

MEDIATED SETTLEMENT AGREEMENT BETWEEN PLAINTIFFS AND DHS

BACKGROUND

In July 1984, plaintiffs, Harold Handel, Karen Johnson, Beverly Howe, and David Larson, commenced a lawsuit in Ramsey County District Court, Court File #468475, against defendants Leonard Levine, individually and as Commissioner of the Minnesota Department of Human Services and against the chief executive officers and medical directors, of three Minnesota State hospitals (Moose Lake State Hospital, Brainerd State Hospital, and St. Peter State Hospital). The plaintiffs alleged that because of their hearing impairment they had been denied an opportunity to participate in and benefit from services provided to hearing residents of state hospitals and that they had been denied a treatment program, best adapted according to contemporary professional standards, so as to make continued hospitalization no longer necessary. They also alleged that defendants have failed to assure the availability of community-based services which can meet their needs as mentally-ill hearing-impaired persons.

MEDIATED SETTLEMENT PROVISIONS

In September 1984, the plaintiffs, through their representatives - Curt Micka and Susan L Lentz of the Legal Aid Society of Minneapolis, signed an agreement to participate voluntarily in mediation in an attempt to reach settlement. The outcome of the subsequent settlement was the creation and implementation in the fall of 1985 of the St. Peter Regional Treatment Center-Deaf Services Program staffed by persons skilled in mental health and deafness. An ongoing in-service training program has been implemented to train other staff in mental health and deafness who have direct contact with the plaintiffs. Another result of the settlement has been the establishment of Journey House (People, Inc.) to fill the need for community-based residential program for mentally ill/deaf adults who have been discharged from the Regional Treatment Centers. The issues of obtaining funding and setting up day treatment program and Work Activity Centers (WACs) appropriate for MI/HI people with limited communication skills and behavioral or emotional problems have NOT been resolved yet.

Section 11, Part G. of the Mediated Settlement Agreement states "this agreement shall remain in effect so long as any of the plaintiffs is known to be receiving mental health services funded in part by the State of Minnesota, except that the reporting requirements in this section shall terminate when none of the plaintiffs any longer reside at a state hospital or regional treatment center".

CURRENT STATUS

Beverly Howe and David Larson continue to reside at St. Peter Regional Treatment Center. The prognosis for them to improve enough to be discharged from the hospital are guarded. Harold Handel and Karen Johnson have been discharged from St. Peter Regional Treatment Center. Harold Handel is currently residing at Journey House, which is funded by the State of Minnesota, and is receiving day treatment programming in the house. Karen Johnson is currently residing at one of the Boston Care homes, which is also receiving some state funding. Karen is also working part-time under Kaposia program.

The Mediated Settlement Agreement Monitor continues to be responsible for monitoring the MSA, making quarterly site visits to St. Peter Regional Treatment Center, submitting quarterly reports to appropriate persons, submitting staff scheduling to appropriate persons, and maintaining periodic contacts with Journey House and Boston Care Homes to monitor plaintiffs' progress.

MEDIATED SETTLEMENT AGREEMENT

TABLE OF CONTENTS

<u>SECTION</u>	<u>PAGE</u>
#1 Introduction	1
#2 Treatment Programming.	3
#3 Core Staff	6
#4 Unit Staff Training Requirements	12
#5 Job Classifications.	14
#6 Requirements for Other Staff Working With Plaintiffs	15
#7 Materials and Equipment.	16
#8 Intermediate Temporary Relief.	17
#9 Community-Based Services	20
#10 Budget and Obligation to Secure Funding.	23
#11 Form of Agreement, Enforcement, and Monitoring	25
#12 Signature Page	30

MEDIATED SETTLEMENT AGREEMENT

Section 1 INTRODUCTION

This agreement constitutes a mediated settlement agreement and an agreement to arbitrate, which is binding upon the parties and their successors in office as set forth herein.

- A. In July, 1984, plaintiffs, Harold Handel, Karen Johnson, Beverly Howe and David A. Larson, commenced a lawsuit in Ramsey County District Court, Court File #468475, against defendants Leonard Levine, individually and as Commissioner of the Minnesota Department of Human Services and against Frank Milczark et al, who are, respectively, the chief executive officers and medical directors, of three Minnesota state hospitals as named in the complaint. Lawrence Howe is Beverly Howe's guardian and Lloyd Larson is David A. Larson's guardian ad litem.
- B. On September 4, 1984, the above-named parties, through their representatives, signed an agreement to participate voluntarily in mediation in an attempt to reach settlement.
- C. Harold Handel, Karen Johnson, Beverly Howe and David A. Larson are hearing impaired persons who have been diagnosed as mentally ill and who reside in Minnesota state hospitals. Mr. Handel and Ms. Howe presently reside at Moose Lake State Hospital, Ms. Johnson at Brainerd State Hospital, and Mr. Larson at St. Peter State Hospital, also known as and a part of St. Peter Regional Treatment Center.
- D. Curt Micka and Susan L. Lentz of the Legal Aid Society of Minneapolis have represented the plaintiffs in this litigation and mediation.
- E. Commissioner Levine, the other named defendants, and the Minnesota Department of Human Services are responsible for providing and administering services at the state hospitals providing services to mentally ill persons. Commissioner Levine is also responsible for supervising community social services and for carrying out certain responsibilities under federal law.
- F. Deborah Huskins has represented the defendants in this litigation. Ms. Huskins, Jerri Sudderth, and David Lubinski have represented the defendants and the Minnesota Department of Human Services in this mediation.
- G. The parties recognize that all representatives have conducted the mediation in good faith and on the basis of several common beliefs and goals, including a recognition that mentally ill hearing impaired persons have specialized needs, and a desire to improve services for the four plaintiffs in light of their specialized needs.

