



# University Legal Services, Inc.

## THE PROTECTION & ADVOCACY PROGRAM FOR THE DISTRICT OF COLUMBIA

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### SUCCESSFUL ACCESSIBILITY

*By Elizabeth Greczek,  
ULS-P&A Staff Attorney*



Recently, University Legal Services (ULS) was involved in a case centering on a teenage student with cerebral palsy, who uses a wheelchair for mobility. Officials of the District of Columbia Public Schools (DCPS) determined that the student should be placed at Dunbar High School. This decision was made, in part, because Dunbar is considered by DCPS to be somewhat accessible. The school consists of five floors and is ramped through-out four of the floors and has an elevator. However, on various occasions during the beginning of the summer, the student's parent, ULS staff members, and a special education attorney in the area, Margie Kohn, "walked-

through" the school and, over the course of these walk-throughs, it became clear that the school was void of any accessible bathrooms. Ms. Kohn took the initial steps to give notice to DCPS of the bathroom accessibility problems at Dunbar. ULS staff also met with DCPS Facilities personnel several times and a plan and timeline to make renovations was established. On September 1, 2001, the last workday before the first day of school, ULS staffed toured Dunbar High school and found that, with the exception of some minor repairs that still needed to be done (and were finished prior to the first day of school), DCPS Facilities had completed the renovation of four female bathrooms and four water fountains and made them accessible to our client. These changes allowed our client to go to school on the first day with the rest of her peers and made it possible for her to integrate

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### YOUNG, ET AL. V. DC HOUSING AUTHORITY: THE CASE FOR ACCESSIBLE PUBLIC HOUSING

*By Marjorie Rifkin,  
ULS-P&A Staff Attorney*

For the first time in many years, 18-year-old Marcus can now go outdoors without being carried up and down the stairs in his wheelchair. He has also taken his first shower now that his wheelchair can get through the bathroom doorway. Barbara went outdoors for the first time in seven months when she and her family moved into an accessible public housing apartment where she can finally eat meals with her family and enjoy autumn days in the District from her porch. They are just two of the many people with mobility impairments in the District represented by ULS-P&A in a case

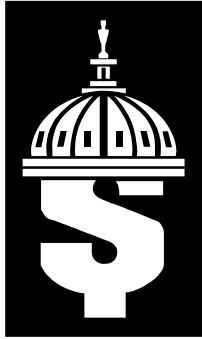
against the District of Columbia Housing Authority (DCHA).

ULS-P&A filed an amended class action complaint in April 2001 in federal district court naming nine individual plaintiffs and Capital Area ADAPT, a disability rights advocacy group in the District. The case, Young v. D.C. Housing Authority, seeks a federal court order directing DCHA to comply with the 1973 Rehabilitation Act's mandate to make at least 5% of public housing wheelchair-accessible, and to assist people with mobility, visual, and hearing impairments to locate accessible Section 8 housing.

In June 2001, ULS filed a preliminary in-  
*(Continued on page 4)*

## MRDDA CONTROLLED CONSUMER ACCOUNTS TO BE AUDITED FOR 1991-2001

By Kelly Bagby,  
ULS-P&A Managing Attorney



The parties in Evans v. Williams, the 25 year old class action case on behalf of all former residents of the Forest Haven institution, have agreed to an audit of the accounts of all MRDDA consumers who were formerly in Forest Haven. The audit will cover the period from 1991 to 2001. The goal of the audit is to ensure that consumers received all interest owed to them for that period and to make certain that consumers' funds were not used

inappropriately. Any consumer who has information or concerns related to how MRDDA or DHS handled their funds between 1991 and 2001 should contact Jane Haddad, the Evans Court Monitor, at 202-832-6860 or Kelly Bagby at University Legal Services (ULS), 202-547-0198.

Another critical issue: DHS recently issued regulations to assess "cost of care" for all MRDDA consumers with assets over \$8000. Any MRDDA consumer (or guardian/family member) who receives a bill from the District related to cost of care should contact ULS immediately. Under the regulations, DHS can file suit against a consumer to recover cost of care. If DHS implements these

regulations, ULS plans to organize a protest and we will be seeking the support of consumers and advocates in this regard.

Good News! Congratulations and welcome to the Quality Trust for Individuals With Disabilities. This newly created non-profit organization has emerged from the Evans v. Williams lawsuit and shares our goal: to advance the rights of all District of Columbia residents with developmental disabilities through legal and lay advocacy and monitoring.

## SYSTEM CHANGES AND OUTREACH

By Melanie Tostanoski,  
ULS-P&A Outreach Advocate

University Legal Services-Protection and Advocacy welcomes the establishment of a new Department of Mental Health (DMH) to replace the Commission on Mental Health.

