

HUMAN RIGHTS REVIEW AND PROTECTION BOARDS

I. Introduction

Vulnerability to rights violations varies depending upon economic and social group membership. Mentally retarded individuals are especially susceptible to infringement of their rights.

In its basic policy statement on the "Rights of Mentally Retarded Persons" (October, 1973) the American Association on Mental Deficiency makes clear that professional persons have a moral and ethical responsibility for providing leadership in protecting the rights of retarded persons. The statement says, in part, "Professionals in the field, individually and in concert, should assert leadership in protection of these rights, in assuring their exercise and enjoyment by retarded citizens, and in the implementation of these rights to provide for more satisfying circumstances of life for retarded persons."

One of the difficulties faced by individual practitioners and interested professional and citizen groups, however, is the lack of a clear focal point within our society for protecting the legal and human rights of retarded children and adults. The purpose of this policy statement is to suggest a general strategy for addressing this issue.

II. Guidelines

A. Establishment of Human Rights Review and Protection Boards

In order to safeguard adequately the legal and human rights of mentally retarded persons, a network of human rights review and protection boards should be established in each state of the United States and each province of Canada. The main purpose of these boards will be to assure that proper legal, administrative and procedural safeguards are available to protect the individual rights of mentally retarded persons.

Commentary: While the scope of the boards' activities and organizational configurations may vary significantly from state to state, each board should perform the essential functions and be organized in accordance with the general principles outlined below. Among the factors which will have to be taken into account in organizing a statewide network of boards are: (a) the physical size of the state and other geographical considerations; (b) population; (c) the structure of the existing service delivery system, including defined sub-state service areas; and (d) any other relevant social and political factors.

B. Functions of the Board

Each board should perform the following essential functions:

1. Review, monitor and assess the efficacy of existing and proposed methods and procedures for protecting the rights of mentally retarded individuals;
2. Review and comment on proposed legislation, regulations, guidelines, and standards for licensure insofar as they affect the human rights of retarded individuals.

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3. Serve as an independent review body responsible for investigating alleged violations of the rights of individuals and groups brought by retarded persons, their parents or guardians, or other parties;
4. Assure that all service agencies have formal due process appeals procedures through which retarded persons or their representatives can raise complaints concerning alleged infringements of their rights and receive a prompt and fair hearing before the board;
5. Bring to the attention of appropriate agencies existing violations of human rights;
6. Perform periodic on-site inspections of programs serving the mentally retarded to assure that the rights of all clients are being adequately protected.

Commentary: Human Rights Review and Protection Boards are not intended to deny any individual the right to seek redress in the courts. On the contrary, the boards should be reviewed as an administrative means of identifying actual or potential rights violations and seeking appropriate corrective action before formal litigation becomes necessary. The boards would also be responsible for advising legislators and agency administrators on the adequacy of rights safeguards built into statutes, regulations and agency operating policies.

Since its primary role is administrative, a board should not initiate, sponsor or otherwise directly engage in litigation; however, individual board members, acting independently of the board, may choose to play an active role in cases before the courts.

III Organizations of the Boards

In organizing the proposed boards the following general principles should be followed:

1. The board should be administratively and fiscally independent of any public or private agency responsible for the delivery of direct services to mentally retarded persons;
2. The board should be so positioned within the state, regional or local structure of government as to have ready access to key decision makers in each of the major component parts of the service delivery system;
3. The board should have free access to the records of agencies serving the retarded within their jurisdiction except that confidential, personal records should not be released unless authorized by the client, the client's legal representative, or the courts.
4. The board should be adequately financed and staffed (both qualitatively and quantitatively) to carry out its functions. The board's permanent staff should be drawn from a variety of professional disciplines;
5. A cross-section of major viewpoints on the needs and rights of retarded citizens should be represented on the board. The membership of the board should include a qualified attorney, consumers, consumer representatives, and professionals from a minimum of three associated fields such as social work, education, psychology and medicine.

Commentary: While a board must be prepared to speak out forthrightly against administrative policies or professional decisions which infringe on the rights of retarded persons, its purpose is not to second guess the professional judgment of individual practitioners regarding the most appropriate treatment modalities or intervene in the day-to-day administrative decisions of program officials except as they impinge on the exercise of the legal and human rights of mentally retarded individuals. In addition, the board should function as a corporate body and not as a vehicle for airing individual grievances, concerns or programmatic viewpoints of individual members of the board.