- H. The parties wish to resolve this controversy by means of this mediated settlement agreement and enter into this agreement in consideration of the mutual promises and undertakings set forth hereinafter. This agreement constitutes a full and complete settlement of the claims made by the plaintiffs in their complaint, except for damages and attorneys fees, and subject to enforcement under Section 11 of this agreement. The parties agree that if litigation or other proceedings outside of mediation are required to resolve the issue of attorneys' fees, drafts of this agreement and other written communications among the parties and the mediator and documents generated during the course of mediation shall not be subject to the confidentiality strictures of paragraph 10, ground rules, of the agreement to mediate. The parties further agree that such communication or documents may be utilized only in proceedings required to resolve the issue of attorneys' fees in Handel et al. v. Levine et al., Ramsey County District Court File 468475.
- I. This agreement shall be binding on the parties, their successors in office and the Minnesota Department of Human Services and its officers, agents and employees.
- J. The rights and obligations enumerated in this agreement are in addition to and not in lieu of all rights and obligations set forth in existing law, rules, statutes, policies and guidelines.
- K. The parties agree to take all necessary action to secure full implementation of this settlement agreement.
- L. The mediator conducting the proceedings resulting in this agreement has been George Beck of the Office of Administrative Hearings, Minneapolis, Minnesota. The parties have been and are hereby advised in writing that:
1. The mediator has no duty to protect their interests or provide them with information about their legal rights.
 2. Signing this mediated settlement agreement may adversely affect their legal rights.
 3. They should consult an attorney before signing a mediated settlement agreement if they are uncertain of their rights.
- M. The core staff described in this settlement agreement shall be located at St. Peter Regional Treatment Center (hereinafter sometimes referred to as "SPRTC").

Section 2 TREATMENT PROGRAMMING

The parties agree that the following services will be provided to the four named plaintiffs while they reside at SPRTC. The representatives of the Department agree and undertake to provide the following services, programs, and facilities commencing no later than July 1, 1985. To the maximum extent feasible, qualified direct care staff and core staff shall be the staff providing the services detailed below.

- A. Each named plaintiff will be provided with a communication/language skills development program that uses a variety of communication modes to meet the individual's needs and abilities. This programming will be provided on a 1:1 basis, in groups and in a living/treatment environment supportive of communication/language development as appropriate for the plaintiffs' individual needs.
- B. Each named plaintiff shall be provided with individualized treatment and counseling programs to address the plaintiff's specific mental health needs, including the behavioral problems which have resulted in their continued hospitalization. The programming will be provided on a 1:1 basis and/or in groups as appropriate to the plaintiffs individual needs. Staff offering such services shall be knowledgeable of both behavioral and psycho-social/developmental learning modes of treatment used with mentally ill hearing-impaired people. Plaintiffs' individual treatment plans will address any need for use of visual forms of presentation and the need for structure and consistency in establishing limits and expectations.
- C. Each named plaintiff shall be provided with programs to teach adult basic education, independent living skills and social interaction skills appropriate for community living. This programming will be provided on a 1:1 and/or group basis as appropriate to the individual plaintiffs' needs.
- D. Each of the named plaintiffs shall be provided with vocational opportunities, including "accessible" assessment and training opportunities (see Section 6 D).
- E. Each of the named plaintiffs will reside on a unit where qualified staff are available, seven days a week, at least during the day and evening hours. The ratio of qualified direct care staff, not including core staff, to hearing-impaired residents during day and evening hours will be 1:4. During sleeping hours the ratio will be 1:7, although qualified staff may be physically located elsewhere on the SPRTC campus.
 1. Qualified direct care staff means RNs, LPNs, HSTs and BAIs, excluding core staff, who are skilled in manual communication methods including signed English, trained in American Sign Language, and knowledgeable of the mental health and psycho-social aspects of deafness.

F. Plaintiffs shall not be excluded from other hospital activities, programs or services because of their need for special communication services.

1. Plaintiffs shall have access to TDDs and television decoders.
2. Plaintiffs will be provided with interpreter services, as needed, to make all other hospital services and programs accessible. When interpreter services are of limited communicational value to an individual plaintiff, the core staff shall explore optional, functional communication systems in an effort to make other hospital services and programs accessible and shall implement such optional systems if they seem to offer more benefit to the plaintiff than interpreter services.

G. Each of the named plaintiffs shall have available to them at least the following specialized services, as part of or in addition to, other available hospital programs and services:

1. Group and individual therapy - 4 hours/week
2. Communication/language skills development - 10 hours/week
3. Vocational, pre-vocational, industrial or occupational therapy - 10 hours/week
4. Education and independent living services - 7 hours/week
5. Planned recreation activities - 7 hours/week.

Although such services will be available to the named plaintiffs, alterations in the delivery of these services may be made if based upon a plaintiff's need as determined by the treatment team and in accord with the plaintiff's individual treatment plan.

H. The parties agree that placing the four named plaintiffs, and other similar hearing-impaired clients together on the same unit will be most likely to promote the acquisition of communication skills by both clients and staff (including but not limited to direct care staff), provide maximum opportunities for socialization and learning by residents, facilitate treatment and expedite a return to a less restrictive community environment.

The named plaintiffs shall, upon transfer to SPRTC, be placed together on the same unit. However, if clinical considerations are present or develop which treatment personnel, including core staff, if hired, judge to merit alternative placement, those considerations shall be fully documented in the client's chart, with a complete statement of the reasons judged to require alternative placement, and specific behaviors of the client underlying those reasons. In addition, the documentation must detail the reasons for which the advantages of the placement of choice are judged to outweigh both the advantages and benefits of placement in the unit containing other hearing-impaired residents and the limits of the communication environment in the placement of choice. The documentation must also detail the methods by which communication and communication skills training will be provided and enhanced in this placement of choice. Treatment service requirements indicated in paragraphs A-G will continue to apply.

