



In this Issue:

CRF Operator Sentenced For Defrauding ULS Client.....1

ULS-P&A Celebrates Appointment of Transportation Administrator to take over DCPS Special Education Transportation System ..1

“Ticket to Work” Program Launched in Washington D.C.....2

Update on Accessible Housing in D.C.....3

Consumer Action Network Press Release4

ULS’ Consumer Rights Project4

Schedule for ULS’ Consumer Rights Training Sessions5

Achieving Independence - Success Story5

University Legal Services - Protection and Advocacy Welcomes Six New Staff Members6

Medicaid Home-Based Attendant Services Are Now Available7

Special Education Changes8

The New Help America Vote Act..... 10

New Traumatic Brain Injury Program.....11

CRF OPERATOR SENTENCED FOR DEFRAUDING ULS CLIENT

*By Sandy Bernstein, Esq.
ULS-P&A Co-Managing Attorney*

Alphonzo Capers, a former operator of a community residential facility (CRF) in the District of Columbia, was sentenced to five years probation, with one year of house arrest, and ordered to pay restitution after he pleaded guilty to spending a former resident’s retirement account, purchasing vehicles in his name and using credit cards in the resident’s name. Mr. D., who is blind, moved into Mr. Capers’ Loving Care Community Home in 1995 because he was unable to take care of his needs independently, but instead of gaining assistance Mr. D. was taken advantage of by the providers who were supposed to care for him. Almost as soon as Mr. D. moved in, Mr. Capers withdrew funds from Mr. D’s retirement account and, without authorization, spent most of Mr. D’s retirement savings on himself and his

family. As if that were not bad enough, Mr. Capers also purchased two vans in Mr. D’s name and, using credit cards issued in Mr. D’s name, charged up thousands of dollars and failed to pay off the card balances. In addition to purchasing personal items for himself and his family using Mr. D’s credit, Mr. Capers rented cars and wrote large checks to himself and his family, all the while denying Mr. D. money to purchase clothing and other necessities.

In the summer of 1999, and for the fraudulent acts described above, attorneys at University Legal Services, Protection and Advocacy (ULS), filed a civil suit against Mr. Capers and his wife in the U.S. District Court for the District of Columbia. Both before and after ULS filed suit, ULS attorneys worked closely with the U.S. Attorney’s Office on the case which involved both civil and criminal

(Continued on page 3)

ULS-P&A CELEBRATES APPOINTMENT OF TRANSPORTATION ADMINISTRATOR TO TAKE OVER DCPS SPECIAL EDUCATION TRANSPORTATION SYSTEM

*By Kelly Bagby, Esq.
ULS-P&A Legal Director*

On June 25, 2003, Federal District Court Judge Paul Friedman appointed a quasi-receiver to take over operations of the DCPS Special Education transportation system. The Judge’s Order hopefully marks the start of a “new day” as the failures of the DCPS Special Education transportation system have plagued special education students in the District for many years. To the present day, DCPS transportation delivers extraordinarily poor service, resulting in students waiting for hours for buses that do not arrive. When students are picked up,

delays result in their being frequently late for school while many are riding buses for many hours every day simply in order to participate in their educational programs.

In January 2003, ULS-P&A and our co-counsel in the *Petties v. District of Columbia* lawsuit requested that the Court appoint a federal receiver. After months of intense litigation, the District of Columbia agreed to appoint David Gilmore (former Receiver of the District of Columbia Housing Authority), to act as an independent Transportation Administrator. The Order appointing Mr. Gilmore grants him very broad authority over the

(Continued on page 9)

“TICKET TO WORK” PROGRAM LAUNCHED IN WASHINGTON, D.C.

*By Tracy C. Alston, Esq.
ULS-P&A Staff Attorney*

In November 2002, the “Ticket to Work” program was officially launched in Washington, DC. The “Ticket to Work and Work Incentives Act” (Public Law 106-170), was signed into law in December 1999. Since last November, eligible beneficiaries have been receiving “tickets” in the mail that they can redeem for vocational rehabilitation services, employment services, and other support services. The “Ticket to Work” program is a **voluntary** program designed to help people receiving Social Security Disability Income (SSDI) and Supplemental Security Income (SSI) benefits to go to work, become self-sufficient, and eliminate the need for cash benefits.

University Legal Services, Protection and Advocacy (ULS), provides representation, advocacy, information and referral regarding the Ticket to Work Program under its Beneficiaries of Social Security program (PABSS). ULS’ mission, as it pertains to the PABSS program, is to assist beneficiaries in breaking down the barriers to securing, regaining, or maintaining employment. If you receive SSI or SSDI and have questions regarding the “Ticket to Work” program, or if you have a complaint or problem in connection with any entity providing employment-related services, please contact ULS staff attorney Tracy C. Alston. If you would like to work but fear losing your benefits, Ms. Alston is available to discuss your options.

**“All SSI and
SSDI recipients
in the District
of Columbia
should receive
their Tickets by
September
2003.”**

FREQUENTLY ASKED QUESTIONS:

1. Will I get a Ticket?

If you receive SSI or SSDI, are between 18 and 64, and are not expected to medically improve to the point that you will be ineligible for benefits, you will receive a Ticket. If you are expected to medically improve to the point you would be ineligible, but have had at least one continuing disability review and were continued on benefits, you will receive a Ticket.

