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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

TERRI LEE HALDERMAN, et al.

v.

PENNHURST STATE SCHOOL AND
HOSPITAL, et al.

NO. 74-1345

FINAL SETTLEMENT AGREEMENT

1. This Final Settlement Agreement will become effective upon approval by the District Court. The purpose of this Final Settlement Agreement is to set forth actions Defendants will take to provide and maintain services to Plaintiffs and to establish a timetable for termination of the Court's active jurisdiction over the underlying action.

2. Pennhurst State School and Hospital will be closed no later than July 1, 1986, subject to Paragraph 3. After that date, the institution shall not be used as a residential facility for people with retardation by any state or county agency.

3. Should Defendants present good cause for extension of the deadline in Paragraph 2 above, Plaintiffs will agree to such an extension to a date no later than September 30, 1986. Alternatively, upon motion by Defendants and a finding of good

cause by the District Court, the deadline in Paragraph 2 above may be extended for a reasonable time.

4. The prior orders of the Court will have no further binding effect except insofar as specific provisions of the prior orders are incorporated in Appendix A.

5. The Plaintiff class, as previously determined, included "persons who are on a waiting list for placement at Pennhurst" and "persons who because of the unavailability of alternate services in the community may be placed at Pennhurst." There is a need to alter the class definition to take into account the upcoming closing of the institution. The claims of the afore-mentioned persons, to the extent they exist, are voluntarily dismissed pursuant to Fed. R. Civ. P. 41, without prejudice to their being asserted in any court of competent jurisdiction the individuals may choose. Defendants agree not to assert any res judicata or collateral estoppel bar to such claims based upon the pendency of this case, any previous order herein, or this agreement.

6. Pursuant to Fed. R. Civ. Pro 23, the class definition is amended. The members of the Plaintiff class are all retarded persons who have resided at Pennhurst at any time on or after May 30, 1974.

7. Resources currently committed to Pennhurst shall be

reallocated to community programs and services in the manner set forth in Appendix B.

8. The current Hearing Master shall continue his functions only until the approval of this Final Settlement Agreement by the District Court, at which time unresolved matters shall be transferred to the reviewing professional for disposition in accordance with Paragraph 9 below.

9. For those plans developed pursuant to Appendix A for current residents of Pennhurst:

(a) The parties to this Final Settlement Agreement will mutually agree to an individual to serve as the independent neutral retardation professional under this Paragraph. The Commonwealth Defendants shall bear the cost of the independent mental retardation professional and shall enter into an appropriate contract with him or her, which contract shall be reviewed in advance by the other parties to this Final Settlement Agreement.

(b) Any person disagreeing with that aspect of the TIHP which constitutes the judgment whether to move the Pennhurst resident into a community living arrangement or an institution (including the class member, Commonwealth, County, parent, advocate, or plaintiffs' counsel in this case) may apply to the independent neutral retardation professional for review.

c) The reviewing professional shall uphold the judgment

made by the interdisciplinary team process i) if it is in fact a professional judgment in light of all the facts and circumstances of the case, and ii) if placement in a state retardation facility is recommended, the standards in Goldy v. Beal, 6 Pa. Bull. 2883 (Nov. 13, 1976), have been met.

d) Whenever the reviewing professional determines that the individual habilitation plan does not satisfy the standards set forth in Paragraph 9(c), he or she will state reasons and the plan will be rejected and the interdisciplinary team reconvened to prepare a plan in accordance with their, and the County Administrator's, professional judgment. After such a remand, if disagreements are again raised, the revised plan will be resubmitted to the reviewing professional.

e) The reviewing professional will hold a conference on the proposed placement, receive information from the professionals proposing the plan and other participants in the conference, and will express his or her findings and conclusions in writing. Notice of all conferences, findings and other communications by the reviewing professional will be provided to the parties to this Final Settlement Agreement. The decision of the reviewing professional shall be final and binding on all parties. However, nothing herein shall preclude any aggrieved party from seeking such remedy in any court (other than in this action) as would otherwise be available under either state or federal law.

10. Commonwealth Defendants shall continue to make

available advocates to assist class members and their families in the TIHP process and review. The advocates shall have the authority to freely communicate with any organization, person or counsel, including counsel for any party in this case, and to refer clients to any counsel; nothing herein obligates any party to assume costs of counsel as a result of such referral.

11. Absent the availability of an appropriate placement, no Pennhurst resident shall be moved merely to meet a timetable. Nothing herein shall prohibit a properly planned temporary placement.

12. Class members and their parents or guardian, or closest relative, will have a significant role in the placement decision-making process. As members of the interdisciplinary team and as important participants, the input of class members and their parents or guardians, or closest relative, shall be encouraged and respected by the other members of the team who shall be sensitive and respond to their feelings and concerns.