The Department of Mental Health is moving in a new direction to improve care for it's mental health consumers, placing greater emphasis on the recovery model as the approach to treatment. Major highlights include both the implementation of a formal Grievance Process and the opening of the first Consumer Training Center. The training center is located at 35 K Street, N.E. and will be open on weekdays during business hours. There will also be a telephone number available 24 hours-a-day for consumers to call with questions or concerns. The center provides training for consumers in various areas including computer skills, job readiness, medication issues, and consumer rights.

The department is also involved in creating and implementing a formal grievance process to increase consumer satisfaction and quality of services. University Legal Services-Protection and Advocacy strongly supports these efforts by the department, as they are essential for consumers' rights to choices in their mental health treatment. In tandem with the DMH implemented grievance system and using information gleaned from community feedback, ULS-P&A will continue to

increase outreach efforts to mental health consumers including filing grievances on behalf of consumers requiring assistance. The focus of this outreach will initially pertain to consumers residing at St. Elizabeth's hospital, as ULS-P&A continues to receive feedback indicating severe problems with treatment and conditions there. ULS-P&A will be an ongoing force for consumers at St. Elizabeth's by becoming involved in ward meetings and providing information and education about the grievance process. In addition, ULS-P&A will assist mental health consumers in filing and forwarding their complaints and checking on progress toward correcting the problems noted in complaints. ULS-P&A has high hopes that these efforts will help to facilitate the new grievance process for the Department of Mental Health.

ULS-P&A appreciates any feedback from providers, community members, mental health consumers, and professionals regarding these issues. Anyone needing information about the grievance system or in need of assistance with filing a grievance should contact Melanie Tostanoski—Outreach Advocate, University Legal Services-Protection & Advocacy, at (202) 574-0198, ext. 103.

## “ALWAYS AN ADVENTURE”: UNIVERSITY LEGAL SERVICES’ INTAKE REFERRAL PROGRAM

*By Cheryl A. Brown,  
ULS-P&A Intake Specialist*

Special education cases and the issues and challenges arising from efforts to facilitate a positive outcome for those who require education-related services are at the center of much of the work undertaken at University Legal Services’ Intake and Referral (“I and R”) Program. The program staff often advise the parents and guardians of special education students and set up referrals to organizations that can assist in regard to placement so that the student receives the optimum educational opportunity. For example, there is the case of the young man who attended the Hardy Middle School Inclusion Program for two years, and whose placement was accomplished through the efforts of the program staff in conjunction with a very determined parent who provided invaluable assistance. While parents and guardians working alone often are unsuccessful in trying to obtain appropriate placements for their children, ULS can usually help. The mother of the Hardy Middle School student is now pursuing a private high school for her son and, in her case, ULS was able to fa-

ilitate a fruitful connection to an organization called Advocates For Justice In Education.

In another special education intake case, a young man with attention deficit hyperactivity disorder was having problems at school where his teacher became frustrated with him and called him “retarded” because he was “acting-out” in class. ULS-P&A I and R Program reviewed his Individualized Education Plan (I.E.P) and subsequently made a referral to an authority on special education at the Legal Aid Society of D.C. which resulted in a positive outcome for the young man.

Another instance involving a student being improperly labeled happened in the case of an intake from the parent of a student in a D.C. Public School. The student was diagnosed as mildly mentally retarded and the parent involved did not agree with the diagnosis. Although the child did have a very short attention span, his mother believed the condition was due to a discrete neurological problem. The parent arranged for her child to undergo neurological testing and ULS I and R set-up a referral to Advocates for Justice in Education who took up her case.

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## MONITORING HOUSING AND SERVICES IN THE DEPARTMENT OF MENTAL HEALTH: AN UPDATED REVIEW

*By Celeste Valente, LICSW  
ULS-P&A Senior PAIMI Advocate*

As of October 1, 2001 the newly created Department of Mental Health (DMH) has complete responsibility for licensing all Chapter 38 Community Residence Facilities (CRFs). This change came about due to the enabling legislation that created the Department of Mental Health. The Chapter 38 homes are those that are specifically licensed to provide residential settings for persons with mental illness. Previously, this meant that providers had to attend some directed trainings in order to be certified to accept placements by the Department of Mental Health. Up until October 1, these CRFs were licensed not by the Department of Mental Health but by the Licensing Regulatory Administration (LRA), a division within the Department of Health.

The Department of Mental Health now has the responsibility to ensure that all Community Residence Facilities are licensed in a timely fashion. As of Fall 2001, University Legal Services (ULS P&A) had information showing that at least 28 of these homes remain unlicensed. The District of Columbia auditor’s report, released in July 2001,

**“ULS-P&A had  
information showing  
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unlicensed”**

found that—in addition to the problem of unlicensed homes—fire inspections were not conducted in a timely fashion, the Department of Mental Health’s own monitoring was ineffective and financial records were improperly maintained. Within the Licensing and Regulatory Administration, there was a lack of internal communication. This woeful state of affairs has now been transferred wholesale to the Department of Mental Health.

