



UNIVERSITY LEGAL SERVICES (ULS)

Protection & Advocacy Program for the District of Columbia

Celebrating 10 Years of Protecting and Empowering People with Disabilities

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ULS SEEKS THE APPOINTMENT OF A RECEIVER TO ADDRESS SYSTEMIC AND LONG-STANDING PROBLEMS IN THE SUPPORTS PROVIDED TO EVANS CLASS MEMBERS

*By Sandy Bernstein,
Legal Director*

On May 24, 2006, University Legal Services (ULS) filed a Motion for Noncompliance and a Motion to Appoint a Receiver in the Evans v. Williams case. ULS represents the plaintiffs in the Evans case, along with the Center for Public Representation and the law firm of Holland and Knight. Evans v. Williams is a class action lawsuit that was originally filed in 1976 because the residents of Forest Haven, individuals with developmental disabilities, were not receiving adequate services and supports and were not being protected from harm. Unfortunately, thirty years later, there are still very significant problems in the District of Columbia's provision of services to individuals with developmental disabilities.

In it's filing, ULS argues that the District of Columbia has failed to comply with various court orders and failed to protect class members from harm. ULS details the deaths and harm class members have been subjected to and the failure of the District of Columbia to provide the necessary oversight, take any enforcement action and hold anyone accountable for the suffering of individuals with developmental disabilities. A few days after our Motion was filed, Mayor Williams terminated the Administrator of the Mental Retardation and Developmental Disabilities Administration (MRDDA). Unfortunately, the problems with the service delivery system for people with developmental disabilities are not as simple as removing an employee or several employees from MRDDA. The District needs to make significant systemic and structural changes. Thus far, the District has been unwilling or unable to make these changes. Recently, the Mayor hired Kathy Sawyer, an experienced Administrator from Alabama. Ms. Sawyer's appointment is unlikely to improve the services for the class members because no structural changes were made when she was hired. The MRDDA Administrator still lacks the authority needed to be able to get the job done. In addition, she has only been hired as an Interim Administrator for six months. Six months is clearly not enough time to fix a broken system and thirty year's worth of problems.

The recent Evans Court Monitor's report dated June 22, 2006 describes the serious problems that continue to exist at MRDDA and the other District agencies responsible for serving individuals with developmental disabilities. The Court Monitor reviewed five recent deaths and made disturbing findings including that recommendations from death investigations still are not shared consistently with providers, staff cited for neglect continue to be em-

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ULS ENFORCES FEDERAL COURT ORDER FOR ACCESSIBLE PUBLIC HOUSING



By Marjorie Rifkin,
Managing Attorney

In 2001, ULS brought Young v. District of Columbia Housing Authority (DCHA), a class action lawsuit on behalf of Capital Area ADAPT and all people with mobility disabilities in the District of Columbia in need of wheelchair accessible public housing. In 2002, the federal court entered a consent order signed by the parties that required DCHA to renovate and build 565 fully wheelchair accessible public housing units in specific bedroom sizes pursuant to a fixed schedule. In September 2005, ULS filed a contempt motion against DCHA to enforce the consent order. A three-day evidentiary hearing was held before Judge James Robertson in federal district court in mid-March 2006.

In blatant violation of the court order, DCHA failed to build 106 accessible units of new construction by May 31, 2005, and despite repeated inquiries from ULS, failed to report their violation of the order to ULS or the court. DCHA finally admitted that they completed only 25 of the 106 accessible units of new construction by the May 31, 2005 deadline. To make matters worse, many of the 25 completed accessible units were leased to able-bodied people, rather than people with mobility disabilities.

DCHA renovated 324 accessible public housing units according to the court-ordered schedule by December 31, 2004, but *leased many of the accessible units to able-bodied people, rather than to people with mobility disabilities*. This is a blatant violation of the order and of federal HUD regulations, which prohibit DCHA from leasing accessible units to able-bodied people when, as in DC, there are qualified people with mobility disabilities awaiting transfers or on the public housing waiting list who need the wider doorways, ramps, lower sinks, electrical switches, appliances, and other accessible features of the completed accessible units.

DCHA also violated the court order by failing to provide interim measures such as partially accessible public housing units and modify units on accessible routes to people with mobility disabilities on the public housing waiting list while they await completion of the fully accessible units.

On August 8, 2006, Judge Robertson issued his decision and found evidence of DCHA's "institutional disregard for its obligations to plaintiffs and the court." He ordered DCHA to provide to public housing applicants interim relief such as partially accessible public housing units on accessible paths that could be modified by DCHA, including those in senior buildings, regardless of applicants' age; HCVP vouchers with housing search assistance; HCVP project-based units. DCHA must

provide each of these interim options, among others, to one applicant with mobility disabilities for every accessible unit it failed to deliver on May 31, 2005. Judge Robertson did not extend the Consent Order's next construction deadline of December 31, 2007 for completion of the remaining 135 accessible public housing units.

ULS encourages all people with mobility disabilities in need of wheelchair accessible public housing to:

- fill out an application (available on the internet at: http://www.dchousing.org/departments/Client_Placement_application.pdf) and submit it to DCHA's Client Placement Division at 1133 North Capitol Street NE, Washington, DC 20002;
- provide DCHA with a valid, permanent address (such as a post office box) where timely receipt of mail is ensured;
- contact DCHA's Client Placement Division at 1133 North Capitol St NE on a regular basis to confirm your status on the public housing waiting list for wheelchair accessible housing;
- attend all scheduled interviews or meetings with DCHA's Client Placement staff, or, *if necessary, request accommodations to extend deadlines for interviews*;
- provide all necessary documents required by DCHA such as birth certificates, (non-)driver photo identification, income statements, medical releases for verification of the need for accessible housing *and, if necessary, request accommodations to extend deadlines for interviews and submission of documents*;
- respond to all DCHA correspondence by the deadlines provided or, *if necessary, request accommodations to extend deadline*.

