



MR-UT-001-002

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IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH

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PARRANT, et. al., on behalf of :
themselves and all others : SETTLEMENT AGREEMENT
similarly situation, :
Plaintiffs, :
v. :
STEWART, et. al., : Case No. 890907653CV
Defendants. : Judge Timothy R. Hansen

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IT IS HEREBY STIPULATED and AGREED by and between the
undersigned Plaintiffs and their attorneys, and the undersigned
defendants and their attorneys, on behalf of their respective
parties:

I. INTRODUCTION

1. This action was initiated on December 21, 1989, by
Plaintiff Lisa Parrant, individually; Matthew W., by his
guardians and next friends Melody W. and James W.; and various

other residents of the Utah State Developmental Center, by their attorneys the Legal Center for People with Disabilities, and by the Association for Retarded Citizens for Utah (now the ARC of Utah). The named plaintiffs brought the action on behalf of themselves and all other similarly situated residents at the Utah State Developmental Center.

2. The defendants in this action include members of the Board of Services for People with Disabilities, the Executive Director of the Department of Human Services, the Director of the Division of Services for People with Disabilities of the Utah State Department of Human Services, and the Administrator of the Utah State Developmental Center. Plaintiffs brought the action against those individuals in their official capacities.

3. After initiation of this action, the Court certified as a class all the then current residents of the Utah State Developmental Center.

4. The Court has jurisdiction of this matter and of the parties pursuant to Utah Code Annotated §§78-3-4(1), 78-33-1, and Rule 65A of the Utah Rules of Civil Procedure.

5. Each of the terms and conditions of this Agreement is subject to the legislative limitations with respect to available appropriations which are in effect on July 1, 1993.

II. PHILOSOPHICAL PRINCIPLES

6. The paragraphs contained in this section represent the guiding principles that are the foundation of this Agreement, and are offered to aid in the interpretation of the Agreement and to be utilized as criteria for the individual evaluation process set forth in this agreement.

7. The parties share the philosophy that persons with disabilities should have a lifestyle that is similar to that of persons without disabilities. The parties share the philosophy that persons with disabilities, their guardians, and parents should be active participants in the decisions that affect the services and support options available to them in the State's service delivery system.

8. The State of Utah supports and protects the liberty and dignity of people with developmental disabilities through statutes and rules which have the purpose of enhancing the opportunity for the individual to exercise his or her rights, providing them the opportunity to make independent decisions to the fullest extent possible and to live in an environment that approximates that of society at large, with a lifestyle similar to that of persons without disabilities. Included in these rights is the right of class members to consult with guardians, family members, and significant others concerning the choices

about where and with whom they wish to live, learn, and work.

9. The State of Utah's system of services to persons with mental retardation or other developmental disabilities has as a goal the protection of the right to integrated living. The parties share the belief that this goal is best met through a comprehensive system of community habilitation services designed to strengthen and maintain natural settings. Individuals with mental retardation and developmental disabilities best learn cognitive, social, and functional skills when taught in the environment in which they are expected to use those skills.

10. It is the State of Utah's intent, pursuant to U.C.A. §§62A-5-102(2) that, within appropriations authorized by the Legislature, and to the extent allowed under Title XIX of the Social Security Act, persons with mental retardation and developmental disabilities be afforded services and supports in the least restrictive and most enabling environment which meets the individual's needs and promotes the independence and productivity of the individual. It is also the intent of the State of Utah that the director of the Division of Services for People with Disabilities and the administrator of the Developmental Center consider the wishes and recommendations of the legal representatives of individuals who were admitted to the Developmental Center prior to July 1, 1993, before considering

discharge of those individuals.

11. The State of Utah's intent is to continue to promote residential environments and surroundings which allow persons with developmental disabilities and mental retardation the opportunity to live a life as normal as possible, and to associate with people who are both disabled and not disabled.

12. The parties stipulate and agree that the purposes and objectives of this Agreement are to meet as promptly as practicable the following goals: (a) the service needs of the plaintiffs and plaintiff class members will be evaluated; (b) recommendations will be made describing the services and supports best suited to meet the specific needs of each individual, and which are consistent with the philosophies set out in this Section; (c) Defendants will consistently and diligently plan to make all systems changes necessary so that the recommendations for appropriate placements may be implemented within the appropriations constraints set forth in U.C.A. §§62A-5-102; (d) Defendants will make best efforts to develop their yearly appropriations requests so that the recommended placements may be implemented; (e) each individual who resides at the Utah State Developmental Center will live in the placement recommended to meet their needs in accordance with Section VII within two years of the completion of that individual's evaluation under this

Decree, within the constraints of U.C.A. §§62A-5-102(2).

