

A MATTER OF PRINCIPLES

Settlements in class action lawsuits in Tennessee (*Brian A. v. Sundquist*) and Alabama (*R.C. v. Hornsby*) include a series of guiding principles. We invite you to compare those principles and ask yourself this question: If these principles can indeed become reality, which would be the better reality for vulnerable children?

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Alabama Consent Decree (*R.C. v. Hornsby*) Goals and Principles

The consent decree spells out as the goals of the new system of care, to:

Protect class members from abuse and neglect; and

Enable class members to:

- live with their families; and when that cannot be achieved through the provision of services, to live near their home;
- achieve stability and permanency in their living situation;
- achieve success in school; and become stable, gainfully employed adults.

To achieve these goals, the new system of care is expected to operate according to the following principles:

1. **Class members shall live with their families.** Exceptions are to be made only when:

- it is not possible, through the provision of services (including intensive home-based services), to protect a class member living with his/her family from imminent, serious harm; or
- it is not possible, through the provision of services, including intensive home-based services, to protect a class member from serious harm upon reunification with his/her family.

2. **Class members and their families shall have access to a comprehensive array of services, including intensive home-based services, designed to enable class members to live with their families.**

These services should be designed to enhance the natural support networks of class members and their families. Other services to which class members and their families shall have access, if required to enable class members to live with their families, are: parenting skills and household management training; peer support; homemaker services; day care; respite care; help with housing; crisis services; mental health services; services for substance abuse; and “facilitative” services. Class members and their families shall have access to such services when the class member is living with his/her family or when the goal is for the class member to return home or live with a relative. When the goal is for the class member to return home, services should also be provided to the parents to prepare and enable them to care for the class member when he/she returns home. When the goal is for the class member to live with a family member, services should be also provided to the family member to prepare and enable the family member to care for the class member.

3. **Class members, while in foster care or DHR custody, shall have access to a comprehensive array of services that address their physical, emotional, social and educational needs.**

3. **Both class members and family members may refuse placement-prevention services.**

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

4. **Class members and their families shall be encouraged and supported to access services.**

To this end, the “system of care” shall develop and implement strategies to promote the utilization of services by class members and their families. These strategies shall include the use of community aides, the provision of transportation services, the development of ethnically and culturally sensitive

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services, and referral to peer support groups. When class members or their families refuse or fail to access services, the reasons for their doing so shall be assessed and the services that have been offered shall be modified or alternative services shall be offered to encourage acceptance of services.

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

The strengths and needs of the class member and his/her family shall dictate the type and mix of services provided; the type and mix of services provided shall not be dictated by what services are available. Services must be adapted to class members and their families; class members and their families must not be required to adapt to inflexible, pre-existing services that are unlikely to be effective.

7. Services to class members and their families shall be delivered pursuant to an individualized service plan.

There must be a reasonable prospect that the services provided will achieve their purpose. The services must be of a type and mix likely to achieve the goal for the child. The services must also be of a type and mix likely to be effective in meeting the needs to which the plan is designed to respond.

- a. Individualized service plans shall be based on a comprehensive, individualized assessment of the strengths and needs of the class member and his/her family. In the case of class members in foster care or DHR custody, this assessment shall include an examination of the class member's (i) developmental, behavioral, emotional, family, and educational history and (ii) strengths and weaknesses in behavioral, emotional, educational, and medical/physical areas.
- b. Individualized service plans shall include specific services to reinforce the strengths and meet the needs of the class member and his/her family. Each plan shall identify the specific steps to be taken by DHR staff, other service providers, class members, and the class members' parents and family toward meeting the short-term and long term objectives of the plan.
- c. The "system of care" shall carefully monitor implementation of the individualized service plan and the progress being made toward the goal and objectives of the plan.
- d. The goal and the objectives of the individualized service plan will be updated as needed. Services identified in the plan will be modified as needed to meet the goal and objectives of the plan (for example, by adding new services or providing services in a different way). Steps shall be taken to prevent and address deterioration in the functioning of class members.

