

# ADAP

Alabama Disabilities Advocacy Program



NOVEMBER 2006



**ADAP  
Celebrates  
30th  
Anniversary**



*Curt Decker with Ricky A. Wyatt*

ADAP celebrated its 30th Anniversary in Montgomery, Alabama on Friday, November 3, 2006 in the Old Archives Room at the State Capitol.

Thanks are extended to all our special guests, friends and family who attended and made the event so memorable.

Curt Decker, Executive Director of the National Disability Rights Network, presented the keynote address, focusing on the past and future of the Protection and Advocacy system. *(continued on Page 5)*

## Charles Priest

Director, Alabama Head Injury Foundation

*Interview by Ellen B. Gillespie, Ph.D.  
ADAP, Executive Director*

*Charlie Priest has been the Executive Director of the Alabama Head Injury Foundation (AHIF) since 1984. He recently talked with ADAP Director Ellen Gillespie about the work of the AHIF.*



*Charles Priest, Director,  
Alabama Head Injury Foundation*

**Ellen:** I tend to use the terms “head injury” and “brain injury” interchangeably. Which is the correct term?

**Charlie:** We use the terms synonymously but brain injury is really the more accurate definition. A lot of organizations and references are starting to speak of traumatic brain injury.

**Ellen:** How common are brain injuries in Alabama?

**Charlie:** Unfortunately, they are too common. There are an estimated 10,000 brain injuries each year in Alabama. About 80% of those are what we call minor or subtle brain injuries, and most of those people will have, if not a full recovery, a very good recovery and outcome.

That leaves about 20% or 2,000 people who have a moderate or severe brain injury. Of that number, about 500 will die. According to the Centers for Disease Control, the remaining 1,500 people will be permanently disabled due to a *(continued on Page 4)*

ADAP is pleased to announce the start-up of its latest advocacy program: Aiding Alabama.



*Nic Carlisle*

Spearheaded by staff attorney Nic Carlisle, Aiding Alabama is designed to provide rights education and advocacy services to persons living with HIV/AIDS.

Aiding Alabama is supported through a grant from Equal Justice Works, a national organization founded in 1986 by law students dedicated to working for equal justice on behalf of underserved communities and causes. Today, Equal Justice Works is the national leader in creating summer and postgraduate public interest opportunities for law students and lawyers as well as in urging more public interest programming at law schools.

In addition to providing direct legal representation to individuals throughout the state living with HIV/AIDS, Nic has also developed an education initiative focused on teaching others to advocate for them.

# AIDING ALABAMA

Protecting the Rights of People with HIV/AIDS

## **Wills, Guardianships and Power of Attorney**

- Leave your possessions to your loved ones
- Make sure your children are cared for if something happens to you
- Appoint someone to make decisions for you if you become too sick to make decisions for yourself

## **Insurance**

- Continue your health insurance after you leave a job
- Help you if an insurance company won't pay for your pre-existing condition
- Help you if your insurance company cancels your policy after finding out you are positive

## **Employment**

- Deal with discrimination in the workplace
- Help you if you are fired because of your HIV status
- Help you if you are denied a reasonable accommodation

## **Medicare and Medicaid**

- Help make sure the government pays for the services or treatments you need
- Help you understand your prescription drug plan

## **Return to Work**

- Help you understand how working will affect your federal and state benefits

## **Immigration**

- Obtain United States citizenship despite your HIV status

## **Debtor/Creditor Issues**

- Help you handle harassing creditors when you can't pay your bills

## **Other Rights Violations**

- Help you if someone discloses your HIV status without your permission
- Help you if a nursing home or other residential facility refuses to serve you based on your HIV status
- Help you with any other rights violation based on your HIV status



*For more information about Aiding Alabama, contact ADAP at 1-800-826-1675 or visit our website at <http://www.adap.net>*

# EEOC Reminds SSA that Equal Access to Restrooms is Essential to all Employees

By Beau Butts  
ADAP Staff, Law Clerk



*Kimberly Mensi*  
of 1973 by not providing reasonable accommodations to an employee at its Montgomery, Alabama office.

ADAP filed the EEOC complaint on behalf of Kimberly Mensi, a SSA claims representative who had worked for the agency since 1998.

