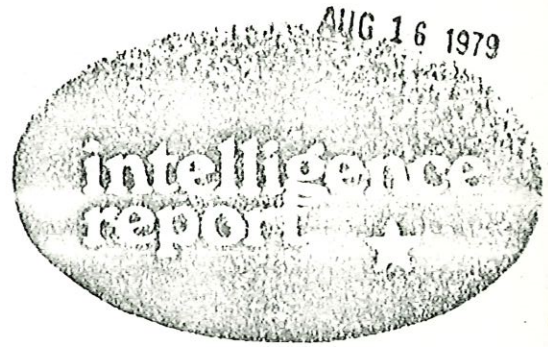


NATIONAL ASSOCIATION OF
STATE MENTAL RETARDATION
PROGRAM DIRECTORS, INC.

2001 Jefferson Davis Highway Arlington, Virginia 22202
703. 920-0700



BULLETIN NO. 79-55

August 6, 1979

AFSCME FILES DEINSTITUTIONALIZATION
COMPLAINT WITH HEW

The American Federation of State, County and Municipal Employees has filed a formal complaint (copy attached) against the State of Rhode Island and HEW's Developmental Disabilities Office on the issue of inadequate job protection for employees affected by the state's deinstitutionalization plans.

Although the specific object of the complaint is the Rhode Island State DD plan, the fact that it was signed by AFSCME International President, Jerry Wurf, suggests that other states may face similar complaints. The crux of the problem seems to be a deficiency in the HEW "preprint assurances"--agreement forms developed by HEW's Developmental Disabilities Bureau to fulfill statutory and regulatory requirements relating to job protection for institutional workers. According to the AFSCME complaint, the preprint assurances do not adequately incorporate the employee protection requirements set forth in guidelines issued by DDO on March 3, 1978 (copy attached).

AFSCME also claims that the DD Bureau was in error to approve Rhode Island's state DD plan, because (1) the plan was not developed in consultation with employee representatives, and (2) it does not contain specific employee assurances relating to the state's plan for deinstitutionalizing residents of the Joseph R. Ladd School, Rhode Island's primary public residential facility for the mentally retarded. The State Director of the Division of Retardation, Dr. Robert L. Carl, Jr., said that Rhode Island is willing to correct any deficiencies in its plan to meet HEW's requirements. He said that state officials are currently meeting with union representatives to negotiate employee benefits and that the state already has plans for retraining institutional employees and transferring them to newly established community facilities as the approximately 400 residents of the Ladd School are placed in the community over the next two to three years.

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August 6, 1979
Page 2

HEW's DD Bureau is investigating the complaint and will determine appropriate action when the regional office files its report on the situation.

State directors who may encounter similar AFSCME actions are asked to inform the NASMRPD office.

SM:jp
Attachments



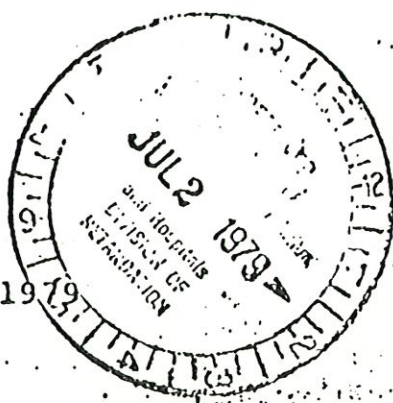
AFSCME 7-20611411-1000

American Federation of State, County and Municipal Employees

1625 L Street, N.W., Washington, D.C. 20036

Telephone (202) 452-4800

Telex 89-2376



June 15, 1979

The Honorable Joseph A. Califano, Jr.
Secretary of Health, Education and
Welfare

Hubert Humphrey Building
200 Independence Avenue, S.W.
Washington, D. C. 20201

Dear Mr. Secretary:

On behalf of the members of AFSCME Council 94, Local 1293, employees of the Joseph R. Ladd School in Exeter, Rhode Island, we make the following formal complaint against the State of Rhode Island and the Developmental Disabilities Office of the Rehabilitation Services Administration of the Department of Health, Education and Welfare for the failure of both parties to carry out their responsibilities as set forth in the employee protection provisions of the Developmental Disabilities Assistance and Bill of Rights Act, Section 133(7)(B), 42 U.S.C. 6063(b)(7)(B).