13. The obligation of the County Defendants to provide services under this Final Settlement Agreement is conditioned upon the provision by the Commonwealth Defendants of complete funding for such services, except that the County may be required to provide 10% of the funding for certain non-residential services as identified in the Mental Health and Mental Retardation Act of 1966. The funding so provided by the

Commonwealth Defendants shall through Fiscal Year 1986 - 1987 be specifically and separately set forth in the allocation letters sent by the Secretary of Public Welfare to the County Defendants. The County Defendants may, in their absolute discretion, provide additional services over and above those funded by the Commonwealth Defendants, but the County Defendants may not be required to do so.

14. Subject to paragraphs 15 and 16 below, the parties agree that as of the dates specified in those paragraphs, the District Court will mark this case closed and settled, will vacate the judgment and all orders of the Court except those in Appendix A, which shall remain in effect permanently (subject to Fed. R. Civ. P. 60(b)), and will cease to have active jurisdiction of this case. Until the District Court's actions pursuant to this paragraph, the opinion entered by the District Court on December 23, 1978 in lieu of findings of fact and conclusions of law shall remain in effect as the law of the case but shall otherwise have no collateral estoppel or res judicata effect, and may not serve as the basis for requiring anything of Defendants other than as is required by this Final Settlement Agreement and its Appendices, except that with reference to enforcement of this Final Settlement Agreement, nothing herein will affect plaintiffs' claim for costs or fees.

15. If, before the dates specified in Paragraph 16, the District Court finds that the Defendants are not in substantial

compliance with any provision of this Final Settlement Agreement, including the appendices, or that community residential and nonresidential services and programs have been reduced, such finding will prevent the actions described in Paragraph 14 below until the Court further finds that Defendants have rectified such substantial noncompliance or have increased the services and programs.

16. The parties desire that there be an orderly transition to the cessation of active jurisdiction specified in Paragraph 14. For each of the five sets of County Defendants (the Bucks, Chester, Delaware, Montgomery, and Philadelphia Defendants), the "date specified" in Paragraphs 14 and 15 shall be two years after the last of each of the County's residents leaves Pennhurst. For the Commonwealth Defendants, the "date specified" in Paragraphs 14 and 15 shall be July 1, 1989.

17. If the General Assembly, for any reason, fails to appropriate or make available sufficient funds (a) to implement this Final Settlement Agreement as set forth in Appendix B, Paragraphs B4-B8, or (b) to increase the funding for community services in an amount approximately equal to or greater than the amount saved by reducing the Pennhurst population as provided for in this Final Settlement Agreement, then upon a showing by Commonwealth Defendants to the District Court that such events have occurred, the parties agree that this final settlement agreement shall be voided as to the Commonwealth Defendants and as to those County Defendants, if any, who are unable to provide

the services contemplated herein by reason of such funding insufficiency or unavailability. The parties agree further that thereupon the case shall be reinstated on the docket of the Court of Appeals in exactly the status it had as of May 1, 1984.

18. In the event that the Plaintiffs should determine that any party to this Final Settlement Agreement is failing adequately to discharge its obligations hereunder, Plaintiffs shall give written notice of such failure to the defaulting party, specifying the grounds relied upon as demonstrating such failure. The defaulting party will have 30 days, from the receipt of such notice, in order to cure the alleged default. If the default has not been cured within the 30 day period, or if the defaulting party has not in the meantime reasonably undertaken to correct the default, Plaintiffs may pursue their remedies in court. The provisions of this paragraph providing for notice and an opportunity to correct default shall not be construed to limit the defenses available to Defendants with reference to default.

19. Attached as Appendix B is a description of the implementation steps Defendants will take to comply with this Final Settlement Agreement.

20. All appeals pending in the Court of Appeals in this case (except Nos. 78-1490, 78-1564 and 78-1602), all motions, contempt citations, and exceptions filed by any party hereto and now pending, will be stayed upon approval of the Final

Settlement Agreement by the District Court. The parties will present the proposed order, attached as Appendix D, to the Court of Appeals.

21. Until July 1, 1989, all bulletins, memoranda, directives, and statements of official policy issued by Defendants in connection with implementation of this Final Settlement Agreement shall, upon issuance, be sent to Plaintiffs' counsel.

22. Procedures for class notice and settlement approval hearing are set forth in Appendix C.

Glossary of Terms

Advocate -- A trained individual whose primary responsibility is to represent a plaintiff class member's interests during the planning process and monitor the provision of those services in the absence of involved family or at the request of the individual and/or his or her family.

