

# ADAP

Alabama Disabilities Advocacy Program



DECEMBER 2005



From the desk of  
Ellen B. Gillespie, Ph.D.

ADAP Executive Director

On the morning of August 29, 2005, all of us awoke up with apprehension, anxious to turn on the television to learn if Hurricane Katrina had been as serious as the forecasters had predicted. No one could have guessed that the damage would be so extensive, and that our region of the country would be changed forever after that day.

When we returned to ADAP two days after Katrina, there were already groups of people, including many with significant disabilities, in Tuscaloosa and all over Alabama. For the next few weeks, we switched gears at ADAP. What we did was not all legal advocacy. While our regular work continued, we helped people sign up for benefits, we helped people find doctors and get prescriptions, we collected food and clothing, and we worked with families to find a place to live. That all these activities were not traditional Protection and Advocacy agency services did not matter. We helped people with the most basic needs, and I am proud of the energy and initiative shown by

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## A Light On The Dark Truth

By: James A. Tucker  
Reprint from *The Mobile Register*  
Sunday, November 20, 2005  
*Opinion Editorial*

Earlier this month, the Mobile, Alabama Register published a story titled "Sick, old prisoners get turned down on 'geriatric parole,'" which shone a light on the dark truth about Alabama's elderly and sick prisoners.

People need to know that Alabama incarcerates more of our own citizens per capita than nearly any other state in the nation, and that because of the habitual offender and other Draconian sentencing laws, our prison population is increasingly old and very sick.

Indeed, what has happened in Alabama is shameful. We have concentrated many of the oldest and sickest men prisoners in a dilapidated prison in Hamilton, and instead of designing a facility that meets their needs, they are sent to die, alone and far from home.

Rather than a dignified death, we hear accounts of prisoners dying in a roomful of people, moaning and crying out, without comfort from fellow prisoners, let alone a nurse or officer.

These individuals could be safely

released to the community to live with family.

That's the case with the man highlighted in the Register's story on "geriatric paroles." The state parole board took barely a half-minute earlier this year to deny parole for Autrey Lee Bowden, who was convicted for the 1987 murder of Vincent Terrell Neely.

The denial came even though Bowden is now 83 years old, and even though Jane Neely Buell - the wife of the victim - told the parole board that she didn't feel Bowden was a threat any longer.

Some of the men who are incarcerated at the Hamilton. Aged and Infirm Prison are older and sicker than Bowden. They have suffered strokes or are losing eyesight or developing dementia.

Others use wheelchairs when they become too frail to walk, or due to progression of disease or disability.

Under Title II of the Americans with Disabilities Act, public facilities are to make accommodations for people with disabilities, including those in prison.

There should be enough space to maneuver wheelchairs in dorm rooms, hallways and bathrooms. There should be ramps that provide the same access available to people without physical disabilities.

But physical access aside, the ADA demands that people with disabilities be treated with dignity. We must carry

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**A Light On The Dark Truth***(Continued from pg. 1)*

that promise of dignity inside prison walls.

According to a Criminal Justice Institute survey of approximately a decade ago, there were a little over 40,000 prisoners aged 50 and older in the United States. Less than a decade later, that number had nearly tripled, to 111,358 people.

Today, men and women over the age of 50 represent close to 10 percent of the prison population nationwide. In Alabama, the number of prisoners over 50 amounts to nearly 13 percent of the population.

Combine the natural disease process with a population of people who are more likely to have histories of substance abuse, high-risk behaviors

and chronic illness, and then put them in the prison environment, and what you get is a group of people who, after age 50, are aged about a dozen years older than their chronological age, according to experts.

At age 50, a prisoner's body may really seem to be closer to that of a 62 year old, and a 65 year old will be closer in age to a 77 year old.

DOC spokesman Brian Corbett claims such prisoners represent such a small segment of the population that it really isn't worth the fuss.

But even when people are behind bars, the way in which we treat those who have disabilities, and who are aging, sick and dying, reflects on us all as a society.

As things stand now, Alabama's treatment of its elderly and disabled prisoners is a bad reflection indeed.

**From the desk of Ellen B. Gillespie***(Continued from Page 1)*

ADAP staff during that time.

There is still so much to do to help people put their lives back together, and my hope is that we can learn some things from this experience that will provide more safety and security to people with disabilities. All agencies, including ADAP, need to improve emergency planning. The Louisiana P&A, which had its primary office in New Orleans, could not locate some staff for several weeks and they have recommended that all agencies develop much more thorough contact information, and that the information be stored with several people and off-site. Agencies providing direct services must develop more thorough emergency plans. It's not enough to get a generator and a few supplies and hope for the best. We know now that people with disabilities were particularly vulnerable in this emergency. Some were abandoned, some were not able to evacuate due to lack of accessible transportation, and many were without technology and medication they must have to maintain their health.

