

State Planning Council and Regional Boards  
Jeff D Information

The main focus of the Jeff D case is publicly funded community based services for children with serious emotional disturbances and their families. Publicly funded means any and all services paid for with tax dollars. This includes programs in Health and Welfare (Medicaid, Family and Community Services, and Behavioral Health), State and local education districts, Department of Juvenile Corrections, and any county funded programs.

Services for children with serious emotional disturbances include:

- Assessment
- Case Management
- Crisis
- Day Treatment
- Family Support
- Outpatient
- Inpatient
- Residential Care
- Respite Care
- Treatment Foster Care

Suggestions for monitoring:

- Designate a standing committee from the regional advisory board to monitor Jeff D at the local level.
- Become familiar with what services are provided by what child serving agencies in the community.
- Determine where and how to get data related to those services.
- Review the data and trends over time.
- Include in the annual report to the Governor any recommendations for additional funding or services.
- Review the Consent decrees for additional information.

***This document was created at the request of the State Planning Council on Mental Health during the August 2012 meeting. This document is created solely as a guide and is not binding or limiting of the activities of the State Planning Council on Mental Health or the Regional Advisory Boards.***

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U.S. DISTRICT COURT

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DISTRICT OF IDAHO  
COURT HOUSE, BOISE

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

JEFF D., et al.,	)	
	)	Case No 80-4091
Plaintiffs,	)	
vs.	)	SUPPLEMENTAL AGREEMENT REGARDING
	)	COMPLIANCE WITH STIPULATION
CECIL ANDRUS, et al.,	)	SETTLING MENTAL HEALTH CLAIMS
	)	AND ORDER
Defendants.	)	
_____	)	

Comes now the Plaintiff class members and next friend, and Cecil D. Andrus, Richard Donovan and William Bonnes, by and through their undersigned counsels of record, to stipulate to resolve all existing claims and allegations regarding noncompliance with the 1983 Stipulation Settling Mental Health Claims and Order ("1983 Order").

I. PRELIMINARY STATEMENT

1. In 1980 the Plaintiffs filed a class action complaint for declaratory and injunctive relief. Plaintiffs are indigent

children and adolescents who suffer from emotional and mental handicaps, as specified in the class definition. See Jeff D. v. Andrus, 899 F.2d 753 (9th Cir. 1990). Defendants are the Governor of Idaho, Director of the Idaho Department of Health and Welfare ("IDHW"), Administrator of State Hospital South ("SHS") and Clinical Director of SHS. At Jeff D. v. Andrus, 899 F.2d 753, 756, the Ninth Circuit Court of Appeals found:

Many of these children have been confined to adult psychiatric wards of state hospitals and other facilities or in out-of-state institutions located far from their homes and families. The [Plaintiffs] allege that these children have not received minimal mental health services as required by law. These children would benefit and recover more successfully if community mental health care services geared to juveniles were provided. The fact that some juveniles are sent out of state or to adult facilities has hindered their recovery.

2. On April 28, 1983, the parties stipulated to a settlement agreeing to the separation of class members from adult mental patients, preparing a needs assessment, and to make every effort to provide the Plaintiff class with facilities and programs for mental health treatment and services and the provision of professional staff necessary to provide the treatment and services in a community based setting least restrictive of personal liberty. The procedural history of this case since the 1983 Order is fully discussed in Jeff D. v. Andrus, 899 F.2d 753 (9th Cir. 1990).

3. In 1987 the Defendants, as required by the 1983 Order, performed a needs assessment entitled "Department of Health and

Welfare Executive Summary, Status of Comprehensive Planning for Services to Severely Emotionally Disturbed Minors."

4. This needs assessment "describes the basic core services needed to diagnose and successfully treat severely emotionally disturbed children" and assessed the availability of services in Idaho in the following areas: Inpatient Treatment; Secure Residential Treatment Centers; Therapeutic Group Homes; Therapeutic Foster Care; Day Treatment Services; Family/Home Based Services; and Out Patient Mental Health Services. The needs assessment found that additional facilities and services were needed in each category. This needs assessment also noted a need for more specialized staff including child trained psychiatrists and psychologists.