County Defendants -- The Commissioners, County Council, and Mental Health and Mental Retardation Administrators of Bucks, Chester, Delaware, and Montgomery Counties, and the Mayor, City Council, and the Mental Health and Mental Retardation Administrator of Philadelphia.

Commonwealth Defendants -- Pennhurst State School and Hospital; the Department of Public Welfare; the Secretary of Public Welfare; the Deputy Secretary of Mental Retardation; the Executive Deputy Secretary of Public Welfare; the Deputy Secretary for the Southeast Region; the Commissioner for Mental Retardation for the Southeast Region; the Superintendent of the Pennhurst State School and Hospital; and the employees and agents of Pennhurst State School and Hospital.

Waiver -- A waiver granted by HCFA under Section 2176 of the Omnibus Budget Reconciliation Act of 1981, P.L. 97-35, 42 U.S.C. 1396n(c), permitting state plans to include, as medical assistance, payment for part or all of the cost of home or community based services.

Southeast Region -- An administrative division of the Department of Public Welfare encompassing five (5) counties -- Bucks, Chester, Delaware, Montgomery and Philadelphia Counties.

Case Manager -- A qualified mental retardation professional, employed by County Defendants with the primary responsibility for coordination of an individual's program planning and the provision of services.

Special Management Unit -- A unit of Commonwealth employees whose

Commonwealth Defendants -- Pennhurst State School and Hospital; the Department of Public Welfare; the Secretary of Public Welfare; the Deputy Secretary of Mental Retardation; the Executive Deputy Secretary of Public Welfare; the Deputy Secretary for the Southeast Region; the Commissioner for Mental Retardation for the Southeast Region; the Superintendent of the Pennhurst State School and Hospital; and the employees and agents of Pennhurst State School and Hospital.

Waiver -- A waiver granted by HCFA under Section 2176 of the Omnibus Budget Reconciliation Act of 1981, P.L. 97-35, 42 U.S.C. 1396n(c), permitting state plans to include, as medical assistance, payment for part or all of the cost of home or community based services.

Southeast Region -- An administrative division of the Department of Public Welfare encompassing five (5) counties -- Bucks, Chester, Delaware, Montgomery and Philadelphia Counties.

Case Manager -- A qualified mental retardation professional, employed by County Defendants with the primary responsibility for coordination of an individual's program planning and the provision of services.

Special Management Unit -- A unit of Commonwealth employees whose

approval of plaintiff class member's Transitional Individual Habilitation Plans and the monitoring of the provision of services to mentally retarded individuals.

HCFA -- Health Care Financing Administration of the United States Department of Health and Human Services.

Individual Habilitation Plan (IHP) -- A written plan, based upon an interdisciplinary assessment of an individual's strengths and needs and formulated in accordance with the "Placement Procedures", which sets forth specific short and long term goals and objectives for the person's habilitation and specifies the services and the methods for delivering them which are necessary to the individual's habilitation.

Transitional Individual Habilitation Plan (TIHP) -- The initial Individual Habilitation Plan which in addition specifies the services necessary to facilitate an individual's transfer to a new residential setting.

Interdisciplinary Team -- A group of persons drawn from each of the professions, disciplines and service areas relevant to identifying the individual's strengths and developmental needs and designing a program for the individual's habilitation, including the individual's county case manager, the retarded person, her or his parents, guardian, any advocate, and, if

identified, the person's primary service providers including staff most familiar with the individual.

Individual Habilitation Planning Process -- The process by which an Individual Habilitation Plan is developed by an Interdisciplinary Team, reviewed and periodically revised in accordance with professional standards.

Professional Judgment -- A decision about the placement or services to be provided to a mentally retarded individual made by a qualified mental retardation professional or professionals in accordance with professional standards and based upon all information relevant to the habilitation and placement of the individual.

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Appendix A

A1. Plans and services shall be provided by Commonwealth and County Defendants to class members as determined in accordance with this Final Settlement Agreement by a professional judgment, expressed through the interdisciplinary team process, and approved or disapproved by the County Mental Health and Mental Retardation Administrator or his or her designee.

A2. Commonwealth and County Defendants shall provide community living arrangements to the members of the Plaintiff class for whom such placement is called for by the individual planning process, together with such community services as are necessary to provide them with minimally adequate habilitation, as defined in the individual planning process, until such time as the retarded individual is no longer in need of such living arrangement and/or community service.

A3. The Defendants agree that they will continue to provide residential and habilitative services to those persons

who were furnished such services pursuant to the placement orders of the District Court in this case or who are being furnished such services under this Final Settlement Agreement (with the exception of the Selinsgrove and Ebensburg Center residents to be placed under Appendix B), including the IHP planning process, written IHPs, case management and monitoring, as provided in this Appendix A.