This issue has captured the attention of the country and we need to push at this time to make sure the disability community is on the table at the local, state, and federal levels to plan for future emergencies. We are all busy with other priorities but a disaster like Katrina reminds us that providing for basic needs can take precedence over other things in a heartbeat. If you are interested in helping the disability community in Alabama be better prepared for the next time, please call us at 1-800-826-1675 or send an e-mail to [adap@adap.ua.edu](mailto:adap@adap.ua.edu).

**Transportation at ADAP, or What in the World is JARC?**

*By: Ellen Gillespie  
ADAP Executive Director*

In Alabama, it comes as no surprise that virtually every survey or needs assessment finds a serious lack of available transportation for all persons in the state, including individuals with disabilities. Several years ago Reuben Cook, Director of ADAP at the time, approached federal leaders to brainstorm ideas about this problem. With the assistance of Sen. Richard Shelby, ADAP received generous funding in 2004 from the U.S. Department of Transportation, Federal Transit Authority, to assist Alabamians with disabilities with the critical problem of transportation. This grant funding is part of the (JARC). The JARC program assists states and localities in developing and expanding transportation services that connect individuals with low incomes to jobs and other

employment related services. Priority at ADAP for use of the funding is the provision of direct transportation services for persons with disabilities.

One of ADAP's JARC projects is our partnership with KidOne Transit System in West Alabama. KidOne transports children and expectant mothers to receive needed medical care. JARC funding has allowed significant expansion of the KidOne program in rural Alabama.

In recent months, ADAP has received proposals for several mini-grants from other agencies for the provision of direct transportation services. All projects require a 1:1 match. Currently, eight mini-grants are in various stages of implementation across the state using this funding. Funding is available for additional projects, and other organizations may wish to consider developing and submitting an application. For a copy of proposal guidelines, contact Mary Durrett via e-mail: [mdurrett@adap.ua.edu](mailto:mdurrett@adap.ua.edu).

# Katrina



By:  
*LaTangela Foster  
and Elaine Gallien*  
*ADAP Case  
Advocates*

Hurricane Katrina is the United States' worst natural disaster in recent years. Along with total devastation and destruction, Katrina brought with it opportunities for ADAP to provide a wide array of services to Louisianans and Mississippians with disabilities. Not only did ADAP provide contact and referral information through FEMA and Red Cross activities and shelter sites, ADAP also had the privilege of working with a group of evacuees sheltered in Bailey Tabernacle CME Church in Tuscaloosa, AL.

The W. I. Moore group homes located in St. Bernard Parish, just outside New Orleans, had in place an emergency plan that brought residents and staff to Tuscaloosa. Sixty-five individuals, including residents with mental retardation, staff, and staff family members evacuated with the expectation that they would be able to return to their homes and their lives in several days. As the reality of Katrina's wrath sat in, several days looked more like several months. ADAP decided to make initial contact with the evacuees and assess their immediate needs.

ADAP first focused on assisting with school enrollment for staff members' children as well as helping to ensure that basic needs for shelter, clothing, food and health care were being addressed. Next, a truly collaborative effort ensured that the evacuees in need of services were assimilated into ongoing community programs. People First of Alabama, Ability Alliance, ARC of Tuscaloosa Co., Indian Rivers Mental Health Center,

DMHMR Region II West community services, W.I. Moore group home residents, group home staff and ADAP staff literally came to the table to determine how to best meet the needs for services. The needs for transportation, day habilitation, work activities and case management were quickly addressed. The evacuees staying at Bailey Tabernacle became a part of the Tuscaloosa community.

The individuals staying at the church returned to Louisiana on November 19th. They left behind friends and an example of what can be done if a spirit of caring and collaboration is maintained. ADAP staff members were both fortunate and honored to have worked with such a resilient, brave, and compassionate group of individuals.



## We will have Fun! ... Fun! ... Fun! ...

By: *Angie Allen*  
*ADAP*  
*Case Advocate*

Late this summer, ADAP received a grant from the Alabama Council for Developmental Disabilities to focus on recreation and leisure activities for people with developmental disabilities.

Alabama has a wide variety of recreational opportunities that attract people from all over the region and the nation but ironically, many of these facilities or outdoor areas are not accessible to

our own citizens. Therefore, the focus of the recreation project will be to increase the opportunities for Alabamians with developmental disabilities to actively participate in a full array of recreational activities in the state, including parks, museums, beaches, fishing areas, theaters and many other sites.

In order to carry out this mission, ADAP started by holding a focus group meeting. Participants from Birmingham, Mobile, Montgomery, Opelika and Tuscaloosa met via video conference to identify the barriers to recreation; the specific sites or facilities that have access problems; how children with disabilities can be more involved in recreation; facilities

or sites that have been successful in addressing barrier problems, and ideas for an "accessibility friendly" logo design were discussed.