The violation by the State of Rhode Island of statute, regulation (45 CFR 1386.27) and guidelines (Transmittal Issuance No. DDO-SPO-60-003, TN-78-007), if not corrected, must result in a withholding of payments by the Secretary of Health, Education and Welfare, under Section 135 of the Act, 42 U.S.C. 6065. For its part, the Department of Health, Education and Welfare, through the Developmental Disabilities Office, has permitted, encouraged and even cooperated in, violation of the regulations and guidelines which it had promulgated under the statute.

Harry Wulf
President
William Lucy
Secretary-Treasurer
Rick Friedman
Bob Anderson
Jefferson City, Mo.
Dominic J. Barozato
Bellingham, Conn.
Rev. Albert B. Blatz
St. Peter, Minn.
Joseph Boll
Richmond, Ind.
Joseph M. Bonaville
Boston, Mass.
Robert A. Brindza
Cleveland, Ohio
Ernest B. Crofoot
Baltimore, Md.
Albert A. Diop
New York, N.Y.
Irving Fishmanbaum
Hempstead, N.Y.
Thomas G. Gerber, Sr.
Eau Claire, Wis.
Larry Goodman
Olympia, Wash.
Victor Gutbaum
New York, N.Y.
Bob Johnson
Belden City, Mich.
Henry LeBar
Baton Rouge, La.
Larry Marquardt
Chicago, Ill.
Gerald W. McEnroe
Harrisburg, Pa.
George H. McGhee
Grand Rapids, Mich.
William L. McGowan
Albany, N.Y.
Jack Merkel
Trenton, N.J.
Richard P. Morison
New York, N.Y.
John Seton
San Juan, P.R.
Earl Stout
Philadelphia, Pa.
Leo A. Tefel
Miami, Fla.
David H. Tish
Honolulu, Hawaii
Maurice W. Wink
New York, N.Y.

100-100000-100000

1. The Facts

On August 9, 1978, Governor J. Joseph Garrahy submitted the 1979 Rhode Island State Plan for Developmental Disabilities to the Department of Health, Education and Welfare. This submission was made to Mr. Robert Briggs of the Region I Developmental Disabilities Office of the Rehabilitation Services Administration. On September 15, 1978, the Plan was found to be in compliance with the provisions of the Developmental Disabilities Assistance and Bill of Rights Act 42 U.S.C. 6000 et seq. Based upon provisions of the approved Plan, the State has received under Section 132 of the Act, 42 U.S.C. 6062, a minimum allotment of \$150,000 for services to the developmentally disabled.

The Rhode Island State Plan for 1979 includes a section of "preprint assurances" addressing a number of concerns which the states are, by law, required to include in their plans. These assurances were drafted by the Developmental Disabilities Office shortly after the Act's enactment and, after being inserted in the state plans, they are routinely approved by the Office on behalf of the Secretary. The "preprint assurance" on employee protection merely paraphrases statutory and regulatory language and does not include the minimum State Plan Requirements set forth in the Employee Protection Guidelines promulgated by the Developmental Disabilities Office. These detailed guidelines were transmitted to the states on March 3, 1978, more than five months before the submission of the Rhode Island Plan. The State plan includes provisions for a program of ongoing deinstitutionalization at the Ladd School.

