recognize these constitutional interests, and for the purpose of avoiding protracted and adversarial litigation, agree to the provisions set forth herein.

11. In entering into this Consent Decree, the Defendants do not admit any violation of law and this Consent Decree may not be used as evidence of liability in any other proceeding. Any violation of provisions of this Consent Decree does not create a private right of action.

12. The provisions of this Consent Decree are a fair and appropriate resolution of this case.

13. This Consent Decree shall be applicable to and binding upon all of the parties, and their officers, agents, employees, assigns, and successors.

I. Purposes and Objectives

The State of Louisiana and the United States stipulate and agree that the purposes and objectives of this Consent Decree are to establish as promptly as practicable the following conditions at MDC in order to ensure that residents of the facility are not being deprived of rights, privileges or immunities secured to them by the Constitution of the United States:

1. That degree of care must be provided which is sufficient to protect all residents from unreasonable risks to their personal safety both by the conduct of staff and of other residents, and from unreasonable use of bodily restraint.

2. Adequate medical care must be afforded all residents pursuant to the exercise of professional judgment by a qualified professional.

3. Psychotropic and other medications must be prescribed pursuant to the exercise of professional judgment by a qualified professional and must be administered to residents by, or under the direct supervision of, a qualified professional exercising professional judgment.

4. Bodily restraint procedures, when appropriate, must be administered safely and pursuant to the exercise of professional judgment by a qualified professional.

These purposes and objectives shall be achieved at MDC by implementing the requirements set forth in Parts III and IV and by developing and implementing the plans described in Part V of this Consent Decree.

II. Definitions

As used in this Decree, the following definitions shall apply:

1. "Physician": A medical doctor lawfully entitled to practice medicine.

2. "Psychiatrist": A physician who either is certified by or is eligible for certification by the American Board of

Psychiatry and Neurology or who has successfully completed an approved residency program in psychiatry and upon completion of post-residency requirements will become eligible for examination for such certification.

3. "Qualified Professional": A person competent, whether by education, training, or experience, to make the particular decision at issue.

4. "Bodily Restraint" (or "Restraint"): Any physical or mechanical device used to restrict the movement of a resident or the movement or normal function of any portion of the resident's body, excluding those devices used only to provide support for the achievement of functional body position or balance and devices used for specific medical and surgical (as distinguished from behavioral) treatment; and chemical substances used solely to restrict the movement of a resident, including behavior management drugs as defined herein.

5. "Behavior Management Drugs": Drugs that are prescribed or administered for the purpose of modifying behavior. Included are major and minor tranquilizers and antidepressants. Excluded are drugs that may have behavior modifying effects but that are not prescribed or administered for that purpose, such as anticonvulsants.

6. "Training Program" (or "Training"): A program of steps and activities, including behavior management and the teaching of basic self-care skills, determined by a qualified professional consistent with professional judgment to be necessary to protect a resident from unreasonable risks to

personal safety and to facilitate his or her ability to function free from undue bodily restraint.

7. "The State": The Executive Branch of the Government of the State of Louisiana, specifically including the Governor of the State of Louisiana, the Louisiana Attorney General, the Louisiana Department of Health and Human Resources, the administration of MDC, and any and all of their officials, agents, employees, or assigns, and the successors in office of such officials, agents, employees, or assigns.

8. "Professional Judgment": A decision by a qualified professional that is not such a substantial departure from accepted professional opinion, practice, or standards as to demonstrate that the person responsible did not base the decision on such professional opinion, practice, or standards.

III. Conditions Requiring Immediate Correction

In order to eliminate conditions which may pose an immediate threat to the life, health, and safety of the residents of MDC, the State agrees to meet the following requirements:

1. Within 30 days after the entry of this Consent Decree, examine any patient receiving a polypharmacy regimen and cease the practice of any polypharmacy not consistent with professional judgment.

2. Within 30 days after the entry of this Consent Decree, commence periodic medical monitoring, as appropriate to the behavior modification or antiseizure medication regimen involved, including urinalysis, electro-

- B. Registered Nurses 1:65 day shift and evening shift
 (excluding Director 1:80 night shift
 of Nursing and Staff
 development nurse)
- C. Licensed Practical 1:60 day shift and evening shift
 Nurses 1:70 night shift

2.A. If the State should choose to retain the current method of providing psychiatric care to residents by employing part-time psychiatric consultants to advise MDC physicians on matters of psychiatric care, the following full-time equivalent psychiatrist-to-resident ratio shall apply:

Consulting Psychiatrists 1:700 total residents

B. If the State should choose to employ clinical psychiatrists to provide direct psychiatric care for the residents, psychiatric staffing must be provided in accordance with the staffing plan developed by the State and approved by the United States pursuant to Part V, infra.

