

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

NANCY DOE, by her guardian *
*
ad litem ANNE K. PECORA *
Plaintiff *
v. * Civil Action No. H83-2409
ADELE WILZACK, et al. *
Defendants *
* * * *

CONSENT DECREE

IT IS HEREBY STIPULATED by and between the undersigned attorneys for Plaintiff and the undersigned attorneys for Defendants Buck, Wilzack, Platman, Karahasan and Hamilton, on behalf of their respective parties:

DECLARATORY STATEMENTS

1. Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. Section 794, prohibits the State of Maryland from discriminating against an otherwise qualified hearing-impaired person in its in-patient mental hygiene facilities solely by reason of the individual's handicap. The State will not exclude otherwise qualified hearing-impaired persons in its in-patient mental hygiene facilities from participation in those facilities' programs nor deny hearing-impaired persons the benefits of those programs or activities solely because the individual is hearing-impaired.

2. 29 U.S.C. Section 794 imposes on the State of Maryland the duty to make reasonable accommodation for hearing-impaired persons in its in-patient mental hygiene facilities.

3. Regulations issued by the United States Department of Health and Human Services to implement 29 U.S.C. Section 794, entitled "Non-discrimination on the Basis of Handicap Programs and Activities Receiving or Benefiting From Federal Financial Assistance", at 45 C.F.R. Section 84.52, require the State of Maryland to provide appropriate auxiliary aids to hearing-impaired persons in its inpatient mental hygiene facilities where necessary in order to afford such patients an equal opportunity to achieve equal results to non-hearing impaired persons.

4. The regulations at 45 C.F.R. Section 84.4 require the State of Maryland to provide equally effective services to hearing-impaired persons in its in-patient mental hygiene facilities. To be equally effective, a service must afford the hearing-impaired person an equal opportunity to achieve equal results to non-hearing-impaired persons.

5. The due process clause of the Fifth Amendment to the United States Constitution, applied to the states through the Fourteenth Amendment, requires the State of Maryland to provide hearing-impaired persons in its in-patient mental hygiene facilities with skills and training sufficient to protect the individual from harm. The adequacy of the skills and training is to be determined by professionals exercising professional judgment.

6. COMAR 10.21.03 requires the State of Maryland to provide hearing-impaired Mental Hygiene patients with a comprehensive plan of active treatment which includes "regular participation by a patient in professionally developed and supervised activities, experiences or therapies."

STIPULATIONS

7. The parties have agreed to the provisions of this Consent Decree in order to resolve on an amicable and cooperative basis the issues raised in this litigation. The parties believe it to be in their best interest and in the best interest of the public to resolve the issues herein in a cooperative fashion.

8. On July 5, 1983, Plaintiff, a patient in a Mental Hygiene Administration facility, filed suit in the above-captioned action seeking declaratory and injunctive relief and monetary damages. Plaintiff claimed violations of Section 504 of the Rehabilitation Act (29 U.S.C. Section 794), the Fourth and Fourteenth Amendments to the United States Constitution, 42 U.S.C. Section 1983, and the Maryland Annotated Code, Health-General Article, Section 10-705.

9. Prior to the Court's consideration or adjudication of any of the issues of fact or law raised in this case, these Defendants have agreed to implement the plan for hearing-impaired persons described below.

10. Plaintiff will have access to any of the services described in that plan whenever she or her guardian determines those services to be appropriate in accordance with paragraphs 38 through 57 of this Decree. Plaintiff will also be entitled to other relief as set forth below.

PLAN OF SERVICES FOR HEARING-IMPAIRED MENTALLY ILL PERSONS

Part I: Identification of Hearing-Impaired Patients

11. The Mental Hygiene Administration is promulgating regulations to implement a policy for identification of hearing-impaired patients in State mental hospitals. "Hearing impaired" means having a hearing impairment so severe that, with or without amplification, the processing of linguistic information through hearing is impaired. The policy will provide for the screening for hearing impairment of all patients who are now or will be admitted to Mental Hygiene inpatient facilities. That policy specifically requires that:

- a. Except as provided in subsection (i) below, all Mental Hygiene Administration inpatient facilities will perform an examination for gross testing of hearing acuity on all newly admitted patients within 24 hours of admission. This testing will be repeated again within 15 days after admission on all patients not already tested with more sophisticated equipment. If either test indicates a potential hearing impairment, Rinne and Weber testing will also be provided at that time.
- b. Any patient suspected of having a hearing impairment on the basis of any of the above tests, or who was unresponsive because of a possible hearing impairment, or who responded

in an inappropriate manner that may be related to a possible hearing impairment will be screened with an audiometer within 3 working days.

