

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

NEW YORK STATE ASSOCIATION FOR RETARDED CHILDREN, INC.; BENEVOLENT SOCIETY FOR RETARDED CHILDREN, WILLOWBROOK CHAPTER, OF THE NEW YORK STATE ASSOCIATION FOR RETARDED CHILDREN; LARA R. SCHNEPS, by her father Murray B. Schneps; NINA GALIN, by her mother Diana Lane McCourt; ANTHONY RIOS, by his father Jesus Rios; DAVID AMOROSO, by his mother Rosalie Amoroso; ROSE EVELYN CRUZ, by her father Francisco M. Cruz; BARRY FRIEDMAN; by his father Melvin Friedman; LOWELL SCOTT ISAACS, by his father Jerome W. Isaacs; and ANTOINETTE MAGRI, by her mother Sandra Magri,

FINAL JUDGMENT

72 Civil 356

and

PATRICIA PARISI, by her mother Lena Steuernagel; ANSELMO CLARKE, by his mother Estella Clarke; NELSON AGOSTO, by his aunt and next friend Lucilia DeJesus; FRANCES BREEN, by her sister Mary Morganstern as committee of her person and property; JOHN DUFFY, by his next friend Robert L. Feldt, Esq.; EVELYN CRUZ, by her father Francisco Cruz; BONNIE ROSE, by her mother Anne Rose; MARIO NARVAEZ, by his mother Carmen Narvaez; JOHN DOE, by his mother Jane Doe; STEVEN ROSEPKA, by his father Ben Rosepka;

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individually and on behalf of all others similarly situated,

Plaintiffs,

- against -

HUGH L. CAREY, individually and as Governor of the State of New York; THE NEW YORK STATE DEPARTMENT OF MENTAL HYGIENE; LAWRENCE C. KOLB, M.D., individually and as Commissioner of the New York State Department of Mental Hygiene; ROBERT W. HAYES, individually and as Deputy Commissioner of the Division of Mental Retardation and Children's Services of the New York State Department of Mental Hygiene; HAROLD C. PIEPENBRINK, individually and as Director of Willowbrook Developmental Center; STUART KEILL, M.D.,

*Handwritten notes:*  
3/2/76  
Lara R. Schneps  
Diana Lane McCourt  
Melvin Friedman  
Jerome W. Isaacs  
Sandra Magri

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individually and as Regional Director, New York City Regional Office of the New York State Department of Mental Hygiene, ROBERT E. PATTON, individually and as Second Deputy Commissioner of the New York State Department of Mental Hygiene; RANGASAMY NATARAJAN, M.D., individually and as Deputy Director for Clinical Services for Willowbrook Developmental Center; DONALD E. FLEMING, individually and as Deputy Director for Institutional Administration for Willowbrook Developmental Center,

Defendants,

UNITED STATES OF AMERICA,

Amicus Curiae.

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Upon the joint motion of plaintiffs, defendants, and the United States, it is hereby ordered, adjudged and decreed:

1. This Court has jurisdiction of the subject matter and of the parties hereto, and the complaints state claims under 42 U.S.C. §1983. On April 10, 1973 this Court entered an opinion finding that Willowbrook's residents had a constitutional right, under the Eighth and Fourteenth Amendments, to protection from harm. Subsequently, a trial was held on plaintiffs' request for permanent relief. Without admission and prior to final findings of fact and conclusions of law, the parties have now agreed to entry of a consent judgment, specifying additional steps, standards and procedures necessary to secure the constitutional right to protection from harm for Willowbrook's residents and members of the class.

The Court has issued notice to the class, and finds that this judgment is supported by evidence in the record. This judgment and Appendix "A" thereto are hereby approved pursuant to Rule 23(e) of the Federal Rules of Civil Procedure. The steps, standards and procedures contained in Appendix "A" hereto are not optimal or ideal standards, nor are they just custodial standards. They are based on the recognition that retarded persons, regardless of the degree of handicapping conditions, are capable of physical, intellectual, emotional and social growth, and upon the further recognition that a certain level of affirmative intervention and programming is necessary if that capacity for growth and development is to be preserved, and regression prevented.

2. Within their lawful authority, including the State Constitution and applicable State laws, and subject to any legislative approval that may be required, defendants are hereby ordered and enjoined to take all actions necessary to secure implementation of the steps, standards and procedures contained in this judgment and in Appendix "A" hereto, which appendix is expressly made part hereof, in a prompt and orderly manner.

3. The steps, standards and procedures contained in this judgment and in Appendix "A" hereto shall be applicable to all residents of Willowbrook and, unless inappropriate, to all other members of the class.

Specifically, defendants shall delegate among themselves and their subordinates responsibility for the appropriate and relevant actions necessary to implement this judgment. Defendants shall take all steps necessary to ensure the full and timely financing of this judgment, including, if necessary, submission of appropriate budget requests to the legislature.

4. This judgment and Appendix "A" hereto shall be applicable to and binding on the defendants and their successors, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of this judgment by personal service or otherwise. In addition, defendants shall include in every future contract requiring an agent or independent contractor to perform steps, standards and procedures that would otherwise be performed by defendants or their employees, a clause requiring the agent or independent contractor to meet the steps, standards and procedures specified in Appendix "A" hereto, insofar as they are relevant to said contracts.

5. This judgment shall have no binding force or effect with respect to any other action or proceeding.

6. Defendants shall post in each building where members of the class reside a notice that the Court has issued a judgment setting forth steps, standards and procedures to be applicable to those residents, and that a copy of that judgment is available for inspection

by employees in the office of each such building. In addition, defendants shall make a copy of this judgment available for inspection by parents, relatives or guardians at the administration building during regular business hours.

7. (a) Within 45 days of the date of this judgment, a Review Panel shall be appointed, consisting of two persons chosen by defendants and approved by the Court, three persons chosen by plaintiffs and approved by the Court, and two recognized experts in the field of mental retardation who are not otherwise currently employed or retained by defendants. One of the two experts shall be experienced in the management and operation of public institutions for the mentally retarded, and the other in the establishment and operation of community facilities and in the care and placement of mentally retarded persons in such facilities. The two experts shall be agreed upon by the parties and approved by the Court; if the parties do not agree, each party shall submit one nomination for each disputed position and the appointments shall be made by the Court. The Court may terminate and replace any of the seven Review Panel members at any time, for good cause. Upon resignation, termination or inability of any Review Panel member to continue to serve on the Review Panel, his or her replacement shall be appointed in accordance with the procedures specified in this paragraph.

(b) The Review Panel shall promptly hire at least one, but not more than three, full-time staff members with appropriate experience in mental retardation and/or institutional administration to assist the Review Panel in performing its duties.

(c) Review Panel members and Review Panel staff shall receive appropriate compensation from defendants, on a monthly basis, and shall promptly be reimbursed by defendants for reasonable out of pocket expenses incurred in performing the duties of the Review Panel. Defendants shall at their expense provide appropriate office space, telephone service, postage, clerical staff, typewriters, and similar support equipment to enable the Review Panel to carry out its duties. The classification and status of the Review Panel and its staff (i.e., as employees, consultants, or otherwise) shall promptly be determined by defendants.

(d) All Willowbrook unit chiefs, team leaders and department heads (referred to hereafter as "supervisors") shall compile and submit to the Director and to the Review Panel every 60 days written reports which show in detail the progress towards implementation within the building, unit or department of which they are supervisors of each relevant provision of this judgment, and which describe problems or obstacles to full implementation. For this purpose, the Review Panel shall consider issuance of recommended check lists and appropriate forms. Supervisors shall be allowed

sufficient on duty time, and shall be provided sufficient clerical and other support, to carry out this responsibility.