A4. Commonwealth and County Defendants shall develop and provide a written individualized program plan, formulated in accordance with professional standards, to each member of plaintiff class, provide to each an individualized habilitation program, provide annual periodic review thereof and provide the opportunity to each member of plaintiff class and to his or her next friend to be heard thereon.

A5. Commonwealth and County Defendants shall monitor the services and programs being received by class members as follows:

a. Each TIHP shall be reviewed and approved by the Commonwealth Defendants through the Special Management Unit to assure it meets the needs of the person and is formulated in accordance with professional standards.

b. The County Defendants will monitor the programs and services being received by each individual class member in accordance with his or her IHP. This monitoring will include an annual on-site visit of all residential and day programs serving class members to examine the strengths and weaknesses of the

facilities are safe and adequately staffed, and that services of necessary quantity and quality are available. A written report of the site visit shall be provided to the program provider and the Commonwealth. Until July 1, 1989, the Commonwealth will make such reports available to Plaintiffs' Counsel for inspection or copying. The County Defendants shall follow up to require corrective action and the implementation of recommendations.

c. The Commonwealth Defendants shall continue, either by themselves or by qualified contractor, to measure annually by suitable instruments the progress of each class member and the characteristics of the person's environment. The findings, including any significant decrease in adaptive behavior or environmental quality, shall be reported promptly to the County Administrators and distributed by them to providers and case managers. Said findings, aggregated by County and by provider, will be furnished by the Commonwealth Defendants to the Plaintiffs' Counsel until July 1, 1989.

d. Every person receiving services under the Final Settlement Agreement shall have a case manager who shall be responsible to the County Mental Health and Mental Retardation Administrator, and whose caseload shall not exceed the ratios set forth in the respective county-state Title 19 waiver agreements. The Commonwealth Defendants will provide at least three working days' training to newly hired case managers and continuing annual training to them.

e. The Commonwealth Defendants, through the Special Management Unit, will visit the residential and day program of

each class member placed from Pennhurst hereafter within 120 days of such placement. Thereafter the Commonwealth Defendants will monitor the Counties' performance of their obligations under Subparagraph b above, and will monitor annually on-site the residential and day programs of 20% of such class members. Such monitoring shall continue for two and one-half years from the date upon which each County's last Pennhurst resident leaves Pennhurst; in the event that, during any such period, the Commonwealth Defendants shall establish, by duly promulgated regulation, a state-wide on-site monitoring system, the provisions of such regulation shall supercede the monitoring provisions in this Subparagraph e.

f. The Commonwealth functions set forth at Subparagraphs a, d, and e above shall be carried out by a unit sufficiently staffed, located within the Southeastern Region and elsewhere, as appropriate, and supervised by qualified professionals responsible for the work of the unit.

A6. Commonwealth and County Defendants shall take adequate actions and shall require providers of residential or habilitative services to take adequate actions to provide individuals served hereunder with the following:

- a. Protection from harm.
- b. Safe conditions.
- c. Adequate shelter and clothing.
- d. Medical, health-related and dental care.

e. Prohibition of physical and psychological abuse, neglect or mistreatment.

f. Prohibition of unreasonable restraint and prohibition of the use of seclusion.

g. Prohibition of administration of excessive or unnecessary medication.

A7. Commonwealth and County Defendants will maintain written rules pertaining to implementation of the provisions of Paragraph A6 above, including procedures requiring prompt review/investigation of any complaints pertaining thereto, and adoption of necessary corrective actions in response to such reviews/investigations.

A8. County and Commonwealth Defendants shall require any provider of residential or habilitative services to comply with the Community Residential Mental Retardation Facility Regulations, 55 Pa. Code, Chapter 6400 (12 Pa. Bull. 384), the ICF/MR Regulations, 42 CFR 442.400, 43 Fed. Reg. 190 (Sept. 29, 1978), the Day Program Regulations, 55 Pa. Code 2-7-1 (8 Pa. Bull.) and the Vocational Rehabilitation Regulations, 55 Pa. Code 9056 (10 Pa. Bull. 1897), as applicable. Until July 1, 1989, Commonwealth Defendants will provide Plaintiffs' counsel with thirty (30) days advance notice of any proposed changes in the above state regulations at the time any such changes are filed with the Legislative Reference Bureau. The Commonwealth Defendants' provision of advanced notice to Plaintiffs' counsel

does not apply to regulatory changes where proposed rulemaking had been omitted and the regulations are published as final rulemaking in accordance with the provisions of the Commonwealth Documents Law, 45 P.S. 1102 et seq.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

TERRI LEE HALDERMAN, <u>et al.</u>	:	
	:	
	:	NO. 74-1345
v.	:	
	:	
	:	
PENNHURST STATE SCHOOL AND	:	
HOSPITAL, <u>et al.</u>	:	

Appendix B

Compliance With Previously Filed Plan

B1. In implementing this Final Settlement Agreement, Commonwealth Defendants agree to substantially comply with the plan filed with the District Court on November 23, 1983, subject to the contingencies stated therein, except that the section of that plan entitled "Monitoring" shall not apply.