In accepting the unfinished work of the Department of Health, the newly created DMH must now investigate all consumer complaints. The new agency is also charged with the responsibility of providing for ongoing monitoring of safety and housing codes, as well as general programmatic conditions. The schedule of fines and authority to impose sanctions will also be transferred to the DMH. The question is: Will these enforcement mechanisms be targeted to improve the quality of life for mental health consumers in the District of Columbia?

The new head of the DMH Office of Accountability, Marcia Jones, Esq. will be responsible for staffing a new monitoring team, developing new monitoring instruments, investigating all allegations of abuse and neglect and ensur-

*(Continued on page 5)*

*(Successful Accessibility...Continued from page 1)*

with all of her classmates and to remain at a public high school, instead of being relegated to a self-contained accessible special education school. The changes also make it possible for other students, who have mobility impairments and wish to attend Dunbar High School, to integrate into the public school setting.

ULS remains in negotiations with DCPS about other areas of the school that need to be made accessible and expect successful results in these areas as well. We will inform readers later of any additional areas of the school that become accessible.

ULS continues to practice special education law focusing

on issues of transition from early implementation to regular special education. In addition, ULS handles cases regarding assistive technology needs including assessments and services, students in need of wrap around services, and accessibility issues in schools. ULS is also preparing to publish material on the special education process in the District of Columbia. Further information will be distributed upon completion of the project.

*(Young, et al. v. DC Housing Authority...Continued from page 1)*

junction motion seeking accessible housing for the individual plaintiffs named in the complaint, and responded to DHCA's motion to dismiss the case. At a hearing on July 13, 2001, ULS attorney Marjorie Rifkin described how many of the plaintiffs, including children with cerebral palsy, are forced to stay inside their inaccessible homes due to stairs that prevent them from coming and going on their own. They are also denied access to second-floor bathrooms and other essential parts of their homes to which they are entitled access under federal law. Other plaintiffs are young men who must live in nursing homes, separated from their families, because there is no accessible public housing in the District. Ms. Rifkin emphasized that DCHA has violated the federal law for the past 18 years despite their acceptance of \$300 million in federal funds. Very few units in the District meet the federal accessibility standards, and those units are located in senior citizen buildings that do not allow families with children. Just minutes before the hearing began, DCHA offered accessible housing to four of the named plaintiffs who are public tenants living in inaccessible units.

In their motion to dismiss, attorneys representing DCHA attempted to argue that plaintiffs were not legally entitled to bring their lawsuit because they claimed that the Rehabilitation Act does not specifically authorize individuals who are victims of discrimination to seek enforcement of the HUD regulations, even though these regulations were developed and implemented to enforce the statute. U.S. District Judge James Robertson rejected the Housing Authority's argument and denied DCHA's motion to dismiss the case. The Court distinguished the recent Supreme Court case Alexander v. Sandoval, 121 S. Ct. 1511 (2001), and found that the plaintiffs had a right to sue in order to vindicate their right to accessible housing in the District.

The parties are in the process of attempting to negotiate a

court-enforceable order that will ensure DCHA's compliance with federal law requiring: construction or renovation of at least 5% wheelchair-accessible public housing, assistance with locating Section 8 units, and provision of incentives for landlords to offer more accessible units under the Section 8 Program in the District. In the event that the case is not settled, plaintiffs will take the necessary steps toward a trial whereby the Court will resolve the issues.

**“Four of the named plaintiffs—all whom were public housing tenants at the start of the case—have moved into accessible units.”**

As of mid-October 2001, four of the named plaintiffs — all whom were public housing tenants at the start of the case — have moved into accessible units where they can finally enter and leave their homes independently, and have access to showers and bathrooms and family dining areas for the first time in many years. Three of the named plaintiffs who are on the waiting list for accessible housing are still awaiting offers of accessible housing or Section 8 vouchers, and one plaintiff recently received a Section 8 voucher. ULS has been contacted by scores of people who are in need of wheelchair-accessible housing, some after years of waiting on DCHA's applicant lists. We urge all people in need of accessible housing in the District to contact us to ensure that we can assist and advocate on their behalf and monitor the steps taken by DCHA to comply with federal law.

*("Always An Adventure"...Continued from page 3)*

ULS I and R also receives many employment-related calls. One example is that of a young woman who was in danger of being fired due to the effects of schizophrenia. The woman was employed at an office where her duties included: typing, filing, Xeroxing, and answering phones. Problems began occurring when she stopped taking her medications due to suffering from serious side-effects whenever she took her medicines. The resultant medical problems caused her to spend approximately three weeks in hospital.

In addition to missing work, she was accused of not performing her work up to par. The young lady was put on a thirty day probationary period. Unfortunately, by the time she called ULS she had been notified of termination. In this case, several referrals were made: to the D.C. Employment Justice Center, to Neighborhood Legal Services, to the ACLU of the National Capital Area, and also to a private attorney. As in other difficult situations, staff ULS P&A Intake and Referral Program were able to provide valuable contacts to a person in crisis.