5. The State of Idaho Bureau of Mental Health of the Idaho State Department of Health and Welfare, hereinafter IDHW, prepared a "Mental Health Systems Plan for fiscal years 1990-1992," hereinafter 1990-1992 Plan.

6. The 1990-1992 Plan identified several needs in mental health services for children in Idaho including:

A. Community resources for initial or up-front assessment and evaluation.

B. Child trained psychiatric and psychological support.

C. Regional Medicaid eligible acute care capacity for children.

D. Services specifically designed for children dually diagnosed with emotional disturbances and developmental disabilities.

E. Services for children dually diagnosed with serious emotional disturbances and alcohol drug related problems.

F. A process to facilitate transition of adolescents and young adults into the adult system with care.

7. The 1990-1992 Plan also stated that additional treatment facilities and programs which are needed include: a) intensive family centered treatment; b) day treatment; c) treatment and family services in the community, including therapeutic group homes and foster care; d) crisis and respite services; and e) psychological and psychiatric services. These needs continued to exist as recognized in the subsequent "Mental Health Services Plan, Fiscal Year 1990-1992; FY 1990 update."

8. Currently there are pending before the District Court motions seeking to enforce the Defendants' compliance with the 1983 Order. A hearing on compliance has been scheduled for July 30, 1990. Plaintiffs contend Defendants have not complied with the 1983 Order. Defendants believe they are in compliance at the present time with the 1983 Order and make no admissions by entering into this Supplemental Agreement.

WHEREFORE, the parties hereby stipulate and agree to enter into this Supplemental Agreement for the purposes of enforcing the 1983 Order and resolving all Plaintiffs' allegations regarding Defendants' compliance.

II. SEPARATION OF CHILDREN FROM ADULT MENTAL PATIENTS AT ALL STATE FACILITIES

A. All existing and future facilities and treatment programs of the IDHW for class members shall be designed, constructed and operated so that there is no contact in living or sleeping arrangements between class members and adult mental patients. The purpose of this segregation of class members from adult mental patients is related to the safety and protection of the class members. Contact with adult mental patients should be minimal at all times, and at no time may a class member be unaccompanied by an adult staff person, except as provided herein. All persons employed by the IDHW or a private entity under contract with IDHW who have contact with class members shall have a background investigation and a criminal history check as provided by Idaho Code § 39-1210 and IDHW regulations, IDAPA 16.03.2299 and 16.06.2611, incorporated by reference.

B. Existing State Hospital South Facility. The Adolescent Unit ("AU") on the campus of SHS is currently housed in the administration building. To protect class members at SHS the AU shall be operated as a separate and distinct unit where there shall be complete separation of all children from adult patients. Any violation of the terms of this Section II shall be documented and reported to Plaintiffs' counsels within 72 hours. The following shall be incorporated in the AU's programing and written policies for purposes of assuring separation of all class members from adult mental patients:

a) Meals. The AU patients will receive their meals on the unit totally separate from the adult mental patients.

b) Visits to the Canteen. The canteen is a restaurant/food bar facility presently located in the administrative building. AU patients that have demonstrated an ability to handle the responsibility may be given permission to visit the hospital canteen pursuant to a privilege or high status system. Any privilege or high status policy that permits visits by the AU patients to the canteen shall require that AU patients be accompanied, supervised and escorted at all times by a hospital staff person or appropriate adult visitor. Additionally, the policy shall require that AU patients exercise a canteen visit privilege during times that use of the canteen by adult patients is prohibited.

c) Recreation. Normally AU patients will recreate on the unit, which includes an area for outdoor activities. Outdoor activities shall be held in an enclosed area adjacent to the AU in a separate and distinct area inaccessible to adult mental patients. Any off-unit recreation shall be pursuant to a planned recreation activity where class members are escorted, supervised and accompanied at all times by hospital staff in a separate and distinct area apart from adult mental patients.

d) Medical Services. AU patients leaving the unit to receive medical, dental or mental health services shall be

escorted, supervised and accompanied at all times to the off-unit location by hospital staff.

e) School. All AU patients attending a school facility off the unit shall be escorted, supervised and accompanied at all times to the school facility by hospital staff. The school facility shall be held in a separate and distinct area inaccessible to adult mental patients.

f) The staff shall be trained and instructed in these separation requirements within one week of working on the AU.