(e) The Review Panel staff shall periodically compile written reports showing in detail the degree of progress with respect to implementation of this judgment and specifying recommendations for consideration by the Review Panel, and shall perform such other duties as the Review Panel directs.

(f) Members of the Review Panel and its staff shall be allowed access to all information, records (including budget records), buildings and areas, and shall be permitted to interview any member of the class or employee of defendants, at reasonable times and places, to the extent necessary to the discharge of their duties under this judgment.

(g) Any interference with the Review Panel, its staff, or with supervisors in connection with their performance of the duties described herein, by any person having notice of the contents of this judgment, may be punishable as contempt of court and subject to other sanctions provided by law.

(h) All reports submitted to the Review Panel by the Professional or Consumer Advisory Boards, by supervisors, by Review Panel staff, or by consultants, shall be available for inspection and copying by all parties to this action.

8. (a) The Review Panel appointed pursuant to paragraph 7 above shall receive the reports described in said paragraph and any reports submitted by the Professional and Consumer Advisory Boards or by consultants pursuant to this judgment. The Review Panel and its staff shall conduct any additional inquiries they deem necessary or appropriate with respect to the matters contained in such reports or with respect to other matters which may come to the Review Panel's attention relative to the provisions of this judgment.

(b) The Review Panel, by majority vote of the entire panel, shall periodically make written recommendations to defendants of steps deemed necessary to achieve or maintain compliance with the provisions of this judgment. Such recommendations shall include, where necessary, timetables for implementation of steps or measures for which timetables are not specified elsewhere in this judgment. Copies of such recommendations shall be served upon counsel for plaintiffs and the United States, the New York City Regional Director of the Department of Mental Hygiene, and upon such other persons as the Review Panel deems appropriate.

(c) Panel members may also make informal suggestions to the defendants, in whatever form they deem appropriate, which in their opinion will facilitate compliance with this judgment.



(d) The Review Panel shall, by majority vote of the entire panel, recommend a resolution of any disagreements which arise concerning the interpretation or application of the steps, standards and procedures contained in Appendix "A" hereto. Such recommendations shall be communicated in writing to defendants, to counsel for plaintiffs and the United States, to the New York City Regional Director of the Department of Mental Hygiene, and to such other persons as the Review Panel deems appropriate.

(e) All parties to this judgment shall be bound by and shall implement the recommendations of the Review Panel issued pursuant to paragraphs 8(b) and 8(d) hereof, unless within 15 business days following receipt of such recommendations they serve on all other parties and file with the Review Panel a written objection to such recommendations. The filing of such an objection by any party shall automatically stay the effect of any such recommendation until further order of the Court.

(f) After receipt of written objections, the Review Panel, by majority vote of the entire panel, or any party, may apply to Court for an order implementing the recommendations to which objection has been taken. Such applications shall be upon prior written notice to all parties and to the Review Panel.

(g) Any party may request the Review Panel to issue a specific recommendation, and upon the Review Panel's failure or refusal to do so, that party may apply to Court for appropriate relief.

(h) Any employee, resident, parent, foster parent, next of kin or guardian may bring a situation or disagreement related to the provisions of this judgment to the attention of the Review Panel for appropriate action in accordance with the procedures outlined above.

(i) The Review Panel, by majority vote of the entire panel, shall establish such formal and informal hearing procedures, bylaws and regulations as it deems necessary in order to perform its duties.

(j) The Review Panel shall hold meetings every four months, or more often, at which any employee, resident, parent, foster parent, next of kin or guardian, or any other person deemed by the Review Panel to have a similar or appropriate interest, may appear and make recommendations, comments, or suggestions as to any matter within the jurisdiction of the panel. Such meetings shall be held alternately at Willowbrook and at the New York City Regional Office of the Department of Mental Hygiene, and shall be adequately publicized at Willowbrook and in the general community no less than 7 days prior to the date thereof. Such meetings shall be in addition to any other meetings, hearings, or conferences which the Review Panel deems necessary in order to carry out its duties under this judgment.

(k) Where appropriate, the Review Panel shall draw upon and utilize the experience and expertise of the Consumer and Professional Advisory Boards established pursuant to this judgment, and upon the advice and assistance of other recognized experts. The defendants herein shall bear the costs, within reasonable limitations, of the services provided and necessary expenses incurred by such other experts.

(l) Within six months of the date of its appointment, and each six months thereafter, the Review Panel shall report in writing to the Court and counsel for the parties concerning the progress made in carrying out the provisions of this judgment. Such reports shall include a description of steps taken to achieve compliance with the judgment, a description of all disagreements and interpretive questions resolved by the Review Panel and the recommended resolutions thereof, a statement of problems which the panel has been unable to resolve, recommendations of the panel or any member thereof for modifications of this judgment, and any other matters which the panel deems appropriate. The Review Panel may also submit special reports at any time.

9. Jurisdiction is retained by the Court until further order, for the purpose of enabling any party to apply at any time for an order pursuant to Rule 60 of the Federal Rules of Civil Procedure, or for such further orders as may be necessary or appropriate for the construction of, implementation of, or enforcement of

compliance with this judgment or any of the provisions thereof. The plaintiffs reserve the right to request such attorneys' fees and costs as this Court deems appropriate, and defendants reserve the right to oppose such requests.

Date:

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UNITED STATES DISTRICT JUDGE

APPENDIX "A"

Steps, Standards, and Procedures

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Definitions

For the purposes of this Appendix, and of the Consent Judgment of which it is a part:

"Plaintiffs" and "defendants"	refer to the parties named as plaintiffs and defendants in the caption hereof. In addition, for this purpose only, plaintiffs shall be deemed to include the United States of America, <u>amicus curiae</u> .
"Department"	refers to the New York State Department of Mental Hygiene.
"Commissioner"	refers to the Commissioner of the State Department of Mental Hygiene.
"Willowbrook"	refers to Willowbrook Developmental Center, on Staten Island, New York (formerly Willowbrook State School).
"Director"	refers to the Director of Willowbrook Developmental Center, and shall include acting or interim directors.
"Consultant" or "consultants"	refers to a person, agency, firm, or organization that is independent of the Department, or of Willowbrook, though not necessarily independent of other state agencies or departments.
"The Class"	refers to all persons who were residents of Willowbrook on March 17th, 1972.
"Programming" or "program activity"	refers to any activity specified in the resident's development plan that is individually designed and structured to increase the resident's physical, social, emotional or intellectual growth and development, and shall include but not be limited to structured recreation as defined in section G.6 hereof, programs to teach self-awareness, basic motor and sensory skills, self-care activities, communication and social abilities, vocational and avocational skills and other skills necessary to live as independently as possible.

## A. Resident Living

1. Residents shall be provided with the least restrictive and most normal living conditions possible. This standard shall apply to dress, grooming, movement, use of free time, and contact and communication with the outside community, including access to educational, vocational and therapy services outside of the institution. Residents shall be taught skills that help them learn how to manipulate their environment and how to make choices necessary for daily living.

2. In addition, the staff shall prepare residents to move from 1) more to less structured living; 2) larger to smaller facilities; 3) larger to smaller living units; 4) group to individual residences; 5) segregated from the community to integrated with the community living and programming; 6) dependent to independent living.

3. Living groups shall not contain unrelated residents differing widely in age level (e.g., young children and adults) or level of retardation (e.g., profoundly and moderately retarded) unless designed to test out special models within a research framework. Blind residents shall not be grouped with lower functioning residents simply because of their blindness, nor shall the multiply handicapped be segregated unless particular circumstances so require.

4. The institution's rhythm of life shall be modified to conform with practices prevalent in the community. For example, older residents ordinarily shall not be expected to live according to the timetable of younger children.