ULS I and R receives numerous calls from St. Elizabeth's Hospital. In one instance, a young woman diagnosed with bipolar disorder had been in St. Elizabeth's for several months. She had not been discharged simply because she had nowhere to go. However, I and R staff were aware that St. Elizabeth's hospital itself has a program wherein apartments and furniture are obtained for patients that are ready for discharge but have no home to go to. ULS teamed with the young woman to mount a campaign to obtain an apartment through the program at St. Elizabeth's. We inundated the appropriate

office and counselor with phone calls. The patient's determination combined with the ULS' I and R staff members' persistence was rewarded when she acquired an apartment and furniture and the young woman has been living successfully in the community for several months.

ULS P&A Intake and Referral Program can also help in other problem areas as well. For example, a young lady who cares for two children with disabilities was in danger of having her gas turned off. With the cold weather approaching, she needed the gas to cook and care for her nephew who has cerebral palsy and her son who suffers from chronic asthma. The lady naturally felt that she would be in dire straits without a gas supply and ULS I and R coached her into negotiations with the gas company. In talking to a supervisor, she was able to work out a payment plan for the \$800.00 that she owed and in the interim the gas was left turned on.

University Legal Services' Intake and Referral program staff are involved in counseling along a wide spectrum of problem areas. Staff work to solve or alleviate problems involving special education, discrimination against people with disabilities in the workplace, serving consumers in psychiatric institutions, and even helping people in danger of having their gas turned off. In addition, many intakes become cases which are then handled by ULS attorneys. At University Legal Services, the Intake and Referral system has proved to be an essential component of a comprehensively functioning Protection and Advocacy Program. For more information call Cheryl Brown at ULS.

*(Monitoring Housing and Services in the Department of Mental Health: An Updated Review...Continued from page 3)*

ing that all Community Residence Facilities (CRFs) are monitored in a timely fashion. Consumers who reside in these settings have the right to file grievances or to appeal certain decisions. We are looking forward to expanded details about the operations of the new monitoring and licensing office in the Department.

We know that consumers continue to face enormous problems in many of these homes. ULS-P&A has been intensifying its efforts to evaluate and investigate the conditions in the system of Community Residence Facilities. Our new review of the present state of affairs in CRFs leaves us apprehensive about the lack of infrastructure and the number of problems that are about to be transferred wholesale to the Department of Mental Health. The Long Term Care Ombudsman and ULS-P&A have worked in concert for the past two years to close homes with the most egregious conditions but, unfortunately, the amount of ground

that we can possibly cover is limited and, meantime, residents remain stuck in perilous environments.

We continue to find CRFs that have no air conditioning, CRFs that force residents to leave each day, and situations where CRF staff insult the residents regularly. Over the past months, we have continued to document conditions in facilities that lack basic supplies, such as toilet paper and soap. Fresh food is often a rarity in these homes. In one home, we discovered cereal past its "best before" date by over a year, and we also saw bent and damaged canned goods on the shelves.

There are two major areas where sweeping changes must be made. One area is that of client rights, everything from having one's own key to choosing a roommate or keeping furniture. The second area has to do with the concept that CRFs should only be a step in the process of rehabilitation, not a life sentence to second rate accommo-

dation.

**"To make progress in these areas, the Department of Mental Health needs to create a monitoring system that is integrated with outreach case management"**

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*(Monitoring Housing and Services in the Department of Mental Health: An Updated Review...Continued from page 5)*

To make progress in these areas, the Department of Mental Health needs to create a monitoring system that is integrated with outreach case management. Our continuing effort in this area underscores the necessity of interconnection between case management, housing, and monitoring, and an accessible grievance system for mental health consumers. These facets are interdependent in any efficiently functioning mental health system. To achieve improvements, all of these components need to communicate and cooperate with each other in creating and sustaining the fabric for systems of feedback and accountability.

One of many examples of abuse that ULS-P&A uncovered this past summer was that of a home in which our staff heard and witnessed instances of verbal abuse. The CRF operator yelled at residents and berated them in front of staff from ULS. The residents of this home were forced to do their own laundry yet there were insufficient supplies. One resident who had lived there more than ten years asked for assistance to move. When the situation was reported to the Department of Mental Health, the case management supervisor and his case managers "investigated" the issues raised. They found that some allegations were substantiated. In response, DMH staff are choosing to "counsel" the CRF operator and to provide training themselves. They have instructed her to do laundry for the residents. Finally, the DMH staff concluded that the resident does not really want to move. What is wrong with this picture?

The Department of Mental Health staff conduct their own internal investigation, provide no sanctions, no additional monitoring, and reach questionable conclusions. In other words, this is an all too typical scenario, one that runs roughshod over client rights and maintains the status-in-quo.

