

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

Nancy Martin, et al.,	:	
	:	CASE NO. C2-89-362
Plaintiffs,	:	
vs.	:	JUDGE SARGUS
	:	
Robert Taft, et al.,	:	
	:	MAGISTRATE JUDGE KING
Defendants.	:	

**JOINT MOTION FOR APPROVAL OF NOTICE TO CLASS MEMBERS
AND TO SET FAIRNESS HEARING**

Pursuant to Rule 23 of the Federal Rules of Civil Procedure, plaintiffs and defendants jointly move the Court for approval of the notice to be given to plaintiff class members in the form and manner described below.

A joint motion for preliminary approval of the consent order has been filed concurrently with this motion, and a copy of the proposed consent order is Exhibit A to that motion. The proposed notice to class is filed with this motion as Exhibit B.

Plaintiff Class: The plaintiff class consists of all persons in Ohio with mental retardation or developmental disabilities who are or will be in need of community housing and services which are normalized, home-like and integrated, and includes a subclass of persons who, in addition to being members of the plaintiff class, are, or will be, Medicaid recipients. The term “in need of community housing and services” has been interpreted by the court to be limited to those people with MR/DD who would choose to move to or accept an integrated setting. Opinion and Order, November 28, 2005.

Plaintiff Ohio Legal Rights Service, as next friend of Kathy R., shall mail the notice attached as Exhibit B to the superintendent of each of Ohio’s county boards of mental retardation

and developmental disabilities, and request that the notice be posted at each of their sheltered workshops, as well as in a location visible to the public at each county board's headquarters. Notice and a copy of the proposed order will be provided by OLRs to all amicus who have participated in the case. The notice will be disseminated in the newsletter of the Ohio Legal Rights Service, and placed on that agency's web site, <http://olrs.ohio.gov>,¹ and list-serve, which mails to approximately 30 statewide MR/DD organizations. The Arc of Ohio will redistribute the notice on its list-serve, which reaches approximately 30,000 individuals with MR/DD and their families.

ODMR/DD and ODJFS will disseminate the notice to all superintendents of all developmental centers in the State of Ohio; the administrators of Ohio ICFs/MR (intermediate care facilities for the mentally retarded), the Ohio Developmental Disabilities Council, the Ohio Olmstead Task Force, and the administrators of all nursing facilities with instructions that copies of the notice and summary shall be posted conspicuously in all residential areas and distributed to all QMRPs or client representatives.

Ohio Legal Rights Service will provide the notice to any person who may be a class member, or the person's guardian, upon request; and to Advocacy and Protective Services, Inc., (APSI), a non-profit corporation that serves as guardian for plaintiff Kathy R. and approximately 2800 other class members.

Notice to the class shall be completed by December 15, 2006.

Members of the class have the right to submit written comments or objections to the Court. The parties propose that only a member of the class or a guardian of the person of the class member who has been appointed by the probate court may file objections. The court may reject for filing any objection from a person other than a class member that does not include

¹ There were 1,723,317 "hits" on the OLRs site in 2005.

information that substantiates that the filer is a class member or the class member's duly appointed guardian.

The parties propose an objection period of 60 days beginning on December 15, 2006, which means that objections must be filed with the Court or, if mailed, postmarked on or before February 13, 2007. Such comments or objections shall be submitted to the Court in the manner and place designated in the notice. Hearing on the proposed settlement shall be held at 10:00 o'clock a.m. on February 26, 2007, at which time the Court will consider all comments and objections submitted, the position of plaintiffs' counsel, defendants and their counsel, and, if warranted, enter final approval of the settlement.

The parties suggest that the above-described notice procedure meets the requirements of Federal Rule 23 and of due process, as set forth more fully in the Joint Memorandum in Support of Notice to Members of Plaintiff Class, attached. The parties therefore move for approval of the notice procedure. A proposed order is attached hereto.

Respectfully submitted,

s/ _____
Michael Kirkman (0009854)
Ohio Legal Rights Service
50 East Broad Street, Suite 1400
Columbus, Ohio 43215-5923
Trial Attorney for Plaintiffs and
Plaintiff Class

/s/ _____
Roger F. Carroll (0023142)
Principal Assistant Attorney General
Health and Human Services Section
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(614) 466-8600
Trial Attorney for Defendants Robert Taft
and Kenneth W. Ritchey

/s/ _____
Anne Light Hoke (0039204)
Senior Assistant Attorney General
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30 East Broad Street
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(614) 466-8600
Trial Attorney for Defendant Barbara E.
Riley