- c. As soon as possible, but in any event within 90 days after admission, any patient who has not already been screened with an audiometer will be so evaluated in accordance with the "Guidelines for Identification Audiometry" adopted by the American Speech-Language-Hearing Association (ASHA, 1975 or subsequent revisions). Each patient's annual physical examination will also include such screening.
- d. If the patient has received a documented audiometer screening within the previous six months, this form of testing is not required.
- e. The above tests may be administered by an audiologist or by speech and hearing staff or by properly and periodically trained allied health and/or nursing staff, under the supervision and monitoring of a licensed audiologist.
- f. All patients suspected of having a hearing impairment on the basis of the audiometer screening will be promptly referred to a licensed audiologist. If recommended by that audiologist, the patient will be evaluated by

- a Board-eligible or Board-certified otolaryngologist. If recommended by the otolaryngologist further evaluations by a speech pathologist shall be conducted.
- g. Treatment recommendations by the otolaryngologist, audiologist, and/or speech pathologist will be incorporated in the patient's Individual Treatment Plan.
- h. Where an otolaryngologist or the audiologist determines that a patient requires a hearing aid, that hearing aid will be provided by the facility. Further, the patient and appropriate staff will receive instruction on the use of the hearing aid, including the regular inspection and timely repair or replacement of batteries.
- i. The above screening procedure is not required if the patient has a documented history of deafness. "Documented history of deafness" means a documented diagnosis of deafness made by a licensed audiologist or by a Board-eligible or Board-certified otolaryngologist.

Part II: Springfield Hospital Unit for
Hearing-Impaired Patients

12. The Mental Hygiene Administration has established an inpatient unit for hearing-impaired persons at the Springfield

Hospital Center. Admission criteria for that Unit require inter alia that the individual:

- a. Meet the statutory criteria for admission set forth in §§10-609 through 10-619 of the Health-General Article of the Annotated Code of Maryland;
- b. Has a documented history of deafness or impaired hearing of such a character that the individual could not understand ordinary conversation even with available amplification equipment; and
- c. Is capable of using or being trained in visual or tactile modes of communication, i.e. American Sign Language, finger-spelling, and speech reading.
- d. Be 14 years old or older. Fourteen to 18-year olds may not be placed in the Unit with adults unless the individual plan of treatment for the minor so provides.
- e. Be capable, with reasonable accommodation if necessary, of participating in the activities provided by the Unit.
- f. Does not object, based on information necessary to make an informed judgment, to participating in the Unit.

13. The Unit is being organized as a model for treating hearing-impaired mentally ill persons using appropriate communication methods. The Unit will be staffed and directed by professionals trained in the mental health needs of hearing-impaired individuals and will utilize community educational resources for hearing-impaired persons.

14. Unit personnel are currently coordinating efforts with the following programs: The Mental Health Center for the Deaf and Hearing-Impaired; the University of Maryland School of Social Work; Gallaudet College, for the purpose of establishing internships at the unit; the Western Maryland College Education for the Deaf Program which is expected to provide students interested in mental health to sign with patients; the Maryland State Department of Education, Division of Library Development and Services and the Carroll County Library Services for the Deaf, to provide library services, e.g. captioned films, resource material, and linkage with other libraries serving hearing-impaired persons; and Carroll County Library/Springfield Hospital Volunteer Services for the purpose of providing volunteers who can sign with patients. Liaison is also being established with St. Elizabeth's Hospital Program for the Deaf and the Maryland School for the Deaf.

15. This Unit is in a separate cottage as a discrete unit for hearing-impaired patients. Hearing patients will be housed in this Unit only at night and only when necessary to accommodate overflow from other units within the hospital and only to the extent space is available.

