

**Massachusetts
Department of
Mental Retardation**



**A NEW
BEGINNING
The 1993 Order
in the Mental
Retardation Cases**

**QUESTIONS, ANSWERS
AND RESOURCES**

Commonwealth of Massachusetts
Argeo Paul Cellucci, Governor
Jane Swift, Lieutenant Governor
Executive Office of Health and Human Services
William D. O'Leary, Secretary
Department of Mental Retardation
Gerald J. Morrissey, Jr., Commissioner

Introduction

With the close of the 20-year era of the consent decrees, the Massachusetts Department of Mental Retardation serves its citizens with mental retardation with renewed commitment to providing quality services responsive to their needs. Some aspects of those services are affected by the final order of the Federal Court which supervised those decrees. Parts of that order are described in this booklet. In addition, various resources for individuals and their families are listed at the end of this booklet.

On May 25, 1993, the Hon. Joseph Tauro, Chief Judge of the Federal Court in Massachusetts, formally ended the Court's active involvement in the cases related to five state schools which began in 1972, and specified in a single order all the obligations of the state and the enforceable rights of the class members.

At the same time the Hon. William Weld, Governor of Massachusetts, established the Governor's Commission on Mental Retardation to work cooperatively with individuals with mental retardation, their families, concerned citizens, the Department of Mental Retardation and other agencies towards continuing improvements in the retardation system.

On the following pages, you will find a summary of some important effects of the 1993 federal court order in a question-and-answer format. The summary does not describe every aspect of the order. This document itself has no legal effect. It is not intended as legal advice.

You may obtain a copy of the full order from the Department of Mental Retardation Central Office in Boston, any DMR Regional or Area Office, or any Developmental Center Administration Office.

WHY IS THERE A NEW COURT ORDER ABOUT THE RIGHTS OF PEOPLE WITH RETARDATION?

Five lawsuits were filed in federal court in the 1970's, one against each of the state's mental retardation institutions, questioning the quality of care in those state schools. [(Ricci, et al., v. Okin, et al. C.A. No. 72-0469-T (Belchertown); McEvoy, et al. v. Mitchell, et al., C.A. No. 74-2768-T (Fernald); Gauthier, et al. v. Benson, et al., C.A. No. 75-3910-T (Monson); Mass. Association for Retarded Citizens, Inc., et al. v. Dukakis, et al. C.A. No. 75-5023-T (Wrentham); and Mass. Association for Retarded Citizens, Inc., et al. v. Dukakis, et al. C.A. No. 75-5210-T (Dever).] All the cases were settled by court orders agreed to by the state. Other court orders have been entered over the years. In 1986, the court began to withdraw from involvement in the cases.

There has been much improvement in the care given to people with retardation in Massachusetts. Most class members have moved from state schools to the community. When the suits were filed, nearly all the class members lived in the institutions.

Improvements in the retardation system, combined with questions about the need for the old consent decrees, resulted in a single document stating all the obligations of the state in this lawsuit toward the class members. The 1993 Order provides the state and the other parties a reasonable means to both return control of the state's retardation system to its officials and also to ensure permanent protections for the plaintiff class.

ARE THE COURT ORDERS ENTERED OVER THE LAST 20 YEARS STILL IN EFFECT?

No. The 1993 Order replaces all prior orders of the Court,

including the consent decrees. All earlier orders are "vacated and dissolved" and no longer have any effect. Therefore, the only existing legal obligations and rights of class members stemming from the original consent decree cases are in the 1993 Order.

WHO IS PROTECTED BY THE ORDER? WHO IS A CLASS MEMBER?

The 1993 Order applies to anyone identified as a class member in DMR's Class Identification List as of April 30, 1993, regardless of where the person now lives. Those listed are people who were residents of the state schools on or after the following dates: Belchertown (2/7/72); Dever (12/17/75); Fernald (7/23/74); Monson (9/17/75); and Wrentham (12/4/75). These are the dates the original lawsuits were filed.

If, after April 30, 1993, someone lives at one of the state schools for more than 30 consecutive days, or for

more than 60 days during any twelve-month period, that person would also become a class member.

