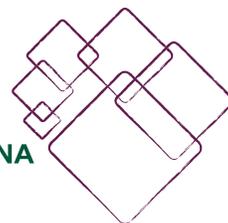


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DISABILITY RIGHTS
NORTH CAROLINA

Champions for Equality and Justice



Volume 15 • Summer 2013

From the Director: Meeting the Challenge

Times of change require vision, strategic planning and action. We envision a society in which people with disabilities have the services and supports necessary to live safely in the communities of their choice. We think strategically and we take action. Our work results in real change that transforms how people with disabilities live, work, go to school and play.

We fulfill our responsibilities by the action we take. Our work makes a difference to people with disabilities. We protect their rights to safe living conditions, reasonable accommodations in employment and appropriate services in the least restrictive environment. We demand due process. And we protect the rights of service animals to be in schools. Daily we remind those in charge that state and federal laws also apply to them.

The State of North Carolina is transforming the way it does business. And we will meet that change by planning effectively and changing decisively. We will be like “a great river that maintains its course but adjusts its flow...”

Vicki Smith
Executive Director

“Those who are victorious plan effectively and change decisively. They are like a great river that maintains its course but adjusts its flow ... They are skilled in both planning and adapting and need not fear the result of a thousand battles; for they win in advance, defeating those that have already lost.”

Sun Tzu, Chinese Philosopher 100 B.C.

Nominate Your Favorite Advocate

We are now accepting nominations for the 2013 Champions of Equality and Justice Awards. If you know an individual deserving of recognition, please nominate him or her. You will find more information about the award and previous recipients as well as the nomination form on our website. Nominations close on August 9, 2013.

The awards reception for the 2013 recipients of the Champions of Equality and Justice Awards will be held on October 3, 2013 at the Hilton North Raleigh Midtown beginning at 6:00 pm. Tickets and sponsorships are now available online.

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Disability Rights NC Board of Directors

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Charles Walker (*Raleigh*)

Deborah Whitfield (*Charlotte*)

Welcome, New Board Members!

Over the past seven months, the board has appointed six new members to serve in the seats vacated by several board members whose terms ended in December as well as a board member who moved away from North Carolina.

Iris Castillo (*Fuquay-Varina*)

As a recent graduate of the N.C. Partners of Policymaking program, Iris recognizes the need for advocacy at every level. She currently is working with CCSA to become a certified trainer for day care centers so she can educate the staff of day care centers in the Triangle on inclusion. She works with Biogen Idec as a patient services coordinator where she provides support and resources for people with multiple sclerosis. In her new role on the Board of Directors of Disability Rights NC, Iris wants to raise awareness of the agency and its work in the Hispanic community.

Bill Donohue (*Winston-Salem*)

Bill was born and raised in Iowa, attended Michigan State for his graduate education, and served as Dean/Vice Chancellor for student life for thirty-three years across six states. He capped his formal work life as Executive Director of The Special Children's School in Winston Salem. In retirement he plays golf, raises popcorn and enjoys spending time with his wife, Deborah, and three children: Carrie, Jeremy, and Lindsay. His background with disabilities includes family members with polio, ALS, Down syndrome, Alzheimer's and muscular dystrophy. Bill recently published *The Kind of September: A Race Against Time and Alzheimer's*, a novel based on the true story of a family coming to terms with dementia.

D. Jones (*Greenville*)

D. is an individual with autism who seeks opportunities to share her tools for living an independent life with other individuals with autism. She has been a Physical Therapist Assistant for more than twenty years. She received her associate's degree in physical therapy assistance at Union County College and her bachelor's degree in Psychology from Rutgers University. She has traveled across the United States participating in Power Tumbling competitions. D. first became involved with Disability Rights NC when she attended the two-part DATE volunteer training. She wants to be a voice for those who do not have one.

Mary Skov (*Wilmington*)

Mary is a Desert Storm Combat Veteran. She served in the U.S. Air Force as a fighter aircraft electrician. As a military advocate and activist, she works to build bridges between civilians and those who have served and seeks to defend their rights by working in the political arena and as a member of U.S. Congressman McIntyre's



New members of the Board of Directors, left to right: Deborah Whitfield, Mary Skov, Dr. Charles Walker, D. Jones, and Bill Donohue. Not pictured: Iris Castillo.