16. The Unit will accommodate up to 20 patients depending upon need.

17. The Unit's staff includes a full time psychologist, full time social worker, full time occupational therapist, half-time activity therapist, two half-time certified interpreters, and a consultant psychiatrist. In addition to these professional staff persons, there will also be a flexible number of nursing staff provided to the Unit depending upon the number of patient beds that are filled, as follows: if ten beds are occupied, the Unit will have eleven nursing staff, and if 20 beds are occupied, the Unit will have 21 nursing staff. When staff persons are hired, every effort will be made to seek staff who sign and who have experience in working with deaf mentally ill persons. Vacancies will be published in major publications designed for and read by hearing-impaired individuals, such as the NAD Broadcaster, the Silent News, the Gallaudet College Alumni Association (GCAA) Newsletter, Dee Cee Eyes, the (ASDC) Endeavor, the ADARA newsletter, publications of the American Speech and Hearing Association and in periodicals published by state associations of the deaf.

18. Treatment modalities include, but are not limited to, chemotherapy, group therapy, one-to-one therapy, substance abuse therapy, independent living skills training, sex education, communication skills, art therapy and behavior modification.

19. Basic education services will be provided as needed through a contract to be entered into with the Maryland

School for the Deaf. Public Law 94-142, 20 U.S.C. 51401, et sec. provides that handicapped children under age 21 must receive a free appropriate public education.

20. Unit staff, both clinical and non-clinical, have received and will continue to receive sign language instruction through the advanced level. The Unit has already hired a psychologist and a hearing-impaired social worker; both sign fluently. Interpreter services are provided by certified interpreters.

21. Other training to instruct staff in the unique mental health needs of hearing-impaired persons and in providing mental health services to hearing-impaired persons includes a three-part course on the psychology of deafness. The segment on psycho-social aspects of deafness has already been provided; the segments on sensory deprivation and language/communication of hearing-impaired persons will be scheduled in the near future. Another course is scheduled on the appropriate use of sign language interpreters. In-service training for Unit personnel will be arranged on at least an annual basis by the Unit Director.

22. To provide screening and assessment for all Springfield patients, the Western Maryland College has supplied equipment for audiological assessment and an audiologist fluent in signing. The audiologist from the College has trained and is supervising Springfield staff in the use of the audiometer.

23. The Unit has other specialized equipment. Three telecommunication devices for the deaf (TDDs) have been installed

Sign classes

so that Unit patients will be able to receive incoming telephone calls and make outgoing telephone calls. Any pay telephone on the Unit has been fitted with an amplifier and a caption device has been installed for the television. Strobe lights have been installed in the area where hearing-impaired patients on the Unit reside and two flashing alarm clocks will be purchased.

24. Either a certified interpreter or another staff member who signs fluently will be on duty in the Unit 24-hours a day. To the extent practical, no staff member will serve simultaneously as both an interpreter and a provider of other services. Staff members will not be scheduled to provide interpreter services and any other services at the same time. No person will be deemed qualified to provide counseling services merely because that person can sign or interpret.

25. Persons who provide interpreting services will possess a Comprehensive Skills Certificate issued by the Registry of Interpreters for the Deaf, or shall possess equivalent qualifications.

26. Persons who provide sign language training will be fluent in American Sign Language. Further, every effort will be made to contract with sign language interpreters who are knowledgeable about the mental health needs of hearing-impaired individuals.

27. On October 16, 1984, the Unit conducted an open house to provide information on its services. Invitations to the open house were mailed to approximately 200 persons including service providers, advocacy groups and legislators.

28. This Unit is now fully implemented.

29. Each public and private mental health facility in the State will be provided with a full description of the Unit and its services.