Certificate of Service

I hereby certify that on this ___ th day of November, 2006, a true copy of the forgoing Motion and the accompanying memorandum was filed electronically via the Court's electronic filing system. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ _____
Michael Kirkman

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

Nancy Martin, et al.,	:	
	:	CASE NO. C2-89-362
Plaintiffs,	:	
vs.	:	JUDGE SARGUS
	:	
Robert Taft, et al.,	:	
	:	MAGISTRATE JUDGE KING
Defendants.	:	

**JOINT MEMORANDUM IN SUPPORT OF
NOTICE TO MEMBERS OF PLAINTIFF CLASS**

INTRODUCTION

This case, a Rule 23(b)(2) class action for declaratory and injunctive relief, seeks to establish and enforce the right of Ohio residents with mental retardation or other developmental disabilities to obtain appropriate, meaningful, and integrated services in the community. The plaintiff class consists of all persons in Ohio with mental retardation or developmental disabilities who are or will be in need of community housing and services which are normalized, home-like, and integrated, and includes a subclass of persons who, in addition to being members of the plaintiff class, are or will be, Medicaid recipients.

METHOD OF NOTICE

Counsel for Plaintiffs and Defendants, together with considerable assistance from the Court, have engaged in extensive negotiations to settle this case. The parties have now reached agreement, and have filed joint motions requesting approval of the Consent Order, together with the proposed Consent Order, and approval of notice to the members of the plaintiff class. Approval regarding notice is required by Federal Rule of Civil Procedure 23(e), which provides that “(1)(B) The court must direct notice in a reasonable manner to all class members who would be bound by a proposed settlement, voluntary dismissal, or compromise.”

Because of the large size of the certified plaintiff class and the cognitive disabilities of

many members, the parties do not propose dissemination to plaintiff class members individually. The parties recognize that all but a very few class members are currently receiving services in Ohio's MR/DD system, and propose dissemination of the notice in this case to all county boards of mental retardation and developmental disabilities; all superintendents of all developmental centers in the State of Ohio; the administrators of all ICFs/MR (intermediate care facilities for the mentally retarded); and the administrators of all nursing facilities, with instructions that copies of the notice and summary shall be posted conspicuously in all residential areas and distributed to all QMRPs and client representatives. Advocacy and Protective Services, Inc., (APSI), a non-profit corporation that serves as guardian for many plaintiff class members, the Ohio Developmental Disabilities Council and the Ohio Olmstead Task force will receive notice. In addition, the notice will be made available to any class member or the member's guardian requesting the notice. Notice and a copy of the proposed order will be provided to all amicus who have participated in the case. The notice will be disseminated in the newsletter of the Ohio Legal Rights Service and placed on that agency's web site, <http://olrs.ohio.gov>.

Because many class members can neither read nor write and many have difficulty understanding the written word, notice to advocates and others will ensure that information about this settlement will be provided to individual class members in as effective a manner as is possible under these circumstances. The QMRPs in the state institutions can assist individuals living there who may be affected by this settlement in understanding its meaning. Additionally, many class members have Service and Support Administrators (case managers) from the county boards of MR/DD who can assist them with the process of understanding the settlement and providing comments to the Court.

The above described notice to class members, with accompanying notice to individuals and agencies who can assist them, meets the requirements of due process and is the best notice practicable in this case. Rule 23 indicates that notice can be tailored to fit the special needs and circumstances surrounding a particular class, and Plaintiff and Defendants' counsel urge this Court to approve the method of notice proposed above as appropriate for the members of the

class.

CONTENT OF NOTICE

The content of Rule 23(e) notice is not prescribed in the rule, but clearly it must meet due process requirements. The contents of the notice are sufficient if they inform the class members of the nature of the action pending, the general terms of the settlement, that complete information is available upon request, and that any class member may appear and be heard at the hearing. *Miller v. Republic Nat'l Life Ins. Co.*, 559 F.2d 426 (5th Cir. 1977); *see also, Ohio Public Interest Campaign v. Fisher Foods, Inc.*, 546 F. Supp. 1 (N. D. Ohio 1982).

The content of the proposed notice in this case is reasonably calculated, under the circumstances of this case, to inform class members of the pendency of the action and to afford them an opportunity to present objections. The notice contains a heading structured so that the individual reader is readily informed that the notice is of particular importance to him or her. The heading is followed by a definition of the certified class, a description of the litigation, including allegations of the complaint, a summary of the proceedings that preceded the settlement, and a detailed summary of the proposed settlement. The notice further contains a procedure for making objections to or comments on the proposed settlement and includes a process to obtain a copy of the proposed consent order.