III. STIPULATIONS

13. The undersigned counsel are authorized by their clients to enter into this binding Agreement and to take all steps required of them by this Agreement.

14. For the purpose of this Agreement, the plaintiff class shall include all residents of the Utah State Developmental Center as of the date of entry of the Court's order based upon this Settlement Agreement. A list of said class members and their parents (if a minor) or legal guardians (if an adult) is attached hereto as Exhibit A.

15. After the entry of an order by the court based upon this Agreement, the Defendants will make reasonable efforts to assure that no person who can be served in a community-based program will be admitted to the Utah Developmental Center except in accordance with the provisions of U.C.A. § 62A-5-309 (1993).

16. Plaintiffs consider it desirable and in the best interests of the class members to settle their claims by entering into this Agreement.

17. Defendants consider it desirable and in their best interests to settle the claims brought against them and their predecessors in office by entering into this Agreement.

18. The parties represent to the Court that this Agreement

is fair, reasonable, and adequate to protect the class in accordance with the standards of Rule 23(e) of the Utah Rules of Civil Procedure.

19. By entering into this Agreement Defendants do not admit any violations of laws. The acceptance by the Court of this Agreement constitutes no evidence as to any issue of law or fact raised by either party in this action.

20. Defendants agree that this Agreement is fully binding upon them, their officers, agents, employees, and successors.

21. This Agreement is fully binding on the named Plaintiffs and on the members of the plaintiff class.

22. Plaintiffs and the plaintiff class are not barred by this Agreement from bringing any individual actions at law against Defendants for any incidents of abuse, neglect, injuries, or wrongful death that may have occurred prior to the acceptance by the court of this consent decree. Plaintiffs and the plaintiff shall not be barred from bringing any legal action for wrongs suffered subsequent to the acceptance of this decree.

IV. SUBMISSION OF SETTLEMENT AGREEMENT TO THE COURT

23. Promptly upon execution of this Agreement, counsel for the parties shall jointly submit this Agreement to the Court for its approval.

24. Notice of this Agreement shall be directed to each plaintiff class member as set forth at paragraph 13 and legal

guardians or designated legal representatives, if any exist. The Notice shall advise each class member of the substance of the Agreement and of their right to oppose the final acceptance of the proposed Agreement by the Court.

25. Upon final approval by the Court, this settlement Agreement shall be effective immediately.

26. Should the Court approve this Agreement and enter an order consistent with it, notice of the Agreement and Order shall be provided to the plaintiff class by publishing a summary of the settlement and notice of where a copy of it can be obtained in publications of general circulation throughout the state, by posting the same at the institution, and mailing copies of said summary and notice to all guardians and legal representatives of residents.

V. DEFINITIONS

27. Residential Service Delivery Model: the type of residential service provided by the Division of Services for People with Disabilities. This currently includes the Utah State Developmental Center, group homes, small group homes, specialized group homes, supervised apartments, apartment follow along, and supports and training brought into the family home.

VI. PLAN FOR SERVICES TO RESIDENTS OF THE UTAH STATE DEVELOPMENTAL CENTER

28. The Division shall place residents from the

Developmental Center into appropriate less restrictive placements and shall determine each year the number to be placed based upon the individual assessed needs of the residents. The Division shall confer with legal representatives to ensure the most appropriate placement for each resident.

29. Defendants agree to take reasonable steps to assure that class members shall be placed in settings consistent with their needs within two years after the completion of their individual evaluations. Availability of resources is a factor which may be considered in implementing placement recommendations.

30. In order to implement the Order based upon this Agreement, Defendants shall make best efforts to access not only those funding sources currently used to pay for community residential services, such as the Title XIX Home and Community Based Waiver, but all other funding sources reasonably available to meet the specialized needs of each individual as determined by the evaluations described below.

VII. EVALUATION OF RESIDENTS OF THE
UTAH STATE DEVELOPMENTAL CENTER

31. Within a four-year-period of the entry of the order based upon this Agreement, all class members, as defined in paragraph 14 above, will be evaluated to determine, given their already identified service needs and any subsequently identified needs, what

services and supports would best meet those needs. No fewer than twenty five per cent (25%) of the class members will be evaluated during each of the first three years. The initial class members to be evaluated shall be those individuals whose legal representatives have expressed a desire to have their child or ward placed into a community setting from the Developmental Center.