C. New Facility. If, in the future, the IDHW moves the AU into a new facility the Defendants shall comply with the Paragraphs II. B. a)-f). If the AU, as proposed, is to occupy the "A" Wing of the new building at SHS it shall be maintained as a separate unit exclusively for adolescent patients in a separate and distinct area inaccessible to adult mental patients.

### III. COMMUNITY BASED MENTAL HEALTH FACILITIES, PROGRAMS, AND PROFESSIONALS

The 1983 Order states:

#### I.

Plaintiffs have the right to a sound, coordinated system of appropriate mental health services delivered in the least restrictive environment appropriate to their needs, with the goal of providing them the opportunity to develop their full potential.

Defendants have the duty, so far as possible, through procedures, agreements, contracts and policies, of ensuring an available, accessible continuum of alternative community-based treatment facilities and residential programs providing mental health services to plaintiffs in the

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setting least restrictive of personal liberty on a statewide basis.

A. The Defendants shall ensure that community and residential based facilities and programs shall be made available in each of the seven IDHW regions to all class members. No class member shall be required to travel or be placed more than 70 miles from his or her home to receive mental health treatment and services except for inpatient treatment services provided at SHS after commitment to the custody of IDHW under the Idaho Mental Health Act. The 70 mile limit may be extended to the nearest appropriate facility or program if, in the opinion of a designated examiner, it is necessary for the mental health of the class member, the class member would benefit from the placement rather than one in the community, and other community or residential based programs are not available within the 70 mile limit. Plaintiffs' counsel shall be notified of all such placements.

B. The Defendants agree to conduct needs assessments every other year for class members identifying the number of class members in need of mental health facilities and programs, the type of facility and programs required to serve the population and the number and type of professional staff required to provide treatment and services.

C. As IDHW plans and develops improvements in the continuum of care for class members, emphasis shall be placed on community based and out patient care programs. IDHW shall increase the availability of less costly community based programs

within IDHW's budgets and not increase the use and availability of more costly inpatient or secure residential programs. IDHW shall, to meet the existing and future needs of class members, provide the following:

1. Secure Residential Treatment Centers. IDHW, by October 1992, shall discontinue use of secure residential treatment centers.

2. Therapeutic Group Homes, by October 1993, shall be available in all regions if needed.

3. Therapeutic Foster Care Homes and Programs, by October 1993, shall be available in all regions.

4. Day Treatment Services shall be established by October 1, 1990 in all regions as outlined in Exhibits A and B, attached and incorporated by reference.

5. Family/Home Based Services, by October 1992, shall be available in all regions as needed by class members for out-patient mental health services and counseling, and crisis or respite services including the following or comparable services:

a) Family Preservation Teams: designed to provide intensive family treatment, family case management, and family support services to the families of children at risk of removal from the family.

b) Children's Companion Program: designed to provide additional intensive services as needed to prevent removal of a child from classroom, school, home, or community setting.

c) Treatment Family Clusters: designed to provide a local family-oriented alternative to residential care for children temporarily or permanently unable to reside with their families <sup>C</sup> or origin.

d) Crisis Nursery Programs: designed to provide respite and crisis services to infants and young children as needed to maintain these children with their families or in family-based settings.

e) Family-Centered Crisis Hospitalization: available to children and adolescents, utilizing the support and assistance of their families, and providing 24 hour to 5 day hospitalization for stabilization of acute symptomatology.

6. By October 1992, Out Patient Mental Health Services shall be available in all regions including outreach services, intensive case management, skill streaming, community support services and other services and programs found necessary in the future.

7. The Department shall have case management staff in each IDHW region to provide for the care and treatment of each class member in community and residential based programs. The case management staff shall develop appropriate treatment programs and services and monitor the progress of each class member. The case management staff shall initiate family participation in developing a treatment and discharge plan. The case manager shall have no more than 20 cases. Treatment and discharge plans shall be reviewed every 30 days by the case manager.

8. By October 1991, accessibility to psychiatrists, psychologists or other mental health professionals trained in treating children or adolescents in all regions as necessary for the Plaintiff class in all facilities and programs.

9. If a class member is put on a waiting list for services and programs, the names and addresses of the person and the reason for the delay shall be sent to Plaintiffs' counsel, Idaho Legal Aid Services, Inc. ("ILAS") and Charles Johnson, III.

