



AIRMAIL

ALABAMA DISABILITIES ADVOCACY PROGRAM

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February 1998

THE UNIVERSITY OF ALABAMA SCHOOL OF LAW CLINICAL PROGRAMS

AUGMENTATIVE COMMUNICATION

"The woods would be very silent if no birds sang
there except those who sang best . . ." *Anonymous*

Rachel L. Webber, J.D. Candidate

WHAT IS AUGMENTATIVE COMMUNICATION?

Augmentative communication devices aid children and adults in producing and understanding spoken language. The technology used for this purpose is anything from a piece of paper with picture symbols representing life activities to sophisticated electronic or computer devices with speech synthesizers. Speech output devices can either store recorded human voices or play computer generated speech.

THE LAW

The legal requirements for providing augmentative devices to students with disabilities have not changed since the 1970s. The Rehabilitation Act of 1973 required accommodations for all individuals with disabilities who were served by programs receiving federal funding. The Individuals with Disabilities Education Act (IDEA), which amended Public Law 94-142 (1975), established requirements for schools to provide the necessary devices and services to ensure an appropriate public education for all students with disabilities. Despite

these acts school districts and other agencies were slow to adopt the use of augmentative devices and other assistive technology. Therefore, Congress enacted the Technology-Related Assistance for Individuals with Disabilities Act (Tech Act) in 1988 to provide grants to the states to increase awareness of the need for these devices and related services among people with disabilities. This grant program is scheduled to expire in 1999.

FUNDING SOURCES FOR AUGMENTATIVE COMMUNICATION

"Low-tech" augmentative communication devices can be paper laminated pictures representing school activities taped on a classroom wall. This type of augmentative communication can be very inexpensive. However, some "high-tech" devices cost in the thousands of dollars. Therefore, funding of these devices becomes a very important issue. Funds can sometimes be obtained through the local school system, Medicaid (only under certain circumstances), and charitable organizations.

Another funding issue is the cost of the evaluation process of a child or adult who may need some type of augmentative device. Some agencies may not have the resources to employ staff who are able to evaluate the communication needs of an individual. Evaluation is an ongoing process, because as the vocabulary of the individual grows they may outgrow a particular communication device. Programs such as the Alabama Statewide Technology Access and Response Project (STAR) may be of some help in the evaluation process. Also, corporations such as Zygo offer "rental" programs which allow you to check out a device for a small rental fee to see if it is going to work before making a large investment.

CAMPS

With the increase in number of individuals using augmentative communication devices, summer camps have sprung up that specialize in providing services for campers who use these devices. Three of these camps are Sky Ranch; Talking with Technology Camp, a

Please see AUGMENTATIVE page 2

program of The Children's Hospital in Denver; and Camp Talk in San Antonio, Texas. See <http://members.aol.com/skyranch1> and <http://kaddath.mt.cs.cmu.edu>. The founder of Sky Ranch is also a member of the Augmentative Communication On-Line Users Group, an internet site for users of augmentative communication. See <http://nimbus.ocis.temple.edu>

SPEECH TO SPEECH RELAY SERVICE

The Speech-to-Speech relay service was mandated in Title IV of the Americans with Disabilities Act, in 1990. This service involves the use of specially trained communications assistants as relay voices for persons with speech disabilities, including people who use augmentative communication devices. The numbers for this service in Alabama are (800) 548-2546 and (800) 548-2547 (V).

RESOURCES

ABLEDATA - 8455 Colesville Road; Suite 935; Silver Spring, MD 20910-3319; Phone: (800) 227-0216 or (301) 588-9284 (V/TT), FTS Voice Line: (301) 427-0277. Funded by the National Institute on Disability and Rehabilitation Research (NIDRR) of the U.S. Department of Education, ABLEDATA provides information on assistive technology available both commercially and noncommercially for all consumers. Database searches can be performed by information specialists, or the data base may be purchased in CD-ROM or diskette format.

Closing the Gap - P.O. Box 68; Henderson, MN 56044; Phone: (612) 248-3294.

Closing the Gap publishes a bi-monthly newsletter and conducts an annual conference each October focusing on the use of computer technology by and for individuals with disabilities.

Goosens, C., Crain, S., & Elder, P. (1992) *Engineering the Preschool environment for interactive, symbolic communication: An emphasis on the developmental period 18 months to five years* - Southeast Augmentative Communication Conference Clinician Series; 2430 11th Ave. North; Birmingham, AL 35234; Phone: (205) 251-0165.

Technology Related Assistance - Tom Gannaway, Executive Director; Alabama Statewide Technology Access and Response Project (STAR) System for Alabamians with Disabilities; 2125 East South Boulevard; P.O. Box 20752; Montgomery, AL 36120-0752; Phone: (334) 613-3480; (334) 613-3519 (TTY); (800) 782-7656 (In AL).

The Technology and Media Division of the Council for Exceptional Children - 1920 Association Drive; Reston, VA 22091; Phone: (703) 620-3660.



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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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

Supportive Living Conference
March 23-25, 1998
For registration call:
1/800-819-5115
Scholarships available for people with disabilities & their families

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- Center for Mental Health Services (PAIMI)
- U.S. Department of Education/Rehabilitation Services (PAIR)

Scott H. Hughes

Director of Clinical Education
& Assistant Professor

Happy New Year and Happy New Semester

The spring semester at the Law School has just begun and I would like to tell you about the seven new students that started at ADAP this semester.

Nancy Anderson joins the Law School for her third year as a visiting student from Rutgers University School of Law in New Jersey. She and her family moved to Tuscaloosa when her husband Bob, a metallurgist, took a position at Tuscaloosa Steel. Nancy has joined ADAP to pursue her interest in special education issues. She believes that a, "clinical setting like ADAP allows students to get experience in case management and advocating while being guided by lawyers who have, as part of their mandate, the teaching of students."

George Arnold is in his second year and hails from Satsuma, Alabama. He hopes to, "gain practical experience in an interesting area of law. Working with ADAP should help me understand better the need for public interest lawyers."

Will Gamble, a Selma native, is a second year student. Will joins George in believing that ADAP will allow him to, "gain practical experience." Also, "ADAP will affect my career by giving me particular insight into the needs of people with disabilities."

Christina Hayes, a third year law student from Enterprise, became interested in ADAP after discussing the work done at ADAP with a former clinic student, Ben Larkin. She is very interested in this area of law as her

mother has been disabled for over 10 years due to a stroke. "At this point, I am unsure how my experience [in ADAP] will affect my career, but I am interested in learning disability law. I have enjoyed the work I have already done here, especially the client contact."

Terrinell Lyons calls Florence her hometown. This third year student says, "I believe that discrimination in any form is wrong and worthy of adjudication. Thus, my plans after graduation are to practice law in the employment and labor fields. I believe that working at ADAP will allow me to become even more familiar with the ADA and other federal employment related issues."

Shannon Matthew Moore, from Huntsville, is also a third year student. Shannon wants to get some real world experience in applying his legal education to real problems. "I feel that working at ADAP will help me learn how to develop appropriate strategies for dealing with different situations involving real people and problems."

Deena Tyler, calls Haines City, Florida home. As a second year student she believes ADAP "allows me to be proactive in people's lives, avoiding crises before they happen." Deena wants to, "gain practical ex-

perience by learning to talk with people and understand their needs, and I believe working at ADAP will help me achieve this goal."

Already, in their first two weeks at ADAP, we can tell this is a great bunch of students. We are pleased to have them in the clinic this semester.

Last fall, Staff Attorney Roz Smith supervised all of the clinic students. She deserves most of the credit for organizing the clinical experience. Because the work is so intensive and time consuming, we have divided the clinic students among the entire litigation staff this semester. In addition to Roz, the students will be working with attorneys James Tucker, Director of Litigation, and Barbara Lawrence, Staff Attorney. In addition to freeing up Roz so that she can attend to her other duties, this approach should allow more one-on-one contact between students and supervisors, thus improving the students' clinical experience.

Each student will work on both Brief Service Cases and Advocacy Representation Cases. The Brief Service Cases require less than ten hours of work and will provide the students with valuable experience in client interviewing and counseling. For Advocacy Representation Cases, the students will work on smaller individual cases and on the large, complex cases like *Wyatt* and *R.C.* Through this broad array of experiences each student should gain an appreciation of the needs of individuals with disabilities and a strong knowledge of the rights that the law provides.

Please see NOTEPAD page 8

ADAP PRIORITIES & GOALS

PROTECTION AND ADVOCACY FOR DEVELOPMENTAL DISABILITIES (PADD)

Quality of Life in Residential Placements Goal **Persons with disabilities in residential placements will be free of physical abuse and life-threatening neglect [correctional facilities excluded].**

Strategies:

1. Investigate the appropriateness of living conditions in residential placements by gaining access to targeted facilities for the purpose of completing quality of life assessments.
2. Investigate the appropriateness of living conditions in residential placements by gaining access to patients' records related to death.
3. Investigate the appropriateness of living conditions in residential placements by reviewing reports of investigative and monitoring bodies.
4. Represent PADD-eligible clients in cases which involve unnatural death or serious physical abuse in order to investigate and produce appropriate reports.
5. Inform consumer and family organizations of ADAP's residential placement goals and request information on potential cases.
6. Provide information about Protection and Advocacy agencies' legal right to access to DMH/MR Internal Advocacy staff at facilities and central office.
7. Develop and place ADAP posters containing contact information, client rights and complaint process in target residential settings. Monitor regularly to insure posters receive prominent display and remain in place.
8. Provide in-service information to members of the staff of target residential settings concerning required neglect reporting and abuse/neglect policies and prevention.

Independent Living Goal **State agencies will facilitate/fund services in the least restrictive environment for persons with disabilities.**

Strategies:

1. Represent PADD-eligible clients in cases where the client is presently in an institution, but should be receiving services in the community.
2. Represent PADD-eligible clients in cases where the client cannot receive services in the least restrictive environment due to a Medicaid regulation/selection criteria.
3. Represent PADD-eligible clients in cases where the client needs assistive technology to live more independently, but Medicaid has refused to pay for that technology.
4. Organize mental health consumers and their advocates to advocate with DMH/MR to develop a more community-based system with appropriate services.
5. Provide four training sessions to mental health consumers and their advocates on self-advocacy skills to change service delivery systems to become more community based and to provide services in the least restrictive environment.

FOR FISCAL YEAR 1998

PROTECTION AND ADVOCACY FOR DEVELOPMENTAL DISABILITIES (PADD) [CONT'D]

6. Provide technical assistance and resources — “Train the Trainer” — to People First in implementing their R.W. Johnson grant on self-determination and moving individuals from institutions to the community.
7. Educate mental health consumers and their advocates on how to appeal Medicaid funding determinations which discourage or prevent placement in the least restrictive environment.
8. Publicize the need for changes in Medicaid regulations and policy which will facilitate placement in the least restrictive environment and promote public understanding of need for such placements.

Employment Goal Persons with disabilities will be provided reasonable accommodations in employment.

Strategies:

1. Represent PADD-eligible clients in cases where the client has been denied reasonable accommodations in private sector employment.
2. Provide at least four training sessions during the year to persons with disabilities, their families and advocates on the right to reasonable accommodations in employment and the accommodation process.
3. Update and widely disseminate the ADA Resource Guide.
4. Develop and widely disseminate a booklet concerning the ADA.
5. Work collaboratively with Southeast DBTAC and Alabama ADA Partners to provide technical assistance to persons with disabilities, their families and advocates, and the business community about ADA employment rights.
6. Publicize information regarding ADA employment rights through media (radio, television and print).

Children's Issues Goal Children with disabilities will be provided an educational placement in schools which can afford the maximum amount of interaction with non-disabled peers in age-appropriate regular classrooms unless it can be demonstrated that IEP goals can be accomplished in a more restrictive setting in that school.

Strategies:

1. Represent PADD-eligible clients in cases where the child is being educated in a segregated school (more than 90% of the students in the school are students with disabilities) and the parents want the child to attend a regular school and receive services in a more inclusive setting.
2. Provide at least 12 training sessions for parents of children eligible for special education on special education rights, emphasizing the importance of maximum interaction with non-disabled peers in the least restrictive environment.
3. Update and widely disseminate *Special Education in Alabama: A Right not a Favor*.
4. Provide technical assistance to other parent advocacy groups.

Please see PRIORITIES page 6

PROTECTION AND ADVOCACY FOR INDIVIDUAL RIGHTS (PAIR)

Employment Goal **Persons with disabilities will be provided reasonable accommodations in employment.**

Strategies:

1. Represent PAIR-eligible clients in cases where the client has been denied reasonable accommodations in private sector employment.
2. Provide at least four training sessions during the year to persons with disabilities, their families and advocates on the right to reasonable accommodations in employment and the accommodation process.
3. Update and widely disseminate the ADA Resource Guide.
4. Develop and widely disseminate a booklet concerning the ADA.
5. Work collaboratively with Southeast DBTAC and Alabama ADA Partners to provide technical assistance to persons with disabilities, their families and advocates, and the business community about ADA employment rights.
6. Publicize information regarding ADA employment rights through media (radio, television and print).

Housing Goal **Persons with disabilities will be free from architectural barriers in housing.**

Strategies:

1. Represent PAIR-eligible clients in cases where housing is inaccessible due to architectural barriers.
2. Collaborate with the state's two Fair Housing Centers on training persons with disabilities and their families on their legal rights to housing.
3. Provide technical assistance/resource materials for Fair Housing Centers.
4. Provide training and technical assistance to realtor associations about rights of persons with disabilities, including sensitivity training.
5. Produce a booklet on housing rights for wide dissemination to persons with disabilities, their families, advocates, realtors, housing owners, etc.
6. Continue to provide technical assistance and support to Community Living Initiative.
7. Publicize information regarding housing rights through the media (print, radio, TV).

PROTECTION AND ADVOCACY FOR ASSISTIVE TECHNOLOGY (PAAT)

Goal **Laws, regulations, policies, procedures, practices, and organizational structures will affect, in a positive way, access to, provision of, and funding for assistive technology for individuals with disabilities.**

Strategies:

1. Resolve Medicaid issues through the provision of individual advocacy and legal representation in order to promote payment by Medicaid for augmentative communication devices that are "medically necessary" for children with disabilities (ages 0-21).

PROTECTION AND ADVOCACY FOR INDIVIDUALS WITH MENTAL ILLNESS (PAIMI)

Quality of Life in Residential Placements Goal

Persons with disabilities in residential placements will be free of physical abuse and life-threatening neglect [correctional facilities excluded].

Strategies:

1. Investigate the appropriateness of living conditions in residential placements by gaining access to targeted facilities for the purpose of completing quality of life assessments.
2. Investigate the appropriateness of living conditions in residential placements by gaining access to patients' records related to death.
3. Investigate the appropriateness of living conditions in residential placements by reviewing reports of investigative and monitoring bodies.
4. Represent PAIMI-eligible clients in cases which involve unnatural death or serious physical abuse in order to investigate and produce appropriate reports.
5. Inform consumer and family organizations such as MHCA and AMI of ADAP's residential placement goals and request information on potential cases.
6. Provide information about Protection and Advocacy agencies' legal right to access to DMH/MR Internal Advocacy staff at facilities and central office.
7. Develop and place ADAP posters containing contact information, client rights and complaint process in target residential settings. Monitor regularly to ensure posters receive prominent display and remain in place.
8. Provide in-service information to members of staff of target residential settings concerning required neglect reporting and abuse/neglect policies and prevention.

Independent Living Goal

State agencies will facilitate/fund services in the least restrictive environment for persons with disabilities.