Special circumstances surround the settlement of this case because the class members are people with MR/DD. As stated earlier, many class members cannot read or write and others need assistance understanding formal documents. In light of these special circumstances, class counsel has made a good faith attempt to draft the notice in language that is not too complex for class members to understand. The notice attempts to explain in simple terms the nature of the action, terms of the settlement, and methods for objection to or comment on the proposed settlement. The notice also provides class members and their guardians and advocates help with writing objections or understanding the action by providing a toll-free number at Ohio Legal Rights Service. This should ensure that class members who wish to object to or comment on the proposed settlement have an effective voice with which to do so.

CONCLUSION

Plaintiffs and Defendants' counsel assert that the notice in this case meets due process requirements and is the best notice practicable under the circumstances of this case. Therefore, for the reasons stated above, Plaintiffs and Defendants' counsel request the Court approve the Notice to be given to class member in the form and manner proposed.

Respectfully submitted,

s/ _____
Michael Kirkman (0009854)
Ohio Legal Rights Service
50 East Broad Street, Suite 1400
Columbus, Ohio 43215-5923
Trial Attorney for Plaintiffs and
Plaintiff Class

/s/ _____
Roger F. Carroll (0023142)
Principal Assistant Attorney General
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Trial Attorney for Defendants Robert Taft
and Kenneth W. Ritchey

/s/ _____
Anne Light Hoke (0039204)
Senior Assistant Attorney General
Health and Human Services Section
30 East Broad Street
Columbus, OH 43215-3428
(614) 466-8600
Trial Attorney for Defendant Barbara E.
Riley

Certificate of Service

I hereby certify that on this __ th day of November, 2006, a true copy of the forgoing Motion and the accompanying memorandum was filed electronically via the Court's electronic filing system. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ _____
Michael Kirkman

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

Nancy Martin, et al.,	:	
	:	CASE NO. C2-89-362
Plaintiffs,	:	
vs.	:	JUDGE SARGUS
	:	
Robert Taft, et al.,	:	
	:	MAGISTRATE JUDGE KING
Defendants.	:	

ORDER

This matter is before the Court on the Joint Motion of the parties to approve the notice to class members and to set a fairness hearing. The Court finds that the notice proffered by the parties as Exhibit B to their motion, and the scheme for distribution of said notice meet the requirements of Federal Rule of Civil Procedure 23(e) and Due Process.

WHEREFORE, for good cause shown, IT IS ORDERED that:

1. The parties shall distribute notice as set forth in the joint motion and memorandum submitted by the parties, and that notice shall be complete by December 15, 2006;
2. Objections to the proposed Consent Order shall be mailed on or before February 13, 2007;
3. The clerk's office shall receive and lodge any objections in this matter for review by the parties and court prior to the fairness hearing, but shall reject for filing any proffered objection that does not include information that substantiates that the filer is a class member or the class member's duly appointed guardian; and

4. This matter shall be set for a fairness hearing on February 26, 2007, at 10:00 o'clock a.m.

IT IS SO ORDERED

EDMUND A. SARGUS, JR.
UNITED STATES DISTRICT JUDGE

Date _____

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

Nancy Martin, et al.,	:	
	:	CASE NO. C2-89-362
Plaintiffs,	:	
vs.	:	JUDGE SARGUS
	:	
Robert Taft, et al.,	:	
	:	MAGISTRATE JUDGE KING
Defendants.	:	

**JOINT MOTION FOR PRELIMINARY APPROVAL
OF SETTLEMENT OF CLASS ACTION**

Pursuant to Rule 23(e), of the Federal Rules of Civil Procedure, the Plaintiffs and Defendants jointly move this Court for preliminary approval of the proposed Consent Order in this case. The terms of the parties' settlement are fully set forth in the Consent Order between the above-names parties, attached hereto as Exhibit A.

The proposed Consent Order is fair, adequate and reasonable under the circumstances of this case having due regard for the merits of the claims advanced, the defenses asserted to such claims, and the risks, uncertainties and costs to all parties if this case were to proceed to trial. The parties will submit additional briefing and necessary documents in support of approval at the time of the fairness hearing. The parties request that this Court grant preliminary approval of the Consent order between the Plaintiffs and Defendants.