5. Multiply handicapped and non-ambulatory residents shall, except where otherwise indicated by a physician's order, spend a major portion of their waking day out of bed, spend a portion of their waking day out of their bedrooms, have planned daily activity, and be rendered mobile by suitable methods and devices. Residents shall not stay in beds, cribs, wheelchairs or orthopedic carts all day long, except on the order of a physician, which must be in writing if the order is to remain in effect for more than four hours.

6. The Director and the Consumer Advisory Board shall prepare a document listing the legal and civil rights of residents, which shall be approved by the parties, circulated to staff and residents, and posted throughout Willowbrook.

7. Residents shall be provided with clean, adequate and seasonally appropriate clothing, including shoes and coats, which shall be readily accessible for residents' use. Such clothing shall be comparable in styles and quality with clothing worn by persons of similar age and sex in the community.



## B. Environment

1. Defendants shall provide living facilities which afford residents privacy, dignity, comfort and sanitation. This shall include, but not be limited to:

- accessible, private and easily usable toilets and bathing facilities, including specialized equipment for the physically handicapped;
- accessible and easily usable sinks and drinking facilities;
- adequate toilet paper, soap, towels, linen and bedding;
- training for residents in the use of toilet facilities;
- individual bed and dresser or storage place;
- attractive, comfortable and spacious living and sleeping areas;
- attractive and normalizing furnishings and leisure equipment, including materials to reduce noise level;
- normal temperatures and adequate ventilation;
- separate clean and dirty linen storage areas.

2. Living areas shall be sectioned and partitioned so that no more than eight residents live or sleep in one unit. Programming and working areas shall be quiet, appropriately designed and conducive to programming. Architectural barriers which impede living and programming for handicapped residents shall be corrected or removed. Residents shall be encouraged to decorate their living areas and furniture.

3. Every building shall be kept clean, odorless, and insect-free at all times, and sufficient equipment such as brooms, mops, etc., shall be provided to housekeeping staff for this purpose. In particular, lavatory areas are to be cleaned as often as necessary every day, and bathtubs shall be cleaned after the bath of each resident.

4. Housekeeping staff and services shall be provided to all living units every day on both the day and evening shifts. Additional housekeeping staff shall be employed for this purpose.

5. Residents shall ordinarily sit or be on the floor only for therapeutic reasons (i.e., physical therapy positioning). If placed on the floor for play or other purposes, they shall be on mats, a sufficient number of which shall be provided so that residents are not crowded together.

6. Residential life shall be structured so that it is possible for residents to wear and use glasses, hearing aids, crutches, braces, rolling walkers, and similar aids in their living units, and residents who need such aids shall be provided with and assisted to use them.

7. Toys and equipment shall be readily accessible to residents during waking hours.

C. Direct Care Staff, Mid-Level Supervisors & Clinical Staff

1. Each resident at Willowbrook shall receive appreciable and appropriate attention each day from the direct care staff in his living unit, whose primary responsibility shall be the care and development of each resident. To this end, appropriate provision shall be made to ensure that direct care staff are not required to perform routine housekeeping chores, except during the 3rd (night) shift.

2. Direct care staff shall participate in the inter-disciplinary team decision-making process and individual care, development and services programming, as described in section D, with the responsibility for individual residents set forth in that section

3. Willowbrook shall employ and maintain sufficient therapy aides at the grade 7 and 9 levels to ensure that the following numbers shall be present and on duty:

a) During the hours of the day and evening when residents are awake:

- 1) One therapy aide for every four residents in buildings primarily for residents who are children, non-ambulatory or multiply handicapped, and for those residents receiving intensive psychiatric care;
- 2) One therapy aide for every sixteen adult residents presently residing in buildings 19 and 32;
- 3) One therapy aide for every resident receiving an intensive behavior modification program;
- 4) One therapy aide for every six residents for all residents and buildings not covered above;

b) During sleeping hours, an average of one therapy aide for every twelve residents on an institutional basis.

4. So long as defendants maintain the ratios required by paragraph 3(a) hereof within buildings, they may provide a lower staff to resident ratio for one or more living units within a building, in order to provide higher staff to resident ratio for another living unit, or units, within that building, provided that such deviation is not regular, chronic or permanent for any living unit or units, and provided further that in no living unit shall the staff to resident ratio ever be lower than 1:8, except in those living units covered by paragraph 3(a) (2) above.

5. Schedules of residents and employees shall be revised so that day ratios apply when residents are waking and preparing for breakfast.

6. The direct care staff to resident ratios specified above shall be achieved and maintained as promptly as possible and in no event later than 13 months from the date of this judgment.

7. Sufficient mid-level supervisors, i.e., grade 11 and grade 13 therapy assistants, or registered or practical nurses where appropriate, shall be employed to ensure that there will be one such person present on duty per 24 residents on both the first (day) and second (evening) shifts, and one such person present on duty for every 48 residents on the third (night) shift, such ratios to be achieved within 13 months of the date of this judgment. At least 1/4 of the persons employed at grades 11 and 13 shall be employed at the grade 13 level.

8. Willowbrook shall establish and maintain an overall ratio of clinical staff to residents of 1 to 3. For this purpose, clinical staff shall include, without limitation, physicians, psychologists, dentists, nurses, teachers, physical therapists, social workers, speech and hearing therapists, recreation therapists, music therapists, unit chiefs, and team leaders, but shall not include the direct care staff (including therapy aides and mid-level supervisors as defined in paragraph 7 above), and other administrative, support and clerical staff. Each of the above clinical disciplines shall be adequately represented by appropriately qualified staff. The numbers of persons to be included within each discipline shall be at the discretion of the Director. Within 13 months of the date of this judgment, at least one-third of the total clinical staff, and at least one-third of the clinical staff within each discipline other than social work and occupational therapy, shall be employed at the professional, as opposed to the paraprofessional or trainee, level. Within 18 months of the date of this judgment, at least one-third of the clinical staff within the social work and occupational therapy disciplines shall be employed at the professional level. All persons employed at the professional level shall meet the standards for licensure, certification or registration that would be required for similar practice in the community.

9. Defendants shall begin immediately and shall continue to hire such staff as is necessary to maintain steady progress towards achievement of the ratios specified in paragraphs 3, 7 and 8 hereof.

#### D. Programming and Evaluation

1. Each resident shall have an individual plan of care, development and services (referred to hereafter as the "development plan"), which shall be prepared and re-evaluated at least annually by an interdisciplinary team of direct care and appropriate professional staff, as described in this judgment, after comprehensive diagnostic testing and evaluative screening, with the assistance of the resident, his or her parents, relatives or guardian. The development plan shall include all education, speech, physical therapy or other plans required by this judgment. The development plan shall be regularly reviewed by the team, at least quarterly.

2. Each development plan shall describe the nature of the resident's specific needs and capabilities, his or her program goals, with short range and long range objectives and timetables for their attainment. The development plan shall provide for six (6) scheduled hours of program activity per weekday, designed to contribute to the achievement of objectives established for each resident, and each resident shall receive six hours of such program activity per weekday. In exceptional cases, residents may receive fewer than six hours of program activity per weekday if a physician certifies in writing that such activity would be medically harmful to the resident. Such certification shall promptly be submitted to the Professional Advisory Board for approval. The development plan shall state criteria for release to less restrictive settings, including criteria and projected date for release, discharge, or transfer to a community placement, and programming necessary to achieve such release, discharge or transfer.