2. Do I Have to Use the Ticket?

Ticket use is completely **VOLUNTARY**. If you begin using your Ticket and find that you cannot or do not want to continue, you may stop without penalty. Your decision not to use your Ticket will have no effect on your benefits.

3. What does using the Ticket do for me?

Using the Ticket should make more service providers available to you to help you return to work and become self-sufficient. While you are using your Ticket, you will be exempt from continuing disability reviews by Social Security

to determine if you are still disabled.

4. Will my participation in the Ticket Program affect my benefits?

Your benefits will not be reduced or discontinued if you choose not to participate in the Ticket Program. If you choose to participate and you return to work at a significant salary level, you may no longer qualify for cash benefits. Should you find that you cannot continue to work, your cash benefits can be reinstated quickly.

5. If my cash benefits stop because I go to work, what happens to my health insurance (Medicare and Medicaid)?

Your Medicare may continue for as long as eight and one-half years. Depending on your salary, you may also have the opportunity to continue to receive Medicaid Insurance.

6. Who can provide employment services to me?

Under the Ticket program, you can receive employment services from an approved Employment Network (EN) or from the Rehabilitation Services Administration (RSA). To find the Employment Networks (EN) in your area, you may call MAXI-

MUS, the Program Manager at 866-968-7842 or check the MAXIMUS website at www.yourtickettowork.com.

7. What is an Employment Network?

An Employment Network is an organization approved by the Social Security Administration to assist you with a variety of services. Examples of these services may include resume writing, interviewing skills, job application assistance, job seeking skills assistance, support groups, job training and re-training, and job coaching. The Employment Network (EN) to whom you assign your Ticket will develop a plan with you, outlining steps that will help you return to work and assist you as you progress through the steps of your plan.

8. Does the Employment Network have to accept my Ticket and provide services to me?

Only the Rehabilitation Services Administration (RSA) is required to accept your Ticket and attempt to provide services to you. All other Employment Networks (EN) will assess whether you fit the profile of individuals to whom they think they can successfully provide services. Many ENs focus their services to specific disabilities. Examples of these specialized areas are physical disabilities, cognitive disabilities, traumatic brain injuries or mental illness. If an EN believes that they cannot help you, they may refuse to accept your Ticket. ENs may also accept your Ticket and refer you to the Rehabilitation Services Administration (RSA) for the actual services.

(Continued on page 5)

(CRF OPERATOR SENTENCED FOR DEFRAUDING ULS CLIENT...Continued from page 1)

aspects. The U.S. Attorney's Office was simultaneously investigating the Capers for acts committed against Mr. D and subsequently filed criminal charges against Mr. Capers. These charges were sent to the judge assigned to hear the civil case in U.S. District Court, Judge Urbina. In January of 2003, Mr. D. settled his civil case against the Capers. In that settlement, Mr. Capers agreed to plead guilty to causing harm to Mr. D.; to pay compensation to Mr. D.; and to take financial responsibility for the credit card balances fraudulently accumulated in Mr. D's name. In regards to the criminal aspect of the case: although Mr. D has suffered financially and emotionally because of Mr. Capers' acts, Mr. D. told Judge Urbina that he did not want Mr. Capers to serve time in jail because he wanted him to be able to work to repay the money he had taken. Judge Urbina accepted Mr. Capers' guilty plea but was hesitant about omitting jail time from his sentence because of the seriousness of Capers' offences against Mr. D. At Mr. Capers' April 1st sentencing hearing, the Honorable Judge Urbina expressed his disgust at what Capers had done: "... you used your position to defraud

this elderly, blind, diabetic, disabled gentleman repeatedly. Just on those facts, Mr. Capers, my response would be to give you every minute of the incarceration I possibly could lawfully do..."

Judge Urbina sentenced Mr. Capers to one year of house arrest, where he will be subjected to electronic monitoring, and 5 years probation. In addition, Judge Urbina ordered Mr. Capers to pay restitution to Mr. D and to pay a special assessment to the Court and also ordered that he contact credit card companies and assume the debts listed on Mr. D's credit report within 30 days of the April 1st hearing. The sentence incorporated many of the terms of the settlement agreement signed by the parties to settle Mr. D's civil case against Mr. Capers and his wife. Although restitution payment cannot change the fact that Mr. D has been without access to the money he earned for years, he is happy to finally have the ability to take care of his needs and to know that the man who was charged with taking care of him finally will be forced to pay for what he did to him.

For more information, please contact Sandy Bernstein, Co-Managing Attorney, University Legal Services, Protection and Advocacy at (202) 547-0198.

UPDATE ON ACCESSIBLE HOUSING IN D.C.

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



In Young, et al. v. DC Housing Authority, University Legal Services, Protection and Advocacy (ULS-P&A), negotiated a federal consent order requiring the D.C. Housing Authority (DCHA) to build or renovate 565 fully wheelchair accessible public housing units for people with disabilities. The Consent Order

requires these public housing units to meet Uniform Federal Accessibility Standards (UFAS) by providing features such as no-step entries through the use of ramps, wider doorways, grab-bars in the bathrooms, lower kitchen counters, and appliances with adequate clearance space for wheelchairs underneath. DCHA renovated the first 108 units in 2002; they must renovate 108 more units each year for the next two years (to be completed by 12/31/04), and they must complete 106 more new units by 5/31/05, and 135 new units to be completed by 12/31/07.

