



AIRMAIL

ALABAMA DISABILITIES ADVOCACY PROGRAM Vol. 2 Issue 1 February 1997
THE UNIVERSITY OF ALABAMA SCHOOL OF LAW CLINICAL PROGRAMS

Changes to Children's SSI

Thousands of children with serious mental, emotional, and physical problems likely will lose their federal disability benefits due to recent changes in the Supplemental Security Income program. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 changed the definition of disability for children to qualify for the SSI program. The end result is that it will be harder for children to qualify for SSI benefits. The Social Security Administration projects that an estimated 100,000 to 200,000 children currently receiving SSI eventually will lose their benefits.

The Act provides for more stringent criteria in ascertaining a disability to qualify for SSI benefits and places restrictions on how certain large retroactive payments to these children may be used. Additionally, individualized functional assessments will be discontinued. There is grave

concern by children's advocacy groups who fear that these changes may create overwhelming problems for families on the economic edge.

By January 1, 1997, the Social Security Administration (the federal agency that manages the SSI program) had notified an estimated 300,000 children nationwide who

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might potentially be affected. In order to adequately review each notified child under the new criteria, the agency will be requesting that the child's representative-payee provide information about the child's condition. If a decision is made to terminate benefits, the SSA decision may be appealed. The child is then entitled to a personal interview with the decisionmaker, and subsequently a hearing before an administrative law judge. In accordance with the

requirements of due process, the child's benefits may at least continue through the personal interview stage. July 1, 1997, is the earliest date set by the agency to begin discontinuing payments for those children who are no longer qualified for SSI benefits.

Additionally, if a child is receiving Medicaid based on SSI, Medicaid should continue as long as the child is receiving SSI benefits. If SSI is discontinued, some children may qualify for Medicaid under another government program.

Continuing Disability Reviews (CDRs) will now be required every three years for recipients of SSI under eighteen years of age whose conditions are likely to improve. A review may also be made for recipients under eighteen whose conditions are not likely to improve. Low birth weight baby reviews must be done no later than twelve months after the birth. Under these reviews, representative payees must provide evidence of treatment unless it is deemed inappropriate or unnecessary. The law also requires a disability determination at the age of eighteen and will affect children under eighteen who live throughout an entire

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THE CONTRACT WITH AMERICA ADVANCEMENT ACT OF 1996 - P.L. 104-121

Should people who are disabled because of drug addiction and/or alcoholism (DAA) receive disability benefits paid for by taxpayers?

Should people who are disabled because of drug addiction and/or alcoholism (DAA) receive disability benefits paid for by taxpayers? While there may still be a philosophical debate, the United States Congress has answered that question with a stern NO.

This decision became law with the enactment of P.L. 104-121, also known as The Contract With America Advancement Act of 1996. The law prohibits Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) disability benefits and Medicare and Medicaid coverage based on those benefits to people who are disabled because of drug addiction and/or alcoholism. The individuals affected by this change are those whose DAA is material to the finding of disability.

This change became effective for persons who applied for benefits on or after March 29, 1996. For those individuals already receiving benefits before that date, benefits were stopped on January 1, 1997.

In June 1996, the Social Security Administration (SSA) mailed termination notices to more than 200,000 individuals subject to the new law. As of early December 1996, only 60% had appealed. Of those who appealed, about 66% requalified under another disability following a mere paper review. It was expected that half of the 34% proceeding to the hearing level would also requalify.

Although recipients should have filed their appeals within 10 days of receiving the termination notice, an appeal may still be possible. An SSA spokesperson

has stated that cases will be reviewed on an individual basis to determine if an appeal can be accepted at this late date.

Appeals may be accepted if a "good cause" exists for missing the deadline. Good cause in some cases has meant that the applicant missed the deadline for a credible reason such as confusion about the notice; not having received the notice; being too ill to respond; or because of physical, mental, educational, or linguistic limitations.

While a recipient may have been eligible for interim benefits if an appeal had been filed more promptly, an SSA spokesperson has stated that such benefits may not be available at this time. If an

Continued on page 3

ALABAMA DISABILITIES ADVOCACY PROGRAM (ADAP)

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Associate Dean, Director of Clinical Programs and Clinical Professor of Law .. Steven C. Emens
 Director, Alabama Disabilities Advocacy Program Reuben W. Cook

Sr. Staff Attorney.....Ginger Tomlin
 Staff Attorney Paul Johnson
 Staff Attorney.....Rozalind Smith
 Staff Attorney Don Tipper
 Information SpecialistSegail I. Friedman
 Advocate Coordinator David Prince

Data Technician.....Rosemary Beck
 Case Advocate David W. Gamble
 Case Advocate Catherine D. Harper
 Case Advocate Ann Marshall
 Administrative Secretary Janet Owens
 Office Assistant.....Susan Tretter

Airmail is published to provide information on issues and events of interest to people concerned about the rights of persons with disabilities. Organizations and individuals are encouraged to submit articles to be considered for publication. Inquiries may be sent to Segail I. Friedman, Information Specialist, at the address printed below.

Airmail is published by Alabama Disabilities Advocacy Program (ADAP), The University of Alabama School of Law Clinical Programs, Box 870395, Tuscaloosa, AL 35487-0395, (205)348-4928, FAX (205)348-3909, TDD (205)348-9484.

Children's SSI

Continued from page 1

calendar month in certain institutions when a private health insurance pays for their care.

For more information contact your local Social Security office or call 1-800-772-1213 (24 hours a day or 7 a.m. to 7 p.m. to talk with a representative). For persons with a hearing impairment, call 1-800-325-0778 between 7 a.m. and 7 p.m. Information is also available on the Internet at <http://www.ssa.gov>.

The Worker's Compensation Section of the Alabama State Bar has established a scholarship for children of persons who were killed or permanently and totally disabled in an on-the-job accident. The scholarship can be used to fund a college or trade school education. For an application, write to:



Kid's Chance Scholarship
P.O. Box 671
Montgomery, AL 36101

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appeal is unavailable for an individual, that individual may still reapply for benefits.

Since termination of SSI benefits also means that individuals will lose their categorical eligibility for Medicaid, it is important that all affected recipients reapply for benefits. In any event, if individuals do not requalify and are terminated, their Medicaid coverage may continue until the state Medicaid agency redetermines eligibility based on noncategorical criteria.

In addition, any beneficiary whose application was filed on or after July 1, 1996 who qualifies for disability benefits on some basis other than DAA, but is determined by the SSA to have a DAA condition and to be incapable of managing benefits, must be paid through a representative payee

(RP) and be referred to the appropriate state agency for treatment.

If benefits are paid to a representative payee, the RP will manage the money for the beneficiary. The RP may be a nonprofit social service agency, a governmental social service agency or public guardian, a family member or other interested person approved by the SSA to act in the best interest of the beneficiary.

For more information, you can contact the Social Security Administration 24 hours a day at their toll-free number, 1-800-772-1213. You can speak to a service representative between the hours of 7 a.m. and 7 p.m. on business days. The phone lines are busiest early in the week and early in the month, so try to call at other times. For those who are deaf or hard of hearing, you may call the SSA's toll-free "TTY" number, 1-800-325-0778 during the same hours.

Stipends Available
Autism Society Conference
February 22, 1997
AUM
Montgomery, AL

The Autism Society of Alabama extends an offer for stipends to pay for conference fees to interested individuals for whom paying the \$49 fee would currently be difficult.

Priority will be given to parents and family members, but we encourage anyone to apply.

Call 205/599-3976 and ask for a conference stipend. To register, call 334/244-3929



Strategies for Implementing Inclusive Practices

May 1-2, 1997

Embassy Suites - Montgomery, AL

Contact the State Department of Education
at 1-800-392-8020 for more information.

ADAP welcomes

Ginger Tomlin - Advocacy for persons with disabilities has been the focus of two careers of Ginger Tomlin: special education teacher and attorney specializing in rights of persons with disabilities. Besides advancing the rights of persons with disabilities through her careers, she has been a speaker in numerous forums throughout Alabama on disability-related topics and is a law professor at the Birmingham School of Law. In addition to a Masters degree in Special Education and a Juris Doctorate degree, Ginger has a Masters of Law degree in International Human Rights Law from the University of Nottingham in England. Her LLM dissertation entitled *Toward Defining the International Rights of Disabled Persons*, presented to the United Nations a proposal for the furtherance of the rights of disabled persons in all nations of the world.

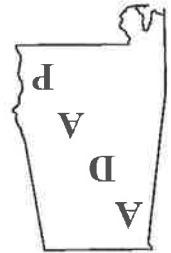
Rozalind Smith - Rozalind brings special talents to ADAP. She received her Bachelor of Science degree in Mechanical Engineering from Tennessee State University. She was employed by the General Motors Corporation as a test and development engineer for a number of years before returning to school where she earned her Juris Doctorate degree from Tulane University. Upon graduation she was a staff attorney with Legal Services in both Anniston and Birmingham. Upon leaving Legal Services she was Assistant General Counsel with the Birmingham Housing Authority; and thereafter was in private practice with a general civil law firm.

Rosemary Beck - Experience in computer technology, general office skills and a good personality make Rosemary ideal for the position of Data Technician. She attended Shelton State Community College where she studied data processing and general business. Rosemary worked at The University of Alabama and we are glad has returned to work at ADAP.

Special thanks to The University of Alabama School of Law students who work at ADAP and who contributed articles for *Airmail*: Glenda Bumpus, Leigh Davis, Honey Ferguson, Patrick Hackney, Ben Larkin and Chris Pankey.

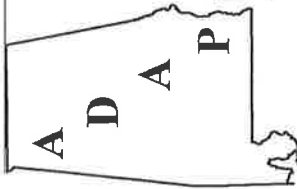
Alabama Disabilities Advocacy Program

*Designated by the Governor in Accordance with Public Laws 98-527 and 99-319
A Statewide Protection and Advocacy System on Behalf of Persons Labeled Developmentally Disabled or Mentally Ill*



Alabama Disabilities Advocacy Program
The University of Alabama
School of Law Clinical Programs
Box 870395
Tuscaloosa, AL 35487-0395

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THE UNIVERSITY OF ALABAMA SCHOOL OF LAW CLINICAL PROGRAMS

UPDATE ALABAMA'S EDUCATION

FUNDING LAWSUIT

By GINGER TOMLIN

On May 3, 1990, the Alabama Coalition for Equity (ACE), an Alabama nonprofit organization formed by various school boards throughout the State of Alabama to promote equitable public school funding within the state, filed suit before Judge Reese of the Circuit Court for Montgomery County to challenge the enforcement of the state's system of public education. The Plaintiffs named the Governor, the Alabama State Board of Education, the Lieutenant Governor, and the Speaker of the Alabama House of Representatives as Defendants in the case.

In Alabama, public school funding is directly related to the school district's property tax base and its efforts to raise and collect those taxes. According to ACE, this results in an unfair system in which the wealthiest school

a separate class action lawsuit, *Harper v. Hunt*, on behalf of "all children who are presently enrolled in public schools in Alabama that provide a less than minimally adequate education." The Circuit Court then allowed ADAP to represent a sub-class of schoolchildren aged three to twenty-one with identified disabilities within the *Harper* class. These two lawsuits, *ACE* and *Harper*, were consolidated.

Because they agreed that Alabama's public school system was unconstitutional, the Lieutenant Governor, Speaker of the House, and State Board of Education asked to be realigned

LICENSE PROBLEMS NEAR SOLUTION

By ANN MARSHALL AND BEN LARKIN

The Alabama Disabilities Advocacy Program (ADAP) and the Alabama Department of Public Safety (DPS) are nearing settlement of a federal lawsuit regarding discriminatory practices in driver licensing of people with disabilities in Alabama.

As the federal protection and advocacy program in the State of Alabama, ADAP had received complaints for several years concerning problems with driver license issuance. Widespread recognition of the problems was surfacing and people with disabilities, particularly those with a mental or a history of mental illness, began voicing concerns about their experiences with the onerous and over lengthy process of obtaining an Alabama driver's license.

After three years of unsuccessful negotiations and working with the support of various state advocacy groups, in 1993 ADAP filed a complaint with the U.S. Department

of Justice charging DPS with "blatantly discriminatory" practices in the licensing process that were illegal and in violation of the Americans with Disabilities Act (ADA).

ADAP had received complaints concerning the asking of medical history questions during the driver's license application process by the Alabama Department of Public Safety (DPS). Among the questions were inquiries regarding whether the applicant had been treated for a mental illness or a physical condition. If applicants answered "yes" to any of the licensing questions, in order to get a license they were forced to sign a release for his/her complete medical

history. Grievance and due process procedures were difficult to access or nonexistent. Sometimes, the applicant was asked to appear before a medical review board, which usually consisted of one state trooper with no medical background.

The complaint claimed that DPS' licensing practices violated Title II of the Americans with Disabilities Act. During November of the same year, one of the clients for whom the DOJ complaint was filed sued in the U.S. District Court in Montgomery. ADAP was allowed to intervene in this suit on behalf of people with disabilities in Alabama. The parties agreed to pursue settlement negotiations prior to trial, and the judge appointed an attorney to act as a facilitator. The judge adopted a plan, developed through negotiations, that would require DPS to change the procedures to receive an Alabama's driver's license.