AFSCME Council 94 is the duly constituted collective bargaining agent for Local 1293, which represents 750 employees at the Joseph R. Ladd School. These employees include the facility's direct care, dietary and housekeeping staffs and comprise 75 percent of the institution's staff. It is the purpose of this complaint to cause action by the Secretary under Section 135 of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6065). Such action would ascertain the extent to which the implementation of the 1979 Rhode Island State Plan for Developmental Disabilities complies with the employee protection

provisions of the Plan as well as the extent to which those provisions of the Plan are consistent with the requirements of the statute, regulations and guidelines. Such a review, as we show below, would conclude that both the State and HEW have violated the statute, regulations and guidelines.

II. Non-Compliance on the Part of the State of Rhode Island

1. The State of Rhode Island, the State Planning Council and the State Agency, the Department of Mental Health, Retardation and Hospitals, violated the statute, regulations and guidelines by formulating and implementing the 1979 State Plan for Developmental Disabilities without the required employee protections. The "preprint assurances" which were included in the Plan by the State Agency ignore the arrangements which the Department of Health, Education and Welfare requires as minimum provisions of an acceptable plan. "Such protective arrangements shall include, without being limited to, such provisions as may be necessary for:
 - 1) The preservation of rights, privileges and benefits (including continuation of pension rights and benefits) under existing collective bargaining agreements; or
 - 2) The continuation of collective bargaining rights;
 - 3) The protection of individual employees against a worsening of their positions with respect to their employment;
 - 4) Maximum efforts be made (sic) to guarantee employment of employees of any State political subdivision thereof (sic) who will be affected by any program funded in whole or in part under provisions of this Act; and
 - 5) Employee training or retraining programs." (Guidelines, p. 2, emphasis supplied)

Additionally, the State of Rhode Island in its 1979 State Plan failed to include or comply

with any of the performance standards required as terms and conditions of the protective arrangements described above. These mandatory performance standards are set forth in pages 2-4 of the Guidelines. The State also violated the requirement that the plan call for, and that there be, participation by employee representatives in the development of employee protection provisions:

The State Plan, as a minimum shall... provide that employees be given written notice at least six months prior to the formation of such deinstitutionalization plans for the State. Specific conditions for the protection of employees affected by actions taken pursuant to the deinstitutionalization plan will be developed as a result of negotiations between appropriate State authorities and employee representatives. ("State Plan Requirements" section of Guidelines, p. 2)

AFSCME neither received written notice nor had any opportunity for negotiations prior to the formation of the deinstitutionalization plan contained in the State Plan.

2. The Rhode Island Department of Mental Health Retardation and Hospitals failed to carry out its responsibility as the State Agency responsible for devising and implementing the employee protection provisions. The Department failed to provide written notification to all affected employees and their collective bargaining representatives prior to the implementation of the State's proposed deinstitutionalization plan. It disregarded that portion of the guidelines which states that, "early employee participation is necessary to effectively implement employee protections." (Guidelines, p. 4) The Department did not engage in the necessary data collection, nor did it fulfill its duty to obtain the detailed statements which each state is expected to submit describing, in full, "the anticipated effect of the project upon... employees (whether

or not it is believed to be adverse)... including the possible impact of the project upon... collective bargaining contracts, employment rights, privileges and benefits, including pension benefits, vacation and insurance benefits." (Guidelines, p. 5) In fact, the Mental Health, Retardation and Hospital Department has consistently cited "... Federal statutes and regulations which require us to provide placement alternatives..." as an excuse for non-compliance with its collective bargaining contracts. (Letter from Robert L. Carl, Jr. to John Polcarelli, February 6, 1979.) A less selective and self-serving reading of Federal statutes and regulations by the State would have brought to its attention the extent to which its employee protection arrangements were inadequate and in violation of the law.

3. Subsequent to the approval of the 1979 State Plan, the State of Rhode Island has consistently violated the assurance it gave in the plan to make "fair and equitable arrangements... to protect the interests of employees affected by actions to carry out the plan... including arrangements designed to preserve employee rights and benefits and to provide training and re-training of such employees where necessary and arrangements under which maximum efforts will be made to guarantee the employment of such employees." Under Section 135 of the Act, 42 U.S.C. 6065, this represents a failure to comply substantially with a provision required by Section 133, 42 U.S.C. 6063, and should lead to a withholding of HEW payments for planning, construction, administration and services.