A decision to place a hearing-impaired client in an alternative placement cannot be implemented unless:

1. all documentation outlined above has been completed; and
 2. the documentation has been reviewed and the alternative placement approved by the head of the treatment facility; or
 3. the named plaintiff presents a serious and imminent threat of physical harm to self or others. In this situation, the documentation required above must be completed within seven calendar days of the placement in the alternative unit.
- I. After February 1, 1985, if any of the named plaintiffs reside in a state facility under the authority of the Commissioner of Human Services other than SPRTC, the plaintiff(s) shall not be denied the opportunity to participate in the programs and services of such facilities because of communication barriers.

Section 3 CORE STAFF

- A. The Department will hire the full time equivalent ("FTE") of the following positions detailed below in order to provide plaintiffs with the level of services described in this settlement agreement. The specialized core staff described below shall function as a central part of the treatment team of every mentally ill hearing impaired resident of SPRTC. The core staff shall also participate in all decisions about placement of hearing impaired mentally ill residents of SPRTC. The core staff will, through the coordinator of clinical services, report directly to the head of the treatment facility.
- B. DHS will advertise nationally for these positions and will continue to advertise until they are filled.
- C. Clerical support for the core staff will be provided by and funded from the existing budget of SPRTC for the FY 1986-87 biennium.
- D. The core staff shall be hired and ready to work July 1, 1985, or as soon as possible thereafter. All preparations for the hiring of the core staff shall be completed so as to make it possible for the core staff to begin work at that time.
- E. If any of the core staff positions are not filled by August 1, 1985, the Department shall immediately hire "qualified" consultants to provide plaintiffs with the services as listed in Section No. 2. "Qualified" means possessing the skills as listed in the individual positions in this section of the settlement agreement.
- F. To the extent that positions are not filled by core staff or qualified consultants on or after August 1, 1985, the intermediate provisions as specified in Section No. 8 shall continue until such core staff or qualified consultants are hired.
- G. Each of the core staff hired shall have the following qualifications and responsibilities as listed in each of the position descriptions in this section.
- H. Coordinator of Clinical Services for the Hearing Impaired

Qualifications:

1. Master's degree or its equivalent in psychology, social work or related field, preferably with experience in developing and administering mental health programs for hearing impaired people.
2. Demonstrated knowledge and understanding of the educational, psychological, mental health, and sociological implications of deafness.

3. Demonstrated knowledge and/or experience in a variety of treatment, therapy, and counseling with hearing impaired persons, including behavior modification techniques and developmental or psycho-social learning models.
4. Ability to relate and communicate with hearing impaired persons, including those with minimal language skills, in a variety of communication modes including American Sign Language.

Responsibilities:

1. Developing and directing an inpatient mental health delivery system for hearing impaired people at SPRTC and providing consultation and assistance as necessary at other regional treatment centers.
2. Establishing and maintaining liaison with appropriate private, state, and federal agencies, and local community resources, including those in other states.
3. Evaluating and monitoring program effectiveness and developing proposals for corrective action.
4. Recruiting, training, and supervision of specialized staff and training of other staff working with hearing impaired residents.
5. Reporting directly to the head of the treatment facility.

I. Communication Specialists (2 FTE)

Qualifications:

1. Bachelor's degree in education of the hearing impaired, special education, speech and language pathology or related field.
2. Demonstrated knowledge and understanding of the educational, psychological, mental health, and sociological implications of deafness.
3. Ability to teach both to residents and hearing staff, American Sign Language and other non-verbal forms of communication used by hearing impaired persons.
4. Skilled in a variety of communication modes, including American Sign Language, mime, and other augmentative modes.
5. Prefer person who is certified by the National Registry of Interpreters for the Deaf.
6. Demonstrated knowledge in teaching and/or working with hearing impaired people with minimal language skills.

7. Demonstrated knowledge of language development of hearing impaired persons and basic education techniques used with hearing impaired people.

Responsibilities:

1. Evaluating staff and resident communicative abilities.
2. Developing and implementing communication skill development programs for residents and staff.
3. Providing interpreting services as needed.

J. Clinical Social Worker

Qualifications:

1. Master's degree or equivalent in clinical social work, psychology, or related field preferably with three years treatment experience with mentally ill hearing impaired people.
2. Knowledge and understanding of the educational, psychological, mental health, and sociological implications of deafness.
3. Ability to relate and communicate with hearing impaired persons including those with minimal language skills in a variety of communication modes including American Sign Language.
4. Ability to provide counseling to hearing impaired residents regarding personal, social and vocational goals.

Responsibilities:

1. Providing direct clinical services such as individual and group therapy, psycho-social assessments and discharge/aftercare planning for hearing impaired residents.
2. Documentation and maintenance of clinical records as set by the Joint Commission on Accreditation of Hospitals.
3. Consultation and training of other staff working with hearing impaired residents.

K. Sign Language Interpreter

Qualifications:

1. Successful completion of a professional sign language interpreter training program preferably with experience working with mentally ill, chemically dependent and developmentally disabled hearing impaired people.

2. Demonstrated knowledge and understanding of the educational, psychological, mental health, and sociological implications of deafness.
3. Certification by the National Registry of Interpreters for the Deaf (RID) or able to secure certification within one year.
4. Ability to relate and communicate with deaf persons who have minimal language skills (MLS).

Responsibilities:

1. Translation and interpretation of spoken language into visual language and translation and interpretation of visual language into spoken language.
2. Consulting with involved treatment staff to support an effective communicative environment.
3. Assisting in the development and provision of in-service training to SPRTC staff.
4. Assisting the Coordinator in the identification of program areas affecting communication which need development or other corrective action.

L. Behavior Analyst

Qualifications:

1. Bachelor's degree in behavior analysis, clinical social work, psychology, or related field, preferably with three years treatment experience with mentally ill hearing impaired people.
2. Knowledge and understanding of the educational, psychological, mental health, and sociological implications of deafness.
3. Ability to relate and communicate with mentally ill hearing impaired residents in a variety of communication modes including American Sign Language.
4. Ability to initiate and monitor effective behavior modification programs for hearing impaired residents.

