

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA,
NORTHERN DIVISION

R.C., by his next friend,
the ALABAMA DISABILITIES
ADVOCACY PROGRAM, on behalf
of himself and those
similarly situated,

Plaintiffs,

vs.

ANDY HORNSBY, Commissioner
of the Alabama Department
of Human Resources,

Defendant.

Civil Action
No. 88-H-1170-N

CONSENT DECREE

- I. Introduction.

The parties have consented to the entry of this decree as an order and judgment of the Court. By virtue of the parties' consent, it is unnecessary to have a trial on the liability issues in this case.

The parties' agreement to entry of this decree is the outcome of negotiations and bargaining.¹ Both the plaintiffs and the defendant have made concessions that they believed were unnecessary in light of prevailing law and the facts of this case. Likewise, both plaintiffs and the defendant have obtained concessions they might not have obtained from this Court.¹

¹ In other words, each party has given up some things to which the party believed himself entitled or which the party believed he might have achieved through further litigation; and each party has been able to obtain favorable outcomes that might have been beyond his reach if the case had been decided by the Court instead of resolved through negotiations.

In agreeing to the entry of this decree, the parties hope and intend to transform the operations of Alabama's child protective services and foster care systems by altering their operating principles and increasing their professionalization. The decree emphasizes the prevention of placement, early intervention, family reunification, delivery of services in home-based and community-based settings, and child and parent involvement in planning and delivering services. Its implementation requires initiatives in the areas of service development, training, quality assurance, and rights protection.

Instead of specifying the precise means for accomplishing these ends, the decree lays out a set of "operating principles" or "standards" and directs defendant to ensure that the Alabama Department of Human Resources' child protective services and foster care systems comply with these principles or standards by a date certain. Defendant maintains full operating authority over DHR and has broad discretion to devise the means by which to achieve compliance, so long as the requirements of this decree are met.

Also, the parties' agreement contemplates the development of a comprehensive array of services for class members over a period of seven years. Implementation will be phased according to an express timetable in a manner designed to maximize the benefits - - fiscal and otherwise -- the defendant expects to reap from greater emphasis on placement prevention and early intervention as means of resolving the problems identified in plaintiffs'

complaint.

The decree requires that, by October 1, 1992, DHR develop an implementation plan, acceptable to both parties, with the assistance of consultants recommended by the Florida Research and Training Center for Improved Services for Seriously Emotionally Disturbed Children in Tampa, Florida, and the Center for the Study of Social Policy in Washington, D.C.,² or others mutually agreed upon by the parties. It also requires the parties to negotiate the process by which the plan will be developed.

To minimize cost to the state and to maximize the effectiveness of new capacity, the decree calls for a sizeable investment in planning before implementation begins. New concepts and capabilities are to be piloted before going "on-line". The decree aims to achieve implementation in as cost-effective a manner as possible.

A major portion of the funds needed to finance reforms can be obtained through existing sources, including reallocation of existing spending,³ federal funds,⁴ and funds for implementation of new legislative requirements concerning "multiple needs"

² The consultants recommended may be employees or contractors of either or both Centers.

³ For example, by shifting money from foster care services to placement prevention.

⁴ For example, through the SSI, Title IV-A emergency assistance, Title IV-E, and Title XIX programs (all provided for in the Social Security Act). The SSI program is totally federally supported. The other programs provide approximately \$3 in federal money for each \$1 contributed by the state.

children.⁵ However, a sizeable increase in state appropriations to DHR will also be required, beginning in Fiscal Year 1993⁶.

II. Disclaimer of Liability.

1. By agreeing to the entry of this decree, defendant does not acknowledge or admit that DHR is in any way in violation of the U.S. Constitution or any federal statute.

III. Rationale.

The parties are of the opinion that:

2. The number of class members removed from their homes could be reduced by at least one-third through appropriate interventions (including the provision of intensive home-based services).⁷

3. A great many class members in foster care could be reunited with their families through the provision of appropriate services.