DCHA must offer these accessible units first to public housing tenants who are mobility impaired, need accessible units and request a transfer through their property managers. Next, DCHA will offer these accessible units to applicants with mobility impairments who reach the top of the waiting list for public housing. Thus far, nine ULS-P&A clients have moved into accessible public housing units as a result of the class ac-

tion lawsuit and many more public housing tenants have transferred into the new wheelchair accessible units.

If the fully accessible units are not available, DCHA is required to provide a partially accessible unit to each public housing applicant with mobility impairments who reaches the top of the waiting list, based on availability. The unit must come with accessible features that meet the applicant's needs or the unit must be on an accessible route that DCHA will modify to meet the applicant's needs, and DCHA must also assign priority status to ensure that modifications are completed within a reasonable period of time.

Section 8 Housing Program

When applicants with mobility or visual impairments reach the top of the waiting list for the Section 8 voucher program (now called the "Housing Choice Voucher Program"), DCHA is required to: 1) issue Section 8 housing vouchers valid for 120 days and allow extension(s) of 60 days to people with mobility or visual impairments who show that they are unable to find available, accessible housing; 2) develop a list of available wheelchair accessible Section 8 housing apartments and distribute it to mobility impaired people when they get their Section 8 vouchers; 3) offer search assistance to people with visual and mobility impairments who need help in locating suitable Section 8 housing; and 4) process Section 8 applicants who live in nursing homes who do not have homes to return to, as eligible for

(Continued on page 6)

CONSUMER ACTION NETWORK

PRESS RELEASE

By Mary Blake

Consultant to University Legal Services, Protection & Advocacy

FOR IMMEDIATE RELEASE

September 8, 2003

Peer Group Wins Contract to Advocate for People with Mental Illnesses

People enrolled in the District of Columbia (D.C.) mental health system can call on a new and independent consumer organization to help them protect their rights and get the services they need. On September 3, 2003, Consumer Action Network (CAN), a non-profit peer-advocacy organization, was awarded a contract with the D.C. Department of Mental Health to develop a Grievance System and Peer Advocacy program for mental health consumers. CAN expects to begin outreach work in the mental health community by September 15, 2003, and will send formal announcements when we're in our new office space.

According to Dennis Jones, the court-appointed monitor for the D.C. mental health system, in funding an *independent* peer advocacy program, the mental health system can better "...maximize emphasis on consumer and family perspective in the implementation and integrity of the grievance system.... This is viewed by the Court Monitor as an important and positive decision and is consistent with the clear intent of the Court-ordered Plan."

CAN's focus will be to empower consumers to advocate for themselves; educate consumers about the new grievance system and help them file grievances; ensure that consumers understand their rights and responsibilities; support and mentor consumers' recovery through planning and goal-setting; enable consumers to exercise their choices in care; and help

consumers to be accountable for their choices.

CAN plans to work cooperatively with all other mental health advocacy and stakeholder organizations, focusing on the development of a strong, coordinated, and self-sufficient network of consumer advocacy agencies. CAN will provide academic and public educational opportunities to combat stigma against mental illness and promote recovery principles as best mental health practices. Within the next six months, CAN will launch a web site as a central portal for information about available services, national and local advocacy organizations, news about consumer rights and policies in the D.C. mental health system, and links to funding opportunities for advocacy and other organizations.

Consumer Action Network was incorporated in the District of Columbia as a non-profit peer advocacy organization in January 2003. Drawing CAN's name from a previous effort by consumers, consumer advocacy organizations, and the Department of Mental Health, CAN's initial directors, Mary Hathaway, Effie Smith and Mary Blake, envisioned a new project-focused, empowerment-based strategy for addressing D.C. consumer's needs. To preserve its independence, CAN plans to seek funding from diverse sources. CAN hopes to collaborate with other consumer organizations to secure funding opportunities and enhance the consumer role in delivering services, improving quality of life, and supporting recovery.

Contacts: Effie Smith, Director of Advocacy/Program Coordination, (202) 408-1817; Mary Hathaway, Director of Planning/Operations, (202) 483-3205; Mary Blake, Director of Training/Communications, (202) 518-8305; E-mail: info@can-dc.org.

ULS' CONSUMER RIGHTS PROJECT



University Legal Services has launched its consumer rights project in DC by creating a mental health consumer rights manual and rolling it out to the mental health community in training venues across the city. At the forums, consumers and family members receive up-to-date information on their rights and strategies to help them

exercise their choices in care. For instance, they discuss their rights in accessing and receiving mental health, crisis services, and representative payee services, filing grievances, getting appropriate care for children, and more. They also receive *FREE* copies of a consumer rights handbook, which includes current information on legal, advocacy, crisis services, peer, and family member resources in the District of Columbia. At the forums, participants are invited to ask questions and actively engage in dialogue about specific concerns.