Respectfully submitted,

s/ _____
Michael Kirkman (0009854)
Ohio Legal Rights Service
50 East Broad Street, Suite 1400
Columbus, Ohio 43215-5923
Trial Attorney for Plaintiffs and
Plaintiff Class

/s/ _____
Roger F. Carroll (0023142)
Principal Assistant Attorney General
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Trial Attorney for Defendants Robert Taft
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Anne Light Hoke (0039204)
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Health and Human Services Section
30 East Broad Street
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(614) 466-8600
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Riley

Certificate of Service

I hereby certify that on this ___ th day of November, 2006, a true copy of the forgoing Motion and the accompanying memorandum was filed electronically via the Court's electronic filing system. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ _____
Michael Kirkman

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

**NANCY MARTIN,
et al.,**

Plaintiffs

vs.

**ROBERT TAFT,
et al.**

Defendants.

: CASE NO. C2-89-362
:
: JUDGE SARGUS
:
: MAGISTRATE JUDGE KING
:
:
:
:
:
:

**NOTICE TO PERSONS WITH MENTAL RETARDATION OR DEVELOPMENTAL
DISABILITIES IN NEED OF COMMUNITY SERVICES**

1. This notice may apply to you if you are a person with mental retardation or developmental disabilities and you want to be on a waiver or live in your own home. This notice may apply to you if you live in an institution or if you are on a waiting list for community services.
2. The purpose of this notice is to tell you about a proposed settlement in a lawsuit that may affect you. The lawsuit was brought by people like you who wanted to have their services in the community, not in an institution.
3. The people who brought the lawsuit (named plaintiffs) were Nancy Martin, Kathy R., Claude Martin, and Warren B. Their attorneys are Michael Kirkman and Harry Keith of the Ohio Legal Rights Service. The judge in this case has decided that the four people and their attorneys will fairly represent all people who want to live in a community setting and receive services making the case a "class action."
4. The plaintiffs sued state officials responsible for development of community housing and services for people who need them. The defendants are the Governor of Ohio and other

state officials who are in charge of Medicaid and MR/DD services in Ohio.

5. After many years of negotiating, the parties agreed to settle this case without a trial. This will allow more people to choose to live in the community and get the services they need.
6. The plaintiffs and the defendants have written down their agreement in a document called a "Consent Order." The Consent Order has to be approved by the Judge before it is final. Before the Judge decides to approve it, you can tell the Judge if you do not like any part of it. To do this, you must get a copy of the Consent Order by calling 1-800-282-9181. Or you can write to Ohio Legal Rights Service, 50 West Broad Street, Suite 1400, Columbus, Ohio 43215-5923. Or you can look at the agreement online at www.olrs.ohio.gov.
7. The Consent Order requires the defendants to take several steps to give class members the opportunity to choose community based services:
 - The Ohio Department of Mental Retardation and Developmental Disabilities ("ODMR/DD") and the Ohio Department of Job and Family Services ("ODJFS") will request funding for an additional 1500 Individual Option waiver slots to be included in Ohio's Executive Budget for FY 08-09.
 - If the money is not allocated by the General Assembly, the plaintiffs can ask the judge to set the case for trial.
 - If the requested funding is appropriated by the Ohio General Assembly and approved by the incoming Governor, the ODMR/DD will make a good faith effort to fill 600 slots during FY 08 and 900 slots during FY 09.
 - One hundred (100) slots per fiscal year will be available for persons residing in intermediate care facilities for the mentally retarded (ICFs/MR).
 - Forty (40) slots per fiscal year will be available for persons residing in nursing facilities (NFs).
 - ODMR/DD will allocate the rest of the waiver slots to the County Boards of MR/DD according to a formula developed by the ODMR/DD. The formula will include

consideration of the person's position on the waiting list maintained by the County Boards of MR/DD.

- If ODMR/DD cannot fill all 1500 slots in FY 08 and FY 09, it will have the slots assigned to individuals by June 30, 2009 and enroll these individuals as soon as possible, consistent with health and safety.
8. The Director of ODMR/DD shall distribute 4.2 million dollars in funds to provide affordable community housing to individuals with MR/DD through non-profit housing corporations contracting with County Boards of MR/DD. After obtaining approval for the funds from the state controlling board, the Director of ODMR/DD shall allocate funds to the County Boards of MR/DD. Seven percent (7%) of the money will be available to make housing accessible for people with mobility and other impairments under the Residential Handicap Accessibility Project.
 9. There are other provisions of the Consent Order which include a survey of residents of Developmental Centers (DCs) by ODMR/DD and a survey of private and County Board operated ICFs/MR by ODJFS to determine residents' preferences for residential placement. The Consent Order also includes various monitoring and enforcement provisions.
 10. If you agree with the Consent Order you do not have to do anything. If you disagree with any part of the Consent Order and you want to tell the Judge, you have to do these things:
 - You must write a letter to the Judge telling him what you do not like about the Consent Order.
 - On the first page of your letter write in large or underlined letters: “OBJECTIONS TO PROPOSAL IN MARTIN V. TAFT.”
 - Mail your letter to:
Clerk's Office: Judge Sargus's docket
U.S. Courthouse
85 Marconi Boulevard
Columbus, Ohio 43215

- A guardian of the person of the class member may object on behalf of the class member, but must state in the objection that he or she is the guardian of the class member, along with details of the appointment by the probate court and the name of the class member.