Pennhurst Monitoring and Reporting

B2. Commonwealth Defendants will operate Pennhurst Center so as to maintain its eligibility for federal funds under the ICF/MR program, and to satisfy the substantive requirements of Paragraphs 7 through 17, and 19 through 24 of the August 26, 1983 Order of the District Court. The Deputy Secretary, through her designee, shall be administratively responsible for conducting such monitoring and reporting as may be deemed necessary to satisfy these requirements, and will file reports

regarding compliance every four months.

Friend-Advocacy Program

B3. Commonwealth Defendants will provide a one-time grant of \$100,000 in seed money to establish a friend-advocacy network to make friend-advocates available to individuals served under this Final Settlement Agreement after the TIHP review. As soon as possible, but not later than six months after approval of this Final Settlement Agreement by the District Court, Commonwealth Defendants will publish a Request for Proposals, after providing a copy of the draft Request for Proposals to the parties and consultation with them. The parties will be invited to present comments to the Commonwealth Defendants on the proposals received. An award of the \$100,000 will be made within one year of the approval by the District Court of the Final Settlement Agreement.

Re-Investment of Pennhurst Funds

B4. ~~Commonwealth~~ defendants will, subject to Paragraph 17 of the Final Settlement Agreement, allocate the funds made available to them as the result of the closure of Pennhurst to provide community services to former Pennhurst residents and other retarded people, in the manner set forth in Paragraphs B5 through B7 below.

B5. 1984-85. Commonwealth Defendants will make

available, in fiscal year 1984-85, \$43.5 million (an amount approximately equal to that expended to operate Pennhurst in fiscal year 1982-83), to be expended on the following purposes, in the following order of priority:

(1) The continued operation of Pennhurst for those still there;

(2) The maintenance of community services for those persons placed in the community pursuant to orders of the district court;

(3) The creation of community placements and services for persons presently residing at Pennhurst at a rate designed to allow the closing of Pennhurst by July 1, 1986;

(4) The creation of community placements and services for 100 residents of Selinsgrove and Ebensburg Centers;

(5) The creation of community placements and services for approximately 83 individuals residing in or from the five defendant counties who are not presently at Pennhurst;

(6) The creation of community placements and services for additional individuals residing in the five defendant counties who are not presently at Pennhurst.

B6. 1985-86. Commonwealth Defendants will make available, in fiscal year 1985-86, \$43.0 million to be expended on the following purposes, in the following order of priority:

(1) The continued operation of Pennhurst for those still there;

(2) The maintenance of community services for those persons placed in the community in 1983-84 pursuant to orders of the district court and in 1984-85 pursuant to this Appendix except

those 100 residents of Selinsgrove and Ebensburg placed in the community in 1984-85;

(3) The creation of community placements and services for persons still residing at Pennhurst at a rate designed to allow the closing of Pennhurst by July 1, 1986;

(4) The maintenance of community placements and services for 100 residents of Selinsgrove and Ebensburg Centers placed in 1984-85.

(5) The creation of community placements and services for approximately 32 individuals residing in or from the five defendant counties who are not presently at Pennhurst.

(6) The creation of community placements and services for additional individuals residing in the five defendant counties who are not presently at Pennhurst.

B7. 1986-87. Commonwealth Defendants will make available, in fiscal year 1986-87, sufficient funds to maintain community programs and services for all individuals placed in the community pursuant to this Appendix and the prior orders of the district court, and will also fund the Special Management Unit in an amount sufficient to allow it to carry out its functions, as described in this Appendix. Should there be funds available to them from the amounts referred to in the previous paragraphs in excess of that required for the purposes stated in the previous sentence, Commonwealth Defendants will use those funds for the provision of community services for individuals with retardation.

B8. In addition to the foregoing, Commonwealth

Defendants will ensure appropriate services to any person transferred from Pennhurst to another institutional placement in accordance with the provisions of this Final Settlement Agreement.

B9. Commonwealth and County Defendants will use substantial good faith efforts to frame and submit to HCFA 2176 Waiver applications to maximize federal matching dollars for services to individuals residing in or from the five Defendants Counties. The amounts set forth in paragraphs B5, B6, and B7 will be adjusted to the extent necessary to reflect the level or percentage of federal financial participation allowed by HCFA under 2176 Waiver applications. To accomplish any such necessary adjustment, (a) defendants will disclose all relevant information, budgets and projections, (b) the parties will attempt to agree on an adjusted amount, and (c) if agreement cannot be reached, the parties will jointly select an arbitrator whose decision on the adjusted amount will be final and binding.