SCHEDULE FOR ULS' CONSUMER RIGHTS TRAINING SESSIONS

- Tuesday, September 9, 2003 at 11:15 AM - 12:45 PM - Rachel's Womens Center
- Tuesdays, September 16 & 23 at 9:00 - 9:45 AM - Washington Hospital Center (in two parts)
- Tuesday, September 23 at 7:00 - 9:00 PM - Family Alliance (35 K Street, NW)
- Thursday, September 25 at 7:00 - 9:00 PM - NAMI-DC
- Thursday, October 2 at 2:00 - 4:00 PM - DC Mental Health Consumers League (at MLK Library, Rm A-9)
- Saturday, Oct. 4 @ 1:00 - 2:00 PM - Center For Mental Health-Children's/Family Mem.'s Part I
- Monday, October 6 at 7:00 PM - FASA (1289 Brentwood Road, NE)
- Tuesday, October 7 at 10:30 - 11:30 AM - Our House (Drop-in Center)
- Wednesday, Oct. 8 @ 9:00 - 9:45 AM - Washington Hospital Center Part III
- Wednesday, Oct. 8 @ 11:00 AM - 1:00 PM - Our Turn Drop-In Center -
- Monday, October 13 at 11:00 AM - 12:00 PM - Bethany Women's Group

ACHIEVING INDEPENDENCE – A SUCCESS STORY

*By Vivi Smith
ULS-P&A Advocate*

When Forest Haven closed its doors as an institution, the District had the opportunity to turn things around and begin to do right by residents with Mental Retardation. One of the goals for all residents with MR was successful community integration with as much independence as possible. Now, years later, some D.C. residents are finally being enabled to achieve these objectives.

For years, a client I will call N.T. languished in an Intermediate Care Facility (ICF-MR), even though everyone involved with her care and N.T. herself realized that the group home setting where she had been placed was an unnecessarily restrictive environment for her. N.T. wanted more independence, more control of her life. Although N.T. was constantly informed by agency officials that she was on a waiting list to move into an apartment setting, she was also told that there were no apartments available for her. Nevertheless, N.T. persevered. She told anyone and everyone who would

listen that she yearned for "a more normal life."

Eventually, N.T. found her way to University Legal Services, Protection and Advocacy (ULS-P&A). ULS-P&A immediately began advocating for what everyone agreed N.T. required, a less restrictive community setting. Of course, N.T. made her voice heard every step of the way. She attended and was an integral part of every meeting that was convened on her behalf. After many months of advocacy by ULS-P&A, and after persisting through several changes in case managers from the District's Mental Retardation and Developmental Disabilities Administration (MRDDA), N.T.'s long awaited dream of independence and more control over her life was finally realized.

N.T. is now living very successfully and happily in an apartment that she shares with one roommate. Though she has a support system of professionals who assist her with some daily living activities, she finally has what she dreamed of for so long, an apartment that she calls home in a community that she likes, and more control over her life.

("TICKET TO WORK" PROGRAM LAUNCHED IN WASHINGTON, D.C.Continued from page 2)

9. When will I get a Ticket?

All SSI and SSDI recipients in the District of Columbia should receive their Tickets by September 2003. However, if eligible, you may request a Ticket at any time by contacting MAXIMUS at 1-866-968-7842 (voice) or 1-866-833-2967 (TTY).

10. Who can give me more information on the Ticket program?

The Social Security Administration has contracted with **MAXIMUS, Inc.** to perform the Program Manager role. You can reach a **MAXIMUS** representative toll-free at 1-866-968-7842 (voice) or 1-866-833-2967 (TTY). They can provide you with information and a list of ENs that serve

the District. **However, before you decide to use your ticket, you should contact a benefits planner with the Benefit Planning, Assistance and Outreach program to help you determine how income from work will impact your benefits (such as SSDI, SSI, Medicare, Medicaid, Housing, Food Stamps, Cash Assistance, and Transportation Assistance).** For Washington D.C., Goodwill Industries is the Benefit Planning, Assistance and Outreach program contracted with Social Security to provide services. They can be reached at 202-636-4225. You may also contact ULS (202-547-0198) or visit the following website: www.yourtickettowork.com

("UPDATE ON ACCESSIBLE HOUSING IN D.C....Continued from page 3)

the homelessness preference. As required by the Consent Order, DCHA asked the U.S. Department of Housing & Urban Development (HUD) for permission to raise the value of Section 8 Vouchers to 120% of Fair Market Rent (FMR) to encourage private landlords to make housing accessible and available to people with mobility impairments. ULS-P&A advocated on behalf of seventeen people with mobility impairments who have moved into accessible units with their Section 8 vouchers. Some of these people received their vouchers through the Mainstream Voucher Program conducted by Community Connections, a D.C. agency that received and distributed 75 housing vouchers under a separate HUD program.

Accessible Project-based Subsidized Housing

Apart from our work on accessible *public housing* (owned by the D.C. Housing Authority), ULS-P&A is also actively involved in identifying wheelchair accessible subsidized housing for people with disabilities who need to find low cost housing that does not require Section 8 vouchers. Project-based subsidized housing is owned and managed by

private landlords funded by the U.S. Department of Housing & Urban Development (HUD) to offer discounted rents to tenants based on their income. These buildings have their own waiting lists, lists far shorter than the D.C. Housing Authority's lists for public housing and Section 8 housing. Under Section 504 of the Rehabilitation Act, all the private project-based developments that receive federal funding must make at least 5% of their units wheelchair accessible if they were built or substantially renovated after July 1, 1988. In cases of older developments, the landlords must make reasonable accommodations for tenants who require wheelchair accessible features.

ULS-P&A is in the process of developing a comprehensive list of the project-based subsidized developments with accessible units in the District with contact information and information about waiting lists. For a list of some of the project-based subsidized units in the District, as well as those in states across the country, visit the HUD website at: <http://www.hud.gov/offices/hsg/mfh/hto/inventorysurvey.cfm>

For more information, contact: Marjorie Rifkin, ULS-P&A Staff Attorney, (202) 547-0198 ext.112, mrifkin@uls-dc.com.