DCHA's Director of Client Placement is Reba Anderson-Graham, 202- 435-3240; the Americans with Disabilities Act/ Section 504 Coordinator at DCHA is Lorry Bonds, 202-535-2737.

For more information, or in the event that DCHA is not responsive to your need for accessible housing, please contact Marjorie Rifkin or Amy Metzel.

ULS PROTECTION AND ADVOCACY CELEBRATES 10 YEARS

By Jane Brown,
Executive Director

The Protection and Advocacy program (P&A) of University Legal Services (ULS) celebrates its tenth year, marking September 18, 1996 as the date ULS was notified as having been designated the Protection and Advocacy program for the District of Columbia.

The national Protection and Advocacy laws established a system in each state to protect and advocate for the rights of individuals with disabilities. Each state is free to set its own priorities, however, all activities of a P&A must further the cause of ensuring the rights of people with disabilities as set forth in the U.S. Constitution and in federal and state statutes. As the P&A of the District of Columbia, ULS has the authority and mandate to pursue administrative, legal and other appropriate remedies that address complaints of abuse, neglect, and rights violations on behalf of people with disabilities. Moreover, ULS is required by law to ensure the enforcement of the constitutional and statutory rights of people with disabilities.

In 1996, fully aware of the authority ULS had been granted with the P&A designation, we set ourselves on a course to determine the imminent and momentous needs facing people with disabilities in the District of Columbia.

We embarked on a two-track plan involving hiring staff and developing the program in-house, and spending equal amounts of time outside of the office meeting with people with disabilities, their family members, and advocates who worked in the disability rights field. We met with city and federal government officials, service providers, attorneys, university professors, professional associations, P&As in neighboring states, non-profits, and legal services offices serving people with disabilities. We linked arms with other organizations whose mandate to serve people with disabilities was similar to our own.

After many months of such meetings in which we "picked brains" and sought to learn of the crucial issues facing people with disabilities, and the systems through which services were provided, we began to stay closer to home to complete our hiring requirements. On one such hiatus from our community interviews, we were paid a surprise visit by the Office of the Inspector General of the US Department of Health and Human Services with an unceremonious knock on our front door. What I assumed would be a polite, brief meeting of introductions and congratulations was a weeklong review of our policies, financial records, including each and every check written, and staff interviews. Did

anyone say baptized by fire? Since that visit ULS has participated in two more federal audits, in 2002 and 2005. I am proud to say that ULS was and remains fiscally and programmatically sound.

In January, 1997, ULS, aided by the National Disability Rights Network (NRDN, formerly known as NAPAS), convened several large public meetings to gather community input to develop a proper focus of ULS staff time and resources. The issue areas that emerged as needing the most attention fell in the categories of education, employment, transportation, housing and health.

Participants at the public meetings provided contact information and were called to participate in smaller focus groups at ULS to further hone large topical areas into more specific issue areas in which to focus our advocacy. From this process, our objectives and priorities emerged directing our efforts for the first year. Many of you continue to participate in this priority setting process by means of an annual survey mailed to you each summer.

A kaleidoscope of some of our efforts through the last ten years are as follows:

- Served 3,000 individual clients
- Responded to 2,404 calls for information and referral
- Engaged in non-litigation, group advocacy which has benefited literally tens of thousands of people
- ULS efforts in the Evans v. Williams litigation funded the establishment of the Quality Trust for Individuals with Disabilities (QT). The QT expands the availability of services for people with developmental disabilities
- The appointment of a Transportation Administrator in the Petties v. District of Columbia lawsuit, to improve school bus transportation for DC Public School students with disabilities
- Negotiated a settlement agreement in the Evans case which resulted in 1.2 million dollars being returned to consumers of the D.C. Mental Retardation and Developmental Disabilities Administration.
- Established a special needs trust for persons with

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ULS SEEKS APPOINTMENT OF RECEIVER...Continued from page 1

ployed in the system and class members still experience delay in obtaining medically-necessary diagnostic procedures. The Court Monitor stated that these problems continue to exist and place individuals with developmental disabilities at risk of harm. The Court Monitor also found that individuals' health care needs are not being met. For example, 51% of the Court Monitor's reviews indicated lab work and other tests were not completed as ordered, 64% of primary care physicians and specialty consultants' recommendations were not acted upon timely, and 69% of the Court Monitor's revealed that class members receiving psychotropic medications did not receive competent and consistent monitoring of side effects. In addition, the Court Monitor reported that 73% of MRDDA case managers did not make the requisite visits to their clients despite having one of the lowest case management ratios in the country.

By filing a Motion to Appoint a Receiver, ULS is asking the court to take away the District of Columbia's authority to run some or all of the system for District residents with developmental disabilities. ULS believes that such a change is needed to turn this system around and to ensure that these vulnerable individuals are provided with adequate supports and services and are protected from harm. ULS tried to work with the District on different initiatives, both short-term and long-term, in an attempt to improve services and avoid having to request that the court appoint a Receiver. After all of these initiatives failed and the District continued to break their commitments and promises to the individuals they are charged with serving, ULS finally was left with no other option than to file a motion asking the court to appoint a Receiver. The U.S. District Court for the District of Columbia has scheduled the hearing on our Motion for Noncompliance for the week of October 2, 2006.

If you would like additional information about the Evans case, please feel free to contact Sandy Bernstein at (202) 547-0198 ext. 117.

Déjà Vu

By Celeste Valente, LICSW
Senior Advocate

A local coalition of mental health consumers and other community advocates is crying foul. The District government, through the Social Security Administration, recently arranged for an increase of approximately \$108.00 per month to go to the operators of Community Residence Facilities (CRFs), but completely left out the residents of these facilities. These same facility owners also receive the entire Cost of Living Allowance (COLA) every year. Residents never get a penny of this annual increase.