3. A single team member, identified in the development plan, shall be responsible for reviewing and supervising the resident's program progress, including his progress toward community placement, and for coordinating the inputs and assignments of other professionals and disciplines. For each shift a specific direct care employee shall be designated to have continuing responsibility for each resident's daily living and safety. Records shall be maintained listing such employees and the residents for whom they are responsible. Such records shall be available to the Review Panel and to parents, relatives or guardians. Professional team members shall be responsible for training, supervising and evaluating therapy aides and direct care staff who implement any part of the program.

4. Defendants, in collaboration with plaintiffs, shall promptly establish and submit to the Review Panel for consideration a mechanism for an appeal by residents, parents, guardians or relatives when they disagree with the resident's individual development plan.

5. Residents shall not be sent back to their living units from programming activity as punishment, and programming shall not be withdrawn from any individual except as part of an approved behavior modification program. Programming shall be regularly scheduled for both the day and evening shifts.

6. Parents, relatives and guardians shall be kept informed on at least a quarterly basis of the resident's educational, vocational, and living skills, progress, and medical condition, and shall be allowed access to the resident's records, subject to objection of the resident, who shall also have access to his or her records.

E. Personnel - Recruitment, Screening, Training, Qualifications, Termination.

1. Defendants shall actively recruit qualified staff, including top level management and professionals, whose licensure, certification or qualifications would be suitable for practice or employment in comparable circumstances in the community.

2. There shall be full staff orientation and training programs to increase employees' skills and interest in achieving the program goals of the residents. Within 60 days of the date of this judgment, defendants shall prepare and submit to the Review Panel for evaluation and recommendation a plan to improve Willowbrook's orientation and in-service training programs, which plan shall specify the proposed staffing, curriculum and duration of such programs.

3. Personnel policies shall be directed at the best use of individual employees' skills and at the enhancement of effective programming for residents and working conditions for employees. In order to continually improve personnel policies, systematic interviews of employees terminating employment shall be carried out, summaries of which shall be reviewed by the Willowbrook personnel department, the New York City Regional Office of the Department of Mental Hygiene, and by other appropriate persons, to determine any causes of employee dissatisfaction and instances of dehumanizing or abusive practices and other relevant information, including the determination of appropriate criteria for hiring and screening new employees.

4. All employees with direct care responsibilities shall be able to communicate in English. Sufficient bilingual staff shall be hired to serve the needs of Spanish-speaking residents.

5. Staff shall be actively involved by the administration in the development and assessment of Willowbrook policies and programming.

6. Supervisors shall be responsible under appropriate law and regulation for the regular review and assessment of the performance of their subordinates, including most particularly their success in meeting program objectives. The administration shall be responsible for pursuing every procedure and requirement provided by law, regulation or contract, in the termination or reassignment of employees whose performance is found unsatisfactory.

7. Whenever necessary to expedite recruitment or to maintain staff, whatever exceptions are permitted under the State Civil Service Law or any other law shall be utilized. In addition, defendants shall develop a plan for increasing the length of the probationary period for grade 7 mental hygiene therapy aides, and shall seek, where necessary, approval for such plan from the Civil Service Commission.

## F. Education

1. The education philosophy shall be that all residents are presumed to be capable of benefitting from education. Except for residents over the age of 21 who are involved in six or more hours of appropriate, formal, daily programming, all residents shall be provided a full and suitable educational program, regardless of chronological age, degree of retardation or accompanying disabilities or handicaps. No resident shall be presumed to be incapable of educational development. Each resident in a formal education program shall have an individual education plan which shall specify short term and long term objectives. The education staff shall consult on at least a weekly basis with those individuals and teams responsible for the daily care and programming of each resident.

2. Educational services at Willowbrook shall, at least, be generally equivalent to the special educational services provided in New York City in terms of:

- a. Staff qualifications and competencies, in-service training, and diagnostic or prescriptive teachers;
- b. Program hours per student;
- c. Nature, content and quality of programs;
- d. Curriculum guides, equipment, resource materials and diagnostic, testing, and screening procedures.

3. There shall be provided sufficient teachers' aides, therapy aides and other assistants to achieve an average of one such aide or assistant for each teacher, to assist the education staff.

4. There shall be no more than six residents in a class for severely and profoundly retarded residents, nine in a class for moderately retarded residents, and twelve in a class for mildly retarded residents. Generally, classes for school-age children shall be conducted for six hours per day. For this purpose, classes shall include lunch periods if they are used for training purposes, physical education, and similar non-academic programs of instruction. In exceptional cases, residents may receive fewer than six hours of educational activity per weekday if a physician certifies in writing that such activity would be medically harmful to the resident. Such certification shall promptly be submitted to the Professional Advisory Board for approval.

5. The Department and the Director shall seek out and develop educational services in the community for residents who are able to take advantage of such services.

6. Those residents with specialized needs, such as the blind, deaf and multiply handicapped, shall receive programs of special education and development specifically designed to meet those needs, and special education staff shall receive specialized training for this purpose.

7. Toilet training shall not be a prerequisite to receiving educational services.

8. All necessary classroom materials and equipment shall be on hand and re-ordered as necessary. Teachers shall have a major voice in deciding what is needed. All necessary diagnostic equipment shall be ordered immediately. Teachers shall be trained to use such equipment.

9. Education shall be provided on a year-round basis to those residents who require year-round educational services as part of their individual development plan set forth in section D.

10. Defendants shall advise the New York City schools of the number of school-age Willowbrook residents being prepared for transfer to the community, and shall supply the New York City schools with a projected timetable for the transfer of such residents to the jurisdiction of such schools.

11. Sufficient bilingual/bicultural staff and instructional and testing materials shall be provided to meet the needs of residents from Spanish-speaking backgrounds.

## G. Recreation

1. There shall be a recreational program at Willowbrook which meets the recreational needs of each resident, as set forth in his or her development plan described in section D, as to design of equipment, functional level, and physical or visual handicap. There shall be enough recreational equipment to provide adequate recreation services to all residents. There shall be special emphasis on equipment for lower functioning residents. The recreation program shall conform as closely as possible to normal community recreation activities, in particular in terms of equipment, age and sex grouping, facilities and surroundings.

2. Unless there is a medical order to the contrary, a minimum of two hours per day of recreation activities shall be provided for each resident, and weather permitting, recreation activities shall take place outdoors.

3. Recreation shall be conducted in small groups, except for activities such as baseball or swimming, where larger numbers are appropriate.

4. Whenever possible, recreational activities shall take place in the community. Additional vehicles shall be provided to ensure adequate transportation for all residents, regardless of handicap.

5. There shall be at least one recreational therapist for every 60 residents, assisted by recreation therapy aides. Recreation staff shall receive in-service training and shall conduct activities during the day and evening. Additional supervised recreational and leisure activities shall be available on weekends and holidays.

6. Recreation may be considered a part of programming if it consists of organized and structured activity related to the achieving of program goals. A resident shall not be considered to be receiving recreational programming merely because he or she is outdoors.

7. Library facilities shall be developed for the use of residents, containing reading materials, coloring books, film strips and the like.



## H. Food and Nutrition Services

1. Consistent with their capabilities and handicaps, residents shall be taught to feed themselves and shall be fed both hot and cold foods and beverages in a normal fashion with due regard for personal hygiene (including washing hands of residents before and after every meal), use of utensils, appropriate quantities of food, appropriate dining room surroundings, meal schedules which correspond to normal community standards, with no less than 30-45 minutes allotted for each resident's meal. Where appropriate, residents shall be taught to eat in leisurely family style and to choose their own quantities and items according to individual tastes and preferences. Direct care staff shall be trained in and shall utilize proper feeding techniques.