When she was hired by the SSA, Ms. Mensi told her manager that she would need accommodations under the Rehabilitation Act. Working together, she and her supervisor decided upon

an accommodation plan – SSA would hire a personal assistant to assist Ms. Mensi in handling the various physical accessibility problems in the building, including a physically inaccessible restroom. For a variety of reasons, the arrangement fell apart in 2004.

When the SSA was advised that there was no one to provide assistant services and that Ms. Mensi no longer had a way to use the restroom, SSA stated that it was not legally required to provide her with the same access to a restroom that its other employees had. SSA suggested that Ms. Mensi drive to another facility to find an accessible restroom.

After enduring the obvious hardships associated with not having access to a restroom at work, Ms. Mensi contacted ADAP for assistance.

ADAP made many attempts to resolve the matter with the SSA. Finally, the agency filed a complaint

with the EEOC demanding that the building accessibility violations be remedied and that Ms. Mensi be provided with a personal assistant.

The administrative law judge ruled in August that SSA was not in compliance with the Rehabilitation Act of 1973. In addition, the judge ordered the SSA to pay monetary damages and provide reasonable physical accommodations at Ms. Mensi's work station and in the mail room and restroom. SSA was ordered not to retaliate against Ms. Mensi and to pay fees and costs to ADAP.

Finally, the judge ordered all of the regional SSA managers to be trained on disability accommodation issues.

Since the ruling Ms. Mensi has returned to work and a new personal assistant has been hired who assists her with all of her needs in her workplace.



*Pictured are: (l-r) Nancy Anderson, Jane Perkins, Sara Somers, James Tucker and Ellen Gillespie*

## Medicaid Teach-In

Advocates for persons with disabilities, the poor and elderly came together at a Medicaid teach-in sponsored by ADAP in October 2006.

Over the course of two days, attorneys Jane Perkins and Sarah Somers from the National Health Law Program (NHeLP) led the attendees in discussions that focused on Medicaid's legal structure, the challenges facing the program on the federal and state level, and advocacy opportunities here in Alabama.

NHeLP is a nationally renowned public interest law firm dedicated to improving health care for America's working and unemployed poor, minorities, the elderly and people with disabilities.

*Charles Priest*  
(continued from Page 1)

brain injury. That's an enormous number and it represents the fastest growing disability in our state.

**Ellen:** What are the common causes of brain injury?

**Charlie:** Forty-eight percent of severe brain injuries are caused by motor vehicle crashes and falls. Violence is increasingly becoming a major cause.

**Ellen:** What is the number one need that people with head injuries have?

**Charlie:** It's hard to identify the number one unmet need. There are so many because this population seems to fall between the cracks. I think that one of the greatest unmet needs is for rehabilitation. Secondly, I think long term behavioral supports are needed. There are very few avenues where you can go for treatment or support or help.

**Ellen:** If a brain injury occurs during childhood, is that considered a developmental disability?

**Charlie:** Yes, if it occurs prior to age 22 and if the person meets the other functional definitions of a developmental disability. For some programs and services, such as the Family Support Councils, the age of onset is waived in the case of traumatic brain injury due to advocacy on our part and education and receptivity by the Family Support program.

**Ellen:** What services does the AHIF offer?

**Charlie:** We serve over 1,200 people each year. We provide information and referral services to about 800 people each year. We do local resource coordination serving all 67 counties throughout the state. We have some social recreational programs, camp sessions and day programs around the state. We have in-home respite care to provide primary care givers with relief. We also have a housing program that includes some

accessibility modifications and the development of some new affordable accessible housing facilities in Florence, Hoover, and soon to be in Mobile, AL. We do a lot of professional education, training and consumer education. Finally, we are involved in individual and group advocacy.

**Ellen:** Have you had contact in the last few years with veterans who have returned from war with brain injuries?

**Charlie:** Yes, that's an emerging issue. The Alabama Head Injury Task Force, a committee under the Alabama Department of Rehabilitation Services, is even developing a separate committee to look at veterans' issues because of the large number of referrals we are getting from veterans from the Middle East with blast injuries. These injuries are unlike those suffered in previous conflicts where the primary injuries were penetrating bullet wounds and shrapnel.