The personal needs allowance (PNA), is the only money that some residents receive. It is prescribed by DC law which sets the rate for licensed CRFs. The last time that the PNA was officially changed for residents was 1997, when a coalition successfully advocated for a change from \$55.00 per month to \$70.00 per month. ULS was part of this coalition in 1997. Residents who only

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AN ALERT

By Joseph Cooney,
CAP Director

To the present and future clients of D.C. Rehabilitation Services Administration (DCRSA):

On November 7 DCRSA held a hearing concerning proposed regulations for vocational rehabilitation services. These proposed regulations will greatly impact students in transition from high school, working individuals, persons with a vision or hearing impairment and others.

CAP-ULS expects these proposed regulations will limit the choice of students seeking post-secondary training. Generally, the student will be limited to the University of the District of Columbia. CAP-ULS also expects DCRSA to require a client to contribute a percentage of the cost of certain vocational rehabilitation services. The amount to be paid will depend on the client's family income. We believe the income criteria will negatively impact middle income families, working individuals seeking post employment services, and those with vision or hearing impairments.

Be an advocate yourself and for persons with disabilities by learning what changes the D.C. government proposes for vocational rehabilitation services. Tell DCRSA and the City Council what you think about the changes based on your own experiences. Tell DCRSA whether you agree or disagree with their new regulations.

The reference section of the Martin Luther King Public Library should have a copy of the D.C. Register.

If you want a copy, you can try calling DCRSA or you can call the CAP-ULS office at 202 547-0198. We will add your name and address to the list of interested persons and organizations. When the regulations become available we will send you a copy. Tell your family, friends and others who might be interested.

Be ready. You will have only 30 days from the date of publication to submit your comments on the changes.

(ULS PROTECTION AND ADVOCACY CELEBRATES 10 YEARS...Continued from page 3)

developmental disabilities

- Secured a settlement with the DC Housing Authority for the completion of 565 accessible public housing units
- Initiated and oversaw the liberation of several dozen clients from nursing homes and ensured they received the necessary community services
- Represented students with disabilities to ensure that their educational, and other school-related goals were met, allowing them to more fully participate in their schools' academic, athletic and social activities
- Oversaw the creation of a grievance procedure for those receiving services from the DC Department of Mental Health
- Worked with advocates to secure policy changes from the DC Income Maintenance Administration which increased the personal needs allowance to which DC citizens in nursing homes and other facilities are entitled
- Authored 4 reports on the quality of care of our clients, and on accessibility at the polls.
- Commissioned a rights training manual for mental health consumers, empowering consumers to protect their rights, and self-advocate
- Created a directory of services in the Washington, D.C. metropolitan area for people with disabilities
- Negotiated access agreements with public psychiatric facilities providing access to our clients and their records
- Successfully advocated for various places of public accommodation (hotels, restaurants, bookstores, etc.) to be accessible to people with disabilities
- Successfully advocated that a transportation company change their discriminatory policy regarding wheelchair riders
- Initiated voter registration of over 200 people with disabilities
- Surveyed DC polling sites for conformity to accessibility requirements

- ULS P&A staff have been quoted in print media 136 times
- ULS P&A staff have been interviewed on radio news programs 22 times
- ULS P&A staff have been interviewed on local network television news 5 times
- ULS P&A staff have testified before the DC City Council more than 20 times

The assistance provided by law firms greatly expanded our resources and our ability to impact the lives of many more people. I would like to thank the law firms of Holland and Knight, Kelley Drye Collier Shannon, and King and Spalding.

I would like to make special mention of Washington Post reporters Karlyn Barker, Katherine Boo, and Sewell Chan who continuously brought our work to the forefront and drew attention to the plight of our clients which would have remained largely unknown by our community.

And what can I say about the staff of ULS? I would like to thank the staff, but a simple thanks is not near enough for what the community and I owe them. Their vision, tireless efforts, creativity, and ingenuity belie traditional notions about the practice and uses of law and advocacy. How often they have successfully negotiated matters against great odds, how often they prevail, how often their tenacity has saved lives, and improved the lives of many more. I am privileged to be the director of the people of University Legal Services. If I fancied myself a conductor of an orchestra with each staff person robustly playing her or his part, surely we would be playing Beethoven, passionate and prolific. And such words only hint at the awesome abilities of my staff whom I thank from the bottom of my heart.

I would like to thank the Board of Directors of ULS for their leadership, support, commitment to our mission, and willingness to serve and grow in the various directions asked of them, and as our community has needed. Many have been with ULS since the "early days" when housing counseling was our sole focus. And as we continue to serve our community with housing counseling services, tenant purchase services, assistive technology services, and protection and advocacy services, our goal remains simple: finding solutions that address the unmet need of DC citizens in the areas of service to which we are committed.

(Déjà Vu... Continued from page 4)

receive SSI funds find it almost impossible to make their \$70 allowance meet their monthly expenses. This small amount has to include toiletries, transportation, over-the-counter medications, clothing, and entertainment.

As important as it is, money is not the only issue here. Just as vital is the matter of respect. When the retroactive money was granted to CRF operators, consumers were neither consulted nor notified, despite the fact that this change directly affects the contract that each consumer signs with the CRF operator.

The conditions in CRFs remain troublesome. Many consumers continue to be locked out of their own homes, are denied basic supplies, eat inferior food and are denied privacy. Consumer rights are routinely violated in many CRFs.

There is a growing concern about access to quality housing and self-determination arising from the situation. The above-mentioned coalition has sent a letter to Dr. Pane and to Steve Baron, directors of the Department of Health and the Department of Mental Health, respectively. The group seeks a meeting with these officials to discuss the importance of consultation, communication and equity in matters that directly affect consumers and their living situations.