Information gathered from the focus group will be evaluated and priority needs identified. Technical assistance will be provided to facility site managers throughout the state for facilities identified as needing an "accessibility makeover." ADAP will create a directory of accessible friendly sites that will be provided to agencies, individuals and tourism boards statewide. The directory will also include information about the applicable laws used to meet federal requirements for accessibility.

# Transition to Adult Living

By: *Barbara Lawrence*  
Senior Staff Attorney

It is the responsibility of the (DHR) under the principles of the R.C. Consent Decree to prepare youth in its care to live independently. In the event a child is unable to live independently or is in need of ongoing services as an adult it is DHR's responsibility to smoothly transition the child into appropriate adult service systems.

In 2003, ADAP became aware of a young woman on the verge of "aging out" of foster care whom Alabama's child welfare system had failed in many important ways. Although she had been in care for about five years this young lady was not prepared to live independently. Nor had she been smoothly transitioned to appropriate adult service systems. She had multiple placements while in the foster care system of a large urban county. The Department had often failed to offer her appropriate services or failed to implement them if services had been offered. A victim of serious physical child abuse she had requested additional counseling services. Nevertheless, she received little counseling to address her issues of childhood trauma. She was within 4 months of turning 21 and leaving care. She feared contact with her family, had no family support, and little informal supports. She had no means to support herself, nowhere to go and was on the verge of becoming homeless. She did not know how to use public transportation, she had very few job skills and was ill prepared to hold a job. She was a person with a diagnosis of severe depression and was taking her medication erratically.

She was denied supplemental security benefits by Social Security. Definitions of disability for children

and adults can differ under Social Security Disability law. If DHR had filed timely for disability benefits before she reached the age of 18 it is fairly clear under her particular set of circumstances she would have met the Social Security Administration's definition of disability. Although the state could have received benefits on her behalf DHR did not file for supplemental security benefits until shortly before the girls 21st birthday.

At ADAP's insistence, the local Department of Human Resources with the assistance of the State DHR stepped up and attempted to provide needed services and arrange for appropriate living accommodations and adult services. Housing was provided to her for six months after she turned 21 years old.

ADAP continued to follow this young woman providing advocacy services with adult services providers. ADAP helped her obtain a protective order after she was again threatened by her childhood abuser and advocated for her in court on many occasions. Although she attempted to work, it became apparent that she would not be able to do so successfully. ADAP appealed the denial of Supplemental Security benefits and brought the matter before an administrative law judge. Fortunately the appeal was successful and she recently was awarded SSI benefits including back benefits.

There continue to be many youth in similar situations that are either inappropriately prepared to live successfully as adults, are not transitioned into appropriate adult services, or do not meet an agency's strict definition to qualify for adult services. These children are at risk of falling through the cracks of Alabama's existing social services systems. ADAP continues to advocate for appropriate services for these youth and young adults.

## WHEELCHAIR BASKETBALL 2005-2006 SCHEDULE

**December 10**  
Southern Conference  
Nashville, TN

**January 6**  
Intercollegiate Tournament  
Champaign, IL

**January 12**  
UA Classic  
Tuscaloosa, AL

**January 14**  
Pioneer Classic  
Birmingham, AL

**January 28**  
Southern Conference  
Lexington, KY

**February**  
TBA  
TBA

**March 2**  
Women's Nationals  
Birmingham, AL



## 2006 Council Meeting Dates

(Unless otherwise indicated, all meetings will be held in Tuscaloosa. All meetings are open to the public.)

PADD Jan 27, May 5, Sep 15  
PAIMI Feb 3, May 12, Sep 15

A joint meeting for PADD and PAIMI Councils will be held on September 15. The location will be announced at a later date.

# Consumer Guide Available

## to Assist People with Disabilities in Navigating Medicare Part D Drug Coverage

By Jeffrey S. Crowley,  
Health Policy Institute, Georgetown University,  
with Bob Williams, Advancing Independence

Washington, DC - Advancing Independence, a disability-focused policy organization, released today a new guide, *Understanding Changes in Prescription Drug Coverage for People with Disabilities on Medicare: A Guide for People with Disabilities, Benefits Counselors, Disability Organizations and Others On Transitioning to the Medicare Part D Prescription Drug Benefit*. While many organizations are developing helpful materials to assist Medicare beneficiaries through this transition, this guide was written specifically to address special concerns of people with disabilities. The guide was written in a question and answer format and includes worksheets that individuals can use in consulting their physicians about current pharmaceutical use and in comparing and selecting a plan that meets their needs.