8. The "system of care" shall address the needs of class members believed to be victims of sexual abuse.

- a. Timely, professional assessments shall be conducted of class members believed to be victims of sexual abuse. DHR shall ensure that such assessments provide clear, prescriptive guidelines for treatment of the sexual abuse.
- b. The individualized service plans of class members believed to be victims of sexual abuse shall specifically identify both the class member's needs as a sex abuse victim and services to be provided in response to those needs.

9. Class members, parents, and foster parents shall be accurately and timely informed, in language understandable to them, concerning: rights under the decree (including the right to be treated in accordance with the "principles" or "standards"); the goal for the class member; individualized service plans, including objectives; services, including placements; and options.

10. Class members, parents, and foster parents shall be encouraged and assisted to articulate their own strengths and needs, the goals they are seeking for themselves, and what services they

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think are required to meet these goals.

11. Class members, their parents, and foster parents shall be involved in the planning and delivery of services.

This includes the ISP. The right of class members, parents, and foster parents to participate in treatment planning and delivery may be restricted only according to a specified administrative process. DHR shall promulgate a policy, acceptable to both parties, describing under what circumstances and according to what procedures restrictions may be imposed.

- a. The class member shall be treated as a partner in the planning and delivery of services if the class member is age 10 or older and, if the class member is under the age of 10, when possible.
- b. The class member's parents shall be treated as partners in the planning and delivery of services if the class member is living at home or if the goal is for the class member to return home.
- c. Foster parents shall be treated as partners in the planning and delivery of services whether or not the goal for the class member is to return home.
- d. When necessary, services shall be provided class members and parents to enable them to participate as partners. Such services shall include transportation assistance, advance discussions, and assistance with understanding written materials.

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

- a. The matter of visitation shall be addressed in the class member's individualized service plan. The frequency and circumstances of visitation shall depend on age and need. Visitation shall be viewed as an essential ingredient of family reunification services. Hence, when the goal is for the child to return home or live with a family member, visitation will be actively encouraged; assistance with transportation will also be provided.
- b. Visitation may be arranged by the class member, the class member's parents or family, or the foster parents, as well as by DHR staff and the staff of residential facilities, in accordance with the individualized service plan.
- c. Supervision of visitation shall be required only when there is a danger that the parent or family member with whom the class member is visiting will harm the class member unless the visit is supervised. When supervision of visitation is required, such supervision may be provided, as appropriate, by the class member's foster parents, as well as by DHR staff, the staff of residential facilities, or other designated persons.

13. The "system of care" shall be sensitive to cultural differences and the special needs of minority ethnic and racial groups.

Services shall be provided in a manner that respects these differences and attends to these special needs. These differences and special needs shall not be used as an excuse for failing to provide services.

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

14. The "system of care" shall embrace the philosophy of service delivery in home-based and community-based settings.

Class members shall receive services in the least restrictive, most normalized environment that is

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appropriate to their strengths and needs.

- a. Class members shall be placed in the least restrictive, most normalized living conditions appropriate to their strengths and needs. The class member's own home shall be considered the least restrictive, most normal placement. Following are other placements listed in ascending order in terms of restrictiveness: independent living; a foster home; a therapeutic foster home; a group foster home; a group home; a child care institution; an institution. Institutional care shall be used only in an emergency and as a last resort. Class members shall be placed in family settings, whenever they can be cared for in such a setting with supportive services.
- b. Siblings shall be placed together. DHR may promulgate a policy, acceptable to both parties, identifying circumstances in which exceptions to this principle may be permitted.
- c. The "system of care" shall not initiate or consent to the placement of a class member in an institution or other facility operated by DMH/MR or by DYS unless the placement is the least restrictive, most normalized placement appropriate to the strengths and needs of the class member.
- d. Class members, when in foster care or DHR custody, shall be integrated to the maximum extent feasible into normalized leisure and work activities.
- e. DHR shall vigorously seek to assure that class members, when in foster care or DHR custody, are integrated to the maximum extent feasible into normalized school settings and activities.