32. Evaluations will be conducted by the Interdisciplinary Teams at the Utah State Developmental Center, with staff of the Regional Offices of the Division of Services for People with Disabilities joining in that decision-making team. Supervisory staff at the Regional Offices of the Division may review the quality of evaluations. The evaluations shall be premised upon the following values and principles:

a. Personal growth. People with disabilities are capable of growth throughout life. Personal growth largely depends upon environment, training, the range and quality of learning experiences, and on positive expectations for improvement. Services shall facilitate (not restrict) people receiving services to confront new life challenges. Individuals with mental retardation and developmental disabilities best learn cognitive, social, and functional skills when taught in the environment in which they are expected to use those skills. All programming for teaching such skills should take place in the least restrictive, most normal

environment.

b. Individualization. People with disabilities have the same need for individual attention and identity common to everyone. Every person is unique in temperament, strengths, interests, and needs. Attention to individual characteristics encourages realization of a person's potential. Persons with disabilities have a right to receive services from a system that is accountable to each person and places the decision-making process as close to the person as possible.

Personal choice, as it reflects the preferences of the person with the disability, must be sought out, supported, and not limited by law or state policy. Freedom of choice among options for the person receiving services, or for the legally authorized substitute decision-makers, should be honored within resource constraints. The legal representatives and guardians of class members, and the class members, shall be involved in any decision to move an individual within the State's service delivery system. Decisions about discharging of an individual from the Utah State Developmental Center should be part of a team process that includes the individual, his guardian, and his designated legal representative, if one exists. If an individual has an advocate, the advocate should participate in the decision making process.

c. Integration. The opportunity to live, work, and associate with other people, including those with and without disabilities is

essential to any person's normal development and ability to contribute to society. While an individual with disabilities may need additional assistance to function well, this assistance need not interfere with physical, vocational, and social integration. Persons with disabilities, should, whenever possible, have the opportunity to use public transportation and recreation facilities, go to a doctor serving the general public, use local libraries, etc. The creation of duplicate systems for persons with disabilities is expensive and promotes unnecessary segregation. Training for service providers and special supports, when necessary, are two means by which generic systems may be made responsive to all persons, regardless of disabilities. Persons with disabilities should have a lifestyle that is similar to that of persons without disabilities. Every person learns appropriate behavior and normal patterns of living through experience. To learn this, a person should live in a regular home, whenever possible, and experience routines and activities in natural settings that are appropriate to a person's age. The ability to live a normal life depends, in part, on the quality and variety of learning opportunities. Individuals with disabilities should be provided the opportunity to make independent decisions to the fullest extent possible and to live in an environment that approximates that of society at large, with a lifestyle similar to persons without disabilities

d. Professionally-oriented criteria

The evaluations shall be initiated by the staff of the Utah State Developmental Center identifying the services and supports that each individual needs or may benefit from, environmental factors which may affect the individual, and measures that might be necessary in any transition of the individual to a new environment. The team conducting the final evaluations shall take that information and, along with any other information it may choose to gather, recommend the services and supports in which these needs and factors might be met, consistent with the criteria outlined in subsections a through c above, focusing on what it would take to serve the individual in an environment which most closely meets those criteria.

33. Should sufficient state and federal funds not be appropriated to substantially implement the terms of the Order based upon this Agreement, plaintiffs shall have the discretion, upon 120 days prior written notice, to bring an independent action or post-judgment motion when the failure to appropriate money results in a violation of the parties' federal statutory or constitutional rights.

34. Any disputes concerning any judgement or decision made as to placement services to be provided to an individual under the Order based upon this Agreement shall be resolved as follows:

(a) The class member, his/her guardian, or legal representative shall notify the evaluation team of any dispute.

(b) The parties or their designees shall meet within 14 days of notice of the dispute and attempt to reach a resolution.

(c) If a resolution is not reached, the State defendants shall retain a mental retardation professional, subject to the approval of the plaintiffs' counsel, who shall review the dispute and resolve the matter.

(d) Consistent with the class member's wishes and the terms and conditions of this Agreement, the State defendants shall assure the implementation of the professional's decision.

36. The State defendants, upon execution of this Agreement, shall initiate efforts to have the Utah State Developmental Center accredited pursuant to standards established by the Accreditation Council of Landover, Maryland, with the goal that full accreditation of the institution be obtained by January, 1996. This accreditation effort will be undertaken with the expectation that, barring any major unforeseen circumstances, no additional monies will be requested from the Legislature to accomplish accreditation.

37. In order to accomplish the provisions set forth at paragraph 15, the State Defendants shall utilize their best efforts during the general legislative sessions of years 1994, 1995, and 1996 to seek legislative funding for the critical DSPD "priority one" waiting list of developmentally disabled citizens of Utah who are residing in the community and are not being served by the Division

programs.

38. Defendants shall provide Plaintiffs' counsel with semi-annual reports addressing the implementation of the Court's Order based upon this Agreement, including, but not limited to, the results of individual evaluations, community systems development, policy changes, and institutional changes.

39. Plaintiffs' counsel may communicate informally with Defendants concerning the implementation of the Court's Order based upon this Agreement after giving Defendants' counsel notice of their intent to do so. Plaintiffs' counsel will also have access to documents in Defendant's possession concerning the implementation of the Order without the need to initiate formal discovery.