Medicare plays a critical role in enhancing the health and independence of nearly 15 million people with disabilities

of all ages most of whom rely extensively on prescription medications. It is essential that they be able to make the best use of the new Medicare prescription drug benefit, said Bob Williams, Principal of Advancing Independence and a co-author of the report.

Given all of the recent media coverage of fear and confusion on the part of Medicare beneficiaries trying to make sense of the complex details of this program and the extraordinary number of plan choices, we hope that this guide can be a useful tool for people with disabilities, their family members, and others who will assist them in enrolling in a Medicare drug plan, added Jeffrey Crowley, Senior Research Scholar at the Georgetown Health Policy Institute and a co-author of the report.

The report was a collaborative effort between Advancing Independence and the Health Policy Institute at Georgetown University. Free

copies of the guide can be obtained in PDF and HTML formats at <http://hpi.georgetown.edu/rxchanges.html>.

Financial support for the guide was provided to Advancing Independence by the Pharmaceutical Research and Manufacturers of America (PhRMA).



## No Olmstead Plan All Bets Are Off!

By: Steve Gold  
*The Disability Odyssey*

Nearly six years ago, the Supreme Court issued its Olmstead decision. As you remember, this decision was based on the ADA's mandate that "A public entity shall administer services, program, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities."

The Court recognized that Congress had found that "unjustified institutional isolation of persons with disabilities is a form of discrimination." The Court understood that a "State's responsibility, once it provides community-based [services] is not boundless." But....

What the Court said about an "effectively working plan" is very critical to persons in nursing homes who have stated they want to reside in the community and who could reside in the community with appropriate services.

Namely, the Supreme Court stated "if the State were to demonstrate that it had a comprehensive, effectively working plan for placing qualified



persons [in nursing homes] in less restrictive settings, and a waiting list that moved to a reasonable place not controlled by the State's endeavors to

keep its institutions fully population," then the State could properly use the "reasonable modification" (i.e., not boundless) defense.

The Court recognized that a State could ask "a person to wait a short time until a community bed is available."

### We're now six years down the road.

1. Most States do NOT have an "Olmstead Plan" at all, let alone a Plan that is "effectively working." A Plan is something in writing that you could read which states how many people will move to the community each year.
2. Without a written Plan, there is nothing to be "effectively working." Most States believe they can have some vague, undefined, unwritten "idea" or "policy," for which no one

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# ADAP Students



**Akin**



**Banks**



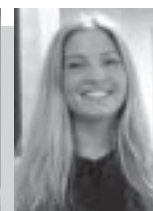
**Boone**



**Carlisle**



**Dufrechou**



**Duncan**

Each year, ADAP has the opportunity to work with other related social service and public policy disciplines within the University of Alabama as well as other colleges and universities. For example, this year, we have worked with students from several law schools, the UA School of Social Work, the College of Education, the Counseling Rehabilitation Program, the College of Communications and the Honors Program. We have also been invited to participate in a new initiative within the University of Alabama that will increase service learning opportunities for students. Through clinical internships, research assistantships, volunteer hours and the work study program, these students provide ADAP with invaluable assistance and, in return, they receive a hands-on learning experience that will broaden their knowledge of disability issues and hopefully have a positive impact on their lives. Over the past two years, ADAP has also partnered with Crossing Points, a program that provides transition services for students with disabilities ages 18-21. These students learn job skills they can transfer to full time positions once they graduate from high school.

We want to introduce you to some of the students we have had the honor of working with this semester.

**Andy Akin**  
**University of Alabama**  
**Ph. D. (International Relations & Public Policy)**

ADAP provided me an opportunity to combine my previous work in law with my present study of public policy. I have learned how incredibly unin-

formed the general public is on issues of disability. One memorable experience was how involved I was in all of the work here from my first day.

**Lea Ann Banks**  
**Crossing Points**

I work at ADAP to get job skills. I enjoy working on different stuff; working independently; friendships made with co-workers, everyone has been wonderful; lunch with co-workers is fun!

**Christopher Boone**  
**University of Alabama**  
**Undecided Major**

I have learned that the situation of services and aid for people with disabilities is somewhat grim, but the efforts are being made.

**Nic Carlisle**  
**University of Alabama**  
**Law**

Working at ADAP is an excellent opportunity for me to serve the community. It allows me to be the kind of attorney that I have always wanted to be. I have learned the work-day of a public interest lawyer usually begins before eight in the morning and rarely ends at five in the evening. I learned what it is like to some nights lose sleep over a client's seemingly hopeless situation, and others to sleep soundly from a combination of mental exhaustion and comfort in knowing that you have helped someone in need. Every client makes a lasting impression. However, I am most proud of being involved with helping a client with muscular dystrophy get back on Medicaid.