**Ellen:** If you had to reminisce about your time here, can you think of a favorite story that you have about somebody who benefited from AHIF services?

**Charlie:** An elderly gentleman who was a survivor of traumatic brain injury was barely able to live in his own home. He couldn't maintain the house itself or cut the grass or keep it up. But, he was doing what he could and he wanted to remain there. He was having a little bit of trouble as a heavy winter was approaching. Our local resource coordinator knew that the house had no insulation, its heater was on the blink and it was drafty — cold air would flow in through one side of the house and out the other. The resource coordinator practiced what we preach — that is, develop a consumer's natural supports. Never replace natural supports with an artificial support such as government funding when there is local support available. That coordinator recognized

that local supports were the gentleman's neighbors. So, he got out in front of that house on a ladder with a caulk gun and started to caulk up the gentleman's house, whistling and singing loudly. Before long, neighbors started to look out through their doors and windows, wondering what was going on. A few approached our staff member who proceeded to explain that their neighbor had a brain injury and was having trouble maintaining the house and that he was helping him to get his house ready for the awful cold that was coming.

Natural supports started to emerge: neighbors started to come over and help with the caulking. Some of them made food for the workers. Before long a local church joined in supporting the gentleman; he had his yard cut, and the house insulated and painted through the church's efforts. Every day he's got friendly visitors stopping by. He became a member of that local church. That is the bottom line story of what we are all about: to help change the environment for the person with brain injury who returns home.



The interview with Willodean Ash in the July 2006 edition of the ADAP

newsletter stated that one of the eligibility requirements to qualify for services from the Alabama Dept. of Mental Health/ Mental Retardation (DMH/MR) was that a person's IQ must be assessed to be "70 or below." DMH/MR uses the 1983 AAMR definition of mental retardation, which states that a person's IQ must be assessed at below 70. ADAP apologizes for this mistake.



*30th Anniversary (continued from Page 1)*

The Ricky A. Wyatt Lifetime Advocacy Award was presented to the following outstanding Alabamians for advocacy on behalf of persons with disabilities:

- Jayne R. Chase, Advocate; Director, Partners in Policymaking of Alabama from Florence, AL
- Paul R. Davis, Journalist; President and Publisher of Davis Publications in Auburn; Owner and Publisher, Tuskegee News from Tuskegee, AL
- Nicholas F. Dupree, Advocate; Disability Rights Organizer from Mobile, AL
- Kathy E. Sawyer, Advocate; Acting Administrator, Mental Retardation and Developmental Disabilities Administration, District of Columbia; Former Commissioner, Alabama Department of Mental Health and Mental Retardation from Montgomery, AL



*ADAP Executive Director, Ellen Gillespie, with award recipient Nicholas F. Dupree.*



*ADAP Executive Director, Ellen Gillespie, with award recipient, Jayne Chase.*



*James Tucker, ADAP's Litigation Director, introduced special guest Ricky Wyatt and spoke about the recognition of awards being named in his honor.*



*Over 150 guests, friends, and family members attended the 2006 Award Ceremony in Montgomery.*



Over 70 people attended ADAP's one day conference on accessible recreation at the Bryant Conference Center on September 8.

Presenters from the National Center on Accessibility at Indiana University delivered an informative training on recreation and people with disabilities to a statewide audience of disability professionals, recreation facility staff, and consumers.

The conference began with a panel of consumers recalling challenges and successes with their families in the quest for accessible recreation.

Alabama Adventure was honored for its commitment to universal access in its facilities and staffing.

The conference was funded through a grant ADAP received from the Alabama Council on Developmental Disabilities. For more information on the grant's activities, visit [www.adap.net](http://www.adap.net).

*Right: Jennifer Skulski, Director of Marketing and Special Projects provided technical training and assistance from the National Center on Accessibility at the 2006 Recreation Conference held in Tuscaloosa on September 8 at the Bryant Conference Center.*



*Left: Ray Bloomer, Director of Education and Technical Assistance from the National Center on Accessibility directed and provided technical training at the Recreation Conference.*



*Above: Mr. Mike Oswald, Director of Operations for Alabama Adventure accepts Recreation Accessibility Award from Ellen Gillespie.*

*Right: Consumer and Family Panel discuss problems in accessing recreation in Alabama. Panel members: Lauren Carr, Elizabeth Prince and Scott Renner.*



# ADAP's Priorities

## ADAP's Annual Priorities for Fiscal Year 2007

(October 1, 2006 - September 30, 2007)

### Children's Advocacy Team

- ADAP will ensure that children with disabilities are educated in their least restrictive environment (LRE) with appropriate support and services.
- ADAP will advocate for a state special education monitoring and complaint system that will ensure state and district compliance with the Individuals with Disabilities Education Act (IDEA).
- ADAP will advocate for the provision of appropriate behavioral and mental health services for children with disabilities.
- ADAP will ensure that Alabama school districts utilize appropriate practices, procedures and policies with respect to the discipline of children with disabilities.
- ADAP will promote the use of effective transition services to ensure successful movement from school to post-high school education/work and

independent living for children with disabilities.

- ADAP will ensure that children with emotional or behavioral disorders who are placed in or who are at imminent risk of being placed in foster care and/or DHR custody receive appropriate treatment and services.
- ADAP will eliminate the use of seclusion and restraint to promote the safety of children by advocating for the use of effective behavior interventions in schools and other settings.
- ADAP will ensure that children with disabilities will receive necessary medical screening and treatment as required under Title XIX's Early and Periodic Screening Diagnostic and Treatment (EPSDT) program.
- ADAP will increase outreach and advocacy services to children with disabilities and their families residing in Alabama's Black Belt

### Community Access Team

- ADAP will ensure that individuals residing in mental health facilities, developmental centers and community placements are safe and free from abuse, neglect and disability rights violations.
- ADAP will advocate on behalf of adults with disabilities to ensure access

to services and programs, and to protect individual disability rights.

- ADAP will ensure that people with disabilities who are involved in the criminal justice process have full access to programs and services available for alternative sentencing or lesser sentences.
- ADAP will investigate and review complaints of improper or inadequate services provided to SSI/SSDI beneficiaries with a service provider, employer or other entity involved in the person's return to work effort and/or barriers to continued employment
- ADAP will work with people who have disabilities to ensure that they have full access to the voting process.
- ADAP will represent individuals with disabilities and their families, and work with advocates and providers to challenge state policies and practices that limit access to Medicaid and community services.
- ADAP will educate adults living with HIV/AIDS about their legal rights and the resources available to address those rights.

ADAP's annual priorities are determined with the assistance of its advisory councils (PADD and PAIMI). The priorities are approved by ADAP's governing authority, The University of Alabama, Academic Affairs.

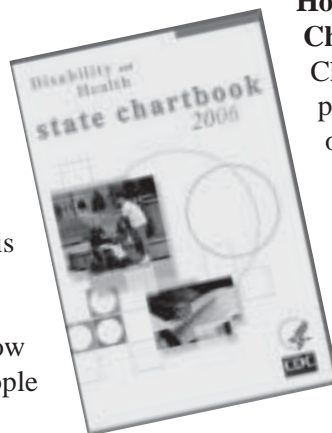
## How healthy are people with disabilities in your state?

Find the answer in the 2006 Disability and Health State Chartbook.

<http://www.cdc.gov/ncbddd/dh/>

### What is the Disability and Health State Chartbook?

The Disability and Health State Chartbook is a new reference book about people with disabilities. It has information about the people with disabilities state by state and how their health compares with the health of people without disabilities.



**How can you use the Disability and Health State Chartbook?** There are many ways you can use this Chartbook. Here are just a few: Look up how many people in your state have a disability. Find out how often disability occurs in age groups and racial or ethnic groups in your state. Compare how many people with disabilities smoke in your region. Learn how many people with a disability in your state have been immunized against influenza and pneumonia, or contact a state program for disability and health information or for health promotion resources.

# Landmark Case Prompts Change in Federal Food Stamp Policy for People with Disabilities



Because of a case filed by Legal Services Alabama (LSA) for a woman in Montgomery, the federal government has changed a key policy on food stamps for persons with disabilities.

Catherine Carter has cerebral palsy, which severely affects the use of her hands. She lives with her mother, who purchases food and prepares meals for her separately. Carter and her mother received food stamps together. However, Carter did not get enough food assistance to keep from having to spend, for food, money that she needed to apply to house payments, utilities and other necessities. That is why she needed to establish herself as a separate food stamp household from her mother. The county food stamp office denied her application. Its rationale was that "disabled individuals must have the ability to purchase and prepare their meals separately from others in the household in order to be given separate household status."

Carter turned to LSA for help. After negotiations proved unsuccessful, Larry Gardella of LSA filed suit for Carter against both DHR and the Food and Nutrition Service (FNS), which administers the Food Stamp Program. Soon

after the suit was filed, FNS issued a policy letter saying that separate food stamp household status will not be denied to any persons simply because they are unable to purchase or prepare their own food.

The new FNS policy, which was issued June 12, should make it easier for a person with disabilities to live with and receive care from a family member, since she can provide food stamp benefits that pay for the food she eats. This also removes one financial disincentive for providing care and housing to someone who lives with a disability.

Many people who are under the age of 60 and over the age of 21 and have disabilities live with family members or others who provide care other services, including the purchase of food and the preparation of meals. If the entire family or group is eligible for food stamps, they will receive considerably more benefits by breaking up into separate food stamp households.

Ultimately, this case should benefit individuals when a person with a disability lives with someone ineligible for food stamps, because having the person with disabilities receive food stamps as a separate household may help lower the food costs involved.

For more information, contact: Larry Gardella, LSA, 334-832-1427, [lgardella@alsp.org](mailto:lgardella@alsp.org)

## Hotline for Air Travelers with Disabilities

The U.S. Department of Transportation (DOT) has established a toll-free hotline to assist travelers with disabilities. The hotline will provide general information to consumers about the rights of air travelers with disabilities, respond to requests for printed consumer information, and assist air travelers with time-sensitive disability-related issues that need to be addressed in "real time." The line is staffed Monday through Friday from 7:00 a.m. to 5:00 p.m., Eastern time, except holidays. Calls outside those hours (i.e., evenings, weekends and holidays) will be recorded and answered when the office reopens

the next business day. Air travelers who experience disability-related air travel service problems may call the toll-free hotline at 1-800-778-4838 (voice) or 1-800-455-9880 (TTY) to obtain assistance. As in the past, air travelers who would like DOT to investigate a complaint about a disability issue must submit their complaint in writing or via e-mail. Access this website for details: <http://airconsumer.ost.dot.gov/>



## 2006 National Inclusive Schools Week to Focus on Transition Planning

The 6th Annual National Inclusive Schools Week is scheduled for December 4-8, 2006. The week highlights and celebrates the progress our nation's schools have made using inclusive practices to ensure a quality education that includes students with disabilities, those with low socioeconomic backgrounds, and English language learners. The theme for this year's celebration is Charting an Inclusive Journey through School, Work, and Life: Successful Transition Planning for All Students. Publications and resources that speak to the benefits of inclusive schools, celebration ideas, and lesson plans are available on [www.inclusiveschools.org](http://www.inclusiveschools.org)



# ADA Accessibility Issues in Public Schools

by Lonnie Williams  
ADAP Staff Attorney

ADAP's Community Access Team has recently received a number of complaints regarding ADA accessibility issues in public schools throughout the state. The complaints typically involve students or family members with physical disabilities who are experiencing problems due to the inaccessibility of school facilities. Some students have experienced barriers that prevent their access to several areas of the school. Some students and family members have experienced barriers that prevent their access to school functions like award ceremonies, pageants, concerts, plays, and sporting events.

These ADA accessibility issues are not limited to school systems in rural or impoverished areas. Rather, it is the age of the facilities that increases the likelihood that barriers exist. Although the ADA went into effect more than a decade ago, there are some school systems that are using facilities constructed more than fifty years ago. Too often, school systems have made little or no effort to identify and remove barriers people with disabilities.

ADAP tries to address accessibility concerns with school systems by providing the district with a report of our

findings and suggestions and then requesting that the school system submit a detailed plan for working toward compliance. Once a plan is in place, we then monitor the school system's progress.

On occasion, more action is needed. In some cases, ADAP has filed complaints with the Office for Civil Rights at the U.S. Department of Education. ADAP has also filed a lawsuit in Federal Court in one case involving school accessibility. That suit is presently being litigated.

If you or someone you know has a disability and is experiencing problems due to the inaccessibility of public school facilities or a facility where a public school function is being held, please contact ADAP so that we can determine whether we can help.



*Wilson Carr, in his school classroom with his father Michael Carr.*

## Wal-Mart \$4 Generic Prescription Program

Wal-Mart Stores, Inc. announced that starting October 26 it is rolling out its \$4 generic prescription program in Alabama.

"No American should have to cut pills in half, decide between taking medicine and putting food on the table, or go without medicines altogether," said Wal-Mart President and CEO Lee Scott.

The \$4 generics program includes 314 generic prescriptions available for up to a 30-day supply at commonly prescribed dosages. According to [www.rxlist.com](http://www.rxlist.com), the list also represents 14 of the top 20 prescribed medications in the United States. With 314 generic prescriptions, the list is made up of as many as 143

compounds in 24 therapeutic categories. Generic medicines generally cost



**Information about the top 100 drug offerings can be found by visiting <http://www.walmart.com/pharmacy>**

between 30 to 60 percent less than equivalent brand name products and Wal-Mart estimates that its list of \$4 generic prescriptions represents more than 25 percent of prescriptions currently dispensed in its pharmacies nationwide.

The prescription medicines included in the program represent many of the

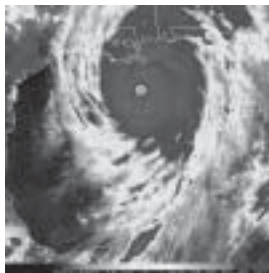
most commonly prescribed generic medications in a wide range of therapeutic categories. Generics contain the same high quality active ingredients as their "brand-name" counterparts and are equally effective but cost significantly less.

Consumers interested in saving money on prescriptions through the program should ask their doctor if a generic is available for their prescription and is right for them. At this time, the \$4 prescriptions are not available by mail order, but are available on-line or by telephone for refills only for in-person pickup in Alabama.

Information about the top 100 drug offerings can be found by visiting <http://www.walmart.com/pharmacy>.

Information about the top 100 drug offerings can be found by visiting <http://www.walmart.com/pharmacy>

# Hurricane Katrina: One Year Later



*While Recovery Progresses Slowly, People with Disabilities Still Face Unique Challenges*

Individuals with disabilities were among the persons most affected by Hurricane Katrina. One year later many of these individuals still face challenges in receiving the supports and services they need to return to their pre-hurricane level of self-sufficiency.

The National Disability Rights Network (NDRN), the national association of protection and advocacy systems, is working to help persons with disabilities affected by Hurricane Katrina. NDRN is part of the Katrina Aid Today (KAT) initiative - a consortium of nine social service and voluntary organizations, led by the United Methodist Committee on Relief (UMCOR) and sponsored by FEMA. KAT is dedicated to helping survivors recover from this tragic disruption of their lives. There are 13 State P&A systems providing case management and advocacy services through KAT, including Alabama.

“While navigating the system of government and private recovery support can be overwhelming for any survivors of disasters, it can be even more so for individuals with disabilities,” says Curt Decker, Executive Director of NDRN. “Our state Protection and Advocacy agencies continue to work tirelessly to identify individuals with disabilities

affected by Hurricane Katrina and assist them in re-establishing the necessary supports and services to rebuild their lives.”

The state P&As focus on long term recovery and comprehensive case management with individuals and their families. The needs of these clients are complex. Accessible and affordable housing, transportation, and services (such as Medicaid waivers) are vital for long-term recovery, with the continuation of services from one state to another in the resettlement process being critical. Eight hundred new cases have been opened through P&A efforts during the last quarter alone.

One case ADAP worked on involved a Viet Nam veteran who is legally blind, has diabetes, hepatitis C and numerous other medical conditions. This individual was referred to ADAP by FEMA and the KAT/NDRN affiliate in Louisiana. The veteran lived in Mobile prior to the hurricane but had been evacuated to Louisiana’s Veterans Hospital and then to Mississippi’s Veterans Hospital. Later, the client moved to a FEMA trailer in Mobile. ADAP assisted the man in finding a rental home and financial assistance for utility deposits, furniture, and transportation.

If you know of individuals with disabilities who were affected by Hurricane Katrina and who need help in recovery, please contact ADAP’s KAT initiative coordinator, Elaine Gallien at 1-800-826-1675.

## ADAP Students 2006



*Amanda Hathcock*

### Amanda Hathcock

I am excited to have the privilege and opportunity to be at ADAP for my field placement. My interest areas include substance abuse, HIV/AIDS, and mental illness populations. After graduating with my BSW degree in May 2007, I plan to pursue my MSW degree. I look forward to learning and participating in all that I can this semester at ADAP.



*Priscilla Fountain*

### Priscilla Fountain

I am currently a senior in the BSW program. My interest areas are advocacy, education, and forensic social work. I hope to gain knowledge in understanding issues that children and adults may have across the spectrum of their life. This will give me an opportunity to serve a large sector of our population.

## New Disability Determination Process

Jo Anne Barnhart, Commissioner of Social Security, issued a final rule establishing a new disability determination process. The new process, built upon Social Security’s electronic disability claims process, will shorten decision times and pay benefits to people who are obviously disabled much earlier in the process.

“The changes we are making in the disability process will greatly improve the quality of service that Social Security provides to millions of disabled workers and their families,” Commissioner Barnhart said.

For more information on the new disability determination process, go to [www.socialsecurity.gov/disability-new-approach](http://www.socialsecurity.gov/disability-new-approach)

# Private Schools and the Individuals with Disabilities Education Act of 2004 (IDEA 2004)

By Pam Olson  
ADAP Case Advocate

A child who is found eligible for special education services is entitled to whatever services are necessary to provide her with a free, appropriate public education when that child is enrolled in a public school.

What about a student whose parents have enrolled her in a private school? Is she entitled to any special education services, including an evaluation for special education eligibility?

## Child Find: Evaluation & Eligibility

A school district must identify, locate and evaluate all children within the district who may need special education services, including those attending private schools. This process is called Child Find.



The school district where a private school is located is responsible for Child

Find for students in the private school - not the district where the students live. Private schools include religious schools and, in Alabama, home-schooled children.

School districts must consult with private school officials and representatives of parents of parentally-placed private school children to ensure that the Child Find process treats such students equitably and that parents, teachers and private school officials are informed about the process.

The Child Find evaluation procedures, standards and timelines for private school students must be the same as those used for public school students in the district.

## A Services Plan: "IEP Lite"

Children enrolled by their parents in private schools do not have an individual right to receive the special education and related services they would receive if enrolled in a public school.

The IDEA requires school districts to create a "Services Plan" for a private school child who is eligible for special

education services. A Services Plan describes the specific special education and related services being offered to a private school child — what type of services will be provided, where they will be provided and by whom.

A Services Plan is different from an IEP because it doesn't necessarily plan for the full range of special education and related services needed by a child with a disability. Furthermore, a Services Plan is not developed in the same way that an IEP is developed; a child's parents and her teachers have little say in determining the services - if any - to be provided to a parentally-placed private school student.

The school district must develop the Services Plan with timely and meaningful input from private school officials and from representatives of parents of parentally-placed children in the district. In working with these representatives, the school district must discuss:

- types of special education services;
- how services will be allocated if there is not enough money to fund services for all parentally-placed children;
- how and when Services Plan decisions will be made

In the end, the school district has the final authority to make decisions about all aspects of the Services Plans being offered.

## Due Process Protections

The due process protections provided for parents of children enrolled in private schools differ from those provided to parents of children enrolled in public schools.

The full range of IDEA due process protections is available for parents of a parentally-placed private school child for issues regarding the district's failure to meet its Child Find obligation. Child Find complaints must be filed with the school district in which the private school is located. The school district must forward a copy of the complaint to the State Department of Education for it to act upon.

Parents are limited to filing a state administrative complaint with the State Department of Education for matters relating to Services Plan development and implementation.

A private school official can also file a complaint with the State Department of Education if he believes that a school district did not engage in the required meaningful and timely consultation or if he believes the district did not give his views due consideration when it developed Services Plans.

For more information about private schools and the IDEA, please contact ADAP's intake line at 1-800-826-1675.



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To each valued client we are privileged to serve...may your holidays bring you peace and good cheer, prosperous times and a joyous New Year.

Happy Holidays,  
 ADAP Staff

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