Part III: Determination of Placement

30. The Mental Hygiene Administration has developed a policy for transfer of appropriate patients to the specialized inpatient unit at the Springfield Hospital Center described above. Each physician in each State facility will be provided with a copy of the transfer policy. That policy provides as follows:

- a. Every hearing-impaired patient, whether or not such patient has other handicapping conditions, who is admitted to a Mental Hygiene Administration inpatient facility will be considered for referral to the specialized inpatient unit for hearing-impaired persons at Springfield Hospital Center. Within 72 hours of admission of any hearing-impaired patient, or within 72 hours of the identification of any patient as hearing-impaired, the treating physician will refer the patient to the Unit. Unit staff in consultation with the patient's treating physician will then make a determination within seven days as to the appropriateness of transfer of that patient to the Unit.

- b. If it is determined that the patient should be transferred to the Springfield Unit, staff from both facilities will arrange for the immediate transfer of the patient. In no case will such transfer occur later than two working days after that determination unless no bed is available on the Unit.
- c. If it is determined that the patient should be retained at the original facility, this decision and the basis for it shall be documented in the patient's chart. Further, staff will provide treatment and services as provided in Part IV.
- d. For those hearing-impaired patients who are not transferred to the Springfield Unit, the treating physician will contact the Unit staff at least every 60 days to re-evaluate the appropriateness of transfer to the Unit and to provide consultation as to any appropriate treatment options.
- e. This policy for determination of placement will be issued and implemented by February 1, 1985.

Part IV: Services to Hearing Impaired Patients
In Mental Hygiene Facilities

31. All hearing-impaired patients in Mental Hygiene Administration facilities shall receive appropriate treatment and services, including interpreter services, as provided in the patients' treatment plans.

(1) Treatment plans, and their periodic revisions, shall be developed in consultation with qualified professionals trained in the mental health needs of hearing-impaired individuals.

(2) Treatment and services required by such plans shall be implemented by qualified professionals to attempt to prevent regression or deterioration in the patients' mental conditions, loss of basic communication, self-care and other skills, and to enable such patients to receive an equal opportunity to achieve equal results to non-hearing-impaired patients.

(3) In developing treatment plans, the following services will be provided based on the individual needs of each hearing-impaired patient:

- a. audiological services, prescription of devices and follow-up and maintenance of such devices, including regular inspection and timely repair and replacement of batteries;
- b. communication services, including, but not limited to, interpreter services, sign language training, speech reading training, auditory therapy, counseling

in the use of audiological devices and speech therapy;

- c. psychosocial and psychotherapeutic services by qualified professionals able to communicate either directly or with the assistance of an interpreter in the mode of communication preferred by the patient and who are trained in the psychosocial aspects of deafness and the mental health needs of hearing-impaired individuals.

(4) Persons who provide interpreting services will possess a Comprehensive Skills Certificate issued by the Registry of Interpreters for the Deaf, or shall possess equivalent qualifications.

(5) Persons who provide sign language training will be fluent in American Sign Language. Further, every effort will be made to contract with sign language trainers who are knowledgeable in the mental health needs of hearing-impaired persons.

32. On or before February 1, 1985, every Mental Hygiene Administration facility will purchase and maintain at least one telecommunication device for the deaf (TDD). All hearing-impaired patients shall be informed of the availability of these devices. These devices shall be made available to patients requesting their use. The TDD numbers will be available through directory assistance and State Defendants will attempt to place these numbers in the International Telephone Directory of the Deaf and the Greater Washington Area TDD/Community Directory.

Part V: Psycho-Social Programming for
Hearing-Impaired Persons

33. Community psycho-social rehabilitation and supervised housing services will be specifically created for hearing-impaired patients. These programs will be available to persons who are currently in MHA facilities as well as to those already in the community.

34. The Mental Hygiene Administration will develop approximately 20 psycho-social rehabilitation slots, depending on need, for hearing-impaired patients: 10 slots will be for a site in the Southern Maryland Region and 10 slots for a site in the Central Maryland Region. It is anticipated that 20 slots can accommodate approximately 30 to 40 hearing-impaired patients depending upon the intensity of the services needed by each person. The proposed program model will include specialized staff who can work with hearing-impaired patients in a rehabilitation setting.

35. In conjunction with the rehabilitation services, approximately 12 supervised housing slots will also be developed depending on need. Six slots will be developed in the Southern Maryland Region and six slots will be developed in the Central Maryland Region.