Cost Review of Individual Plans

B10. Following development of the TIHP, the County Mental Health and Mental Retardation Administrator, or designee, will approve or disapprove the plan. In the process, the County Mental Health and Mental Retardation Administrator, or designee, will also determine an anticipated per diem cost of implementation.

B11. Cost review will be undertaken by the Commonwealth Defendants when the expenditure of allocated funds on the anticipated per diem cost of the TIHP exceeds 105% of the negotiated county average under the County/Commonwealth waiver agreements implementing the waivers approved or to be approved; however, such a review will not take place if the County can demonstrate the existence of a cost-offsetting approved TIHP with a per diem cost at least equally below the aforesaid negotiated county average. Persons reviewing fiscal matters for the Commonwealth will be provided with a copy of the TIHP and will consider the individual needs of the person in making their evaluation. The Commonwealth will develop procedures to be followed in that review.

B12. If the Deputy Secretary or her designee determines that the projected per diem is unnecessarily high she will disapprove the TIHP and return it to the County for modification. The TIHP team will meet and seek to make modifications to reduce the cost. In no case will the individual needs of the person for minimally adequate habilitation not be met because of cost factors.

B13. If disagreement still obtains, the issues regarding cost will be referred to the reviewing professional (established under Paragraph 9 of the Final Settlement Agreement), whose decision will be final and binding.

Delaware County

B14. Of the 52 Pennhurst residents from Delaware County to be placed in fiscal years 1984-1986, community living arrangements will be provided to all but a maximum of six; and of the 25 Pennhurst residents planned for placement in fiscal year 1983-1984, community living arrangements will be made available for all but at most one. For these 25 persons, Commonwealth and County Defendants will provide community living arrangements and other community services as follows:

- a. Twelve persons, no later than July 1, 1987
- b. The rest, no later than July 1, 1988.

Should the individual planning process decide upon a state mental retardation facility placement, nothing herein shall preclude such placement in accordance with the provisions of paragraph 9 of this Final Settlement Agreement. Other placements hereunder shall be subject to the provisions of Paragraph 9 of this Final Settlement Agreement. These placements are also subject to the cost review set forth in B10, B12 and B13 above.

Undertaking of the United States

B15. Counsel for the United States, shall, upon request of the parties, provide such assistance as is within their authority to obtain timely decisions on waiver applications from those federal officials having the statutory responsibility to administer the Medicaid program.

Appendix C

1. Plaintiffs and Commonwealth and County Defendants will cooperate in the submission of this Final Settlement Agreement to the Court promptly and will recommend acceptance of this Final Settlement Agreement. All parties to this Final Settlement Agreement will use their respective good faith efforts to consummate this Final Settlement Agreement and obtain entry of an order approving this Final Settlement Agreement.

2. Commonwealth and County Defendants will be responsible for providing notice. All members of the Plaintiff class, as originally certified, and their parents and guardians, will receive notice of this Final Settlement Agreement in the following manner:

a. Commonwealth Defendants will prominently post in the Administration and residential buildings at Pennhurst, and County Defendants will prominently post in the County Mental Health / Mental Retardation Offices, the attached notice of this Final Settlement Agreement.

b. Copies of the attached notice and this Final Settlement Agreement will be available for inspection at the offices of the Commonwealth and County Mental Health and Mental Retardation Administrator Defendants during regular business hours.

c. A reasonable number of copies of this Final Settlement Agreement will be made available on request to concerned individuals, local agencies, providers, advocacy and consumer

groups.

d. Individuals residing at Pennhurst, and their parents or guardians, will receive copies of the attached notice by personal service or first class mail.

e. Individuals on the Pennhurst waiting list, and their parents or guardians, will receive copies of the attached notice by personal service or first class mail.

f. Individuals who have received services under prior orders of the District Court, and their parents or guardians, will receive copies of the attached notice by personal service or first class mail.

g. The attached notice will be published in at least one newspaper of general circulation in Bucks, Chester, Delaware, Montgomery and Philadelphia Counties. Such publication will occur once in a Wednesday and once in a Sunday edition in the news sections of the newspapers.

3. Commonwealth and County Defendants will immediately begin to provide the notice required by the above paragraph and will complete it not later than twenty-five days before the settlement hearing to be scheduled by the District Court. Defendants will file at that hearing an affidavit or affidavits that the class notice has been accomplished as set forth above.