40. Plaintiffs' counsel shall receive copies of all recommendations of the Interdisciplinary Team arising from the individual evaluations outlined in this document, and the plan for implementation of each recommendation. Should they determine that the recommendations or plans for implementation are inconsistent with the values, principles, and criteria outlined in this agreement, they can submit them for review pursuant to the procedures established in paragraph 34. Plaintiffs' counsel may enlist the assistance of trained volunteers to work under their supervision in reviewing the recommendations for placement for the plaintiff class members.

41. Plaintiffs' counsel shall have access to all records of

each plaintiff class member for the purposes of reviewing individual evaluations for placement.

42. In order to efficiently implement the Court's Order based upon this Agreement, the Division of Services for People with Disabilities will exert its best efforts to structure yearly appropriation requests to the Utah State Legislature in a manner that prioritizes funding to implement the Agreement. Best efforts will include:

(a) using all federal credits and dedicated credits collected during any fiscal year, above those anticipated when making appropriation requests, towards implementing the Agreement;

(b) paying for new community residential programs and support systems, when possible, from existing appropriation levels;

(c) prioritizing building blocks for new community residential services and supports as one of the top building blocks for the Division of Services for People with Disabilities and the Board of Services for People with Disabilities in the budget submitted to the Governor by the Department of Human Services; and

(d) determining yearly the number of individuals who can be transferred, under existing appropriations, from the Developmental Center consistent with the recommendations of the interdisciplinary team.

Defendants shall make best efforts to seek approval of their appropriation requests from the Governor and the Legislature.

43. Should Plaintiffs' counsel have reason to believe that Defendants are not in compliance with any provision of the Order based

upon this Agreement, they shall arrange through Defendants' counsel to confer and consult with Defendants regarding their concerns. If their concerns are not resolved by a conference with Defendants and their counsel, Plaintiffs may retain an expert to evaluate the asserted non-compliance matters without obtaining leave of the court to do so. The expert shall have access to the plaintiff class members and their records, the Utah State Developmental Center and its staff, along with employees of the Defendants, community programs and supports and whatever else the expert deems necessary to review the alleged non-compliance. After the Plaintiffs expert has evaluated the asserted non-compliance matter(s), the expert's analysis will be submitted to the Defendants' counsel and the another conference between the parties and counsel will conducted to resolve any disputes. If the Defendants choose to do so, they may retain their own expert to evaluate any non-compliance issues raised by the Plaintiffs. Should the parties, their counsel, and their experts be unable to informally resolve any disputes regarding compliance with the Order, they may request a hearing before the Court to present evidence and request a ruling with respect to the alleged non-compliance. In the event that the Court finds that the Defendants have substantially violated the terms of this Agreement and any Order entered by the Court, the Defendants shall be ordered to pay all costs of the Plaintiffs' expert.


44. On or after the date on which Defendants have fully and

faithfully implemented all provisions of the Order based upon this Agreement, Defendants may move that the case be dismissed with prejudice. Dismissal shall be granted unless, within sixty days after receipt of Defendants' motion, Plaintiffs file an objection.

45. The parties agree to present this Agreement to the Court and to request that the Court enter an Order consistent with the terms and conditions of this Agreement.

46. Both parties are to bear their own costs and attorneys fees in this action.

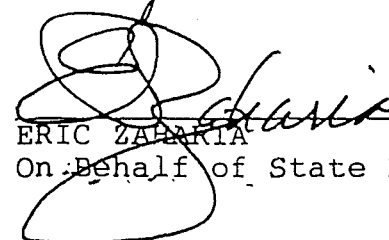
DATED this 7th day of June, 1993.


LINDA LUINSTR
Attorney for Defendants

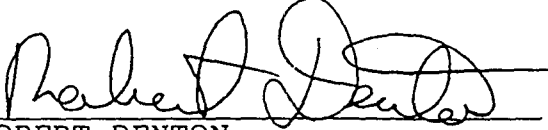
DATED this 7th day of June, 1993.


MICHAEL STEWART
On behalf of State Defendants

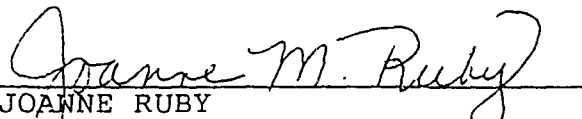
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ERIC ZARARIA
On Behalf of State Defendants

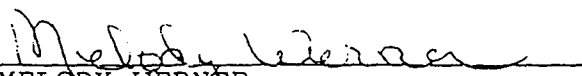
DATED this 2nd day of June, 1993.



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MELODY WERNER
On Behalf of Matthew Werner