3. At the State's discretion, the ratios may be obtained hiring additional needed staff or by reducing the resident population at MDC, or both. The State agrees that, if it decides to reduce the population of the school by discharging patients, the determination as to which residents shall be discharged will be made by professional staff qualified to make such decision.

V. Plans

In order to establish compliance with this Consent Decree, the State shall file with the Court no later than August 22, 1987, its plan(s) for implementing this Consent Decree. Such plan(s) shall set forth:

1. The steps that the State will take in order to meet the staff-to-resident ratios required under the terms of this Decree. Appropriate steps may include release of residents, changes in personnel policies, hiring standards and employment practices, adjustments in salaries or pay levels, enhanced recruitment efforts or other outreach techniques, and other measures calculated either to attract and retain qualified staff, or to reduce the resident population, or both.

2. The procedures to be utilized to provide for consultation and communication of relevant information between and among professional personnel regarding residents' care, medical treatment, and training needs and the communication of information regarding each resident's care, medical treatment, and training to direct care staff who provide care for that resident.

3. The measures that will be undertaken to provide adequate medical care, including the medical monitoring of drugs and screening for adverse side effects.

4. The policies and procedures that will govern the use of drugs, particularly behavior management drugs, including monitoring and review of whether the drugs prescribed for and administered to each resident are appropriate for the needs of that resident, drug dosage levels, use of two or more behavior management drugs, and utilization of drugs with a behavior modification program.

5. Recordkeeping systems and administrative procedures with respect to each patient's care, medical treatment,

and required training that shall be utilized to maintain and make available in each resident's record such information as is professionally necessary to permit the exercise of professional judgment in that resident's care, medical treatment, and training.

6. The policies and procedures that will be utilized to provide that bodily restraints (a) are administered only pursuant to the judgment of a qualified professional; (b) are not to be used as punishment, in lieu of training programs prescribed by a qualified professional or for the convenience of staff; but (c) may be used, when appropriate, to control residents when they engage in isolated incidents of violence and/or dangerous behavior. Said policies and procedures shall provide that the decision to restrain a resident shall be reviewed by a qualified professional at specified reasonable intervals to determine whether or not the continuation of such restraint is professionally justified.

7. All plans shall state in specific terms and reasonable detail the actions to be taken by the Defendants, the dates of such actions, the text of the procedures, regulations, or protocols promulgated and issued by the Defendants.) The plans shall include a description of the personnel, by job title, responsible for implementing each plan, and the name and qualifications of the professional consistent with whose professional judgment each plan has been prepared and submitted.

8. All plans shall state the specific date or dates by which each shall be implemented in toto but in no event shall

the final implementation date of any plan be later than _____
February 22, 1988, with respect to the plan required in Part V,
paragraph 1, and February 22, 1989, with respect to all other
plans required by Part V.

VI. Construction and Implementation

In construing and implementing the terms of this Decree,
the following are agreed to by the parties:

1.A. The United States shall have sixty (60) days from
receipt of any plan in which to file a response to the plan
with the Court. If the United States objects to any plan or
portion thereof filed by the State, State and Federal officials
shall meet in a good faith effort to resolve their differences.
If the State and Federal officials are unable to resolve
their differences through negotiation, the adequacy of the
contested portions of the proposed plan to achieve the purposes
and objectives set forth in Part I of this Consent Decree
shall be determined by the Court. The court shall determine
the adequacy of the defendants' plans in accordance with the
following standard:

1. The plan at issue must have been
developed by a qualified professional;
2. The plan at issue must be implemented
by qualified professionals;
3. The plan at issue must have been
designed to implement the purposes and objectives
of the decree;

4. If implemented, there is reasonable certitude based upon the evidence of professional judgment that the plan at issue will achieve the purposes and objectives it was designed to achieve.

5. The plan at issue must be consistent with professional judgment.

B. If, after a plan is approved, state officials decide to modify that plan or any portion thereof, State officials shall notify the Court and the United States of the proposed modification. The United States shall have sixty (60) days from the receipt of any plan in which to file a response to the plan with the Court. If the State and Federal officials are unable to resolve their differences through negotiations, the adequacy of the proposed modification to achieve the purposes and objectives set forth in Part I of this Consent Decree shall be determined by the Court. The Court shall determine the adequacy of the defendants' modified plans in accordance with the standard set forth in Part VI, paragraph 1.A. of this decree.

C. Plans, including modifications of plans, to which the United States does not timely object, shall be deemed approved by the Court.