Responsibilities:

1. Initiating and monitoring behavior modification programs for residents of SPRTC who are hearing impaired.
2. Consulting with involved treatment staff to support an effective therapeutic environment.

3. Assisting in the development and provision of in-service training to SPRTC staff.
4. Assisting the Coordinator in the identification of program areas affecting behavior management needing development or other corrective action.

M. Educational Specialist

Qualifications:

1. Skill in a variety of communication modes including American Sign Language, mime and other augmentative modes.
2. Experience and/or training in teaching hearing impaired people, including those with minimal language skills, independent living skills and basic education (functional reading and math).
3. Knowledge and understanding of the educational, psychological, mental health, and sociological implications of deafness.
4. Ability to initiate and monitor effective educational programs for hearing impaired residents.

Responsibilities:

1. Initiating and monitoring educational programs for residents of SPRTC who are hearing impaired.
2. Consulting with involved treatment staff to support effective educational goals.
3. Assisting in the development and provision of in-service training to SPRTC staff.
4. Providing direct educational programming covering independent living skills and basic education (functional reading and math) through 1:1 and group modalities.

N. Psychologist (.20 FTE Consultant)

Qualifications:

1. Trained and experienced in the psychological and intellectual testing techniques utilized with hearing impaired people.
2. Trained and experienced in the psycho-social aspects of deafness.
3. Knowledgeable of current behavioral, developmental and other models of treatment for mentally ill hearing impaired persons.

4. Skilled in a variety of communication modes including American Sign Language.

Responsibilities:

1. Evaluating clinical practices utilized for the hearing impaired residents.
2. Providing psychometric evaluations.
3. Providing psychotherapy to hearing impaired residents as needed.
4. Assisting the formulation of individual treatment plans.

0. Psychiatrist (.20 FTE consultant)

Qualifications:

1. Trained and experienced in the psychiatric diagnosis and treatment techniques utilized with hearing impaired people.
2. Knowledgeable of the symptoms of tardive dyskinesia, akathisia and other side effects of medications and how they may affect hearing impaired people using visual languages.
3. Trained and experienced in the psycho-social aspects of deafness.
4. Knowledgeable of current behavioral, developmental and other models of treatment for mentally ill hearing impaired persons.
5. Skilled in a variety of communication modes including American Sign Language.

Responsibilities:

1. Evaluating clinical practices utilized for the hearing impaired residents.
2. Prescribing and monitoring medication.
3. Providing psychotherapy to hearing impaired residents as needed.
4. Assisting the formulation of individual treatment plans.

Section 4 UNIT STAFF TRAINING REQUIREMENTS

- A. Staff who have or will have responsibility for providing services specified in the individual treatment plans of the four named plaintiffs shall receive initial intensive training totaling 32 hours and covering the following subject areas:

Psycho-social implications of deafness, including developmental information giving insights into the reasons that many mentally ill hearing impaired persons exhibit low frustration tolerance, immature social development, impulsivity, low self-esteem, poor sequential ordering, and a maladaptive sense of cause and effect.

Psychometric tools and techniques used with hearing impaired persons.

Therapeutic tools and techniques used with hearing impaired persons.

Medication management and monitoring, with special considerations for persons relying on manual communication systems.

Communication methods and systems used with hearing impaired mentally-ill persons.

Role and utilization of sign language interpreters.

Crisis intervention with mentally ill hearing impaired persons.

Vocational implications of deafness.

Deaf Services Division will be responsible for coordinating training in cooperation with DHS and SPRTC staff development units.

- B. Extensive training in manual communication methods, including visual/gestural language (ASL) techniques and strategies, shall be provided for at least 20 direct care staff members during the 1986 fiscal year and for at least 10 direct care staff members during the 1987 fiscal year. Such extensive training which shall commence no later than September 30 of each fiscal year, shall consist of a minimum of 138 hours, of which 30 shall consist of structured tutorial or interactive experiences in manual communications. The additional 108 hours shall consist of classroom training in manual communications. Staff completing the course shall be evaluated to receive a certificate of competency from the instructor(s) in order to be considered initially "qualified" for the purpose of delivery of services to the plaintiffs. The instructor(s) shall be skilled in visual/gestural (ASL) techniques and strategies and shall be experienced in the teaching of same.
- C. Staff shall be provided with ongoing training opportunities in both manual communication and psycho-social aspects of deafness, including the following:

1. Staff shall have access to ongoing training to improve manual communication skills through a combination of formal classes, participation in training with residents, and contacts with interpreters and communication specialists. Such access shall be provided on a daily basis.
2. Formal follow-up training in communication shall be available in the amount of at least 30 hours per year. Direct care staff working with the named plaintiffs shall be required to attend this training.
3. Formal in-service training in mental health and deafness shall be available in the amount of 15 hours per year. Direct care staff working with the named plaintiffs shall be required to attend this training.

Section 5 JOB CLASSIFICATIONS

- A. The Department, in coordination with the Department of Employee Relations, shall create position descriptions described in this agreement.
- B. Position descriptions for core staff positions shall include all the position qualifications and responsibilities as listed in Section No. 3.
- C. Testing procedures for all core staff positions shall be devised to assure that they do not have a discriminatory impact against hearing impaired applicants.
- D. In advertising openings for positions involving delivery of services to the named plaintiffs, DHS shall encourage hearing impaired persons to apply.