4. The State Planning Council has failed to carry out its duties as set forth under 42 U.S.C. 6067(b). Its first failure was in supervising the development of, and approving a State plan which was out of compliance with the statute, regulations and guidelines. The Council further abdicated its duties by failing to monitor, review and evaluate the implementation of the Plan's employee protections. Assertions by Council staff to the contrary notwithstanding, the Development Disabilities

Plan for 1979 includes Federal funding for deinstitutionalization projects which, by reducing the institutional population and increasing the extent of contracting with private providers, will certainly affect employees.

III. Federal Actions Which Have Aided and Abetted Non-Compliance by the State

1. In supplying the State of Rhode Island with prepared "preprint assurances" which ignore the guidelines and merely summarize general statutory requirements, the Developmental Disabilities Office of the Department of Health, Education and Welfare has enabled the State to evade HEW's employee protection guidelines. (Transmittal Issuance No. DDO-SPO-60-003, TN-78-007.)
2. Subsequent approval of the 1979 Rhode Island State Plan for Developmental Disabilities by the Developmental Disabilities Office was in direct violation of the Developmental Disabilities Assistance and Bill of Rights Act, the Regulations of the Department of Health, Education and Welfare (45 CFR 1386.27) and the Employee Protections Guidelines issued under the statute and regulations. Both the statute and regulation require that:

The plan must provide for fair and equitable arrangements (as determined by the Secretary after consultation with the Secretary of Labor) to protect the interests of employees affected by actions under the plan to provide alternative community living arrangement services... including arrangements designed to preserve employee rights and benefits and to provide training and retraining of such employees where necessary and arrangements under which maximum efforts will be made to guarantee the employment of such employees.

The plan submitted, by relying on the "preprint assurances" instead of containing any substantive provisions explaining how affected employees would be protected, did not conform to the Guideline's minimum requirements for employee

protections; nor was it in compliance with the requirement that detailed performance standards be devised and implemented as part of the terms and conditions of the protective arrangements. By ignoring the statute and its own regulations and guidelines, the Department actively facilitated violations of employee protection requirements by the State of Rhode Island.

3. The Developmental Disabilities Office failed to monitor and review the implementation of the Rhode Island State Plan subsequent to its approval. Even a cursory reading of the plan, a request for documentation, an inspection of performance standards, or a phone call to the employees' collective bargaining representative to ascertain the extent of compliance with the notification and negotiation requirement would have made obvious the inability and unwillingness of Rhode Island Department of Mental Health, Retardation and Hospitals to "insure employees the full range of protections afforded by the statute and regulations as interpreted by the guidelines." (Guidelines, p. 5) This failure to police the State Agency, compounded with the earlier failure to critically evaluate the employee protection provisions of the Rhode Island State Plan, created a situation in which the State of Rhode Island was allowed to receive Federal funds without any attempt being made to ensure compliance with the conditions imposed by Congress as a requisite for such funding.

IV. Immediate Action Required to Ensure State Plan Compliance

In order to guarantee that the State of Rhode Island satisfies the employee protection provisions of the Developmental Disabilities Assistance and Bill of Rights Act, the Department of Health, Education and Welfare must take the following immediate action:

1. The Secretary of Health, Education and Welfare must begin forthwith the notification and hearing process under 42 U.S.C. 6065. This section governs the procedure for withholding payments:

Whenever the Secretary, after reasonable notice and opportunity for hearing to the State Planning Council and the appropriate State agencies or agency, designated pursuant to Section 6063(b)(1) of this title finds that --

- (1) there is a failure to comply substantially with any of the provisions required by Section 6063 of this title to be included in the State plan; or
- (2) there is a failure to comply substantially with any regulations of the Secretary which are applicable to this subchapter,

the Secretary shall notify such State Council and agency or agencies that further payments will not be made to the State under Section 6062 of this title (or, in his discretion, that further payments will not be made to the State under Section 6062 of this title for activities in which there is such failure), until he is satisfied that there will no longer be such failure. Until he is so satisfied, the Secretary shall make no further payment to the State under Section 6062 of this title or shall limit further payment under Section 6062 of this title to such State to activities in which there is no such failure.