4. The placement of class members in expensive treatment facilities and institutions could be significantly reduced through the provision of appropriate home-based and community based services.

5. A great many class members could achieve permanency in

⁵ Alabama Code §12-15-71(h) (1975).

⁶ Alabama's fiscal years begin on October 1 and end on September 30. FY 1993 begins October 1, 1992.

⁷ A recent study by DHR indicates that as many of 45% of all admissions into foster care could be avoided through the provision of appropriate services. Also, each year approximately 1,000 children are placed in foster care for less than a month's time; most of these admissions could be avoided through appropriate interventions.

their living situations, achieve success in school, and become stable, gainfully employed adults if provided appropriate services.

6. The reforms incorporated in this decree are designed to achieve these improvements, among others. These reforms will help prevent serious harm to many class members. In many cases, they will also save the state considerable money.

IV. The Plaintiff Class.

7. The "plaintiff class" is all children who are now, or in the future will be, children in foster care and/or DHR custody who have emotional or behavioral disorders. The class consists of the following children:¹

- a. Children with severe emotional or behavioral problems who are in foster care and/or DHR custody, or who are at imminent risk of placement into foster care and/or DHR custody.
- DHR shall promulgate a definition, acceptable to the parties, of

¹ Regarding children who have been adjudicated a "Child in Need of Supervision" ("CHINS"), see Alabama Code §12-15-1(4) (1975), or who exhibit behaviors characteristic of CHINS:

- a. Children who have been adjudicated CHINS and placed in DHR custody are members of the plaintiff class.

- b. Children who have been adjudicated CHINS or who exhibit behaviors characteristic of CHINS are considered, under this decree, to have "emotional or behavioral problems".

- c. Children who have been adjudicated CHINS or who exhibit behaviors characteristic of CHINS may be among children "who are at imminent risk of placement into foster care and/or DHR custody." If so, they should receive services to prevent their placement.

However, it is not the intent of this decree to encourage state courts to declare children "dependent", see Alabama Code §12-15-1(10) (1975), merely because they are CHINS or exhibit behavior characteristic of CHINS.

"severe emotional or behavioral problems". The definition shall be within the "parameters" that have been formulated by the CASSP program of the National Institute of Mental Health.⁹

b. Children with moderate or mild emotional or behavioral problems who are in foster care and/or DHR custody, or who are at imminent risk of placement into foster care and/or DHR custody. Children who meet any of the descriptions in paragraphs 1-6 of the Supplemental Recommendation of the Magistrate Concerning Class Certification, filed May 15, 1990,¹⁰ and who do

⁹ CASSP, the Child and Adolescent Service System Program of the National Institute of Mental Health, was launched in 1984 to assist states and communities to develop comprehensive, home-based and community-based systems of care for emotionally disturbed youth and their families. The "parameters" referred to are discussed at pages 7-9 of Stroul & Friedman, A System of Care for Severely Emotionally Disturbed Children and Youth (Georgetown University, CASSP Technical Assistance Center: 1986).

¹⁰ The descriptions in paragraphs 1-6 of the Supplemental Recommendation of the Magistrate Concerning Class Certification are:

- (1) The child has been diagnosed as being emotionally disturbed or as having a behavioral disorder;
- (2) Although the child has not been formally diagnosed emotionally disturbed, DHR or the facility in which the child resides considers the child to be emotionally disturbed;
- (3) The child has been adjudicated a delinquent;
- (4) The child is receiving special education as an EC ("emotionally conflicted") child;
- (5) The child is residing in any of the facilities listed in Exhibit A to this order; or
- (6) Although not formally diagnosed as having a behavioral disorder, the child is considered to have a behavior disorder by DHR or the facility in which the child resides. A child has a "behavior disorder" if DHR or the facility considers the child to fit any one of the following descriptions:

- (i) the child has persistent behavior problems; (ii) the child commits significant rule infractions; (iii) the child persistently absents himself from his placement without permission or runs away; (iv) the child commits

not have severe emotional or behavioral problems, shall be considered "children with moderate or mild emotional or behavioral problems".