Military and Veteran Advisory Committee. With a background in psychology and as a certified Peer Support Specialist, Mary leads support groups for Veterans and helps Veterans reintegrate back into society. She is working to become a certified Veteran Service Officer through the Vietnam Veterans of America Chapter 885.

Dr. Charles Walker (Raleigh)

Charles established himself as a role model for overcoming the challenges of blindness by first obtaining his GED and continuing his education through a doctorate program at N.C. State University. As a graduate student, he conducted a national study investigating the attitudes of counselors in graduate programs towards people with blindness. As an adjunct professor of counselor education, Charles includes disability awareness components in his course curriculum. Charles has served on the Raleigh Mayor's Committee for Persons with Disabilities and the Board of Directors of the Raleigh Lions Clinic for the Blind. He is a 2011 recipient of the Champions for Equality and Justice Award presented by Disability Rights NC.

Deborah Whitfield (Charlotte)

Deborah has been an attorney with the Council for Children's Rights in Charlotte since 2007. But many in the disability community may know her better as the Program Coordinator for N.C. Partners in Policymaking, a nationally recognized training program funded by the N.C. Council on Developmental Disabilities. She is the founder and executive director of Advocacy Institute, Inc. In 2011, Deborah was appointed to the N.C. Board of Education/Department of Public Instruction Council on Educational Services for Exceptional Children. She received a master's degree in city and regional planning from UNC at Chapel Hill and a juris doctorate from N.C. Central University School of Law.

The quarterly meetings of the Board of Directors are open to the public. Dates and locations are posted on our website.

Disability Rights North Carolina is a federally mandated protection and advocacy system with funding from the U.S. Department of Health and Human Services, the U.S. Department of Education, and the Social Security Administration. It is a 501(c)(3) nonprofit organization.

Special Section: Service Animals



Students with Service Animals

Update: Catawba County Schools Must Allow Service Animal in Elementary School

We first reported on the case of A.S. in the Spring 2011 edition of our newsletter. A.S. is a child who suffers from developmental disabilities that manifest in aggressive and self-injurious behaviors, lack of impulse control and elopement. He had been paired with his service animal, Chatham, since September 2009 but the Catawba County Public School System refused to allow Chatham to accompany A.S. to his pre-kindergarten classroom when he enrolled in August 2010.

On March 7, 2013, the Catawba County School System agreed to accommodate A.S. and his service animal at its Startown Elementary School and to provide A.S. with any compensatory education needed as a result of its failure to accommodate the service animal since August 2010. The agreement was reached in response to a complaint A.S. filed with the U.S. Department of Education Office of Civil Rights (OCR) in September 2012, and resolves the now three-year-long disagreement between A.S. and the school system over his right to have a service animal in school.

The right of access for a service animal team is critical for students because service animals often become less effective when not in use for long periods of time. A service animal will perform best when it routinely practices and performs its skills and tasks for a person with a disability. Holly Stiles, the Disability Rights NC attorney who represented A.S. and his parents said, “The right of access for service animals is especially important because separating a service animal and its user for any period of time is harmful to the effectiveness of the team. The school system’s refusal to allow Chatham to accompany this student to school for the past three years contributed to the student’s regression behaviorally and lessened the service animal’s overall effectiveness when the student was not in school.”

OCR will keep the case open to monitor the school system’s implementation of the agreement.

First Service Animal at American Renaissance School

D.C. is a nine-year-old with lots of enthusiasm who has a rare condition that affects his ability to produce collagen. What might be a minor accident for most of us is a life-threatening situation for him. His service dog Lizzie helps out by assisting D.C. with maintaining balance while walking, retrieving items, pulling his wheelchair, and turning lights on and off.

D.C. is the first student with a service animal to attend American Renaissance School. Since the school was unfamiliar with having

service animals in its classrooms, D.C.'s mom contacted Disability Rights NC for help navigating the process. Lizzie has been successfully integrated and has been a permanent part of D.C.'s school day since last fall. A special thanks to this family and the American Renaissance Charter School for letting us share their story!

Access for Service Animals Is the Law

The Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act (Section 504) establish the right of access for service animals. A service animal, as defined by the ADA regulations, is a dog that has been individually trained to do work or perform tasks on behalf of a person with a disability. (Section 504 does not have a service animal definition and generally borrows its definition from the ADA.) Public and private schools are required to accommodate service animals assisting students with disabilities unless the dog is out of control, is not housebroken or would be a “fundamental alteration” of services, programs, or activities of the school. Similar rules exist for staff members with service animals.