36. These services will be implemented by the end of Fiscal Year 1986.

37. Counsel for the plaintiff may notify the State Defendants of any individual they believe is appropriate for

these services. State Defendants will then evaluate the individual to determine if s/he is appropriate for placement and, if so, arrange for placement.

SERVICES TO NANCY DOE

38. The Secretary of Health and Mental Hygiene or her designee will file a petition in a court of competent jurisdiction seeking the appointment of a guardian of the person for Nancy Doe with the powers enumerated in Estates Article, §13-708(b)(8), MD. ANN. CODE, and such other powers as the court determines. The Maryland Disability Law Center agrees to represent Nancy Doe in that proceeding.

39. Possible candidates to serve as guardian of the person for Nancy Doe will be selected from a pool of candidates solicited through advertisements in the newsletter and journals described in paragraph 17 and through other appropriate sources. No state employee will be eligible to serve as the guardian of the person of Nancy Doe.

40. The Secretary of Health and Mental Hygiene will reimburse the guardian of the person appointed by the Court for reasonable expenses and services rendered in fulfilling responsibilities to Nancy Doe. The guardian will be reimbursed at the hourly rate at which the Department normally pays consultants who have qualifications similar to those of the guardian. To receive reimbursement, the guardian will provide documentation in the form specified by the Department of Health and Mental Hygiene.

41. Hereinafter in this agreement, whenever a reference is made to Nancy Doe, any authority to be exercised by Nancy

Doe will be exercised by her guardian of the person, if one has been appointed for her.

42. The Secretary of Health and Mental Hygiene agrees to provide, either directly or through purchase of services, those medical and non-medical services that are determined by Nancy Doe to be reasonably necessary for her comfort, care and treatment, including services to permit maximal restoration of her adaptive capacity and to permit her appropriate return to the community as soon as possible.

43. Non-medical services include, but are not limited to, housing, food, clothing, and personal needs; psychological care and treatment; physical therapy; interpreter services, telecommunication devices and other auxiliary aids; audiology and speech therapy; nursing; social work services; counseling; vocational services; transportation and travel; and recreational allowances. Medical services consist only of care and treatment provided or prescribed by a licensed physician or psychiatrist.

44. It is contemplated by the parties that Nancy Doe will need both the non-medical and medical services specified above. Non-medical and medical services will be provided during Nancy Doe's lifetime regardless of whether she requires inpatient or outpatient services in a public or private facility, or whether she can later return to the community, or whether she is subject to guardianship of the person. These services shall not be limited to services available in Maryland, or to services provided to other patients in state facilities, or by the costs of the service.

45. Nancy Doe shall apply for all governmental or other benefits to which she may be eligible that might defray in whole or in part the expenses associated with these services.

46. Nancy Doe, shall make all decisions as to the services described in paragraphs 42 through 44 in her sole discretion, except for decisions as to medical services for which consent is not required by state law.

47. The Secretary of Health and Mental Hygiene shall designate an individual who is authorized to review all decisions made by Nancy Doe as to medical services. The Secretary shall designate an individual to review all decisions made by Nancy Doe as to non-medical services. The same individual may be designated to perform both functions.

48. If the State designee believes that a new service requested by Nancy Doe does not meet the requirements of paragraphs 42 through 44, the State designee will first discuss that belief with Nancy Doe and attempt to resolve it. If no agreement is reached, the State designee must either ensure that the service is provided or must request impartial arbitration, if it is available subject to paragraph 50. Any such request for arbitration must be made within 15 days of the request for services.

49. If the State designee believes that a service already being provided does not meet the requirements of paragraph 42, the State designee will first discuss that belief with Nancy Doe and attempt to resolve it. If no agreement is reached, the State designee must either continue to provide the service, or must request impartial arbitration, if it is available pur-

suant to paragraph 50. While such a dispute is being arbitrated, Nancy Doe will continue to receive the services.

50. Arbitration is available only in the following situations:

- (a) Disputes concerning medical services; or
- (b) Disputes as to any non-medical service that exceeds \$5,000, or that establishes an ongoing or renewable obligation that may exceed \$5,000 during a State fiscal year.