c. Children who are at high risk of developing emotional or behavioral problems and who are at imminent risk of placement into foster care and/or DHR custody. Defendant shall develop a definition, acceptable to the parties, of which children at imminent risk of placement are "at high risk of developing emotional or behavioral problems." While the defendant shall have broad discretion to develop and modify the definition, approximately 35% of all children at imminent risk of placement shall be deemed to be "at high risk of developing emotional or behavioral problems." Defendant shall consider including in the definition of those "at high risk" children who have previously been admitted to foster care and/or DHR custody.

actions that if committed by adults would be crimes; (v) the child engages in aggressive behavior that places the child or others at risk of injury; (vi) the child engages in self-injurious behavior; (vii) the child is residing in a facility operated or certified by the Alabama Department of Mental Health and Mental Retardation, and the child has been placed in the facility for reasons other than the child's mental retardation; (viii) the child is residing in a facility operated or licensed by the Alabama Department of Youth Services; or (ix) the child has been identified by DHR as having behavior problems. Such children may be emotionally disturbed, mentally retarded, or otherwise developmentally disabled. On the other hand, they may suffer from no handicap other than their behavior disorder.

"Exhibit A", referred to in paragraph 5 of the Supplemental Recommendation, is attached as Appendix A to this decree.

V. Definitions.

The following definitions apply to this decree and to related documents.

8. A "child care institution" is defined at Alabama Code §38-7-2(4) (1975).

9. "Class members" means each and every member of the plaintiff class.

10. "Community aides" are volunteer or paid staff from the same community and culture as the client, including volunteers or paid staff who have themselves been recipients of services.

11. "Disruption" means an unplanned change in placement.

12. "Family setting" means a class member's own home, the home of a relative, a foster home, or a therapeutic foster home. It does not include a group foster home.

13. A child is in "foster care" if (a) the child is residing outside of his home and (b) any one of the following other conditions is met: (i) the child is in temporary protective custody, temporary custody, or permanent custody of DHR, (ii) the child is the subject of a voluntary placement agreement, or (iii) the child was in DHR custody immediately prior to the child's entry into an institution and the plan is for the child to return to DHR custody upon discharge.¹¹ The fact that a child is

¹¹ This definition is for purposes of this decree only. The definition is not meant to alter state law understandings of the meaning of "foster care". Nor is it meant to alter how the term "foster care" is understood for purposes of federal audits of Alabama's Title IV-B and Title V-E programs.

residing in a placement or institution operated or licensed by DMH/MR and/or DYS does not disqualify the child from being in "foster care".

14. Children in "foster care and/or DHR custody" includes: children who are voluntarily placed; children in the temporary protective custody, temporary custody, or permanent custody of DHR; children in DHR custody who live at home or with relatives; and children residing in institutions operated by the Department of Mental Health and Mental Retardation ("DMH/MR") or the Department of Youth Services ("DYS") who, prior to their entry into the institution, were in foster care and/or DHR custody and for whom the plan is to return to foster care and/or DHR custody upon their discharge from the institution.

15. A "foster home" is defined at Alabama Code §38-7-3(10) (1975).

16. "Foster parent" means the responsible adult or adults caring for a class member in an out-of-home family setting. "Foster parent" includes a foster parent in a therapeutic foster home and the responsible adults in a relative placement. It does not include a natural or adoptive parent.

17. The "goal" for the child is the permanent living situation that the child's case plan is designed to achieve.¹² Possible goals are: remaining at home or with a relative; returning the child home; placing the child with a relative;

¹² DHR currently refers to the "goal" for the child as the child's "permanent plan".

adoption; independent living; and longterm foster care.

18. A "group home" is defined at Alabama Code §38-7-3(9) (1975).

19. A "group foster home" is a staffed foster home in which five or fewer children live. It is distinct from a foster home with the same number of children. A "group foster home" is the creation of a public or private service provider; the staff of the "group foster home" do not consider it their own home or the home of their family. By contrast, a foster home is a "real" home into which foster children are placed. The foster parents are not "staff"; the foster home is their actual home.