4. Commonwealth and County Defendants shall compile lists of those individuals who have been residents of Pennhurst since May

30, 1974, who are on the Pennhurst waiting list, or who have received services under the prior orders of the District Court. Said lists, including identifying information about the individuals, will be provided to Plaintiffs' counsel at least one week prior to the settlement hearing to be scheduled by the District Court, and will be made available to the Court and the independent reviewing professional.

5. The notice referred to in the preceding paragraphs is as follows:

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

TERRI LEE HALDERMAN, et al.	:	CIVIL ACTION NO. 74-1345
	:	
	:	
v.	:	
	:	
	:	
PENNHURST STATE SCHOOL	:	
and HOSPITAL, et al.	:	

IMPORTANT NOTICE

Who Is Affected by This Notice

This notice may affect your rights, or the rights of a family member. Please read it carefully if you or a family member are or have been a) a resident of the Pennhurst Center, Spring City, Pennsylvania, at any time since May 30, 1974, b) on the waiting list for placement at Pennhurst, or c) because of the unavailability of alternate services in the community, at risk of placement at Pennhurst.

Purpose of this Notice

After ten years of litigation, a Final Settlement Agreement has

been reached in this case. This Notice is to inform you of the settlement, tell you how to obtain more information, and explain how you may object to the settlement if you disagree with it. A hearing has been scheduled by the District Court to consider the settlement.

Background

This lawsuit was filed May 30, 1974 in federal court in Philadelphia. The class action suit sought improved conditions at the Pennhurst institution and also individualized least restrictive care for all of its residents, those on the Pennhurst waiting list and those who, because of the unavailability of alternate community services, might be placed at Pennhurst. The Pennsylvania Association for Retarded Citizens, the Parents and Family Association of Pennhurst, the United States of America, and individuals are named plaintiffs in the case.

After trial in the Spring of 1977, the District Court granted judgment for Plaintiffs. The Court ordered that Pennhurst be closed and replaced with community services, ordered specific protections for residents of the institution, and granted other relief. A number of appeals followed. The Court of Appeals for the Third Circuit in 1979 generally affirmed the District Court's orders, except that it recognized that some individuals may require institutionalization. In 1981, the Supreme Court of the United States reversed the Court of Appeals and ruled that the Court of Appeals was wrong in its reliance on a federal statute. Another ruling in Plaintiffs' favor by the Court of Appeals was reversed on January 23, 1984 when the Supreme Court ruled that state law could not be a basis for granting relief against state defendants. The case was sent back to the Court of Appeals for decision of constitutional questions. The Court of Appeals has sent the case to the District Court for consideration of the settlement discussed below.

The Final Settlement Agreement

The Final Settlement Agreement ("Settlement"), submitted to the District Court for Approval, provides in summary as follows:

1. All people who have received services under past court orders in the Pennhurst case or who will receive them under the Settlement will receive permanent protections including, for example, a written habilitation plan, habilitation programs, specific on-site and systemic monitoring, case management, protection from harm, safe conditions, adequate shelter and clothing, medical and dental services, and compliance with applicable state and federal regulations.

2. Also included in the above permanent protections are prohibition of physical and psychological abuse, neglect, mistreatment, unreasonable restraint and administration of excessive or unnecessary medication.

3. Pennhurst Center will be closed by July 1, 1986, unless a reasonable extension of time is obtained under the Settlement.
4. All residents currently at Pennhurst, and their parents or advocates, will be provided alternate professionally developed plans, together with the opportunity to appeal such plans to an independent neutral mental retardation professional (this person will be agreed upon by all the parties) whose decision regarding whether to move the Pennhurst resident to a community living arrangement, or another institution, or some other residential facility, will be final. Advocates will be provided to assist class members and their families in this process.
5. Absent the availability of an appropriate placement, no Pennhurst resident will be moved merely to meet a timetable.
6. The Commonwealth of Pennsylvania will reallocate the funds made available to them as a result of the closure of Pennhurst to provide community services for former Pennhurst residents and other people with retardation, with a priority for people who have left and are leaving Pennhurst.
7. Due to the closing of the Pennhurst institution, the original definition of the Plaintiff class is changed. It will include "all retarded persons who have resided at Pennhurst at any time on or after May 30, 1974." It will no longer include people who are on a waiting list for Pennhurst or people who because of the unavailability of alternate community services may be placed at Pennhurst.
8. The District Court will maintain active jurisdiction of the case until July 1, 1989 (in the case of the Commonwealth of Pennsylvania Defendants) or two years after each of the five County Defendants' last resident leaves Pennhurst.
9. The Settlement replaces all the existing orders of the District Court and, unless Plaintiffs show substantial non-compliance with the Settlement by the dates in the paragraph above, the Court will mark the case closed and settled by those dates.
10. Should there be insufficient funds to implement the Settlement, the Settlement will become void and the case returned to its current status in the Court of Appeals.

