

family member.

23. "Normalized" means the type of activities and settings in which children who do not have emotional or behavioral disorders, and children who are not in foster care or DHR custody, would participate or be found.

24. "Parent" means a natural or adoptive parent, a child's legal custodian or guardian, or a person acting as a parent.<sup>14</sup> A person is an "adoptive parent" after the placement of a child in the home for purposes of adoption and the execution of an Adoptive Home Placement Agreement.

25. "Placement prevention services" are services offered prior to the placement of a class member in foster care and/or DHR custody; they are designed to avoid out-of-home placement.

26. "Services" means services that are needed, not services that are available. It includes but is not limited to: "hard" or "concrete" services, like the services provided families under DHR's recently instituted "Placement Prevention Project";

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services as "family preservation services").

<sup>14</sup> See 34 C.F.R. §300.10 (defining "parent" for purposes of special education law).

Persons acting as a parent include the actual caregivers of a child, such as a grandmother or aunt with whom the child lives. Where it is impossible for defendant to follow the wishes of both a child's legal parent and a person acting as the child's parent, the rights of the child's legal parent will prevail unless a court of competent jurisdiction orders otherwise.

DHR shall have discretion to decide whether a caregiver is "acting as a parent" when the caregiver has no legal relationship to the child and is not a relative.

placement prevention services as well as other services; activities of DHR staff as well as of other providers; and services to meet mental health needs.

27. "Surrogate parent" means an individual appointed pursuant to 20 U.S.C. §1415(b)(1)(B) and 34 C.F.R. §300.514 to advocate for appropriate special education and related services for class members who are "children with disabilities" within the meaning of the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. §1400 et seq.

28. The "system of care" is the system described in Sections VII and VIII below. It shall be under the control or regulation of the defendant. The system is based on, among other things, the model developed and promoted by the CASSP program of the National Institute of Mental Health. Thus, literature existing at the time of entry of this decree and currently disseminated by CASSP-funded national centers<sup>15</sup> may be used as an aid in interpreting the requirements of this decree.

29. A "therapeutic foster home" is a specialized foster home in which no more than one class member resides.<sup>16</sup> A therapeutic foster home may provide brief respite care to a child

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<sup>15</sup> There are currently three such centers: the Florida Research and Training Center for Improved Services for Seriously Emotionally Disturbed Children in Tampa, Florida; the Research and Training Center on Family Support and Children's Mental Health in Portland, Oregon; and the CAASP Technical Assistance Center at the Georgetown University Child Development Center in Washington, D.C.

<sup>16</sup> The Implementation Plan may provide for exceptions to the rule of one resident class member in special circumstances -- for example, when it would be appropriate to have siblings who are both class members reside in the same home.

other than and in addition to the child residing in the home.<sup>17</sup>

30. Defendant will promulgate a policy, acceptable to both parties, that defines the terms "relative", "family member", and child's "home" as used in this decree.

VI. Obligations of the Department of Human Resources.

31. Defendant shall ensure that DHR, pursuant to the timetable in the Implementation Plan:

a. Establishes a "system of care" for class members and their families;

b. Operates the "system of care" with the aim of achieving the goals described in Section VII below and in conformity with the "principles" or "standards" set forth in Section VIII below;

c. Develops an Implementation Plan, as provided in Section IX below;<sup>18</sup> and

d. Complies with the provisions of Sections X-XIV below.

32. Subject to the timetable in the Implementation Plan,

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<sup>17</sup> For a description of the mission and characteristics of "therapeutic foster homes", see Stroul, Volume III: Therapeutic Foster Care, Series on Community-Based Services for Children and Adolescents who are Severely Emotionally Disturbed (Georgetown University, CASSP Technical Assistance Center: 1989).

<sup>18</sup> This decree contemplates implementation of the "operating principles" or "standards" by project areas or regions across the state over a period of time according to the Implementation Plan. The rights of class members and their families will be operationalized according to the timetable in the Implementation Plan. In other words, DHR's compliance with the "principles" or "standards" will be phased-in as provided in the Implementation Plan.

each and every class member is entitled to be treated in accordance with the "operating principles" or "standards" in Section VIII below.