2. A nourishing, well-balanced, nutritionally adequate diet shall be provided. Residents shall be given liquids at appropriate intervals during each meal, not just at the end of the meal. The food and nutrition needs of residents shall be met in accordance with the Recommended Dietary Allowances of the Food and Nutrition Board of the National Research Council, adjusted for age, sex, activity, disability and special therapeutic needs of individual residents. There shall be a mechanism for ensuring that residents who require special diets receive them.

3. A medical order shall be required if residents are to be fed a diet of other than solid foods, are to be fed in any setting other than a suitable dining area, or are to be fed in a prone position.

4. There shall be a sufficient number of competent personnel, including personnel with experience in mental retardation, to instruct the staff and to fulfill the objectives of the food and nutrition services, including:

- Institution Food Administrator;
- Nutritionists and/or dieticians;
- Other food service personnel;
- Clerical personnel.

Every person engaged in the preparation and serving of food in the facility shall have a food handler's permit or a pending application for such a permit.

5. Dining areas and food storage, preparation, and distribution shall be in compliance with state and local sanitation requirements. There shall be sufficient dishes and utensils for all residents, which shall be thoroughly cleaned between uses.

6. Food shall be prepared by methods that preserve nutritive value, served at normal temperatures, and protected from contamination in transport and storage.

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

## I. Dental Services

1. As part of each resident's overall health services program, the full range of necessary or appropriate dental services shall be supplied by qualified professionals, and such services shall include diagnosis, treatment, and at least annual examination and cleaning. Emergency treatment by a dentist on a 24-hour seven-day a week basis shall be available. In addition, each resident shall be provided with and taught to use toothpaste and his or her own toothbrush, or, if incapable, such brushing shall be performed for the resident by the staff each morning and evening.

2. Specialized services shall be made available to all residents in need and shall include orthodontics, false teeth, and dental plates. Painkillers normally associated with dental work shall be administered when needed.

J. Psychological Services

1. These services shall include at least annual psychological evaluations which shall be conducted as part of each resident's development plan pursuant to section D. In addition, evaluation, consultation, development plan preparation, therapy and behavior modification shall be provided, where necessary or appropriate, by sufficient qualified psychology staff and supporting personnel.

2. All psychology staff other than M.A. or Ph.D. psychologists shall be actively and regularly supervised by M.A. or Ph.D. psychologists.

K. Physical Therapy Services

1. Individualized physical therapy services on a regular basis (including 7 days a week where needed) shall be provided to those residents who can benefit therefrom, including all cerebral palsy residents and all non-ambulatory residents, and shall include positioning, feeding programs, self-ambulation programs, intervention and activation. Each physical therapist shall keep evaluation and progress records for each resident under his or her care, in accordance with the requirements of section D.

2. Sufficient numbers of qualified staff and personnel shall promptly evaluate all non-ambulatory and physically handicapped residents to determine the number of wheelchairs (including electric), braces, orthopedic shoes, walkers, crutches, positioning equipment, bolsters, helmets, adaptive chairs, etc., that are needed. Such equipment shall be ordered and/or constructed and issued as quickly as possible. Carpenters shall be employed to make adaptive equipment, tailored to the physical needs of individual residents.

3. There shall be immediate physical therapy follow-up on residents who have undergone orthopedic surgery.

#### L. Speech Pathology and Audiology Services

1. The purpose of speech pathology and audiology services shall be to improve the verbal or non-verbal communication skills of all residents. For this purpose, it shall be presumed that all residents can benefit from such services. Speech pathology and audiology services shall be provided, as needed, to all residents. Speech therapy shall be integrated with the educational program described in section F, and residents shall be entitled to both educational and speech services, where appropriate.

2. To this end, there shall be available sufficient appropriately qualified staff and necessary supporting personnel to carry out speech pathology and audiology services, in accordance with goals and stated objectives in individual development plans. Staff who assume independent responsibilities for clinical services shall possess the educational and experience qualifications required for a Certificate of Clinical Competence issued by the American Speech and Hearing Association (ASHA) in the area (speech pathology or audiology) in which they provide services, or equivalent qualifications.

3. The annual evaluation described in section D shall include an audiometric test conducted by an audiologist, and an evaluation by a speech therapist to identify speech and hearing problems. Sufficient audiometers shall be provided for testing, conditioning and therapy, and all speech therapists and specialists shall be trained in their use. Testing shall be diagnostic and shall include speech and language evaluation. A speech therapist shall develop an individual plan for each resident after each evaluation, as part of the development plan requirements of Section D.

4. Speech therapists shall teach parents and relatives how to stimulate language.

5. Residents who require hearing aids are to wear the aids as the therapist recommends.

6. Speech therapists shall consult with physicians if they believe surgery is appropriate. Physicians trained in this area shall be available.

7. Speech therapists' recommendations as to ENT, dental referrals and continued programming shall be considered by the interdisciplinary team described in Section D.

8. Where appropriate, deaf residents shall be taught sign language.

M. Medical and Nursing Services

1. Willowbrook shall have a comprehensive program of health services for residents which provides quality, continuity and accessibility of care. Each resident shall have at least annually a comprehensive medical examination. A full range of preventive, acute, and specialized medical services and resources shall be available to residents as needed. In keeping with section D, medical services and diagnosis shall be closely coordinated with an individual resident's development plan.

2. Residents not requiring specialized medical or nursing care shall not be kept in the infirmary for reasons of personal safety, discipline, or any other reason.

3. Adequate provision shall be made for direct-care supervision of residents isolated with contagious diseases. Such isolation shall be permitted only upon written order of a physician after personal examination. Such order shall only be valid for 10 days, and renewals shall not be employed excessively. No resident shall remain in isolation for more than 30 days without contemporaneous written approval of the Director for each succeeding 30 day period. Isolation of a resident alone in a locked room, living unit or area shall be deemed seclusion, and therefore prohibited.

4. All residents who remain in the infirmary for more than 5 days shall receive the same amount and kind of programming they would otherwise receive, unless the written order of a physician certifies that such programming would be medically harmful to the resident.

5. A full-scale immunization program shall be established so that all residents receive all necessary immunizations within 3 months after the date of this judgment and as often thereafter as is medically usual.

6. Arrangements shall be made to increase and improve the ambulance services presently available at Willowbrook so that ambulances will always be available when requested and can respond rapidly (on the average, within fifteen minutes) to emergency calls. To the extent this requirement is met by the utilization of personnel employed at Willowbrook, they shall meet the same standards required for public or private ambulance personnel in the Willowbrook geographical area.

7. There shall be regular training sessions for direct care staff on the identification and treatment of medical problems, with particular emphasis on seizure control, aspiration, prevention of bed sores, etc.

8. Physicians' schedules shall include adequate provision for medical coverage, including care for medical emergencies on a 24-hour, seven-day-a-week basis. In particular, an additional and adequate number of physicians, in no event less than two, shall be scheduled to be present on duty during the early morning, breakfast, and dinner periods, and during the third (night) shift.

9. Willowbrook shall maintain a contract for acute medical care with one or more accredited hospitals. In addition, service agreements with backup medical facilities shall be developed, where appropriate.

10. The comprehensive medical evaluations specified in paragraph "1" hereof shall include evaluation of the need for comprehensive eye examinations. An adequate number of optometrists and ophthalmologists shall be employed or retained on a contract basis to ensure that every resident receives such eye examinations, when indicated. Glasses shall be provided when indicated and promptly replaced if broken.

11. Defendants shall employ or contract for the full-time services of at least one ENT physician, and at least one neurologist or other physician with specialized training in diagnosis, treatment and control of seizures who shall not be assigned responsibility for a building, or any other responsibility that would interfere with performance of these functions.