VOTERS WITH DISABILITIES HAVE THE RIGHT TO VOTE IN PERSON, INDEPENDENTLY AND IN PRIVACY



By Amy Metzel,
Staff Attorney

In 2002, Congress passed the Help America Vote Act (HAVA), in part as a response to problems that came to light in the presidential election of November 2000. While a primary goal of HAVA is to help states replace punch card voting systems and improve the general administration of elections, the act also contains a number of provisions designed to assist states in making the electoral process more accessible to people with disabilities. HAVA specifically provides funding for protection and advocacy systems, such as ULS, to “ensure full participation in the electoral process for individuals with disabilities, including registering to vote, casting a vote, and accessing polling places.” In Title III, the act mandates certain minimum requirements that states must have met by January 1, 2006, including providing at least one direct recording electronic (DRE) voting system or other voting system accessible to people with disabilities at each polling place. Voters with disabilities must have the same opportunity as other voters to vote privately and independently.

Since 2003, ULS has worked with the D.C. Board of Elections and Ethics (BOEE) and other advocacy groups to ensure that each polling place is accessible to people with disabilities, with an accessible route from the street or parking lot to the voting machine itself, and that election officials and pollworkers understand that voters with disabilities have the right to vote independently and in privacy. A lawsuit brought against the District of Columbia and BOEE in 2001 by the American Association of People with Disabilities, the Disability Rights Council of Greater Washington, and individual voters, sought many of the same objectives as HAVA. The settlement agreements entered into by the parties in August 2002 (a few months before the signing of HAVA) anticipated the accessibility mandates of HAVA, requiring the Board to provide at least one DRE voting machine in every precinct, to conduct a survey of all polling places in the District to determine their accessibility, and to achieve (by the 2004 presidential primary election) *and maintain* accessibility to the maximum extent feasible at all polling places.

ULS has promoted the Board's compliance with the settlement agreement and with HAVA requirements by inspecting individual polling places and notifying the Board of accessibility problems, seeking the designation of alternative sites to inaccessible polling locations, and monitoring accessibility for people with disabilities in the 2004 presidential election. The results of ULS' monitoring were presented in a January 2005 report highlighting many training and operational issues that caused difficulties for voters with disabilities at the polls (available online at <http://www.uls-dc.org/issues.html>). In particular, ULS found that poll workers were not properly trained regarding the placement and use of the accessible touch screen machines, and that poll workers often failed to post signs properly directing voters with disabilities to accessible entrances.

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ULS INVESTIGATION LEADS TO IMPROVEMENTS IN NURSING SERVICES

*By Shawn Highland,
Staff Attorney*

On September 26, 2003, a 13-year old student tragically died on the school bus on the way home from school. The student was non-verbal and had significant developmental delays as well as cerebral palsy, microcephaly, a history of seizure disorder, gastrointestinal reflux with dysphagia, kidney disease, and hypertension. The student attended a school that was identified by the District of Columbia Public Schools (DCPS) as the most appropriate in the city to educate all students with needs as significant as this student's needs. In addition, the student lived in a foster home under the supervision of the Child and Family Services Agency (CFSA).

In its role as the protection and advocacy program for individuals with disabilities in the District of Columbia, University Legal Services (ULS) investigated the unusual circumstances surrounding the student's death. ULS issued a report on August 13, 2004 titled "A Life Cut Short: Investigation of C.A. – A Student in District of Columbia's Sharpe Health School." ULS reviewed records from Sharpe, DCPS, and CFSA and interviewed school staff and the student's foster family. From its investigation, ULS determined that the nurse at Sharpe Health School did not take steps to appropriately assess the student's needs and refer the student to the hospital, steps that might have saved the student's life.

Since its report was issued, ULS has met with representatives of CFSA, DCPS, the D.C. Department of Health (DOH) – the agency with responsibility for providing all school health services – and Children's National Medical Center, School Services Division – the private entity that contracts with DOH to provide nurses and nursing services to the District's public and charter schools. The representatives candidly discussed ULS' concerns and the problems that they saw within the school health system.

In fact, at the direction of the D.C. City Council, DOH collaborated with several city agencies and community experts to issue a report in January 2006 titled "Towards a Coordinated School Health Program in the District of Columbia: A Status Report on School-based Health Care and Proposals for Reform." The District appears to be taking several positive steps toward improving school health services for all students in the District.

One issue that ULS raised in its investigation report was the school's apparent lack of information regarding the student's medical history and current medical needs. The DOH report requires each "medically-fragile" student – students like the 13-year old who attended Sharpe – to have an individual health plan on file in their school's health suite. The DOH report also recommends creating procedures to refer students to and communicate with their primary care providers. In addition, the report recognizes the importance of coordination between entities serving children with health needs, including DCPS, DOH, and the D.C. Department of Mental Health (DMH). The DOH report recommends the creation of a Memorandum of Understanding between each of these agencies to outline the roles and responsibilities of each agency in providing school health services.

The most important issue raised by ULS in its investigation report involved the quality of nursing care received by students in the District's public schools. The DOH report also recognizes the importance of monitoring the quality of the nursing program and recommends that standards of care be created for school health services. The standards of care would include measures for assuring nursing services are provided to all students in public and charter schools, health suite staff are trained and qualified, and health suites collect and maintain valid data.

ULS applauds the District for taking these important steps and hopes that the District will follow through with the DOH report's recommendations to ensure that all students in the District receive quality nursing services from their schools.

If you have any questions or concerns about the nursing services that your child receives at school, you should contact Colleen Whitmore at the D.C. Department of Health at (202) 442-5925. If you believe that the school has abused or neglected a student with a disability, please contact ULS at (202) 547-0198 and ask for our intake specialist.