In the new system, with DMH at the helm, we expect to see objective and professionally completed investigations, an appeals process, sanctions and increased monitoring when appropriate. Most importantly, we look forward to the day when we raise expectations so that mental health consumers can live in real homes, not just small institutions.

To report allegations of abuse or neglect in any CRF call Marcia Jones, DMH office of Accountability at (202) 673-2292 or Celeste Valente at ULS at (202) 547-0198.

## INEFFICIENCY AT D.C. DMH RESULTS IN SERIOUS HARDSHIP

*By Sandy Bernstein,  
ULS-P&A Assistant Managing Attorney*

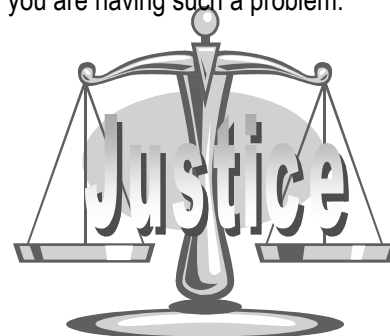
University Legal Services has several clients who have the Department of Mental Health (DMH) as their representative payee and have not had rent and other essential bills paid by DMH in a timely manner. DMH's failure to pay these bills on time has resulted in individuals receiving threatening letters and calls from utility companies and threats of eviction from their landlord.

The main problem is the unacceptable delay from the time that DMH receives individuals' SSI checks to the time that the money is made available. Since most individuals' rent payments are due by the 5th of the month, this delay results in late rent payments. Landlords can seek to evict their tenants for late payments or can charge them a late fee. It also appears that DMH uses the individuals' money to pay the late fees even though it is not the individual's fault that the rent is being paid late.

ULS recently had a client who had received notices from his landlord that his rent had not been paid in months. DMH is the individual's representative payee. The man lives in public

housing, a valuable commodity in the District, and he was at risk of losing his housing because DMH did not pay his rent on time. After ULS became involved and contacted the individual's case manager, his rent was paid. ULS is concerned that there are many more individuals like this man who have been evicted or have had their utilities turned off because DMH, as their representative payee, did not make payments on time.

If the Department of Mental Health is your representative payee and your bills are not being paid or being paid late, ULS wants to hear from you. Please call Sandy Bernstein at (202) 547-0198 if you are having such a problem.



## ULS-P&A CRF REPORT RESULTS

*By Melanie Tostanoski & Katie Anderson  
ULS-P&A Outreach Advocate & ULS-P&A Law Clerk*

University Legal Services-Protection and Advocacy recently completed a report highlighting the inadequate care for persons with mental illness in the District of Columbia. The goal was to increase awareness and make recommendations about the conditions and treatment found at Community Residential Facilities (CRFs) throughout the District. ULS-P&A will share the information contained in the report with providers, professionals, fellow advocacy groups, consumers, and community members in hopes that concerns about consumer welfare will be noted and acted upon.

ULS-P&A compiled the information through investigations, monitoring CRFs, interviews with consumers and family members, and by reviewing consumer records. The report outlined common complaints received by ULS-P&A, formal policies and regulations on each issue, and actual case examples illustrating violations of these policies and regulations. ULS-P&A also provided specific recommendations for improvement in each of the areas where inadequacies were found.

ULS-P&A found cases where:

1. Consumers were abused and discriminated against in CRFs
2. Consumers were refused entrance to CRFs during the day
3. Providers abused their role as representative payee for consumers
4. Consumers in CRFs did not receive basic nutrition or medically necessary foods
5. CRFs did not have adequate household supplies available for consumers
6. CRFs were understaffed
7. Environmental deficiencies were found in CRFs
8. Consumers were at risk for heat related injuries at CRFs
9. Case managers placed consumers in inhabitable and unsafe housing
10. CRFs failed to provide habilitative social and recreational activities for consumers
11. Consumers were not living in the least restrictive setting

ULS-P&A made specific recommendations for each of the above findings in the report. The Department of Mental Health has failed to hold providers accountable for adequate screening, training, supervision, and monitoring of staff. Case man-

agement for consumers is minimal, causing them to be placed in run-down CRFs with little monitoring. In addition, the eligibility standards and monitoring for licensure of CRFs appears to be radically inadequate, which results in placement of consumers into homes needing extensive repairs as well as posing risks for their health and safety. Consumers are also not involved in their financial management planning, resulting in representative payees abusing their roles. The Department of Mental Health must increase training on the responsibilities included in their role as representative payee, as well as establishing a system of accountability and monitoring.

In addition, case managers receive little training to help them recognize signs of abuse and neglect, or on appropriate interventions, or even on how to effectively handle consumer complaints. Perhaps the most devastating of the findings is the obvious lack of a consumer-centered treatment approach in providing services to mentally ill persons. Case reviews rarely include the consumer who is also not consulted in the treatment planning process, resulting in a blanket dismissal of the consumers' right to choose. The consumers minimal participation in their own treatment also hampers future plans for discharge into lower

levels of care, which itself leads to a failure to consider the legal imperative of treatment in the least restrictive setting.