2.A. The State shall submit periodic compliance reports to the United States and the Court. The reports shall be filed quarterly, fifteen (15) days after the end of each quarter, beginning on November 15, 1987, and continue until such time as this Consent Decree is terminated.

B. The compliance reports shall describe the State's progress towards implementation and compliance with the provisions of this Consent Decree and the plan(s) submitted pursuant thereto.

3. The United States and its attorneys, consultants, and agents shall have reasonable access to the facilities, records, residents, and employees of MDC upon reasonable notice to the State for the purpose of ascertaining compliance with the Decree. Such access shall continue until this Consent Decree is terminated.

4. All parties shall bear their own costs including attorney fees.

VII. TERMINATION OF DECREE

1. The parties contemplate that the defendants shall have fully and faithfully implemented all provisions of this Consent Decree and the plans herein required to be submitted and approved by the Court, on or before February 22, 1989.

2. The Court shall retain jurisdiction of this action for all purposes under this Consent Decree until the defendants shall have fully and faithfully implemented all provisions of the Consent Decree and plans submitted pursuant thereto, and until the judgment be discharged.

3. All plans required under this Decree shall be submitted for approval by the Court and, if approved, shall be issued as orders of the Court and enforceable as such. The United States shall have sixty (60) days from receipt of

a plan to comment or object to the approval thereof by the Court.

4. On or after the date on which the defendants shall have fully and faithfully implemented all provisions of this Consent Decree and the plans submitted, the defendants may move that the injunctions entered therein be dissolved, the judgment discharged, jurisdiction terminated, and the case closed and dismissed with prejudice on grounds that the defendants have fully and faithfully implemented and maintained all provisions of this Consent Decree and the plans submitted pursuant thereto.

5. Dismissal shall be granted unless, within sixty (60) days after receipt of the defendant's motion, the United States objects to the motion. If such an objection is made with particularity, the Court shall hold a hearing on the motion and the burden shall be on the United States to demonstrate that the defendants have not fully and faithfully implemented all provisions of this Settlement Agreement or any approved plan(s) or any part thereof and, if objection is based upon failure to implement any plan or part thereof, that such plan or part thereof is essential to the achievement of one or more of the purposes and objectives set forth in Part I of this Consent Decree. If the United States fails to meet this burden, the injunctions shall be dissolved, this judgment shall be discharged, jurisdiction shall be terminated forthwith,

and the case shall be closed and dismissed with prejudice.

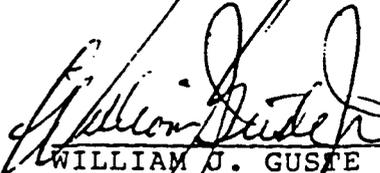
Consented to by the undersigned:

FOR THE STATE OF LOUISIANA

FOR THE UNITED STATES OF AMERICA

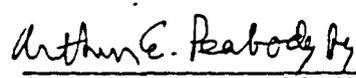

Date: 7/15/87
EDWIN W. EDWARDS
Governor


Date: 7/8/87
WM. BRADFORD REYNOLDS
Assistant Attorney General


Date: 7/26/87
WILLIAM J. GUSTE
Attorney General


Date: 7/20/87
JOHN VOLZ
United States Attorney
Eastern District of Louisiana


Date: 7-16-87
SANDRA L. ROBINSON
Secretary
Louisiana Department of
Health and Human Resources


Date: 7/8/87
ARTHUR E. PEABODY, JR.
Chief
Special Litigation Section


Date: 7/8/87
ANDREW J. BARRICK
MARK L. POLLOT
Attorneys
Special Litigation Section
Civil Rights Division
U.S. Department of Justice
Washington, D.C.

FOR THE STATE OF LOUISIANA

FOR THE UNITED STATES OF AMERICA

Cecil Colwell Date: 7/17/87

CECIL COLWELL
Assistant Secretary
Office of Mental Retardation
and Developmental Disabilities

John Volz

Date: 7/20/87

JOHN VOLZ
United States Attorney
Eastern District of Louisiana

Wayne Greenleaf Date: 7/16/87

WAYNE GREENLEAF
Regional Administrator
Office of Mental Retardation
and Developmental
Disabilities

Henry A. Ferguson Date: 7/20/87

for WILLIAM BAITY
Assistant United States Attorney

WHEREFORE, the parties to this action having agreed to the provisions in the Consent Decree set forth above, and the Court being advised in the premises, this Consent Decree is hereby entered as the JUDGMENT of this Court.

IT IS SO ORDERED this 22 day of July, 1987
at New Orleans

Henry A. Mentz
UNITED STATES DISTRICT JUDGE