20. The "Implementation Plan" is the plan required by paragraphs 64-68 of this decree.

21. An "institution" means a psychiatric hospital, a psychiatric ward of a general hospital, any facility operated by DMH/MR or by DYS, or a detention facility. It does not include a child care institution, group home, group foster home, or foster home (including a therapeutic foster home) or other similar placement.

22. "Live with their families" means to live at home and, when that cannot be achieved through the provision of services (including intensive, home-based services),¹³ to live with a

¹³ The characteristics of intensive home-based services are described in, among other works: Stroul, Volume I: Home-Based Services, Series on Community-Based Services for Children and Adolescents who are Severely Emotionally Disturbed (Georgetown University, CASSP Technical Assistance Center: 1988); Edna McConnell Clark Foundation, Keeping Families Together: The Case for Family Preservation 7-13 (1985) (referring to intensive home-based

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.¹⁴ 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";

services as "family preservation services").

¹⁴ 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 centers¹⁵ 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.¹⁶ A therapeutic foster home may provide brief respite care to a child

¹⁵ 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 CASSP Technical Assistance Center at the Georgetown University Child Development Center in Washington, D.C.

¹⁶ 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.¹⁷

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;¹⁸ and

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

32. Subject to the timetable in the Implementation Plan,

¹⁷ 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).

¹⁸ 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.¹⁹

¹⁹ 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".²⁰

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.²¹

35. Class members and their families shall have access²² to

²⁰ 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.

²¹ 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.

²² 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.

a comprehensive array of services (including intensive home-based services)²³ designed²⁴ 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.²⁵

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

²³ 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.

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

²⁵ 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.²⁶ Class members and family members may refuse other services, to the extent permitted under law.²⁷

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.²⁸

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

²⁶ 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.

²⁷ 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.

²⁸ 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.²⁹ 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.³⁰

40. Services to class members and their families shall be delivered pursuant to an individualized service plan.³¹ 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 effective³² in meeting the

²⁹ 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.

³⁰ The Implementation Plan shall set forth how this obligation is to be met.

³¹ 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.

³² 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.”

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

³³ 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.³⁴

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.³⁵ 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

³⁴ 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.

³⁵ This standard applies even if an allegation of sexual abuse was not the basis 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.

encouraged and assisted to articulate their own strengths and needs, the goals they are seeking for themselves, and what services they think are required to meet these goals.³⁶

44. Class members, their parents, and foster parents shall be involved in the planning³⁷ and delivery of services, in accordance with paragraphs (a)-(d) below. The right of class members, parents, and foster parents to participate in treatment planning and delivery may be restricted only according to a specified administrative process. DHR shall promulgate a policy, acceptable to both parties, describing under what circumstances and according to what procedures restrictions may be imposed.

a. The class member shall be treated as a partner in the planning and delivery of services if the class member is age 10 or older and, if the class member is under the age of 10, when possible.

b. The class member's parents shall be treated as partners in the planning and delivery of services if the class member is living at home or if the goal is for the class member to return home.

c. Foster parents shall be treated as partners in the planning and delivery of services whether or not the goal for the class member is to return home.

³⁶ See Dunst, Trivette, and Deal, Enabling and Empowering Families: Principles and Guidelines for Practice (Brookline Books, Cambridge, MA: 1988).

³⁷ This includes, but is not limited to, the development of individualized service plans.

d. When necessary, services shall be provided class members and parents to enable them to participate as partners. Such services shall include transportation assistance, advance discussions, and assistance with understanding written materials.