Section 6 REQUIREMENTS FOR OTHER STAFF WORKING WITH PLAINTIFFS

- A. Psychologists, psychiatrists and other mental health professionals who test or diagnose the named plaintiffs shall be trained in the psychological and intellectual testing techniques used with hearing impaired persons, shall be knowledgeable of the psycho-social aspects of deafness, shall be knowledgeable of current behavioral, developmental, and other models of treatment used with mentally ill hearing impaired persons, and shall be able to communicate effectively with the named plaintiffs. If such staff is not available the treatment staff shall have direct access to professionals under contract who possess the qualifications listed above.
- B. Except in emergencies, medication reviews for the named plaintiffs must be done by physicians who are able to effectively communicate with plaintiffs and who are cognizant of the long-term side effects of medications for persons who rely on manual communication systems.
- C. SPRTC staff will monitor plaintiffs on a regular basis for symptoms of tardive dyskinesia, akathisia and other known side effects of psychotropic medications and will make appropriate adjustments in medications if such symptoms are discovered.
- D. Vocational services, including assessment and training, that are provided as a part of regular hospital services shall be accessible to the four named plaintiffs. If the persons providing vocational services do not have the communication skills to communicate effectively with the plaintiffs, DHS will make available other means of communication, such as interpreters or consultation services to devise and implement basic communication systems for use in the work environment.

Section 7 MATERIALS AND EQUIPMENT

The Department will make available materials and equipment needed for the individual treatment programs and the adaptive equipment needed to make hospital facilities accessible for the named plaintiffs. Such materials and equipment may include, but not be limited to, TDD's, TV decoders, educational materials, and visual signal equipment for fire alarms and other needed signaling systems (e.g. doorbells).

Section 8 INTERMEDIATE TEMPORARY RELIEF

A. The Department of Human Services will provide the following services to plaintiffs, by use of its current staff, hiring new staff, contracting for services, or a combination thereof:

1. Language/Communication Development

- a. Within one month of signing this agreement, language/communications development programming will be provided for each of the plaintiffs, for at least five hours per week.
- b. This programming shall be developed and monitored by a person skilled in the development of language/communications programming but may be provided by persons having lesser qualifications. The person or persons developing and monitoring these services shall work with the plaintiffs' direct care staff and treatment team to develop and implement a functional communication system for plaintiffs and direct care staff as appropriate to the plaintiffs' needs such that direct care staff can reinforce and/or deliver the language/communication development program.
- c. The development, monitoring, and provision of these services shall be fully documented in the plaintiffs' individual treatment plans.
- d. The person developing and monitoring these services to the plaintiffs will consult and work with any person who is offering training in manual communication methods to hospital staff who are or who might in the near future provide services or treatment to any of the plaintiffs.

2. Interpreter Services

- a. Within two weeks of signing this agreement, DHS will provide each of the plaintiffs with a minimum of ten hours per week of interpreting services for the purpose of making care and treatment services accessible to the plaintiffs.
- b. The interpreter(s) providing these services shall consult with the person providing the language/communication development services to the plaintiffs in order to make the interpreter services as meaningful as possible for the plaintiffs.
- c. If interpreter services are not of benefit to an individual plaintiff, then alternative activities involving language/communication development activities may be substituted for an equal number of hours per week.

3. Programming Services

- a. Within two weeks of signing this agreement, DHS will provide assistance in developing individual treatment plans for each of the named plaintiffs by a person skilled and knowledgeable in treatment planning for both mental illness and hearing impairment. This person shall also work directly with plaintiffs and staff in providing services and treatment to the plaintiffs and shall provide initial training to hospital staff, as needed. This person shall exercise his or her professional judgment with regard to the allocation of time spent on each of the aforementioned duties. This person shall be available to perform such activities for a minimum of 16 hours per week.
- b. Treatment or services shall be provided to address Harold Handel's fire-setting behavior. The treatment or services provided shall be fully documented in his individual treatment plan. Persons developing the treatment or services shall consult with other mental health experts who are knowledgeable regarding modalities for treating fire-starting behavior.
- c. Within two weeks of the signing of this agreement, DHS will implement an alternative vocational program for Harold Handel. If the alternative vocational program is not acceptable to Mr. Handel and his counsel, DHS will have a vocational assessment completed as soon as possible, but in any event before February 1, 1985. Mr. Handel's vocational abilities and skills must be assessed by a person or persons experienced in making vocational assessments of hearing impaired persons and skilled in communicating with hearing-impaired persons with minimal language skills. Upon Mr. Handel's transfer to St. Peter Regional Treatment Center, DHS shall develop and implement a vocational program in accord with Mr. Handel's assessed skills and abilities.

4. Initial Training of Direct Care Staff

- a. A minimum of five direct care staff at St. Peter Regional Treatment Center shall be selected within three weeks of the signing of this agreement to participate in a training program of orientation to hearing impairment and mental health (See Section 4.A). Direct care staff means RNs, LPNs, HSTs, BAIs, excluding core staff, at SPRTC.
- b. This orientation shall begin no later than December 1, 1984.
- c. A minimum of five direct care staff at St. Peter Regional Treatment Center shall be selected within three weeks of the signing of this agreement to participate in a manual communications class. This initial group of five direct care staff shall participate in a 30-hour (1 week) class providing visual/gestural language techniques and strategies. Following

the completion of this class, these five direct care staff members shall have additional training during January 1985 of at least 10 hours in strategies for communicating with the plaintiffs and shall also participate in three courses in manual communication totaling approximately 108 hours for the equivalent of the staff training requirements specified in Section 4.B. Additional ongoing training shall be provided as specified in Section 4.C.

- d. The initial 30-hour class shall begin no later than January 15, 1985. The trainer shall have demonstrated experience in teaching manual communication systems.
- e. These five direct care staff shall thereafter be provided with ongoing training opportunities in both manual communications and in the psycho-social aspects of deafness as provided in Section 4.C.

5. Coordination of Effort

Persons providing interim services specified in this section shall consult with each other and coordinate their efforts.

- B. Conditions will be considered appropriate for transferring the named plaintiffs (except David Larson) to SPRTC when direct care staff have completed the training as specified in paragraphs A.4.a. and the 30-hour class in visual/gestural techniques and strategies and the January 1985 training indicated in A.4.c. above. This training must be completed no later than February 1, 1985.