2. The Department, through the Developmental Disabilities Office, must enforce the entire range of duties assigned to the State Agency and the State Planning Council. These include: ensuring that future state plans contain employee protection programs which are consistent with the Employee Protection Guidelines as well as the statutory and regulatory language which serves as the authority for these guidelines; ensuring that the State Agency complies with the employee protection provisions of any approved State plan; and ensuring that, at least once a year, the State Planning Council monitors, reviews and evaluates the implementation of the State plan as provided for in 42 U.S.C. 6067.

3. The Developmental Disabilities Office must cease the practice of approving the "preprint assurance" on employee protections in State plans. This "assurance," developed by the Developmental Disabilities Office, has the effect of nullifying statutory employee protection requirements.


V. Corrective Action by the State of Rhode Island Required


The State of Rhode Island must take steps to ensure that the State Agency and State Planning Council fulfill their responsibilities under the law with regard to employee protections. Adequate notification to employees and their collective bargaining representatives prior to the implementation of the State plan, detailed impact statements concerning employees affected by deinstitutionalization, full compliance by the State and all grantees with the State plan and effective monitoring, evaluation and review of such compliance with the plan are among the legal responsibilities and obligations which are now ignored by the State.

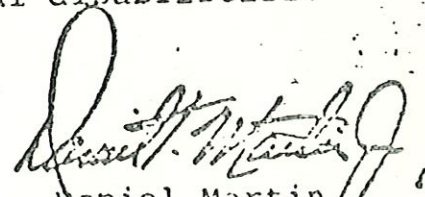
VI. Conclusion

Unless the Secretary of Health, Education and Welfare and the Governor of Rhode Island take steps to guarantee that those offices within their jurisdiction carry out all their duties with regard to employee protections as established by the Developmental Disabilities Assistance and Bill of Rights Act, and the regulations and guidelines adopted pursuant to the Act, we shall be forced to pursue appropriate legal remedies. The State and Federal Governments cannot be permitted to callously disregard their legal responsibilities and jeopardize the legitimate interests of our members and other workers in the field of mental retardation and developmental disabilities.

Sincerely,


Jerry Wurf
International
President

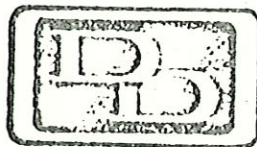

Giovanni Folcarelli
Executive Director
APSCME Council 94


Daniel Martin
President
AFSCME Local 1293

JW/GF/DM:ewj

176-007

EMPLOYEE PROTECTIONS
AS RELATED TO
DEINSTITUTIONALIZATION



Developmental Disabilities Office
Office of Human Development
U.S. DEPARTMENT OF HEALTH,
EDUCATION, AND WELFARE

TRANSMITTAL NOTICE

DEVELOPMENTAL DISABILITIES OFFICE

Date:

TRANSMITTAL

MAR 3 1972

Issuance No: DDO-SPO-60-003

Type: Program Regulation Guide

Title: Employee Protections as Related to Deinstitutionalization

ISSUANCE TO BE REPLACED

New Issuance

BACKGROUND

It is anticipated that the implementation of the national deinstitutionalization priority will effect a significant progressive decline in the caseload of institutions as residential facilities. Recent Developmental Disabilities State Plans demonstrate the trend toward providing settings that are least restrictive of the personal liberties of developmentally disabled persons. The increasing State efforts toward community alternative programs and the improvement of residential programs will create varying circumstances in which current institutional employees will require relocation or retraining, or both, to continue working in the general field of their present employment. Accordingly, Section 133(b)(29) of the Act,* mandates that the State provide for fair and equitable arrangements to protect the interests of employees affected by actions to carry out the deinstitutionalization plan as described in Section 133(b)(20) of the Act.