16. Class members from Jefferson, Mobile, Montgomery, Madison, Houston, Tuscaloosa, Etowah, Calhoun, Walker, Lee, and Dallas counties shall be placed within their home county when removed from their homes.

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

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

- a. 'When the goal is that the class member shall return home or be discharged to a family member, the "system of care" shall vigorously seek to achieve this goal. b. When the goal of return home or discharge to family has been achieved, the "system of care" shall vigorously seek to avoid reentry of the class member into foster care.
- c. The "system of care" shall make timely, competent decisions concerning whether and when class members should return home.
- d. When a decision is made that a class member should not return home, DHR shall seek a timely dispositional hearing.
- e. When the goal is that the class member not return home, the "system of care" shall vigorously seek a permanent living situation for the class member.

18. The "system of care" shall promote stability in class members' living situations.

- a. The "system of care" shall be designed to minimize multiple placements. The "system of care" shall be based on the philosophy that the disruption of a placement is a failure of the system, not a failure of the class member.
- b. Individualized service plans shall identify whether a class member is at risk of experiencing a placement disruption and, if so, will identify the steps to be taken to minimize or eliminate the risk.
- c. Appropriate training will be required for, and appropriate supportive services will be provided to, foster parents and staff of residential facilities in order to minimize placement disruptions. In the case of foster parents, the services shall include intensive home-based services and respite care.
- d. The "system of care" shall forbid summary discharges from placements. DHR shall promulgate a policy, acceptable to both parties, that describes steps that must be taken prior to a class member's discharge from a placement. The policy may permit in exceptional circumstances the placement of a class member in a temporary, emergency setting without prior notice to DHR.
- e. The "system of care" will avoid temporary, interim placements. Class members shall be placed in settings that could reasonably be expected to deliver long term care if necessary. To this end, DHR will

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not place class members in shelters unless (i) the full array of services the class member needs can be provided the class member while residing in the shelter and (ii) it is likely that the class member's stay in foster care will not extend beyond his/her stay in the shelter. f. The "system of care" will vigorously seek to ensure that law enforcement officers, juvenile court personnel, and others do not remove class members from their home and place them in foster care or DHR custody without first notifying the "system of care" and providing the system an opportunity to intervene to prevent the removal or placement.

19. The "system of care" shall ensure that the services identified in individualized service plans are accessed and delivered in a coordinated and therapeutic manner.

20. Services shall be provided by competent staff who are adequately trained and supervised and who have appropriate caseloads.

The competence of staff staff's training and supervision, and staff's caseloads shall be deemed adequate when the "system of care" is able to comply with the standards set forth in this decree.

21. Services provided class members and their families shall meet relevant professional standards in the fields of child welfare, social work, and mental health.

22. The "system of care" shall require that any behavior modification program employed in the treatment or management of a class member be individualized and meet generally accepted professional standards, including that:

- a. The program rely primarily on rewards instead of punishments;
- b. The program be based on a careful assessment of the antecedents of the behavior that the program is designed to change; and
- c. The program be consistently implemented throughout the day, including in school, residential, and leisure activity settings.
- d. The "system of care" shall take an active role in seeking to ensure that local education agencies and the Alabama Department of Education (i) recognize class members' educational rights and (ii) provide class members with educational services in accord with those rights. Among other things, the "system of care" shall advocate for class members who are subjected to inappropriate and/or illegal disciplinary measures.

23. The "system of care" shall promote smooth transitions for class members to adult service systems and/or independent living when class members "age out" of the system.

The individualized service plans of class members who are expected to "age out" of the system shall provide for such transitions.

24. The "system of care" shall accord class members the following rights: the right of access to counsel and the courts, the right of access to family members, the right to be free of excessive medication, and the right to be free from unnecessary seclusion and restraint.