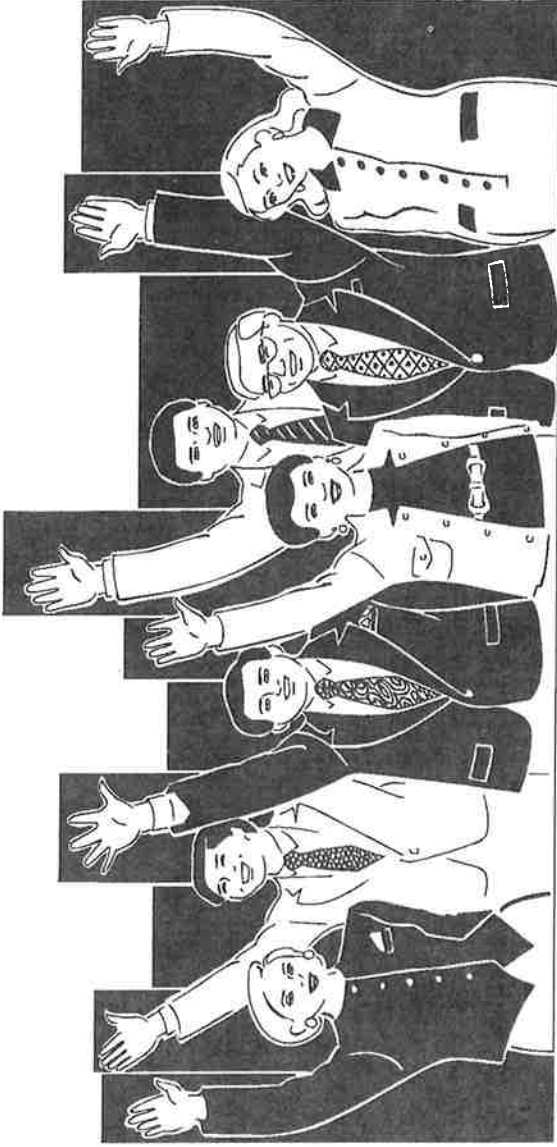
The parties agreed to consult with several committees made up of consumers, advocates and medical professionals in order to revise the licensing process. The committees and parties decided to focus on functional capabilities, such as mobility, decision-making processes and awareness, instead of specific disabilities. The group studied other states'

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PUBLIC MEETING ANNOUNCEMENT

Federal officials will conduct a site review of the **MENTAL ILLNESS DIVISION** of the Alabama Disabilities Advocacy Program (ADAP) May 12-14, 1997.

During the review, they will hold:

A PUBLIC MEETING

ON THE OPERATION AND ACTIVITIES OF THE PROGRAM

PROTECTION AND ADVOCACY FOR INDIVIDUALS WITH MENTAL ILLNESS (PAIMI)

OF THE ALABAMA DISABILITIES ADVOCACY PROGRAM

DATE: May 12, 1997

TIME: 2:30 P.M. - 4:00 P.M.

PLACE: Nichols Room
Paul W. Bryant Conference Center
240 Bryant Drive
Tuscaloosa, Alabama

The PAIMI Program protects and advocates the rights of individuals with mental illness and investigates incidents of abuse and neglect. Mental health consumers, family members or other interested parties

A CREDO FOR SUPPORT

Throughout history, people with physical and mental disabilities have been abandoned at birth, banished from society, used as court jesters, drowned and burned during the inquisition, gassed in Nazi Germany, and still continue to be segregated, institutionalized, tortured in the name of behavior management, abuse, raped, euthanized, and murdered.

Now, for the first time, people with disabilities are taking their rightful place as fully contributing citizens.

The danger is that we will respond with remediation and benevolence rather than equity and respect. And so, we offer you *A Credo for Support*.

Do Not see my disability as the problem. **RECOGNIZE** that my disability is an attribute.

Do Not see my disability as a deficit. It is you who see me as **DEVIANT** and **HELPLESS**.

Do Not try to fix me because I am not broken. **SUPPORT ME**. I can make my contribution to the community in my way.

Do Not see me as your client. I am your fellow citizen.

SEE ME AS YOUR NEIGHBOR. Remember, none of us can be self-sufficient.

Do Not try to modify my behaviour. **BE STILL & LISTEN**. What you define as inappropriate may be my attempt to communicate with you in the only way I can.

Do Not try to change me, you have no right. **HELP ME LEARN** what I want to know.

Do Not hide your uncertainty behind "professional": distance. **BE A PERSON WHO LISTENS**, and does not take my struggle away from me by trying to make it all better.

Do Not use theories and strategies on me. **BE WITH ME**. And when we struggle with each other, let that give rise to self-reflection.

Do Not try to control me. I have a right to my power as a person. What you call non-compliance or manipulation may actually be the only way I can **EXERT SOME CONTROL OVER MY LIFE**.

Do Not teach me to be obedient, submissive, and polite. I need to feel entitled to say **No** if I am to protect myself.

Do Not be charitable towards me. The last thing the world needs is another Jerry Lewis.

BE MY ALLY against those who exploit me for their own gratification.

Do Not try to be my friend. I deserve more than that. Get to know me. **WE MAY BECOME FRIENDS**.

Do Not help me, even if it does make you feel good. **ASK ME IF I NEED YOUR HELP**. Let me show you how you can best assist me.

Continued from page 2

board. In addition, DPS agreed to change the policies it uses regarding licensing applications and procedures for a licensing determination. Now, the application focuses on functional capabilities and asks if the applicant has suffered a loss of consciousness, an altered state of consciousness or a loss of bodily control in the last two years. In addition, an applicant has specific due process rights if his or her application is denied. Applicants can ask the medical

advisory board to review the case and request a due process hearing before an impartial hearing officer if the medical advisory board turns them down.

The legislation to change the stigmatizing language in the state's licensing statute passed. However, legislation changing the makeup of the medical advisory board and guaranteeing important rights provisions still requires passage.

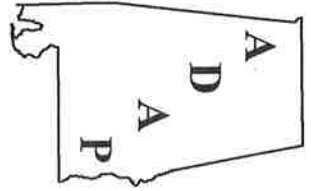
ONE STEP REMAINS . . .

in completing a proposed settlement, passage of House Bill 204. House Bill 204 includes important rights provisions for people with disabilities. It was introduced again in the 1997 legislative session. The bill contains important provisions regarding the right of people with disabilities to review their own records. This bill would clarify that persons affected by licensing decisions of the Alabama Department of Public Safety may obtain copies of reports or records used by the medical advisory board of DPS in making licensing decisions. *Plus*, the bill would increase the number of doctors serving on the Drivers License Medical Advisory Board from 9 to a minimum of 18. Contact your legislative delegates to express your opinion about rights to records and the composition of the medical advisory board which reviews driver license cases for DPS.

For general information and the name of your delegates contact the Alabama House of Representatives at 334/242-7600. For information from ADAP, contact Ann Marshall at 1-800-826-1675.

Alabama Disabilities Advocacy Program

*Designated by the Governor in Accordance with Public Laws 98-527 and 99-319
A Statewide Protection and Advocacy System on Behalf of Persons Labeled Developmentally Disabled or Mentally Ill*





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ALABAMA DISABILITIES ADVOCACY PROGRAM

Vol. 2 Issue 3 July 1997

THE UNIVERSITY OF ALABAMA SCHOOL OF LAW CLINICAL PROGRAMS



SPEAK UP!

July 22, 1997

3 - 5 p.m.

at a location near you.

SPEAK UP !

at a statewide interactive video conference!

TELL US IN 3 MINUTES OR LESS:

1. How are the rights of persons with disabilities violated?
2. In what ways are persons with disabilities discriminated against?
3. What are the barriers which prevent persons with disabilities from participating in the community to the same extent as persons without disabilities?
4. In what ways are persons with disabilities denied the opportunity to make informed decisions or have meaningful choices?

Your participation is vital to the development of ADAP's 3-5 Year Plan of Action.

YOU can help ADAP identify problem areas affecting persons with disabilities in the state of Alabama. After the **SPEAK UP!** public hearing on July 22, ADAP will assemble focus groups to help develop a 3-5 Year Plan of Action based on the concerns you identify at the public hearing. *What you need to do:* a) attend the video-conference; b) simultaneously hear the issues presented by others throughout the state; and c) tell us about your own experiences.

Six locations to choose from:

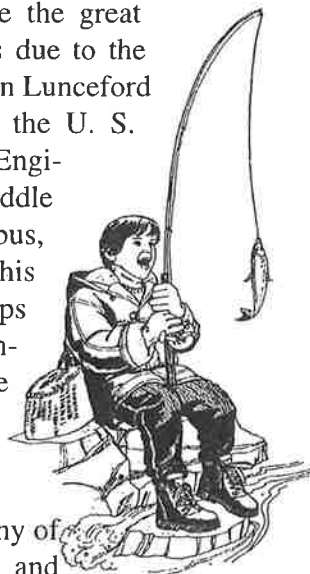
Muscle Shoals • Gadsden • Birmingham • Tuscaloosa • Montgomery • Atmore

See page 3 for directions to locations and meeting room facilities 

Hunters With Disabilities Return to the Great Outdoors

By ROZALIND T. SMITH

Thanks to the U.S Army Corps of Engineers, hunters with disabilities throughout the state once again have an opportunity to experience the great outdoors. This is due to the ingenuity of Calvin Lunceford and the staff of the U. S. Army Corps of Engineers of the Middle District in Columbus, Mississippi. This division of the corps operates and maintains the Tennessee Tombigbee Waterway which runs through west-central Alabama. Many of the campgrounds and parks along the Tenn-Tom Project have facilities for the disabled available, including design-



ated campsites, accessible fishing piers, boat ramps, picnic shelters and restrooms.

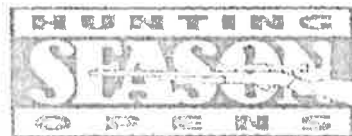
In 1988 when Lunceford saw that the deer population in the Riverside area was getting too large, he initiated the first annual hunt. Except for uncooperative weather at the first official hunt on November 19, 1988, each hunt has been a great success. There are two (2) campgrounds in the Tenn-Tom Project located in Alabama—Pickensville Campground located near Pickensville and Cochrane Campground near Aliceville. The Riverside Management Area, located between Aliceville and Gainesville, is currently the only location

designated for hunters with disabilities.

According to Doug Blount, Resource Manager for the division, the special hunts are held each year for one-half days on Wednesday and Saturday during the regular Alabama hunting season. Although the final decision has not yet been made, Blount expects the hunts to be during the morning in the upcoming season.

In the January 1995 issue of the *Tenn-Tom Sportsman* it was reported that “[t]he determination for eligibility as handicapped is by medical statement, V.A. or Social Security declaration of total disability.” However, since that time, due to overwhelming response, the criteria has been narrowed. It now includes only those persons whose disability limits or affects their ambulation. In fact, to become eligible to participate in the hunts, a person must first submit a certificate, completed by a physician, which verifies the disability.

Quite often the number of requests to participate greatly exceeds the 12 hunter per day limit. A drawing is held in order to give each person a fair chance of being selected to hunt. The hunter must be accompanied by a nondisabled hunter to assist them as needed. Park rangers and other volunteers are also present to give assistance.



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 Advocate Coordinator-Sr. ... Fay Wilson Hobbs

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LOCATIONS & DIRECTIONS

If you have any questions about locations or directions, please call ADAP's office
205/348-4928 • 800/826-1675 • TDD 205/348-9484

If an interpreter is needed, please contact us by July 17, 1997

Muscle Shoals - The Bevill Center for Advanced Environmental Technology The Bevill Center - Classroom 147

From Birmingham, take I-65 North until you reach Cullman. Take Exit 310--University of North Alabama Highway. Take Highway 157 West straight to Tuscumbia. At Tuscumbia, there will be a four-way intersection of Highway 72 and Highway 43. A Hardee's restaurant will be on your right. Continue straight through the intersection and go approximately 3/4 mile. The Bevill Center is on your right and is located on the South Campus of Northwest-Shoals Community College.

From Huntsville, take I-565 to Highway 20 to Decatur. Take Highway 20/ALT 72 to Tuscumbia. At Tuscumbia, you will come to the intersection of Highway 43 and Highway 72. A Hardee's restaurant will be on your right. Continue straight through the intersection and go approximately 3/4 mile. The Bevill Center is on your right and is located on the South Campus of Northwest-Shoals Community College.

Gadsden - Bevil Manufacturing Technology Center The Tom Bevill Center - Classroom 5

From Interstate 59, follow Interstate 759 about five miles to its end, and turn right onto George Wallace Drive. Take the first left from George Wallace Drive, and the Bevill Center will be the first building on the right.

Birmingham - UAB Education Building 924 - 19th Street South Room 153

[There is a possibility the meeting will be in UAB 15th Street Classroom Building, Room 139, which is across the street. Someone will be at Room 153 to direct you to the alternate location.]

From Interstate 65 Southbound, take the 4th Avenue South exit. Follow 4th Avenue to 14th Street; turn right. Follow 14th Street across University Boulevard. The Education Building will be on the right.

From Interstate 65 Northbound, take the 8th Avenue South exit, turn right onto University Boulevard, and follow University Boulevard to 14th Street. Turn right onto 14th Street, and the Education Building will be on the right.

Tuscaloosa - University of Alabama Martha Parham West, Cahaba Room (Room 124)

From Interstate 59, take Exit 73, McFarland Boulevard (Highway 82 North). Turn north and follow McFarland Boulevard approximately two miles to the University Boulevard Exit. Turn right onto University Boulevard, and turn left at the second traffic light onto Paul W. Bryant Drive. Follow Bryant Drive past Coleman Coliseum, across Hackberry Lane and Sixth Avenue, and turn right (across from the Alabama Bookstore) into the Martha Parham West parking lot. Enter through the front doors, and the Cahaba Room is on the right.

Continued on page 4

**Montgomery - State Department of Education Videoconferencing Center
Gordon Persons Building, Room 5313
50 North Ripley Street**

From East Alabama on I-85 South, exit I-85 S at the Union Street Exit. Turn right onto Union Street. Turn right onto Adams. Turn left onto Ripley Street. Turn right onto Monroe crossing Jackson to the Cramton Bowl Parking Lot. (See Crampton Bowl parking lot directions below to locate room.)

From Troy-Dothan on U.S. 231 North, cross Southern Boulevard at McGehee Road. Turn right onto Carter Hill Road. (Stay on it until the intersection with Vaughn Road and Zelda Road.) Merge right onto Ann Street into left lane. Turn left onto I-85 S and follow "From East Alabama on I-85 South" instructions. (See Crampton Bowl parking lot directions below to locate room.)

From the Cramton Bowl parking lot, go west on Monroe Street sidewalk. Cross Jackson Street at the traffic signal. Enter the Gordon Persons Building on the 2nd floor at the corner of Jackson and Monroe. Go around large pole and continue straight ahead through a glassed-in atrium until reaching the Rotunda. Take the elevator up to the 5th floor. After exiting the elevator, go to the left. Look for the painting of a large black dog. Go through brown, double-doors and walk down that hallway. Room 5313 is the last door on the left.

**Atmore - the Center for Telecommunications Technology
Atmore Campus of Jefferson Davis Community College**

Follow Interstate 65 South, to the Atmore/Uriah/Highway 21 Exit (#57). Turn right onto Highway 21. The campus is on the right immediately after you turn. The teleconference center is located in the Administration Building, which is the first building you will see. Enter the front doors, and follow the hallway to the left to the Compressed Video Room.

For additional information or applications, you may contact either Mr. Norman L. Connell, Project Manager for the Tennessee-Tombigbee Operations or Mr. Doug Blount, Resource Manager at (601) 327-2142.

Also, an application may be requested by writing:

**The Department of the Army
Mobile District,
Corps of Engineers
Columbus Area Office
3606 West Plymouth Road
Columbus, Mississippi**

Application to participate in the hunt must be received by the Corps of Engineers no later than October 30, 1997.

SPECIAL DAY FOR SPECIAL KIDS

In addition to the Tenn-Tom Project, two other Alabama projects are operated by the Corps of Engineers. They are the Alabama River Lakes Project and the Black Warrior & Tombigbee Lake Project.

The Alabama River Lakes Project spreads over eight counties from the point where the Tallapoosa and Coosa Rivers meet near Wetumpka to Claiborne Lake & Dam near Monroeville.

The Black Warrior & Tombigbee Lake Project has six lakes. The project runs south from Gainsville Lock & Dam on the Tombigbee River and south



from the Locust & Mulberry Forks on the Black Warrior River. The project has an annual "Special day for Special Kids" on Holt Lake near Peterson. This day is dedicated to children with cerebral palsy.

Park rangers take the children fishing and for boat rides.

For more information on the "Special Day for Special Kids," contact Lamar Haynes, Demopolis Site

Manager at the Demopolis Site Office, 384 Resource Management Drive, Demopolis, AL 36732 or call 334/289-3540.

Many thanks to Lou Ann Lackey at Carter's Lake for her help in gathering information for these articles.

e x p a n s i o n

ADAP adds staff

After a national search **SCOTT HUGHES** was appointed Director of the Law School Clinical Program and Assistant Professor of Law in March. Scott began work immediately. However, the actual move to Tuscaloosa for the Hughes family was in May. He, his wife Peggy, and their two daughters, Kira, age 6, and Torrie, age 15 months, are great additions to Tuscaloosa. Scott confirms that "in the short time we have been here we have fallen in love with Alabama. We have been welcomed with open arms and in a very short time feel at home."

The Law School's Clinical Program includes the Civil Law and Criminal Public Defender clinics as well as the Alabama Disabilities Advocacy Program and the Legal Counsel for the Elderly Program. In addition to his administrative and teaching duties at the Law School Clinic, Professor Hughes will teach Alternative Dispute Resolution.

Professor Hughes received his bachelor's degree from Arizona State University, a *cum laude* graduate of the Creighton University School of Law in 1976, and earned the LL.M. from Temple in 1995. Hughes worked for a number of years in private practice and with the U.S. Department of Justice.

In February 1997, **JEANA RILEY** was selected as an Advocate with ADAP in the Protection and Advocacy for Individuals with Mental Illness program. In 1993 Jeana had her first encounter with football, the "Alabama/Auburn thing," U of A traditions, and the Tuscaloosa community. She was hooked and wanted to stay. She began researching information about the University and its programs for advanced studies. This positive-thinking native Texan began looking for a place to live before finding a job.

She received her bachelors degree in psychology from Texas Lutheran University - Seguin, Texas. Riley has worked in the field of developmental disabilities for 17 years. Her experience includes Recreation Therapy, Behavior Therapy, Special Programs and Sheltered Workshops/Supported Employment. In addition to her work in Texas, Jeana has worked in Alabama as a case manager for a private agency in Birmingham who provided community living homes for persons with

developmental disabilities and as a Qualified Mental Retardation Professional (QMRP) consultant to St. Clair County ARC Adult Training Program.

ARGENEL WELLS has returned to ADAP as a Case Advocate for the Protection and Advocacy Developmental Disabilities (PADD) program. She received her bachelor's degree in psychology and her master's degree in social work from the University of Alabama.

Her previous experience at ADAP included Rural/Minority Advocate Coordinator, SSI Training, Legislative Advocacy Training, and PADD caseworker. Other work experience includes Coordinator of Social Services for Maude Whatley Community Health Center, Director of the University of Alabama's "Project HEART," a cardiovascular disease research project, and a research associate on the study of depression and hypertension.

Continued on page 6



ADAP meets Millennium with renewed commitment

Vicki Smith, Deputy Director of the Advocacy Training/Technical Assistance Center (ATTAC) of the National Association of Protection and Advocacy Systems (NAPAS), visited Tuscaloosa in June and conducted a workshop for all members of ADAP's staff. During the three-day workshop insight was provided as to mission, goals and priorities of protection and advocacy (P&A) agencies. Vicki reaffirmed that, "each of the federal P&A mandates defines persons who are eligible for services under their Act. Therefore, in order to receive P&A services from one P&A program, people with disabilities must also have an issue consistent with the priorities of that program.

"**Priorities** are those agency goals which will be assigned sufficient staff and other support as necessary to implement the work plan. The budget of the agency should reflect the resource requirements of each priority.

"**Priorities** are goals that measure incremental progress toward the desired end outcome of the program. Goals are statements that resolve an identified issue for a targeted service provider sometime in the future, without specifying degree of accomplishment.

"**Priorities** therefore articulate the desired intermediate outcomes of the program. They give direction and keep the agency focused on achieving its mission.

"**Case selection priorities** identify criteria that must be met in order to accept a case. Case selection criteria must be consistent and represent a refinement of eligibility requirements and **priorities** of a specific program. Not all **priorities** will have case selection criteria but all cases must be open and consistent with a program **priority**.

"**Impact statements** are the direct or indirect effects or consequences resulting from the achievement of program **priority**. An example of an impact is the comparison of actual program intermediate outcomes with estimates of the outcomes that would have occurred in the absence of the program."

When the year 2000 arrives ADAP will meet the challenges of the people to whom it is dedicated to serve.

Continued from page 5

FAY WILSON HOBBS will join the ADAP staff as a case advocate July 15. She received her B.S. degree in political science from Hollins College, the M.S.W. in case management at Florida State University, and the J.D. degree in 1997 from Washington & Lee University. Fay brings seven years of work experience. In Virginia she has served as a juvenile correctional officer, court and hotline advocate, rehabilitation counselor, social services director and adoption counselor.

Fay's husband, Steven H. Hobbs, is the Tom Bevell Chairholder of Law at The University. Professor Hobbs will teach Professional Responsibility and Family Law.

ADAP ATTORNEY MOVES TO NORTH CAROLINA

PAUL JOHNSON, former ADAP staff attorney, is currently working as an attorney advisor in Raleigh, NC. Paul works with federal administrative law judges who hear claims on appeal from the Social Security Administration.



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Welfare Reform

BY GLENDA BUMPUS



The Effects on Noncitizen Disability Benefits Eligibility

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 contains several provisions affecting the payment of Supplemental Security Income (SSI) benefits to current noncitizen beneficiaries and future applicants. The individuals who may receive SSI on or after August 22, 1996 are:

- ☆ Citizens or nationals of the U.S.
- ☆ Noncitizens receiving SSI prior to August 22, 1996 until their case is reviewed by the Social Security Administration (SSA).
- ☆ Noncitizens who have been lawfully admitted to the U.S. for permanent residence and have a total of 40 work credits.
- ☆ Certain noncitizens who are active duty members, or honorably discharged veterans, of the U.S. Armed Forces, their spouses, and unmarried dependent children.
- ☆ Certain other noncitizens may be eligible for five years after:
 - ⊕ Date of admission as refugee under Section 207 of the Immigration and Nationality Act (INA);
 - ⊕ Date granted asylum under Section 208 of the INA; or
 - ⊕ Date deportation is withheld under Section 243(h) of the INA.

The Congressional Budget Office (CBO) estimates that the new law will cut 81,000 noncitizens from the SSI rolls by October 1, 1997 and an additional 493,000 by October 1, 1998. The baseline caseload will be reduced by 501,000 by the end of fiscal year 2002. This caseload reduction could, by CBO estimates, result in Federal savings of \$375 million in fiscal 1997, \$2.4 billion in 1998, and \$2.7 billion in 2002. The savings over the six year period (1997-2002) could total \$13.275 billion.

Four-fifths of the lawful permanent residents currently receiving SSI benefits are at risk of losing their eligibility and less than 20 percent may retain eligibility because of the military/veteran or 40 work credits exceptions. This law will have a significant impact on several states, especially California where,

according to the SSA, 41 percent of all SSI recipients are noncitizens. In Alabama, however, only a small number of individuals is expected to be affected.

The SSA planned to notify SSI recipients who would be ineligible for benefits in February and March 1997. The SSA must then obtain evidence of their current citizenship/alien status—those who are ineligible noncitizens will have their benefits ended by the statutory deadline of September 1997. Individuals who are able to provide evidence of eligibility will continue to receive benefits. Examples of the kind of information needed by the SSA include:

- ☆ As proof of citizenship—a U.S. birth certificate, passport, or naturalization certificate;
- ☆ As proof of noncitizenship status—an unexpired Form I-94 or I-551 from the Immigration and Naturalization Service; or
- ☆ As proof of military service—U.S. military discharge papers (DD Form 214) showing honorable discharge not based on noncitizen status.

Individuals who do not meet the new criteria or who do not respond to requests to provide information on their citizenship/alien status will receive a notice of planned action before their benefits stop. The notice will tell recipients why their benefits are being stopped and advise them of their appeal rights. If an individual requests an appeal within 10 days of receipt of the notice, benefits will continue until there is a decision made at the initial level of appeal. Although benefit continuation applies only if the appeal is made within 10 days, the individual may appeal the determination at anytime within 60 days after receipt of notice.

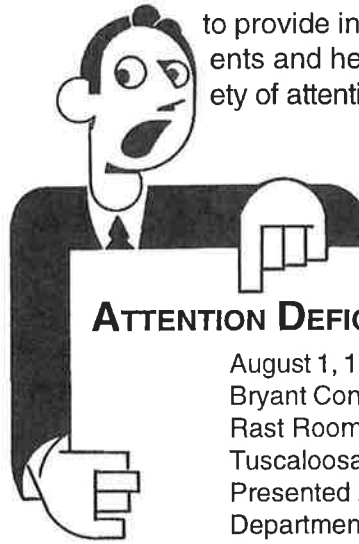
The decision to stop an individual's benefits will not be treated as a termination but rather a suspension of eligibility. The individual's eligibility may be reinstated if he or she becomes naturalized within 10 months of the decision. The reinstatement would be effective with the date of naturalization.

For more information concerning eligibility for SSI benefits, call the SSA toll-free at 1-800-870-3676 or your local SSA office.

SSI & MEDICAID UPDATE

As reported in the February edition of *Airmail*, Congress has significantly modified the SSI program for children and adults, including noncitizens and individuals who are disabled because of alcoholism or drug addiction. Advocacy groups are concerned that changes in SSI eligibility will lead to a loss of health insurance for thousands of individuals with disabilities. It is important to note, however, that an SSI recipient who has received a benefits termination notice is entitled to continue Medicaid coverage if he or she timely appeals the termination decision pursuant to the SSA appeals process.

Ginger Tomlin, Associate Director, Alabama Disabilities Advocacy Program, will be a speaker at a seminar on attention deficit disorder. The program is designed to provide information to educators, parents and health professionals on a variety of attention deficit disorder topics.



ATTENTION DEFICIT DISORDER SEMINAR

August 1, 1997 8:00 a.m. - 4:45 p.m.
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Presented by DCH
Department of Organizational
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SPEAK UP!
JULY 22, 1997



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A Statewide Protection and Advocacy System on Behalf of Persons Labeled Developmentally Disabled or Mentally Ill

July 1997 ADAP AIRMAIL



AIRMAIL

ALABAMA DISABILITIES ADVOCACY PROGRAM

Vol. 2 Issue 4 August 1997

THE UNIVERSITY OF ALABAMA SCHOOL OF LAW CLINICAL PROGRAMS

SPEAK UP!

EIGHTY-SEVEN PERSONS

SPOKE OUT!

BY GINGER TOMLIN

On July 22, 1997, ADAP held its first statewide **SPEAK UP!** teleconference aimed at providing a forum in which persons with disabilities or their advocates could voice their concerns about rights violations in Alabama.

Each speaker was asked to identify the problem areas for persons with disabilities in Alabama by answering the following questions:

- **How are the rights of persons with disabilities violated?**
- **In what ways are persons with disabilities discriminated against?**
- **What are the barriers which prevent persons with disabilities from participating in the community to the same extent as persons without disabilities?**
- **In what ways are persons with disabilities denied the opportunity to make informed decisions or have meaningful choices?**

A total of 87 persons participated at six locations around the state: Tuscaloosa, Birmingham, Atmore, Gadsden, Montgomery, and Muscle Shoals. In addition, twelve people who were not able to attend and/or speak sent written comments.

The **SPEAK UP!** teleconference was the first step toward ADAP's development of a 3-5 Year Plan of Action. New federal initiatives will require ADAP to achieve specific measurable outcomes to demonstrate that the federal funds which support the program are being used to bring about observable changes for persons with disabilities in Alabama. The next step toward the development of a 3-5 Year Plan will be statewide meetings of focus groups to consider the issues raised at the teleconference. These focus groups will identify the positive outcomes that need to be achieved in their focus areas and will list the barriers which prevent the achievement of these outcomes. When the barriers that ADAP can address are identified, ADAP's staff and advisory councils will write goals/objectives aimed at overcoming these barriers. From these goals/objectives, strategies will be developed by ADAP's staff and governing authority and Annual Priorities will be established. Achievement of Annual Priorities will lead to the accomplishment of the measurable outcomes set out in ADAP's 3-5 Year Plan of Action.

Continued on page 6

READING TO SEE

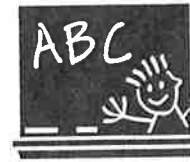
FROM COMIC STRIPS AND THE BEST GROCERY BARGAINS TO LOCAL OBITUARIES, MANY FEATURES OF A NEWSPAPER AREN'T EARTH SHATTERING NEWS LIKELY TO BE ON TELEVISION, BUT WOULD BE MISSED BY THOSE WHO LIKE TO SIT DOWN WITH A CUP OF COFFEE AND READ ABOUT WHAT'S GOING ON AROUND TOWN.

But for people who are visually impaired or for some reason cannot hold a newspaper or book, these special features would be unavailable except for radio reading services at public radio stations across the state.

Staffed by volunteer readers at WUAL-FM 91.5 in Tuscaloosa, WBHM-FM 90.3 in Birmingham, WLRH-FM 89.3 in Huntsville, WHIL-FM 91.3 in Mobile, and WTSU-FM 89.9 at Troy State University and in Montgomery, the services provide access to in-depth coverage of national and local

news, consumer information and entertainment highlights. Volunteers (more are always needed) read from a studio at the radio stations, which broadcast the program to homes via a special receiver distributed by the stations. The service is available throughout the coverage area of each station, although receivers are in limited supply.

Anyone who is unable to read because of a visual or physical disability is eligible for a receiver, which are distributed free of charge as they become available. Receivers cost about \$90 each, and donations are welcome.



BY HONEY FERGUSON

Volunteers also are needed. Some have their own weekly slots, while others are substitutes, called to read on occasion.

For information about obtaining a receiver or becoming a volunteer reader call 205/348-6644 in Tuscaloosa; 205/934-6576 in Birmingham; 205/895-9574 in Huntsville; 334/380-4699 in Mobile; or Don Sims at 1-800-441-7607 in Montgomery.

For those who aren't able to obtain a receiver, an alternative source of WBHM's reading service is available statewide to people with late-model TV sets. Most new TV sets have the Separate Audio Programming (SAP) channel as a standard feature. When SAP is activated and tuned to Alabama Public Television, the viewer will pick up APT's Descriptive Video Service, a new program designed to describe television programming for viewers with visual disabilities. Descriptive Video is available only for limited television programs, and when it is not available, those televisions with SAP tuned into Alabama Public Television will hear Birmingham's radio reading service, which operates 24 hours per day. □

ALABAMA DISABILITIES ADVOCACY PROGRAM (ADAP)

ADAP is a statewide, independent program established to protect the rights of persons with disabilities ranging from developmental disabilities, manifesting themselves in childhood, to mental illness.

Director of the Law Clinic and Assistant Professor of Law Scott Hughes
 Director, Alabama Disabilities Advocacy Program Reuben W. Cook
 Associate Director Ginger Tomlin

Staff Attorney.....Rozalind Smith	Case Advocate..... Ann Marshall
Information Specialist.....Segail I. Friedman	Case Advocate..... Jeana Riley
Advocate Coordinator..... David Prince	Case Advocate..... Arngene Wells
Case Advocate.....David W. Gamble	Administrative Secretary..... Janet Owens
Case Advocate..... Catherine D. Harper	Office Assistant.....Susan Tretter
Case Advocate.....Fay Wilson Hobbs	Data Technician.....Rosemary Beck

Airmail is published to provide information on issues and events of interest to people concerned about the rights of persons with disabilities. Organizations and individuals are encouraged to submit articles to be considered for publication. Inquiries may be sent to Segail I. Friedman, Information Specialist, at the address printed below.

Airmail is published by Alabama Disabilities Advocacy Program (ADAP), The University of Alabama School of Law Clinical Programs, Box 870395, Tuscaloosa, AL 35487-0395, (205)348-4928, FAX (205)348-3909, TDD (205)348-9484. e-mail: ADAP@law.ua.edu

Scott H. Hughes
Director of Clinical Education
& Assistant Professor

“Welcome to ADAP,
we’re glad to have
you on board!”

I have heard this phrase, or one just like it, so many times since I arrived a few months ago that I have been overwhelmed with the warmth and friendliness of the staff at ADAP! Before I could understand the complete workings of ADAP, I was certain that I was extremely lucky to inherit such a diverse, talented, and motivated staff.

You see, it is my happy task as the Director of Clinical Education and ADAP’s Governing Authority to try and focus this motivation and talent to better meet the needs of people with disabilities in Alabama. This job has already begun. As you can read elsewhere in this issue, ADAP is in the middle of a process to create a long-range strategic plan to develop case selection priorities. Since the needs of people with disabilities in the community are so numerous and our resources so finite, we must make crucial and critical choices about the types of cases we will take. We wish we could serve all the needs, but we can’t. We must then “aim” our resources where they will have the greatest impact.

Important to this process is the gathering of input from those who have experienced discrimination or abuse because of their disabilities and from those who facilitate and advocate on behalf of

people with disabilities. To do this, ADAP held a state-wide public hearing on Wednesday, July 22 from 3-5 p.m. It was held at six locations across the state using The University of Alabama Intercampus Interactive Telecommunications System (Whew, what a name!). Each speaker was given three minutes apiece to voice their concerns about the matters that need to be addressed around our state on behalf of people with disabilities. The presentations rotated through each of the locations and, as each person spoke, the other participants were able to see the speaker on closed circuit TV. With written input from others who were unable to attend, ADAP will begin the process of defining fair and intelligible criteria for selecting cases.

My congratulations go to Ginger Tomlin, Assistant Director of ADAP, and the other staffers for their work on this project: Reuben Cook, Roz Smith, Arngel Wells, Segail Friedman, and David Gamble. I am sure that I have left out others that deserve my thanks, for which I apologize.

I am greatly honored to have been named the Director of Clinical Education at The University of Alabama School of Law. There are many great things in ADAP’s future, not least of which is taking a giant step forward in our ability to protect the rights and interests of the citizens with disabilities of the State of Alabama. □

Upcoming Articles for the October 1997 Issue

- The Alabama Occupational Diploma
- Changes in Special Education Law: Part II
- The ADA and Psychiatric Disabilities

Changes in Special

Ginger Tomlin, JD. LLM.

On June 4, 1997, President Clinton signed into law the Individuals with Disabilities Education Act (IDEA) Amendments of 1997 (PL 105-17),

ending a two-year debate over changes to the 22-year-old statute which now mandates special services for children with disabilities from birth to twenty-one years of age. The final bill was developed in an unusual process -- by hammering out compromises in a workgroup composed of U.S. House and Senate leaders, Administration representatives, and members of disability and education groups. The need for collaboration to resolve the contentious elements of the statute reflect the complexities of special education during a time when the number of children eligible for IDEA services has increased from 4.8 million to 5.4 million nationally within the decade and federal funding has nearly reached the \$4 billion mark.

Some key provisions in the new IDEA address discipline of students with disabilities, components of the individualized education program (IEP) and the individualized family service plan (IFSP), identification of children for services, the use of IDEA funds in a regular classroom, involvement of parents and regular class teachers, services for incarcerated students with disabilities, transition services, and services for students who are enrolled in private schools by their parents. With some noted exceptions, all changes to the IDEA took effect on June 4, 1997. This month's article will discuss discipline and additional components of the IEP and IFSP. Next month's AIRMAIL will explain the other changes in the law.

Discipline

Prior to the 1997 Amendments, students with disabilities could be suspended or moved to a different placement for not more than 10 days, to the extent that such alternatives could be applied to a student without disabilities. Since 1994, schools could place a student with disabilities who brought a firearm to school in an alternative educational setting for up to 45 days.

For students who are already identified as IDEA eligible students and whose actions are determined to be a "manifestation" of their disability, the new IDEA

allows school districts to place these students in alternative settings for up to 45 days -- to the same extent that they would for non-disabled children -- if:

- (1) **the student brings a dangerous weapon to school or knowingly possesses, sells, or solicits illegal drugs at school or at a school function; or**
- (2) **the school can demonstrate to a due process hearing officer that the student's behavior is "substantially likely to result in injury to the child or others."**

The hearing officer must consider the appropriateness of the child's current placement and whether the school made reasonable efforts to address the behavior prior to the current incident of misbehavior. In both instances, the student must return to his original placement after the 45-day period unless the school district and the parents agree to another placement.

If the student's actions are determined to *not* be a manifestation of their disability, the school may employ the same disciplinary rules as are applied to non-disabled students. However, the student's educational services must continue.

Whether or not the student's misconduct is a manifestation of his disability, the student's IEP must continue to be implemented and the student must continue to participate in the general education curriculum while he is in the alternative setting. In addition, the school must provide services and modifications designed to address the student's misconduct.

If a student accused of misconduct had not yet been declared eligible for IDEA services, the student may invoke the law's procedural **and due process** protections -- including an expedited evaluation -- *if the school knew the student had a disability*. The school is considered to have known the student had a disability if the parent expressed concern in writing to the school staff; if the

Education Law: Part I

behavior or performance of the child demonstrated the need for IDEA services; or if the child's teacher or other school personnel "expressed concern" to the school's special education director.

The new law specifies that schools may report a crime committed by a student with disabilities to the law enforcement authorities. If the school takes this step, copies of the student's special education and disciplinary records must be transmitted to these authorities. There is, however, no indication in the new law of whether notification of the authorities triggers the 10- and 45-day placement change procedural safeguards.

The IEP and IFSP

The new rules on development of the IEP (the individualized plan for 3-21 year olds) take effect July 1, 1998. After that date, IEPs must include a statement of the present levels of academic performance, including how the child's disability affects his/her progress in the general education curriculum, and for preschool children how their disability affects the child's participation in appropriate activities. The IEP must also include:


- Measurable annual goals, including benchmarks or short-term objectives that enable the student to participate in the general curriculum and help meet any other education need resulting from his disability;
- Special education and related services to be provided;
- Program modifications or supports for school personnel that will be provided not only for the student to attain annual goals and be involved in the education curriculum, but also to participate in extracurricular and other nonacademic activities;
- Explanation of the extent, if any, to which the student will not participate in regular education classes;
- Projected date for the start of services and

their anticipated frequency, location, and duration;

- How the student's progress toward the annual goals will be measured;
- How the parents will be informed as often as parents of non-disabled students of their child's progress toward annual goals, and the extent to which that progress is sufficient to enable their child to achieve the goals by the end of the school year;
- At least one year before the child becomes an adult under state law, a statement that the child has been informed of the transfer of rights to him/her as an adult.

IEPs must be reviewed periodically, but not less than annually. When the IEP is reviewed, the IEP must be revised to address any lack of expected progress toward annual goals, the results of any reevaluation, any information provided by parents, the child's anticipated needs, and "other matters."

The IEP team must consider strategies including: behavioral interventions that may mitigate conduct that impedes the child's learning or that of others; the need for instruction in English; the child's communication needs; and the need for assistive technology. If the child is blind or visually impaired, the IEP must provide instruction in Braille unless the IEP team determines through an evaluation that Braille is inappropriate.

The new law requires some changes in the IFSP (the individualized plan for birth-2 year olds) by July 1, 1998. Under the old law, eligible children and families receive a multi-disciplinary assessment of the child's strengths and needs and identification of appropriate services and family directed assessments of supports and services needed to meet the child's developmental needs. Under the new IDEA, the IFSP must also include a statement about the natural environments in which early intervention services will be provided, including a justification for the services that will not be provided in the natural environment, such as the home. 

*NOTE: Next month's AIRMAIL will discuss identification of children for services, the use of IDEA funds in a regular classroom, involvement of parents and regular class teachers, services for incarcerated students with disabilities, transition services, and services for students who are enrolled in private schools by their parents.

PLANS FOR FOCUS GROUPS

ADAP has organized the issues presented at the teleconference under broad themes which emerged from the comments. These issues will provide direction for focus groups which will meet to address the following broad themes:

Independent Living Issues and Support Services, Employment Discrimination/Barriers to Employment, Transportation and Housing, Children's Issues, Quality of Life in Residential Placement

INDEPENDENT LIVING ISSUES AND SUPPORT SERVICES

- >Lack of respite care for severely disabled.
- >Lack of entitlements/services after age 21 for persons with developmental disabilities.
- >Service coordination problems between Medicaid and Vocational Rehabilitation.
- >Accessibility of public accommodations and governmental buildings.
- >Accessible parking—housing complexes, i.e. apartments.
- >Equal access to state and local government programs, i.e. interpreters for court, etc.
- >Access to assistive technology.
- >Alabama Medicaid refusal to pay for certain assistive technology devices which are covered under other states' Medicaid programs, i.e. augmentative communication devices.
- >Inadequate services for persons with disabilities over the age of 21.
- >Lack of mental health services for those with conditions caused or exacerbated by traumatic brain and/or spinal cord injuries.
- >Need for trained sign language interpreters.
- >Need sign language education for families of deaf persons.
- >Third party reimbursement for augmentative devices.
- >Enforcement of handicapped parking.
- >Medicare and Medicaid discrepancies in payment for drug coverage.
- >Need licensing for deaf interpreters
- >Lack of involvement of MR and other people with disabilities in recreational activities.
- >Discrimination against MR and other people with disabilities in recreational activities.
- >Arbitration and litigation to enforce ADA
- >Not enough involvement of adults with disabilities in community activities.
- >Lack of consumer choices and allowing them to make those choices.
- >Lack of services available: adult activity centers.
- >Rural areas need more assistance with supported living.
- >Access to MI services when a person is also diagnosed as MR.

- >Misunderstanding of a dual diagnosis.
- >Lack of community services causing persons to remain in institutions.
- >Need more community services for persons with disabilities.
- >Medicaid waiver program not serving anyone who is in a nursing home.
- >Lack of choice about community housing, group homes, transition homes, schools.
- >Representation at administrative hearings for housing evictions for persons with disabilities.
- >Outplacement from institutions more difficult because of lack of assisted living arrangements.
- >Loss of Medicare after 3 years for persons with transplants—medication unavailable.
- >The family of the institutionalized person should be involved when considering outplacement from an institution.
- >Medicaid waiver program makes it difficult to move to home of choice.
- >Agency choice takes precedence over consumer choice.
- >Medicare: can get medication for only two weeks at a time.
- >Involuntary commitment hearings not conducted according to law.
- >Need an amendment to the Social Security law that would exempt persons with disabilities and their employers as long as those persons do not draw Social Security benefits, yet allow persons with disabilities to draw Social Security benefits when need arises.
- >MR individuals or those with limited speech do not have assistance of an independent advocate (one not associated with service provider) to assist in decision making.
- >Doctors unwilling to accept Medicaid results in lack of proper medical care.
- >Need for hot water at rest areas and welcome centers for those who need to wash liners for tracheotomies.

Employment Discrimination and Barriers to Employment

- >Failure of Vocational Rehabilitation to serve persons with severe disabilities.
- >More inclusion for people with disabilities in community, especially employment.
- >Need more work opportunities for people with disabilities.
- >Arbitration and litigation to enforce ADA.
- >Discrimination in employment against persons with Mental Illness.
- >Employment discrimination against the deaf.
- >Conflict between desire to work and loss of funds.
- >More supports needed to make all persons with disabilities employable.
- >Long term supports needed for persons with disabilities in employment.
- >Supported employment being made available.

Transportation and Housing

- >Transportation is lacking or is not well-coordinated (especially in rural areas).

Continued on page 7

Continued from page 6

- >Lack of adequate transportation.
- >Lack of available decent housing.
- >Arbitration and litigation to enforce the ADA.
- >Lack of adequate housing for persons with dual diagnosis: discrimination issues.
- >Housing: Fair Housing Act, Section 504 violations.
- >Discrimination in housing.
- >Lack of choice about community housing, group homes, transition homes.
- >Violation of right to subsidized housing for persons with disabilities.
- >Transportation: to work, to participate in the community-- expensive and unavailable.
- >Lack of legal services for assisting persons with disabilities when being evicted from their homes.
- >Only affordable housing is in unsafe areas.

CHILDREN'S ISSUES

- >Lack of transitional services to assist in the move from school to meaningful adulthood.
- >Children with behavioral disabilities being punished for disability-related behaviors.
- >IDEA violations in public schools.
- >Access to assistive technology.
- >Alabama Medicaid refusal to pay for certain assistive technology devices which are covered under other states' Medicaid programs, i.e. augmentative communication devices.
- >Lack of enforcement procedures under Part H (now Part C) of the IDEA when Individualized Family Service Plan is not followed or is inappropriate. (Agencies "passing the buck.")
- >Early intervention service providers are not qualified.
- >Failure to provide appropriate education for children with disabilities, particularly more severely disabled: not a true continuum of services and not in the least restrictive environment.
- >Lack of mental health services for those with conditions caused or exacerbated by traumatic and/or spinal cord injuries.
- >Third party reimbursement for augmentative devices.
- >Educational issues relating to children with autism, particularly inclusion.
- >Lack of services for children with severe disabilities, especially respite care.
- >Lack of involvement of MR and other persons with disabilities in public and private recreational activities in the community.
- >Discrimination against MR and other people with disabilities in recreational activities.
- >Total inclusion for children with disabilities, starting with preschool--at their neighborhood school.
- >Children with disabilities in foster care lack advocates.
- >Higher standards of accountability in foster homes.
- >IEP not appropriately developed or implemented.
- >Availability of services for non-English speaking people (Spanish) with disabilities-- testing in schools, information/outreach to these persons.

- >Lack of community schools for persons with disabilities--to make true inclusion possible.
- >Lack of legal representation for IEP disputes--particularly where systemic change is needed, like inclusion.

QUALITY OF LIFE IN RESIDENTIAL PLACEMENTS

- >Lack of qualified and caring personal care workers.
- >Lack of monitoring/enforcement of community living facilities/programs results in abuse, neglect, exploitation, etc.
- >Need for stronger standards and monitoring of those standards in MR certified group homes.
- >Persons with MI having access to their monies when placed in the community.
- >More training in rights and communication for persons with MI in boarding homes and day treatment centers.
- >Where there are allegations of abuse--who to report to and who will investigate.
- >Higher standards of accountability in foster homes.
- >Lack of consumer choices and allowing consumers to make their own choices.
- >Choice about community housing, group homes, transition homes, schools.
- >Mistreatment and lack of choice for persons residing in nursing homes.
- >Agency choice takes precedence over consumer choice.
- >Problems with unlicensed boarding homes, jails, other settings.
- >Persons with disabilities not allowed to express their needs, nor demonstrate their abilities.
- >MR individuals or those with limited speech do not have assistance of an independent advocate (one not associated with a service provider) to assist in decision making.

Training

- >Need to educate regarding changes in SSI, determination/eligibility.
- >Need for comprehensive education rights training for parents, particularly surrogate parents of children in state custody.
- >Need more training for parents and teachers regarding inclusion of children with disabilities.
- >The difficulties of hard-of-hearing persons need to be better understood.
- >Communication with public officials.
- >Business community uninformed about persons with disabilities.
- >Stigma.
- >Appropriate training for emergency care, police officers to deal with the deaf.
- >Educating and self-empowering persons with MI.
- >More training and communication for persons with MI in boarding homes.

Continued on page 8

Continued from page 7

- >Need for training of police officers, setting policies/procedures regarding dealing with persons with MI.
- >Training in rights of persons with MI at boarding homes and day treatment centers.
- >Need for awareness of needs of deaf persons.
- >Parents whose children are going into the school system need more education.
- >Informing consumers and family members of their rights, procedures for filing complaints.
- >Training for parents and teachers of children with disabilities.
- >Misunderstanding of dual diagnosis.
- >Lack of information, particularly over the Internet.
- >Availability of services for non-English speaking people (Spanish) with disabilities -- testing in schools, information/outreach to these persons.
- >Public misunderstanding of persons with disabilities.
- >Persons with disabilities not allowed to express their needs, nor demonstrate their abilities.
- >Inadequate information available regarding benefits of agencies, e.g. Social Security, Medicaid, and Mental Health.
- >Need for education of legislators regarding children with behavioral disabilities.

FOCUS GROUP MEMBERS NEEDED

If you are interested in participating in one of the focus groups, please contact the ADAP staff member listed as Chairperson before August 20th

INDEPENDENT LIVING ISSUES/SUPPORT SERVICES

Chairperson Ann Marshall

EMPLOYMENT DISCRIMINATION/BARRIERS TO EMPLOYMENT

Chairperson Ann Marshall

TRANSPORTATION AND HOUSING

Chairperson David Gamble

CHILDREN'S ISSUES

Chairperson Arngene Wells

QUALITY OF LIFE IN RESIDENTIAL PLACEMENTS

Chairperson David Prince

CALL 1-800-826-1675 or 205-348-4928 or

TDD 205-348-9484 TODAY

DEADLINE FOR JOINING FOCUS GROUPS — AUGUST 20TH

Alabama Disabilities Advocacy Program
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School of Law Clinical Programs
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A Statewide Protection and Advocacy System on Behalf of Persons Labeled Developmentally Disabled or Mentally Ill

August 1997 ADAP AIRMAIL



AIRMAIL

ALABAMA DISABILITIES ADVOCACY PROGRAM

Vol. 2 Issue 5 October 1997

THE UNIVERSITY OF ALABAMA SCHOOL OF LAW CLINICAL PROGRAMS

EEOC'S COMMENTS ON THE ADA AND PSYCHIATRIC DISORDERS

BY ROZALIND SMITH, J.D.

On March 23, 1997, the Equal Employment Opportunity Commission (EEOC or the Commission) released its enforcement guidelines on the Americans with Disabilities Act (ADA) and Psychiatric Disorders. The following is a summary of the guidelines on how the Commission applies the ADA to Psychiatric Disorders.

According to the EEOC, between July 26, 1992 and September 30, 1996, approximately 12.7% of all ADA related charges filed with the EEOC were based on emotional or psychiatric impairment. The charges included claims based on anxiety disorders, depression, bipolar disorder (manic depression), schizophrenia, and other psychiatric impairments. These charges raise a wide array of legal issues such as, whether an individual has a psychiatric disability as defined by the ADA or whether an employer may ask about an individual's psychiatric disability. The EEOC therefore, designed its guidance to:

facilitate the full enforcement of the ADA with respect to individuals alleging employment discrimination based on psychiatric disability;
respond to questions and concerns expressed by individuals with psychiatric disabilities regarding the ADA; and
answer questions posed by employers about how principles of ADA analysis apply in the context of psychiatric disabilities.

Because the Commission received so many questions about how it applied the ADA in the context of psychiatric disorders, the Commission has focused its guidance on the first prong of the ADA's definition of "disability," that is, "a physical or mental impairment that substantially limits one or more of the major life activities of [an] individual."

WHAT IS A MENTAL IMPAIRMENT UNDER THE ADA — According to the EEOC, the ADA definition of "mental impairment" should include:

[a]ny mental or psychological disorder, such as ... emotional or mental illness, including, major depression, bipolar disorder, anxiety disorders, including panic disorder, obsessive compulsive disorder, and post-traumatic stress disorder, schizophrenia, and personality disorders.

The Commission also suggests the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders fourth edition, (DSM-IV) as a good tool for identifying psychiatric disorders. However, it should be remembered that the ADA remains the controlling authority for defining psychiatric disabilities. In fact, the DSM-IV covers some conditions which are expressly excluded from the ADA definition of disability, e.g. current use of illegal drugs. The DSM-IV also includes conditions that are not mental disorders but for which treatment is sought, e.g. problems with a spouse or children. The Commission, however, is very clear that "to rise to the level of a 'disability', an impairment must substantially limit one or more major life activities of the individual." The Commission further states that traits or behaviors, in and of themselves, are not mental impairments, even though some traits such as stress may be shown to relate to a mental or physical impairment.

MAJOR LIFE ACTIVITIES—

An impairment must “substantially limit one or more major life activities” to be viewed as a disability under the ADA. Mental impairments which limit major life activities must be determined on a case by case basis. For some people, mental impairments restrict the major life activities of thinking, learning, concentrating, interacting with others, caring for oneself, speaking, performing manual tasks, sleeping, or working. However, work should be analyzed only if no other major life activity is substantially limited by the impairment. It should be noted that this is arguably the first time that the Commission, in any guidance or regulation, has recognized sleep as a major life activity.

SUBSTANTIAL LIMITATION—An impairment is a disability only if it “substantially

limits” a major life activity. “Substantial limitation” must be evaluated in terms of the severity of the limitation and the length of the time it restricts a major life activity. How the impairment affects the individual is the standard in determining substantial limitation. EEOC investigators consider relevant evidence to include descriptions of the individual’s typical level of functioning at home, at work, and in other settings, as well as evidence showing that the functional limitations are linked to the individual’s impairment.

An impairment is sufficiently severe to substantially limit a major life activity if it **prevents an individual from performing a major life activity or significantly restricts the condition, manner, or duration under which an individual can perform a major life activity as compared with the average**

person in the general population. The corrective effects of medications or other mitigating measures may not be considered in deciding if an impairment is so severe as to substantially limit a major life activity. To “substantially limit,” the impairment must last for more than several months and significantly restrict the performance of one or more major life activities during that time. Chronic, episodic disorders may also be considered if they are “substantially limiting when active or have a high likelihood of recurrence in substantially limiting forms.”

DISCLOSURE OF DISABILITY—A significant number of questions have been raised concerning whether and when an individual is required to disclose a psychological disability to his/her employer under the ADA. The employer may not ask

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ALABAMA DISABILITIES ADVOCACY PROGRAM (ADAP)

ADAP is a statewide, independent program established to protect the rights of persons with disabilities ranging from developmental disabilities, manifesting themselves in childhood, to mental illness.

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Case AdvocateFay Wilson Hobbs
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Airmail is published to provide information on issues and events of interest to people concerned about the rights of persons with disabilities. Organizations and individuals are encouraged to submit articles to be considered for publication. Inquiries may be sent to Segail I. Friedman, Information Specialist, at the address printed below.

Airmail is published by Alabama Disabilities Advocacy Program (ADAP), The University of Alabama School of Law Clinical Programs, Box 870395, Tuscaloosa, AL 35487-0395, (205)348-4928, FAX (205)348-3909, TDD (205)348-9484. e-mail: ADAP@law.ua.edu

Welcome Aboard

ADAP welcomes six law students to its clinical program. The program helps students to learn about public interest work in a legal setting. Welcome Aboard **Rachel Webber • Jackie Trimm • Jonathan Sapp • Clint Hyde • Patton Hahn • Cati Diamond.**

Rachel was a special education teacher for three years before coming to law school. “Although

Scott H. Hughes
Director of Clinical Education
& Assistant Professor

I would like to take a moment to introduce Ann Marshall. You say, "Isn't Ann already on the staff at ADAP?" Yes, but Ann came very close to taking a position with a sister P&A in another state. Fortunately for us and, I believe, fortunately for our constituency, Ann has decided to stay at ADAP. There is another reason why I wanted to talk about Ann. In order to take fuller advantage of her skills, she will now coordinate outreach, public education, and staff training.

For several years as the staffer responsible for "intake," Ann received from five to ten calls everyday from individuals seeking help for themselves, their children, patients, clients, wards, or just friends. These calls covered the entire range of needs of the disabled community. This is a time consuming, pressure-filled, and stress-laden job. Even so, Ann performed with dedication, composure, and empathy.

Under the guidance of ADAP's Associate Director Ginger Tomlin, Ann's responsibilities at ADAP have been crafted to take advantage of the immense knowledge she has developed in her years of service to individuals with disabilities in Alabama. In addition to casework with clients who have mental illness and

developmental disabilities, Ann is providing consumer, public, and staff training on disability issues. She also coordinates outreach activities between ADAP and state agencies and advocacy, consumer, and family groups.

Her efforts on behalf of disabled individuals go far beyond the confines of ADAP. She has been a member of the Boards of Directors of both the Alabama and Tuscaloosa Mental Health Associations. Ann has been active on the regional and national scene, as well. She currently sits on the Board of Directors for the National Association of Protection and Advocacy Systems (NAPAS) and was Chair of the Training Committee. She is also a Project Advisory Council Member and an Evaluation and Quality Assurance Committee Member for NAPAS. She is also a former member of the Board of Directors of the National Association of Rights, Protection, and Advocacy (NARPA). Ann frequently serves as a consultant to the Center for Mental Health Services in Washington, DC. Finally, she has received the prestigious National Volunteer of the Year award from the National Mental Health Association.

To give you some indication as to the immense responsibilities Ann had as intake staffer, her duties have been divided among all the case advocates! Instead of just a welcome to ADAP, I am sure you will join me in extending Ann a hearty, "Welcome back, we're glad to have you here!"

Scott Hughes

I loved teaching I thought that more could be done to help the children in my classroom. Therefore, I decided to attend law school so that I could learn more about how I could use the law to benefit children with disabilities. When I graduate from Law School I would like to practice in the areas of child, disability, and education law.

Cati is from Guntersville and is a second year law student. She is an alumnae of the University of Southern Mississippi where she received her BA in English, with emphasis in Shakespearean studies.

Clint is a graduate of The University, and is a third year law school student, and calls Evergreen home. In the rare times when he is not working or studying, Clint tries to catch up on his sleep by taking afternoon naps.

Jackie is a second year law student. She received her BA from The University in 1996 with a major in psychology. She is interested in practicing employment law upon graduation. Jackie is originally from Fayette County.

Jonathan grew up in Trussville. Although always fascinated by the practice of law, upon entering The University he began pursuing a career

in medicine. He soon realized that his interests and talents were much more suited to the practice of law. "My decision to become a lawyer was finalized after spending the summer of 1995 as a Congressional intern in the office of one of Alabama's United States senators.

Patton is from Birmingham. He graduated from Colgate University in 1994 and spent the next two years in Washington, D.C. on the staff of Senator Richard Shelby. Patton plans to practice law in Alabama.

Changes in Special

Ginger Tomlin, JD. LL.M.

Besides bringing about changes in provisions regarding discipline, IEPs, and IFSPs (topics discussed in last month's article), the 1997 amendments to the Individuals with Disabilities Education Act (IDEA) addressed identification of children for services, the use of IDEA funds in a regular classroom, the involvement of parents and regular class teachers, services for incarcerated students with disabilities, transition services, and services for students who are enrolled in private school by their parents.

Identification of Children for Services

Categories

Prior to the amendments, states could serve three to five-year-old children under a broad "developmental delay" category. The new law permits states and local school districts to extend their use of the developmental delay category to children through the age of nine, in an attempt to avoid mislabeling children at an early age.

Because the term has some derogatory connotation, "serious emotional disturbances" as a category has been eliminated. In its place, the amendments list "emotional disturbances."

Unidentified Children and Misconduct

Under the old law children who had not previously been declared eligible for IDEA services were granted no protection if accused of misconduct. Now, a child who has violated rules or the code of conduct but is not, at that time, identified for IDEA services, may invoke the IDEA's procedural and due process protections if the school knew the child had a disability. The school is considered to have known the child had a disability if:

- the child's parent expressed concern in writing (unless the parent is illiterate or has a disability that prevents this requirement) to school personnel that the child is in need of special education and related services; or
- if the behavior or performance of the child demonstrates a need for such services; or
- the parent of the child has requested an evaluation of the child for IDEA services; or
- the teacher of the child or other school personnel has expressed concern about the behavior or performance of the child to the director of special education of the school district or to other school personnel.

If a request for an evaluation is made during the time period in which the child is subjected to disciplinary measures,

the evaluation must be conducted in an expedited manner. Pending the results of the evaluation, the child must remain in the educational placement determined by the school authorities.

The Use of IDEA Funds in Regular Classroom

Prior to the amendments, the U.S. Department of Education required schools to monitor the amount of time special educators spent in regular classes to ensure that IDEA-funded teachers did not provide incidental instruction to non-disabled students. Under the new law, special educators may provide incidental benefits to non-disabled students while serving students with disabilities according to their individualized education programs (IEPs).

Involvement of Parents and Regular Class Teachers

Eligibility Teams

The multi-disciplinary team that formerly determined eligibility for IDEA services has been replaced by a team of qualified professionals and the child's parent. Any information provided by the parent and the parent's input will be considered, along with the school's and other service providers' evaluations and observations, in making the eligibility determination. The parents must also be included in all groups that make subsequent placement decisions.

Records

A copy of the evaluation report and the documentation of determination of eligibility must be given to the parent. Additionally, the parents are to have access to all records, not just "relevant" records. This new provision means that schools may not withhold any records from parents regarding the identification, evaluation, placement or the special education and related services provided for their child.

Notification

The new law changed some parental notification requirements. Parents must be informed of the progress of their children as often as the parents of non-disabled children. Also, when schools notify parents of evaluation, identification or placement issues, schools are required to include information on sources, such as nonprofit agencies, that could assist parents in understanding their child's rights.

Education Law: Part II

IEP Team

Under the old law the IEP team consisted of the parents, special education teacher, an administrator (LEA representative), and, when appropriate, the child. The amendments require a new member of the team -- a regular class teacher of the child if the child will receive services in regular classes. The law states that the regular class teacher will assist in the development of all aspects of the IEP, including the determination of appropriate positive behavioral interventions and strategies and the determination of supplementary aids and services, program modifications, and support for school personnel.

Services for Incarcerated Students with Disabilities

While the U.S. Department of Education had interpreted the IDEA to require states to serve children imprisoned as adults, the new law provides that where a child is incarcerated as an adult, the IEP team may modify the child's IEP or placement if the state demonstrates a security or compelling corrections interest that cannot otherwise be accommodated. A state may choose to transfer the responsibility for educating juveniles with disabilities in adult prisons from local school agencies to others deemed appropriate by the governor. States are now exempt from having to serve 18 to 21-year-olds who were not identified as disabled prior to their incarceration. States also do not have to provide transition services to IDEA-eligible inmates if they will be released from prison after their 22nd birthday.

Transition Services

Beginning at age 14, and updated annually, a statement of transition service needs must be included in the child's IEP. The statement must focus on the child's courses of study such as a vocational education program or an advanced placement class. Prior to the amendments, the school was required to start writing transition plans and providing transition services at age 16. The change in the law does not affect when transition services must be delivered (age 16 or younger, if determined appropriate by the IEP team.)

The new law adds related services to the list of services considered "transition services." The term "related services" means transportation, and such developmental, corrective, and other supportive services as may be required to assist a child with a disability to benefit from special education.

Under Part C (formerly Part H) of the IDEA, the Infants and Toddlers section, the new law attempts to ensure a smooth

transition for toddlers receiving early intervention services to preschool. Now, the lead state agency responsible for the toddler's early intervention services must notify the school district wherein the toddler resides that the child will shortly reach the age of eligibility for IDEA preschool services. Additionally, the lead state agency must convene a conference among the lead agency, the family, and the school district at least 90 days (and at the discretion of all such parties, up to 6 months) before the toddler reaches the age of three, to discuss the services the child may receive and establish a transition plan. Where the toddler is not eligible for IDEA services at the age of three, the parties are to discuss other appropriate services the toddler may receive. These specific provisions replace the earlier ones which merely required states to "set policies and procedures" for the transition to preschool programs.

Services for Unilaterally Enrolled Private School Students

Prior to the amendments, the IDEA did not specify how IDEA funds should be used to serve children who, by parental choice, attend private schools. The new law states that the amount expended for the provision of services to these private school children "shall be equal to a proportionate amount of Federal funds" made available to the school district. Another new provision states that IDEA services may be provided at the private, including parochial, schools, "to the extent consistent with law."

New Regulations

Many questions remain regarding the meaning of many of these new provisions. The U.S. Department of Education is in the process of drafting regulations which will provide further guidance in understanding the new law. The draft regulations should be completed and distributed by the end of September, 1997. Following an appropriate period of time for comments, the Department expects to finalize the rules in the Spring of 1998.

CHECK OUT IDEA'S REAUTHORIZATION ON-LINE!

1. Log onto <http://thomas.loc.gov/>
2. Click on "Public Laws by Law Number"
3. Click on Public Laws in Number Sequence -- 105-1-105-19
4. Click on #17 (H.R. 5)

The Alabama Occupational Diploma

Questions & Answers

ADAP extends its appreciation to the Alabama State Department of Education for this article.

Q What is the Alabama Occupational Diploma?

A A new high school program of study is available in which students with disabilities may earn an *Alabama Occupational Diploma*. Through this program, students are taught functional academics and personal, social, vocational, and independent living skills that prepare them for successful young adult roles and responsibilities. Alabama's other graduation options open to students with disabilities are the *Alabama High School Diploma*, the *Alabama High School Diploma with Advanced Academic Endorsement*, and the *Graduation Certificate*.

Q Who is eligible for the Occupational Diploma?

A The Alabama Occupational Diploma is available only to students with disabilities, as defined by the Individuals with Disabilities Education Act (Public Law 105-17). The academic curriculum standards required to earn this diploma are such that primarily students with mild to moderate disabilities are the most appropriate candidates. Students with more severe disabilities, however, can participate in and benefit from the curriculum even though they may not be able to meet its academic or career/technical education requirements. Students in this case would earn a Graduation Certificate. It is the responsibility of the Individualized Education Program (IEP) committee to determine whether the student is participating in the program as defined by his or her IEP, or participating as defined by the content standards required for the issuance of this diploma.

Q What are the requirements to earn an Alabama Occupational Diploma?

A In order to earn this diploma, the student must meet the program's *academic curriculum* requirements, *work training curriculum* requirements, and complete the *occupational diploma portfolio*.

Academic Curriculum: A total of 24 academic credits are required for graduation. These requirements include (1) four credits each in English (*Employment English*), mathematics (*Job Skills Math*), science (*Life Skills Science*), and social studies (*Career Preparation*), (2) two credits in career/technical education, (3) one credit in cooperative career/technical education, (4) one credit in physical education, (5) one-half credit each in health education and fine arts, and (6) three elective credits. The content standards presented through the Alabama Occupational Diploma core subjects may be accomplished through any of the least restrictive environments that the students' IEP committee feels is most appropriate. Therefore, students may earn these credits in both general and special education classes if the content standards for the Occupational Diploma are included.

Work Training Curriculum: There are three major phases to the work training curriculum which align with the student's tenth, eleventh, and twelfth grade years. The requirements for this portion of the curriculum are as follows:

Tenth grade: The first phase of the curriculum includes school-based work assessment and/or community-based job shadowing. The student must have successful experience and acceptable work performance evaluations in three to six school-based

work assessment experiences, six to eight job shadowing experiences, or a combination of the above for a minimum total of 30 hours. This requirement can be waived in lieu of a minimum of 30 hours of other work experiences if agreed upon by the IEP committee. The substituted work experience must be documented and noted in the student's occupational portfolio.

Eleventh grade: The second phase of the curriculum occurs during the student's eleventh grade year in which he or she must have successful experience and acceptable work performance evaluations in two to four community-based work training experiences with a minimum of 30 hours. This requirement may be waived if the student successfully completes a planned sequence of courses (from career/technical education course of study) in their chosen career/technical education field that designates the student as a "program completer."

Twelfth grade: The final phase of the curriculum is the paid competitive employment experience. This experience, which must consist of a minimum of 540 successful hours, is provided through a joint effort of the transition job coach and the cooperative career/technical education program.

Occupational Diploma Portfolio: In order to graduate, each student must have a completed occupational portfolio which reflects satisfactory performance in meeting both the academic and work-training curriculum requirements. As each content standard is taught in the core curriculum courses, items of evidence representative of the student's level of acquisition of the content standard must be collected by that teacher and documented in the portfolio. Items of evidence must be included in the student's portfolio for all content standards. A single item of evidence may be used to document more than one content

standard and in more than one core curriculum course. The final portfolio is reviewed for completion during the "exit" IEP meeting. Prior to graduation and the issuing of the Alabama Occupational Diploma, the student's principal (or designee) must approve the student's portfolio, which means that items of evidence have been included for all content areas.

Q When may students select the Alabama Occupational Diploma Program?


A The decision regarding choosing a program of study leading to one of the exit documents available must be made by the student's IEP committee during the student's ninth grade year or the IEP developed prior to the student's sixteenth birthday, whichever comes first. Program and diploma option decision are to be reviewed annually by the IEP committee and revisions made as necessary. The offering of the Alabama Occupational Diploma does not restrict the right of a student with a disability solely to this diploma option. Students with disabilities may also still pursue the Alabama High School Diploma or the Graduation Certificate.

Students in the occupational program of study may not count credits earned in this program toward the Alabama High School Diploma, except as electives. Students with disabilities working toward the Alabama High School Diploma may switch, if determined appropriate by the IEP committee, to the Alabama Occupational Diploma program at any time with the earned credits counting toward the Alabama Occupational Diploma. For these students, additional coursework and/or community-based work training experience may be required. The IEP committee will make decisions on a case-by-case basis regarding the number of community-based work training experiences in which the student participates. This decision should be based on the student's individual needs.

questions likely to elicit information concerning an individual's disability before making an offer of employment. An employer may ask for disability-related information about psychiatric disability only in the following limited circumstances:

- When an applicant requests reasonable accommodation during the hiring process, an employer may ask for documentation about the individual's disability if the need for accommodation is not obvious. However, if the applicant withdraws the request for accommodation, the employer may not insist on obtaining documentation and must cease its inquiry.
- During a post offer, pre-employment medical examination or inquiry if it is required of everyone in the same job category; and
- During employment, when a disability related inquiry or medical examination of an employee is job related and consistent with business necessity.

REASONABLE ACCOMMODATIONS—The employer is required to provide reasonable accommodations for known physical or mental limitations of a qualified individual unless the employer can show that to do so would impose an undue hardship.

To receive full text of the Commission's comments you may contact the EEOC at (205) 731-1359 or you may dial toll-free 1-800-669-4000, or by accessing this internet site: <http://www.eec.gov/publicat.html> then click on "ASCII." 

December topics to include:

- ✿ Update on ADAP's 1998 Goals
- ✿ Job Transfer: A Reasonable Accommodation?
- ✿ ADA Title III: Accessibility Requirements for Service Providers
- ✿ Treatment of Inmates with AIDS
- ✿ Special Education: Practical Ways to Advocate for Your Child
- ✿ Dogs Help Detect Onset of Epileptic Seizures

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AIRMAIL

ALABAMA DISABILITIES ADVOCACY PROGRAM Vol. 2 Issue 6 December 1997

THE UNIVERSITY OF ALABAMA SCHOOL OF LAW CLINICAL PROGRAMS

ADA Title III:

Cati Diamond, JD Candidate

Title III of the Americans with Disabilities Act prohibits discrimination on the basis of disability in places of public accommodation. Public accommodations are places within the community that citizens frequent on a daily basis. These accommodations include such places as restaurants, doctors' offices, movie theaters, retail sales establishments, museums, or other places of recreation (an exhaustive list of public accommodations can be found in Section 36.104 of the Department of Justice's Regulation at 28 C.F.R. pt. 36, or on the Internet at <http://gopher.usdoj.gov/crt/ada/ada-home.html>). No matter what the facility, all goods and services must be provided in an integrated manner and in an environment free from barriers.

Title III, along with the other provisions of the ADA, contains landmark legislation that extends civil rights protections to individuals with disabilities. Thus, it is always helpful to brush up on the requirements that public accommodations must meet to comply with Title III in order to see how this provision benefits the disabled community, as well as the facilities relying on disabled patrons. Determining ADA compliance is not completely an elementary process, but there are some things one can look for to make sure that the local businesses and facilities they frequent are up to par with the requirements of Title III.

The regulations governing Title III require that architectural and communication barriers that are structural be removed in public areas of existing fa-

Accessibility Requirements for Public Accommodations

cilities (facilities erected prior to January 26, 1992) when their removal is readily achievable. Title III further requires that all facilities under new construction fully comply. There are four priorities recommended by the Title III regulations for accessibility. Listed below are these priorities. Each priority is accompanied by questions to ponder when visiting places of public accommodation.

Priority 1: Accessible approach and entrance

Is there a route of travel that does not require the use of stairs?

Is the route of travel stable, firm and slip-resistant?

Is the entrance door wide enough to permit the entrance of a wheelchair?

Priority 2: Access to goods and services

Can a disabled customer obtain materials or services without assistance?

Are there spaces for wheelchair seating?

Can a disabled customer freely access all areas of the facility?

Priority 3: Access to restrooms

If restrooms are available to the public, is at least one restroom fully accessible?

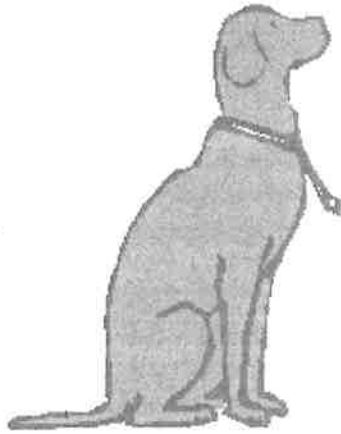
Are restroom doors wide enough to permit the entrance of a wheelchair?

In an accessible stall, are there grab bars behind and on the side wall nearest the toilet?

Priority 4: Any other measures necessary

If provided for the public, are telephones or drinking fountains accessible to people with disabilities?

See ADA on page 9



Epileptics and Service Dogs

The Americans with Disabilities Act provides protection to many disabled people who use guide dogs or service animals for assistance.

The Americans with Disabilities Act provides accessibility in a method other than modifications to buildings. It also provides protection to many people with disabilities who use guide dogs or service animals for assistance. While most people think service animals are used exclusively by blind people, this is not true. Service animals are now being used by others with disabilities, including people with epilepsy.

The use of service animals by epileptics serves two valuable purposes. First the service animal is

used to assist the owner during a seizure as a seizure response dog. The dog can recognize when a seizure is occurring and will remove objects from the hands of the owner. This action prevents the owner from injuring him/herself with the object they are holding. A service animal can also call for help during a seizure by pressing an automatic phone calling device, which is connected to emergency personnel and alerts them to the condition of their owner. Dogs are able to find assistance when the

owner is away from home and can lead a disoriented person home.

According to Ruby Joyce in a story in the *Decatur (Illinois) Herald & Review*, service animals can also detect the seizure. Alert seizure dogs are service dogs which can detect a seizure before it occurs. They are trained to respond to their owner's seizure. Their detection ability develops from the relationship with their owner. The detection of a seizure is a mystery of science. It is known that dogs are able to warn their owners about future seizures, but no known reason exists for how the dogs are able to detect the seizures. Seizures are caused by a "brief disturbance in the brain's electrochemical activity." See (www.epinet.org.au/efvunder.html). One theory regarding the dog's detection ability is that they are able to smell a change in the chemicals of the brain.

According to accounts in *The Birmingham News*, *Decatur (Illinois) Herald & Review*, and the Internet, the lives of people with epilepsy can be enhanced by these helpful animals. The detection of seizures is not limited to dogs. Accounts on the

ALABAMA DISABILITIES ADVOCACY PROGRAM (ADAP)

ADAP is a statewide, independent program established to protect the rights of persons with disabilities ranging from developmental disabilities, manifesting themselves in childhood, to mental illness.

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See **Dogs** on page 8

Scott H. Hughes
Director of Clinical Education
& Assistant Professor

GREAT NEWS!

Two top notch attorneys joining ADAP staff to boost trial staff.

Ms. BARBARA LAWRENCE will come to ADAP as a staff attorney in December. Barbara received her B.S. (double major in quantitative methods and management) and M.B.A. from The University of Alabama at Birmingham. She received her J.D. from The University of Alabama School of Law in 1992 and has spent five years working in Tuscaloosa for the Legal Services Corporation of Alabama. Along with a deep commitment to public interest work, she brings extensive courtroom experience to ADAP. While at Legal Services she handled many cases dealing with disabilities and the Social Security Administration and has often worked with individuals with disabilities. Her case load was diverse, complex and heavy. Barbara will be an excellent addition to our staff.

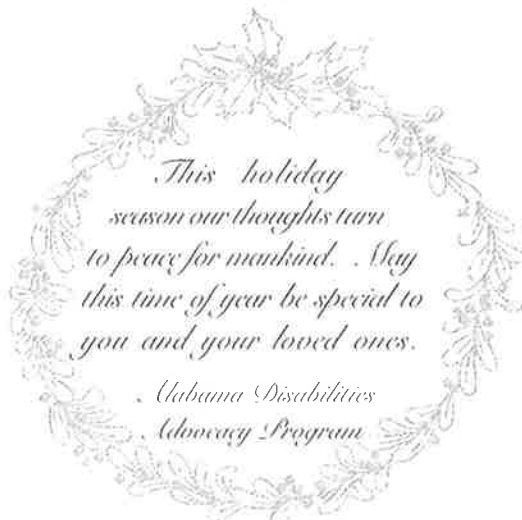
Then, in January, **Mr. JAMES TUCKER** will assume control of all litigation for ADAP as Assistant Program Director. James has 11 years

of legal experience, all of which is applicable to the work he will be doing for ADAP. He worked for more than five years at Florida Rural Legal Services where he served as a staff attorney, director of civil rights litigation, and director of the AIDS Advocacy Project. James left Legal Services to return to his home state of Alabama where he has spent more than five years with the American Civil Liberties Union in Montgomery. At the ACLU he has served as a special projects counsel with a primary emphasis on statewide child welfare and foster care reform. He has also assisted in the development and coordination of a general civil liberties and civil rights litigation docket. In addition to his work at the ACLU, James has consulted with ADAP on many similar issues over the last five years.

James received a B.S. in Business Administration, *Cum Laude*, from The University of Alabama in

1982 and J. D. Degree from Emory University in 1986. He has extensive experience in disability issues similar to the cases that we work on here at ADAP. His experience includes cases in the areas of civil rights litigation, employment discrimination, voting rights, education, housing, prisoners' rights, and mental health. His legal work has produced some important decisions and, as a result, he is recognized as an expert in the state in many areas of disability law — child welfare and foster care reform, persons with mental illness and mental retardation in institutions, and community services.

It is extremely rare for ADAP to have the opportunity to retain two such talented individuals as James Tucker and Barbara Lawrence, both of whom have extensive litigation experience and a deep commitment to work in public interest law. I am sure that you will join me in extending them a warm welcome to ADAP!



THE LONG & SHORT OF SERVICES & SUPPORTS

Long term services and supports are changing the future for people with developmental disabilities. Although several state residential institutions for persons with developmental disabilities still exist in Alabama, as well as in most other states, the field has seen many changes over the past 25 years. The de-institutionalization movement has given way to community integration and is now moving toward what many call "Self-Determination" or participant-driven systems and approaches.

Prior to 1970, service options for persons with developmental disabilities were limited. They either lived in large, state institutions or remained at home with their families where they had access to little or no services. In the early 1970's two major changes occurred in the disabilities field. There were discoveries of appalling conditions in institutions across the nation and an overall change occurred in society with regard to how persons with developmental disabilities were viewed.

As a result of these changes, the number of individuals living in institutions has decreased dramatically. Concomitantly, the number of persons with developmental disabilities living in the community has increased. Typically, those living in the community live in group homes and receive services from the private sector. They ride stereotypic vans, attend special day programs and, in some cases, attend segregated schools. In many cases, individuals with developmental disabilities live in the community but don't participate in it.

It is not enough to simply live in the community. There is a growing philosophy which emphasizes that persons with developmental disabili-

ties should (and want to) live their lives just like anyone else. In correlation with this philosophy is the support and commitment toward ensuring that individuals with developmental disabilities have opportunities to participate in and contribute to all aspects of their community—to attend regular schools, participate in regular classes, have real jobs, live in

real homes and to utilize ordinary and traditional means of transportation.

Although the field is still struggling, it is making progress in moving from a system that is directed by professionals to a system that is

participant driven. In other words, people with developmental disabilities are given the opportunity to control their own lives and play a greater role in planning their futures.

This philosophy is not all that new. In more recent years, many types of programs and services have employed participant-driven approaches. Supported employment and supported living arrangements are examples of this approach. However, personal assistance and family support programs are perhaps some of the latest and more innovative participant-driven approaches.

Personal assistance programs included support in services such as personal care, managing household affairs and assisting with mobility. In consumer-directed personal assistance programs, the participant has a choice and control in determining the supports they need, in hiring (and firing) their personal assistant and in training, supervising and paying their assistant.

**It is not enough
to simply live in
the community.**

See Long on page 5

Family support programs offer a wide variety of services and supports that provide families with greater control and flexibility in the supports they choose. In states where vouchers or cash payments are offered, families can purchase whatever is necessary to help them meet their caregiving needs.

People with developmental disabilities deserve to control . . . their supports and their services.

This is just the "tip of the iceberg." With managed care looming around the corner,

the opportunity exists to develop a system that emphasizes the values of self-determination and full community participation for people with developmental disabilities. Over the past year, several

states have worked diligently toward developing a participant-driven system. Georgia, Rhode Island and New Hampshire are just a few.

The Robert Wood Johnson Foundation has funded a few projects to explore alternative means of financing and delivering supports. In 1993, the Foundation funded a pilot project in New Hampshire which tested a participant-driven service delivery approach and in 1996 the Foundation provided grants to several states that wanted to change their policies and practices. Here, at home in Alabama, People First (in conjunction with People First of Tennessee and Georgia) received a small grant which will enable them to go out into their communities and educate the public about self-determination.

Change is always resisted and it's often tough to let go of the past. But **all** people with disabilities deserve and are entitled to real control over their lives, their supports and their services.

It is Here !!

WWW.LAW.UA.EDU/ADAP

CHECK US OUT

ADAP's WEB PAGE & RESOURCE DATABASE

On December 1, 1997, ADAP launched its Web Page loaded with information about the agency and its services, as well as a resource database containing over 900 links providing services, information sources, agency listings, etc. to assist persons with disabilities. Visit us on-line at:

WWW.LAW.UA.EDU/ADAP

WEB PAGE

WWW.LAW.UA.EDU/ADAP

HOW TO ADVOCATE FOR YOUR



What does it mean to “advocate” for someone? According to Webster’s Third New International Dictionary, the word is derived from the Latin word “advocatus,” which literally means “to call to one’s aid.” In its modern usage, the word simply means, “to plead the cause of another.” Given this basic definition, it would seem that a child’s most natural advocates are his or her parents. Other advocates with expertise in specific areas may be called upon to assist when needed, but the primary advocacy role belongs to the parent(s).

How, then, do parents effectively advocate for their exceptional child in the area of special education? This article addresses practical strategies which may be employed by parents on behalf of their children, in light of the basic provisions of the Individuals with Disabilities Education Act (IDEA).

What is the IDEA?

Enacted in 1990, the IDEA, which amended Public Law 94-142 (the Education for All Handicapped Children’s Act) requires that states provide free and appropriate education services to disabled children and youths between the ages of three and twenty-one, regardless to the nature or severity of their disability. Under Part C of the IDEA, formerly Part H, most states, including Alabama, also provide early intervention services for children from birth to three years of age.

It is advantageous for children and their parents that the language of IDEA is clear with regard to the child’s entitlements to special education and related services. Following are suggested advocacy approaches for parents which may enable children to truly benefit from the provisions of the law.

Know Your Child

The basis for any successful advocacy effort is a thorough knowledge of your child’s needs. Close ob-

servations during the first few months of life can be very helpful in the detection of developmental delays and other problems which may exist. For older children, it is important to listen to what your child has to say about his school experience and to observe his performance carefully. To the extent that he or she is able to tell you, find out what goes on in the classroom and how well your child feels that he or she is learning. The child usually knows before anyone else when there is a problem, but may need help in articulating exactly what the difficulty may be.

Become Familiar with the Law

In order to appropriate the provisions of IDEA for your child, it is important that you have knowledge about the law and its application. Information regarding IDEA is available from a number of sources, including your local library, the Internet, and a number of advocacy organizations, including ADAP. ADAP publishes a handbook entitled, “Special Education in Alabama: A Right, Not A Favor,” which includes a guide to understanding the basic provisions of IDEA and how to apply them. There is no cost for this publication, when requested in small quantities.

Become Familiar With Available Resources

If your observations and/or discussions with your child lead you to suspect that a problem exists, you may wish to talk with your family physician or other professionals about obtaining a private evaluation to determine the exact nature of the problem. For infants and toddlers, another option is the Child Find Division of Alabama’s Early Intervention System, which provides evaluations that can be used to confirm or rule out suspected impairments. Child Find can be reached at 1-800-543-3098. For preschoolers between three and five years old, as well as children who are already enrolled in school, you may request that the **Local Education Agency (LEA)**, or local school sys-

CHILD IN SPECIAL EDUCATION

tem, conduct the evaluation to determine whether special intervention is needed. This service is provided at no cost to the parent.

Actively Participate in Your Child's Evaluation

When referring a child for special education services, the request should be made in writing. Because the law provides timeframes within which responsible agencies, including school systems, must respond to your request, all correspondence should be dated and copied for your personal files. Timely intervention is important, and being able to document the date of your request is sometimes necessary. Following this referral, the school will arrange for professionals with expertise in the area of the suspected disability to assess your child and render an opinion, at no charge to you. The results of any prior evaluations you may have obtained must also be considered.

Following the evaluation, a report of the findings should be made available to the parent, which will improve their ability to participate in the eligibility determination process, as well as in program development and placement decisions. IDEA now provides that parents are to be fully participating members of the Multi-Disciplinary Eligibility Determination Committee (MEDC). This means that you have a voice in the determination of your child's need for special services.

Take an Active Role in IEP Development and Placement Decisions

Once eligibility has been established, the next task is the determination of the types of special instruction and services which are necessary for your child to reach his or her maximum educational potential. The document which describes the child's specialized program is called an **Individualized Education Program (IEP)**. The parents and the child, when appropriate,

are key members of the IEP committee, whose job is to develop the IEP each year. Parents may elect to also include other advocates and individuals who have expertise related to their child's disability.

Keep in mind that the plan you and the other IEP committee members will develop should reflect an *Individualized* Education Program. Individualized means it should be tailored to fit your child's needs in much the same way as an article of clothing is tailored to fit the person who will wear it. The outfit that fits your child's classmate perfectly may be completely wrong for your child, even though both children may share the same disabling condition. If you are presented with an IEP that was developed prior to the meeting, you may respectfully decline to sign it and request that the committee, of which you are a part, consider your child's needs *as a team*. This team approach to IEP development is one of the very basic provisions of the law. Even though school personnel may be quite knowledgeable about your child's needs and the services to be provided, they do not have the benefit of the parental perspective without your input.

After all, the primary responsibility for the child's welfare, including his or her education, rests with you.



During the IEP meeting, be sure that your child's *current* strengths and weaknesses are considered in the development of goals and objectives for the coming year. It may be helpful to prepare a list of things you feel your child needs to focus on prior to meeting with other IEP team members. Be sure that consideration is given to **related services** which would enable your child to benefit educationally, including such things as speech and physical therapy, aides, special transportation and special equipment. If your child is at least 14 years old, the IEP should contain a statement of transition service needs. Transition goals implemented will

See *Advocate* on page 10

Internet tell of cats having the ability to detect the onset of seizures, too. Knowledge of when a seizure will occur allows people with epilepsy to prepare for the seizure and place themselves in a safe position so that the seizure will not cause any injury. This gives people with epilepsy a new independence by allowing the person to overcome fears they may have about being alone.

Under the ADA, service animals are protected from being excluded from public accommodations. Problems can be encountered by epileptics when businesses do not recognize that they have a disability and a need for a service animal. The business may attempt to exclude the animal because it believes it is a pet rather than a service animal. Public accommodations, under Title III of the ADA, can not exclude service animals even if it has a "no animals" or "no pets" policy. To exclude service animals, the public accommodation would have to demonstrate the service animal "would fundamentally alter the nature of the [business] goods, services, facilities, privileges, advantages, or accommodations." 42 U.S.C.A. § 12182 (b) (2) (A) (ii). Under the ADA, a service animal for any disabled person would have the protection of this

federal law. No distinction is made for the type of disability in the ADA. Under Alabama state law, however, only a blind or hearing impaired person with a service animal would be protected.

Case law concerning service animals supports the owner's right

Problems can be encountered by epileptics when businesses do not recognize that they have a disability and a need for a service animal.

to use them while visiting public accommodations. Safety concerns will not always exclude the service animal even when federal statutes such as the Food, Drug, and Cosmetics Act intend to keep animals out of a specific area. The safety concern has to be real and not speculative in order to allow an exclusion policy to be upheld. When a policy against animals is being challenged, the plaintiff will have to show a modification to the policy is reasonable. If the modification is reasonable, then the restriction on service animals is discriminatory without a showing by the public accommodation that the modification would fundamentally alter the nature of the public accommodation or the modification would actually jeopardize its safety. Johnson v. Gambrinus Company/Spoetzl Brewery 116 F.3d 1052.

The use of service animals is protected under the ADA for

any disabled person using an animal trained for assisting people with a particular disability. Stereotypically, the use of service animals is limited to blind people, but today more people are using trained service animals to perform many accommodating tasks. These service animals are given the same protection as the more common seeing-eye dog. Service animals provide valuable assistance to people with epilepsy. They assist once a seizure has begun by providing protection and finding assistance. More importantly, they have the ability to detect oncoming seizures, which can give the owner more independence than they previously had, thereby enhancing their enjoyment of life.

Additional information contact:

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Birmingham, AL 35209
205/870-1146
800/950-6662 (in AL)**

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Executive Director
Epilepsy Chapter of Mobile and Gulf Coast
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Suite 201
Mobile, AL 36604
334/432-0970
800/626-1582 (in AL)**

Litigation Continues Over Rights of HIV-positive Inmates

Earlier this month, the Eleventh Circuit issued its latest ruling on the rights of HIV-positive inmates in Alabama in Onishea v. Hopper, 1997 U.S. App. LEXIS30286. Some readers may recognize this opinion as the second round of the 1991 case, Harris v. Thigpen, 941 F.2d 1495 (11th Cir.). Harris was brought under section 504 of the Rehabilitation Act of 1973 by HIV-positive inmates who claimed that their exclusion from participation in most of the state prison system's educational, vocational, rehabilitative, religious,

and recreational programs violated the Act. The Eleventh Circuit remanded Harris to the district court for additional findings and clarification. The district court ruled in favor of the Department of Corrections, but failed to comply with the Eleventh Circuit's mandates. Lydia Onishea, who filed suite in 1987, was substituted for Harris upon Harris' death, and Onishea was heard by the Eleventh Circuit on appeal from the district court's second ruling.

In Alabama, each inmate is tested for HIV when he or she enters the prison system. Male prisoners who test positive are incarcerated at the Limestone Correctional Facility, and women are incarcerated at the Julia Tutwiler Prison for women. All HIV-positive inmates are held in a separate unit, and are either not allowed to participate in many of the programs available to general population inmates, or are provided with segregated programming. The inmates claim that this type of exclusion and/or segregation is in violation of their rights under section 504.

Section 504 states, "No otherwise qualified individual with a disability . . .

shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program . . . receiving federal financial assistance. . . ." The inmates had to establish four elements to show a prima facie case:

1. that they are "handicapped";
2. that they are "otherwise qualified";
3. that they are excluded solely because of the handicap; and
4. that the programs receive federal funds.

The only disputed element in Onishea on appeal was whether the inmates were "otherwise qualified" (Harris had established that HIV is a "handicap" and the other two requirements were not disputed).

In vacating the district court's second judgment in this matter, and ordering that the case on remand be assigned to a different district judge for further proceedings, the Eleventh Circuit seems to be taking affirmative steps in ensuring some degree of fairness in this highly debated topic's resolution in the court system. The conflict, however, seems far from over.

ADA - Continued from page 1

These questions are just examples of how Title III compliance can be determined. Most existing facilities can make reasonable alterations to remove these barriers for the benefit of patrons with disabilities quite easily and with little expense. The ADA regulations provide information to public accommodations on how to ensure that their facilities are in compliance. The Federal Government has even pro-

vided a tax incentive to facilities making alterations to meet applicable ADA compliance requirements (see section 190 of the Internal Revenue Code).

Making the proprietor of a business or facility aware of the existence of a possible barrier is the first step that should be taken when one thinks there may be a violation of Title III. One might then want to consult a local disabilities advocacy program or a private attorney if necessary.

at age 16 (or sooner where appropriate) help prepare him or her for life after high school.

Once the document is drafted, review it carefully. Don't be pressured to sign a document that: a) doesn't include what you believe your child needs, or b) doesn't reflect the things that were specifically agreed upon in the meeting. If you are satisfied with the IEP, you should obtain a copy of the

signed document at the close of the meeting. If you are unable to reach an agreement with the school, you may wish to consider **mediation** or a **due process hearing** before an impartial hearing officer.

Once the IEP is developed, then a determination must be made as to the best educational environment or **placement** in which to implement the program. The IDEA provides that students should be educated to the maximum extent possible with non-disabled peers. This concept is referred to as **Least Restrictive Environment (LRE)**. Only after the IEP is developed should a decision regarding placement be made. The parents have a voice in this decision, as well.

Get To Know Your Child's Teacher(s)

Once your child's placement is decided, it is important to become acquainted with his or her

teacher(s). As the primary agent of the school system, the teacher is responsible for implementing the instructional provisions of the IEP, while other professionals may be called upon to provide related services. The teacher's function is to assist in the parents' effort to promote the educational develop-

All of the effort to evaluate and appropriately place and serve your child will be in vain if the program doesn't work.

ment of the child. He or she extends the learning process which begins in the home. Parents, children and teachers can work together as a team, where the family develops a meaningful life goal for the child, and the teacher provides the special knowledge and expertise that are necessary for the child to reach the goal that has been established.

Monitor Your Child's Progress

All of the effort to evaluate and appropriately place and serve your child will be in vain if the program doesn't work. Monitoring your child's progress is as important as all the other steps in the process. Assisting your child with homework assignments can provide an opportunity for you to make a first-hand assessment of the extent to which the components of the IEP are being implemented, and the

degree of progress your child is making. In addition, you should meet regularly with your child's teachers and pay attention to progress notes and report cards, looking closely for indicators of progress on the specific objectives which were listed in the IEP. If your child is not making progress, check

to see if there are factors *other than* the program itself which may be interfering with the learning process.

If you feel strongly that another evaluation is warranted, you may request it, even if it is not yet time for the mandatory three-year re-evaluation. If you determine that the program, in part or as a whole, is not working, you may request that the IEP committee reconvene to discuss the situation and determine what modifications to the program may be necessary. This can be done *at any time*, not just annually.

Recent changes in the IDEA have underscored the conviction that parental involvement is essential to the success of any education program. It is vitally important that parents take an active role in guiding and being thoroughly involved in the process by which their child receives his or her formal education.

For additional information regarding the specific provisions of the IDEA, call or write ADAP.

Update on ADAP's Five Year Plan of Action

Ginger Tomlin, Associate Director

After receiving training from the National Association of Protection and Advocacy Systems (NAPAS), ADAP and its advisory councils began in June 1997 a nationally recommended process for the setting of goals and priorities by Protection and Advocacy programs (P&As) such as ADAP. The following summarizes the process and notes the dates at which each step was completed or will be completed:

- Step 1:** Inform advisory councils and solicit their suggestions regarding the process of goal-setting. (June-July 1997)
- Step 2:** Hold statewide teleconference aimed at providing a forum in which persons with disabilities or their advocates can voice their concerns about rights violations in Alabama. (July 22, 1997)
- Step 3:** Publish list of concerns voiced during the teleconference and solicit public involvement in focus groups to consider the concerns in depth. (August 1997)
- Step 4:** Hold series of focus group meetings to consider the concerns in depth, identify the positive outcomes that need to be achieved and the barriers which prevent the achievement of these outcomes. (August-September, 1997)
- Step 5:** NAPAS training of staff and advisory councils in how to use the information provided by the focus groups to write measurable goals and develop strategies to meet those goals. (September 25-26, 1997)
- Step 6:** Develop goals aimed at overcoming the major barriers identified by the focus groups along with strategies designed to meet the goals. Estimate the cost of achieving each goal. (October-November, 1997)
- Step 7:** Meet with advisory councils to solicit their recommendations regarding the selection of program priorities for the FY1998 from the goals listed in ADAP's Five Year Plan of Action. (December 1997)
- Step 8:** Solicit the approval of the governing authority, The University of Alabama Law School, of the Five Year Plan of Action and the priorities selected for FY1998. (December 1997)
- Step 9:** Publish ADAP's Five Year Plan of Action and the FY1998 Priorities. (December 1997).

ADAP is now working diligently to complete Step 6. ADAP's staff is finalizing the strategies for meeting the following goals in the next 5 years:¹

1. Public transportation will be an accessible and reliable option for persons with disabilities. [PAIR, PAIMI, PADD]
2. Persons with disabilities will be free from architectural barriers in housing. [PAIR, PADD]
3. Persons with disabilities will be free from attitudinal barriers in housing. [PAIR, PADD]
4. Persons with disabilities will be provided reasonable accommodations in employment. [PAIR, PADD]
5. Employers will use employment application forms which comply with the Americans with Disabilities Act (ADA). [PAIR, PADD]
6. Licensing application forms utilized by state agencies will comply with the Americans with Disabilities Act (ADA). [PAIR, PADD]
7. Persons with disabilities will be afforded reasonable testing accommodations on licensing examinations. [PAIR, PADD]
8. State agencies will facilitate/fund services in the least restrictive environment for persons with disabilities. [PAIR, PAIMI, PADD]
9. Persons with disabilities will control their own finances. [PAIR, PAIMI, PADD]
10. Persons with disabilities will have program access to state/local governmental services.
11. Persons with disabilities will be free of physical abuse and life-threatening neglect. [PAIMI, PADD]
12. Children with disabilities will be provided an educational placement in schools which can afford the maximum amount of interaction with non-disabled peers in the least restrictive environment. [PADD]

13. Individualized education programs (IEPs) for children with disabilities will include meaningful life goals. [PADD]
14. Children with disabilities will be provided appropriate transitional services. [PADD]
15. Persons with disabilities will be informed and empowered to make meaningful choices and to advocate on their own behalf for the guarantee of their rights. [PAIR, PAIMI, PADD]
16. Persons with disabilities, their family members and advocates, as well as the general public, will be aware of the rights of persons with disabilities and the resources/information sources available to facilitate a higher quality of life for persons with disabilities. [PAIR, PAIMI, PADD]
17. Persons with disabilities, their family members and advocates will be aware of timely issues relating to the rights of persons with disabilities and empowered to advocate on their own behalf in regard to these issues. [PAIR, PAIMI, PADD]

Keep in mind that ADAP aims to fulfill these goals within the next 5 years. ADAP will not work on all 17 goals every year. In September of each year, the staff and governing authority, with the assistance of ADAP's advisory councils, will select annual priorities from among these goals. Only the goals selected to be annual priorities will be pursued during that fiscal year.² (Note: The selection of annual priorities is behind schedule this year because of the length of time dedicated to the development of the Five Year Plan of Action.)

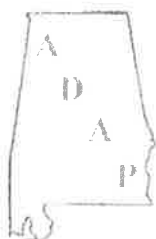
The Five Year Plan of Action, strategies, and annual priorities for Fiscal Year 1998 (through September, 1998) will be published in January 1997 on ADAP's web site and will appear in the February edition of the AIRMAIL. A copy of the Plan may also be requested by contacting ADAP after January 2, 1998.

Endnotes:

1. Individuals eligible under the program named after each goal statement, within brackets, may receive ADAP's individual advocacy services if the individual needs assistance with a situation which meets all of ADAP's case selection criteria.
2. PAAT program goals are not included since criteria for services under the PAAT program may vary according to ADAP's yearly contract with STAR (State Technology Access and Response System for Alabamians with Disabilities) which is administered by the Department of Rehabilitative Services.

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