UNIVERSITY LEGAL SERVICES – PROTECTION AND ADVOCACY **WELCOMES SIX NEW STAFF MEMBERS**

Mary Nell McGarity Clark, Esq. - Co-Managing Attorney

University Legal Services, Protection and Advocacy (ULS-P&A) welcomes Mary Nell McGarity Clark, who joined ULS on June 23rd as co-managing attorney. Mary Nell worked for almost ten years in the Commercial Litigation Branch of the United States Department of Justice, where she handled large class action lawsuits. Mary Nell has a special interest in disabilities law and has a family member with developmental delays.

Pamela Williams, Esq. - Staff Attorney

Pamela Williams joined University Legal Services (ULS) as a Staff Attorney in December 2002. Her responsibilities include advocating to increase independent living opportunities and community support services for people with disabilities, educating nursing home residents about community-based alternatives to nursing home care and assisting them in finding appropriate housing within the community, and litigating to increase the availability of accessible, affordable housing for people with disabilities. Prior to joining ULS, Ms. Williams served as Law Clerk to Chief Judge Norma Holloway Johnson of the United States District Court for the District of Columbia. Upon completion of her clerkship, she joined the law firm of Morgan, Lewis & Bockius as a litigation

associate practicing in the areas of securities compliance and white-collar crime. She left the firm in 2002 to develop the National Center for Minority Research, a Washington, DC based non-profit organization focusing on addressing the numerous health concerns of the African-American population.

Tracy C. Alston, Esq. - Staff Attorney

Tracy C. Alston joined ULS January 2003 as a Staff Attorney under the PABSS Program. Under this program, Ms. Alston provides assistance and individual representation to Social Security beneficiaries, who are seeking vocational rehabilitation, employment services, and other services that will help to break down barriers to securing, regaining, or maintaining employment. She also provides advocacy, advice, and referrals to beneficiaries regarding the new "Ticket to Work" legislation. Before joining ULS, Ms. Alston served as a Staff Attorney at the Legal Aid Bureau in Riverdale, Maryland for four years, where she practiced in the areas of administrative, landlord-tenant, and consumer law. She holds a J.D. from Catholic University Columbus School of Law and a B. A. from Georgetown University.

Ezinwanne Hawkins - Housing Advocate

We also welcome housing advocate Ezinwanne Hawkins to University Legal Services, Protection and Advocacy (ULS-P&A).

(Continued on page 10)

MEDICAID HOME-BASED ATTENDANT SERVICES ARE NOW AVAILABLE

*By Pamela Williams, Esq.
ULS-P&A Staff Attorney*

After years of advocacy by University Legal Services, Protection and Advocacy (ULS-P&A), and Capital Area ADAPT, the District of Columbia's Medical Assistance Administration (MAA) has finally issued rules implementing the Elderly and Physical Disabilities (EPD) Waiver Program for eligible people with disabilities who are 18 years and older. Under the EPD Waiver Program, attendant care (personal care assistance), chore services and homemaker services are now available to eligible people with disabilities in their own homes. The new program provides people with disabilities the opportunity to live independently in the community instead of in nursing homes.

The program is designed to serve people with disabilities, 18 years and older, who: (1) are already on D.C. Medicaid and receive attendant services in their homes under the Medicaid State Plan but require more than the eight hours of daily attendant care services currently available under the Medicaid State Plan Personal Care Aide Program; or (2) are on D.C. Medicaid and receiving home health services but need services in addition to the attendant care services; or (3) are *not* financially eligible for D.C. Medicaid but have a monthly income that is no more than 300% of Supplemental Security Income, which would currently total \$1,656 per month. It is this last category of people who will, for the first time, be eligible to receive personal care services in their homes under the EPD Waiver.

There are several requirements that must be met to be eligible for the EPD Waiver Program. Initially, the consumer's physician must sign an order for home-based personal care assistance. Next, the consumer (or the consumer's advocate) must contact one of the case management agencies designated by MAA to enroll people in the waiver program. The case management agency will meet with the consumer to determine if s/he meets the financial requirements and needs a "nursing home level of care," that is, assistance with at least two of the following activities of daily living (ADLs): toileting, dressing, bathing, eating, and transferring into and out of the wheelchair. In addition to requiring assistance with ADLs, eligible consumers may also need assistance with tasks including meal preparation, housework and chores (for example, grocery shopping and laundry).

After determining if a person is eligible for the waiver, the case management agency, with the participation of the consumer, will develop a care plan that defines the type of services and the number of hours of care needed. After the care plan is created, consumers will be able to select a certified home

health agency called a "direct service provider." This agency will assign the personal care aides, and/or homemakers to work with the consumers, and will carry out the terms of the plan. Under the EPD Waiver Program, the personal care aides will be paid by Medicaid.

ULS-P&A will continue to push for "consumer-directed" services under the EPD Waiver which would allow people with disabilities the option to choose care providers from among their family members (except spouses) and friends, rather than rely on agencies to provide attendants. In the consumer-directed model, all care providers must meet the same training and certification requirements as the agency providers. They would then be under the supervision of the consumer who would manage his or her own care. The caregivers would be paid for their services through fiscal agents designated to work with MAA.

ULS-P&A urges people with disabilities to apply for the EPD Waiver Program by contacting a case management agency. A list of case management agencies is available through either ULS-P&A or MAA. For further information, contact Rolda Hamblin, MAA Office on Disabilities and Aging, at (202) 442-9055. ULS-P&A will be glad to assist people with the enrollment process.