VII. The Goals of The System of Care.

33. The goals of the "system of care" shall be to:

- a. Protect class members from abuse and neglect; and
- b. Enable class members to:

- (i). Live with their families; and when that cannot be achieved through the provision of services, to live near their home;

- (ii). Achieve stability and permanency in their living situation;

- (iii). Achieve success in school; and

- (iv). Become stable, gainfully employed

adults.<sup>19</sup>

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<sup>19</sup> The goals are meant, among other things, to explain the "needs" to which services are to be addressed. The object of services is to attain these goals. Thus, the goals are meant both to give meaning to and to limit the entitlements of class members and their families.

For example, in the usual case, a class member would not "need" music lessons because such lessons are not necessary to attaining the ends identified in this paragraph. However, in certain cases, the provision of music lessons may be part of a treatment plan to achieve these ends. (It may be decided that they are a less expensive, and more effective, way of promoting the class member's self-esteem and emotional stability than sessions with a counselor.) In these cases, the class member could be said to "need" the lessons and the "system of care" would be obliged to provide them.

The statement of goals is not meant to guarantee attainment of the goals for every class member. Instead, DHR is obliged to provide services needed to enable class members to attain the goals.

VI. "Operating Principles" or "Standards".

The "system of care" shall operate in conformity with the following "principles" or "standards".<sup>20</sup>

34. Class members shall live with their families.

Exceptions to this principle are to be made only when:

a. It is not possible, through the provision of services (including intensive home-based services), to protect a class member living with his/her family from imminent, serious harm; or

b. It is not possible, through the provision of services (including intensive home-based services), to protect a class member from serious harm upon reunification with his/her family.<sup>21</sup>

35. Class members and their families shall have access<sup>22</sup>

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<sup>20</sup> Unless otherwise indicated, the "principles" or "standards" apply to: placement prevention services as well as other services; class members who will not be reunited with their families as well as class members who may be; class members in longterm foster care as well as other class members; and all services provided class members and their families as well as those specifically identified herein.

<sup>21</sup> The above principle, and all other provisions of this decree, apply to voluntary placements as well as involuntary ones, but they do not apply to situations in which the parents wish to voluntarily relinquish their rights so that their child may be adopted. However, before such a voluntary relinquishment is accepted, parents must be informed, in language understandable to them, of services to which they and their child may be entitled under this decree.

<sup>22</sup> This access is limited to services needed to prevent the removal of the class member from his/her home; to enable the class member to live with a family member upon removal from his/her home; or, after removal from his/her home, to enable the class member to return home or to be discharged from foster care and/or DHR custody to a family member.

to a comprehensive array of services (including intensive home-based services)<sup>23</sup> designed<sup>24</sup> to enable class members to live with their families.

36. Class members, while in foster care or DHR custody, shall have access to a comprehensive array of services that address their physical, emotional, social and educational needs.<sup>25</sup>

37. Both class members and family members may refuse pre-

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<sup>23</sup> Other services to which class members and their families shall have access, if required to enable class members to live with their families, are: "hard" or "concrete" services including cash assistance (as limited by policies to be developed as part of the Implementation Plan); parenting skills and household management training; peer support; homemaker services; day care; respite care; help with housing; crisis services; mental health services; services for substance abuse; and "facilitative" services. For a more complete listing, see the monograph by the National Council of Juvenile and Family Court Judges and others on Making Reasonable Efforts: Steps for Keeping Families Together at pages 81-91.

Class members and their families shall have access to such services when the class member is living with his/her family or when the goal is for the class member to return home or live with a relative. When the goal is for the class member to return home, services should also be provided to the parents to prepare and enable them to care for the class member when he/she returns home. When the goal is for the class member to live with a family member, services should be also provided to the family member to prepare and enable the family member to care for the class member.

<sup>24</sup> These services should be designed, among other things, to enhance the natural support networks of class members and their families.

<sup>25</sup> Among the services to which class members shall have access, if required to attain the goals in paragraph 33, are mental health services, social services, educational services, health services, vocational services, recreational services, and "operational" services. For a listing of key services within each of the above categories of services, see page xii of Stroul & Friedman, A System of Care for Severely Emotionally Disturbed Children and Youth (Georgetown University, CASSP Technical Assistance Center: 1986).

placement services.<sup>26</sup> Class members and family members may refuse other services, to the extent permitted under law.<sup>27</sup>

38. Class members and their families shall be encouraged and supported to access services. To this end, the "system of care" shall develop and implement strategies to promote the utilization of services by class members and their families. These strategies shall include the use of community aides, the provision of transportation services, the development of ethnically and culturally sensitive services, and referral to peer support groups. When class members or their families refuse or fail to access services, the reasons for their doing so shall be assessed and the services that have been offered shall be modified or alternative services shall be offered to encourage acceptance of services.<sup>28</sup>

39. Class members and their families shall receive individualized services based on their unique strengths and

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<sup>26</sup> Such a refusal would not bar DHR from removing the class member from his home or from a relative's home when the criteria in paragraph 34 are met.