10. Any class member may request residential or community-based services, programs and professionals as provided in Paragraphs III C. 1-8 by the IDHW. The IDHW will assess the family and recommend in conjunction with the family, the appropriate services. If any class member is dissatisfied with service recommendations or services provided he shall be provided with a written explanation of the reasons why the IDHW believes the appropriate programs and services are being provided or why they are not being provided. A copy of the written explanation shall be sent to ILAS and Charles Johnson, III. The person shall also be given notice that they have the right to an independent review of all such decisions through the appeal process established within the Department, set forth at IDAPA 16.03.2056 through 16.03.2059, incorporated by reference. The class member shall be given notice that he or she may be eligible for free legal assistance from ILAS, whose telephone number and address will be provided. The person shall have right to present evidence, call witnesses, cross examine witnesses and be

represented by a person of his or her choice who does not necessarily have to be an attorney. A notice of these review procedures shall be conspicuously posted in IDHW offices.

A copy of the written decision shall be sent to ILAS and Charles Johnson, III, when issued. If a class member requests an informal conference pursuant to IDAPA 16.03.2056.07, the informal conference must occur within 10 days.

#### IV. BUDGET REQUESTS

Defendant IDHW shall prepare legislative budget requests for fiscal year 1992 and all subsequent fiscal years to fund the necessary community and residential based facilities, programs and professionals required by the 1983 Order and this Agreement. Copies shall be forwarded to ILAS. IDHW and the Plaintiffs shall cooperate and use their best efforts to ensure that necessary funding is requested from the Idaho Legislature. IDHW agrees:

1. To support legislative budget proposals by testifying or having staff testify before appropriate finance, appropriation, and health and welfare committees and providing the committee members with the necessary information on the needs of the Plaintiff class.

2. IDHW shall help facilitate and support efforts by ILAS or their designated representative to testify before the appropriate legislative committees on IDHW's budget requests each legislative session.

IDHW will prepare and submit to the Legislature separate budget requests with annual decision units in order to implement this Agreement and the 1983 Order. Such decision units will be provided to the Division of Financial Management within the Office of the Governor for its consideration for inclusion within the overall annual executive budget recommendations.

The Governor will instruct the administrator of the Division of Financial Management to identify an appropriate budget analyst to review budget proposals for programs and services for children and adolescents pertaining to the 1983 Order and this Agreement.

#### V. MONITORING REQUIREMENTS

1. State Mental Health Planning Council. The State Mental Health Planning Council shall be apprised of the existence and requirements of this Agreement. The State Mental Health Planning Council shall be instructed to study issues concerning the delivery of mental health services to juveniles and make recommendations for future funding of facilities, services and programs that should be provided by the State. The Council shall monitor Defendants' compliance with the 1983 Order and this Supplemental Agreement and specifically address compliance in the annual report to be submitted to the Governor. Defendants shall appoint a member of IIAS to the State Mental Health Planning Council.

2. Committee from Regional Advisory Boards. IDHW shall appoint a committee from each Regional Advisory Board to monitor

compliance with the 1983 Order and this Agreement within their region. The committee shall be comprised of 3-5 members of the Regional Advisory Board who have an interest in mental health issues, including at least one consumer representative.

3. Plaintiffs' counsels may monitor Defendants' compliance with the 1983 Order and this Supplemental Agreement, including but not limited to by examining documents for this purpose. Plaintiffs' monitoring requests must be directed to the Administrator of the Division of Family and Children's Services. The parties agree to exercise good faith in fulfilling the terms and intent of the 1983 Order and this Agreement.

4. Notice to Defendants. In the event any class member or his or her representative or attorney believes Defendants are not in compliance with this Agreement, Defendants shall be notified in writing of the specific provision of this Agreement that allegedly has not been followed. Written notice shall be sent to the Legal Services Division of IDHW. Defendants shall have 45 days to respond to the written notice and, if appropriate, to take corrective action before any legal proceeding will be implemented by Plaintiffs.

#### VI. AFFECT OF CURRENT AND PENDING LITIGATION

The 1983 Order, to the extent not clearly inconsistent with this Agreement, remains in full force and effect. This Supplemental Agreement resolves all pending claims of noncompliance with the 1983 Order. This Agreement shall be

merged into the 1983 Order. This Agreement is binding upon the Defendants or their successors in office or position as long as it is in effect.