WHAT TO DO WITH ISSUANCE

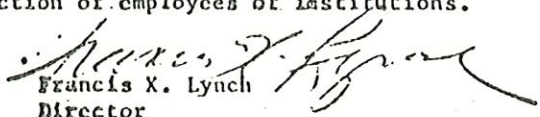
The Guidelines are intended to set forth the mandatory requirements of the statute, and, where appropriate, the agency's interpretation of such requirements. They are not intended to impose requirements that are properly the subject of the rulemaking process. In some instances arrangements or actions are suggested in these Guidelines, rather than set forth as requirements, because the Department believes that they are properly the subject of rulemaking, rather than an interpretation of statutory requirements. Whenever there are any questions with respect to whether a provision is mandatory, or with respect to the basis of any requirement, such questions should be directed to the appropriate Regional Office, or the Central Office in Washington.

SCOPE OF COVERAGE

These guidelines are primarily applicable to (1) State Planning Councils and State Administering Agencies for the developmental disabilities program, (2) authorities of the State and its political subdivisions and employee representatives concerned with employment and job rights for employees who will be affected by any program funded in whole or in part under provisions of the Act. They may be useful to other persons, organizations and governmental authorities interested or involved in services for the developmentally disabled.

DISTRIBUTION

Regional Office, DD State Planning Councils, DD State administering agencies, constituent organizations, U.S. Department of Labor, OHDS Central Register. DD State administering agencies must make further distribution to pertinent governmental and labor authorities and organizations concerned with institutional programs and with the protection of employees of institutions.


Francis X. Lynch

Director

Developmental Disabilities

III. Regulatory Authority:

Department of Health, Education, and Welfare Regulations, Section 1386.27.

IV. State Plan Requirements (Part 1386 of the Regulations):

The State Plan (Sec. 133, P.L. 94-103), as a minimum, shall 1) provide for fair and equitable arrangements to protect the interests of all employees affected by deinstitutionalization plans assisted under the Developmental Disabilities Act, and 2) provide that employees be given written notice at least six months prior to the formation of such deinstitutionalization plans for the State. Specific conditions for the protection of employees affected by actions taken pursuant to the deinstitutionalization plan will be developed as a result of negotiations between appropriate State authorities and employee representatives. Such protective arrangements shall include, without being limited to, such provisions as may be necessary for:

1. the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective bargaining agreements or otherwise;
2. the continuation of collective bargaining rights;
3. the protection of individual employees against a worsening of their positions with respect to their employment;
4. maximum efforts be made to guarantee employment to employees of any State political subdivision thereof who will be affected by any program funded in whole or in part under provisions of this Act; and
5. employee training or retraining programs.

V. Performance Standards:

The terms and conditions of such protective arrangements must include the following performance standards:

1. Preservation of Rights and Benefits

The preservation of rights and benefits requires that any new job offer to an employee displaced due to deinstitutionalization plans will not result in the termination of accrued benefits such as pension benefits, vacation benefits, health and insurance benefits, seniority rights or similar such benefits.

GUIDELINES

Employee Protections

I. Purpose of Guidelines

These Guidelines are transmitted by Transmittal Issuance No. DDO-SPO-60-003, TN-78-007. The Guidelines constitute the determination of the Secretary of Health, Education, and Welfare as to what, at a minimum, constitute fair and equitable arrangements to protect the interests of employees affected by actions to carry out State deinstitutionalization plans under the Developmental Disabilities Assistance and Bill of Rights Act, P.L. 91-517, as amended by P.L. 94-103, 42 U.S.C. Sec. 6001, et seq. The Secretary of Health, Education, and Welfare has consulted with the Secretary of Labor with respect to the provisions of these Guidelines.