University Legal Services-Protection and Advocacy concluded that many of the deficiencies discussed in this report are to be largely attributed to the lack of staff training and support. University Legal Services-Protection and Advocacy also feels that the findings of this report warrant serious concern and further action. Therefore, ULS-P&A will be administering satisfaction surveys to mental health consumers currently receiving services and we will be considering the results when planning our policy concerning problems in CRFs.

ULS-P&A encourages anyone with concerns, questions, or in need of assistance with such CRF connected issues to call the office at (202) 547-0198.



## WHEN CONSERVATORS EXPLOIT

By Jesse Stein,  
ULS-P&A Staff Attorney

Preventing financial abuse and neglect is always a priority for University Legal Services, the Protection and Advocacy Program for the District of Columbia (ULS-P&A). Financial abuse and neglect can occur in several ways, and ULS-P&A is particularly concerned about the possibility of financial exploitation when a client's funds are managed by people other than the client, as with representative payees or conservators.

For much of the past year, ULS-P&A has been fighting financial abuse and neglect through two cases involving court appointed guardians and conservators. In both cases, the clients were persons with mental illness who were under the care of guardians and/or conservators appointed by the Superior Court of the District of Columbia, Probate Division. After receiving complaints and conducting investigations, ULS-P&A discovered that neither attorney was managing their clients' money or property in their clients' best interests and were, as a result, placing their clients in great financial and even physical peril. In both cases, ULS-P&A was able to obtain court intervention that ultimately lead to the replacement of both attorneys and improved services for both clients.

In the first case, ULS-P&A discovered that the client's attorney/guardian/conservator sold the client's home to members of the attorney's own family—the attorney's step-father and mother. ULS-P&A learned that the attorney sold the house for \$36,000.00 and that after almost 12 months of rehabilitation, the house was sold for \$137,000.00. This case attracted a significant amount of attention throughout the metropolitan region, partially as a result of an article outlining the situation that appeared in *The Washington Post*. As a result of the article, persons throughout the region wrote letters to the Superior Court requesting that the court investigate the allegations raised in *The Post's* article. In December, 2000, the Court appointed a Special Master to investigate the case as detailed in the *Washington Post* article and to determine if the sale of the client's home was proper and whether the client received all of the money he should have received from the sale of his family home.

ULS-P&A represented the client throughout the investigation, which concluded in July, 2001. The Special Master found that the attorney acted improperly when

she sold the client's house to her step-father and mother. The Special Master determined that the house was worth far more than \$36,000.00, the amount for which the attorney sold the house to relatives. It was determined by the Special Master that the house was more likely to have been worth more than \$55,000.00 at the time of the sale. As a result, the Special Master requested that the Court should order the attorney to repay the client almost \$25,000.00.

Even after almost 11 months, this case is on-going and ULS-P&A continues to represent the client through the final stages of the investigation. However, ULS-P&A helped negotiate the resignation of the guardian/conservator and arranged for the appointment of a new guardian/conservator. The new appointment has already resulted in the interests of the client being better represented. For the first time in more than four years, the client has his own apartment and is receiving regular allowances from his conservator and case management services, something that was not happening while the client received services from the other attorney.

In the second case, which came to light following the closure of an unlicensed group home in the District of Columbia, ULS-P&A learned that a gentleman with mental illness and a hearing impairment was placed in an unlicensed and dangerous home by his guardian and conservator. ULS-P&A also learned that at the time he was placed in the home, the client's guardian/conservator was managing more than \$30,000.00 on the client's behalf and yet was only giving him \$25.00 a week as an allowance. ULS-P&A also learned that this attorney had not filed a single report with the Court for

over five years. Ordinarily, guardians and conservators are required to file one report a year with the Court.

After several months of work, the Court finally appointed a Guardian Ad-litem (GAL) to investigate whether the attorney was acting properly. The GAL determined that the guardian/conservator was not acting properly, however, the Court stopped short of removing the attorney from her position as guardian. However, as a result of the pressure placed on the attorney from both the Court and ULS-P&A, the attorney subsequently resigned from her guardianship position.

