

 KeyCite Yellow Flag - Negative Treatment
Distinguished by [American Ass'n of People With Disabilities v. Hood](#),
M.D.Fla., March 24, 2004

Deaf and hearing-impaired individuals who were eligible for **mental** health counseling services, as well as members of their families, sought preliminary injunction under Americans With Disabilities Act (ADA) requiring state to provide **mental** health counseling services through counselors with sign language ability and knowledge and understanding of **deaf** community rather than through hearing counselors aided by sign language interpreters as proposed. The District Court, [K. Michael Moore](#), J., held that: (1) class certification was appropriate; (2) family members had standing to bring suit; (3) plaintiffs established likelihood of success on merits of their claim; and (4) other equities weighed in favor of granting preliminary injunctive relief.

health counseling services to **deaf** and hearing-impaired individuals through hearing counselors aided by sign language interpreters, state failed to establish that it would endure undue hardship if required to provide counselors with sign language ability and knowledge and understanding of **deaf**

was a grant from the Federal Emergency Management Agency (“FEMA”), to provide crisis counseling to victims of Hurricane Andrew. The FEMA funding, which ceased on May 31, 1994, paid for two **mental** health counselors at DSB: David Killam, who is **deaf**, and Darlene Watson, who is hearing impaired. The second source was the state of Florida’s special hurricane trust fund. That money is intended to pay for a telephone “hot line” counselor, that has not yet been filled. The “hot line” funding is currently available through January 31, 1995. No money from HRS’s general budget was spent on the Contract. The June extension of the FEMA funding was from “lapsed” FEMA funding.

Counseling services provided by the DSB include individual and group counseling, telephone and peer support counseling. These services are provided on an out-patient basis at no fee to the client. DSB employs two Masters Degree-level counselors, three peer counselors and one tri-lingual staff interpreter. (Aff. of Stephen Bail, at par. 9). During the 14-month period from April 1993 through May 1994, DSB handled 11,046 requests for **mental** health services, an average of 42 requests each day. (Bail Aff., at par. 12). It costs DSB approximately \$20,000 to provide these services each month. (Bail Aff., at par. 13).

After the termination of the DSB Contract, HRS intends to continue to provide counseling *1204 services to the **deaf** and hearing impaired through other **mental** health providers under contract with the agency. These services are to be provided by hearing counselors aided by a sign language interpreter, at no additional cost to the client.

***1205 1. Substantial Likelihood of Success**

[3] The issue of whether the Plaintiffs have demonstrated a substantial likelihood of success on the merits depends upon whether the Plaintiffs have offered sufficient evidence to show that the Defendants' actions violate the ADA and/or the Rehabilitation Act of 1973.⁴ The Plaintiffs assert their claims under Title II of the ADA, which prohibits discrimination against persons with disabilities by public entities.⁵ 42 U.S.C. § 12132. That section states, in pertinent part:

... [N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by such entity.

42 U.S.C. § 12132. Title II's definition of "public entity" includes "any department, agency, special purpose district, or other instrumentality of a State or States or local government." 42 U.S.C. § 12131(I)(B). Thus, HRS is a public entity because it is a Department of state government.

[4] The ADA defines "qualified individual with a disability" as "an individual with a disability who, with or without reasonable modifications" is otherwise eligible to receive the government services in question. 42 U.S.C. § 12131(2). A "disability" is "a physical or **mental impairment** that substantially limits one or more of the major life activities of [an] individual ..." 42 U.S.C. § 12102; 28 C.F.R. § 35.104. The phrase "major life activities" is defined by the ADA regulations to include "hearing" and "speaking." 28 C.F.R. § 35.104(2).⁶

This action is brought on behalf of **deaf** and hearing

Plaintiffs face in receiving effective **mental** health counseling. To the extent that this obstacle is heightened by a therapist's lack of education, training or experience regarding the specific psychological conditions common to the **deaf**, the Court finds this issue is rooted in the Plaintiffs condition, not their culture.

In sum, the Court finds that the Plaintiffs have presented sufficient evidence to demonstrate that the Defendants have denied the Plaintiffs, by reason of their disability, the benefits of **mental** health services provided by HRS to the general public. Thus, the Plaintiffs have shown a

28 C.F.R. § 35.107. By failing to comply with this ADA provision, the Defendants provided no avenue for the Plaintiffs to bring their grievance other than Federal Court.

Accordingly, the Court finds that the balance of equities in this matter weighs in the Plaintiffs' favor.

4. Public Interest

^[9] In *Concerned Parents*, Judge Ryskamp weighed the City of West Palm Beach's interest in balancing its budget against the plaintiffs' interest in participating in recreational programs and found that the public interest was not harmed by continuing the funding in question. *See Concerned Parents* at 993. "[B]eyond the interest of the 300 plus disabled individuals that participate in programs offered by the City, the public also has an interest in meeting the recreation needs of people with disabilities." *Id.* Similarly, this Court also finds that the public has an interest in providing for the full participation by persons with disabilities in the **mental** health benefits afforded by the state.

III. CONCLUSION

THE COURT has considered the Motion, the responses, the testimony of witnesses, and the pertinent portions of

Footnotes

¹ This Memorandum Order will fully set forth the Court's reasoning behind its entry of a Preliminary Injunction in its

the record, and being otherwise fully advised in the premises, it is

ORDERED AND ADJUDGED that the Motion be, and the same is hereby GRANTED. It is further ORDERED AND ADJUDGED as follows:

The provision of **mental** health services for the **deaf** by HRS in District XI serving Dade and Monroe counties shall include, to the extent available in the community, **mental** health counselors, **deaf** or hearing, with sign language ability, who possess by training, education, or experience, an understanding of the **mental** health needs of the **deaf** community. Compensation for such services shall be at a rate consistent with that established in the DSB's contract with HRS that is the subject of this action. HRS shall also devise guidelines or promulgate regulations for the provision of **mental** health services to the **deaf**, incorporating the minimum standards discussed above. This Order shall remain in effect until such guidelines or regulations are approved by this Court.

DONE AND ORDERED.

All Citations

864 F.Supp. 1201, 6 A.D. Cases 395, 6 A.D.D. 1199, 5 NDLR P 311

this Order addresses only the Plaintiffs' ADA claims.

5 Title I of the ADA prohibits employment discrimination on the basis of disability by any employer of more than 15 employees. [42 U.S.C. Sec. 12111–12117](#). Title III of the ADA prohibits public accommodations, including hotels, restaurants and retail stores, from denying persons with disabilities equal access to their services. [42 U.S.C. Sec. 12181–12201](#).

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