II. Legislative Authority

Section 133(b)(20). In order to be approved by the Secretary a State Plan for the provision of services and facilities for persons with developmental disabilities must... "contain a plan designed (A) to eliminate inappropriate placement in institutions of persons with developmental disabilities, and (B) to improve the quality of care and the state of surroundings of persons for whom institutional care is appropriate;..."

Section 133(b)(29) "...provide for fair and equitable arrangements (as determined by the Secretary after consultation with the Secretary of Labor) to protect the interests of employees affected by actions to carry out the plan described in paragraph (20)(A), including arrangements designed to preserve employee rights and benefits and to provide training and retraining of such employees where necessary and arrangements under which maximum efforts will be made to guarantee the employment of such employees;..."

This provision applies only to jobs offered by the State or local governments pursuant to the deinstitutionalization plans and not to jobs found independently by a terminated employee seeking alternative employment.

2. Continuation of Collective Bargaining Rights

This provision protects existing bargaining rights in two circumstances:

- 1) when the administration of a facility would be turned over from one governmental unit to another (for example, from State to county); and
- 2) when an entire employee group would be moved intact to a new facility.

3. Worsening of Position

This provision requires that an employee whose job is terminated by a plan to eliminate inappropriate placement in institutions cannot, for example, be offered a job: a) at less pay, or b) with a substantial increase in health or safety hazard.

4. Assurances of Employment

"Assurances of employment" requires that a State or local government employee displaced because of the deinstitutionalization plan be offered a job that conforms with these guidelines.

This provision places the State in the position of an employer-of-last resort in the event no other employment opportunity existed, but this provision would impose no requirement for employment in the same job capacity or locality. With the capacity to retrain employees in a new field, the State has an unlimited opportunity to make full and productive use of such employees.

In order to comply with the provision of the Act to make maximum efforts to guarantee employment, the State agency shall initiate policies and procedures to insure that: a) affected employees have transfer rights to employment in community facilities for the developmentally disabled; b) all job vacancies be posted at locations convenient for employees; c) affected employees have the right to transfer to jobs in other State or local government departments; d) employees upon transfer to a new place of employment more than 50 miles beyond their previous employment have the right to relocation expenses; and e) employees who qualify under "State civil service" have the right to early retirement.

5. Training and Retraining Programs

Where necessary, States must provide training and retraining programs for current employees displaced by deinstitutionalization plans. No employee may be compelled to work in a capacity for which they have had no previous training. All training and retraining must be conducted during regular employment hours; an employee must keep receiving his regular salary while being trained or retrained; all training programs are to be provided at no expense to employees; and each affected employee will receive job counseling and vocational guidance.

VI. Action by State Agency

The State agency is responsible for devising and implementing the employee protection provisions. It is suggested that the State agency notify, in writing, all affected employees and their collective bargaining representatives at least six months prior to the implementation of a State's proposed deinstitutionalization plan. Early employee participation in formulation of deinstitutionalization planning is necessary to effectively implement employee protections. In the event that the implementation schedule is set and does not allow for the six months notification, it is recommended that at least forty-five days be provided for notification and for time to work out a satisfactory employee protection system. If the implementation is already in progress, employees and their collective bargaining representatives should enter into cooperative relationships with the State agency without delay to work out a satisfactory employee protection system. Employees' and their collective bargaining representatives' participation in the deinstitutional planning will lend itself to cooperative relationships with management, thereby eliminating uncertainties about employment and reducing many obstacles in establishing a strong community-based delivery system.

The State Plan must include protections for all employees affected by the State's Plan for deinstitutionalization. Accordingly, employees at all levels of State or local government whose employment is jeopardized by a State's Plan to close or reduce institutional services to the developmentally disabled population must be protected. For example, employees in administrative or support service jobs, even though they may not work directly in an institution, are entitled to employment protections.