(VOTERS WITH DISABILITIES...Continued from page 6)

In 2005 and 2006, ULS has continued its efforts to bring to BOEE's attention the additional modifications needed to make all polling places fully accessible. Unfortunately, there is still at least one polling place that remains completely inaccessible to voters with mobility disabilities, in spite of ULS' requests that the BOEE relocate the polling site or combine it with a neighboring precinct. BOEE has indicated that it will send a mailing to voters in this precinct who have identified themselves as having a disability, reminding them that *in D.C., voters with disabilities as well as elderly persons, have the right to vote in any precinct*, not just the one to which they have been assigned. With regard to training and operational issues, ULS has provided (at BOEE's request) comments on the poll worker training manual used to prepare for the 2006 mayoral election, and has continued to stress to BOEE the importance of educating poll workers about proper placement of signage, the use and placement of DRE machines, and the right of voters with disabilities and elderly voters to vote in any precinct.

In the month preceding the August 14, 2006 deadline for new voter registration and changes to voter registration information (such as address changes), ULS conducted numerous voter registration drives at nursing homes, [homeless shelters,] and subsidized residential buildings for the elderly and people with disabilities. For those facilities that were more than a couple of blocks from the polling site, ULS inquired about the plans for providing transportation to the polls on election day.

ULS encourages persons with disabilities to apply for poll worker positions in order to ensure greater sensitivity and commitment to accessibility in the electoral process. A voter with disabilities who experiences problems with accessibility at the polls on election day can contact Amy Metzger, ULS staff attorney, at (202) 547-0198 x102.

ULS Advocates to Protect the Rights of Children and Adolescents at Riverside Hospital and Residential Treatment Center

*By Jennifer Lav,
Staff Attorney*

For the past several months, University Legal Services (ULS) has been actively working with residents and staff at Riverside Hospital and Residential Treatment Center to ensure that residents' rights are protected.

Riverside is the only long-term residential facility for adolescents with mental illness in the District of Columbia. Approximately 70 teenagers and young adults live at Riverside, some with stays over one year.

As the protection and advocacy agency for the District of Columbia, there are special legal provisions that allow ULS access to Riverside and its residents. Using the access ULS is entitled to, ULS has been conducting outreach and education to the youth at Riverside, monitoring Riverside to ensure it complies with District and federal law, and conducting investigations of allegations of abuse and neglect.

ULS conducts outreach and education at Riverside by speaking with residents about their rights as mental health consumers in the District. ULS also conducts workshops with small groups of residents, covering topics such as the right to participate in one's own treatment plan, the right to be free from unnecessary restraint and seclusion, and the rights to maintain contact with family and friends. The workshops may also cover other topics, such as the right to practice one's own religion, to an education, to wear one's own clothes, and to be free from abuse and neglect. ULS has created a booklet, specifically for the youth at Riverside, about these rights.

ULS also monitors conditions at Riverside to ensure residents' rights are respected. In this capacity, ULS meets with individuals who have complaints and concerns, and works with Riverside to make sure concerns are addressed. ULS also conducts tours and inspections of the physical premises, to make sure that residents have a clean and safe living environment.

Last, when reports of abuse and neglect of the youth at Riverside are made, ULS conducts investigations of these allegations. If the allegations are determined to be founded, ULS then advocates through the appropriate internal and external administrative and/or legal channels to remedy the problem.

ULS' presence at Riverside is particularly important because almost all of Riverside's residents are children and adolescents. Many of these youth do not have any family member that can advocate for them. If the youth do have family, being placed in residential treatment tends to breakdown normal ties between family. ULS works with these youth to make sure that their voices are heard and to teach them how to advocate for themselves in the District's mental health system.

UPDATE ON ULS LAWSUIT AGAINST D.C. AND SAINT ELIZABETHS HOSPITAL

By Mary Nell Clark,
Managing Attorney

In March of 2005, ULS, along with the law firm of King & Spalding, filed a lawsuit against the District of Columbia because efforts to negotiate an end to the abuse and neglect of consumers at Saint Elizabeths Hospital had failed to bring about any change. ULS found that patients were not receiving appropriate psychiatric or medical treatment, and the critical staffing shortages were resulting in serious safety issues.

After issuing our report "Patients in Peril" in November 2004, ULS attempted to negotiate a process to bring about change but because the District would not agree to provide us with critical information we believed we needed to ensure change actually occurred, negotiations fell apart. Ultimately, we filed our lawsuit. During the summer of 2005, the parties participated in mediation but the efforts failed. A factual discovery period of nine months began and will end this fall 2006.

Perhaps the greatest benefit achieved by the litigation thus far is our access to critical information -- both from documents and depositions -- that enables us to evaluate the status of the Hospital. The more information we receive, the more concerns we have. Almost everyone deposed states that the Hospital is seriously understaffed. On Friday, July 21st, the Hospital's CEO, Joy Holland, testified at her deposition that there are only 15 full-time psychiatrists, 10 full-time general medical officers, and 2 full-time clinical psychologists at a psychiatric hospital of between 430 - 450 patients. She acknowledged that the Hospital needs to hire between 68 and 70 full-time nurses, and currently that critical shortage is being met with very expensive contract nurses. We have learned that from 5:00 p.m. to 8:00 a.m., only one psychiatrist is on-call for the entire hospital, and only one is on-call for the entire weekend. There are psychiatric medical residents in training that help to cover for some of the weekend but that program is on probation.