Often, students with service animals also receive special education services and have an individualized education plan (IEP) or Section 504 plan. Many schools have struggled to understand the interplay of the various rights of students with disabilities under the ADA, Section 504 and the special education laws. The Department of Education Office of Civil Rights recently provided guidance on this issue in the Catawba County Schools case reported on page 4. A school must evaluate a student's request to have a service animal under the ADA and Section 504. Only in the rarest of circumstances may a service animal be excluded under the special education laws and only if the service animal would undermine the student's educational progress.

The Department of Justice (DOJ) recently settled a service animal case involving a residential school in Connecticut. The settlement makes it clear that all schools (public, private, residential, etc.) *cannot* require students to provide any of the following as a condition of having his or her service animal on school grounds and in the classroom:

- ◆ a release allowing the school to speak with the student's health care providers,
- ◆ documentation of the animal's training or certification,
- ◆ proof of liability insurance, or
- ◆ indemnification (“hold harmless”) agreement for damages.

If you'd like to read the full agreement, it is available at: www.ada.gov/tlc.htm.

Contact Disability Rights NC if you have additional questions about the rights of students with disabilities to have a service animal in school.

Step by Step: How to Integrate a Service Animal into the Classroom

- ◆ Parent asks school to accommodate use of service animal. The request includes information about the student's disability and the dog's training to assist student.
- ◆ Parent and School meet to discuss the request in more detail and consider the logistics of the animal's presence throughout the day. (For example: Where will dog be during gym? When will it be given a bathroom break?)
- ◆ School sends letter to all parents notifying them that a student will be working with a service animal in school and asks to be contacted with any questions or concerns. School consults with Parent as needed to resolve concerns.
- ◆ School holds an assembly where Parent and Student introduce the service animal to classmates and explain how it will be helping Student.
- ◆ Student begins attending school with service animal! Student may need to gradually work up to full-time use of the service animal in the classroom.

A Collaborative Conference: October 4-5, 2013

Disability Rights NC has joined The Arc of NC as a partner for its annual conference on October 4 and 5, 2013. Sessions covering a wide variety of topics will be offered, including sessions led by Disability Rights NC attorneys. The conference will be held at the Hilton North Raleigh Midtown.

The theme for this year's conference is **Honoring Our Past & Partnering for Our Future**. You'll find more information about the conference on The Arc's website – www.arcnc.org. Updates on session topics and speakers will be provided on the Disability Rights NC website throughout the summer.

Find links to the court decisions mentioned here as well as decisions in other cases in which Disability Rights NC is involved on our website at www.disabilityrightsn.org/cases-we-are-working.

Legal Updates

L.S. v. Delia and PBH - Appeals Court Finds DHHS Responsible for Medicaid Contractor's Compliance with the Law

This lawsuit was filed in 2011 to challenge the manner in which N.C. Department of Health and Human Services (DHHS), acting through its contractor PBH (formerly Piedmont Behavioral Health and currently Cardinal Innovations), had implemented a version of a Medicaid waiver program known as the Innovations Waiver. PBH, a managed care organization within the LME system, made substantial changes to the Innovations Waiver serving those with Intellectual and Developmental Disabilities. The changes included the implementation of as many as 31 tiers within the waiver, each with its own budgetary limit. The tier assignment process, which resulted in substantial service cuts for a number of waiver recipients, was conducted without benefit of any opportunity to appeal or challenge the tier assignment.

On March 29, 2012, U.S. District Court Judge Louise Flanagan granted a preliminary injunction ordering the State of North Carolina to halt reductions to home and community-based services and restore lost services until the state Medicaid agency and its managed care contractor, PBH, comply with legal requirements for providing Medicaid beneficiaries with adequate notices and opportunities for impartial hearings when their services are denied, reduced or terminated. PBH appealed Judge Flanagan's decision to the U.S. Court of Appeals for the Fourth Circuit, but DHHS did not join PBH in its appeal.

In a decision issued on May 10, 2013, the Fourth Circuit dismissed the appeal, finding that PBH could not maintain its appeal without the state's involvement. The court held that as an agent of the state, PBH had no authority to challenge North Carolina's decision not to join the appeal. As the single state agency, DHHS cannot simply hand Medicaid programs over to private contractors and then walk away, leaving beneficiaries without legal protection.

The case has returned to Judge Flanagan for a review on the merits.