You must do all of this to be sure the Judge will read your letter. You must send your letter before February 13, 2007. If you need help writing your letter to the Judge, you may call Ohio Legal Rights Service at 1-800-282-9181 or ask your QMRP, SSA or nursing home ombudsman for help.

DO NOT CALL THE COURT. THE COURT WILL NOT ACCEPT PHONE CALLS ABOUT THIS. YOU MUST SUBMIT YOUR OBJECTIONS IN WRITING.

11. A hearing will be held on February 26, 2007, at 10:00 o'clock a.m. before the Honorable Judge Edmund A. Sargus, Jr. of the U. S. District Court for the Southern District of Ohio in Columbus, Ohio. The Judge may ask that some people who wrote letters attend the hearing. The Judge will decide whether to approve the Consent Order and allow the lawsuit to end. If the Judge decides to approve the proposed Consent Order, his decision is final.
12. If you have any questions about this case you can call Ohio Legal Rights Service, Intake Worker, 50 West Broad Street, Suite 1400, Columbus, Ohio, 43215, at 1-800-282-9181 or (614) 466-7264.

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

Nancy Martin, et al.,	:	
	:	CASE NO. C2-89-362
Plaintiffs,	:	
vs.	:	JUDGE SARGUS
	:	
Robert Taft, et al.,	:	
	:	MAGISTRATE JUDGE KING
Defendants.	:	

**JOINT MOTION FOR PRELIMINARY APPROVAL OF
SETTLEMENT OF CLASS ACTION**

Pursuant to Rule 23(e), of the Federal Rules of Civil Procedure, the plaintiffs and the defendants jointly move the Court for preliminary approval of the (proposed) Consent Order in this case. The terms of the parties' settlement are fully set forth in the Consent Order between the above-named parties attached hereto as exhibit A.

The proposed Consent Order is fair, adequate and reasonable under the circumstances of this case, having due regard for the merits of the claims advanced, the defenses asserted to such claims, and the risks, uncertainties and costs to all parties if this case were to proceed to trial. The plaintiff will submit additional briefing and necessary documents in support of approval at the time of the fairness hearing. The parties request that the Court grant preliminary approval of the Consent Order between plaintiffs and the defendants.

/s/ _____
Michael Kirkman (0009854)
Ohio Legal Rights Service
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Columbus, Ohio 43215-5923

Trial Attorney for Plaintiffs and
Plaintiff Class

/s/ _____
Roger F. Carroll (0023142)
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Trial Attorney for Defendants Robert
Taft and Kenneth W. Ritchey

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(614) 466-8600

Trial Attorney for Defendant Barbara
Riley

Martin v. Taft, No. 89-CV-00362

Exhibit A

Proposed Consent Order

**IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

NANCY MARTIN, <i>et al.</i> ,	:	
	:	CASE NO. 89-CV-00362
Plaintiffs,	:	
	:	JUDGE SARGUS
vs.	:	
	:	MAGISTRATE JUDGE KING
BOB TAFT, <i>et al.</i> ,	:	
	:	
Defendants.	:	

CONSENT ORDER

This matter is before the Court on the Third Amended Complaint of Plaintiffs and the Defendants' Joint Answer to the Plaintiffs' Third Amended Complaint. The class in this case is certified as "all mentally retarded or developmentally disabled Ohioans who are, or will be, in need of community housing and services which are normalized, home-like and integrated, and a subclass who, in addition to being members of the class, are or will be, Medicaid recipients." As determined in the Court's order of November 28, 2005, "[i]f an individual with Mental Retardation or other Developmental Disabilities is not, or will not be, in need of community housing and services, they are not member of the Class, lack standing to pursue a judicial resolution, and will not be bound by any decision of this Court." Opinion and Order, R. 736, p. 5.

The Court takes notice that the parties have reached a settlement in this case. The parties have agreed to the following stipulations:

1. Plaintiffs filed this lawsuit to compel Defendants to provide them with a choice of community based, integrated residential services that are readily available. Since its

filing, the State of Ohio has undertaken a shift away from institutions to community based services as the primary choice of residence for persons with disabilities.