12. Nurses shall be considered part of the care service team. Residents shall be provided with nursing services in accordance with their needs. Such services shall include:

a. Provision of skilled nursing care as needed;

and

b. Control of communicable diseases and infections through:

- (1). Identification and assessment;
- (2). Reporting to medical authority;
- (3). Implementation of appropriate protective and preventive measures.

13. Defendants shall request appropriate authorities to conduct a public health inspection immediately throughout Willowbrook, and all recommendations required to meet applicable health codes shall be implemented immediately.

N. Restraints and Abuses

1. Mistreatment, neglect or abuse in any form of any resident shall be prohibited. The routine use of all forms of restraint shall be eliminated. Physical restraints shall be employed only when absolutely necessary to prevent a resident from seriously injuring himself or others. Restraints shall never be employed as punishment, for the convenience of staff, or as a substitute for programs. In any event, restraints may only be applied if alternative techniques have failed (such failure to be documented in the resident's records) and only if such restraints impose the least possible restriction consistent with their purposes. Willowbrook shall have a written policy defining (1) the use of restraints, (2) the professionals who may authorize such use, and (3) the mechanism for monitoring and controlling such use.

2. Only professionals designated by the Director may order the use of restraints. Such orders shall be in writing and shall not be in force for over 12 hours. A resident placed in restraint shall be checked at least every 30 minutes by staff trained in the use of restraints and a written record of such checks shall be kept.

3. Mechanical restraints shall be designed for minimum discomfort and used so as not to cause physical injury to the resident. Opportunity for motion and exercise shall be provided for a period of not less than ten minutes during each two hours in which restraint is employed.

4. The use and duration of all restraints, including mittens, tying devices, camisole and restraint shirts, shall be documented in daily reports made to the Director by those professionals ordering such use.

5. Straitjackets shall never be used, nor shall any resident be tied, spread-eagled, to a bed, or subjected to either corporal punishment, degradation, or seclusion, which is hereby defined as placing a resident alone in a locked room, living unit or area, which he or she cannot leave at will.

6. Alleged instances of mistreatment, neglect or abuse of any resident shall be reported immediately to the Director, and there shall be a written report that the allegation has been thoroughly and promptly investigated (with the findings stated therein). Such written reports shall be made available to the Consumer Advisory Board and the Professional Advisory Board, on request, and their confidentiality shall be maintained.

7. Parents, relatives or guardians shall be notified in writing whenever restraints are used.



O. Labor

1. Institution Maintenance: No resident shall be required to perform labor which involves the operation and maintenance of the institution or for which the institution is under contract with an outside organization. Privileges or release from the institution shall not be conditioned upon the performance of labor covered by this provision. Residents may voluntarily engage in such labor if the labor is compensated in accordance with applicable minimum wage laws. No resident shall regularly be involved in the care, feeding, clothing, training, or supervision of other residents.

2. Training Tasks and Labor:

(A). Residents may be required to perform vocational training tasks which do not involve the operation and maintenance of the institution, subject to a presumption that an assignment of longer than 4 months to any task is not a training task, provided the specific task or any change in assignment is:

(i). An integrated part of the resident's development plan and has been approved as a program activity by a professional responsible for supervising the resident's program; and

(ii). Supervised by a staff member.

(B). Residents may voluntarily engage in habilitative labor during non-program hours for which the institution would otherwise have to pay an employee, provided the specific labor or any change in labor is:

(i). An integrated part of the resident's development plan and has been approved as a program activity by a professional responsible for supervising the resident's program;

(ii). Supervised by a staff member; and

(iii). Compensated in accordance with applicable minimum wage laws.

3. Personal Housekeeping: Residents may be required to perform tasks of a personal housekeeping nature such as the making of one's own bed.

4. If defendants bill residents for the costs of their care, treatment and maintenance, the total amounts so billed shall not exceed 50% of the total amounts of any payments received by residents pursuant to this section, and shall not be deducted from such payments prior to receipt by the residents.

P. Behavior Modification, Research, and  
Hazardous or Experimental Treatment

1. Residents who require, in addition to regular programming, services for psychiatric or emotional problems shall be treated in their living units or in small residential groups within a living unit of no more than four residents. Defendants shall promptly prepare and submit to plaintiffs' counsel for approval a plan incorporating appropriate due process standards and procedures to precede transfer of any resident to a specialized psychiatric unit, or retention therein.

2. The use of aversive conditioning shall be permitted only after positive reinforcement procedures and other less drastic alternatives have been explored and approval has been obtained:

A. from the resident, if he or she is capable of giving informed consent, or

B. from the parent, relative or guardian if the resident can not give informed consent and the parent, relative or guardian can give informed consent, and

C. from a three person special committee on aversive conditioning, designated by the Director, which shall include at least one designee each from the Consumer Advisory Board and Professional Advisory Board.

The Deputy Commissioner for Mental Retardation, and the New York City Regional Director of the Department, 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 and in the presence of a psychiatrist or psychologist licensed to practice in the State of New York who has had proper training in the use of such techniques, and who is specifically authorized by the Director to conduct such aversive conditioning.

3. Behavioral research or experimentation shall be conducted only after approval has been obtained as set forth in paragraph 2(A)-(C) above.

4. Because of the necessity to concentrate on the basic programmatic needs of Willowbrook residents and the history of experimentation at Willowbrook, no physically intrusive, chemical, or bio-medical research or experimentation shall be performed at Willowbrook or upon members of the plaintiff class. This standard, however, recognizes the possibility that such research or experimentation, under proper safeguards, may be appropriate for persons who are not members of the class, in other facilities or programs.

## Q. Medication

1. No prescription medication shall be administered except upon order of a physician. Such orders shall be confirmed in writing by a physician as promptly as possible, within twenty-four hours.

2. Notation of each individual's medication shall be kept in his medical records. At least weekly the attending physician shall review the drug regimen of each resident under his care. All prescriptions shall be written with a termination date, which shall not exceed 30 days. The chief medical or pharmacological professional shall provide an annual statement of the volume and frequency of drugs administered, by type and condition of resident.

3. Residents shall have a right to be free from unnecessary or excessive medication. The resident's records shall state the effects of psychoactive medication on the resident. When dosages of psychoactive medications are changed or other psychoactive medications are prescribed, a notation shall be made in the resident's record concerning the effect of the new medication or new dosages and the behavior changes, if any, which occur.

4. Medication shall not be used as punishment, for the convenience of staff, as a substitute for program, or in quantities that interfere with the resident's program.

5. Pharmacy services at the institution shall be directed by a professionally competent and licensed pharmacist. Such pharmacist shall be a graduate of a school of pharmacy accredited by the American Council on Pharmaceutical Education. Appropriate officials of the institution, at their option, may hire such a pharmacist or pharmacists fulltime or, in lieu thereof, contract with outside pharmacists.

6. Whether employed fulltime or on a contract basis, the pharmacist shall perform duties which include but are not limited to the following:

- a. Receiving the original, or direct copy, of the physician's drug treatment order;
- b. Reviewing the drug regimen, and any changes, for potentially adverse reactions, allergies, interactions, contraindications, rationality, and laboratory test modifications, and advising the physician of any recommended changes, with reasons and with an alternate drug regimen;
- c. Maintaining for each resident an individual record of all medications (prescription and nonprescription) dispensed, including quantities and frequency of refills.

7. Only appropriately trained staff shall be allowed to administer drugs. Persons administering oral medications shall ensure that they are swallowed by the resident.

8. Written policies and procedures that govern the safe administration and handling of all drugs shall be developed by the responsible pharmacist, physician, nurse, and other professional staff.