Pashby v. Wos – Court Orders Reinstatement of Personal Care Services to Pashby Class Members

This case was filed against the State of North Carolina on May 31, 2011 to stop DHHS from implementing cuts to in-home services. Among the services to be cut were assistance with bathing, dressing, toileting, mobility, and eating – cost-effective services

on which individuals with disabilities, who have no other caretaker, depend to avoid more costly placement in institutions such as adult care homes. At the time the lawsuit was filed, nearly 4,000 people with disabilities would have been negatively impacted if the State's policy had gone into effect in June 2011.

In December 2011, U.S. District Court Judge Terrence Boyle granted a preliminary injunction ordering the State of North Carolina to stop implementing the new policy on Medicaid personal care services. The State appealed Judge Boyle's decision to the U.S. Court of Appeals for the Fourth Circuit. On March 5, 2013, the Fourth Circuit denied the State's appeal. This is the first time that the Fourth Circuit has held that the *Olmstead* mandate extends to people with disabilities at risk of institutionalization. The appeals court agreed with Judge Boyle's conclusion that adult care homes are "institutional settings that segregate residents from the community . . .".

The case returned to Judge Boyle, who issued an order clarifying the scope of the injunction. The court ordered DHHS to reinstate personal care services to all class members whose services were terminated on June 1, 2011. Additionally, the court ordered that, prior to the application of the new personal care policy, DHHS would have to perform a reassessment of each class member and afford appeal rights and maintenance of services to any class member terminated under the policy. Discovery and further proceedings on the merits of the case will continue before Judge Boyle.

Bordonaro v. Johnston County Board of Education – Teaching Assistant Terminated Because Her Disability Prevented Her from Obtaining a Commercial Drivers License

This is an employment discrimination suit filed on October 18, 2012 under the Americans with Disabilities Act. Patricia Bordonaro worked for the Johnston County Public School System. The school system requires nearly all its staff, including janitors and cafeteria workers, to maintain a Commercial Drivers License (CDL) so that they can be called upon to drive a school bus if needed. Because she developed glaucoma, Ms. Bordonaro suffered a loss of peripheral vision and no longer qualified for a

CDL. Although the school system's written CDL policy makes mention of exceptions to the general requirement and Ms. Bordonaro requested an exemption, her request was denied and she was fired. Her termination occurred within one month after she addressed the Johnston County School Board at a public meeting and asked them to change the discriminatory policy.

On December 14, 2012, the school system filed a motion to dismiss, claiming that the CDL requirement is a bona fide requirement for Ms. Bordonaro's job. U.S. District Court Judge Terrence Boyle issued an order on April 11, 2013 denying the motion to dismiss.

Clinton L. v. Wos – Trial Date Scheduled

In this case, Disability Rights NC represents six former *Thomas S.* class members whose services were cut by PBH, thus increasing their risk of institutionalization in violation of the ADA and the *Olmstead* decision. Trial has been calendared to begin on July 1, 2013 but this does not necessarily mean that trial will begin on July 1 (the wheels of justice turn ever so slowly . . .). Updates on the trial date will be posted on our website.



Get the News Faster!

You can now receive the Disability Rights NC quarterly newsletter, periodic news updates, calls to action and event information by email. Sign up for eNews on our website: www.disabilityrightsn.org.



Disability Rights NC has been busy during the 2013 legislative session. Read our Policy Blog for weekly updates from Director of Public Policy Corye Dunn on the bills and legislative trends impacting people with disabilities in our State: www.drncpolicy.blogspot.com.

Federal Funding Update

Last fall, we reported a 13% cut in our federal funding which was the result of sequestration and the loss of one of the seven federal grants supporting P&As throughout the country. We recently learned that the grant eliminated by the Social Security Administration has been restored. The resumption of this funding will allow us to continue our work to protect people with disabilities from employment discrimination and ensure that quality, integrated employment opportunities are available for people with disabilities. Unfortunately, sequestration has not been reversed by Congress, so automatic across-the-board budget cuts stand, and we will be subjected to another automatic across-the-board cut next fiscal year.

2012 Report Available Online

Our 2012 Report takes a look back at what happened during Disability Rights NC's first five years as North Carolina's P&A. This year, we did not mail the annual report to our entire mailing list (over 4,200 addresses!). The report is available on our website in PDF and Word formats.

www.disabilityrightsncc.org

Advocacy System

North Carolina's Protection and

is available in alternate formats.

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