In a related matter, as part of our continuing effort to advocate on behalf of people with disabilities in nursing facilities and to inform them of independent living options, ULS-P&A, together with the D.C. Long-term Care Ombudsman's Office, successfully advocated for the suspension of the April 11, 2003 Rules on Decertification of Residents in Nursing Facilities. Under these decertification rules, MAA, through Delmarva Inc., began decertifying nursing home residents based on the determination that they did not require a "nursing home level of care." After being decertified, nursing home residents were only allowed 30 days to find appropriate housing without benefit of the required discharge planning process. After 30 days, in many instances, nursing facilities discharged residents inappropriately to settings such as inaccessible housing, homeless shelters or even the streets.

ULS-P&A and other advocacy groups submitted comments criticizing the decertification rule noting its many conflicts with existing law and discussing the need to allow decertified residents adequate time to appeal decertification decisions, and additional time to locate housing once any appeals are decided. Additionally, ULS-P&A met with Mr. Robert Cosby, the head of MAA's Office on Disabilities and Aging, to discuss our concerns regarding the rule. In response to our persistent advocacy, the April 11, 2003 Rules on Decertification of Residents in Nursing Facilities expired on July 15, 2003 and were

(Continued on page 8)

"The new program provides people with disabilities the opportunity to live independently in the community instead of in nursing homes."

SPECIAL EDUCATION CHANGES

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

Special Education law is going through many changes in the District of Columbia and University Legal Services, Protection and Advocacy (ULS-P&A), is following these changes closely as well as providing written comments on proposed changes to the laws, rules and regulations.

Student with disabilities are entitled to special services in the school system. The federal law that provides for these services is called the Individuals with Disabilities Education Act, more commonly referred to as IDEA. Under IDEA, a student with a disability is entitled to a free, appropriate public education. Congress is now in the process of "re-authorizing" this law. The re-authorization process permits both the House of Representatives and the Senate to provide versions of the law in the form of a bill. Thereafter, the two sides will meet to try to compromise on any differences. ULS-P&A is monitoring this process and providing information to Congress about how certain proposed changes will impact students with disabilities. The new law should be passed within a few months.

In the District, administrators at District of Columbia Public Schools (DCPS) have proposed rules to develop a State Education Agency. Currently, DCPS has only a Local Education Agency, while states have both a local agency and a state agency. By law, DCPS is required to have a State Education Agency to monitor itself. ULS-P&A is reviewing proposed new regulations to rectify the current lack of oversight and will provide comments to the school board before a law establishing a new agency is passed.

Also on the local front, Elizabeth A. Greczek, an attorney from at ULS-P&A, attended a School Board meeting on July 9, 2003 and presented testimony about issues surrounding due process procedures. Edited excerpts begin below:

I am a staff attorney at University Legal Services, Protection and Advocacy, an agency program for District of Columbia citizens with disabilities. We are a non-profit organization, congressionally mandated to protect the rights of persons with dis-

abilities in the District. Our office represents students in special education proceedings against District of Columbia Public Schools [DCPS] at no charge to our clients. We are one of the programs that DCPS lists as free or low-cost counsel for parents. It is my understanding that the Board of Education is seeking comments on the due process hearing procedures from the public and therefore I am providing comments from our office regarding the current state of due process issues in DCPS.

It appears that DCPS' main focus regarding due process is in answering the question "Why are there so many due process hearings, and how do we limit spending money on attorney fees and related costs including experts, independent evaluations and private school placements?" The answer to this question is straightforward: DCPS must develop and implement quality assessment teams, programs and related services. They must also provide needed assistive technology and make school buildings accessible to mobility-impaired students. Without an infrastructure that provides necessary services and resources, DCPS cannot provide appropriate services in accordance with the IDEA. And, if DCPS cannot provide appropriate service, it is a parent's right to ensure their children receive proper educational services. In order to accomplish this goal, parents must in most circumstances seek a due process hearing.

The District of Columbia Auditor's Report recommends various ways that the District of Columbia Office of General Counsel and other DCPS agencies can change their practices in order to limit hearings. Although some of this advisory information makes sense – for example, ensuring that the requirements of a settlement agreement or a due process hearing reach the local school personnel responsible for implementation – local school personnel cannot implement services that do not exist.

As the Protection and Advocacy service for people in the District, we seek to secure the Least Restrictive Environment for our clients. In our experience, most parents want their chil-

(Continued on page 9)

“Without an infrastructure that provides necessary services and resources, DCPS cannot provide appropriate services in accordance with the IDEA.”

(MEDICAID HOME-BASED ATTENDANT SERVICES ARE NOW AVAILABLE...Continued from page 7)

not renewed, i.e., they are no longer in effect. At this point, if a resident is decertified from a nursing home, the facility must provide adequate notice, inform the resident of the opportunity to appeal the decertification, and conduct discharge planning with the resident in order to assist in locating appropriate housing and services or supports in the community. The resi-

dent and the nursing facility must make a good faith effort to find housing in a reasonable time period in order for the facility to continue to receive Medicaid funds for the care of the resident and thereby permit the resident to remain at the facility.

For more information, contact Pamela Williams, ULS-P&A Staff Attorney, 202-547-0198 ext. 102, pwiliams@ULS-dc.com.

(SPECIAL EDUCATION CHANGES...Continued from page 8)

dren to be educated in the District of Columbia and near their home. However, their primary concern is to ensure that their child receives a proper education and often this requires parents to seek private placements outside of the child's neighborhood. ULS-P&A seeks to assist parents in their endeavor to receive an appropriate education within a DC public school, however, parents face next-to-impossible odds, due to the widespread lack of programs and lack of resources to properly implement existing programs.