2. Ohio provides a wide range of services and supports to people with Mental Retardation and Developmental Disabilities (MR/DD).
3. The Ohio Department of Job and Family Services (ODJFS) and the Ohio Department of Mental Retardation and Developmental Disabilities (ODMR/DD) are public entities as defined by the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 et. seq.
4. ODJFS and ODMR/DD are public entities for the purpose of “community integration” as defined by 28 C.F.R. § 35.130(d).
5. The Supreme Court case of *Olmstead v. L.C.*, 527 U.S. 581 (1999), contains authority which governs and guides this case.
6. The actions by the State of Ohio have assisted the class by increasing options for individuals with MR/DD who want to live in the community.
 - a. In 2000, the “Ohio’s MR/DD Vision Paper: Final Report to the Governor” contained twenty-seven recommendations that addressed issues facing Ohioans with disabilities. The paper established two core system values: an individual with MR/DD has a fundamental choice of services and support, limited by available resources, and is entitled to services that meet his or her health and safety needs.
 - b. In 2001, Ohio created its *Olmstead* Plan, “Ohio Access for People with Disabilities.” Ohio Access contained three guiding principles: increasing community capacity; prioritizing resources; and assuring quality and accountability. Ohio Access was updated in 2004.

- c. Ohio has decreased the population of Developmental Centers (DC). As of June 2006, only 1,607 individuals lived in DCs, which represents a 20% reduction since 2000. As part of the census decrease, Ohio closed two DCs -- Springview Developmental Center in 2005 and Apple Creek Developmental Center in 2006. Each resident was given a choice as to their placement. Individuals chose to move to other DCs, private ICFs/MR, or community placements. Of the 236 residents who left Springview and Apple Creek DCs, 134 went to other DCs, 62 went to private ICFs/MR, and 40 received a waiver and moved to a community placement. In order to make room for residents who chose to move to another DC or to a private ICF/MR, residents in those facilities were also given the option to move to another placement. From those facilities, 31 DC residents and 39 private ICF/MR residents received a waiver and moved to community placement. In addition, Ohio recently decreased the population of Warrensville Developmental Center from 218 in 2005 to 180 in June 2006.
 - d. The State of Ohio also implemented a DC Self-Determination project in 2002 which assisted individuals moving from DCs to the community. ODMR/DD has developed a strategic plan with stakeholders to address the future role of DCs in Ohio's service delivery system for individuals with MR/DD.
 - e. In fiscal year 2004, ODMR/DD distributed \$5,384,019 in housing funds to county boards of MR/DD, with \$1,195,056 available to provide homes for individuals leaving DCs. In fiscal year 2005, ODMR/DD distributed \$7,355,878 for housing, with \$2,397,874 earmarked for DC residents moving to the community.
7. Ohio has created residential service options for class members through Home and Community Based Services (HCBS) Waivers.

- a. There are three waivers available for individuals with MR/DD to receive HCBS services. They are the Individual Options (IO), Level One and Transitions waivers. The IO waiver was approved in 1991. As of October 2006, 11,726 people were enrolled on the IO waiver. The Level One waiver was approved by the Center for Medicare and Medicaid Services (CMS) on May 1, 2003. As of October 3, 2006, 4,126 persons were enrolled on the Level One waiver. The Transitions waiver became effective in 2002 enrolling 1,867 individuals. As of October 3, 2006, 2,969 persons were enrolled on the Transitions waiver.
 - b. Ohio covers Targeted Case Management (TCM) under its Medicaid state plan. Case managers assess individual needs, develop individual service plans, assist in choosing providers, coordinate and monitor services implemented under the plan and ensure that each person has a personal advocate. Waiver enrollees and Medicaid recipients with MR/DD who are at least three years old are eligible for this service. During Fiscal Year 2005, 71,000 individuals with MR/DD received these services in Ohio.
8. Ohio has improved its ability to assure the health and safety of individuals with MR/DD residing in the community and receiving publicly funded supports.
9. Consistent with the November 28, 2005 Order, this Order does not require individuals to leave ICFs/MR against their wishes, and does not require the closure of any Developmental Center or ICF/MR.
10. Any duty that is given to a specific party by this Order may be enforced only as against that party, and no joint liability shall be ascribed to other parties in that circumstance.
11. The Defendants are sued in their official capacity and therefore, are representing the State of Ohio in this agreement. Federal Rule of Civil Procedure 25(d) shall apply.

12. This Order does not limit or otherwise modify the access of Plaintiffs' class counsel or any other employee or agent of OLRs as specified in R.C. § 5123.60 or 42 U.S.C. § 15001, et. seq.
13. This Order was reached in good faith by the Parties. Defendants do not admit any liability or wrongdoing on their part and this Consent Order does not create an admission of liability or wrongdoing by Defendants.