- a. The compounding, packaging, labeling, and dispensing of drugs, including samples and investigational drugs, shall be done by the pharmacist, or under his direct supervision, with proper controls and records. Each drug shall be identified up to the point of administration. Proce-

dures shall be established for obtaining drugs when the pharmacy is closed.

- b. There shall be a written policy regarding the administration of all drugs used by the residents, including those not specifically prescribed by the attending practitioner. There shall be a written policy regarding the routine of drug administration, including standardization of abbreviations indicating dose schedules. Medications shall not be used by any resident other than the one for whom they were issued.

9. Drugs shall be stored under proper conditions of sanitation, temperature, light, moisture, ventilation, segregation and security.

- a. All drugs shall be kept under lock and key except when authorized personnel are in attendance.
- b. The security requirements of federal and state laws shall be satisfied in storerooms, pharmacies, and living units.
- c. Poisons, drugs used externally, and drugs taken internally shall be stored on separate shelves or in separate cabinets, at all locations.
- d. Medications that are stored in a refrigerator containing things other than drugs shall be kept in a separate compartment with proper security.
- e. A perpetual inventory shall be maintained of each narcotic drug in the pharmacy, and each unit in which such drugs are kept, and inventory records shall show the quantities of receipts and issues and the person to whom issued or administered.
- f. If there is a drug storeroom separate from the pharmacy, there shall be a perpetual inventory of receipts and issues of all drugs by such storeroom.

10. Discontinued and outdated drugs, and containers with worn, illegible, or missing labels, shall be returned to the pharmacy for proper disposition.

11. Medication errors and drug reactions shall be recorded and reported immediately to the practitioner who ordered the drug.

R. Maintenance, Safety and Emergency Procedures

1. All necessary steps shall be taken to correct health and safety hazards, including the covering of radiators and steam pipes in a manner to protect residents from injury, the prompt repair of broken windows, and the removal of cockroaches and other insects and vermin.

2. All lead paint on the interior and exterior of buildings shall be removed and replaced with safe agents, or covered with panelling or other suitable materials, to the extent necessary, so that old lead paint is not accessible to residents.

3. Willowbrook shall comply with the provisions of the Life Safety Code of the National Fire Protection Association. Staff and residents shall be trained in emergency procedures, particularly for use in case of fire. Procedures to be followed in case of fire, medical, missing person, or other emergencies, shall be promulgated by the Director. Special attention shall be paid to the needs of physically handicapped residents. There shall be monthly fire drills for each shift except the night shift, and periodic fire drills for the night shift.

4. Defendants shall take whatever steps are necessary to improve security and to protect residents, staff, parents and visitors.

5. All buildings commonly used by residents, other than the gymnasium, shall be air-conditioned as promptly as possible.

6. Defendants shall establish and maintain a program of adequate maintenance of buildings and equipment which shall include prompt elimination of existing maintenance backlogs.

7. Outside windows and doors shall be provided with screens.

8. Floors in living or sleeping areas other than dining or bathroom areas shall be provided with carpets or rugs, consistent with a pleasant, clean, quiet and safe residential environment.

## S. Advisory Bodies and Volunteers

1. A seven member Consumer Advisory Board shall be established, and its responsibilities shall include evaluation of alleged dehumanizing practices, and/or violations of individual or legal rights. This Board shall participate in the development of Willowbrook's philosophy, goals and long-range plans, advise the Director on a regular basis, and at least quarterly shall submit written reports to him, to the Commissioner, and to the Review Panel.

2. Membership on the Consumer Advisory Board shall include parents or relatives of residents, community leaders, and residents or former residents. Members shall be nominated by the Review Panel and appointed by the Commissioner for terms not to exceed two years, such terms to be staggered so as to afford appropriate overlap.

3. A seven member Professional Advisory Board shall be established, and its responsibilities shall include advising on all professional programs and plans, budget requests and objectives, investigations of any alleged dehumanizing practices and/or violations of human and legal rights. This Board shall review research proposals and projects, assist the administration in staff recruitment and training, advise the Director on a regular basis, and at least quarterly shall submit written reports to him, to the Commissioner, and to the Review Panel.

4. The Professional Advisory Board shall consist of eminent professionals in relevant fields. Members shall be nominated by the Review Panel and approved by the Commissioner for terms not to exceed two years, such terms to be staggered so as to furnish appropriate overlap. No member of the Board shall be on the staff of any of the Department's facilities, nor shall he or she be functioning as a paid consultant to the Department.

5. The Professional and Consumer Advisory Boards shall have direct access to all living areas and program areas and to all records directly relating to resident care, other than personnel records. The Boards shall coordinate their efforts with those of both visitor and parent organizations, and shall cooperate with defendants in submitting requests for information and in arranging for such access.

6. Willowbrook shall expand its volunteer program substantially through active recruitment and training of volunteers.

7. Defendants shall apply for federal funding for a foster grandparent program for Willowbrook.

8. Members of the Professional and Consumer Advisory Boards shall be reimbursed by defendants for their reasonable expenses. Members of the Professional Advisory Board, and where appropriate, members of the Consumer Advisory Board, shall receive appropriate compensation.

## T. Management

1. A meaningful table of organization shall be maintained, clearly defining areas of responsibility and accountability by position and name. A means for resolving disputes between units and professional departments, including disputes concerning the deployment or supervision of staff, shall be created, including methods for clarifying any misunderstandings that may arise in this regard. There shall be regular outside evaluation of management and of all major program elements covered by this judgment.

2. A current and meaningful policies and procedures manual shall be developed at once, incorporating recommendations from key institution staff as well as consultants.

3. Consultants shall be used as catalysts, evaluators, and monitors of programs and services on a structured and regular basis. Whenever consultants or outside evaluators are utilized, they shall prepare written reports and evaluations which shall be forwarded to the Director, the Review Panel, and the parties. Where appropriate, such reports may be made available on request to the Professional and Consumer Advisory Boards by the Director or the Review Panel, and their confidentiality shall be maintained.

4. The Director shall prepare an intelligible budget request complying with applicable laws, with program objectives .

## U. Records

1. There shall be a system of records for each resident, developed and maintained under the supervision of a competent librarian or registrar. Each resident's records shall be readily available to all professional staff. Direct care staff involved with a particular resident shall have access to those portions of an individual's records relevant to programming. Information shall be incorporated in the resident's record in sufficient detail to enable those persons involved in the resident's program to provide effective, continuing services. All entries in the resident's record shall be legible, dated, and have the signature and identification of the individual making the entry.

2. These records shall include:

- a. Identification data including the resident's legal status;
- b. The resident's history, including but not limited to:
  - (i) relevant family data, including family visits and contacts, educational background, and employment record;
  - (ii) prior and institutional medical history, both physical and mental, including prior institutionalization;
- c. An inventory of the resident's life skills;
- d. A record of each physical examination, psychological report, and any other evaluations, including all those required by this judgment;
- e. A copy of the individual's development plan, and any modifications and evaluations thereof, with an appropriate summary to guide direct care staff in implementing such plan;
- f. The findings made in periodic (at least quarterly) reviews of the individual's response to his or her development plan, with directions as to modifications, prepared by a professional involved in the resident's program;
- g. A copy of the post-institutionalization plan and any modifications thereof, a summary of the steps that have been taken to implement that plan, and all social service reports;
- h. A medication history and status, as required by Section Q;
- i. A signed order by authorized personnel for any physical restraints, as required by Section N;
- j. A description of any extraordinary incident or accident in the institution involving the resident, to be entered by a staff member noting personal knowledge of the incident or accident or other source of information, including all reports of investigations of resident mistreatment, as required by Section N;
- k. A monthly summary of the extent and nature of any work activities and the effect of such activity upon the resident's progress;



1. All team minutes relating to the resident.

m. All other orders and certifications specifically required by this judgment.