This critical shortage leads to the very high number of patient-on-patient and patient-on-staff attacks/injuries and leaves little time

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AVOIDING SECLUSION AND RESTRAINT AT INPATIENT PSYCHIATRIC FACILITIES

By Patrick Wojahn,
Staff Attorney

Unfortunately, the use of seclusion and restraint is often used at inpatient mental health facilities such as St. Elizabeths Hospital in place of proper treatment. The Department of Justice recently found that the use of seclusion and restraint at St. Elizabeths did not meet generally accepted professional standards. Too often, instead of developing behavior management plans for patients at mental health treatment facilities, nurses and other staff members wait until consumers start acting in challenging ways, and then use seclusion and restraint to control them. Restraint includes *chemical restraint*, which is an involuntary injection of psychiatric medications designed to control a person's behavior. Despite laws and policies that limit the ability of Hospital staff to use seclusion and restraint, consumers at inpatient facilities are often forced into seclusion or placed in restraints, or given an injection of psychiatric medications against their will -- sometimes without following proper procedures. University Legal Services has brought a lawsuit

against St. Elizabeths Hospital to ensure that the staff at the Hospital will only use seclusion and restraint in accordance with the law and the Hospital's own policies.

An advance directive, however, is one way you can reduce the chance that you will be placed in seclusion or restraint. You can work with your treatment team to develop an advance directive stating what you would like your treatment team to do if you are in a crisis situation. Before hospital staff members decide to use seclusion or restraint, they must attempt to prevent the crisis in other ways -- so if you lose control, the staff must attempt to calm you down in other ways before they give you an involuntary shot or place you in restraints. An advance directive allows you to list ways that a staff could try to control the situation before they use seclusion or restraint. You can list whatever ways you think might help you to calm down in a crisis -- anything from being given a particular type of food or item to taking part in a certain activity or having the opportunity to talk about certain things with a staff member. You can list whatever

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ULS MONITORS DAY PROGRAMS

By Rebecca Katz,
Staff Attorney

This year, ULS' Protection and Advocacy for Individuals with Developmental Disabilities (PADD) program has begun a project to monitor a sampling of day programs in the District. We have chosen four programs and visit each approximately once a month. This monitoring serves a variety of purposes:

1. ULS is able to identify problem areas at the day programs and offer recommendations to address those concerns.
2. ULS meets consumers. We are able to tell consumers about the P&A and how we can help them. We are able to identify situations that need to be addressed in consumers' homes, particularly regarding hygiene.
3. ULS meets staff of the programs and one-to-one staff. Staff learn about the P&A and how we can serve as a resource when consumers need advocacy assistance.
4. ULS establishes working relationships with day program staff and administration.
5. ULS makes providers aware of and comfortable with the P&A access authority.

In the first months of this project, we have identified both strengths and weaknesses of the programs we are monitoring. One day program regularly has outings in the community; eight groups out of ten leave the building each day for a trip to a park, a museum, or a shopping center. Staff treat consumers at a second day program with respect and affection. At that program, staff know each of the consumers as individuals, have conversations with consumers, and are constantly engaged with the consumers rather than with the other staff. Monitoring at a third day program has transformed the relationship between ULS and the director of the program from one of mistrust and negativity to a positive, working relationship. In the art room of the fourth program monitored by ULS, consumers are able to do truly individualized work, choosing to work with the media that most interests them. While one consumer paints, two others might choose to work with paper mache, one works on a weaving project, and another draws tattoos.

There is much room for improvement, however, at each of the day programs, especially in the areas of community involvement, active treatment, and communication with the residences of the individuals they serve.

Community involvement is critical, especially at the two programs being monitored that are located in industrial areas. One of these two programs does have regular outings for nearly all of its consumers, but has only two special outings a month for consumers who use wheelchairs. The other program, however, has almost no outings, meaning that consumers are unable to have any interaction with community members during the day, as there is no safe pedestrian access to and from the program. The two other programs take advantage of their locations in or very near commercial areas, but could improve community involvement by planning trips outside the immediate area of the programs.

A lack of active treatment is a widespread problem. Most consumers at three of the programs are funded by Medicaid, which

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(UPDATE ON ULS LAWSUIT AGAINST D.C. AND SAINT ELIZABETHS HOSPITAL...Continued from page 9)

for treatment. Behavioral assessments and behavioral plans should be the response to an attack, but because of the lack of psychologists and staff time, unusual incident reports we have reviewed show that staff respond by using seclusion and physical and chemical restraint to control consumers' behavior. The lack of activities and days spent confined to a locked ward also results in inappropriate and dangerous consumer behavior and does not lead to healing and a return to the community.

The Department of Justice issued a report at the end of

May which describes in detail serious constitutional violations of the rights of the patients at Saint Elizabeths, confirming the facts that ULS has presented. This report can be found at our website at www.uls-dc.org.

As discovery closes, we welcome any information that individuals may have to help us present our case. Just call the office and ask for our intake specialist, Sonia Vega. Complaints can be made anonymously if you choose. In addition, anyone with time and a willingness to help would be tremendously appreciated as we begin the very time-consuming process of preparing for trial.

(AVOIDING SECLUSION AND RESTRAINTS...Continued from page 9)

ways you think might help you to calm down in a crisis – anything from being given a particular type of food or item to taking part in a certain activity or having the opportunity to talk about certain things with a staff member. You can also list specific types of medications that might be used to calm you down. An advance directive is *your* opportunity to say what the staff should do to help you in times of crisis.

District of Columbia law gives you the right to develop an advance directive that will be used when a physician determines that you are unable to make a health care decision for yourself. This allows you to decide ahead of time what will happen in case of a mental health crisis. The policy at St. Elizabeths Hospital requires that you be given an opportunity, upon admission, to document advance instructions about your choice of treatment. Shortly after you are admitted to the hospital, a St. Elizabeths staff member should ask you if you would like to develop an advance directive. If you decide you would like to have an advance directive in place, the staff member should sit down with you and help you write one. Also, you can tell your treatment team that you would like to have an advance directive at any time, and they should help you develop one.