Section 9 COMMUNITY-BASED SERVICES

- A. DHS will maximize efforts to ensure that community-based services are available so that none of the named plaintiffs are denied community placement solely because of a lack of community-based services.

The parties agree that community-based services must have the following components, in addition to other services mandated by statutes or regulations, in order to address the needs of the four named plaintiffs.

1. Staff skilled in manual communication methods and trained in the psycho-social and mental health aspects of deafness.
 2. Capability and willingness to work with mentally ill hearing-impaired persons with severe behavior problems.
 3. Language and communication development training.
 4. A statewide admissions policy.
 5. Capability for long-term provision of services, if necessary.
- B. Residential Treatment Program - State Commitments
1. DHS agrees to actively solicit proposals from counties for a residential treatment facility with the above-stated components to address the needs of the four named plaintiffs.
 2. DHS agrees to recruit actively potential service providers to submit proposals in response to county Requests for Proposals (RFPs) for such a facility.
 3. DHS agrees to continue its effort to provide technical assistance in the RFP development process.
 4. DHS agrees to fund by February 1, 1985, in accordance with existing funding mechanisms, a proposal for a licensable residential treatment facility capable of addressing the needs of the four named plaintiffs, if such a proposal is forthcoming from a county or counties.
 5. If a proposal which meets the requirements of paragraph A is not forthcoming by December 15, 1984, and therefore such a facility is not funded by February 1, 1985, DHS shall encumber \$300,000 through May 30, 1985, for the purpose of funding such a facility, if a proposal for such a facility is forthcoming from a county or counties.
 6. DHS agrees to complete a thorough needs assessment to determine if additional Rule 36 type facilities are needed for mentally ill hearing-impaired persons, including the four named plaintiffs. This

assessment shall be completed on or before September, 1985. If such additional facilities are needed, DHS will utilize existing Rule 12 money or savings to fund such resources or, if Rule 12 money is not available, will seek a supplemental appropriation to fund such resources.

7. The plaintiffs counsel shall, in working with the counties of financial responsibility for the four named plaintiffs or potential host counties, encourage counties to work cooperatively to develop and submit proposals for the development of Rule 36 residential facilities designed to meet the needs of the four named plaintiffs.
8. If at any time any of the four named plaintiffs has a documented need for a community-based residential treatment program, DHS shall work with counties to develop or modify services or programs to meet the needs of plaintiffs for such programming.

C. Day Treatment Services - State Commitments

1. DHS agrees to actively solicit proposals from counties for a day treatment facility with the components stated in paragraph A to address the needs of the four named plaintiffs.
2. DHS agrees to recruit actively potential service providers to submit proposals in response to county RFPs for such services.
3. DHS agrees to provide technical assistance in the RFP development process.
4. If the Legislature appropriates additional Rule 14 money for FY '87, DHS agrees to fund by August 1, 1986 a day treatment program capable of addressing the needs of the four named plaintiffs, if such a proposal is forthcoming from a county or counties.
5. DHS agrees to complete a thorough needs assessment to determine if additional day treatment programming beyond that provided by Rules 12 and 14 is needed for mentally ill hearing-impaired persons, including the four named plaintiffs. If such additional programming is needed, DHS shall fund a proposal in accordance with existing funding mechanisms with a portion of that set aside from the Alcohol and Drug Abuse and Mental Health Services block grant, assuming the needed authority to set aside such funds is received.
6. If at any time any of the four named plaintiffs has a documented need for day treatment programming, DHS shall work with counties to develop or modify services or programs to meet the needs of plaintiffs for such programming.
7. The plaintiffs counsel shall, in working with the counties of financial responsibility for the four named plaintiffs or potential host counties, encourage counties to work cooperatively to develop and submit proposals for the development of day treatment programs designed to meet the needs of the four named plaintiffs.

D. Work Activity Programs and Out-patient Mental Health Services - State Commitments

1. If at any time any of the four named plaintiffs has a documented need for work activity or out-patient mental health services or programs, DHS shall work with counties to develop or modify services or programs to meet the needs of plaintiffs for such programming.
2. DHS agrees to complete a thorough needs assessment to determine the extent of need for accessible work activity and out-patient mental health services for mentally ill hearing-impaired persons. Such needs assessments shall be completed on or before September, 1985. If unmet need is demonstrated, DHS agrees to work with counties in developing or modifying services or programs to meet these needs.
3. DHS shall request necessary approval from the Federal Government and the Legislature to set aside money from the Alcohol and Drug Abuse and Mental Health Services block grant to fund needed out-patient and work activity services as identified in the aforementioned needs assessment. If such approval is received, DHS shall fund such services, or portions thereof, not funded from other sources.
4. DHS shall meet with the Commissioner of Economic Security to coordinate efforts to establish work activity center programs that are appropriate for hearing-impaired mentally ill persons with limited communication skills and behavioral or emotional problems.

Section 10 BUDGET AND OBLIGATION TO SECURE FUNDING

- A. The Department will submit an appropriation request in the amount of \$238,500 for the 1986 fiscal year and \$225,800 for the 1987 fiscal year to the Finance Department, the Governor, and the Legislature to fund specialized core staff and specialized equipment and materials needed for the hearing-impaired program at St. Peter Regional Treatment Center as follows:

Budget - 1986-87 for Hearing-Impaired Program at SPRTC*

	FY 86	FY 87
Equipment/start-up costs	\$ 11.7	\$ 4.0
Coordinator of clinical services for the hearing-impaired	35.2	35.2
Social Worker	30.2	30.2
Behavior Analyst	24.6	24.6
Communication Specialists (2-FTE)	50.5	50.5
Interpreter	24.6	24.6
Education Specialist	21.7	21.7
Consultants Fees (1/5 time psychologist and 1/5 time psychiatrist)	35.0	35.0
Relocation Expenses	5.0	—
Total	\$ 238.5	\$ 225.8

*Dollars are expressed in thousands.