3. Defendants shall employ an adequate number of appropriately qualified staff, and necessary supporting personnel, to facilitate the prompt and accurate processing typing, checking, indexing, filing and retrieval of records and record data.

## V. Community Placement

1. Defendants shall take all steps necessary to develop and operate a broad range of non-institutional community facilities and programs to meet the needs of Willowbrook's residents and of the class. Within six years from the date of this judgment Willowbrook shall be reduced to an institution of 250 or fewer beds to serve the needs of residents who require institutional care and who come from the geographic area of Staten Island. The Review Panel shall annually evaluate progress towards this objective.

2. To this end, defendants shall each year for the next five years request the legislature to appropriate sufficient additional funds for the development and operation of community facilities and programs to serve the needs of the class to ensure that an increasing proportion, exclusive of increases in salaries, of the department's budget, resources and expenditures relevant to the class, shall be devoted to the development and operation of such facilities and programs.

3. Until such time as other private or governmental agencies develop and operate community facilities and programs sufficient to meet the needs of Willowbrook's residents and of the class, defendants shall accept direct responsibility for the development and operation of such facilities and programs, including the development and operation of hostels, halfway houses, group homes, sheltered workshops, and day care training programs.

4. Within 12 months of the date of this judgment, defendants shall develop and operate, or cause to be developed and operated, at least 200 new community placements to meet the needs of Willowbrook's residents and of the class. For purposes of this section, except for placement in hostels currently under construction or development, which in no event shall exceed 15 beds, a "community placement" shall mean a non-institutional residence in the community in a hostel, halfway house, group home, foster care home, or similar residential facility of fifteen or fewer beds for mildly retarded adults, and ten or fewer beds for all others, coupled with a program element adequate to meet the resident's individual needs.

5. Promptly following the date of this judgment, defendants shall request an appropriation of not less than two million dollars (\$2,000,000) in order to finance the leasing and operation of the 200 community placements required by paragraph 4 hereof. If such request is not approved by the legislature, defendants shall earmark and utilize for this purpose a sum of not less than two million dollars from sums already appropriated by the legislature for the 1975-1976 fiscal year.

6. Within six months of the date of this judgment, the Review Panel, working in close collaboration with the plaintiffs and with the defendants, who shall provide all necessary assistance and information for this purpose, shall prepare and recommend for implementation by defendants a detailed and comprehensive plan for the development and operation of additional community facilities and programs to meet the needs of Willowbrook's residents and of the class. Said plan will be referred to hereafter as the "community placement plan."

7. The community placement plan may recommend that additional community facilities and programs be developed and operated during the six months following recommendation of the plan, and shall recommend, by type and size of facility and program, the development and operation of a specified number of community facilities and programs, together with a recommended timetable for their de-

velopment and operation.

8. In order to prepare the community placement plan described in paragraphs 6 and 7 hereof, the Review Panel shall be authorized, at its discretion, to retain consultants with expertise in the development and operation of community facilities and programs. Defendants shall provide a sum of not less than \$50,000 to be used by the Review Panel for this purpose.

9. The primary goal of Willowbrook and of the Department shall be to ready each resident, with due regard for his or her own disabilities and with full appreciation for his or her own capabilities for development, for life in the community at large. To this end, defendants shall develop a full program of normalization and community placement with a full complement of community services.

10. The Director shall proceed immediately to identify those residents, including those with only physically handicapping conditions, who lack only the proper preparation to benefit from community placement. There shall be at least an annual review of each resident's progress for this purpose, as provided in section D.

11. Interdisciplinary teams shall be responsible for the development of specific programming for an individual's normalization, including a projected date for his or her progress to a community setting, in consultation with the individual resident and his or her parents or guardian. An individual staff member shall be designated to ensure the carrying out of each resident's program plan. Preparation for advancement to community placement, as provided in section D, shall include specific instruction, both at Willowbrook and in the community, in living skills, and shall also include participation in residential-type programs housed in smaller units on the Willowbrook grounds, by conversion of residential facilities currently used by staff, to accommodate such programs.

12. The community services office shall conduct an intensive campaign to secure appropriate community placements. Evaluation by interdisciplinary teams shall include recommendations as to the community alternative best suited for each resident.

13. No resident shall be placed in the community or transferred to another State institution unless and until the Director shall find that such placement will offer the individual better services, an opportunity for personal development, and a more suitable living environment than Willowbrook. Services offered in the community shall include, where appropriate, work placement, legal services, health services, recreational services, citizen advocacy, respite care and family planning services and education.

14. The Department will urge and facilitate the development of New York City proposals to take full advantage of some of the \$2,000,000.00 authorized and appropriated by the legislature by Chapter 620 of the Laws of 1974, for the purposes specified therein.

W. Miscellaneous

1. Unless otherwise specified herein, and except for steps, standards and procedures relating to capital construction and renovation, all other steps, standards and procedures contained herein, including those relating to staffing, programming, clothing, housekeeping, recreation, education, food and maintenance, shall be achieved, and thereafter maintained, within thirteen (13) months from the date of this judgment. Capital construction and renovation shall be completed as promptly as possible. To this end, defendants shall promptly prepare and submit to the Review Panel for evaluation and recommendation a detailed plan for all capital construction and renovation required by this judgment, which plan shall include timetables for the achievement of specific objectives.

2. The moratorium on admissions to Willowbrook shall be continued indefinitely. This moratorium, however, shall not preclude "paper admissions" to Willowbrook of persons who are not actually admitted to Willowbrook, but are, instead, placed by Willowbrook in other facilities and programs, and shall not preclude short-term readmissions of members of the class or residents of Staten Island for the purpose of respite care or for specialized intensive services that cannot be provided in the community, and shall not preclude emergency admissions of residents of Staten Island to the Staten Island Unit of Willowbrook Developmental Center, upon notice to the Professional Advisory Board.

3. Defendants shall promptly prepare and submit to the Review Panel for evaluation and recommendation a plan for adequate hearing procedures, incorporating appropriate due process safeguards, to precede any (1) refusal after demand to admit or transfer any Willowbrook resident to a less restrictive setting, or (2) transfer of a Willowbrook resident to any other residential placement. Community placements and transfers to other institutions or developmental centers shall be accompanied by written notice to the Mental Health Information Service, and to parents, relatives, or legal guardians, at least one month prior to the date of transfer.

4. Defendants shall not reduce the level of services and programming provided in other facilities and programs for the mentally retarded in order to meet the requirements of this judgment.

5. The Review Panel shall evaluate and make recommendations concerning the appropriateness of the Keener Unit as a residential facility for the retarded prior to the transfer to or admission of any member of the class to Keener.

6. Nothing in this judgment shall be deemed to expand or restrict the classes of persons otherwise entitled to participate in any disciplinary proceedings authorized by law or contract. The Review Panel, however, may designate one of its members to observe one or more of such proceedings. That member shall not participate in such proceedings, except as an observer, and shall keep confidential the name or names of any employees or residents involved in such proceedings.

7. Plaintiffs and defendants expressly waive the rights of the residents to confidentiality of resident records under §15.13 of the Mental Hygiene Law for the limited purpose of allowing the Consumer Advisory Board or its designees to act in loco parentis with respect to Sections D1, D4, D6, N7, P2, V11, and W3 hereof for residents whose interests under those sections are not actively represented by a parent, relative or legal guardian or committee. If necessary, or advisable, the Consumer Advisory Board may apply to an appropriate court for authority to exercise directly, or through its designees, the function of a guardian, with respect to this judgment. In general the defendants shall support such applications but reserve the right to oppose the particular person or persons nominated to serve as such guardian.