Today, the client is represented by a different attorney. Over the past several months, ULS-P&A has spent a significant amount of time assisting the attorney to collect all of the client's funds so that the client can receive regular allowances in amounts sufficient to live independently in the community. In addition, ULS-P&A, at the request of the new guardian/conservator, is also working with Department of Mental Health to

*(Continued on page 10)*

**“The problem of financial exploitation appears to be continuing”**

## DCPS CONTINUE TO FAIL TO PRIORITIZE REAL REFORM FOR SPECIAL EDUCATION

### The Following Statement Is Derived From Testimony Given Before The District of Columbia City Council On Education, Libraries & Recreation

*By Elizabeth Greczek,  
ULS-P&A Staff Attorney*

University Legal Services (ULS) Protection and Advocacy Program is a non-profit organization, congressionally mandated to protect the rights of persons with disabilities in the District of Columbia. Our office also represents students in special education proceedings against DCPS at no charge to our clients. We are one of the programs listed by the DCPS as free or low-cost counsel for parents. Because of the overwhelming need for legal representation to protect the rights of DCPS special education students, ULS has had to focus on several priority areas: obtaining programs that meet our clients' individual needs; transition from both early intervention into kindergarten and from high school into adult employment or to higher education; acquiring assistive technology to enable students to benefit from their education; and the accessibility of schools. Unfortunately, it has been our experience that DCPS has made little progress in providing the direct services needed and required by special education students in the District.

As the Protection and Advocacy Program for the District, one of our missions is to assist families in obtaining education services in the most integrated and least restrictive environment possible. As a general rule, we strive to assist parents and guardians in attempting to obtain quality services through DCPS. However, despite all the efforts our agency has made on behalf of our clients, we have been forced to conclude that there is a serious shortage of quality programs within the District. As a result, we are oftentimes forced to seek private placements and/or assessments on behalf of our clients. To illustrate the problem, I offer the example of the lack of programs for children with autism in the District and the failure of District authorities' to provide adequate training for teachers and aides in order that they become familiar with the distinctive teaching methodologies appropriate for utilization in the education of autistic students. Research indicates strongly that autistic students require a high level of structure in order to maximize learning potential, and yet, despite this finding, we find a lack of on-

going and comprehensive training and monitoring of teaching staff that—no surprise or mystery here—results in DCPS students in general and autistic individuals in particular receiving an unacceptably poor level of service.

Although the situation surrounding the education of autistic students in the District is very serious, as far as ULS is concerned, the failure to provide proper services for autistic students is but one example of the kind of problems disabled District residents face on an ongoing basis. The fact is, the District continually breaks the law in the way that it treats disabled students. Both the Americans with Disabilities Act (ADA) and the Individuals with Disabilities Education Act (IDEA) mandate that schools be made accessible to individuals with disabilities. The District, instead of

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providing accessibility (as required by law), within the schools near where disabled students live and where their friends attend classes, continues to place students in what are termed “city-wide” programs, such as Sharpe Health School. These “city-wide” programs are usually restrictive placements and they result in a situation where children with disabilities are forcibly segregated from family, friends and neighbors. The “city-wide” schools have widely varying levels of accessibility and so wheelchair-bound students are forced to attend a particular school—regardless of location and/or time spent commuting—and based solely on the fact that the school is the only institution capable of accommodating the students mobility impairment. As indicated earlier, such actions on the part of DCPS violate both the ADA and the IDEA. To rectify the legal breaches and alleviate the suffering of vulnerable residents of the District, DCPS must provide accessible programs in many more neighborhood schools and must further ensure that the programs created meet all of the students special education needs.

DCPS is required to begin transition planning for students by age 14 or earlier if deemed necessary, and to have a transition plan including linkages to adult service

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*(When Conservators Exploit... Continued from page 8)*

locate suitable housing for the client.

Even though ULS-P&A has been successful in these two cases, the problem of financial exploitation appears to be continuing. ULS-P&A regularly receives complaints from persons in the community with concerns about how a loved-one is treated by a court appointed guardian or conservator. Although guardians and conservators are required to act in the client's best interest and are appointed by the Court because of the client's vulnerabilities and inability to manage their own affairs, these two cases, as well as other complaints ULS-

P&A has received, demonstrate that all too often, guardians and conservators are not receiving the level of security that they should receive from the Court. Hopefully, as a result of these two cases, the Court will examine guardian and conservator actions more closely.

People throughout the area can help ensure that those people in the community with guardians and/or conservators are doing their jobs by monitoring how the services are delivered. If you have any questions about this topic, you can contact ULS-P&A or the District of Columbia Bar Association for more information .

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delivery systems worked out by the time the student is 16 years old (or earlier). Currently, such planning often consists of a form-generated statement about transition without any real meaning or purpose for the student. DCPS is required to collaborate with other agencies to provide students with the smooth transition that is needed. However, such collaboration is rarely self-initiated by DCPS in our experience. Notwithstanding that DCPS has a Memorandum of Agreement among several service providers in the city, it appears that the memorandum is not implemented or followed on any kind of consistent basis, if at all. Oftentimes, a dispute arises based on the premise that each agency would prefer that one of the other agencies bear the costs of a necessary program. It is many times the case that students—who are ready to move on from high school—are denied the ability to move, in a timely fashion, into the next level of city-provided programs. This situation occurs because of the failure of DCPS to properly design and implement transition plans. Transition planning and the implementation of transition goals should be a component part of a student's education during the years before leaving DCPS. Without such planning, students with disabilities leave school without vital skills, direction or support. Another serious and widespread problem is DCPS' seeming inability to successfully address the assistive technology needs of students. Assistive technology (AT) is any kind of aid or tool a disabled student requires, a pencil grip or an augmentative communication device, for example.