WHAT BENEFITS DO CLASS MEMBERS RECEIVE UNDER THE ORDER

Each class member, "on a lifetime basis," has a right to have the state "substantially provide services" which are described in the person's Individual Support Plan (ISP). Sufficient trained staff will be available to meet the person's needs which have been identified in the ISP. The next question describes guarantees about care contained in the state regulations.

WHAT IS EFFECT OF THE ORDER ON DMR REGULATIONS?

The 1993 Order does not require changes to any DMR regulations. The state may change its regulations but certain minimum requirements will be maintained.

ISP regulations must "guarantee that each class member be provided with the least restrictive, most normal, appropriate residential environment, together with the most appropriate treatment, training, and support services suited to that person's individual needs." Also, any amendments to the regulations must leave in place at least the substantial equivalent of the current definition of the ISP, individualized nature of the ISP, existence of an appeal process, and other protections.

The state will maintain and implement the basic principles of the ISP which include: 1) human dignity, 2) humane and adequate care and treatment, 3) self-determination to the person's fullest capacity, 4) least restrictive care, 5) the opportunity to undergo normal developmental experiences, provided that the person's safety and well-being are not unreasonably jeopardized, and 6) the opportunity to engage in activities

and styles of living which encourage and maintain the integration of the person in the community through individualized social and physical environments.

ARE THERE OTHER PROTECTIONS FOR PEOPLE IN STATE SCHOOLS AND COMMUNITY PROGRAMS?

Yes. In addition to the protections given to individual class members, the state will maintain certification of state schools under the Federal Medicaid Program (Title XIX of the Social Security Act). Also, the state will maintain compliance with Title XIX obligations regarding services in the community, funded by Title XIX.

Community programs will be reviewed periodically by consultant retardation professionals or a nationally-recognized evaluation group which will be retained by the Department of Mental Retardation.

ARE STATE SCHOOL ADMISSIONS AFFECTED BY THE 1993 ORDER?

Yes. Admissions to the state schools are closed. However, DMR is free in the future to modify its admissions policy.

WHAT HAPPENS WHEN A PERSON IS TRANSFERRED FROM A STATE SCHOOL TO THE COMMUNITY?

The same rights described above under the regulations continue to apply after the transfer to the community. DMR will not approve a transfer to the community unless the Facility Director of the state school or the DMR Regional Director certifies that the person will receive equal or better services in the new location, and that the ISP-recommended services are available there.

DOES THE ORDER AFFECT FUNDING FOR SERVICES FOR CLASS MEMBERS?

Only the Legislature can pass a budget and appropriate funds, and the Legislature is not a party to the lawsuit. However, under the Order, the Governor, DMR and the other defendants have agreed to exert their best efforts to maintain and secure sufficient funds to meet class member needs under the order. The state will be determined to have met its obligation if it secures appropriations equal to fiscal year 1993.

IS THE STAFFING LEVEL AT THE STATE SCHOOLS AFFECTED?

The state will continue to use what is called the "Single Standard Methodology" (a process established under the court orders some years ago for staffing the state schools) for five months or until an alternative is implemented, whichever is later. Any alternative plan will assure

adequate numbers of trained staff, based on DMR's professional judgment. A new plan may or may not use specific ratios for staff. A plan that replaces the Single Standard Methodology will be reviewed by the new Governor's Commission on Mental Retardation.

HOW ARE INDIVIDUAL DISPUTES OVER AN ISP OR OTHER ISSUES RESOLVED?

Individual ISP disputes are dealt with through the state ISP process. That process includes the right to appeal and the right to be heard in state court. Nothing in the Order prevents a class member from bringing an independent lawsuit if the person's grievances have not been remedied through existing state procedures.

WHAT HAPPENS IF THE STATE IS CHARGED WITH NOT FOLLOWING THE ORDER?

If there are assertions of future systemic violations of the Order, then the Plain-

tiff class can seek enforcement in federal court. However, the state must first be informed of the alleged problems and will be given an opportunity to correct them. Individual violations are not addressed in this process.