District of Columbia law also requires that certain things be done to make sure that the advance directive is valid. If you are unable to do any of the things you need to do to make the advance directive valid, you can ask for assistance from your treatment team or your Core Services Agency. To be valid, the advance directive must:

1. Be written;
2. Include the signature of at least one adult witness who is not related to you by blood or marriage, who is not employed by the Department of Mental Health or the Mental Health provider, and

(ULS MONITORS DAY PROGRAM...Continued from page 10)

requires that day programs provide individual and group activities to improve each participant's level of functioning. However, at each of those three programs very little time, generally only ten to fifteen minutes a day, is spent working on individuals' goals, while the amount of general programming in the remaining part of the day varies greatly. Shockingly, one day program has consumers who use communication devices, but the devices are kept in cabinets and brought out only for the ten to fifteen minutes a day during which each consumer works on his or her goals. At one program, all that took place in the last hour of the day was a small snack.

who is not your attending physician;

3. Include acknowledgment that the witness believes that you are able to express the preferences set forth in the declaration of advance instructions; and
4. Be signed and dated by you.

There are many other laws and policies regarding the use of seclusion and restraint, including chemical restraint, in the District of Columbia. You have the right to be free from restraints or seclusion imposed as a means of coercion, punishment, convenience, or retaliation by staff. No one may order the use of seclusion or restraint except a physician or a registered nurse, and a registered nurse may only order seclusion or restraint if a physician is not immediately present. If a registered nurse orders that you be placed in seclusion or restraint, you must be examined by a physician within one hour. The staff may never place you in restraints that allow you to walk around while wearing them, such as wristlets or anklets. The staff also is never allowed to place you in restraints in a "prone," or face-down position, or to restrain you in a way that obstructs your airway or prevents you from breathing. Staff body weight may never be applied to your torso or anywhere above your upper thighs. Staff may never place you in seclusion or restraints for more than twenty-four hours.

If you believe that the staff of any psychiatric facility has improperly used seclusion or restraint against you, contact University Legal Services, so that we can talk to you about your rights. The ULS staff is also working to make sure that the rules against improper use of seclusion and restraint are followed and enforced, and we need to know when they are not.

Communication between the day programs and homes about issues related to hygiene requires improvement at some of the day programs; consumers come regularly with dirty hair or fingernails requiring clipping, and the staff does not communicate these issues to the homes because they do not recognize the problems.

ULS has communicated our findings and recommendations with the day programs and will continue to monitor and follow-up to ensure that our recommendations are being implemented. If you have any questions about this project, please contact Mary Nell Clark, ULS-P&A Staff Attorney, (202) 547-0198, ext 107; mclark@uls-dc.org.

SPECIAL EDUCATION LAW IN THE DISTRICT UNDERGOES CHANGES

*By Shawn Highland,
Staff Attorney*

There have been a lot of changes in the area of special education law in the last year. Changes to the federal special education law, the Individuals with Disabilities Education Act (IDEA), went into effect on July 1, 2005. The D.C. Board of Education made changes to the local special education rules in December 2005. Then, at their June 2006 meeting, the D.C. Board of Education changed the local rule regarding burden of proof in special education due process hearings.

The U.S. Department of Education is responsible for creating federal regulations that implement the IDEA. The federal regulations often provide more explanation on how sections of the IDEA should be implemented in practice. The U.S. Department of Education issued proposed regulations in June 2005 to implement the 2004 changes to the IDEA. Hearings were held around the country in June and July of 2005 so that parents and local school staff could provide suggestions on how to improve the proposed language. The proposed regulations are now in the final stage of approval in the Office of Management and Budget. The final federal regulations should be published sometime in August 2006.

One new requirement in the IDEA is that the school must hold a "resolution session" within 15 days of a request for a due process hearing. A student's parent and representatives from the school must attend to try and resolve the hearing request. These new resolution sessions have been a particular challenge in the District of Columbia. Because each school that is the subject of a hearing request has the responsibility for holding the resolution session, there is little consistency in how and when the resolution sessions occur. Some schools do not include a "representative of [DCPS] who has decision making authority," as required by 5 D.C.M.R. §3030.1(a)(ii). Other schools are not willing to negotiate and only offer the same services or placement that are the subject of the due process request. Some schools have done a better job of promptly scheduling meetings in coordination with parents and their attorneys, coming up with creative solutions, and including the "relevant members of the IEP Team" chosen by the parents and school, as required by 5 D.C.M.R. §3030.1(b). ULS is hopeful that the final federal regulations will offer more guidance on how resolution sessions should be conducted.

In addition, despite the opposition of University Legal Services (ULS) and other legal service organizations in the District, the D.C. Board of Education changed the local rule regarding burden of proof. As of June 30, 2006, parents in the District who request a due process hearing on behalf of their child will now have the burden of proof at the due process hearing. This means that the child's parents will have to prove that the individualized education program (IEP) proposed by the school does not provide their child a free appropriate public education, or FAPE. The Board's reasoning relied heavily on reducing the number of due process requests by private attorneys that the Board felt were abusing the due process system. ULS does not believe that changing the burden of proof will have the effect that the Board envisions.

The D.C. Board of Education did require that DCPS work with stakeholders to create an evaluation mechanism that will monitor the effects of the new rule, specifically whether there is a decrease in abuses of the due process system and whether parents are unintentionally harmed by the rule change. DCPS must provide the Board with quarterly reports regarding the findings of the evaluation. ULS hopes to work with DCPS to monitor the effects of the new rule and, specifically, whether parents' rights are adversely affected.

As part of the Board's resolution to change the burden of proof, the Board also required DCPS to work with D.C. Applesseed to create a formal mediation program and investigate ways to implement a dispute prevention program at the local school level. The early resolution of disputes often benefits children with disabilities and, therefore, ULS supports the school's efforts to create more opportunities for early dispute resolution. ULS has and will continue to work with DCPS and D.C. Applesseed to create an effective system of early dispute resolution in the District.