- B. The representatives of the Commissioner of the Department of Human Services hereby give assurance that all provisions of this agreement that require legislative action, including the budget set out above, have been reviewed by authorized representatives of the Governor's office and by the chairpersons and ranking minority members of the relevant policy committees and finance and appropriations committees or subcommittees of each house of the Legislature.
- C. In addition for the 1986-87 biennium:
1. At least \$10,000 will be encumbered from the budget of the St. Peter Regional Treatment Center during each year of the 1986-87 biennium to fund training of direct care staff in skills of communicating with hearing-impaired residents and related training.
 2. Funds will be provided from the SPRTC budget for all appropriate clerical and administrative support.
- D. The Commissioner of the Department of Human Services hereby agrees to take all appropriate steps directed toward ensuring legislative adoption and gubernatorial approval of the budget, including but not limited to the following:

1. Dissemination of all necessary and appropriate written information to members of the legislature, legislative staff, and the public, including but not limited to appropriate written materials about the need for the program and this settlement agreement.
 2. All appropriate legislative lobbying, by skilled representatives of the Department, including presentation of adequate, persuasive testimony and underlying supportive data.
 3. Keeping plaintiffs' counsel informed on a regular basis, at least weekly during the session, of the status of the budget and the progress of the lobbying effort.
- E. If the Governor's budget recommendation includes the request described above or a similar recommendation, plaintiffs' representatives will assist and cooperate in lobbying efforts to obtain approval of the budget, including advising representatives of the hearing-impaired community of opportunities for lobbying and testifying before legislative committees.

Section 11 FORM OF AGREEMENT, ENFORCEMENT, AND MONITORING

- A. Upon the execution of this agreement, defendants shall file it with the Ramsey County District Court.
- B. Upon the signing of this agreement plaintiffs shall forthwith prepare, execute and forward to counsel for defendants a Stipulation of Dismissal with Prejudice except for the issue of attorneys fees.
- C. The following provisions and procedures shall govern enforcement of this agreement. The Uniform Arbitration Act, Minn. Stat. 572.08, et seq., supplemented by the following provisions, shall govern enforcement of this agreement. Wherever any provision of the Uniform Arbitration Act conflicts with any provision of this agreement, the provisions of the agreement shall prevail. Any departure from the Uniform Arbitration Act or the provisions of this section not expressly permitted by this section or expressly agreed to by the parties in writing is beyond the power of the arbitrator.

1. When one party believes the other is not in compliance with a provision of this agreement, written notice of non-compliance shall be given to the other party, stating with particularity the non-compliance and the relief or remedy requested. The other party shall respond in writing within 10 days of the date of mailing of the written notice or, if personal delivery is made, the date of delivery. Mailing or delivery of written notice to all persons or offices listed below is necessary to commence these enforcement procedures. Addresses to which such written notice or response is to be directed are as follows:

Commissioner of Department of Human Services
4th Floor, Centennial Office Building
658 Cedar Street
St. Paul, Minnesota 55155

Office of the Attorney General
Human Services Division
515 Transportation Building
John Ireland Boulevard
St. Paul, Minnesota 55155

Division Director, Residential Facilities Division
Department of Human Services
4th Floor, Centennial Office Building
658 Cedar Street
St. Paul, Minnesota 55155

Susan Lentz, Esq.
Curt Micka, Esq.
Legal Aid Society of Minneapolis
222 Grain Exchange Building
323 Fourth Avenue South
Minneapolis, Minnesota 55415

2.
 - a. Within seventeen days of the date of mailing of the notice of non-compliance, or the date of personal delivery thereof, the parties shall meet and attempt to reach a mediated resolution. This meeting may be waived or the date thereof extended only by written agreement of the parties.
 - b. The parties shall meet at the location mutually agreed to by the parties. A mediator shall be present to mediate the meeting unless the parties agree in writing that a mediator need not be present.
 - c. The conduct of the mediator shall be in accord with the Civil Mediation Act, Minn. Laws 1984, Ch. 646, including section 8 regarding competency of witnesses and privileged information. However, it is the intention of the parties that the contents of this agreement shall take precedence over any inconsistent provisions of Ch. 646. The mediator shall be the person so designated by The Mediation Center, Minneapolis. The Department of Human Services shall pay all fees and expenses of mediation.
 - d. The parties may agree to an additional meeting or meetings, but no meeting other than the initial meeting shall be required.
3. The complaining party may initiate arbitration pursuant to the Uniform Arbitration Act and this agreement as follows:
 - a. On or after the seventeenth day after the date of mailing or personal delivery of the notice of non-compliance if no written response has been received, but no later than the fiftieth day thereafter, or;
 - b. on or after the twentieth day after the date of mailing or personal delivery thereof if a written response has been received, but not later than the thirty-third day after the date of the last meeting under § 11C.2.
4. Arbitration shall be invoked by mailing or delivering a written notice of invocation of arbitration, together with a request to the Commissioner of Human Services to notify the Chief Administrative Law Judge of the Office of Administrative Hearings of this agreement to arbitrate and the provisions of § 11C.5. regarding appointment of an arbitrator. The written notice shall be mailed or delivered to the persons listed in § 11C.1. and the Chief Administrative Law Judge of the Office of Administrative Hearings. The notice invoking arbitration shall state with particularity the issues to be raised at the arbitration hearing. The non-complaining party may file a response within 10 days. Within five days after receiving the request, the Commissioner shall, in writing, request the Chief

Administrative Law Judge of the Office of Administrative Hearings to appoint an arbitrator as provided in § 11C.5.