<sup>27</sup> This provision is not intended to interfere with any prerogative a state court might have to order a class member or his/her family to accept services. The Court expresses no opinion on whether a state court has such a prerogative and, if so, under what circumstances.

<sup>28</sup> This shall not affect parents' obligations to pay child support.

It is recognized that some families will intransigently refuse services despite DHR's efforts.

needs.<sup>29</sup> The strengths and needs of the class member and his/her family shall dictate the type and mix of services provided; the type and mix of services provided shall not be dictated by what services are available. Services must be adapted to class members and their families; class members and their families must not be required to adapt to inflexible, pre-existing services that are unlikely to be effective. The "system of care" shall create needed services when they are unavailable.<sup>30</sup>

40. Services to class members and their families shall be delivered pursuant to an individualized service plan.<sup>31</sup> There must be a reasonable prospect that the services provided will achieve their purpose. The services must be of a type and mix likely to achieve the goal for the child. The services must also be of a type and mix likely to be effective<sup>32</sup> in meeting the

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<sup>29</sup> The right to services of class members and their families is limited to those services needed to attain for the class member the goals described in paragraph 33 above.

<sup>30</sup> The Implementation Plan shall set forth how this obligation is to be met.

<sup>31</sup> When a class member is not living at home but the goal is to return the class member home, there may be separate individualized service plans for (a) the class member and (b) the parent or parents at home. When a class member is not living with a family member but the goal is to place the child with a family member, there may be separate individualized service plans for (a) the class member and (b) the family member.

<sup>32</sup> The following phrases used in this paragraph are meant to be synonymous: "reasonable prospect that [they] will achieve"; "likely to achieve"; and "likely to be effective".

needs to which the plan is designed to respond.<sup>33</sup>

a. Individualized service plans shall be based on a comprehensive, individualized assessment of the strengths and needs of the class member and his/her family. In the case of class members in foster care or DHR custody, this assessment shall include an examination of the class member's (i) developmental, behavioral, emotional, family, and educational history and (ii) strengths and weaknesses in behavioral, emotional, educational, and medical/physical areas.

b. Individualized service plans shall include specific services to reinforce the strengths and meet the needs of the class member and his/her family. Each plan shall identify the specific steps to be taken by DHR staff, other service providers, class members, and the class members' parents and family toward meeting the short-term and longterm objectives of the plan.

c. The "system of care" shall carefully monitor implementation of the individualized service plan and the progress being made toward the goal and objectives of the plan.

d. The goal and the objectives of the individualized service plan will be updated as needed. Services identified in the plan will be modified as needed to meet the goal and objectives of the plan (for example, by adding new services or

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<sup>33</sup> There will be occasions when services must be provided before an individualized service plan that meets the standards of this decree can be developed. The Implementation Plan shall specify the procedures to be followed on these occasions for the planning and delivery of services. These procedures shall comply as closely as possible with the "operating principles" or "standards" in this decree.

providing services in a different way). Steps shall be taken to prevent and address deterioration in the functioning of class members.<sup>34</sup>

41. The "system of care" shall address the needs of class members believed to be victims of sexual abuse.

a. Timely, professional assessments shall be conducted of class members believed to be victims of sexual abuse.<sup>35</sup> DHR shall ensure that such assessments provide clear, prescriptive guidelines for treatment of the sexual abuse.

b. The individualized service plans of class members believed to be victims of sexual abuse shall specifically identify both the class member's needs as a sex abuse victim and services to be provided in response to those needs.

42. Class members, parents, and foster parents shall be accurately and timely informed, in language understandable to them, concerning: rights under the decree (including the right to be treated in accordance with the "principles" or "standards"); the goal for the class member; individualized service plans, including objectives; services, including placements; and options.

43. Class members, parents, and foster parents shall be

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<sup>34</sup> The "system of care" shall recognize that transitions are often accompanied by deterioration in functioning and shall ensure that appropriate steps are taken to guard against such deterioration and to respond to it if it occurs.

<sup>35</sup> This standard applies even if an allegation of sexual abuse was not the basis for DHR's initiating an investigation of the class member's home and even if sexual abuse was not the basis for the class member's entry into foster care or DHR custody.