45. The "system of care" shall promote class members' visitation with their parents and family.

a. The matter of visitation shall be addressed in the class member's individualized service plan. The frequency and circumstances of visitation shall depend on age and need. Visitation shall be viewed as an essential ingredient of family reunification services. Hence, when the goal is for the child to return home or live with a family member, visitation will be actively encouraged; assistance with transportation will also be provided.

b. Visitation may be arranged by the class member, the class member's parents or family, or the foster parents, as well as by DHR staff and the staff of residential facilities, in accordance with the individualized service plan.

c. Supervision of visitation shall be required only when there is a danger that the parent or family member with whom the class member is visiting will harm the class member unless the visit is supervised. When supervision of visitation is required, such supervision may be provided, as appropriate, by the class member's foster parents, as well as by DHR staff, the staff of residential facilities, or other designated persons.

d. DHR will promulgate a policy, acceptable to both

parties, implementing the principles set forth in paragraphs (a)-(c) above.

46. The "system of care" shall be sensitive to cultural differences and the special needs of minority ethnic and racial groups. Services shall be provided in a manner that respects these differences and attends to these special needs. These differences and special needs shall not be used as an excuse for failing to provide services.

47. The "system of care" shall conduct timely investigations of allegations that class members are being abused or neglected while living at home or with a relative or while in foster care or DHR custody.

48. The "system of care" shall embrace the philosophy of service delivery in home-based and community-based settings. Class members shall receive services in the least restrictive, most normalized environment that is appropriate to their strengths and needs."

a. Class members shall be placed in the least restrictive, most normalized living conditions appropriate to their strengths and needs." The class member's own home shall be considered the least restrictive, most normal placement. Following are other placements listed in ascending order in terms

" To this end, services for class members shall not be unnecessarily segregated. See 29 U.S.C. §794 and the regulations promulgated thereto.

" This standard applies to the "permanent living situations" referred to in paragraph 50(e) as well as to other placements.

of restrictiveness: independent living;⁴⁰ a foster home; a therapeutic foster home; a group foster home; a group home; a child care institution; an institution. Institutional care shall be used only in an emergency and as a last resort. Class members shall be placed in family settings, whenever they can be cared for in such a setting with supportive services.

b. Siblings shall be placed together. DHR may promulgate a policy, acceptable to both parties, identifying circumstances in which exceptions to this principle may be permitted.

c. The "system of care" shall not initiate or consent to the placement of a class member in an institution or other facility operated by DMH/MR or by DYS unless the placement is the least restrictive, most normalized placement appropriate to the strengths and needs of the class member.

d. Class members, when in foster care or DHR custody, shall be integrated to the maximum extent feasible into normalized leisure and work activities.

e. DHR shall vigorously seek to assure that class members, when in foster care or DHR custody, are integrated to the maximum extent feasible into normalized school settings and activities.

49. Class members from Jefferson, Mobile, Montgomery, Madison, Houston, Tuscaloosa, Etowah, Calhoun, Walker, Lee, and

⁴⁰ In this context, "independent living" means living without an adult caretaker.

Dallas counties shall be placed within their home county when removed from their homes.⁴¹ Class members from other counties shall be placed within the region⁴² in which their home county is located.⁴³ Exceptions to this principle are to be permitted only in exceptional circumstances with the written permission of the Director of the Division of Family and Children's Services or his/her designee.⁴⁴ DHR shall promulgate a policy, acceptable to the both parties, that describes when such exceptional circumstances are present.

50. The "system of care" shall promote permanency in class members' living situations.

a. When the goal is that the class member shall return home or be discharged to a family member, the "system of care" shall vigorously seek to achieve this goal.

b. When the goal of return home or discharge to family has been achieved, the "system of care" shall vigorously seek to avoid reentry of the class member into foster care.

c. The "system of care" shall make timely, competent

⁴¹ The requirement of in-county placement may be modified upon mutual consent of the parties if, during the development of the Implementation Plan, it appears that a regional approach would be preferable.

⁴² The Implementation Plan shall specify the number of regions into which the state will be divided and which counties shall be considered a part of which region.

⁴³ The "regions" may include counties specified above.

⁴⁴ An example of such an exceptional circumstance is when an out-of-county or out-of-region placement is necessary to assure that the child lives with a family member.