For Further Information

THIS IS A SUMMARY OF THE SETTLEMENT. TO UNDERSTAND IT FULLY, YOU SHOULD READ THE ENTIRE SETTLEMENT. Copies of the Settlement may be obtained from: _____, Department of Public Welfare, Regional Office, State Office Building, Broad and Spring Garden Streets, Philadelphia, Pa. 19130 (215-____-____), or from your County's Office of Mental Health and Mental

or from your County's Office of Mental Health and Mental Retardation.

Also, you may obtain further information from the lawyers for the Plaintiffs, David Ferleger, Esq., 37 S. 20th Street, Suite 601, Philadelphia, Pa. 19103 (215-567-2828), or Thomas K. Gilhool, Esq. and Frank Laski, Esq., Public Interest Law Center, 1315 Walnut Street, Philadelphia, Pa. 19107 (215-735-7200).

Procedures for Agreement or Objection

IF YOU AGREE WITH THE PROPOSED SETTLEMENT, YOU DO NOT NEED TO TAKE ANY ACTION. You may be present at the public hearing on the proposed Settlement as stated below.

IF YOU DISAGREE WITH THE PROPOSED SETTLEMENT, YOU HAVE A RIGHT TO OBJECT TO IT AND YOUR OBJECTIONS WILL BE CONSIDERED BY THE COURT AS IT REVIEWS THE SETTLEMENT. Objections will be considered only if the following procedures are followed:

1. Objections must be filed with the Clerk of the United States District Court for the Eastern District of Pennsylvania, 2d Floor, U.S. Courthouse, 601 Market Street, Philadelphia, Pa. 19106. ALL OBJECTIONS MUST INCLUDE THE FOLLOWING INFORMATION:

a. The name, address and telephone number of the person filing the objection.

b. The name and address of the person with retardation on whose behalf the objection is sought to be filed. Also, the exact relationship between the person filing and the retarded person.

c. A statement of the reasons for the objections.

d. A statement that you have sent copies of your objections to all the lawyers listed at the end of this notice.

2. YOU MUST SEND COPIES OF YOUR OBJECTIONS TO ALL THE LAWYERS LISTED AT THE END OF THIS NOTICE.

3. The DEADLINE for filing your objections and mailing them to the lawyers listed below is _____, 1984. Objections filed or mailed after that date will not be considered.

4. A public hearing on the proposed Settlement and any objections which have been filed will be held as stated below.

Court Hearing on the Settlement

The District Court will hold a hearing on the Settlement on _____, 1984, at _____ M., in Courtroom 10B, United States Courthouse, 601 Market Street, Philadelphia, Pa. 19106.

RAYMOND J. BRODERICK
United States District Judge

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Attorney for Philadelphia
County Defendants

APPENDIX D

IN THE UNITED STATE COURT OF APPEALS
FOR THE THIRD CIRCUIT

Terri Lee Halderman,
et al.,

Plaintiffs-Appellees,

UNITED STATES OF AMERICA.
and PENNSYLVANIA ASSOCIATION
FOR RETARDED CITIZENS, et al.,

Plaintiffs-Intervenor-
Appellees

V. 4

PENNHURST STATE SCHOOL AND
HOSPITAL, et al.,

Defendants-Appellants

: On Appeal From the
: U.S. District Court,
: Eastern District of
: Pennsylvania

: NOS. 78-1490
: 78-1564
: 78-1602

ORDER

It having been reported to the Court that the Commonwealth, City and Suburban County Appellants, and all Appellees, have entered into a Final Settlement Agreement in the captioned action, it is accordingly

ORDERED

1. This Court shall retain jurisdiction of the appeals in Nos. 78-1490, 78-1564 and 78-1602, and the proceedings are remanded to the District Court for proceedings under F.R.C.P. 23 in consideration of the Final Settlement Agreement.

2. In the event that the District Court approves the Final Settlement Agreement and orders its implementation, the appeals in Nos. 78-1490, 78-1564 and 78-1602 will be placed in suspense until July 1, 1987 except with regard to the obligations under Paragraph B14 with respect to the Commonwealth and Delaware County Defendants as to whom the date shall be July 1, 1988; provided, however, that if the Final Settlement Agreement shall become void by any of the circumstances set forth in paragraph 17 thereof the appeals shall be reinstated in the docket of this Court in the same status as they now occupy, and will proceed to argument and disposition in accordance with the usual procedures of this Court and the Federal Rules of Appellate Procedure.

3. If the proviso of Paragraph 2 does not occur, these appeals will be marked moot and dismissed in accordance with the formula set forth in Paragraph 2 above.

BY THE COURT:
