

AIRMAIL

ALABAMA DISABILITIES ADVOCACY PROGRAM

Vol. 1, Issue 1 May 1996



Common Ground STRATEGIES FOR INCLUSIVE PRACTICES

May 23-24, 1996
Embassy Suites Hotel
Montgomery, Alabama

On May 23-24, 1996, The Alabama Disability Advocacy Program, The Alabama State Department of Education, and The Alabama State Department of Rehabilitation Services are co-sponsoring an interagency conference on inclusive practices in Alabama. This conference will take place in Montgomery, at the Embassy Suites Hotel.

Educators wonder what inclusion will mean for their work life. What will their roles be? How will they spend their time? **Come to the conference:** hear speakers who are practicing inclusion share their experiences with you.

Parents may question whether their child with a disability will continue to receive the services he or she needs in an inclusive environment. **Come to the conference:** hear Norman Kunc's keynote speech and workshop on "New Students, New Questions: Supporting Teachers in Inclusive

Schools." You will leave with much "food for thought." Also you will not want to miss the two sessions presented by students in inclusive classes and families in inclusive settings as they share their personal stories.

Related service providers and speech/language pathologists have wondered how their roles will change: will their services be needed in inclusive settings? **Come to the conference:** hear Rebecca Reeves describe how to deliver speech/language services in regular classes; hear Ann Haggart present ways to make OT and PT activities more integrated and functional.

Why would you fly to Denver or Boston or Vermont to learn about inclusion when you can come to Montgomery, Alabama and hear all these nationally-known experts describe "how to do" inclusion? This is the conference we've been waiting for -- don't miss your chance to learn from the experts!

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Presented by: Alabama State Department of Education
Alabama State Department of Rehabilitation
Alabama Disabilities Advocacy Program (ADAP)

Endorsed by: Alabama Association of School Boards
Alabama Council for School Administration and Supervision

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The '92 amendments to the Individuals with Disabilities Education Act (IDEA) added a definition of assistive technology. Assistive technology is any item, piece of equipment, or product system, acquired commercially, off the shelf, modified or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities. As a result of this advanced technology people with disabilities are able to lead happier and more independent lives today.

Parents of students with disabilities who are in search of assistive technology devices and services must follow certain guidelines to successfully secure funding for the assistive device or service under the IDEA. With an understanding of these guidelines and practices as they pertain to public education, these parents will be better prepared

to advocate for assistive devices and services for their children.

Parents should understand that under the law, schools must follow an "appropriate" standard when providing assistive technology. This means that the student need only to be making progress as a result of the

It is up to parents to think of creative ways to place assistive technology devices and services in the IEP.

assistive technology. In other words, if the student with a disability is benefitting from the assistive technology, the school has then provided appropriate devices or services under the law. This standard

is less than the best devices or services available.

It is important to remember that there are many ways for including assistive technology in the student's Individualized Education Plan (IEP). Assistive technology may be included in the IEP's objectives (assessment or instruction) or in the IEP's services (special education, related, supplementary services). It is up to parents to think of creative ways to place assistive technology devices and services in the IEP.

The distinction must also be drawn between "medically" (excluded from IDEA) and "educationally" (included in IDEA) necessary. If a device or service is "medically" necessary, the school is not responsible for providing payment for said device/service. Therefore, parents of students with disabilities have to prove that assistive technology is "educationally" necessary in order for the school system to provide payment.

There are some key elements to consider when making the distinction between what is "medically" and "educationally" necessary. One of these is the type of expertise required to recommend said device/service. An M.D. would recommend a medical device, while a non-M.D. would recommend an educational device. The intrusiveness of the device or service should also be considered. For example, if the assistive technology is physically intrusive, it is probably medical. If the technology is non-intrusive, it is more than likely educational.

Another key element is the type of delivery environment required for the device/service. A medical

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IDEA (Continued from page 2)

device or service is provided in a hospital, however, an educational device or service is provided in a school. The prescriptiveness of the device or service is also important in differentiating between medical and educational. For example, a prescription written for assistive technology is medical, whereas a recommendation for assistive technology would be educational. Lastly, the purpose of the device or service should be considered. If the

A medical device or service is provided in a hospital, however, an educational device or service is provided in a school.

purpose of the technology is to sustain life, it is medical. If its purpose is student development, it is educational.

If assistive technology is in the IEP, the device must be made available to the student with a disability. In addition, the device must be working properly. For example, if the device has been kept in the school's closet, this could be considered non-compliance with IDEA. If the school is waiting for funding before purchasing the device or service, this could also be considered non-compliance. Furthermore, if the school considers the device as an access of privilege, this is also in violation of IDEA. An example would be a school allowing the student with a disability to use the assistive device only when the student's behavior is considered "good". Lastly, if a brand name device is specified in the IEP, that is the device the school must provide.

Schools cannot limit assistive technology to in-school use only, but not all assistive technology must go home with the student. Home expectations, device options, device damage, travel vs. duplicate services, non-educational device use at home, and device recovery when the student moves are all factors for parents to take into consideration when determining if a device is appropriate for the student to take home.

Through an understanding of the above guidelines, both schools and

parents should possess the knowledge required to make informed decisions regarding their rights and responsibilities under the law in providing assistive technology for students with disabilities. Technology is daily improving the quality of life for people with disabilities. It is important for both schools and parents to work together on technology issues in order to maximize the potential of students with disabilities.

DWG



(Continued from page 1)

Join us in Montgomery on May 23-24 on Common Ground.

Common Ground Speakers

Keynoters:

Norman Kunc - Noted speaker on school inclusion shares thought-provoking, powerful message. Author of "Ready, Willing, and Disabled."

Carl Boyd - Former teacher in Chicago public schools who helps teachers and administrators solve issues related to at-risk students. President of his company, The Art of Positive Teaching. Author of "Plain Teaching."

Presenters:

Mary Falvey - Specialist in curriculum adaptation well-known for restructuring high schools for inclusion. Author of "Community-Based Instruction."

Cyndi Pitonyak - Inclusion facilitator in schools in Virginia who addresses practical strategies for adults' changing roles in inclusive schools.

Rebecca Reeves - How to schedule caseload, how to support regular curriculum.

Barbara Colorosa - One of the most sought-after experts in North America specializing in discipline and excellence in education. Author of "Winning at Parenting—Without Beating Your Kids" and "Winning at Teaching—Without Beating Your Kids."

Lisbeth Vincent - Well-known speaker on adoption of family-centered model for service delivery.

Alice Udvari-Solner - Well-known-designer of process for adapting curriculum. Practical strategies for wide range of learners in regular classroom

Linda Davern - Co-author of Syracuse Community-Referenced Curriculum Guide who addresses new roles for adults in inclusive classrooms and offers practical strategies for team collaboration.

Ann Haggart - Renowned speaker on discipline-free objectives and their relationship to activities and routines in the school day.

Phyllis Mayfield - Consultant supporting functional programs for students with disabilities who offers practical steps in developing individualized functional goals.

Evelyn Blake - Alabama principal shares her inclusion journey.

Mental Health Consumers' Rights Act

History was made in the last hour of the last day of the 1995 session of the Alabama legislature. The Mental Health Consumers' Rights Act was passed.

The legislative effort was spearheaded by the Mental Health Consumers of Alabama (MHCA) under the dedicated leadership of Executive Director David Cannon. ADAP staff and the ADAP MI Advisory Council unswervingly supported the bill, along with other state advocacy groups.

Cannon said, "Clearly we have articulated [in this bill] many of the principles we consumers hold to be essential. On this framework we may continue to help build a compassionate, just system of mental health care in Alabama."

Joel Slack, head of the Department of Consumer Relations comments, "I think that the process of educating legislators

was paramount in this whole bill. The bill exposed them [legislators] to the consumer movement—and Mental Health Consumers of Alabama (MHCA) in particular—and the success of the bill implies that the Legislature has embraced the principles and values of the consumer movement."

Slack applauded the efforts of David Cannon and the MHCA board of directors. "They were very strategic in getting the bill passed. They were patient and they reacted very intelligently to the many obstacles that were placed in front of them. They were relentless in pursuit of passing the bill. Success can also be credited to the many consumers and family members around the state who called their legislators and advocated for the passage of the bill."

A complete text of the bill is printed in *The Standard*, a publication of the Mental Health Consumers of Alabama,

Vol 2, No. 3, September 1995. The bill takes existing rights and codifies them into a single document. The bill was written to be consistent with all existing state law. Section 3 of the bill embraces the philosophical underpinnings of the bill. Once lawmakers and policy makers came to terms with what the bill was really about—basic rights and respectful health care for a large segment of a previously ignored population group—this section seemed to win people over. It is about respectful treatment by caregivers and consumers having the full complement of civil rights available to other citizens. The bill provides a basis for understanding what consumer rights are and what they will continue to be. Section 4 of the bill spells out the general rights guaranteed to Alabama's consumers and ex-patients.

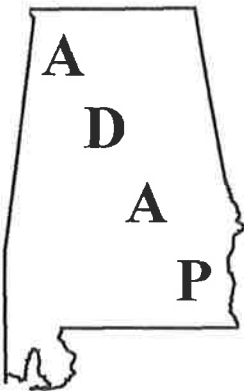
ADAP applauds everyone involved in the passage of the **Alabama Mental Health Consumers' Rights Act**.

May 1996 ADAP AIRMAIL

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Designated by the Governor in Accordance with Public Laws 98-527 and 99-319

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Vol. 1, Issue 2 July 1996

ATTAC of NAPAS 19th Annual NAPAS Conference & CAP Training Washington, D.C.

"If you're coming to help me, you are wasting your time.

But if you have come because your liberation is bound up with mine, let us work together."

an unknown aboriginal woman

Quote from a flyer distributed at the NAPAS Conference.

The opening plenary on Wednesday evening was A Candlelight Vigil in remembrance of people with disabilities whose death in facilities has gone unrecognized. People heard from our own **Ann Marshall** who, along with her husband, David, founded Alabama's first mental health consumer network. Ann also talked about her connection to a cemetery filled with unmarked graves. Others opened their hearts and shared their emotions about family members living in facilities, and a list of names was read of people who have died in facilities.

Diverse workshops included topics from Advanced Litigation Strategies through Multi-Cultural Competency, which provided something for everyone. ADAP's philosophy is to encourage change and improvement in the lives of people. ADAP was well represented at the conference. To share with you the broad range of topics and seminars presented, four staff members have reviewed some of the programs they attended.

Reflections from NAPAS

by David W. Gamble

The Conference was very special for all who attended. Workshops and training sessions were geared toward issues affecting the lives of people with disabilities.

The workshops and training sessions I most enjoyed included the mediation training, advocacy writing skills training, and the negotiation training. All three sessions were applicable to my current position at ADAP.

Mediation training focused on comparing and contrasting different alternative dispute resolution strategies, and developing mediation skills.

Advocacy writing skills training laid out specific guidelines for advocacy writing. These included keeping in mind both your specific goals and specific audience when writing. Confusion about either, or both, can result in confusing writing.

Negotiation training emphasized the role of the advocate as negotiator.

The NAPAS conference created an atmosphere for all participants to learn more about legal and social work issues in the disability arena. The conference was a great experience, one which will enable me to become a more effective advocate.

D.W.G.

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COMINGS AND GOINGS

Drew P. Baker left ADAP June 3 to become a fulltime Mom. She and husband, Don, have two children, Clifton, three years old, and Amanda, six months old. Drew was Assistant Program Director for three years, and her enthusiasm, hard work, and dedication will be missed by all her colleagues.

Anita Kimbrell Hamlett joined ADAP in March as a senior staff attorney. She received her undergraduate and J.D. degrees from The University of Alabama. During law school Anita was manager of the trial Advocacy Team. Before coming to ADAP, Anita worked for the Law Office of Steven Nolen in Fayette, and Lanier, Ford, Shaver and Payne of Huntsville, Alabama. She brings to ADAP a lot of trial experience.

Paul W. Johnson is the newest staff attorney at ADAP. Paul graduated in 1992 from The University of Alabama School of Law. After graduation he accepted a position with the Legal Services Corporation of Alabama in Tuscaloosa. Paul brings a knowledge of Protection and Advocacy which will be beneficial to ADAP's programs.

Elizabeth (Beth) Gamble Coordinator for the PAIR program arrived at ADAP January 1988 and left April 26, 1996. Beth stated, "ADAP provided an opportunity for me to receive invaluable experience. I will miss my friends and co-workers." She is working in Montgomery with the Alabama State Department of Mental Health/Mental Retardation for the Internal Advocacy Services.

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Child Abuse Hurts!

Preventing child abuse should be everyone's concern. In your community you can help to strengthen families who are responsible for the well-being of their children. Every small effort can bring big rewards and will make a difference in the quality of life in your community.

Contact National Clearinghouse on Child Abuse and Neglect for Information

National Clearinghouse on Child Abuse and Neglect Information

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FAX: (703) 385-3206

E-mail: nccanch@calib.com

P.O. Box 1182
 Washington, D.C. 20013-1182

U.S. Department of Health and Human Services

Help Stop It!

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Termination of Life Supports for Persons with Disabilities

by Katie Flora

This workshop covered a case brought before the Michigan Supreme Court, *In re Martin*, involving a man who was disabled in a car accident and subsequently adjudicated incompetent. Mr. Martin's wife, who was his guardian, sought to have his life-sustaining system removed.

The case posed several legal questions: Is there a right to die? Does the right to refuse treatments extend through incompetency? Who decides to terminate life-support? The Court held that, "Once it is determined that a person is conscious and was competent at some time before becoming incapacitated, a court may not authorize a surrogate decision made to waive the person's right to continue life-sustaining treatment unless it is established by clear and convincing evidence that the person, while competent, stated a desire to refuse life-sustaining medical treatment under the specific circumstances present."

Reading Financial Statements, Fulfilling Fiduciary Responsibilities

by Segail I. Friedman

When I read the name of this seminar my immediate reaction was "dry, boring, dull and there is no way that I will attend." However, in all the previous sessions I attended the presenters were excellent. The interaction between presenters and attendees had been outstanding, so I thought, "Okay, I'll

give it a try." I am glad I did! The program was really about: responsibilities required from a board; key financial questions the board should ask; and financial responsibilities.

Responsibilities required from a board were as expected, e.g., support the executive director and review his or her performance; ensure adequate resources; manage the resources effectively; determine and monitor the organization's programs and services; enhance the organization's public image; assess its own performance.* *Ask yourself, if as a board member, are you fulfilling these responsibilities with enthusiasm, a desire to improve the programs, and a willingness to be a positive and active board member?*

Key financial questions should include: Have we run a gain or loss? Do we have sufficient reserves? Where are we compared with budget? Is the staff satisfied and productive? Are we filing all needed reporting documents on a timely basis? *In assessing your board, are these questions being asked?*

We all have heard the expression, "Everybody's job is nobody's job." The board's **financial responsibilities** are to approve a budget that reflects the organization's goals and board policies. The staff prepares the budget and presents it to the finance committee, or full board, with back up information. The board and staff provide checks and balances, therefore, they must work together for the success of the organization. *Does your board*

have a clear and definitive outline of its jobs and responsibilities?

Program presenter was Maureen Robinson, Director of Education National Center for Non Profit Boards, Washington, D.C.

*Adapted from Ten Basic Responsibilities of Nonprofit Boards by Richard T. Ingram. Published by the National Center for Nonprofit Boards.

S.I.F.

EEOC's National Enforcement Plan

by Ann Marshall

Ann Marshall and four other members of NAPAS Board of Directors met with Gilbert Casellas, chairman of the U.S. Equal Employment Opportunity Commission (EEOC), to discuss EEOC enforcement of the Americans with Disabilities Act (ADA). The group was in Washington, D.C., to attend the recent NAPAS annual meeting.

Chairman Casellas talked with NAPAS representatives about the EEOC's National Enforcement Plan of February 1996 which identifies the agency's priority issues. Adopted by the commission, the National Enforcement Plan also sets out a plan for administrative enforcement and litigation of the laws within its jurisdiction: Title VII of the Civil Rights Act of 1964 (Title VII), the Age Discrimination in Employment (ADEA), the Equal Pay Act (EPA), and the Americans with Disabilities Act (ADA).

The number of persons filing charges annually with the EEOC has risen from less than 64,000 in fiscal year 1991 to more than

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95,000 in fiscal year 1995, a 49% increase. According to Mr. Casellas, passage of the ADA in 1990, to protect persons with disabilities from discrimination, has added partially to the EEOC's statutory responsibilities. More funding to support additional staffing and other resources necessary to meet these new challenges has not been forthcoming; therefore, the commission adopted policies in the national plan that would permit the agency to make the most prudent use of its resources to accomplish its mission.

Included within the national plan are enforcement priorities and the requirement that District Directors and Regional Attorneys in each field office develop Local Enforcement Plans. These local plans should be consistent with the national plan and also tailor their priorities to the specific needs of the many communities served by the commission.

Within the "governing principles" of the national plan, the commission states it is "committed to an enforcement plan that encompasses a three-pronged approach to eliminate discrimination in the

workplace: (1) prevention through education and outreach; (2) the voluntary resolution of disputes; and (3) where voluntary resolution fails, strong and fair enforcement."

A.M.

For a copy of the National Enforcement Plan, call Ann Marshall at 1-800-826-1675 or your local EEOC office.

Upcoming Hearings on Reauthorization of the Rehabilitation Act

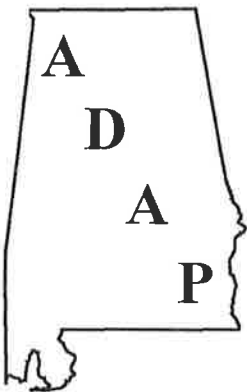
The Rehabilitation Services Administration (RSA) will be conducting a series of public meetings on the upcoming reauthorization of the Rehabilitation Act.

**September 17 - Atlanta, GA
contact Diane Hart at (404)331-2352**

Individuals interested in testifying must contact the designated person to get detailed information on the hearing and to sign up to testify.

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RESTRAINT AND SECLUSION STANDARDS

Restraint and seclusion standards for ambulatory care, hospital, and behavioral health care approved

The Joint Commission on Accreditation of Healthcare Organizations (JCAHO) recently issued new standards for "Special Treatment Procedures." The standards, which went into effect July 1, 1996, address interventions that call for special sensitivity to patient rights and risk management, such as aversive therapies, electroconvulsive therapy, and restraint and seclusion. The new standards were developed with input and cooperation from advocacy groups and consumers. Policies and procedures for special treatment interventions are developed through an interdisciplinary process and approved by medical staff and administration.

In its broadest context, *restraint* is any method of physically restricting a person's freedom of movement, physical activity, or normal access to his or her body.

Restraint or seclusion may be used in response to emergent, dangerous behavior; addictive disorders; as an adjunct to planned care; as a component of an approved protocol; or in some cases, as part of standard practice. In its broadest context, *restraint* is any method of physically restricting a person's freedom of

movement, physical activity, or normal access to his or her body. In the context of these standards, restraint is considered involuntary and is used as either part of an approved protocol, or as indicated by individual orders. *Seclusion* refers to the involuntary confinement of a person alone in a room where the person is physically prevented from leaving.

It should be noted that while the new standards are applicable to any organization where restraint or seclusion use is initiated by individual orders or procedures approved protocols of care, they do not apply:

...to restraint use that is only associated with medical, dental, diagnostic, or surgical procedures and is based on standard practice for the procedure. . . .

...when a restraint device is used to meet the assessed needs of a patient who requires adaptive support or medical protective devices. . . .

...to therapeutic holding or comforting of children or to a time-out when the person to whom it is applied is physically prevented from leaving a room for 15 minutes or less and when its use is consistent with the behavior management standards.

...to forensic and correction restrictions used for security purposes.

Sharon M. Mason, Director, Quality Improvement, MI Division, State of Alabama Department of Mental Health and Mental Retardation expressed that "new" Special Treatment Procedure Standards published in 1996 appear to be the same as [what is published] in the Special Treatment Procedures Chapter from the newly published 1997 JCAHO Comprehensive Accreditation Manual for Hospitals. Ms. Mason also states, "Since JCAHO accreditation is optional, many private hospitals are accredited and many are not. Those hospitals that are accredited are required to meet the new standards."

Following is an abbreviated review of the 1997 JCAHO "Special Treatment Procedures."

TX.7.1 Clinical justification can be guided by clear criteria presented in practice guidelines, practice parameters, pathways of care, or other standardized care processes from relevant professional organizations. When not available, the qualified staff of an organization establishes criteria . . .

TX.7.1.2 The measurement and assessment process related to restraint and seclusion seeks to understand the root cause of their use and incorporates this understanding . . . to evaluate and, if

Continued on page 3

Ann Marshall

First Recipient of the David Marshall Award from MHCA

Congratulations

The Mental Health Consumers of Alabama (MHCA) established a new award this past year in memory of David Marshall. The award was designed by Joel Baumgartner. It is a crystal column etched with David Marshall's likeness, under which are the words, "Justice For All, The David Marshall Award, A Man With A Vision." David was a pioneer in the field of mental health. He was co-founder and president of the first statewide consumer advocacy group, Coalition Of Mental Patients (COMP). David was a

consumer and advocate. He and his wife, Ann, opened their home and hearts, and shared their knowledge and friendship with people in need. Comments from people who knew David include, "When he talked with me, I knew he really understood, . . ." "He spent entire evenings with me—listening, caring, inspiring me . . ." "He took me into his home without even knowing me." "I believe with all my heart that David Marshall knew God and that God knows David Marshall."

Ann Marshall is carrying on the work she and David began together. In 1991, Ann joined the staff of ADAP as a Case Advocate. A former consumer of community mental health services and a family member, Ann has advocated for rights protection, increased funding and services for

people with mental illness for more than 18 years, and was awarded the National Mental Health Association's Volunteer of the Year Award for her efforts.

Ann is an active volunteer with the Mental Health Consumers of Alabama, the Mental Health Association and other state and national service organizations. She currently serves on the Board of Directors of National Associational of Protection and Advocacy Systems and has been nominated to serve on the National Advisory Council for the Center for Mental Health Services, and is a founding member of Alabama Partners in ADA. A University of Alabama alumnus and former newspaper reporter, she lives in Tuscaloosa, Alabama with her daughter, Rachael.

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appropriate, reduce their use. This understanding is advanced by the assessment of aggregate data on restraint and seclusion episodes from all units, for all shifts, and for all purposes. . . . Particular attention is paid to instances of multiple episodes of use for individual patients and the frequency of restraint use by type(s) of staff.

TX.7.1.3 Essential elements govern how an organization uses restraint and seclusion in a way that is appropriate to the population and individuals served. The essential elements assure that any use of restraint or seclusion, . . . protects and preserves the patient and his or her rights, dignity, and well-being. Appropriate staff approves policies and procedures related to restraint and seclusion.

TX.7.1.3.2.2 Restraint or seclusion use is based on the assessed needs of the patient. Use appropriate to the needs of patients is assured by: training and skill of those who decide to apply restraint or initiate seclusion for emergency reasons in the absence of a licensed independent practitioner; clinical oversight by a licensed independent practitioner; review and evaluation of multiple episodes of use or continuous use; and organization policy.

TX.7.1.3.2.3 The least-restrictive safe and effective restraint or seclusion method is employed. This is guided by policy. The choice of a safe, effective, and least-restrictive method is determined by the patient's assessed needs and previous methods. In absence of previous experience, policy describes whether and how least-

restrictive methods are to be tried first. Monitoring and reassessment assures use is discontinued as soon as possible.

TX.7.1.3.2.5 Organization policy defines the frequency, nature, and extent of appropriate monitoring by observation and direct, face-to-face interaction with the patient. Reassessment associated with monitoring is used primarily to determine the patient's well-being. Reassessment associated with time-limited orders is used primarily to determine the continuing need for the restraint or seclusion. *For behavioral health care provided to patients*, policy defines the monitoring frequency as continuous or no less frequent than every 15 minutes.

TX.7.1.3.2.7 Licensed independent practitioners have the responsibility for overseeing how their patients' assessed needs are met. Organization policy identifies who (in accordance with state law) is authorized by the organization to give verbal or written orders for restraint or seclusion and who may receive, record, and initiate verbal orders. Policy also identifies the process for reviewing and reauthorizing emergency restraint or seclusion use. The organization may authorize restraint or seclusion use in response to a patient who poses an immediate danger to himself or herself or to others. *For behavioral health care provided to patients*, policy requires that when emergency use is initiated a licensed independent practitioner is called within one hour.

TX.7.1.3.2.8 Orders for restraint or seclusion use define specific time limits. Written orders are limited to: 24 hours; 4 hours for adults with primary behavioral health needs; 2 hours for children and

adolescents ages 9 to 17 . . . ; 1 hour for patients under age 9 with primary behavioral health needs. Staff can use criteria to guide early restraint or seclusion termination. After original order expires, the patient receives a face-to-face reassessment by a licensed independent practitioner. *Patients with primary behavioral health needs*, organization policy and the original order may permit a licensed, qualified, and authorized individual, e.g., a registered nurse, to perform the reassessment and make a decision to continue the original order for an additional specified length of time. *The use of orders, whether individual or as part of a protocol, for patients with primary behavioral health needs is prohibited.*

The new standards for "Special Treatment Procedures" are provided in detail in the 1997 JCAHO Comprehensive Accreditation Manual for Hospitals. Procedural changes are to be implemented in all public and private healthcare organizations.

Questions or comments about the new standards should be directed to:

Pat Staten

Joint Commission on Accreditation of Healthcare Organizations

One Renaissance Boulevard
Oakbrook Terrace, IL 60181
630/792-5964

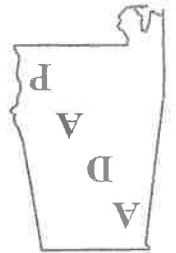
Wyatt v. Rogers - The Next Step into the Future

On October 8, 1996, United States Federal District Court Judge Myron Thompson ruled in *Wyatt v. Rogers* that he will continue to consider complaints by the Alabama Disabilities Advocacy Program (ADAP) and the Washington, DC based Bazelon Center for Mental Health law.

These two agencies had presented evidence at separate hearings in 1991 and 1995, respectively, alleging that the State of Alabama Department of Mental Health and Mental Retardation (Department) had violated the rights of patients in state facilities.

Judge Thompson's ruling also denied the Department's motions to dismiss the above actions while it cleaned up procedural defects in this long standing case. The ruling is favorable to ADAP's clients in state facilities for two reasons. First, the court sent a message to the Department that it would not be swayed to ignore the Plaintiff's evidence presented in prior hearings; and second, that if the court finds, based on this evidence, that the Department has violated patients' rights under the United States' Constitution and the Americans with Disabilities Act, that the Department could face contempt of court proceedings.

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



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AIRMAIL

ALABAMA DISABILITIES ADVOCACY PROGRAM

Vol. 1, Issue 4 December 1996

THE UNIVERSITY OF ALABAMA SCHOOL OF LAW CLINICAL PROGRAM

OUT OF THE DARKNESS . . .

ADAP LIGHTS THE WAY

On October 10, 1996, the U.S. Court of Appeals, Eleventh Circuit, issued a favorable decision in the case brought by the Alabama Disabilities Advocacy Program (ADAP) regarding the rights of protection and advocacy (P&A) systems to gain access to records from state facilities. See Alabama Disabilities Advocacy Program v. J. S. Tarwater Developmental Center, 97 F.3d 492.

The Court held that the Alabama P&A had full authority, under the Developmental Disabilities (DD) Act, to obtain the records of deceased residents of a DD facility in order to conduct death investigations. The court found that consent of the individuals who served as the residents' guardians

The Court agreed that the anonymous phone call to ADAP provided enough evidence to establish probable cause.

prior to their deaths was not a prerequisite for ADAP gaining access to records. Further, the

court established a liberal interpretation regarding the requirements of a "complaint" (one of the bases for P&A records access under the DD and Protection and Advocacy for Individuals with Mental Illness (PAIMI) Acts). An anonymous telephone call to ADAP regarding the death of these residents, the court found, satisfied the "complaint" requirements and established probable cause for an investigation.

The Court of Appeals held that:

1. The appeal was not rendered moot on the grounds that the defendants (the Alabama Department of Mental Health/Mental Retardation) had already complied with the order and granted access to records;
2. The parents/guardians of the residents ceased to be legal representatives after the residents' death, and the parents'/guardians' unwillingness to release records was therefore not controlling;
3. The anonymous telephone call implying that abuse and/or neglect may have caused the death of the residents constituted a complaint justifying ADAP investigation;

4. An anonymous telephone call established probable cause justifying an investigation.

As the State of Alabama's protection and advocacy system, ADAP is statutorily authorized to have access to all records of a person with developmental disabilities

- (I) who, by reason of such individual's mental or physical condition, is unable to authorize the system to have such access;
- (II) who does not have a legal guardian, conservator, or other legal representative, or for whom the legal guardian is the State; and
- (III) with respect to whom a complaint has been received by the system or with respect to who as a result of monitoring or other activities there is probable cause to believe that such individual has been subject to abuse or neglect.

Continued on page 2

See 42 U.S.C. A 6042(a)(2)(I)(ii).

It is clear that the DD Act provides express authority for P&As to gain broad access to records, facilities, and residents to ensure that the authorizing Act's mandates can be effectively pursued. Congress gave substance to its intent to "assure that the most vulnerable individuals [institutionalized persons] who may not be able to contact the P&A system will have access to protection and advocacy services." 1994 U.S.Code Cong. & Admin.News 164, 199. In reauthorizing the Act in 1984, Congress stated its intention that "all developmentally disabled persons who reside in facilities for developmentally disabled persons be eligible for services from the protection and advocacy system." 1984 U.S.Code Cong. & Admin.News 4334, 4376-77.

The DD or PAIMI Acts impose no special requirements on the source of the complaint or of the person making it. Anonymous

complaints are not uncommon occurrences for P&As and for other investigatory agencies. Staff and family members initiating complaints may prefer to remain anonymous for fear of overt or subtle retaliation. The Court in Tarwater found the DD Act pre-able to be particularly persuasive:

Administration Developmental Disabilities understands that P&As undertake investigations . . . based on media reports, general investigations, inspection reports, and other credible information regarding abuse and neglect. P&As also may use information gained through telephone calls or information complaints by residents, staff, relatives, or friends. The regulations are intended to confirm the authority

of the P&As to rely on such information . . .

The Court agreed that the anonymous phone call to ADAP provided enough evidence to establish probable cause. The consequences of a P&As determination of probable cause are not an indictment or an accusation, but rather a civil investigation. No fundamental liberty or privacy interest is hurt when a P&A finds probable cause to investigate an

This ruling should make it easier for P&As to respond to abuse and neglect in the future.

incident at a facility. The interests of three parties are implicated--the facility, the individual and the P&A. In the balance of the three, the facility's interests are less viable and of less importance than those of the individual and the P&A. A facility's legitimate interests are served when abuse and neglect are uncovered and can be corrected. When a P&A finds probable cause, no liberty interest of the developmentally disabled person is threatened, as it is precisely that individual's interest that the P&A seeks to protect.

The significance of this decision enforces the provisions of the DD and PAIMI Acts, and recognizes the fact that P&As and ADAP have specific access rights. This ruling should make it easier for P&As to respond to abuse and neglect in the future. This decision paves the way so that anonymous calls, newspapers articles, monitoring and other informal complaints can be acted upon by P&As to determine probable cause.

ALABAMA DISABILITIES ADVOCACY PROGRAM (ADAP)

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

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Case Advocate Ann Hardner
Case Advocate Catherine D. Harper
Case Advocate Ann Marshall
Administrative Secretary Janet Owens
Data Technician Janell Arnold

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.



DO YOU NEED HELP?

Beginning January 1997 SouthTrust and the Southern Disabilities Foundation, Inc. will launch the Ability Loan Program. The Program is to provide an alternative source of financing to help individuals with disabilities, or their families, purchase adaptive equipment and services through a low-interest extended-term loan program. Any Alabama resident who has a disability or has a family member with a disability is eligible.

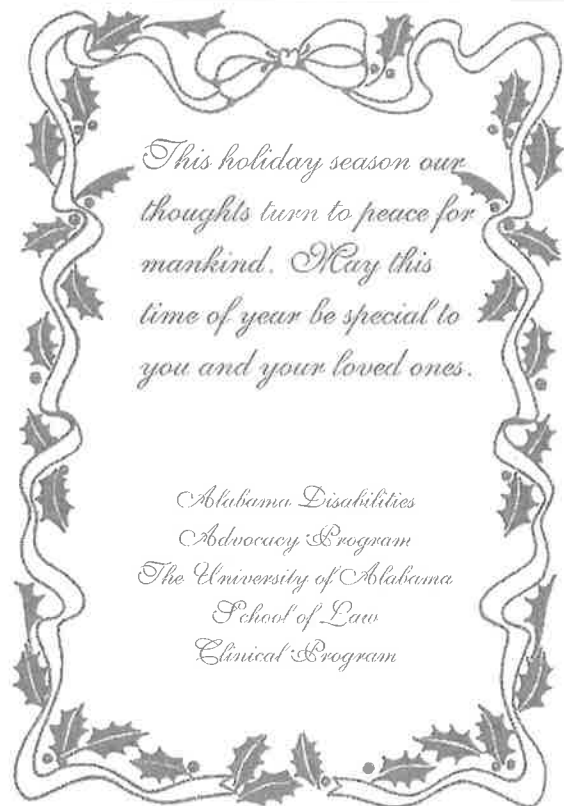
Items covered by this program include:

- telecommunications device for the deaf, hard-of-hearing or speech impaired (TTY)
- closed circuit television (CCTV)
- computer adaptive access or output
- braille machine
- environmental control unit (ECU)
- augmentative or alternative communication (AC) device
- wheelchair
- adaptive driving controls
- power lift
- ramp
- roll-in-shower

Complete information is available from SouthTrust please call 1-800-CALL-STB (1-800-225-5782).

ATTORNEY REFERRALS

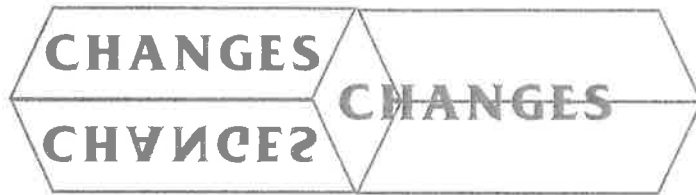
The Alabama Disabilities Advocacy Program (ADAP) of the University of Alabama School of Law Clinical Law Programs is creating a statewide attorney referral list. One service provided by ADAP is disability information distribution and attorney referral. If you are interested in adding your name to ADAP's attorney referral list, please contact the intake advocate at 205/348-4928 or by fax at 205/348-3909. You will need to provide your name, address, telephone and general areas of practice.



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



January will bring about more than a new year, cold weather, and resolutions.
There will be staff changes at ADAP.

Victoria Farr, Assistant Program Director, is entering private practice in Tuscaloosa, Alabama. Victoria joined ADAP in 1990 and has been a strong influence in the arena of public service.

Barbara Cotter joined ADAP in 1981 and will be continuing her developmental disabilities work as a social worker at the Sparks Clinic. The Clinic is part of the Civitan International Research Center at The University of Alabama at Birmingham.

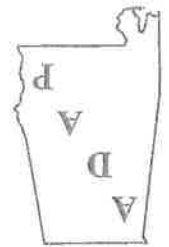
Janell Arnold, Data Technician, joined the staff of ADAP in June 1988. She is retiring as a University employee.

Ann Hardner began working with ADAP as a student at The University of Alabama. Upon graduation she joined the staff full time as a case advocate in the developmental disabilities program. Ann will be a case advocate with the Virginia Protection and Advocacy agency in its Falls Church, VA branch.

Katie Flora Wilkins, senior staff attorney for the PAIR Program, began work at ADAP in February 1993. Katie currently lives in Birmingham.

ADAP wishes everyone success in their future endeavors.

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