**Scott Joseph Dufrechou**  
**University of Alabama**  
**Social Work**

I am working here because I am interested in advocacy work. The current state of special education in Alabama is in need of help. Traveling throughout the Blackbelt to promote ADAP's services was my most memorable experience.

**Nikki Duncan**  
**University of Alabama**  
**Social Work**

I feel fortunate to be in such a caring, active and positive environment. I have learned that things are not always as they seem. Until I began working at ADAP, I had no idea that there were people so selflessly devoting their time to advocating for others. I am very impressed that employees here do not wish for recognition for their acts, but simply for the best outcome for the clients.

**Mega K. Evans**  
**University of Alabama**  
**Secondary English Education**

While working here at ADAP, I have learned how to be patient! I have also enhanced my social skills by answering the phones and completing intakes.

**Jamie Gibson**  
**University of Alabama**  
**Law**

I went to law school to work in public service, and my experience at ADAP has allowed me to do exactly that. I have learned a great deal about the practice of public interest law, and that it is truly the best and most fulfilling law practice imaginable. Working with inmates in the Alabama prison system



Evans



Hubble



Jackson



Mabry



Quesenberry



Rich



Royal



Williams

has shown me how appallingly common it is for these people to fall through the cracks and be denied basic human rights.

**Linda D. Greene**  
**University of Alabama**  
**Nursing**

I find that personnel are eager to protect, promote and expand the rights of the disabled.

**Natalie Jackson**  
**University of Alabama**  
**Human Development /**  
**Interpersonal Relationships**

I have learned about disabilities that I did not know much about or even realize existed. I've enjoyed working with the people in the office - everyone is so unique and passionate about what they do.

**Katie Mabry**  
**University of Alabama**  
**Interdisciplinary Studies**

One memorable experience is grasping the amount of work and cases this program takes on each year. It blows my mind to realize the number of people in this state who need support and assistance.

**Daniel Odrezin**  
**University of Alabama**  
**Public Relations**

Working for ADAP is an opportunity to aid in changing social policy specifically in Alabama. In the short time that I have been at ADAP I have learned that the smaller tasks can make a sizable difference. While putting together informational packets

may seem minimal, if that information can reach the right people that effort can become very significant.

**Jeanette Quesenberry**  
**University of Alabama**  
**Interdisciplinary Studies**

Because I am greatly interested in minority rights issues, and social justice.

**Clarissa P. Rich**  
**University of Alabama**  
**Pre-Med**

By working at ADAP, I've learned that many public places are not fully equipped to fit the needs of individuals with disabilities. The wonderful staff here at ADAP is here to ensure that every client is properly represented and every need is met. I've learned a proper work ethic because this is my first job, and I also became familiar with the information that goes into the RC and educational files that I put together. Simply working at ADAP is a memorable experience that I will never forget.

**Shermika Royal**  
**University of Alabama**  
**Criminal Justice / General Business Administration**

I am working for ADAP because it is a work study job and also on behalf of my brother who has autism. I have learned that people with disabilities should be treated the same as everybody else.

**Sally Sarrett**  
**University of Alabama**  
**International Business Administration**

For our 'Future of Democracy' class, we had to choose an organization to spend fifteen hours volunteering for. I chose ADAP because I really liked the sound of the work that ADAP was doing to help those with disabilities. The people that work here have an immeasurable amount of dedication to their cause which in my experience is 100% necessary to make a difference in disability advocacy.

**Jacqueline Williams**  
**University of Alabama**  
**Social Work**

I have learned a great deal at ADAP. It is because of ADAP that I can go to my son's school and effectively advocate for him. My son has ADHD and is being shuffled through the school system. ADAP has informed me of the many problems that plague our schools in Alabama. Through ADAP, I have learned a lot about the No Child Left Behind (NCLB) Act, and have witnessed first hand how schools have used it in ways that are sometimes destructive to children with disabilities. One memorable experience I have had at ADAP is traveling to Bullock County to participate in the Black Belt Outreach Project. While there, I was fortunate enough to meet some really nice people while acquainting them to ADAP and the services they provide.

# Criminal Justice Issues

By: Lonnie Williams  
ADAP Attorney



Here at ADAP, we work on many kinds of issues. Some people

are familiar with our efforts in special education and foster care. Others know about us because of our work on ADA accessibility issues and our work in the State's mental health and mental retardation facilities. Many people are not as familiar with other work that we do, such as our work on criminal justice issues. Although ADAP does not generally provide criminal defense representation, we do work on many criminal justice issues that affect persons with disabilities.

All persons accused of crimes are afforded the right to receive due process of law. That is, a person is entitled to a fair and impartial hearing before a court of law, to receive proper notice of the charges against him, to confront his accusers, to present witnesses on his own behalf, and to fully participate in the proceedings. All persons accused of crimes are also afforded the right to an attorney and the right to have an attorney appointed to him if he is unable to afford one.