The two areas subject to enforcement in court in this case are: a) if the state substantially fails to provide a state ISP process in compliance with the order, and b) if there is a systemic failure to provide services to class members as described in the order.

Individual ISP issues are resolved through the state appeal process. Within certain guidelines, various issues can be raised to the Governor's Commission on Mental Retardation.

WHAT IS THE GOVERNOR'S COMMISSION ON MENTAL RETARDATION?

In 1993, the Governor established the Governor's Commission on Mental Retardation and re-estab-

lished it in 1997 by Executive Order No. 396. The Commission's purpose is to examine the quality and effectiveness of services for all persons with mental retardation. The Commission's specific responsibilities include:

1. to hold public hearings to assess such areas as safety and the well-being of persons with mental retardation, and the quality of publicly funded services;
2. to monitor the quality of the mental retardation service system in meeting the needs of the state's citizens;
3. to issue reports on matters affecting the health, safety, and well-being of persons with mental retardation;
4. to make recommendations to the Governor; and
5. to be available to help resolve problems which are not resolved through the usual process.

WILL THE OFFICE OF QUALITY ASSURANCE CONTINUE TO FUNCTION?

No. The Office of Quality Assurance, which was established in 1986, no longer exists under the 1993 Order.

WHAT ORGANIZATIONS EXIST TO ASSIST CONSUMERS AND THEIR FAMILIES IN MASSACHUSETTS?

There are a variety of such organizations in this state. Some of them are:

Mental Health Legal Advisors
11 Beacon Street
Boston, MA 02108
(617) 338-2345

Disability Law Center, Inc.
Suite 295
11 Beacon Street
Boston, MA 02108
(617) 723-8455, (800) 872-9992
TTY (617) 227 9464,
(800) 381-0577

Center for Public Representation
22 Green Street
Northampton, MA 01060
(413) 584-1644, ext. 265

Center for Public Representation -
Newton Office
265 Walnut Street
Newton, MA 02160
(781) 965-0776

ArchMass
217 South Street
Waltham, MA 02154
(781) 891-6270

Greater Boston Association for Retarded Citizens
1505 Commonwealth Ave.
Boston, MA 02135
617 783-3900

Advocacy Network, Inc.
Box 2071
Amherst, MA 01004
(413) 256-1313

Pike Center for Law & Disability
765 Commonwealth Ave.
Boston, MA 02215
(617) 353-2904

Coalition of Families and Advocates for the Retarded (COFAR)
POB 614
Maynard, MA 01754
(978) 897-7179

Massachusetts Law Reform Institute
99 Chauncy Street
Suite 500
Boston, MA 02111
(617) 357-0700

Northeast Independent Living Program
20 Ballard Road
Lawrence, MA 01843
(978) 687-4288

Cambridge/Somerville Legal Services
Suite 16
432 Columbia Street
Cambridge, MA 02141
(617) 494-1800, TTY 444-1757

Federation for Children with Special Needs
95 Berkeley Street/Ste. 104
Boston, MA 02116
(617) 482-2915

Hill & Barlow, A Professional Corporation
One International Place
19th Floor
100 Oliver St.
Boston, MA 02110-2607
Attn: Lisa C. Goodheart, Esq.
(617) 428-3000

Beryl W. Cohen, Esq.
11 Beacon Street
Suite 900
Boston, MA 02108
(617) 742-3322

Governor's Commission on Mental Retardation
One Ashburton Place
Boston, MA 02108
(617) 727-0517

The Department of Mental Retardation
160 North Washington Street
Boston, MA 02114
(617) 727-6808
TTY (617) 624-7590

FOR FURTHER INFORMATION OR IF YOU NEED

INTERPRETATION OF THIS BOOKLET,

PLEASE CONTACT:

**The Office of the General Counsel
Department of Mental Retardation
160 N. Washington Street
Boston, MA 02114
617-727-5608**

*This booklet is a general summary of the 1993 Order.
No legal rights arise by reason of any language in this booklet itself.
A copy of the Order and other information may be obtained from
the General Counsel's Office, Department of Mental Retardation.*