In recent months, administrators at DCPS have claimed that they are "bringing students back into the District." If DCPS is creating quality programs they have not shared any facts with the public and instead have made broad and generalized statements regarding 200 (or more) slots that are said to have been opened in District public schools. Failure to properly communicate with students, parents and interested parties and provide detailed factual information does not contribute to a cooperative approach, while broad statements issuing from DCPS will rightly raise concerns and should cause this Board to pause. It is recommended that the Board require detailed information including staffing, resources and accountability requirements for these new slots.

Unfortunately, DCPS claims appear to be nothing more than a smoke screen concealing a situation where students are yanked from appropriate private placements and placed in inadequate public programs. DCPS is waiting to see which parents have the financial wherewithal and the ability to hire an attorney to seek due process. As DCPS plays this game, the agency is well aware that there is a fee cap for any plaintiff attorney wishing to help consumers in unenviable predicaments as a result of DCPS action and inaction. DCPS are failing vulnerable and needy children who will fail to receive the appropriate

education they are entitled to.

At the same time as DCPS' tactics actually invite litigation, DCPS would like the Board and other members of the public to find fault in the fact that parents are trying to enforce a civil right on behalf of their children by filing for due process. If, on the other hand, DCPS would take up the suggestions of the D.C. Auditor's report and ensure that settlement agreement and hearing officer determination requirements are properly relayed to the personnel responsible for ensuring compliance, there would not be a need, in many cases, to file hearing request on top of hearing request to receive relief. A system needs to be developed wherein agencies within DCPS communicate and cooperate with each other on cases, in order to seek and implement appropriate and lasting resolutions. The current preoccupation with how DCPS can better handle the large number of due process hearings entirely evades the reasons why there are so many hearings in the first place. DCPS already knows and has known for many years why there are so many hearings. What DCPS does not know is how to build an infrastructure that ensures Free and Appropriate Public Education (FAPE) for every student entitled to such within its system.

However, if DCPS does not make sure that they have quality evaluators, services and programs, proper implementation will not be possible. Focusing on the number of hearings and desperately attempting to lower the costs associated with these hearings is entirely a waste of DCPS energy and resources that should be directed toward improving services in order to better serve consumers. Improving services is the only sure way to stop litigation. This Board, DCPS, and the District of Columbia government would benefit from focusing

(Continued on page 10)

(ULS-P&A CELEBRATES APPOINTMENT OF TRANSPORTATION ADMINISTRATOR...Continued from page 1)

DCPS Transportation budget, procurement, personnel and other vital services. He will consult regularly with D.C. Schools Superintendent Paul Vance but he has the authority to act independently of the Superintendent if he deems such action necessary.

The Transportation Administrator and his management team began work reforming DCPS Transportation in July 2003 and have already begun to address and dramatically and positively impact a backlog of convoluted problems dating back years. Driver absenteeism has already decreased significantly under Gilmore's leadership and he also managed to obtain an adequate number of buses before the start of school. Before the arrival of Mr. Gilmore, DCPS was unable to accomplish either of these essential prerequisites to the provision of a proper transportation service for Special Education students from the District. ULS-P&A looks forward to lending all appropriate support to Mr. Gilmore in his reform efforts.

ULS is organizing a meeting for parents to meet the Transportation Administrator in mid-October. Anyone who is interested should call Tiffany at ULS-P&A.

If you or someone you know has concerns about DCPS transportation services, please contact ULS-P&A at 202-547-0198. To reach the Transportation Administrator, please call 202-576-5555 or 202-576-5566.



(SPECIAL EDUCATION TRAINING...Continued from page 9)

on how to build successful programs in both regular and special education - programs that meet the needs of students, through, for example, utilizing capable evaluators and allowing them the time to use their expertise to provide quality evaluation. The District government needs to build and renovate schools so that they are accessible to all students and to ensure that an adequate number of qualified service providers are available to properly implement services.

These suggestions represent long-term goals, but significant change at DCPS is the only alternative to the expense of litigating under IDEA. DCPS must change because the future of so many of the District's children is dependent upon how efficiently DCPS functions. The amount of hearings DCPS has to deal with is connected to an obvious need for advocacy on behalf of students. The lack of services and

lack of accountability at DCPS is demonstrated by the failure to develop and ensure appropriate services for DCPS students. According to the D.C. Superior Court Child Abuse and Neglect Section, the judges in that court made 192 educational advocate appointments for one or more children in 2002 and made 107 educational advocate appointments in the first half of 2003 for one or more children. "One or more children" means that a single attorney may handle the educational issues for up to 3 siblings and such a situation is considered one appointment. With the future of these students hanging in the balance, a focus on anything short of the need for drastic improvement in DCPS services would be recklessly short sighted.

(UNIVERSITY LEGAL SERVICES-PROTECTION AND ADVOCACY WELCOMES SIX NEW STAFF MEMBERS...Continued from page 6)

As ULS' housing advocate, Ezinwanne will be responsible for increasing the number of resources available to disabled individuals through aiding clients in their search for accessible housing and attempting to remove barriers to achieving affordable, accessible housing. Before coming to ULS-P&A, she worked as a case manager for three years, in a local shelter for homeless families, assisting them in locating transitional and permanent housing, supportive services and job training.