Title II of the Americans with Disabilities Act (ADA) requires that all of the services, programs, and activities of government entities be available to persons with disabilities on an equal basis with others. Among other

things, the ADA prevents discrimination and unequal treatment, mandates that government facilities meet certain architectural standards, and requires reasonable modifications of existing policies and procedures where necessary. These requirements apply to jails, detention facilities, courts, probation offices and many other government services, programs, and activities related to the criminal justice system.

Because of these laws, Courts have certain responsibilities. First of all, the court itself must be architecturally accessible to persons with disabilities. If interpreter services or assistive technology is needed in order for a person with a disability to fully assist his attorney in his defense, those services or technologies must be provided by the attorney or the Court. If interpreter services or assistive technology is needed in order for a person with a disability to fully participate in the proceedings against him, those services or technologies must be provided by the Court. ADAP may be able to provide assistance to persons with disabilities and their attorneys in assuring these responsibilities are met.

The ADA also places certain responsibilities on jails, prisons, detention facilities, and other services, programs, and activities conducted by State and local governments. The facilities and services must be architecturally accessible to persons with disabilities. Services such as classes, religious services, meetings, medical care, visitation activities, and work details must be available to persons with disabilities on an equal basis with others. Rules and regulations of the facility as well as instructions for participating in services must be adequately communicated to persons with disabilities. Assistive technology for telephone usage must be provided. Reasonable modifications for other activities and services may be re-

quired. ADAP may be able to provide assistance in addressing ADA compliance issues in these facilities.

Jails, prisons, and detention facilities can be dangerous places for persons with disabilities. Substandard medical treatment, vulnerability to other inmates, neglect, abuse, and lack of training among staff in disability issues are all serious concerns for persons with disabilities confined in these facilities. Often, these facilities are not adequate for providing appropriate treatment for persons with disabilities. If persons with disabilities are not receiving adequate treatment or they are being neglected by staff or abused by staff or others, ADAP may be able to provide assistance in addressing these issues.

In some criminal proceedings involving persons with certain disabilities, an issue may arise as to whether the person is "competent" to stand trial or be sentenced. Since due process requires that the person be able to assist in their defense and participate in the proceedings, the person cannot be tried or sentenced unless they are "competent". The court must arrange to have the person evaluated to determine their competency. In such cases, the Department of Mental Health and Mental Retardation (DMHMR) may evaluate the person and to try to restore him to competency if he is determined to be "incompetent". Another issue may also arise as to whether the person should be found "not guilty by reason of mental disease or defect" which is a defense listed in Alabama's criminal code. This is a plea that allows persons to be found "not guilty" of the crime because, "as a result of severe mental disease or defect" the person was "unable to appreciate the nature and quality or wrongfulness of his acts." When this issue arises, DMHMR may evaluate the person's state of mind at the time of the alleged offense.



# Supreme Court Decides Special Education Case

On Monday, November 14, 2005, the US Supreme Court handed down its decision in *Schaffer v. Weast*, ruling that the burden of proof in an administrative hearing under the Individuals with Disabilities Education Act (IDEA) is on the party seeking relief. The Individualized Education Plan (IEP) is a blueprint for the services a student in special education will receive as mandated by IDEA. Normally, developing the IEP is a collaborative process between the student (and family or guardian) and the school system. When the two parties cannot come to an agreement on the appropriateness or the sufficiency of an IEP, the IDEA provides for an “impartial due process hearing,” which either party can initiate, to challenge the IEP. The IDEA is silent as to who has the burden of proof at these hearings.

Brian Schaffer, a student with learning disabilities and speech-language disabilities, and his parents were the Petitioners in this case, and Jerry Weast, superintendent of the Montgomery County MD Public School System was the Respondent. Attorneys for the Schaffers argued that the school system was better able to bear the burden of persuasion regarding the student’s IEP than the student and his parents. The Respondent’s argument was that Congress intended the burden to be allocated to the party initiating the hearing and seeking relief. Many parents of students in special education had hoped that the Court’s decision would give them more influence in the IEP process, but school systems were concerned that a ruling on behalf of the Schaffers would force them to spend more money and time in court than in the classroom. The decision in this case will have far-reaching implications for students in special education and their families, educational funding, taxpayers, and the IDEA program as a whole.