The fact is that there are multitudes of problems with the way DCPS handles AT issues. DCPS often recommends AT devices without conducting an AT assessment and conse-

quently fails to indicate the basis for their recommendations. Additionally, even when a device is recommended by DCPS, the tool rarely makes it into the child's possession within a period of time any logical person would deem reasonable. Typically, students are left without a recommended device for an entire school year or even longer. Also, when students finally receive a needed device, it often proves to be an old and worn piece of equipment that falls apart within a short span of time. Such devices are

then sent to be repaired while, again, students spend an additional portion of the school year or even longer without vital tools. Another related problem that needs to be noted is that, even when evaluations for AT needs are completed, they are oftentimes completed in a vacuum, without collaboration with expert or otherwise relevant parties. To illustrate: personnel knowledgeable about technology and computers will conduct an AT assessment and recommend certain devices. However, rarely, if ever, will the technology expert, for example, collaborate with the occupational therapist, or the speech therapist, or the physical therapist, to find out if a particular model or

device is appropriate based on related needs known in detail by the other experts. Haphazard testing or a complete lack of testing obviously fails to properly meet students' needs and often ends in greater frustration for a child already faced with considerable obstacles to overcome.

The overall result of the misdirected activities or lack of movement on the part of such a broken system is that huge amounts of money are wasted while students usually receive inappropriate assistive devices after an unjustifiably prolonged waiting period. Given the situation, it might be termed "ironic" that the majority of the media corps, in common with politicians and educational administrators within

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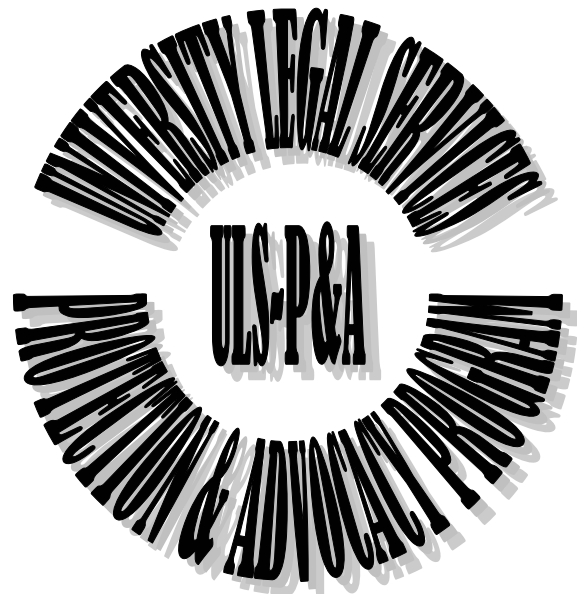
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the District regularly attack those students in need of special education or educational tools as drains on the system. Many within the District maintain that taking care of special education needs is so costly that special education students jeopardize the educational budget and therefore that special education needs threaten the overall financial health of the entire school system in the District. Such misguided or prejudiced views do not place the blame where it belongs. The plain facts are that, if the legitimate and legally mandated educational needs of disabled District residents are accurately calculated and built into the annual educational budget for the District, and if the waste and mismanagement of funds by District agencies impacting special education were effectively tackled, the financial impact of appropriately educating the District's children with special needs would not be an issue, and, furthermore, there would not be any "surprise" at the figure quoted for special education needs. As it is, those expressing "surprise" are showing either their ignorance of fiscal realities or their wish to separate themselves from responsibility for the gross inefficiency and negligence

that cause such apparent "surprises."

In conclusion, I would like to say that my testimony has only highlighted a few of the systemic problems that ULS has encountered with regard to DCPS in the recent past. There are many other areas of concern and therefore a clear process with time-specific deadlines must be established in order to facilitate improvements in the services provided for DCPS students. The current sad state of special education services in the District of Columbia should not and cannot be tolerated. The D.C. City Council and residents of the District must demand change in the form of better services and accountability and should not continue to allow DCPS to hide behind its own unwieldy bureaucracy. DCPS must be pushed forward and forced to commit to intelligently planned services and effectively targeted long-term internal systemic improvements.

***We need your help! ULS is a non-profit, 501 (C)(3) organization. Your tax-deductible gift will enable us to continue to provide advocacy services by experienced staff for people in our community with disabilities. Your gift will enable us to maintain excellent services as well as expand into areas where there are needs but fewer resources to meet them. Please make your check payable to University Legal Services and send it to the attention of Jane Brown, University Legal Services, 300 I Street, N.E., Suite 202, Washington, D.C. 20002.***



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