Tiffany Pertillar - Paralegal

University Legal Services, Protection and Advocacy (ULS), is pleased to welcome paralegal Tiffany Pertillar. Tiffany, who has a Bachelor's Degree in Human Services, previously worked as an intern at the Children's Law Center

in Washington D.C. and as a volunteer at the Tiger Pause mentoring program for at-risk teenaged girls in Beaver Falls, PA. She will be working with the Protection and Advocacy Staff on the *Petties* class action lawsuit. Ms. Pertillar plans to attend the University of Maryland to pursue a Master's degree in Social Work and a Juris Doctorate in a joint degree program.

Christie Vaudo - PAIMI Outreach Advocate

Christie Vaudo has just started at ULS. She is a mental health advocate with many years experience working with people who face homelessness. She also will advocate for people in St. Elizabeths' Hospital.

THE NEW HELP AMERICA VOTE ACT

*By Jane Brown
ULS Executive Director*

The Help America Vote Act (HAVA) is a new law which addresses inaccessibility of state electoral systems. Often, people with disabilities have been unable to vote due to the inaccessibility of polling places, inaccessibility of voting equipment or discriminatory voting practices. By the enactment of this law, national standards concerning voting administration and voting equipment must be implemented by each state and territory.

Through HAVA, the federal government has provided funds to states for the upgrading of voting machines, the improvement of voter databases and the implementation of voter identification requirements. Many states have initiated

this mandated election reform by purchasing new voting machines. In the District of Columbia, funds will be spent on the purchase of optical-scan systems for each polling site, and the improvement of the voter registration database.

If you or someone you know is turned away from a polling place because it is ill-equipped and cannot accommodate the needs of a person with a disability, please contact ULS. We are interested in hearing about the experiences of our residents in dealing with the electoral process and in providing advocacy related to these issues.

Please contact us if you would like an advocate to attend your meeting in order to provide more information about HAVA to your group.

NEW TRAUMATIC BRAIN INJURY PROGRAM

On September 26, 2002, the Department of Health and Human Services announced \$1.5 million on grants to strengthen P&A services for individuals with **traumatic brain injury (TBI)** and their families. The grant program is administered by the Health Resources and Services Administration (HRSA) through its Maternal and Child Health Bureau (MCHB). In FY 1996, Congress authorized HRSA's MCHB to establish a state grant program to improve access to health care and other services for individuals with TBI. These new three year competitive grants, awarded for the first time in FY 2002 as part of the reauthorization of the TBI Grant Program, went to P&A systems in four U.S. territories and one tribal agency. States will receive \$50,000 per year. American Samoa, Guam, the Northern Mariana,

the U.S. Virgin Islands, Native American Consortium in New Mexico will receive \$20,000 yearly.

The grants support P&A agencies, which provide information and referral services to people with disabilities and help them find solutions to problems involving discrimination and employment, education, health care and transportation, personal decision-making, and overall quality of life. The agencies also help clients seeking vocational rehabilitation and Social Security disability benefits and provide individual and family advocacy as well as advocacy training.

**Information Obtained from the National Association of Protection and Advocacy Systems website.*

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.



**UNIVERSITY LEGAL SERVICES, INC.
PROTECTION & ADVOCACY PROGRAM**

220 I Street, N.E.
Suite 130
Washington, D.C. 20002
(202) 547-0198 Phone
(202) 547-2662 Facsimile
(202) 547-2657 TTY
www.dcpanda.org

NON-PROFIT ORG
U.S. POSTAGE
P A I D
Washington, D.C.
Permit No. 1024

IMPORTANT ULS-P&A PROGRAM CONTACT NAMES

Jane M. Brown, Esq. - Executive Director
Cheryl A. White - Newsletter Editor/Design Specialist
Nick Moroney - Consulting Editor/Publications Specialist
Kelly Bagby, Esq. - Legal Director (all Protection & Advocacy programs)
Sandy Bernstein, Esq. - Co-Managing Attorney (all Protection & Advocacy programs)
Mary Nell McGarity Clark, Esq. - Co-Managing Attorney (all Protection & Advocacy programs)
Joseph R. Cooney, Esq. - Client Assistance Program Director
Celeste Valente, LICSW - Senior PAIMI Advocate
Christie Vaudo - PAIMI Outreach Advocate
Elizabeth A. Greczek, Esq. - Staff Attorney, Assistive Technology and Developmental Disabilities Programs
Marjorie Rifkin, Esq. - Staff Attorney, PAIR, Developmental Disabilities, and Assistive Technology Programs
Regan Bailey, Esq. - Staff Attorney, Developmental Disabilities Program
Tracy C. Alston, Esq. - Staff Attorney, PABSS Program
Pamela Williams, Esq. - Staff Attorney, PAIR Program
Andrea Procaccino - Nurse Consultant, JD
Vivi Smith - Advocate/Law Graduate, PAIMI and Developmental Disabilities Programs
Ezinwanne Hawkins - Advocate, P&A Programs
Alicia Johns, Program Manager - Assistive Technology Program (non-legal)
Antoinette Tillman, Outreach Specialist - Assistive Technology Program (non-legal)
Gilan Shamir, Information Specialist - Assistive Technology Program (non-legal)
Sonia Vega, Administrative Secretary - Assistive Technology Program (non-legal)
Tiffany Pertillar - Paralegal (P&A Programs)
Cheryl Brown - Intake Specialist (P&A Programs)
William Findlan - Clerk
Michelle Beard - Receptionist