**BACKGROUND:** Brian Schaffer’s parents stated that they knew early on that Brian had learning problems. They hired a speech therapist when he was two years old to work with him and enrolled him in a small private school when he was old enough for kindergarten. By seventh grade, administrators there recommended that the Schaffers find another program for Brian, at which time they turned to the public schools. From the beginning, the school system and the Schaffers disagreed on Brian’s diagnosis. The Schaffers’ experts diagnosed Brian with a “unique central auditory processing deficit” and recommended placement in a self-contained, full-day special education program. The school system’s experts said Brian had a “mild speech-language disability” and recommended a setting where Brian and other special education students would take regular classes, but would

have an aide to help them with lessons. In addition, Brian would get 45 minutes each week of small group speech therapy and 45 minutes of reading and writing support every day in a special education classroom.

After Brian’s parents expressed concern that the classes at his middle school were too large, the school system recommended a second school not far from the family’s home that had smaller classes. The Schaffers declined that placement and instead enrolled their son at another private school. They then filed a complaint against the school system challenging Brian’s education plan, saying it did not meet their son’s needs and seeking reimbursement for the private school tuition. At the time of the initial complaint, an administrative law judge said the facts were evenly balanced but ruled for the school system because “the parents bear the burden of persuasion.” The Schaffers then appealed to the US District Court in Maryland who sent the case back to the administrative law judge with instructions to reconsider the case with the burden of proof on the school system, and then the judge reversed his ruling. The District Court rejected an appeal by the school system which then appealed to a three-judge panel of the Fourth Circuit that ruled 2-1 in favor of the school system. Ultimately, the final appeal was heard before the US Supreme Court.

**COURT’S RULING:** This was a 6-2 decision, with Justice Sandra Day O’Connor writing for the majority which included Justices John Paul Stevens, Antonin Scalia, Anthony Kennedy, David Souter, and Clarence Thomas. Justice O’Connor said that the burden of proof ordinarily lies where it usually falls, on the party seeking relief. In this case, that party was the Schaffers. Justice O’Connor further stated that the Court saw no reason to depart from this “default” position because the law does not support the argument that every IEP should be assumed to be invalid until the school district demonstrates that it’s not. “There is reason to believe that a great deal is already spent on IDEA administration, and Congress has repeatedly amended” the law “to reduce its administrative and litigation-related costs,” she stated. Justice Ruth Bader Ginsburg dissented saying that the majority’s decision ran contrary to the purpose of the act. Justice Steven Breyer also filed a dissent, although he would have held that the burden of proof issue was one of state, not federal law, and remanded for the lower courts to determine the state law issue. Chief Justice John Roberts, whose former law firm helped represent the Montgomery County schools in this case, did not participate.

To view the Supreme Court decision, go to:  
<http://a257.g.akamaitech.net/7/257/2422/14nov20051045/www.supremecourtus.gov/opinions/05pdf/04-698.pdf>

# ADAP's Priorities

## ADAP's Annual Priorities for Fiscal Year 2006

### Children's Advocacy Team

- Children with disabilities will be educated in their least restrictive environment (LRE) with appropriate support and services.
- A state special education monitoring and complaint system that will ensure state and district compliance with the Individuals with Disabilities Education Act (IDEA) will be utilized by the State of Alabama.
- Children with disabilities will receive appropriate behavioral and mental health services.
- Appropriate practices, procedures and policies with respect to the discipline of children with disabilities will be utilized by Alabama school districts.
- Transition programs utilized by Alabama school districts will ensure successful movement from school to post-high school/work and independent living for children with disabilities.
- 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 will receive appropriate treatment and services.
- Effective behavior interventions will be used in schools and other settings to support children with disabilities to eliminate seclusion and restraint usage and to promote the safety of children.
- 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 its outreach and advocacy services to children with disabilities and their families residing in Alabama's black belt.

### Community Access Team

- Ensure that individuals residing in mental health facilities, developmental centers and community placements are safe and that residents are free from abuse and neglect.

- Ensure that individuals residing in mental health facilities, developmental centers and community placements are free from personal decision-making and rights violations.
- Ensure that people with disabilities are free from abuse and neglect in designated criminal detention or correctional facilities.
- ADAP will represent individuals with developmental disabilities, mental illness 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 increase its outreach and advocacy services to adults with disabilities and their families residing in Alabama's black belt counties.
- Inform individuals and service providers on advocacy strategies and disability issues that affect people with disabilities who have become victims of crime.
- Ensure that people with disabilities who are involved in the criminal justice process have full access to programs and services available for alternative sentencing.
- Work with people with disabilities to ensure that they have full access to the voting process.
- Investigate and review any complaint of improper or inadequate services provided to a beneficiary with a service provider, employer or other entity involved in the person's return to work effort.
- Ensure that people with disabilities have access to services and programs free of discrimination.
- Access recreational facilities for disability access and train business owners and facility administrators on the need of people with disabilities to participate in recreational activities.
- Work with other entities within the state to create programs that can provide accessible transportation to individuals with disabilities.