A detailed statement from each grantee for implementing the State's deinstitutionalization plan for each protective arrangement enumerated under Section IV of these guidelines is to be obtained by the State agency as a part of the project application so that a complete review

can be made to ascertain whether the requirements of the terms and conditions of the protective arrangements are being met. To that end, comprehensive information should be solicited which would identify the employees in the project to be assisted and to determine if any other program might also be affected by the project. Names of any unions representing these employees should be also obtained.

The anticipated effect of the project upon these employees (whether or not it is believed to be adverse) must be described in full, including the possible impact of the project upon their collective bargaining contracts, employment rights, privileges and benefits, including pension benefits, vacation and insurance benefits. Further, the arrangements must include procedures and mechanisms to provide for the resolution of disputes with respect to the interpretation, application, and enforcement of protective arrangements in order to insure employees the full range of protections afforded by the statute and regulations as interpreted by these guidelines. The results of any discussions or negotiations with representatives of workers who may be affected by the project and any understandings reached must be stated. If agreements have not been reached respecting protective arrangements for employees affected by the project the reasons should be fully explained prior to submitting the State plan to the appropriate Regional Office for approval.

Copies of individual agreements are not required to be submitted with the State Plan or its annual revision since each agreement is negotiated on an individual basis. However, copies of all such agreements are to be retained by the designated State administering agency and are subject to review by appropriate Department of Health, Education, and Welfare representatives.

4.2 DEINSTITUTIONALIZATION

The Council policies and objectives which first appeared in the FY 1978 Comprehensive State Plan were partially amended June 10, 1978. These amended policies reflect current federal laws and the composite thinking of the Council. They represent guidelines recommended by the Council to be followed in the development, implementation and provision of residential services to persons with developmental disabilities.

4.2.1 DEINSTITUTIONALIZATION POLICIES

The philosophy underlying the developmental disabilities program in Washington State is based upon the principles of normalization, the developmental model, and the protection of individual rights which includes the right to adequate habilitation and treatment within a normative environmental setting which is as socially integrative as possible; consistent with individuals habitative, training and medical needs.

1. Equal Protection of Rights

Persons with developmental disabilities have the same civil, legal, and human rights as enjoyed and guaranteed all United States citizens and that the protection and continuing guarantee of these rights is fundamental to the life, liberty and pursuit of happiness of all such persons.

2. Right to Non-Discriminatory Treatment

The federally guaranteed individual right to adequate habitation in a non-discriminatory manner must be guaranteed and safeguarded consistent with the Section 504 prohibition against unnecessary separate and inadequate services.

3. Right to Appropriate Habilitation

All persons with developmental disabilities accepted into state funded and/or operated residential facilities and programs must be insured the provision of appropriate habilitation guaranteed in writing through the Individual Habilitation Planning process identified in P.L. 94-103 and safeguarded through the development of adequate due process procedures.

4. Right to Freedom From Harm

All persons with developmental disabilities must be guaranteed placement and accompanying support services that facilitate their residing in a residential environment conducive to normalization.

5. Right to Least Restrictive Environment

Opportunity for alternative community based residential environments, support services, and programs shall be made

4. Increasing Family Support

All efforts and resources within the state are to be mobilized in providing in-home support to assist the natural (or foster) family in maintaining the developmentally disabled child within the natural home. This includes the expansion of available in-home respite care, out-of-home respite care, and specialized therapies.

5. Evaluation and Monitoring Safeguards

Expansion of the development and implementation of an on-going evaluation and monitoring system to insure that individual needs are being met through the provision of normative and adequate habilitation programs thereby insuring and enhancing program quality.

6. Expanding the Availability of Living Environments Conducive to Normalization

Program excellence needs to be expanded by providing the ideological foundation in the principles of normalization for both consumers and providers to facilitate the establishment of community-based residential environments and support services which will support the above identified deinstitutionalization policies of the state which are based on law.

7. Increasing Financial Support

Improved financial support for residential services is critical to the development of a normative and comprehensive community-based residential services program. Stabilized funding for institutional reform during the interim deinstitutionalization process must be guaranteed by the legislature.