DHR shall promulgate policies, acceptable to both parties, describing and protecting these rights. The policies shall provide that:

- a. Class members shall be permitted to freely communicate by telephone or mail with (i) legal counsel of the class member's choosing, including the class member's guardian ad litem, and (ii) organizations that provide legal services.
- b. Class members shall be permitted to freely communicate by telephone or mail with (i) the class member's parents and family members and (ii) adult friends of the class member including former foster parents. This right may be restricted only pursuant to procedures and in circumstances specifically identified in written policy.
- c. Class members retain the right to communicate and visit with their parents and family even when the class member is in the permanent custody of DHR (i.e., parental rights have been terminated). When the class member is in permanent custody, the matter of his/her communication with parents and family members shall be addressed in the class member's individualized service plan. Such communication may be restricted when it would undermine or defeat attainment of th~ goal or objectives identified in the plan.

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- 25. Class members, parents and foster parents shall be made aware, in an effective manner, of the availability of advocacy services to assist them in protecting and advancing their rights and entitlements.**
- 26. Class members shall be provided effective assistance and support in applying for SSI benefits.**
(Where it is necessary that the class member's parents apply for benefits, such assistance and support shall be provided to the parents.)
- 26. Class members shall be enrolled, if eligible, in the EPSDT program and shall receive comprehensive screens that meet the requirements of federal law and are provided according to a professionally acceptable schedule.**
- 27. The "system of care" shall promote early identification and timely intervention in order to enhance the likelihood of positive outcomes.**
- 29. The "system of care" will identify, assess, and disseminate state-of-the-art methods, strategies, and materials for serving class members and their families.**

Tennessee Principles On Following Page

TENNESSEE SETTLEMENT (*Brian A. v. Sundquist*) PRINCIPLES

1. All children should have the best possible opportunity to grow up within a safe, nurturing family, either their biological family or, if that is not possible, within an adoptive family.
2. The state should make reasonable efforts to avoid foster care placement by providing services to preserve the biological family whenever that is reasonably possible. However, child welfare decision-makers must have the professional capacity to make determinations as to when making efforts to preserve the biological family, or leaving the child with that family, is neither safe for the child nor likely to lead to an appropriate result for the child.
3. After children enter placement, all non-destructive family ties should be maintained and nurtured. Children should be placed with relatives who are able to provide a safe, nurturing home for them, and should be placed with siblings, and relationships with relatives and siblings should be facilitated and maintained by the child welfare agency.
4. Foster care should be as temporary an arrangement as possible, with its goal being to provide a permanent home for the child as quickly as possible. In making the determination about what plans and services will best meet this goal, the child's interests must be paramount.
5. The state has primary responsibility for the care and protection of children who enter the foster care system. Insofar as it relies on private contractors to assist in meeting this responsibility, it should only do so according to standards set by and rigorously monitored by the state.
6. All children in need of child welfare services should receive full and equal access to the best available services, regardless of race, religion, ethnicity, or disabilities.
7. Children in foster care placement should be in the least restrictive, most family-like setting possible, and the state should make all efforts to avoid the use of non-family settings for children, particularly young children.
8. Children in foster care placement should have stable placements that meet their needs and the services necessary to address both the trauma of foster care placement and the problems surrounding their removal from their family.
9. Children in out-of-home placement must have timely decision-making about where and with whom they will spend their childhood, and timely implementation of whatever decisions have been made.
10. Families of children in foster care should be significant participants in the planning and decision-making concerning their children.
11. The state should achieve these goals in a family environment whenever possible, separating the child from the child's parents only when necessary for the child's welfare or in the interest of the child's safety, keeping a child as close to home as possible.
12. All parties in judicial proceedings involving neglect, abuse, unruly and delinquency should be provided a fair hearing and their constitutional and other legal rights should be enforced and recognized.
13. Except where a particular provision of this Settlement Agreement establishes a specific limit on the resources required to be allocated, defendants shall commit all necessary resources (administrative, personnel, financial and otherwise) to implement all provisions of the Settlement Agreement.
14. All actions required for plaintiff class members under the Settlement Agreement shall be documented within the individual case file of each member of the plaintiff class. DCS shall have the ability to produce aggregate data requested by the Monitor concerning compliance with the provisions of this Settlement Agreement.