If you have any questions about changes to federal or local special education law, please contact Shawn Highland at (202) 547-0198, ext. 141 or shighland@uls-dc.org.

REQUESTING REASONABLE ACCOMMODATIONS UNDER THE AMERICAN WITH DISABILITIES ACT

By Tracy C. Alston,
Staff Attorney

What is a Reasonable Accommodation?

A reasonable accommodation is a change or adjustment to a job or work environment that will enable employees with disabilities to apply for a job, perform the job, and enjoy the benefits and privileges of the job. Some examples of reasonable accommodations are:

- Part-time or modified work schedules
- Job restructuring
- Reassignment to a vacant position
- Providing readers, note takers, or interpreters
- Providing assistive technology
- Modifying training, exams, or policies
- Making the work environment accessible

Under Title I of the American Disabilities Act (ADA) of 1990, it is unlawful for private employers with 15 or more employees to discriminate against qualified applicants or employees with disabilities. The ADA defines an individual with a disability as a person who: 1) has a physical or mental impairment that substantially limits a major activity; 2) has a record or history of a substantially limiting impairment, or 3) is regarded or perceived by an employer as having a substantially limiting impairment

As long as an applicant or employee with a disability can fulfill the employer's requirements for the job (i.e. experience, education, and training) and can perform the "essential functions" of the job even if they require accommodations, that employer must provide the person with equal employment opportunities. An employer cannot refuse to hire you or fire you because you request a reasonable accommodation. An employer, however, does have the right to refuse any accommodation that will pose a health or safety risk to the employee or employer or cause undue hardship, which under the ADA, is defined as a significant difficulty or expense.

How to Request a Reasonable Accommodation

You must make a request for an accommodation orally or in writing, informing the employer of the sort of change or adjustment that you need based on your disability. Although it is not required, it is best to make the request in writing and date and sign it. The request should include 1) the nature of your disability; 2) reason for your request; 3) requested accommodation; and if possible 4) a doctor's note explaining the disability and accommodation. You should also ask for a response by a certain date and keep a copy of the letter.

After the employer receives the request, the employer and the employee should engage in an interactive process to determine the appropriate accommodation. The employer may ask you for documentation of the medical impairment demonstrating how it relates to the request for accommodation. The employer may suggest another accommodation that might fit your needs. Once a reasonable accommodation is agreed upon, it should be implemented right away by the employer and the employer should follow-up to ensure its effectiveness.

How to Obtain More Information and Assistance

To obtain more information, you may go to the Equal Employment Opportunity Commission's (EEOC) website at www.eeoc.gov, the Job Accommodation Network at www.jan.wvu.edu, or you may contact the PABSS (Protection and Advocacy of Beneficiaries) attorney, Tracy C. Alston at University Legal Services at 202-547-0198. Ms. Alston may be able to assist you in writing a request for an accommodation and in following up with the employer. However, if you feel you have been refused a reasonable accommodation unlawfully or if you suspect that discrimination has occurred, you should contact the EEOC directly and promptly to protect your rights under the ADA.

HOME-BASED ATTENDANT CARE AND NURSING CARE FOR CHILDREN WITH DISABILITIES ON DC MEDICAID

By Shawn Highland,
Staff Attorney

ULS recently advocated successfully on behalf of several individual children with disabilities on DC Medicaid who were initially denied access to ongoing attendant care services and skilled nursing care by Health Services for Children with Special Needs (HSCSN), a Medicaid managed care organization in the District. Children with disabilities on DC Medicaid are entitled to receive ongoing attendant care services and skilled nursing services that are prescribed by medical professionals *whether or not their parent(s) or other adult guardians are living at home with them*. Children's access to these services is especially important when the parent(s) or guardian(s) become ill and is not physically able to perform the services.

Under federal Medicaid law, children on Medicaid's Early and Periodic Screening Diagnostic and Treatment (EPSDT) Program are entitled to receive services they need "to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services, whether or not such services are covered under the State [Medicaid] plan." 42 U.S.C. 1396d(R) (5). The federal Medicaid EPSDT law provides for services designed to achieve the "maximum reduction of physical or mental disability and restoration of an individual to the best possible functional level." 42 U.S.C. 1396d(a)(13).

Under the DC Medicaid State plan, all DC Medicaid recipients are entitled to receive up to eight hours of daily atten-

dant/personal care services to assist them with their activities of daily living, such as transferring into and out of their wheelchairs, bathing, dressing, eating and meal preparation. These services are *not considered respite care*. The maximum number of attendant care hours per year under the State Plan is 1,040 hours, but DC Medicaid authorizes additional prescribed hours. *Neither the eight hour daily limit nor the annual 1,040 hour limit apply to children on DC Medicaid.*

Some children with disabilities require skilled nursing care. *There is no limit on the number of hours or visits for skilled nursing care under the DC Medicaid State Plan.* When nursing services are prescribed for children by medical professionals, HSCSN (and other Medicaid managed care organizations) must arrange with home health agencies to provide the prescribed services.

It has come to ULS' attention that HSCSN (and possibly other Medicaid managed care organizations) has inappropriately denied ongoing home health services that are prescribed for children with disabilities on DC Medicaid. Sometimes these services are offered on a limited basis and mischaracterized as "respite care." ULS encourages parents and guardians of children with disabilities who need these services to request them. For further information, or if your child with disabilities requires home health services that are not authorized by HSCSN, contact Shawn Highland at ULS: 202-547-0198.

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, 220 I Street, N.E., Suite 130, Washington, D.C. 20002, and we will be happy to send you a donation letter for your tax records.

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