*ADAP's annual priorities are determined with the assistance of their advisory councils (PADD and PAIMI) and input from the public. ADAP selects annual priorities on a fiscal-year basis (October 1-September 30) from the goals set out in a five-year plan. The priorities must then be approved by ADAP's governing authority, The University of Alabama, Academic Affairs.*

## Letter from a Client



*ADAP Senior Case Advocate Lydia Akin received this letter from the mother of one of her clients. With the mother's permission, ADAP is printing this letter. Great Job Lydia!*

Dear Mrs. Akin,

I wanted to let you know how much I appreciate what you have done for Clarissa and me. I could not have gotten the help Clarissa needed without you.

It is hard as a mother to want things for my child and not be able to give it to her the way she deserves, but I had you to speak for her and that gave me the peace that every mother who has a child with a disability wants...to be heard.

As the Christmas season comes upon us please know that you are in our thoughts. You have been a true example of how we should remember what Christmas truly means...Peace and goodwill towards all!

Bridgette and Clarissa

## No Olmstead Plan

(Continued from pg. 1)

can hold them accountable.

3. Remember, an effectively working plan has waiting lists that “move at a reasonable pace” so that the discrimination is only for a “short time.”

Without a specific written plan, there is no pace, no movement, no accountability. Only continuing discrimination.

4. In virtually no State can a person ask “when will I be moved into the community from the institution?” “How much longer do I need to be unnecessarily institutionalized?” “When will discrimination stop?”

The disability community has been too nice too long. Many of you have

for years talked and talked and talked to your State officials about writing an Olmstead Plan, about “Money Follows the Person,” about implementing the Minimum Data.

Your State officials have successfully talked you into total nonaction and submission. The discrimination continues and you keep talking.

### What Disability Advocates Should do:

1. Without a written, effectively working Olmstead Plan specifically stating how many persons will move from nursing homes each year and how the money will be allocated, disability advocates should bring individual lawsuits on behalf of persons who are being discriminated

against under the ADA because they are “unnecessarily institutionalized.” Without an Olmstead Plan, your State has no ADA defense!

2. Ask your P&A attorneys, law school clinics, legal services attorneys, the private bar for representation to bring individual lawsuits to implement the ADA.

3 Remind your local newspapers that providing services in the community is much cheaper then services in the nursing home. Let’s end discrimination, follow the ADA, implement the Olmstead mandates, and save money at the same time.

4. The time for excuses is over. Remember, “Power concedes nothing without a struggle.” The ball is in your court.

## Partners In Policymaking

*Recently Ellen Gillespie attended the Graduation of Partners in Policymaking. This is a note and story she received from a graduate of the 2005 class:*

My name is Cathy Blair. I graduated from Partners In Policymaking this month.

I want to say, thank you for you being at our graduation. I enjoyed being in Partners In Policymaking. Getting to meet new and different people. Learning so many new things. It was a wonderful 8 months.

### My 8 months in Partners In Policymaking of Alabama

*By: Cathy Blair  
2005 Graduate of PIPA*

First I’d like to tell you how I found out about Partners. My DHR case-worker sent me the application. She thought it would be a good thing because I have a son that has problems

learning in school but, his diagnosis is ADHD, so I’ve been fighting with schools about his learning. So I filled out the application and mailed it. Not really thinking any more about it. Jayne Chase called me last week of December 2004. I was very surprised that I had been accepted.

I spoke with Jayne a good bit before our first meeting in February 2005. I was really looking forward to our first session...because I am a stay at home mom. Little did I know what the next months would be like... they were wonderful. Each month learning something new, all of the partners are great. You get to meet people from all over Alabama, with different situations. You make friends that will last a life time. There is so much information that you learn. It’s amazing to find out all the different things that are out there now for people with disabilities.

Here’s a few of things I enjoyed the most. Learning the people first language, learning about the new technology, learning more about how behavior can say so much and the skits that Jayne had us to do. We had a lot of fun in the sessions.

There is one more thing... each one

of us are welcomed equally. Jayne and the two ladies make sure that everyone is comfortable and has what is needed.

I encourage everyone to apply to Partners it’s a very enlightening experience.

## Partners in Policymaking of Alabama

funded by the Alabama Council for Developmental Disabilities, is currently accepting applications for the Class of 2006.

<http://www.acdd.org/about/PIPA.htm>

Please contact Jayne Chase for further information.  
**Jayne Chase, PIPA Coordinator**  
**Phone: 1-800-846-3735**  
**JChase1040@aol.com**

## Check out the Consumer Involvement Fund

For more information, call the ACDD at 1-800-232-2158 or email them at [adpcc@mh.state.al.us](mailto:adpcc@mh.state.al.us).



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Alabama Disabilities Advocacy Program  
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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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