5. The Arbitrator shall be George Beck, Administrative Law Judge, Office of Administrative Hearings, Minneapolis. If Judge Beck is unable to serve as arbitrator, the Chief Administrative Law Judge shall propose to the parties a panel of three Administrative Law Judges including, if available, Jon Lunde and Phyllis Reha. Each of the parties may strike one of the proposed arbitrators, provided, however, that if only Jon Lunde or only Phyllis Reha is available, either he or she shall be the arbitrator. The arbitrator shall be chosen within seven days of the date of mailing of the notice invoking arbitration.
6. Arbitration proceedings shall be held at the Office of Administrative Hearings, Minneapolis, Minn., and venue, for purposes of Minn. Stat. § 572.25, shall be in the District Court, 4th Judicial District, Hennepin County, Minnesota.
7. The arbitrator may hold a prehearing conference for determination of an appropriate date for hearing and other matters the arbitrator deems appropriate. Unless the arbitrator determines that additional time is necessary to prepare for hearing, the arbitrator shall set the hearing for a date within thirty days of the date of the notice invoking arbitration. The arbitrator shall appoint a time for the hearing and serve notice as provided in Minn. Stat. § 572.12.
8. The arbitrator shall conduct the hearing as provided in Minn. Stat. § 572.12, et seq., as supplemented, limited or made specific by the provisions of this agreement. The admissibility of evidence shall be governed by Minn. Stat. § 14.60 and Minn. Rule 1400.7300. The standard of proof in arbitration proceedings shall be that of proof by a preponderance of the evidence.
9. Within 30 days after the hearing, the arbitrator shall make an award containing written Findings of Fact and written Conclusions of Law sufficient to support the award. Although the arbitrator may look to applicable statutes and general principles of law in construing this agreement, the arbitrator is limited to enforcing this agreement. The arbitrator shall not base an award solely on general principles of equity. While the arbitrator may look to the parties' conduct under the agreement, a party's course of conduct does not constitute a waiver of any rights or defenses under this agreement nor an amendment to the provisions of this agreement.
10. The arbitrator shall not make an award that is contrary to law nor make an award based on a claim not raised in the notice of non-compliance or the notice invoking arbitration or any written response to those notices, unless by written agreement of the

parties. The arbitrator shall not make an award against the Commissioner of Human Services that is beyond the scope of the Commissioner's authority and responsibility as construed under all applicable state and federal law and regulations. This agreement does bind the Commissioner to provide the named plaintiffs with all services as stated within the agreement and therefore the Commissioner shall not assert that compliance with this agreement is outside the scope of his authority or responsibility because of a lack of funding. In agreeing to the prior sentence, the parties contemplate an appropriation and state agency account system that is the same or similar to the system in effect on the date of signing this agreement.

11. This agreement and the Uniform Arbitration Act define the scope of the arbitrator's powers. A decision that goes beyond the provisions of this agreement exceeds the arbitrator's powers unless and to the extent that the parties have expressly agreed in writing to expand those powers.
12. The parties shall comply with the arbitrator's award forthwith, but the arbitrator may in his award specifically allow a period of time, not to exceed sixty days, for a party to comply with the terms of the award.
13. Confirmation, modification, vacation, and enforcement of an award shall be as provided by the Uniform Arbitration Act, Minn. Stat. § 572.08, et seq. Additionally, however, the parties agree that an award is appealable on the basis of a clear mistake of fact or law. Upon an appeal to the court, the court shall have the power to award attorneys fees to the non-appealing party only, for time and expenses incurred in the appeal, but only if the non-appealing party prevails.
14. The Department of Human Services shall pay the fees and expenses of arbitration and mediation. Attorneys' fees shall be paid only as provided in paragraphs C.13 and 15.
15. If the services of the Legal Aid Society of Minneapolis should become unavailable to the plaintiffs or any of them, and if the services of any other Minnesota organization or program funded by the national Legal Services Corporation, or any other Minnesota organization or program that provides legal services to indigent persons are not available to the plaintiffs or any of them, then, the arbitrator in the case of arbitration, or the court, in the case of an appeal to court, shall have the power to award attorney's fees to such plaintiff or plaintiffs for time and expenses incurred in connection with the arbitration or court appeal but only if the plaintiff or plaintiffs should prevail. This paragraph shall be effective independently of and without regard to the provisions of paragraph C.13.

D. Monitoring:

1. DHS shall provide quarterly reports to plaintiffs' counsel, outlining treatment and services provided to each of the plaintiffs and treatments and services proposed to be provided during the forthcoming quarter. DHS shall also provide quarterly reports to plaintiffs' counsel, detailing compliance with each of the sections of the agreement and identifying by name and position all qualified direct care staff and core staff presently employed. DHS shall also facilitate a quarterly visit by plaintiffs counsel, upon their request, to SPRTC, for purposes of their determining compliance with this agreement. During such visit, plaintiffs' counsel shall have access to programs, facilities, and data necessary for determining compliance, including but not limited to, ward staff schedules for the previous quarter. Copies of all statistical reports and budgetary data pertinent to the hearing impaired program shall also be provided to plaintiffs' counsel. It is hereby acknowledged that counsel for the plaintiffs have full right of access to their clients and their clients' hospital records.
2. DHS shall designate a contact person who shall respond to inquiries by plaintiffs' counsel.
3. SPRTC Review Board shall receive special orientation to the issues of mental health and deafness and shall monitor progress under this agreement at least quarterly. Copies of its reports regarding this agreement or any of the four plaintiffs shall be provided to plaintiffs' counsel.

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- E. It is the intent of the parties that the contents herein constitute the mechanism for enforcement of this agreement, notwithstanding Minn. Laws 1984, Ch. 646, §§ 3 and 4.
- F. The parties may amend the provisions of this agreement by mutual written agreement.
- G. This agreement shall remain in effect so long as any of the plaintiffs is known to be receiving mental health services funded in part by the State of Minnesota, except that the reporting requirements in this section shall terminate when none of the plaintiffs any longer reside at a state hospital or regional treatment center.

FOR THE PLAINTIFFS:

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Lloyd Larson, Guardian
Ad Litem for David A. Larson

Karen Johnson
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