PREAMBLE

By signing this Consent Order, Governor Taft expresses his unqualified support for the terms of the parties' agreement, described below, as they are consistent with the direction and goals of his Administration as expressed in the Ohio Access plan. With his approval, the Ohio Office of Budget and Management (OBM) has granted ODMR/DD an exception to the budget request limitations OBM imposed in anticipation of the next biennial budget, in order to accommodate the agreement. Governor Taft encourages the next Administration and General Assembly to give full consideration to the terms of this settlement agreement and the formal materials related to it that will be submitted as part of the FY08-09 budget process.

TERMS OF THE AGREEMENT

The Court adopts the above stipulations and for good cause shown, the Court orders that:

- 1. INDIVIDUAL OPTIONS WAIVER SLOTS:** ODMR/DD and ODJFS will request that funding for an additional 1500 IO waiver slots be included in the FY08-09 executive budget. These slots shall be funded with federal and state dollars, and shall be in addition to any planned expansion of locally (county) funded slots, as determined by the Preliminary Implementation Component Tool ("PICT") process. If the requested funding for the additional 1500 IO waiver slots is subsequently appropriated in the State of Ohio's operating budget for the FY08-09 biennium by the General Assembly and approved by the incoming Governor, ODMR/DD will make a good faith effort to fill 600 slots during FY08 and 900 slots during FY09. One-hundred (100) slots per fiscal year will be available for persons currently residing in ICFs/MR. Forty (40) slots per fiscal year will be available for persons currently residing in NFs. With the exception of the enumerated

slots for the persons leaving an ICF/MR or NF, ODMR/DD shall allocate the waiver slots to the county boards of MR/DD in accordance with a formula developed by ODMR/DD. Such formula shall include as a factor for consideration the person's position on the waiting lists maintained by the county boards of MR/DD.

If, after making a good faith effort, ODMR/DD is unable to fill all the 1500 slots in FY08 and FY09 as enumerated above, ODMR/DD will allocate the unfilled slots and have those slots assigned to individuals by June 30, 2009 so they can be enrolled as soon thereafter as reasonably practical, consistent with the health and safety of the individuals.

2. **DEVELOPMENTAL CENTER SURVEYS:** ODMR/DD will conduct a survey of residents of DCs to determine which of the residents may wish to choose a community placement, if one were available. In this paragraph, a community placement is defined as a HCBS waiver. The results will be compiled and shared with Plaintiffs, and shall be completed no later than June 30, 2007. The results of the survey shall not be used for litigation or determining placement of the surveyed individuals.
3. **ICFs/MR SURVEYS:** ODJFS will conduct a survey of residents of both privately run ICFs/MR and county operated ICFs/MR to determine which of the residents may wish to choose a community placement, if one were available. In this paragraph, a community placement is defined as a HCBS waiver. The results will be compiled and shared with Plaintiffs, and shall be completed no later than June 30, 2007. The results of the survey shall not be used for litigation or determining placement of the surveyed individuals.
4. **HOUSING:** Director Ritchey shall apply to the Controlling Board for the release of up to \$4,280,000 from the 2005-2006 ODMR/DD Capital Budget (Line Item CAP-480) to County Boards of MR/DD for participation in the Community Capital Assistance

Housing Program and the Residential Handicap Accessibility Project. Director Ritchey agrees to allocate 7% of the \$4,280,000 to the Residential Handicap Accessibility Project. The purpose of both of these programs is to provide affordable community housing to individuals with MR/DD through non-profit housing corporations contracting with County Boards of MR/DD. After obtaining approval from the Controlling Board for the release of the \$4,280,000, Director Ritchey shall allocate the funds to County Boards of MR/DD in accordance with the allocation methodology developed in accordance with Ohio Administrative Code § 5123:1-1-03 (F), whereby ODMR/DD funds 75% of the median cost of a home in the particular county. Allocation of the funds under the Residential Handicap Accessibility Project shall be in accordance with Ohio Administrative Code § 5123:1-1-17.

5. **RESTORATION OF THE CASE:** If there is not substantial compliance with the funding provision of the additional 1500 IO waiver slots specified in this settlement agreement in the FY08-09 Budget, the Plaintiffs may move to set aside the settlement. The Court shall then make a determination on the question of substantial compliance and decide whether to restore the case to the Court's active docket and schedule it for trial. This provision terminates 15 days after the enactment of the FY08-09 Budget Bill.
6. **RELEASE:** Defendants, Defendants' successors, and any other successor agencies are released from current and future claims or actions regarding any and all matters that are or could have been brought as part of this litigation.
7. **COURT RETAINING JURISDICTION:** This Court shall retain jurisdiction over this matter for the purpose of enforcement of this Order. Jurisdiction shall terminate on June 30, 2009.