Strategies:

1. Represent PAIMI-eligible clients in cases where the client is presently in an institution, but should be receiving community services. (This strategy does not include assisting NGRI patients in filing habeas petitions or 25.8 petitions.)
2. Represent PAIMI-eligible clients in cases where the client cannot receive services in the least restrictive environment due to a Medicaid regulation/selection criteria.
3. Organize mental health consumers and their advocates to advocate with DMH/MR to develop a more community-based system with appropriate services.
4. Provide four training sessions to mental health consumers and their advocates on self-advocacy skills to change service delivery system to become more community based and to provide services in the least restrictive environment.
5. Educate mental health consumers and their advocates on how to appeal Medicaid funding determinations which discourage or prevent placement in the least restrictive environment.
6. Publicize the need for changes in Medicaid regulations and policy which will facilitate placement in the least restrictive environment and promote public understanding of the need for such placements.



Credit due . . . Gremlins infiltrated the computer while the last issue of *Airmail* was being put together. Some people who wrote articles were not given credit for their work. A special thank you to the following people who wrote articles:

EPILEPTICS AND SERVICE DOGS

Clint Hyde, J.D. Candidate

THE LONG & SHORT OF SERVICES AND SUPPORTS

Jeana Riley, Case Advocate

HOW TO ADVOCATE FOR YOUR CHILD IN SPECIAL EDUCATION

Arngene Wells, Case Advocate

LITIGATION CONTINUES OVER RIGHTS OF HIV-POSITIVE INMATES

Jackie Trimm, J.D. Candidate

NOTEPAD
Continued from page 3

On a different front, we just said farewell to Fay Hobbs, our Senior Case Advocate Coordinator. Fay joined our staff last summer after she and her family moved to Tuscaloosa from Lexington, Virginia. Her husband, Steven Hobbs, has an office just a few doors from me in the Law School. Professor and Tom Beville Chairholder of Law, Steven teaches Family Law, Professional Responsibility and a seminar in Small Business Organizations. Fortunately, for every ending there is a new beginning. Fay has accepted a position on the faculty in the School of Social Work. We will stay in touch and, hopefully, increase our ties with Fay's new school. Good luck, Fay!

Scott

Wyatt Case Reviewed

EXTRA

An extra special edition of *Airmail* will be published next month.

James Tucker, Director of Litigation and attorney, and David Prince, Advocate Coordinator, will provide an overview of the *Wyatt Case*.

There are developments which will be of interest to readers of *Airmail*.

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AIRMAIL

ALABAMA DISABILITIES ADVOCACY PROGRAM Special Edition March 1998
THE UNIVERSITY OF ALABAMA SCHOOL OF LAW CLINICAL PROGRAMS

SPECIAL EDITION

THE LEGACY OF WYATT:

LEST WE FORGET

The *Wyatt* lawsuit turns twenty-eight years old this year and, as with any 28 year-old's birthday, the day itself is not particularly special. At 28, this lawsuit has grown from a high-risk infancy through a turbulent adolescence into an adulthood that many observers might prefer to ignore. Nevertheless, *Wyatt* represents an important story of progress in the history of how we care for those persons who are judged to be, in the Biblical sense, "the least of these" in Alabama.

Lest we forget, when Judge Frank Johnson issued his first landmark decisions in *Wyatt* in the early seventies, persons who were involuntarily institutionalized in state-run mental health and mental retardation facilities possessed no minimal constitutional rights to adequate care and habilitation. They did not possess such rights in Alabama, nor in any other state in the United States. Because of *Wyatt*, persons in such institutions in Alabama – and in the United States – now have a legally enforceable right to adequate care according to professional standards.

Lest we forget, when Judge Johnson issued his first opinions in 1971, he found that the then-existing "programs of treatment failed to conform to any known minimums established for providing treatment to the mentally ill," nor the mentally retarded. Judge Johnson's eloquent words speak for themselves: "There can be no legal (or moral) justification for the State of Alabama's failing to afford adequate [medical] treatment... to the several thousand patients who have been civilly committed to Bryce's for treatment purposes... The failure to provide suitable and adequate treatment to the mentally ill cannot be justified by a lack of staff or facilities. ...[I]ndefinite delay cannot be approved."

Lest we forget, as *Wyatt* has matured to the ripe old age of 28, many changes have occurred in its life. Very quickly after the initial orders in the case, the case was expanded to cover persons in state-operated mental retardation institutions like Partlow and others. The case included virtually all state-operated mental health and mental retardation facilities, including not only Bryce and Partlow, but also Searcy, Greil, Thomasville, North Alabama Regional, Brewer, Tarwater, Wallace, Eufaula and others.

Lest we forget, many of the players have changed. Judge Johnson is no longer the trial court judge in *Wyatt*. The identities of the facilities, the lawyers, and the state officials have changed. Indeed, many of the class member plaintiff/patients have changed. However, there are at least two things that have not changed. Almost incredibly, some of the patient/plaintiffs who were original members of this important class action remain institutionalized in state-operated facilities. One other thing has not changed in 28 years and will not change - even long after the

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• Administration on Developmental Disabilities (PADD)
• Center for Mental Health Services (PAIMI)

Wyatt suit has come to a close. In the words of Judge Johnson again: "To deprive any citizen of his or her liberty upon the altruistic theory that the confinement is for humane therapeutic reasons and then fail to provide adequate treatment violates the very fundamentals of due process."

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. . . many residents in the [DMH/MR] developmental centers could live in the community settings given the appropriate supports and services.

”

*Judge Thompson
December 15, 1997*

UPDATE ON RECENT DECISION

In 1986, DMH/MR and the plaintiffs (residents of state-operated facilities) entered a consent agreement in which DMH/MR promised to continue efforts to meet the *Wyatt* standards and to outplace patients into the community. In 1991, a new round of litigation began when DMH/MR moved for a finding that they were in compliance with the standards and asked the Court to end the *Wyatt* case. A 35-day trial was held in 1995. In a long-awaited decision in *Wyatt v. Rogers*, U.S. District Judge Myron Thompson on December 15, 1997, refused to find the Department of Mental Health and Mental Retardation (DMH/MR) in compliance with all the *Wyatt* standards and end the case. Judge Thompson found DMH/MR in non-compliance with 14 mental illness standards and all or part of 19 mental retardation standards.

Judge Thompson streamlined the case by eliminating some noncontroversial standards and focusing on substantive issues such as abuse and

neglect, appropriate treatment, and placement in the least restrictive environment. The Court ordered that small, periodic hearings be held to help ensure that compliance with these standards is achieved. DMH/MR has appealed the ruling to the Eleventh Circuit in Atlanta.

NONCOMPLIANCE IN KEY AREAS

Judge Thompson's recent ruling cites several major areas in which DMH/MR has not complied with the *Wyatt* standards and its obligations under the 1986 consent agreement. These include the following:

Abuse, Neglect and Safety

Judge Thompson found that patients/residents are in danger of serious abuse or neglect in state-operated facilities. He wrote, "Patients are not protected from harm and provided a safe environment. Incident reports reveal large numbers of incidents of staff abuse of patients, patient-on-patient abuse, sexual abuse, and unexplained injuries. . . Abuse is not only physical, but also verbal."

Likewise, persons with mental retardation "are subjected to unexcused abuse and neglect in the defendants' institutions. They are not safe and are frequently abused and neglected. Staff members punch, hit, and kick defenseless mentally-retarded residents." The Court noted that "an undercover investigation at [Ireland Developmental Center] led to indictments of 24 Ireland staff for patient abuse. Staff members were charged with kicking and striking residents and hitting them with brushes and metal rods. At [Wallace Developmental Center] abuse and neglect are also rampant."

The Court also noted that, in developmental centers, the problem of patient abuse is often tied to staffing shortages: "...[I]nsufficient staffing also places residents in danger and leads to unnecessary injuries and abuse. . . And patients with severe behavioral

problems who require one-to-one supervision do not always receive the required supervision. This can place them at serious risk of injury to themselves and others."

Judge Thompson acknowledged that it was not reasonable to expect that abuse or neglect could be entirely eradicated. Rather, what the Court expected was that DMH/MR would develop appropriate measures to prevent abuse, investigate it when it occurs, and address problems identified through investigations. However, the Court expressed serious concern over DMH/MR's failure to address known problems. "Even more egregious is the fact that the defendants know about these problems, and yet fail to correct them."

Also of concern is the Court's finding that "the defendants tend to

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many patients are not provided adequate transitional care and are sometimes placed in substandard facilities.

”

*Judge Thompson
December 15, 1997*

respond to any revelations of serious deficiencies—such as abuse and lack of safety—by cover-up and denials." The Court noted that "they tend to condemn the messenger of the deficiencies rather than address the problem itself."

Appropriate Treatment

Under the *Wyatt* standards, patients/residents are entitled to appropriate and meaningful treatment. In discussing the situations of patients with mental illness, the Court noted, "While all patients are given upon admission a comprehensive individual treatment plan, these plans are not always implemented, nor for the intermediate and long-term patients are they updated. . .

[A]n absence of activities and programs exacerbates patients' conditions. Many patients at Bryce spend their days idly with little or nothing to do. Meaningful daily activities are critical to the treatment programs for persons with mental illness." The Court also declared that residents of developmental centers "are not being provided adequate and minimally professional habilitation."

One area highlighted by the Court was DMH/MR's failure to provide adequate habilitation through behavioral programming: "In the area of behavioral programming—that is, programming designed to correct maladaptive behaviors—the defendants' habilitation efforts are woefully inadequate. Some residents with severe behavior problems do not even have a program to address their behavior. Those who do have programs often have inadequate ones."

Treatment in the Least Restrictive Environment

Under the *Wyatt* standards, patients/residents have a right to be treated in the least restrictive environment (LRE). However, the Court noted: "[N]ot all of the individuals in the defendants' institutions belong there. Some patients do not require hospitalization in order to meet the purposes of their commitment. With appropriate supports they can be treated in the community. And some patients meet the commitment criteria only because of the lack of available community services." Judge Thompson stated that "[o]ne of the most egregious failures is the failure to develop crisis services" as well as cases management services, which might prevent unnecessary institutionalization.

The Court summarized its findings as follows: "As a result of the failure to fund community facilities and programs, individuals who need not be institutionalized remain in institutions where their freedom to live as normal and free a life as possible is significantly diminished.

“

Despite knowledge of inadequate staffing—from requests by current staff for additional help, advocacy monitoring reports, and investigations of deaths and incidents—(DMH/MR) has failed to act.

*Judge Thompson
December 15, 1997*

The record is replete with examples of patients for whom there is no clinical justification for continued institutionalization.”

The Court also declared that, upon discharge, many patients are not provided adequate transitional care and are sometimes placed in substandard facilities. With regard to DMH/MR's obligation under standard 34 to provide transitional services, Judge Thompson wrote: "The court finds that the defendants have failed miserably at meeting standard 34."

The Court found that similar problems exist in state-operated developmental centers, where "hundreds of individuals still remain institutionalized in the defendants' facilities for no apparent or good reason." While noting that treatment in the least restrictive environment does not automatically mean that all residents should be deinstitutionalized and placed in community settings, the Court declared: "The field of mental retardation has progressed dramatically since this litigation began in 1970. Today professionals have the capacity to develop community facilities and programs for even the most severely mentally

retarded. Therefore, many residents in the defendants' developmental centers could live in the community settings given the appropriate supports and services."

Other Areas

The Court also found that DMH/MR was not in compliance with a number of other standards. These included mental illness standards regarding the right to exercise and be outdoors, confidentiality of records, and staff supervision, and mental retardation standards regarding grooming of residents, corporal punishment, appropriate clothing, and psychotropic medication.

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AREAS OF COMPLIANCE

Judge Thompson's order streamlined the case by eliminating a number of standards over which there was little or no dispute regarding compliance. These range from standards regarding patients' rights to be provided clothing and to send/receive mail to standards regarding licensing/certification of staff. As a result of the ruling, the Court will no longer scrutinize DMH/MR's compliance with 17 mental illness standards and all or part of 29 mental retardation standards. The court also found that DMH/MR had complied with the requirement in the 1986 Consent Decree to seek Joint Commission on Accreditation of Healthcare Organizations (JCAHO) accreditation for mental health facilities and Title XIX certification for developmental centers.

Quotations are from
Judge Thompson's
December 15, 1997
Memorandum Opinion.



ADAP'S ROLE IN WYATT

In December 1990, after a period of extensive, but ultimately unsuccessful, negotiations with the State, ADAP entered the *Wyatt* suit on behalf of ten residents at Thomasville Adult Adjustment Center (TAAC) as plaintiff-intervenors. ADAP claimed the State failed to provide adequate procedural protections to ensure that involuntarily civilly committed patients are released once they no longer meet the criteria for commitment. Alabama had no periodic post-commitment judicial reviews. In 1991, the Court agreed with ADAP and reiterated to the State that they were still under an obligation to immediately release any patient who no longer required hospitalization (Standard 33) and to provide adequate transitional treatment and care for all patients released after a period of involuntary confinement (Standard 34). ADAP's action forced the parties in *Wyatt* to focus on Standard 34. Also, the State passed a new commitment procedure which took effect in January 1992.

ADAP's other claim was that the care and conditions at TAAC violated the 1986 Consent Decree in *Wyatt*. TAAC was a reputedly short-term facility, but some residents had been at TAAC from 9 to 17 years. After a six day trial in October 1991 on the TAAC issues, the court finally issued its December 15, 1997 ruling. The overall language of the ruling echoes many of our concerns regarding violations of the *Wyatt* standards at TAAC. ADAP's involvement has compelled the State to address least restrictive environment and adequate transition treatment and care issues.

Instead of a review of the standards facility-by-facility, the Court declared that it would be considering releasing the State from the *Wyatt* order on a standard-by-standard basis as a system, thus merging ADAP's TAAC issues into the overall case. Because of this and other reasons, ADAP received approval from its ten clients to withdraw from the *Wyatt* litigation as Plaintiff-Intervenors.

ADAP is now assisting the lead plaintiff attorneys from the Bazelon Center and U.S. Department of Justice by collecting information regarding compliance with the *Wyatt* Standards. ADAP is keenly interested if you know someone in a state-operated facility or state-provided community service for the mentally ill and mentally retarded who are:

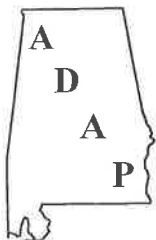
- **being seriously abused or neglected, or**
- **ready to be out-placed in the community, yet no appropriate community services are available.**

Please notify ADAP of any recent unnatural death occurring in state-operated facilities or state-provided community services for the mentally ill and mentally retarded. Contact us at the numbers listed below and ask for **Intake**.

(205) 348-4928
(800) 826-1675
(205) 348-9484 (TDD)
(205) 348-3909 (FAX)

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

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AIRMAIL

ALABAMA DISABILITIES ADVOCACY PROGRAM Vol. 3, Issue 2 April - 1998

THE UNIVERSITY OF ALABAMA SCHOOL OF LAW CLINICAL PROGRAMS

GOAL ADJUSTMENT

ONLY is an important word! In the Children's Issues Goal "**only**" was supposed to be there, but it was not. The Goal now reads:

Children with disabilities will be provided an educational placement in schools which can afford the maximum amount of interaction with non-disabled peers in age-appropriate regular classrooms unless it can be demonstrated that IEP goals can **only** be accomplished in a more restrictive setting in that school.

ADAP is glad to set the record straight. All information from ADAP regarding the Children's Issues Goal now has "**only**" included.

IEP

New IEP (Individualized Education Program) forms are now in place in Alabama for the 1998-1999 school year. In March, the Alabama Department of Education hosted a state training for professional education personnel who will be working with the new IEP forms. The new forms are designed to meet the requirements of the 1997 amendments to the Individuals with Disabilities Education Act (IDEA).

New regulations for IDEA are in draft form. Due to the enormous number of responses received during the public comment period, the regulatory process will not be completed this spring as anticipated and will be extended until later in the year.