The State of Maryland shall not contest the decisions of Nancy Doe concerning any request for a non-medical service equal to or less than \$5,000.

51. Any arbitration shall be completed within 60 days of the request for arbitration, unless both parties consent to an extension. Judicial review of an arbitrator's decision shall be available as provided by law.

52. Any arbitration decision shall be prospective in effect. Nancy Doe shall not be liable to reimburse the State of Maryland for services which she has already received pursuant to this agreement.

53. The impartial arbitrator shall be chosen jointly by Nancy Doe and by the State designee. In the event that the parties cannot agree, the American Arbitration Association shall be requested to appoint an impartial arbitrator.

54. The burden of proof in any such arbitration proceeding shall be on the State designee to demonstrate by clear

and convincing evidence that the services in dispute are not reasonably necessary for Nancy Doe's comfort, care and treatment pursuant to paragraphs 42 through 44.

55. The State of Maryland shall be responsible for all costs and expenses associated with any arbitration or other enforcement of this agreement.

56. Any services or payments for services pursuant to this agreement are deemed to be compensation for injuries sustained as alleged in the complaint in this action.

57. While Nancy Doe is an inpatient in a Mental Hygiene Administration facility, her treatment team will include the psychiatric consultant to the Mental Health Center for the Deaf and Hearing Impaired.

OTHER STIPULATIONS:

58. The terms and conditions of this Consent Decree shall not be construed or interpreted as an admission by or a finding that the State of Maryland or any of its officers, departments, employees, boards or commissions have violated any provisions of 42 U.S.C. §1983; 29 U.S.C. §794; Title 10 of the Health-General Article of the Annotated Code of Maryland; the Fourteenth Amendment to the United States Constitution or any other provision of the laws of the United States or the State of Maryland in regard to the hospitalization, care, and treatment in facilities of the Mental Hygiene Administration of mentally disabled hearing-impaired persons.

59. Plaintiff agrees that Defendants Buck, Wilzack, Platman, Karahasan and Hamilton do not owe her any monetary damages and all claims for monetary damages against these Defendants are waived.

60. A copy of this Decree will be available for inspection by interested persons at the offices of the Mental Hygiene Administration during regular business hours.

61. The parties to this Decree may modify any of its terms upon mutual agreement and without further order of this Court.

62. At least every 90 days for three years after the approval of this Decree, the State will file reports with counsel for the Plaintiff describing the steps taken by the State to comply with this Decree.

63. Plaintiff's attorneys' request for costs and attorneys' fees in this case have been satisfied. Plaintiffs' attorneys therefore waive all other requests for costs and attorneys' fees from the State Defendants in this matter.

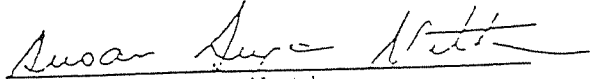
64. The parties further agree that the provisions of this Consent Decree do fully and fairly accommodate the interests of all parties hereto and that such parties had full input into the provisions. Furthermore, all parties hereto agree that this Court should adopt and approve this decree; and that this Decree is a final judgment in the above-captioned case.

WHEREFORE, having fully read and considered the provisions set forth in the above Consent Decree, Plaintiff and

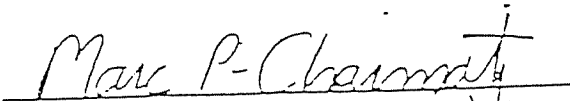
Defendants Buck, Wilzack, Platman, Karahasan and Hamilton, by their counsel, stipulate and agree to the above terms.



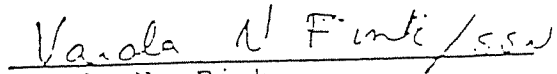
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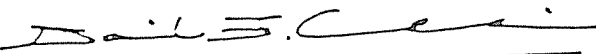
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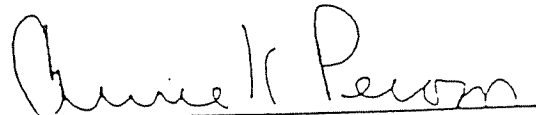
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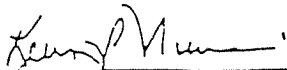
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