8. **COSTS:** If Plaintiffs do not restore this case pursuant to paragraph six of this Order, each party shall bear their own costs and attorney's fees, except that Defendants shall pay Plaintiffs up to one hundred and fifty thousand dollars (\$150,000) in litigation related expenses and costs. At that time, Plaintiffs shall submit a spread sheet of costs certified by the Ohio Legal Rights Services' director or counsel as supporting documentation to the Defendants. Upon receipt of that documentation, Defendants will seek approval for payment by the Controlling Board and make payment to Plaintiffs within a reasonable amount of time.
9. **EFFECTIVE DATE:** The effective date of this Order shall be the day on which the Court enters its Order and Judgment approving this Consent Order pursuant to Federal Rule of Civil Procedure 23(e).
10. **COURT APPROVAL, AGREEMENT TO SUPPORT:** The parties agree that they will recommend approval of this agreement to the Court. The parties also agree that they will fully support this agreement and continued certification of the class during any and all proceedings under Federal Rule of Civil Procedure 23(e).
11. **TERMINATION DATE:** The Order shall terminate on June 30, 2009.

IT IS SO ORDERED.


Edmund A. Sargus, Jr.
United States District Judge

Date: _____

Martin v. Taft,
Case No. 89-CV-00362
Consent Order Nov. 2006

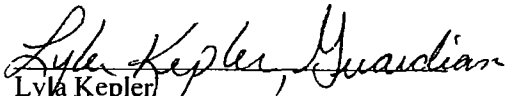
AGREED TO:

PLAINTIFFS

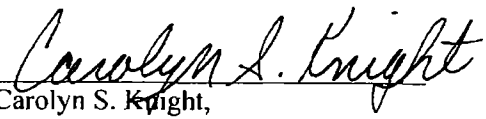


Claude Martin

11/17/06
DATE


Lyla Kepler
In her capacity as Guardian of Warren B.

11-21-06
DATE

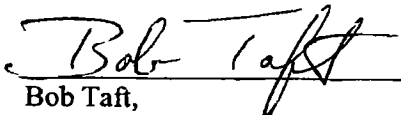

Carolyn S. Knight,
In her capacity as Executive Director
of Ohio Legal Rights Services,
Next of Friend of Kathy R.

10/20/06
DATE

Martin v. Taft,
Case No. 89-CV-00362
Consent Order Nov. 2006

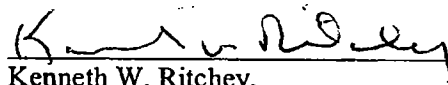
AGREED TO:

DEFENDANTS



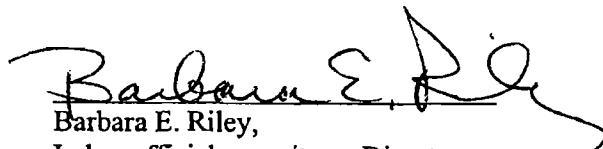
Bob Taft,
In his official capacity as Governor
of the State of Ohio

11-20-06
DATE



Kenneth W. Ritchey,
In his official capacity as Director
of the Ohio Department of Mental
Retardation and Developmental Disabilities

11-17-06
DATE

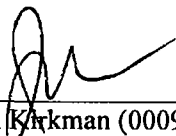


Barbara E. Riley,
In her official capacity as Director
of the Ohio Department of Job and
Family Services

11/27/06
DATE

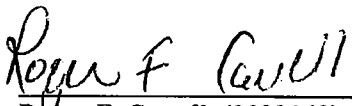
Martin v. Taft,
Case No. 89-CV-00362
Consent Order Nov. 2006

APPROVED BY:



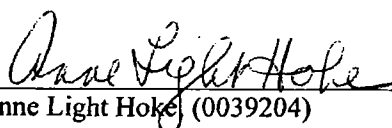
Michael Kirkman (0009854)
Trial Attorney for the Plaintiffs
and the Plaintiff Class

11-27-2006
DATE



Roger F. Carroll, (0023142)
Principal Assistant Attorney General
Trial Attorney for Defendants Bob Taft
and Kenneth Ritchey

11-27-06
DATE



Anne Light Hoke (0039204)
Senior Assistant Attorney General
Trial Attorney for Defendant Barbara Riley

11-27-06
DATE