The rights, interests and benefits of this Agreement shall be contractual in nature and legally binding on the parties. Any person who alleges that he/she is a class member or otherwise eligible for inclusion in this class, and denied any right, interest or benefit offered herein, shall have the right to institute legal action to enforce the provisions of this Agreement in any court of competent jurisdiction. It is the intention of the parties that the 1983 Agreement and this Supplemental Agreement resolve all compliance issues in this litigation, past or pending. The parties stipulate to withdraw all claims before the United States District Court and the Ninth Circuit Court of Appeals upon approval of the Supplemental Agreement by the District Court pursuant to F.R.C.P. Rule 23.

#### VII. ATTORNEY'S FEES AND COSTS

To fully resolve all existing claims for costs and attorney fees, the Defendants shall pay Plaintiffs' attorney's fees relating to this litigation, including for the appeal of the class definition and for enforcement of the 1983 Order, in the amount of \$40,000.00.

DATED this 19<sup>th</sup> day of July, 1990.

  
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HOWARD A. BELODOFF  
Idaho Legal Aids Services, Inc.  
Attorney for Plaintiffs

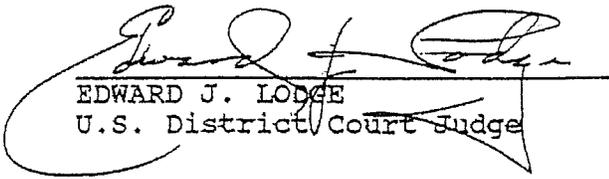
  
\_\_\_\_\_  
WELDON B. STUTZMAN  
Deputy Attorney General  
Attorney for Defendants  
Donovan, Bonnes and Andrus

  
\_\_\_\_\_  
CHARLES JOHNSON III  
Plaintiff Next Friend and  
Attorney

O R D E R

IT IS SO ORDERED.

DATED this 30<sup>th</sup> day of July, 1990.

  
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EDWARD J. LODGE  
U.S. District Court Judge

OUTLINE -- MODEL ADOLESCENT DAY TREATMENT

Service Goals:

(1) To prevent family break-up by treating youth in their own homes and communities; (2) To provide short-term (30-120 day) and long-term (6-9 month) intensive multi-disciplinary services that enable youth to return to normal community systems including their families and schools; (3) To provide a service that helps youth make the transition from structured residential care, to care in normative family settings or independent living settings within their own communities; and (4) To provide a service which is well integrated within the Department's continuum of services for families and children; (5) Longer periods of treatment for several years may be provided on a case by case basis.

Target Populations:

Children and youth, under 18 years of age, who are experiencing failure in major life areas such as school, home, self, and peer relations. These children and youth demonstrate maladaptive behaviors that often bring them into conflict with their families, teachers, and the law.

Admission Criteria:

(1) To be admitted a child must be under 18 years of age; (2) Have been committed into the Department's custody under the juvenile justice, mental health or child protection statutes, or be eligible to be a client of the Department or be referred from a qualified professional (designated examiner, school counselor, police department, etc.); (3) Have displayed serious emotional or behavioral problems, as may be demonstrated by the following: school failure or near failure, self destructiveness, assaultiveness, family dysfunction, poor or negative peer relations, unlawful behavior; (4) Currently residing in a treatment facility but could reside in the community (with minimal staff rotation) with day treatment; (5) Currently residing in community but is at risk of placement or returning to a treatment facility without day treatment.

Exclusions:

Day treatment service will not accept youth who, as demonstrated by their past behavior, represent a clear and present danger to the safety and welfare of program personnel, and other students, as certified by a designated examiner with mental health training or experience, or person qualified to be a designated examiner.

A class member excluded from day treatment shall be entitled to other services.