For information about IEP or IDEA changes, parents and advocates may contact their local special education coordinator; the State of Alabama Department of Education, Division of Special Education Services at 1-800-392-8020; or ADAP staff at our toll free number.

The Fair Housing Act is under attack. Many advocates and people with disabilities think H.R. 3206 would strip away many housing rights for people with disabilities in the community.

An article in the *Chicago Sun-Times* warned of possible negative effects of this legislation:

Thresholds, a major provider of psychiatric services and housing for the mentally ill, is warning that the pending federal legislation would virtually scrap fair-housing protections for people with disabilities.

"Proposed amendments to the Fair Housing Act will revive zoning and land-use provisions' that would set limits on group homes," said Thresholds executive director Jerry Dincin.

The bill would let cities regulate group homes to prevent a concentration in a particular neighborhood or block, according to Dincin. It would also let cities limit the number of recovering substance abusers permitted to live in a group home in a single-family neighborhood.

Talk with your elected Congressmen in the House and Senate to express your opinion about their positions regarding changes in the Fair Housing Act.

HELP US HELP THEM

William J. Gamble, Jr., J.D. Candidate

The mental health facilities of this state have the challenging job of providing adequate care for Alabama's mentally ill patients. However, there is an unfortunate reality: patient abuse does occur from time to time. Recent developments in the law affect ADAP's role in advocating for the needs of mentally ill patients, and ADAP needs your assistance in carrying out that job.

Effective as of November 14, 1997, ADAP's right to access a mental health facility in this state has been redefined. Changes come from the new regulations set out for the Protection and Advocacy for Individuals with Mental Illness (PAIMI) pro-

grams. Under the new regulations, ADAP has expanded "access" if it is investigating an "incident" at a facility. For example, ADAP has the right to interview staff if it is investigating an incident at a facility.

You can help ADAP have increased "access" at mental health facilities by reporting incidents of abuse. Under the new amendments, ADAP's ability to advocate for the mentally ill is enhanced if there is a complaint received about actual or suspected abuse at a mental health facility. Some reports of abuse may be unfounded, but isn't it better to investigate suspicions sooner rather than after it is too late? If you suspect that someone you think may be

abused or neglected at a mental health facility, please call or have them call toll free at 1-800-826-1675.

ADAP can also monitor to check for evidence of abuse or neglect at a mental health facility. One way for ADAP to discover evidence of abuse is to meet with patients. The best way for ADAP to meet with patients is by request from either the patient or the guardian. If you are a guardian, you may request that an ADAP representative meet with a patient. When ADAP is able to meet with patients, we can help them gain an additional line of defense against patient abuse.

In sum, by reporting incidents of abuse and requesting that ADAP meet with patients with mental illness, you can help us HELP THEM. ■

LOCAL HERO

ADAP's own Arngel Wells was surprised and thrilled to learn her mother, Zelpha Storey Wells, was named the 1998 Citizen of the Year by the Tuscaloosa Civitan Club.

When Zelpha Wells left her teaching job with the public schools to offer free music lessons to those who couldn't afford them, some of her friends asked how would she survive. How would a divorced mother ever put her two daughters through college? Her response was "The Lord will provide, and, you know, both graduated from the University of Alabama." Wells continues to fulfill her dream of freely passing on her gift of music to countless children and adults, thus making this world a better place.

Congratulations!

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
Director of Litigation	James Tucker
Director of Advocacy	David Prince
Staff Attorney.....	Rozalind Smith
Staff Attorney.....	Barbara Lawrence
Information Specialist	Segail I. Friedman
Coordinator of Outreach and Training	Ann Marshall
Case Advocate.....	David Gamble
Case Advocate	Arngel Wells
Administrative Secretary	Janet Owens
Office Assistant.....	Susan Tretter
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.

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Website address: <http://www.law.ua.edu/adap>

Scott H. Hughes

Director of Clinical Education
& Assistant Professor

Good News and Great Work

Congratulations Terri Lyons on your recent accomplishments at ADAP!

Third year law student Terri Lyons achieved dramatic results in two of her cases. In one case, ADAP had tried for some time to get accommodations for a client with a learning disability. The client attends college in the Tuscaloosa area and had tried for several months, without success, to get the school to provide reasonable accommodations for his disability. After the client contacted us, the school, for several months, refused to speak with us. When Terri began to work on the case, she prepared the Office of Civil Rights complaint and advised the college authorities of her intent to file. As a result of Terri's work, I am delighted to report that our client will be receiving the accommodations he requested.

Terri also worked on a case where the client was refused check writing privileges at Sears because he did not have a driver's license. Because the client is unable to drive, due to his disability, he does not have a driver's license, but he carries a valid, non-driver identification. The local Sears claimed that the policy was to prevent fraud, which was a significant problem

for them. Although Sears has a valid interest in preventing fraud, their policy of requiring a driver's license was overly broad and improperly impinged upon the rights of a person with disabilities who was unable to drive but who was otherwise qualified to write a check. The national office said that, even though this is not Sears' policy nationwide, the local store could change the policy to address the problem. After negotiating with managers in Sears' local and national offices, Terri was able to convince them that their policy violated the law. Terri recently received a letter from Sears indicating that the stores in the area have changed their policy and will now permit the use of the non-driver identification for check writing purposes.

Terri's victories, both of which were accomplished through quiet, but resolute discussion, will have an impact far beyond the single clients involved or the individual problems with accommodations. Both situations involved relatively large institutions. Hopefully, the next time problems are encountered with these organizations, the personnel and manage-

ment involved will respond with greater understanding and caring for the rights of individuals with disabilities. They may be baby steps, but they are steps forward, indeed!

One final word. I wanted to tell you about these cases, not only for the good news they convey, but to show you the impact that law students are having on the work of ADAP. Invariably, the law students bring youthful enthusiasm, hard work, dedication, and fresh ideas to the clinic. We are all made better by their involvement in our work. We are not, however, the only beneficiaries of this exchange. The law students, I firmly believe, leave ADAP with an appreciation of the rights of individuals with disabilities, the responsibilities to serve this and other traditionally under-served or unserved populations, and the personal rewards that can result from public interest work.

Thank you Terri for your terrific work and the terrific example which you set!

Scott

Rights at Last

Alabama Mental Health Consumers' Rights

W. Patton Hahn, J.D. Candidate

In 1995, the Legislature enacted the Alabama Mental Health Consumers' Rights Act, an historic piece of legislation that, for the first time in the state's history, recognized that individuals with mental illness should have the same rights as the rest of the citizenry. Since that time the challenge has been to find ways to implement the bill's language and bring its effect to the everyday lives of mental health consumers.

The law, contrary to its opponents' claims, did not create a whole new class of rights for the mentally ill. This was neither its goal nor its effect. Rather, the bill sought to codify already existing rights to ensure that mental health consumers receive the same treatment as anyone else. The law serves to give mental health consumers a statutory framework by which to pursue their rights. Additionally, the law gives the State and mental health service providers administrative guidelines to ensure that the rights of consumers are respected and enforced in their programs.

The Department of Mental Health and Mental Retardation's current Community Mental Health Standards, effective as of February 1997, provide clear and definitive standards by which all parties can ensure that proper respect for the rights of the consumer is afforded and by which the State and provider can ensure that they are in full compliance with the law.

Providers under contract with the Department of Mental Health and Mental Retardation must be certified under the Community Mental Health Standards. Rights sections of the Community Health Standards cover specific rights of consumers as set out in the text of the consumers' rights law. In each standards section, there are specific goals for mental health programs to achieve regarding consumer rights. Finally, the standards manual lists specific criteria to use in determining whether or not the listed goals are being achieved.

Of special note to consumers are the sections of the standards dealing with Physical Condi-

tions (Section 2300) and Consumer Protection (Section 3200). Section 2300, for the first time, establishes definitive guidelines for ensuring that mental health consumers receive treatment "in a safe and humane environment." This is especially important in regulating residential mental health settings which traditionally have had little oversight in maintaining a proper environment for patients. Now, if a residential mental health facility fails to comply with these standards, it could lose its certification status.

Section 3200, Consumer Protection, protects rights that most of us take for granted. For example, Section 3202.14 ensures that patients have the right to refuse treatment. Too often mental health patients have been forced to accept treatment. This will give mental health consumers the same right that most of us take for granted; the right to make one's own choices in the medical treatment one receives.

Parts of the Alabama Mental Health Consumers' Rights Act are reprinted in this issue of *Airmail*. Consumers can obtain full copies of the bill by contacting MHCA at P.O. Box 70459, Montgomery, AL 36107, or calling 800/264-MHCA (6422).

Mental Health consumers and their families should become familiar with this bill. All too often abuse occurs and mental health consumers are not aware that their rights are, in fact, being violated. Individuals familiar with their rights will be in a better position to report abuse when it occurs and to advocate on their own behalf. ■

Rights at Last

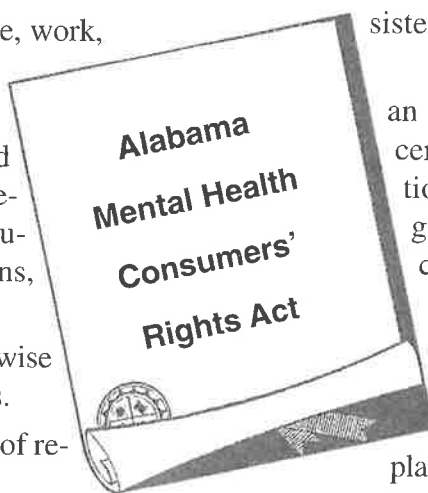
The Alabama Mental Health Consumers' Rights Act

Section 4.(a) Consumers of mental health services have the same general rights as other citizens of Alabama. These rights include but are not limited to the following:

1. The right to exercise rights as a citizen of the United States and the State of Alabama.
2. The right to be served through general services available to all citizens.
3. The right to choose to live, work, be educated, and recreate with persons who do not have disabilities.
4. The right to be presumed competent until a court of competent jurisdiction, abiding by statutory and constitutional provisions, determines otherwise.
5. The right to vote and otherwise participate in the political process.
6. The right to free exercise of religion.
7. The right to own and possess real and personal property. Nothing in this section shall affect existing laws pertaining to conveyance of real or personal property.
8. The right to make contracts.
9. The right to obtain a driver's license on the same basis as other citizens.
10. The right to social interaction with members of either sex.
11. The right to marry and divorce.
12. The right to be paid the value of work performed.
13. The right to exercise rights without reprisal.

(b) In addition, the rights of consumers of mental health services within inpatient, residential, or outpatient settings include, but are not limited to, the following:

1. The right to access individualized mental health services.
2. The right to participate in the treatment planning process, with material involved in this process presented in language appropriate to the consumer's ability to understand.
3. The right to be accorded human respect and dignity on an individual basis in a consistently humane fashion.
4. The right to be fully informed, on an individual basis, when needed, concerning services provided, with information presented in a setting and in language appropriate to the consumer's condition and ability to understand.
5. The right to a statement of any applicable charges for mental health services, itemized when possible, and the right to be informed of any limitations placed on the duration of services.
6. The right to confidentiality of all information in the consumer's mental health, medical, and financial records.
7. The right to access upon request all information in the consumer's mental health, medical and financial records, unless a clinical determination has been made by professional staff that access would be detrimental to the consumer's health.
8. For those consumers legally committed to facilities or programs, the right to be informed of one's commitment status including the requirements of the commitment, if any, and the length of the commitment.
9. The right to be free from any physical verbal, sexual, or psychological abuse, exploitation, coercion, reprisal, intimidation, or neglect.



Please see CONSUMERS' RIGHTS ACT on page 6

10. The right to make an individual, written decision to consent or refuse to participate in research or experimentation, based upon information which is presented in a non-threatening environment and in language appropriate to the consumer's condition and ability to understand. The information presented shall follow the General Requirements for Informed Consent as cited under the Code of Federal Regulations 45 CFR.46.116, Department of Health and Human Services, National Institute of Health, Office for Protection from Research Risks: "Protection of Human Subjects."

11. The right to be informed specifically of the procedures for initiating a complaint or grievance procedure and the applicable appeals process, including the means of requesting a hearing or review of the complaint.

12. The right to be informed of the means for accessing advocates, ombudsmen, or rights protection services within the program and, as applicable, the State of Alabama Mental Health System, The Alabama Department of Human Resources, the federal advocacy system, and other advocacy services. Access must be allowed without reprisal.

13. The right to have access to courts and attorneys.

14. The right to enforce rights in a court of competent jurisdiction or appropriate administrative proceeding.

15. The right to use services in a safe and humane environment.

16. The right to be free from seclusion, physical restraints, drugs, or other interventions administered for purposes of punishment, discipline or staff convenience. Restraint, seclusion, or other

intrusive treatments may be administered only in situations defined by established standards of medical care taking into consideration the health status of the individual and by applicable governing standards.

17. The right to refuse mental health services without reprisal except when refusals are not permitted under applicable law.

18. In residential or inpatient programs, the right to privacy.

19. In residential or inpatient programs, the right to have access to and privacy of mail, telephone communications, and visitors, unless legally restricted.

20. In residential or inpatient programs operated or certified by the State of Alabama, the right to adequate food and shelter.

21. In residential or inpatient programs operated or certified by the State of Alabama, the right to access dental and medical care, including vision and hearing services.

22. The right to conditions of mental health services which are supportive of each consumer's personal liberty and restrict liberty only to the extent necessary, consistent with each consumer's treatment needs, applicable requirements of law, and applicable judicial orders. This right applies to general rights within a clinical setting as well as to specific rights enumerated in Section 4, Subsection B.

23. For those individuals legally committed to mental health services operated by the State of Alabama or community or regional mental health centers, the right to inclusion in the community with appropriate and adequate supports on completion of, or in conjunction with, the terms of commitments.

.....

This is an abridged version of the Alabama Mental Health Consumers' Rights Act. If you would like a complete, copy please contact the Mental Health Consumers of Alabama at P.O. Box 70459, Montgomery, Alabama 36107, or you can call 1-800-264-MHCA (6422).





AND HIGHER EDUCATION

FOR STUDENTS WITH LEARNING DISABILITIES

Jonathan C. Sapp, J.D. Candidate



On July 26, 1990, the Americans with Disabilities Act (ADA) was signed into law by President George Bush, thereby expanding protection against discriminatory practices and policies to millions of disabled persons. The ADA affects the operation of every entity in the United States considered in the statute as a "public accommodation," which includes hotels, restaurants, banks, stores, and universities, colleges, and other places of education. The statute provides that "[n]o individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation."



The ADA defines the term "disability" as "(A) a physical or mental impairment that substantially limits one or more of the major life activities of such an individual; (B) a record of such impairment; or (C) being regarded as having such an impairment." A physical or mental impairment is defined as:

- (1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin and endocrine; or
- (2) Any mental or physiological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

The ADA prohibits institutions of higher learning from discriminating in the admissions process which includes the recruitment, application, testing, interviewing, and decision-making processes. Colleges should ensure that their re-

cruiting activities take place in accessible locations and that their admissions policies reflect nondiscriminatory policies and practices. The use of standardized tests and other eligibility criteria that tend to screen out individuals with disabilities is not prohibited, but such criteria must be validated as predictors of success.

Programs for enrolled students must allow them equal opportunity for education without discrimination based upon their disability. This may require the college or university to make reasonable accommodations to the disabled student. Courts, however, will not force an institution to fulfill a request for an accommodation if it will impose "undue financial or administrative burdens." Reasonable accommodations can include such things as exam accommodations, course load modifications, course waivers, auxiliary aids and services, barrier removal, and adjustment of policies and procedures. It is essential that administrators review their policies and practices to make sure that all students are treated equally.

The duties of an academic institution, in determining whether a reasonable accommodation is available to permit a student with a learning disability to attend its academic program, were set forth by the Court of Appeals for the First Circuit

Please see ADA on page 8

in Wynne v. Tufts University School of Medicine. In this case a student was dismissed from the medical school after he failed several courses during consecutive attempts to complete the first-year program. The student had dyslexia and claimed that the university failed to modify his exams to accommodate his disability. The Court of Appeals for the First Circuit set aside the lower court's grant of summary judgment, despite an affidavit from the Dean of the School of Medicine which stated that the test format was important in the evaluation of the students knowledge. The court pointed out that the affidavit failed to explain the unique qualities of those examinations over other types of exams, or consider alternatives for accommodating a disabled student. This places a heavy burden on the university to demonstrate that it has ex-

hausted all possible means of accommodating a disabled student before denying or revoking his or her admission.

Students with learning disabilities have conquered many barriers in arriving at the point where they are prepared to enter their post-secondary education. Universities and colleges must be prepared to assist these students with reasonable accommodations as they pursue their educational goals. In their attempt to provide such students with accommodations, however, the academic institutions must pay close attention to their academic programs and policies to be certain that the accommodations are based on the individual needs of each student and not simply assumptions about the capabilities of students with disabilities.

Airmail is funded 100% with federal funds through: • Administration on Developmental Disabilities (PADD)
• Center for Mental Health Services (PAIMI) • U.S. Department of Education/Rehabilitation Services (PAIR).

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AIRMAIL

ALABAMA DISABILITIES ADVOCACY PROGRAM Vol. 3. Issue 3 June 1998

THE UNIVERSITY OF ALABAMA SCHOOL OF LAW CLINICAL PROGRAMS

1997 IDEA AMENDMENTS

What do they hold for Private School Children with Disabilities?

Nancy Ellen Anderson, JD Candidate, Rutgers University School of Law

Susan is a 4th grade student with multiple disabilities. She needs the services of a full time instructional aide to attend school.

If Susan attended her local public school, she would be entitled, under the Individuals with Disabilities Education Act (IDEA), to all the services prescribed by her individualized education plan, including the services of the full time aide.

However, Susan's parents want her to attend the private school which her brother and sister attend. Must the school district in which Susan lives provide her with the aide on site at the private school?

During the last decade, courts nationwide have been wrestling with scenarios such as this and the issue they raise: What obligation does the IDEA impose on school districts to provide special education and related services to students with disabilities who have been voluntarily enrolled by their parents in a private school?

The IDEA was enacted to provide children with disabilities a free

and appropriate public education. Should the location of Susan's classroom — whether in a public or private setting — matter when it comes to determining a school district's obligation to her under the IDEA?

Conflicting Court Holdings

Federal circuit courts that addressed this issue under the pre-1997 IDEA amendments came to conflicting conclusions.

Three federal circuit courts held that a school district has broad discretion to determine what services it will provide to voluntarily enrolled private school students. These courts believe that, absent some showing of abuse, if a district offers the services at the public school, then the district has met its obligation under the IDEA.

At the other extreme, two circuits held that while the IDEA gives a district some discretion in determining the level of service, such discretion is limited. To conclude otherwise, asserted these courts, would be to contradict the statutory and regulatory language that provides that these children must participate equitably in special education programming.

These courts have held that a school district is entitled to consider,

Note: Readers should note that the following article deals only with the responsibility of local public schools to provide services to students with disabilities voluntarily placed in private schools. It does not address rights students with disabilities may have to receive special services or accommodations from the private school under such statutes as the Americans With Disabilities Act or Section 504.

for instance, costs when determining the level of service it must provide. If a service doesn't cost a district any more to provide on site at the private school, then absent some other educational consideration, the district must provide the service.

Congressional Response

In light of these judicial conflicts, Congress revamped those provisions of the IDEA which speak to a district's responsibility to this population of students when it enacted the IDEA Amendments in June, 1997. While the final implementing regulations have not been approved,

Please see IDEA on page 4



Frequently Asked Questions About Service Animals in Places of Business

Our appreciation to the U.S. Department of Justice
Civil Rights Division, Disability Rights Section
for permission to publish this article.



What are the laws about service animals that apply to my business?

Under the Americans with Disabilities Act (ADA), privately owned businesses that serve the public, such as restaurants, hotels, retail stores, theaters, public transportation, theaters, and sports facilities, are prohibited from discriminating against individuals with disabilities. The ADA requires these businesses to allow people with disabilities to bring their service animals onto business premises in whatever areas customers are generally allowed.

What is a service animal?

The ADA defines a service animal as *any* guide dog, signal dog, or other animal individually

trained to provide assistance to an individual with a disability. If they meet this definition, animals are considered service animals under the ADA regardless of whether they have been licensed or certified by a state or local government.

How can I tell if an animal is really a service animal and not just a pet?

Some, but not all, service animals wear special collars and harnesses. Some, but not all, are licensed or certified and have identification papers. If you are not certain that an animal is a service animal, you may ask the person who has the animal if it is a service animal required because of a disability.

What must I do when an individual with a service animal comes to my business?

The service animal must be permitted to accompany the individual with a disability to all areas of the facility where customers are normally allowed to go. An individual with a service animal may not be segregated from other customers.

I have always had a clearly posted "no pets" policy at my establishment. Do I still have to allow service animals in?

Yes. A service animal is *not* a pet. The ADA requires you to modify your "no pets" policy to allow the use of a service animal by a person with a disability. This does not mean you must abandon your "no pets" policy altogether but simply that you must make an exception to your general rule for service animals.

My county health department has told me that *only* a seeing eye or guide dog has to be admitted. If I follow those regulations, am I violating the ADA?

Yes, if you refuse to admit any other type of service animal on the basis of local health department regulations or other state or local laws. The ADA provides greater protection for individuals with disabilities and so it takes priority over the local or state laws or regulations.

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Please see SERVICE ANIMALS on page 7

Scott H. Hughes

Director of Clinical Education
& Assistant Professor

WELCOME TO ADAP

It is my pleasure to welcome **Kristi M. Babb** to ADAP as a Case Advocate. Kristi has two years of work experience with Indian Rivers Mental Health Center in their Pickens County Satellite Office in Carrollton, AL. She received her undergraduate degree in Social Work from The University of Alabama. Kristi brings a desire to protect, promote and expand the rights of persons with disabilities.

Lauren Wilson-Carr is ADAP's newest staff attorney. Lauren was a partner at the Tuscaloosa firm Smalley & Carr, L.L.C. where she was active in civil rights issues involving Title IX and VII, and the Americans with Disabilities Act. She was a staff attorney at Legal Services Corporation of Alabama for two years. Lauren is active the Tuscaloosa County and Alabama State Bar Associations. She is a member of the Tuscaloosa County Chapter of *Inns of Court*, and a member of the Volunteer Lawyers Programs of the State Bar as a participating pro bono attorney and mediator. Her civic activities include being a board member of the Miracle Riders of West Alabama, Inc. and West Alabama AIDS Outreach Program, and is involved in the RISE program at The University of Alabama. Lauren received her undergraduate degree at The University of Alabama in Communications and her J.D. from Cumberland School of Law. Welcome to ADAP.

FAREWELL AND CONTINUED SUCCESS

It is with happiness, tinged with sadness, that I must tell you that **Ginger Tomlin**, our Associate Director, is leaving ADAP on June 19, 1998. Exciting things happen to exciting people, and Ginger is proof of this adage. Ginger has accepted a deanship at the Birmingham School of Law in which she will use her many skills, plus having the thrill of teaching future lawyers.

Ginger arrived at ADAP in January 1997 and quickly made her mark. Her positive outlook, can-do attitude, and strong leadership abilities has enabled ADAP to formulate a mission statement, set priorities and goals, and provide a vision that will carry us into the 21st Century. The entire staff has enjoyed working with her and we will miss her quick smile and good humor. We all wish her success in her new position.

Ginger, thank you for your many good works, many hours of devotion to the principles of ADAP, and helping us all to grow together in our work for individuals with disabilities. Good luck and continued success.



the U.S. Department of Education says they plan to issue final regs around July 1998.

Local Funding Cut Off

The amended IDEA states that “[n]o private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school.”

Under the amended statute, a school district has no responsibility to pay for special education costs for a student voluntarily placed by his parents in a private school and for whom a district made a free and appropriate public education available. This provision closes off the mandated use of local or state money to fund special education services to these children.

Although state and local funds don’t have to be used to fund these services, the IDEA still requires a school district to spend a share of its federal IDEA funds on these children. How much federal money is a private school child entitled to? The statute specifically, if inadequately, addresses the method by which services to this group of students will be funded.

The statute states that the total amount of money that must be spent to provide special education and related services to these students is limited to a proportional amount of federal funds made available under the IDEA to a school district.

Thus, a district calculates its financial obligation to private school students through this simple proportion:

Number of privately enrolled IDEA eligible students	=	financial obligation to private students
total number of IDEA eligible students		district's total IDEA grant

Say, for example a school district has 100 disabled students. Five of those students are voluntarily enrolled in private schools by their parents. The district’s total IDEA grant is \$100,000. Five percent of that amount, or \$5,000, must be expended for the provision of special education and related services to voluntarily enrolled private school students.

Which Children Get this Money?

What is unclear in the statute and proposed regulations is how this \$5,000 would be divvied up among the population of private school students.

There are three factors that a district must consider when determining what services to provide private school children with disabilities: the available pot of money (calculated as above) and the needs and location of the district-wide population of private school children with disabilities.

The proposed regulations suggest that not all private school children, or all needs, must be served under the amended IDEA. Instead, a district must consult with students’ representatives to decide which children will receive services, what services will be provided and how the services will be provided and evaluated.

Thus, does the statute envision that all children will receive an equal portion of the private student allotment? Is it to be proportioned out among the students based on the relative costs of the services to be provided? Is it possible that under this proposed schema that some students will not be provided federal funding at all?

Students faced with Hobson’s Choice

While the amended IDEA provisions speak more clearly to a school district’s general obligations to privately enrolled students with disabilities, questions remain as to how that obligation is to be carried out. Hopefully, the final regulations will provide additional guidance.

In practical terms, what might these Amendments mean for a child like Susan?

The lion’s share of funding for special education and related services comes from state and local sources. If a child cannot call upon that money, she is limited to some portion of the federal IDEA fund – which isn’t much. This year, the federal subsidy for each special education child is approximately \$550 while the estimated average cost of educating a child with a disability is \$6,500. The costs of providing a personal, full time aide for a child like Susan would be much higher than this average. Thus, the choice facing Susan’s parents is a hard one: stay at the private school and somehow pay for the aide themselves, or return to the public school. ■

http://www.roadmap

George W. Arnold, J.D. Candidate

internet sites for people with disabilities



While society has not quite reached the stage of technology where every household has a computer, it can safely be said that a majority do. Almost everyone at least has access to a computer, either at a school, office or local public library, and via that computer, the world wide web – or internet, as it is also known.

Therefore, ADAP thought it helpful to provide a list of sites that may be useful to people with disabilities. This list is not meant to be, by any means, exhaustive, but it is a starting point.

Of course, search engines, such as Lycos, Yahoo, Webcrawler, etc., can also help users find useful, informative and, in some cases, entertaining sites related to disabilities. Users just type in the search term specific to their disability. Search engines are service pages on the internet that allow you to type in a word or phrase and the service automatically gives you a list of websites that contain that word or phrase in the body of its information, beginning with those sites which use the term most frequently or the phrase is in their title or web address.

<http://etcs.ext.missouri.edu/info/maa/net.html>
(website address) This site provides links to the Americans with Disabilities Act (ADA) and disability resources on the net. While not the official ADA site, it leads you to that site, plus other sites that provide additional information on ADA. It includes many ADA sites, general disability information sites; university-based disability information (these sites often have educational materials and links to numerous other sites and are not profit-oriented as some sites are); products and services; non-profit organizations; commercial product services; communications and computers; newsletters; specific disability sites; legal resources; health and medicine

resources and more. This is the best site for starting cold because it provides a wide variety of quality sites on many different issues.

www.usdoj.gov.crt/ada/adahom1.htm The Department of Justice is just one of many great government websites. To get to the ADA site, scroll to the Topic Index, double click, and the next screen shows the ADA home page is second on the list. Double click on it. This is a great site for those interested in knowing the mechanics of the ADA, including an overview and the full text of this important piece of civil rights legislation. One of the more useful areas of this site is the updated news/rights section that showcases the latest rulings and settlements made by the Department of Justice on specific issues related to ADA. There is also information on new and proposed regulations, technical assistance materials and more.

<http://theArc.org> The national website of the Association for Retarded Citizens. It offers access to other mental retardation and developmentally disabled sites and a department of research and program services. There is a wealth of information on topics like self-advocacy, supported living, ADA, family support, future planning, fetal alcohol syndrome and aging with mental retardation. This site also provides access to Arc chapters that have their own websites, such as the Montgomery Arc.

<http://www.acc.dhhs.gov/programs/add>
Don't get confused by the ADD at the end of the web address. This is not a site on Attention Deficit Disorder, but from the Administration on Developmental Disabilities, another government site that contains lots of information on mental retardation and developmental disabilities.

Please see ROADMAP on page 8

ADOPTION AND FOSTER CARE OF CHILDREN WITH DISABILITIES

Christy Hayes,
J.D. Candidate

? MAKING THE DECISION

The decision to expand one's family is a gigantic and often intimidating idea for all parents, especially those who are considering adoption. For thousands of couples who are unable to conceive or simply wish to better the life of a needy child, adoption and/or foster care is the preferred option. Even though bringing a child into a new home is both a rewarding yet sometimes challenging experience, many couples are willing to go the extra mile to open their hearts and homes to children with special needs. Still, there are many wonderful and deserving children that go without a permanent family for most of their lives.

\$ OVERCOMING THE FINANCIAL BURDEN

Potential adoptive parents have ways of easing the monetary strains of the adoption process. When parents bring a child into the home and find that they cannot afford the costs of raising and caring for their new son or daughter, the child ends up back in the system. A

stable home is the only want and need of children who have been placed in the adoption system. Finding that his new parents must give him away once again is a traumatic and stigmatizing event.

The Department of Human Resources (DHR) provides subsidies to adoptive parents for special needs children. It is crucial for potential parents to determine their eligibility and how much financial help they can expect from DHR before they sign the adoption agreement. If a prospective parent has not asked about the eligibility for a subsidy beforehand, the child faces the additional trauma of being returned to DHR if the parent is unable to manage without additional assistance. Instability places the child at greater risk of being unable to form bonds and develop trust.

Currently, Alabama's Department of Human Resources pays foster parents \$230 per month for support of a child with no special needs. Unfortunately, this board rate payment is the lowest in the nation. It is less than it would cost to place a dog in a kennel for the same amount of time. For children with special needs, "therapeutic" foster care is provided. The

board rate payment to therapeutic foster parents may approach \$1000 per month. Individuals who choose to provide foster care to children with mental and physical health problems may require special skills and/or training. Once they are licensed as "therapeutic foster care" parents, they are able to handle the health and behavioral challenges of many children. Some therapeutic foster care parents are trained to provide psychological counseling and behavior management for the child in need of these services.



PRIVATE ENTITIES

As Alabama's board rate has remained the same for a number of years, private entities that aid in the placement of children in foster care and adoptive families have had to increase their fundraising efforts dramatically. Many of these non-profit providers of foster care that give additional funds and support for Alabama's homeless children are church-run organizations. The United Methodist Children's Home, based in Selma, is a shining example of such an entity. The Alabama Baptist Convention and the

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Presbyterian Church, U.S.A., also provide group homes and facilities throughout the state.



OPENING YOUR HEART, MIND AND HOME

Children with special needs are often overlooked as potential sons and daughters because of their physical or mental disabilities. It is, however, so important for those who think they are unable to provide the care necessary for these children to remember that a little patience and a lot of love will go a long way for a child who has most likely received none. Training and financial subsidies are available for parents who wish to welcome the rewarding challenge. For information regarding adoption and foster care, including information about financial subsidies and training opportunities, contact Clara Price or Carola Kelly in Resource Development for Adoption and Foster Care at the state Department of Human Resources in Montgomery, 334-254-9500. They can also direct you to the appropriate person to contact at your county DHR. The smile of a child whose life you have changed forever will remind you that it was worth it after all. ■

Source: Conversation with James Tucker, ADAP attorney and children's rights advocate.

Can I charge a maintenance or cleaning fee for customers who bring service animals into my business?

No. Neither a deposit nor a surcharge may be imposed on an individual with a disability as a condition to allowing a service animal to accompany the individual with a disability, even if deposits are routinely required for pets. However, a public accommodation may charge its customers with disabilities if a service animal causes damage so long as it is the regular practice of the entity to charge non-disabled customers for the same types of damages. For example, a hotel can charge a guest with a disability for the cost of repairing or cleaning furniture damaged by a service animal if it is the hotel's policy to charge when non-disabled guests cause such damage.

I operate a private taxicab and I don't want animals in my taxi; they smell, shed hair and sometimes have "accidents." Am I violating the ADA if I refuse to pick up someone with a service animal?

Yes. Taxicab companies may not refuse to provide services to individuals with disabilities. Private taxicab companies are also prohibited from charging higher fares or fees for transporting individuals with disabilities and their service animals than they charge to other persons for the same or equivalent service.

Am I responsible for the animal while the person with a disability is in my business?

No. The care or supervision of a

service animal is solely the responsibility of his or her owner. You are not required to provide care or food or a special location for the animal.

What if a service animal barks or growls at other people, or otherwise acts out of control?

You may exclude any animal, including a service animal, from your facility when that animal's behavior poses a direct threat to the health or safety of others. For example, any service animal that displays vicious behavior towards other guests or customers may be excluded. You may not make assumptions, however, about how a particular animal is likely to behave based on your past experience with other animals. Although a public accommodation may exclude any service animal that is out of control, it should give the individual with a disability who uses the service animal the option of continuing to enjoy its goods and services without having the service animal on the premises.

Can I exclude an animal that doesn't really seem dangerous but is disruptive to my business?

There may be a few circumstances when a public accommodation is not required to accommodate a service animal--that is, when doing so would result in a fundamental alteration to the nature of the business. Generally, this is not likely to occur in restaurants, hotels, retail stores, theaters, concert halls, etc. But when it does, for example, when a dog barks during a movie, the animal can be excluded. ■

<http://addgroup.org> This is the site for ADD. Includes FAQs (Frequently Asked Questions Section), articles, books lists, meetings of action groups. Also has information on dyslexia, learning disabilities and autism.

<http://www.chadd.org> Children and Adults with Attention Deficit Disorder (CHADD) is a non-profit organization that requires a small annual fee for membership, but provides lots of educational and support materials; and has a full-time advocate working for those with ADD on Capitol Hill. Before readers spend any money, investigate and determine if the services are worth the money

and if there are others (such as ADAP) who can provide some of the same services for free.

<http://janweb.icdi.wvu.edu>
The Job Accommodation Network is a consulting service that provides information about job accommodations and the employability of people with disabilities. It is not, however, a job placement service.

<http://www.nas.com/downsyn>
This is a website on Down Syndrome with links to other sites on this subject. This page provides extraordinary emotional support resources, as well as medical articles and educational materials.

Again, this is not even the tip of the iceberg on sites dealing with disabilities, but should be a good starting point. ■

ADAP's website address is:

<http://www.adap.net>

ADAP's e-mail address is:

ADAP@law.ua.edu

Additional information on how to contact ADAP is listed on page 2.

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IDEA *Stay-Put Rule Sees Changes*

George W. Arnold, JD Candidate

The stay-put provision of the Individuals with Disabilities Education Act (IDEA)¹ is one of the most emotionally charged areas of the IDEA. For parents and their school-age children with disabilities, the stay-put provision can be a powerful tool when used to secure due process protections in placement and discipline decisions. Educators and administrators, however, may view the provision as a hindrance to maintaining order and safety in the public schools.

The stay-put provision limits the ability of school administrators to unilaterally transfer or change the placement of special education students. Prior to 1997, the stay-put provision was often interpreted as an absolute, unyielding rule. Congress has amended the law, adding several important exceptions to this rule. However, those changes have spawned new areas of litigation and have done little to quell the numerous suits between parents of special education students and school administrators.

Recently, an article appeared in the *Individuals with Disabilities Education Law Report* regarding frequently litigated

areas of IDEA law. The article, written by Ronald D. Wenkart, who is general counsel for the Orange County, California, Department of Education, addresses the stay-put provision of IDEA. A summary of that report follows:

First, what constitutes a change of placement? IDEA limits an administrator's power to change a special education student's placement, but it does not prevent all transfers, such as changes of location of program or changes in residence. In *Sherri A.D. v. Kirby*, the Court ruled that an educational placement has not changed for IDEA purposes unless a fundamental change in, or the elimination of, a basic element of the educational program has occurred.²

The courts have ruled that the "current placement" is the "last implemented placement" of the child. A developed or revised individualized education program (IEP) that has not been implemented does not constitute a "current placement."³ Similarly, where parents have not appealed or disputed the school district's proposed change in

placement, they may be precluded from invoking the stay-put rule. Finally, courts have refused to apply the stay-put rule to enjoin the closing of a school or require transportation be provided.⁴

Of course, the purpose of the stay-put rule is to maintain a student's current placement while administrative proceedings are held in a dispute over a change in placement. The stay-put law refers to three types of proceedings – state administrative reviews, due process administrative hearings and civil actions seeking review of the administrative decisions in state or federal court. It is very important to distinguish what type of proceeding is at issue. One court has ruled the stay-put provision was intended to keep schools from making unilateral decisions and once a trial court has rendered a decision to make a change, the school has no longer made that decision – the court has.⁵

When parents seek a change in placement over the school district's objections and win at the administrative or trial level, "the

Please see IDEA on page 2

school district must pay for the ordered placement prior to the conclusion of the litigation.”⁶

With regard to IDEA and the stay-put provision in particular, courts generally have been reluctant to create case law exceptions to the plain language of the IDEA statute. As a result, historically, when school administrators experienced alleged discipline or safety problems with special education students, some administrators have felt they were barred or hindered in their attempts to deal with these situations. The stay-put provisions did not allow them to take measures they might have taken otherwise (whether appropriate or not) such as suspensions, interim alternative settings and the like.

This scenario led to the passage of the 1997 Amendments to the stay-put rule dealing with discipline. The Amendments now

authorize school personnel to order a change in the placement of a child with a disability to an interim setting or a suspension for not more than 10 school days, to the extent that such alternatives would be applied to students without disabilities. The

Amendments also authorize school districts to place a child with a disability in an appropriate interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, but not more than 45 days, for such serious infractions as carrying a weapon or illegal drugs.

The new Amendments allow a hearing officer to order a change in placement of a child who is at risk of injury to himself or others for up to 45 days, as long as such a change in placement addresses: (1)

the appropriateness of the current placement; (2) whether the public agency has made reasonable efforts to deal with the risk; and,

Not all of the 1997 Amendments favor school administrators.

(3) whether the interim setting will allow the child to achieve the current IEP goals.

Though the law authorizes exceptions to the long-standing stay-put rule, some due process protections are preserved. For example, the IEP team in any case must determine the alternative setting. Before, or no later than 10 days after, a disciplinary action, the local agency shall convene an IEP meeting if it has not conducted a functional behavior assessment. However, when a parent appeals a disciplinary action, the child stays in the alternative setting until 45 days expire or the parent obtains a favorable ruling on appeal.

Not all of the 1997 Amendments favor school administrators. Traditionally, when a child is expelled from school, that ends the school district's responsibility to educate the child. One of the 1997 IDEA Amendments prohibits its cessation of educational services to children with disabilities following suspensions or expulsions, even if the manifested behavior is not a result of the disability. This Amendment is in direct contravention to prior

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
Assistant Professor of Law	Dan Filler
Program Director	Reuben W. Cook
Associate Program Director	James Tucker
Senior Advocate Coordinator	David Prince
Staff Attorney	Paul J. Dezenberg
Staff Attorney	Barbara Lawrence
Staff Attorney	Rozalind Smith
Staff Attorney	Lauren Wilson-Carr
Information Specialist	Segail I. Friedman
Coordinator of Outreach and Training	Ann Marshall
Case Advocate	Kristi Babb
Case Advocate	David Gamble
Case Advocate	Denise Smith
Case Advocate	Arngene Wells
Administrative Secretary	Janet Owens
Secretary	Susan Tretter
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
Website address: <http://www.adap.net>

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Scott H. Hughes

Director of Clinical Education
& Assistant Professor

LOOK US OVER . . .

I have been at the School of Law for about fifteen months and when this reaches you I will be starting my second academic year of teaching. In addition to welcoming two new members to our staff, Paul Dezenberg and Denise Smith, I thought it would be appropriate to take a moment and reflect on how far ADAP has come in the last year. Although I am disappointed that Ginger Tomlin left ADAP, in eighteen months she built a strong administrative foundation for ADAP. Her work has allowed James Tucker to assume the position of Associate Director while still supervising the difficult class action lawsuits we have, like *RC* and *Wyatt*. James is respected across the state and across the nation for his work with children and individuals with disabilities. We are extremely lucky to have him at ADAP!

When I arrived in May of 1997, ADAP had only one staff attorney. We now have four and plans are in the works to possibly hire a fifth. However, representing the rights of individuals with disabilities means more than just numbers. Fortunately, all four staff attorneys are bright, talented, and experienced. They, along with James, are energized by each other and the incredible help they receive from all of the case advocates and the administrative staff.

Also, we are starting a search for James Tucker's replacement as Litigation Director. See the

announcement elsewhere in this issue of *Airmail*. With James' abilities and leadership combined with a talented staff, we will be able to attract a topnotch litigator to further our work to protect and expand the rights of individuals with disabilities. If you know anyone with the necessary qualifications, please let us know or urge them to contact us. If it is someone that has known ADAP before, ask them to look again, I think they'll like what they see.

One final word before I get to the new introductions. When Denise Smith joins us in August, we will have a net increase of one in our corps of case workers from a year ago. She will join recent arrival Kristi Babb and veterans Arngene Wells and David Gamble. This crew is joined by two part-time intake advocates, Darlene Dutton and Michael Hinton and are led by David Prince. Again, from top to bottom, from David Prince to the intake advocates, I am very excited about the quality of their work and the sense of community that is developing at ADAP.

It is my pleasure to introduce Denise and Paul.

Denise Smith brings a wealth of practical experience along with professional knowledge to ADAP. She received her Master of Social Work from The University of Alabama with concentration in children, youth and

families. Her practical experience includes working as an assistant juvenile and assistant adult probation officer in Beaumont, Texas. Denise has worked in field placement in Special Education with the Tuscaloosa County Board of Education, and as a School Support Specialist in the Family Resource Center in Greensboro, Alabama. Since November 1997, Denise has been a member of ADAP's Protection and Advocacy for Developmental Disabilities Consumer Advisory Council.

Paul Dezenberg comes to ADAP from Huntsville where he had a solo practice in civil litigation. He brings a great deal of experience to our program. He received a BA in English from The University of Alabama and his JD from Washington University School of Law in St. Louis. He was a member of the Order of the Coif and *Washington University Law Quarterly*. He was a legal intern on the House Judiciary Committee, Subcommittee on Civil and Constitutional Rights in Washington D. C. Upon graduation from law school he practiced commercial litigation in Chicago and Dallas.

Watch us. There is an incredible team spirit now forming at ADAP and exciting things are going to happen in the next twelve months!



Fair Housing Rights

FOR PEOPLE WITH DISABILITIES UNDER THE FAIR HOUSING AMENDMENTS OF 1988

David Gamble, Case Advocate

The 1988 amendments to the Fair Housing Act (FHA) prohibit discrimination in housing because of disability. The Fair Housing Act covers most housing. There are, however, two principal exemptions. The first is owner-occupied housing for four or fewer families living independently of each other. The second is the rental or sale of a single-family house by an owner who does not have an interest in more than three such houses, who has not sold a house within the previous two years, who does not use a real estate agent or broker to sell or rent the house, and who does not use a discriminatory advertisement.

What is prohibited? No one may take any of the following actions based on disability:

- Refuse to rent or sell housing
- Refuse to negotiate for housing
- Make housing unavailable
- Deny a dwelling
- Set different terms, conditions or privileges for sale or rental of a dwelling
- Provide different housing services or facilities
- Falsely deny that housing is available for inspection, sale or rental
- For profit, persuade owners to sell or rent (blockbusting)
- Deny anyone access to or membership in a facility or service (such as a multiple listing service) related to the sale or rental of housing
- Discriminate in mortgage lending
- Refuse to allow a tenant to make reasonable modifications to a dwelling or common use area, at tenant's expense, if necessary for the person with a disability to use the housing
- Refuse to make reasonable accommodations in rules, policies, practices, or services if necessary for the person with a disability to use the housing.

If you feel your rights have been violated, you may contact one of the nonprofit Fair Housing centers in your area of the state. The address and telephone number for each center is:



Central Alabama Fair Housing
207 Montgomery St., Suite 725
Montgomery, AL 36104
Ph#: 334/263-4663



Fair Housing of North Alabama
2000 1st Avenue North, Suite 529
Birmingham, AL 35203
Ph#: 205/324-0111



Mobile Fair Housing
951 Government St., Suite 827
Mobile, AL 36604
Ph#: 334/433-8070

The federal enforcement agency for the Fair Housing Act is the U.S. Department of Housing and Urban Development (HUD). If you feel you have been discriminated against in housing because of a disability, you may also write HUD a letter or telephone the HUD Hotline. You have a year after an alleged violation to file a complaint with HUD, but you should file it as soon as possible. The following is a list of information to include when contacting HUD:

- Your name and address
- The name and address of the person your complaint is against (the respondent)
- The address or other identification of the housing involved
- A short description of the alleged violation (the event that caused you to believe your rights were violated)
- The date(s) of the alleged violation

Send a letter to the HUD regional office for Alabama or to the HUD national office. The address for each office is:

HUD-Fair Housing and Equal Opportunity (FHEO)
Richard B. Russell Federal Building
75 Spring Street, S.W.
Atlanta, Georgia 30303-3388

Office of Fair Housing and Equal Opportunity
U.S. Department of Housing and Urban Development
Room 5204
Washington, D.C. 20410-2000

If you wish, you may use the toll-free HUD Hotline at 1-800-669-9777. If you are a person with a disability, HUD provides a toll-free TDD phone for persons with hearing impairments at 1-800-927-9275. HUD also provides interpreters, tapes, braille materials, and assistance in both reading and completing forms. ■

IDEA

Continued from page 2

court rulings. Thus, Congress has sent a clear message about its precise intent.

The Amendments do not limit the jurisdiction of the courts to issue an injunction ordering the transfer of a disabled student to an alternative placement. However, administrative remedies must be exhausted prior to seeking court action. For example, conduct that is substantially likely to result in injury may be grounds for a hearing officer to order alternative placement. If the hearing officer denies relief, the school district may then go to court. Whether seeking an order from a hearing officer or the courts, however, the courts have emphasized the duty of school officials to provide an appropriate education to children who are disabled. "A child's capacity for harmful intent plays no role in this analysis ... [I]n the case of dangerous disabled children the purpose of removal is not punishment but maintaining a safe learning environment for all students."⁷

Potentially, the biggest effect of the 1997 Amendments will be the explicit extension of the stay-put rule to non-special education students. However, because the provisions are so new there is little case law on the subject and it is difficult to predict how courts will interpret the provisions.

The new law provides protections for children not yet eligible for special education and related services. Thus, a child who has not been determined eligible for special education, and who is subject to discipline, may assert an IDEA protection. This is the case, however, only when the school district has knowledge of the disability. A school district is deemed to have knowledge if any one of the following is demonstrated:

1. The parent has expressed concern in writing to personnel that the child needs special education services.
2. The parent has requested an evaluation.
3. The teacher of the student, or other personnel, has expressed concern about the child to school district administrative personnel.
4. The behavior or performance of the child demonstrates the need for services.

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Alabama Disabilities Advocacy Program (ADAP)
and
Alabama Developmental Disabilities Planning Council (ADDPC)
announce a public hearing with
Administration for Children and Families
U.S. Department of Health and Human Services



September 14, 1998
4:00 p.m. - 6:00 p.m.
Rotary Community Room
Second Floor
Tuscaloosa Public Library
1801 River Road
Tuscaloosa, Alabama

The public hearing provides an opportunity for federal officials to hear comments about ADAP, ADDPC, and Civitan International Research Center (Alabama's UAP) which receive funding from the Administration for Children and Families. You are encouraged to attend this meeting, but if you are unable to do so, you may send written comments to:

Mrs. Harriet J. Epps, Administration for Children and Families
U.S. Department of Health and Human Services
Atlanta Federal Center, Suite 4M60
61 Forsyth St., S.W.
Atlanta, GA 30303-8909
FAX 404/562-2983.

For additional information, contact either:

Mr. Reuben Cook at ADAP
205/348-4928
1-800/826-1675
205/348-9484 (TDD)
205/348-3909 (FAX)

Dr. Joan Hannah at ADDPC
334/242-3973
1-800/232-2158
334/242-0797 (FAX)

Persons requiring services of an interpreter or other supports, please contact Mr. Reuben Cook at ADAP no later than September 4, 1998.

Some have argued this will expand the scope of IDEA greatly. However, the following language from the case seems to indicate otherwise:

We wish to make clear that parents of other young offenders should not conclude that they can use this approach to allow the hindsight opinion of some expert to qualify a delinquent child for preliminary protections under the Act ... The IDEA was intended to provide individualized public education for disabled children. The Act was not designed to act as a shield to protect a disruptive child from routine and appropriate school discipline.⁸

However, the Amendments seem to extend the stay-put rule beyond students with disabilities and an argument could be made by parents of juvenile offenders that their children are due the same protections. It is likely the decisions will turn on how liberal an interpretation is given to the term "prior knowledge".

There are limitations to the stay-put rule. First of all, it does not apply once a child reaches age 21.⁹ Also, the stay-put rule does not apply in a case in which parents have not appealed the underlying placement decision.¹⁰ Nor does it apply in a case where there is no appealable issue.¹¹

Though the stay-put rule has led to a significant amount of litigation, the 1997 Amendments give courts more flexibility in dealing with certain issues. In large part, the quality of education that can be achieved for students with disabilities will depend on how administrative bodies and courts exercise their growing discretion. ■

ENDNOTES

¹ 20 U.S.C. 1415.

² 975 F.2d 193 (5th Cir. 1992). See also, Lunceford v. District of Columbia Bd. Of Educ., 745 F.2d 1577 (D.C. Cir. 1984); Weil v. Board of Elementary and Secondary Education, 931 F.2d. 1069 (5th Cir. 1991); and Concerned Parents and Citizens v. New York Board of Education, 629 F.2d 751 (2nd Cir. 1980).

³ Thomas v. Cincinnati Board of Education, 918 F.2d 618 (6th Cir. 1990). See also, Drinker v. Colonial Sch. Dist., 78 F.3d. 859 (3rd Cir. 1996).

⁴ Tilton v. Jefferson County Board of Education, 705 F.2d. 800 (6th Cir. 1983).

⁵ Anderson v. District of Columbia, 877 F.2d 1018 (D.C. Cir. 1989).

⁶ School Committee of the Town of Burlington v. Department of Education, 471 U.S. 359 (1985). Citing Burlington, a district court has ruled "following an administrative decision in favor of the parents seeking a change in placement, the school district must pay for the ordered placement prior to the conclusion of the litigation." Sequenita School District v. Raelee S., 96 F.3d 78 (3rd Cir. 1996). See also, Clovis Unified School District v. Office of Administrative Hearings, 903 F.2d 635 (9th Cir. 1990), where the court ruled the school district could not recover interim costs, even though it won on appeal.

⁷ Id.

⁸ Id.

⁹ Board of Education v. Illinois State Board of Education, 79 F.3d 654 (7th Cir. 1996).

¹⁰ Drinker v. Colonial School District, 78 F.3d 859 (3rd Cir. 1996).

¹¹ Tennessee Department of Mental Health and Mental Retardation v. Paul B., 88 F.3d 1466 (6th Cir. 1996).

POSITION ANNOUNCEMENT

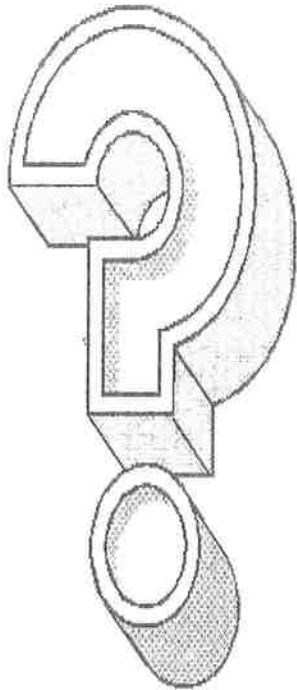
ADAP seeks to hire a new Litigation Program Director who will have full day-to-day responsibility for directing ADAP's legal program. The Litigation Director develops and supervises all litigation on behalf of individuals and groups of persons with disabilities, provides direct representation of clients, supervises all staff attorneys, and works with clinical law professors and students.

Salary: The salary range is \$33,106 - \$50,737.

To Apply: Applicants should send their resume, including their social security number and references, to Reuben W. Cook, Director, ADAP, Box 870395, Tuscaloosa, AL 35487-0395, or information may be faxed to 205/348-3909. To receive full consideration, application deadline is October 15, 1998. (Applications will be accepted until position is filled.)

The University of Alabama is an Equal Opportunity/Affirmative Action Employer. Women, minorities, veterans and persons with disabilities are encouraged to apply. Requests for reasonable accommodation during the application and/or interview process should be made to Reuben W. Cook, Box 870395, Tuscaloosa, AL 35487-0395, or call 205/348-4928.

Did you know that in 1997 . . .



nationwide the Protection & Advocacy for Developmental Disabilities (PADD) programs assisted 28,061 individual clients. . .

39% of cases involved children receiving special education services. . .

29% of cases involved investigation of abuse and neglect such as:

- physical assault
- sexual assault
- failure to provide appropriate medical treatment
- inappropriate medication
- coercion
- sterilization
- financial exploitation

73% of the clients lived independently or with their families. . .

More impressive numbers. . .

78,625 people were provided information and/or referrals

212,624 individuals were provided education and outreach.

PADD's information, referrals, education, and outreach helps promotes self-advocacy. PADD continues to strive for excellence and wants and needs to reach more people who can use its services.

In Alabama, if you or someone you know needs the services of our PADD program, contact ADAP at . . .

Phones and fax:

205/348-4928

205/348-9484 - TDD

800/826-1675 - in-state only

205/348-3909 - fax

Address:

Box 870395

Tuscaloosa, AL 35487-0395

Airmail is funded 100% with federal funds through: • Administration on Developmental Disabilities (PADD) • Center for Mental Health Services (PAIMI) • U.S. Department of Education/Rehabilitation Services (PAIR).

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AIRMAIL

ALABAMA DISABILITIES ADVOCACY PROGRAM

Vol. 3. Issue 5 October 1998

THE UNIVERSITY OF ALABAMA SCHOOL OF LAW CLINICAL PROGRAMS

ADAP PROPOSES PRIORITIES FOR FY 1999

ADAP is in the process of setting program priorities for FY 1999. The issues listed below are currently being considered for priorities for the next fiscal year. ADAP would like to hear from you regarding these proposed priorities. Which do you feel should be the focus of ADAP's advocacy efforts during the coming fiscal year? Are there other issues which you would like added to the list? Please let us hear from you. Write to ADAP at the address on the back of this newsletter, or call us at 1-800-826-1675 and ask for David Prince.

Your comments are important!

Children's Issues (PADD, PAIMI, PAIR)

- * Protection of the rights of children with disabilities who are placed in or at risk of being placed in foster care
- * Protection of children from abuse and neglect in residential facilities
- * Advocating for provision of appropriate services to multi-needs children

Education (PADD)

- * Advocating for placement of students with disabilities in schools which afford the maximum amount of interaction with non-disabled peers in age-appropriate regular classrooms
- * Advocating for development and implementation of appropriate IEPs
- * Advocating for appropriate policies and procedures regarding discipline of children with disabilities

Residential Placements (PADD, PAIMI)

- * Advocating for safe and appropriate treatment conditions in residential placements
- * Advocating for release from institutions of patients who no longer require institutional placement and for provision of appropriate transitional services upon release

ADA/Discrimination Issues (PAIR, PADD)

- * Advocating for reasonable accommodations in employment
- * Advocating for access to state and local government programs and services
- * Advocating for access to public accommodations

Assistive Technology (PAAT)

- * Advocating for Medicaid payment for augmentative communication devices for children with disabilities
- * Advocating for provision of AT to children in special education

NOTE

ADAP's four programs are designated as follows:

PADD = Protection and Advocacy for Persons with Developmental Disabilities;

PAIMI = Protection and Advocacy for Individuals with Mental Illness;

PAIR = Protection and Advocacy for Individual Rights;

PAAT = Protection and Advocacy for Assistive Technology.

ADAP MAKING A DIFFERENCE IN THE LIVES OF CHILDREN

Barbara Lawrence, Staff Attorney

Each day ADAP attorneys, advocates, students, and staff are working to make a difference in the lives of persons with disabilities. Two recent cases involving children illustrate this point.

Recently a city school system in Alabama refused to enroll nine children who lived in a group home. These children had not attended school in this system before. The Assistant Superintendent of Special Education for the district notified the group home that the system was unable to enroll students without proof of guardianship of persons residing within its district. The children had been placed in the group home by the Department of Human Resources and the Department of Mental

Health and Mental Retardation (DMH/MR) and no local person held guardianship. Each of the nine children has mental retardation or mental illness. ADAP took the position that a provision in the Alabama Administrative Code superceded the local residency requirement for children living in a group home and urged that the children were entitled to a free and appropriate education under the IDEA. ADAP notified the system as well as the Alabama Department of Education. At the insistence of ADAP, and with the assistance of the Alabama Department of Education, all nine children were enrolled at the beginning of the school year.

Another case involved an eighteen-year-old R.C. class

member. The R.C. case and Consent Decree deal chiefly with child welfare and foster care reform in the State of Alabama. The Consent Decree requires that an individualized service plan ("ISP") be developed for the child and family based on the unique strengths and needs of that child and family. The individual service plan is to address the services the child and family should receive. If no service exists that will fit the child's unique needs, then the Consent Decree requires that an appropriate service be developed.

In spite of the child's long history of exhibiting behavioral and emotional problems, the county Department of Human Resources (DHR) filed a motion to be relieved of the child's custody. The petition alleged that the child had exhausted the resources available in the community and that it was time for the child's mother to accept full responsibility for the child as he advanced toward adulthood. It appeared to be the intent of the county Department of Human Resources to be relieved of custody, then to provide no further services to the child, in spite of the child's history and demonstrated need for further services.

The child had been in the legal custody of DHR or DMH/MR since the early part of 1989. In October of 1997 the child returned to his mother's home where he has remained. From October of 1989

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
 Assistant Professor of Law Dan Filler
 Program Director Reuben W. Cook
 Associate Program Director James Tucker
 Senior Advocate Coordinator David Prince
 Coordinator of Outreach and Training Ann Marshall

Staff Attorney Paul J. Dezenberg	Case Advocate Kristi Babb
Staff Attorney Barbara Lawrence	Case Advocate David Gamble
Staff Attorney Patrick Hackney	Case Advocate Denise Smith
Staff Attorney Rozalind Smith	Case Advocate Arngel Wells
Staff Attorney Lauren Wilson-Carr	Administrative Secretary Janet Owens
Information Specialist Segail I. Friedman	Secretary Susan Tretter
	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
 Website address: <http://www.adap.net>

Continued on page 3

Clinical

NOTE PAD

Scott H. Hughes

Director of Clinical Education
& Assistant Professor

It is my pleasure to welcome two new members to the ADAP team, Dan Filler as Assistant Professor of Law and Patrick Hackney as staff attorney. Dan will be primarily responsible for supervising the law students in the Disability Clinic at ADAP. In addition to his clinical duties, Dan is already active in a recent lawsuit ADAP is pursuing against Medicaid for assistive technology. He is also teaching Juvenile Justice in the classroom this fall.

Dan joins us after five years of work in Public Defender offices, first in Philadelphia and, most recently, with the Bronx Defenders in New York City. Dan earned an A.B. at Brown University and his J.D. at New York University. While in law school, Dan was an editor of the *N.Y.U. Law Review* and was named the outstanding oral advocate in the Orson Marden Moot Court Competition. After graduation he clerked for the Honorable J. Dickson Phillips, Jr. on the United States Court of Appeals for the Fourth Circuit.

However, Dan brings more than just academic and work credentials to ADAP. He is a terrifically bright, energetic and witty individual who, in the short time he has been here, has already become a vital part of the ADAP team.

Patrick Hackney, a 1998 graduate of our Law School and alumnus of the Disability Law Clinic, joined ADAP on September 1 as the fifth staff attorney under the able supervision of Associate Director James Tucker. Patrick will be working primarily on an accessibility campaign to enforce the provisions of the ADA. In order to accomplish this work in the most efficient manner, he will spend a great deal of time in outreach and education efforts to inform public officials about their responsibilities under the Americans with Disabilities Act. A Tuscaloosa native and an individual with a disability, Patrick brings a special dedication and personal expertise to this important work. As a newly minted attorney,

Patrick will continue his learning at ADAP and we will learn from him, as well.

Please join me in welcoming Dan and Patrick to the terrific team at ADAP.

One final note. For the first time in recent history, all of the clinics at the School of Law are fully subscribed. The primary responsibility for this happy news rests with the members of the staff who worked so hard at the very beginning of the semester in mid-August to design and implement a campaign to get the word out to the law students about the clinics. In five days we recruited fifteen new students to the clinic. My thanks go to the following ADAP staff members: Segail Friedman, Lauren Carr, Rosemary Beck, Paul Dezenberg, Jo Taylor, Hugh Lee, and students Kristi Deason and Mary Scott Hunter. It is going to be a great school year at ADAP!

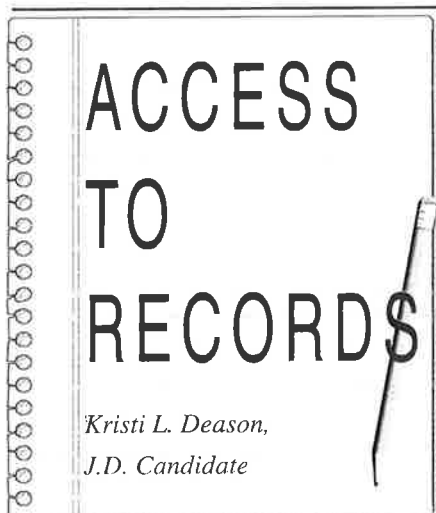


Continued from page 2



until the child's return to his mother's home, and while in the legal custody of DHR and the DMH/MR, the child had been placed in 14 different placements. The child's placements were often disrupted due to his violent and aggressive behavior. The child had few skills and had not passed the GED.

The R.C. Consent Decree requires that the "system of care" shall promote smooth transitions for class members to adult service systems and/or independent living when class members "age out" of the system. The individualized service plan is required to provide for such a transition. With the assistance of an ADAP attorney, an ISP meeting was held and an appropriate ISP was developed for the child to assist him in the transition from childhood to adulthood.



Access to Records is Necessary for a P&A Agency to Protect Persons With Disabilities From Abuse

Access to records is vital for a Protection and Advocacy (P&A) agency, such as ADAP, to do its federally-mandated job of investigating allegations of abuse and neglect of persons with disabilities. Without access to records, investigations would take longer and put the client at risk of continued abuse and neglect. However, Congress and the Courts have created policies that give P&As access to records while also protecting the individual's privacy.

Congress gave P&As the right to access records through a mesh of legislation when it created the Protection and Advocacy for Persons with Developmental Disabilities program (PADD), the Protection and Advocacy for Individual Rights program (PAIR), and the Protection and Advocacy for Individuals with Mental Illness program (PAIMI). Under these laws, P&As have access to a wider range of records, including the client's unit chart, treatment plan, habilitation plan, medical records, financial records, etc. The term "records" also includes:

reports prepared by any staff of a facility rendering care and treatment or reports prepared by an agency charged with investigating reports of abuse, neglect, and injury occurring at such facility that describe incidents of abuse, neglect, and injury occurring at such facility and the steps taken to investigate such incidents, and discharge planning records.

If a state has laws regarding access to records which might contradict federal laws granting P&A access, the federal law supercedes the state law and the P&A's access is not restricted by the state law.

When a person with a disability is represented by a P&A program, the P&A has authority to investigate allegations of abuse and neglect if there is probable cause to believe that it occurred. The P&A agency automatically has access to the records of persons within their system if that person, or their legal guardian, conservator, or other legal representative, gives their permission.

However, the P&A agency can still obtain access to records without formal permission when: 1) the individual is unable to give permission because of a physical or mental condition, 2) the individual does not have a legal guardian, conservator, or other legal representative, or if the state

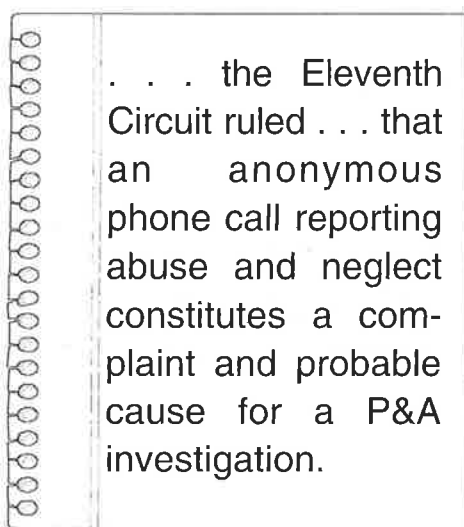
is the legal guardian, and 3) if there is probable cause to believe the individual has been the subject of abuse or neglect.

But if there is probable cause to believe a person with a disability has been the object of abuse or neglect and that person has a legal representative, the P&A can still access the individual's records if their legal representative does not authorize it. If the P&A contacts the legal representative and offers their assistance in resolving the situation, the P&A can get access to the records if that legal representative fails or refuses to act on behalf of the individual.

Some may fear that giving a P&A access to records may compromise the confidentiality of personal information in those records. However, Congress addressed that concern by requiring P&As to maintain the same level of confidentiality as the care-providing agency that supplied the records to them. By law, P&As must protect confidential records from loss, damage, tampering, or access from unauthorized persons. However, the individual or their legal representative continues to have access to the records unless it is prohibited by law, court order, or attorney-client privilege rules.

The Courts have protected the P&A system's right of access to records for the

purpose of investigating claims of abuse and neglect. In 1996, the Eleventh Circuit ruled in *Alabama Disabilities Advocacy Program v. J.S. Tarwarter Developmental Center* that an anonymous phone call reporting abuse and neglect constitutes a complaint and probable cause for a P&A investigation. The Court also ruled that according to Alabama law, guardianship, conserva-



. . . the Eleventh Circuit ruled . . . that an anonymous phone call reporting abuse and neglect constitutes a complaint and probable cause for a P&A investigation.

torship, or any legal representative capacity for an individual ends at his or her death unless he or she establishes that person as conservator of the person's estate. Therefore, a P&A can access the records of that individual after their death without the permission of their former legal representative. This Court ruling allows P&As to investigate deaths caused by abuse and neglect of an individual with a disability even if their former legal representative prefers not to give the P&A permission to access the records.

A Maryland state court found that their state P&A agency had the right to access records of individuals who were not their clients. In *Maryland Disability Law Center, Inc. v. Mt. Washington Pediatric Hospital, Inc.*, the Court of Special Appeals of Maryland ruled that if there is probable cause of abuse or neglect against an individual with a disability, the P&A can have access to that individual's records even if they are not a client. In addition, the Maryland court found the P&A's ability to access records extended to private hospitals.

Federal district courts have found that limiting access to patients' records was not necessary to prevent disruption of patient care and that involvement of a state juvenile court does not affect the P&A's right to access records. Congress and the Courts have been supportive of P&A agencies investigating abuse and neglect of persons with disabilities and it appears they will continue to support P&A agencies in their right to access records so that they may do their job of protecting clients as fast and as efficiently as possible.

Sources for this article include the P&A's authorizing legislation:

- The Developmental Disabilities Assistance and Bill of Rights Act of 1975, 42 U.S.C. §§ 6041-43;
- The Protection and Advocacy of Individual Rights Program of the Rehabilitation Act of 1973, 29 U.S.C. § 794e;
- The Protection and Advocacy for Individuals with Mental Illness Act of 1986, 42 U.S.C. § 10801.

For a complete text of the endnotes, contact ADAP.

PARTNERS IN POLICYMAKING OF ALABAMA SELECTING THE CLASS OF 1999

Partners in Policymaking of Alabama (PIPA) is leadership training that makes a difference. It provides innovative leadership training to people with developmental disabilities and their family members, teaching them to be self-advocates and community leaders.

The Alabama Developmental Disabilities Planning Council is currently recruiting participants for Alabama's 1999 Class of Partners. A limited number of participants will be selected. Funding for PIPA is provided by the Council and there is no cost to participate. Participants' related expenses will be reimbursed (cost must be reasonable). Participants are also required to meet certain expectations in attendance, assignments and projects.

Applications must be postmarked by December 1, 1998 to be eligible. For more information and an application, contact:

Sheryl Matney, PIPA Coordinator
800/232-2158 or 800/846-3735
P.O. Box 301410
Montgomery, AL 36130-1410

Local Consumer and Federal Officials Affirm Community Life

[Ed. Following is the text of a letter from the Health Care Financing Administration to all state Medicaid Directors.]

July 29, 1998

Dear State Medicaid Director:

In the Americans with Disabilities Act (ADA), Congress provided that "the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals." 42 U.S.C. 12101(a)(8). Title II of the ADA further provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs or activities of a public entity, or be the subject of discrimination by any such entity." 42 U.S.C. 12132. Department of Justice regulations implementing this provision require that "a public entity shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities." 28 C.F.R. 35.130(d).

We have summarized below three Medicaid cases related to the ADA to make you aware of recent trends involving Medicaid and the ADA.

In *L.C. & E.W. v. Olmstead*, patients in a State psychiatric hospital in Georgia challenged their placement in an institutional setting rather than in a community-based treatment program. The United States Court of Appeals for the Eleventh Circuit held that placement in an institutional setting appeared to violate the ADA because it constituted a segregated setting, and remanded the case for a determination of whether community placements could be made without fundamentally altering the State's programs. The court emphasized that a community placement could be required as a "reasonable accommodation" to the needs of disabled individuals, and that denial of community placements could not be justified simply by the State's fiscal concerns. However, the court recognized that the ADA does not necessarily require a State to serve everyone in the community but that decisions regarding services, and where they are to be provided must be made based on whether community-based placement is appropriate for a particular individual in addition to whether such placement would fundamentally alter the program.

In *Helen L. v. DiDario*, a Medicaid nursing home resident who was paralyzed from the waist down sought services from a State-funded attendant care program which would allow her to receive services in her own home where she could reside with her children. The United States Court of Appeals for the Third Circuit held that

the State's failure to provide services in the "most integrated setting appropriate" to this individual who was paralyzed from the waist down violated the ADA, and found that provision of attendant care would not fundamentally alter any State program because it was already within the scope of an existing State program. The Supreme Court declined to hear an appeal in this matter, thus, the Court of Appeals decision is final.

In *Easley v. Snider*, a lawsuit, filed by representatives of persons with disabilities deemed to be incapable of controlling their own legal and financial affairs, challenged a requirement that beneficiaries of their State's attendant care program must be mentally alert. The Third Circuit found that, because the essential nature of the program was to foster independence for individuals incapable of controlling their own legal and financial affairs in the program would constitute a fundamental alteration of the program and was not required by the ADA. This is a final decision.

While these decisions are only binding in the affected circuits, the Attorney General has indicated that under the ADA States have an obligation to provide services to people with disabilities in the most integrated setting appropriate to their needs. Reasonable steps

Continued on page 7

Continued from page 6

should be taken if the treating professional determines that an individual living in a facility could live in the community with the right mix of support services to enable them to do so. The Department of Justice recently reiterated that ADA's most "integrated setting" standard applies to States, including State Medicaid programs.

States were required to do a self-evaluation to ensure that their policies, practices and procedures promote, rather than hinder integration. This self-evaluation should have included consideration of the ADA's integration requirement. To the extent that any State Medicaid program has not fully completed its self-evaluation process, it should do so now, in conjunction with the disability community and its representatives to ensure that policies, practices and procedures meet the requirements of the ADA. We recognize that ADA issues are being clarified through administrative and judicial interpretations on a continual basis. We will provide you with additional guidance concerning the ADA compliance as it becomes available.

I urge you also, in recognition of the anniversary of the ADA, to strive to meet its objectives by continuing to develop home and community-based service options for persons with disabilities to live in integrated settings.

If you have any questions concerning this letter or require technical assistance, please contact Mary Jenn Duckett.

Sincerely,

Sally K. Richardson
Director

cc: All HCFA Regional Administrators
All HCFA Associate Regional Administrators
for Medicaid and State Operations
American Public Human Services Association
National Conference of State Legislatures
National Governors' Association

Consumer Backs Community Life for People With Disabilities

The following was recently published in the *Tuscaloosa News*.

Dear Editor:

In the past several weeks there have been a number of stories in your paper as well as most others throughout the state regarding the planned closing of the Lurleen Wallace Developmental Center in Decatur. I am writing in support of this effort.

As a person with a disability, I believe that all individuals should have the opportunity to live in the community and to be able to attempt to attain their dreams and goals. I have been fortunate to have never had to live in an institution but I have friends that have not been as fortunate. Those who have resided within an institution and now live within the community are happier and have been contributing members to society since being allowed to move to the community.

The stories on the closing have too often focused on the issues of safety for the individuals who reside within the institution or the loss of jobs for those employed at the institution. These should be non-issues. The only real issue is the quality of life for the individuals residing within and the improved quality available on the outside. Safety is a part of this quality of life.

I have challenged my fellow members in People First to register to vote and become aware of the positions of the candidates running in this year's election so that we will support those that believe in "liberty and justice for all!" I would hope that it is not too much for me to ask of all citizens of Alabama.

Joe Meadours
Northport

*Joe Meadours is the winner of the 1998
President's Committee on Mental Retardation
Young Elizabeth Moore Boggs Award.*

Project Drive

A support program to help adolescents with mild MR and LD obtain their driver's license

Robin Gaines Lanzi, Ph.D., M.P.H. and Wanda Washington, Ph.D.

The Civitan International Research Center has been awarded a grant from the Joseph P. Kennedy, Jr. Foundation to help adolescents with mild mental retardation and learning disabilities obtain their driver's license. Key components of the project involve: modifying the driver's license manual, developing supplemental material and a video, collaborating with school systems and their transition initiatives, providing individualized attention, utilizing an advisory board of key stakeholders, interviewing parents and adolescents, and following adolescents' progress through the project and a year after completion.

The Alabama Disabilities Advocacy Program (ADAP) is supporting efforts to improve the opportunities for people with disabilities to drive. ADAP is providing help in distributing this survey, as well as other training and technical assistance to the grant. For several years, ADAP has

been involved in enforcing the legal rights of people with disabilities in the licensing process.

A key factor in the project is to learn about the experiences individuals with disabilities have had when attempting to obtain or keep their driver's license. If you want a survey or have any questions, please call Drs. Robin Lanzi or Wanda Washington at 205/975-2336. The survey is also on the Internet at <http://www.circ.uab.edu/projdrv/pd1.htm> or adap@law.ua.edu. Complete and mail the survey to: Project Drive, Civitan International Research Center, 1719 - 6th Ave., South, University of Alabama at Birmingham, Birmingham, AL 35294-0021 or fax to 205/975-6330.

This survey is a very important aspect of program development--your participation will help assure this project will meet the needs of persons with disabilities who want to drive.

Airmail is funded 100% with federal funds through: • Administration on Developmental Disabilities (PADD)
• Center for Mental Health Services (PAIMI) • U.S. Department of Education/Rehabilitation Services (PAIR).

Alabama Disabilities Advocacy Program
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School of Law Clinical Programs
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AIRMAIL

ALABAMA DISABILITIES ADVOCACY PROGRAM Vol. 3, Issue 6 December 1998

THE UNIVERSITY OF ALABAMA SCHOOL OF LAW CLINICAL PROGRAMS

Rolling Amtrak Keeps the Wheels Rolling Rolling

Frank Holifield, J.D. Candidate

Essential to the lives of American citizens, whether mobility impaired or not, is the ability to travel. One such mode of travel is by rail, and as the Legal Center for the Elderly and Disabled in Sacramento, California notes: "If reasonable accommodations are made, Amtrak may be one of the most viable options for transportation for disabled people." The Disability Rights Education and Defense Fund (DREDF) of Berkeley, California, recently settled a suit with the National Railroad Passenger Corporation ("Amtrak") in a move which will serve to provide greater accessibility to travel by rail, plus other concessions, for Americans with mobility impairments.

The terms of the Consent Decree will have a beneficial impact on the rights of travel for Americans and Alabamians with

mobility impairments. Among its routes to and from more than 500 destinations, Amtrak provides a significant number of routes to and from Alabama cities. Therefore, a 15% discount on rail fare for both passengers with mobility impairments and their companions represents a significant concession to passengers with mobility impairments. Noted below are some of the adjustments in fares after the settlement. The fares noted below cover the pre- and post-discount prices for round-trip tickets from three Alabama cities to other major U.S. cities.

FROM	TO	Pre-Discount Average Price	Post-Discount Average Price
Tuscaloosa, AL	New Orleans	\$ 69.00	\$ 58.65
	New York City	\$267.50	\$227.38
	Los Angeles	\$459.50	\$390.58
Birmingham, AL	New Orleans	\$ 68.00	\$ 57.80
	New York City	\$314.50	\$267.33
	Los Angeles	\$432.00	\$367.20
Mobile, AL	New Orleans	\$ 68.00	\$ 57.80
	New York City	\$432.50	\$367.63
	Los Angeles	\$384.50	\$326.83

Continued on page 4

Private Insurance & Assistive Technology: What are Your Rights?

Alicia Lee, J.D. Candidate

Does your private insurance cover hearing aids, wheelchairs or augmentative communication devices? Private insurance may cover policyholders seeking assistive technology if the item being sought is included in the coverage, and if the item is medically necessary as determined by the insurance company. It is important that the consumer examine the actual policy, and not just a handbook or other explanatory material, when trying to determine who and what the policy covers. Also, the consumer should be sure to obtain a copy of any amendments, riders, or supplements pertaining to the policy in question. Finally, a review of relevant laws might be necessary. Insurance

policies are contracts and are generally subject to state insurance law, with state contract law filling in the gaps. Federal law can also be relevant.

Insurance companies erect several barriers to coverage, most prominently exclusionary clauses for pre-existing conditions and expensive co-payments. If the condition for which the consumer seeks assistive technology is excluded by the policy, or if the item itself is excluded, coverage may be denied. Insurance companies also limit coverage by making co-payments unaffordable. With certain qualifications, these clauses are legal.

The policy is not the end of the matter, however. Some types of exclusions may be forbidden by law and certain laws may grant other protections to the consumer. For example, the Health Insurance Portability and Accountability Act of 1996 (HIPAA), also known as the Kennedy-Kassebaum law, has eliminated most pre-existing condition exclusions in group health insurance plans. The Employer Retirement Income Security Act (ERISA) also regulates those plans which choose to self insure. The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) provides the consumer the opportunity to continue coverage after a layoff or job termination.

The Americans with Disabilities Act of 1990 (ADA) may limit a plan's ability to exclude coverage of assistive technology. Title I of the ADA applies to businesses with 15 or more employees and prohibits discrimination in "employment compensation" and "other terms, conditions and privileges of employment." Title III applies to new accommodations and services. Since the ADA was enacted, there have been few decisions applying the ADA in the health insurance context.¹ Although courts have not yet considered these arguments, Title I may prohibit an employee benefit plan from unfairly discriminating against a person with a disability. Similarly, the insurance contract is arguably a "public accommodation" and an insurance company may be required to provide equal access to policy coverage to all potential consumers, regardless of disability.

The insurance company, usually through a doctor or some type of

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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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.

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Clinical

NOTE PAD

Scott H. Hughes
Director of Clinical Education
& Assistant Professor

As the end of the calendar year approaches, I wanted to send along to you several items of good news about ADAP. I have to speak of the calendar year, because at ADAP we have two additional calendars: the fiscal calendar which lasts from October 1 through September 30, which we use for reporting and accounting, and the academic calendar. I could give you three "year-end" reports each year.

ADAP to be featured in national law student magazine. *NATIONAL JURIST MAGAZINE*, a nationally distributed magazine for law students, will feature the Disability Clinic at ADAP along with two other clinics in their January issue. The article will highlight a lawsuit in which ADAP was able to get Medicaid to pay for assistive technology for five year old Danielle Brown, a child with a severe speech disability. This device allows Danielle to communicate freely with family, friends, and teachers. Congratulations for this case go to the students from the Disability Clinic, Professor Dan Filler, and ADAP staff members Paul Dezenberg and David Gamble.

ADAP Website cited. The Alabama Disabilities Advocacy Program web-site has been designated a Cool Site in the NewHoo Regional Disability Information category for our wonderful list of Alabama resources, as well as our excellent services. Congratulations to Rosemary Beck for her work on the web-site. Come visit our website at www.adap.net. We would love to hear your comments and suggestions.

A warm fuzzy for Ann Marshall, Coordinator of Outreach and Training. Overheard at the Early Intervention Conference held at the Bryant Conference Center in Tuscaloosa, "I notice you work at ADAP. I attended a seminar Ann conducted and she was so good. I could not believe I was in the same room with Ann Marshall and had the opportunity to listen to her story." We are lucky to have this national resource working right here in Alabama for the rights of individuals with disabilities!

DHHS gives ADAP high marks. Representatives of the Administration for Children and Families of the Department of Health & Human Services visited ADAP in September as part of their periodic review process. In his cover letter, Regional Hub Director Steven J. Golightly wrote:

We would like to commend you, the University School of Law, the Advisory Council and the staff for the dedication that you have shown and for your commitment to assisting individuals with disabilities....

I want to thank you and your staff... for sharing the success of the program with [us]. Certainly, you manage an exemplary program that is an invaluable resource for individuals with developmental disabilities and their families.

Mr. Golightly also added "**CONGRATULATIONS!**" in bold face across the bottom of his letter!

Even before they left, the federal authorities were excited about our program. During the exit interview, one of the federal representatives stated, "Everyone on the staff is excited about ADAP. Each was eager to tell us about their work and the potential for ADAP.... This is an extraordinary place." I couldn't agree more!

From all of us at ADAP, we hope you have a healthy and happy holiday season and our very best for the new year!



Elvis (Wilson Carr), is dressed and ready for Trick or Treat. Costume designed and made by mom, Lauren Carr, ADAP staff attorney.

The fares quoted are an average, based on a telephone survey of the fares from the three Alabama cities conducted on November 2, 1998. "Highs" and "lows" for fares are subject to availability of passage and timing of reservation.

The fare discounts and other concessions made by Amtrak to passengers with mobility impairments were due to the settlement of the suit filed by DREDF and other concerned parties against Amtrak. The catalyst for this suit was a "harrowing" round trip by rail between Los Angeles, California and New Orleans, Louisiana, taken by named Plaintiffs Susan Ferreyra and Joe Marsh. The couple initially struggled with conflicting information on reservations for an accessible bedroom, only to find that the available accessible bedrooms had previously been reserved for passengers without mobility impairments who were part of a tour group. Ferreyra was forced, on the return trip, to sleep with the door to her standard-sized bedroom open to the other passengers, because of an inability to fit Ferreyra's respirator and wheelchair inside the room with the door closed. Ferreyra was also unable to obtain a continuous power source for her respirator and, as a consequence, had to remain awake at night during any car-switching procedures that would cut off the power to the respirator. Ferreyra was also unable to gain access to the dining and lounge cars. Ferreyra stated: "the system Amtrak had set up was not service-oriented to disabled folks."

DREDF and another San Francisco-based law firm (Orrick, Herrington, and Sutcliffe, LLP) filed the class-action lawsuit against Amtrak on behalf of Ferreyra, Marsh, and others similarly situated for violations of the provisions of the Americans with Disabilities Act of 1990 (ADA) and provisions of the California Civil Code. The suit, filed in federal court in San Francisco on July 31, 1996, included four claims under the ADA. First, the suit claimed that Amtrak failed to ensure that information critical to access was effectively received from and communicated to passengers with mobility impairments. Second, the suit claimed that Amtrak failed to ensure that the limited number of wheelchair-accessible sleeper rooms were reserved for passengers who needed the augmented access features. Third, Amtrak failed to provide an economy fare rate for passengers with increased access requirements. Fourth, Amtrak failed to ensure that all usual train services and amenities would be made available to passengers with mobility impairments and those associated with them. In amicably executing a settlement with DREDF, the named Plaintiffs, and others similarly situated on May 14, 1998, Amtrak asserted that "we're always glad to be shown how to make trains even more user friendly." Speaking of the settlement, Linda Kilb, an attorney with DREDF, stated that: "[W]e are pleased that Amtrak saw this case as an opportunity to improve their services . . . The new reservation policy and low fares demonstrate Amtrak's commitment [to] welcome passengers with disabilities." Of significant note, the settlement by Amtrak was seen by DREDF as a part of a continuing commitment, over recent years, to make Amtrak "the most accessible mode of inter-city transportation in the United States."

The Consent Decree provides for improvements in Amtrak's pricing policies, reservations policies, information policies, computer reservation system, and program access for passengers with mobility impairments. The improvements in Amtrak's pricing policies include a continued 15% discount for passengers with mobility impairments, an additional 15% discount for their adult companions, and a provision of accessible bedrooms at the lowest regular non-discounted bedroom charge, with an additional 30% discount for the three years after the settlement. Improvements in Amtrak's reservations policies include: (1) a reservation of accessible bedrooms for a period up until 14 days prior to the train's departure for passengers with mobility impairments and (2) a provision that any improvements in the reservations policy in the future, which would benefit individuals with mobility impairments, could be added to the terms of the Consent Decree. Improvements in Amtrak's information policies include the provision of a 24-hour customer service desk with trained personnel to accommodate the requirements of individuals with mobility impairments, a publication which provides information on services for passengers with mobility impairments, a 1-800 number (1-800-USA-RAIL) for information on the newly-discounted fares, and a toll free number (877-268-7252) for any questions regarding the special services which Amtrak provides for passengers with mobility impairments. Amtrak's computer reservation system, since the execution of the settlement, has been reprogrammed to implement the revised pricing schedule and reservations policies noted above. Amtrak's improvements in program access include the ability of passengers with mobility impairments to move, where feasible, to the lounge railcar to view movies and

the provision of meals and snacks in the passenger's bedroom, upon request. The terms of the Consent Decree represent a significant, beneficial impact on the ability of Americans with mobility impairments to enjoy travel via the mode of transportation that provides the most viable option for travel for them.

While the terms of the Consent Decree provide Alabamians with decreased fares and an improved reservation and information system, few of these routes include provisions for accessible bedrooms. Therefore, the effects of the decreased fares for accessible bedrooms and new reservation policy are somewhat less significant for travelers from Alabama locales. On one such Alabama route, an accessible bedroom would cost less than \$100, as discounted from the normal charge for a standard sleeping accommodation. This was the Washington D.C.-to-Chicago leg of the Birmingham-to-Los Angeles route. While the provisions for sleeping arrangements do not have quite as much impact on Alabamians with mobility impairments travelling by rail, the other provisions of the Consent Decree still have a significant, beneficial impact on their ability to travel without disruption. Due to the terms of the settlement of this suit, Alabamians with mobility impairments have greater and more equitable access to a significant part of American life – travel by rail.

*Rolling
Rolling*

ONE STEP AT A TIME

Every day begins with one step at a time. In learning to advocate for yourself, children, family members, or friends, every step is important. ADAP is publishing a new edition of *A Guide to Self-Advocacy*. The following "Eleven Steps at Being an Effective Self-Advocate" is an excerpt from the publication.

To receive a copy of *A Guide to Self-Advocacy* contact ADAP at any of the numbers or methods listed on page 2.

Eleven Steps at Being an Effective Self-Advocate

1. **BELIEVE IN YOURSELF**

You are worth the effort it takes to protect your interests and your rights. *You can do it!!!*

2. **REALIZE YOU HAVE RIGHTS**

You are entitled under the law. Inform yourself by asking questions and using resources such as ADAP. (Address and phone numbers are on the cover.) Insist that explanations are clear and understandable. Remember, service providers are public servants. They work for YOU!

3. **DISCUSS YOUR CONCERNS**

Talk directly with your service provider by phone, in person or writing a letter. You may bring someone along for support.

4. **GET THE FACTS**

Problem solve by gathering information. Get the facts in writing. Ask for policies, rules or the regulations being cited to you. Keep notes about your efforts. People sometimes settle for a quick verbal decision that may not be accurate. Hold agencies accountable for the decisions they make.

5. **USE THE CHAIN OF COMMAND**

Use an agency's chain of command to make sure a supervisor or someone else with authority has an opportunity to work with you on the problem and resolution.

6. **KNOW YOUR APPEAL RIGHTS**

Request clear written information on your appeal rights either within an agency or outside an agency. Know what the next step will be if you are dissatisfied.

7. **BE ASSERTIVE & PERSISTENT**

Keep after what you want. Remember that effort moves bureaucracies. Follow up!

8. **USE COMMUNICATION SKILLS**

Have a plan outlining your concerns. Stay calm and express yourself clearly. Be willing to listen because what you hear is usually as important as what you say.

9. **ASK FOR HELP**

Link up with advocacy organizations, such as ADAP, for specific information on problems you are having obtaining services related to a disability. Remember there are also community support groups or organizations.

10. **FOLLOW UP!**

Don't give up without using these skills. Agencies are accountable for the decisions they make. You are entitled to know and exercise all your options to obtain the assistance you need.

11. **REMEMBER TO SAY THANKS**

People will remember you and be willing to help more if you say Thank You!

This holiday season ADAP's thoughts turn to peace for mankind. May this time of year be special to you and your loved ones.

A CREED TO LIVE BY

"Don't underestimate your worth by comparing yourself with others. It is because we are different that each of us is special.

Don't set your goals by what other people deem important. Only you know what is best for you.

Don't take for granted the things closest to your heart. Cling to them as you would your life, for without them life is meaningless.

Don't let your life slip through your fingers by living in the past or the future. By living your life one day at a time, you will live all the days of your life.

Don't give up when you still have something to give. Nothing is really over until the moment you stop trying.

Don't be afraid to encounter risks. It is by taking chances that we learn how to be brave.

Don't shut love out of your life by saying it's impossible to find. The quickest way to receive love is to give love; The fastest way to lose love is to hold it too tightly, and The best way to keep love is to give it wings.

Don't dismiss your dreams, To be without dreams is to be without hope; To be without hope is to be without purpose.

Don't rush through life so fast That you forget not only where you've been, but also where you are going. Life is not a race, but a journey to be savored each step of the way."

Nancy Sims

Happy Holidays!
Kristi Babb

Season's Greetings!
Paul

I wish you hope,
Ann

Have a great new year,
David Prince

My wishes to you
for 1999:
- health
- love
- joy
Segail

Have a HAPPY
Holiday Everyone!
Paul

Merry Christmas!
Rosemary Beck
Wishing you Happy Holidays!
Susan Trexler

Happy Holidays!
Scott H. Hughes

Happy Holidays!
Here's to your health
& wealth in the New Year!
Lauren Can

HAVE A WONDERFUL HOLIDAY SEASON
Patricia

Have a blessed
1999
Kimesi Smith

Best wishes to
you and your family
during THE Holiday
season. TAKE CARE!
Kawson

A joyous holiday season to all!
Janet Owens

Have a happy
holiday season!
David Smith

Happy New Year!
Barbara Lawrence

Holiday cheer!
Kozclind T. Smith

Season's Greetings
Dan Miller

God bless you all!
Angene Wells

Continued from page 2

utilization review agent, determines what is medically necessary. State law may mandate a minimum level of qualification for those responsible for making this decision. If the decision rendered is an unfavorable one, an appeal can be made to the insurance company, or the consumer may seek review in court. In Alabama it appears that the consumer's rights regarding an insurance company appeal are governed exclusively by the terms of the insurance contract. Only HMOs are required by state regulations to include grievance provisions in the contract or any certificates.² A consumer seeking to sue an insurance company for breach of contract should be aware of the state's statute of limitations. Consumers considering filing grievance claims with their insurer should review their contract for any time limitations.

Sometimes state insurance agencies accept complaints as well. In Alabama, the State Department of Insurance works with consumers to facilitate complaints they might have against insurance companies. The

Alabama State Department of Insurance can be reached at 334-269-3550. When consumers make a complaint to the Department, the Department will notify the insurance company that it has received a complaint, and the insurance company will then have 10 days to respond to both the policyholder and to the Department. The insurance commissioner is also authorized by state law to hold hearings³ and institute actions to enforce the insurance code.⁴

Consumers seeking coverage for assistive technology must be aggressive. They must read their policy closely and, if their insurance carrier is not in compliance, they must consider filing grievances with the insurer, complaints with state regulators and, on occasion, lawsuits.

¹ Research in the area did reveal a large number of cases applying the ADA in the disability insurance context, but since the purpose of this article is to inform consumers of their rights regarding assistive technology, those cases are not discussed here.

² Ala. Insurance r. No. 79 § 4 (1987).

³ Ala. Code § 27-2-7 (1997)

⁴ Ala. Code § 27-2-19

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