Service Design:

Day Treatment will include the following service elements: (1) Education services, four hours daily, provided by a certified special education teacher(s) and classroom aide(s), such educational services should be provided in the regular school

classroom but may be provided in an alternative school setting; (2) 1.5 hours of guided group interaction/group therapy, at least 4 days (times) a week; (3) 1.5 hours per week substance abuse group education/counseling led by a substance abuse counselor; (4) 4 hours of family therapy from one to three times a week and when indicated, individual therapy; (5) Psychiatric consultation at least 2 hours each week; (6) Daily recreational programming; (7) Family support groups, and independent living and aftercare groups at least two nights per week; (8) The services provided should be provided by the same qualified staff, with minimal staff rotation, to ensure continuity of care; (9) Other services diagnosed as necessary by Idaho Department of Health and Welfare or day treatment staff or providers.

Treatment Goals:

(1) To teach effective personal, family and problem solving skills; (2) To teach effective communication skills; (3) To upgrade the students academic skills and prepare the student for re-enrollment in the public schools, G.E.D. or the work force; (4) To provide family centered therapy and group sessions and/or medication consultation as needed; (5) To reduce the student delinquent or other maladaptive behaviors.

Staffing Pattern (8 students):

- 1 supervisor/administrator; PHD or Masters Level;
- 1 office secretary;
- 1 group leader/clinician, PHD or Masters Level;
- 2 family technicians;  
    licensed social work staff;
- 1 special education teacher.

At least one group therapy co-facilitator eight hours a week, or four co-facilitators two hours a week each. Psychiatric consultation at least 2 hours weekly. Family therapy up to four hours per week and indicated individual therapy for up to eight hours per week as needed.

The co-facilitator(s) should be the casemanagers of the children receiving the service.

Typical Student Profile:

Children and youth referred to the services are likely to be experiencing school failure; may have committed delinquent acts; often they have substance abuse related problems; and are sexually active. These youth typically have low self-esteem; often have some type of learning disability; are many times diagnosed as conduct disorder with depressive features. Family strife and authority problems are common features of the family system these children live in.

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Case Management and Discharge Planning

1. Each student has a case manager assigned by the region. A primary therapist is assigned to each student within the day treatment program. The primary therapist serves in conjunction with the regional FACS case manager and with school and/or probation staff and regularly consults with other service providers.
2. The assigned case manager attends day treatment staff meetings twice monthly or as needed for purposes of treatment review and updating the case plan.
3. At intake, a services agreement is developed between the primary therapist, the youth and his or her parents, and other agencies providing services which clearly defines roles and responsibilities for all day treatment services to be provided.
4. The day treatment Program Director meets on a monthly basis with FACS case managers and parents to discuss relevant treatment issues and progress.

5. Discharge planning involves a staffing to review if the terms of the Treatment Plan have been met and to evaluate student progress. A staffing is held to develop revisions to the Individual Educational Plan (IEP) to facilitate gradual transition of youth into regular public school, and to monitor the youth's progress.
6. At discharge, the regional case manager provides case management services to link community resources with the needs of the student after discharge. All youth discharged from the program participate in an aftercare group on a weekly basis as needed.
7. Regional FACS case managers must keep cases open for a 3 month period of time after discharge from Day Treatment to facilitate the transition process. This period may be extended on a case-by-case basis.
8. Depending upon the needs of the student, opportunities exist for partial participation in day treatment programming to provide a more gradual weaning from the program.

APPENDIX

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

Case No. CIV 80-4091

JEFF D., PAULA E., JOHN M., and DUSTY R.,  
minors individually and on behalf of the class  
they represent, by and through their next friend,  
Charles Johnson, and MARK CLARY, Inter-  
venor,

Plaintiffs,

vs.

JOHN V. EVANS, THOMAS L. PURCE,  
JERRY EVANS, GEORGE BACHIK and CAR-  
ROLL ELMORE, individually and in their offi-  
cial capacities as employees and agents of the  
Idaho State Department of Health and Welfare,

Their Successors in Offices, Titles and Interests,

Defendants.

STIPULATION SETTLING MENTAL HEALTH  
CLAIMS and ORDER  
(Filed April 28, 1983)

Plaintiffs and Defendants John V. Evans, Thomas L.  
Purce, George Bachik and Carroll Elmore (hereinafter:  
"defendants"), through their respective counsel of record,  
hereby stipulate to settle the remaining mental health  
claims upon the following terms:

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Plaintiffs have the right to a sound, coordinated  
system of appropriate mental health services delivered  
in the least restrictive environment appropriate to their  
needs, with the goal of providing them the opportunity  
to develop their full potential.