

# New Directions

**DISABILITY RIGHTS**  
NORTH CAROLINA

*Champions for Equality and Justice*



**Volume 8 • Summer 2010**

## Director's Message

### The ADA: 20 Years of Progress

Twenty years ago — on July 26, 1990 — the Americans with Disabilities Act (ADA) became law. This landmark civil rights legislation removed barriers to participation in community life for people with disabilities. Whether those barriers are driven by policy, architectural design, communication or attitudes, the ADA is intended to guarantee people with disabilities equal opportunity and protections to which all U.S. citizens are entitled.

This law has accomplished amazing outcomes for people with disabilities. Many policy, structural and communication barriers have been eliminated. People with disabilities are moving out of institutional settings, where they do not belong, and residing in the community with appropriate supports and services. More and more people with disabilities are returning to work or staying employed with accommodations. Public buildings are more accessible. Trains, buses and other forms of public transportation are more accessible. Young adults with disabilities go to college and get advanced degrees. People who are blind or have visual impairments now have access to ATMs in Braille.

Because of these gains, it is painful to watch budget cuts methodically reduce some of the very services that provide the opportunities and protections the ADA mandates. Legislators face dreadfully difficult decisions, but the impact of lower funding will be life-altering for the people who depend on the services that are being cut. As a community, we can either allow these obstacles to overcome us or rise to the challenge of eliminating the barriers.

July 26 is an important date in disability history and must be celebrated. There is no better time than now to renew our commitment to the founding principles of the ADA, and to embrace concepts like most integrated environments, barrier-free buildings, reasonable accommodations in the workplace and equal access to communities. The daily courage and the potential demonstrated by people with disabilities will continue to tear down the barriers still standing in our way. Happy Anniversary, ADA!

Vicki Smith, Executive Director

### Proclamation of Recommitment to the ADA

To celebrate the first 20 years of the ADA, Disability Rights NC is asking businesses, organizations and local governments in our State to adopt a Proclamation of Recommitment to the mission of the ADA. Help us reach our goal of getting 500 proclamations by July 26, 2010. You will also be a part of the “2010 by 2010” nationwide campaign initiated by the National ADA Symposium ([www.2010anniversary.org](http://www.2010anniversary.org)).

It's easy for your business or organization to adopt the Proclamation. Go to the home page of our website – [www.disabilityrightsn.org](http://www.disabilityrightsn.org) – and find the link to the Proclamation.

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## Proclamation of Recommitment to the Americans with Disabilities Act

*On July 26, 1990, President George H. Bush signed into law the Americans with Disabilities Act (ADA) to ensure the civil rights of people with disabilities. This legislation established a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.*

*The ADA has expanded opportunities for Americans with disabilities by reducing barriers and changing perceptions, increasing full participation in community life. However, the full promise of the ADA will only be reached if public entities remain committed in their efforts to fully implement the ADA.*

*On the 20th anniversary of the Americans with Disabilities Act, we celebrate and recognize the progress that has been made by reaffirming the principals of equality and inclusion and recommitting our efforts to reach full ADA compliance.*

*NOW THEREFORE, we hereby reaffirm our commitment to work toward full ADA compliance.*

## Services to Keep People in the Most Integrated Setting

**Disability Rights NC preserves the level of services in the community so that people with disabilities who currently live in a community setting are able to stay in their current placement, avoiding a move to more restrictive settings.**

J.D. is a 25-year-old male diagnosed with severe autism. He receives services under the Innovations Waiver Program administered by Piedmont Behavioral Health (PBH). J.D.'s services under the Innovations Waiver program have been necessary to avoid institutionalization.

When PBH decreased J.D.'s services under the Innovations Waiver program, J.D.'s parents appealed this decision on his behalf. While the issue was on appeal, PBH refused to continue J.D.'s benefits at the level that was previously determined as medically necessary and, in fact, terminated all benefits while the issue was under appeal.

Disability Rights NC successfully negotiated a settlement that allowed J.D. to continue receiving Innovations waiver benefits at the level previously determined to be medically necessary until the end of his Individual Service Plan year.

T.H. is a 23-year old male with an intellectual disability with behavior problems. T.H. was over-medicated after being admitted to a state-operated psychiatric hospital.

A Disability Rights NC attorney had him moved to a safer psychiatric hospital, where he recovered from excessive medication. A Disability Rights NC advocate and attorney worked with the hospital social worker to get T.H. a Medicaid waiver, which allowed him to live in the community.

T.H. is currently living in a group home. He is active with the local community college and participates in the choir of a local church. A Disability Rights NC advocate continues to assist T.H. in adjusting to the community. He recently was given a long-awaited unsupervised visit with his family.

# Repeated Short-term Institutionalization and Extended ER Stays

**Disability Rights NC assesses and investigates the causes of repeated short-term institutionalization, including extended stays in emergency rooms (ER) experienced by adults with mental illness.**

Through its individual and system-wide casework, Disability Rights NC encounters many individuals with persistent mental illnesses who circulate in and out of large psychiatric facilities each year. Many individuals end up staying in the ER while waiting for services in a psychiatric facility. Because recent budget cuts have further reduced already scarce services, these stays in the ER have become longer and more frequent.

In response, Disability Rights NC initiated a project to study the adequacy of services and residential placements available to adults with mental illness. Our office partnered with the University of North Carolina School of Law for this project. Over a two-week period, teams of eight UNC law students and Disability Rights NC staff traveled the state and interviewed individuals, their caregivers and mental health providers in different settings to document the State's level of compliance with the ADA's integration mandate.

# Children in Residential Placements

**Disability Rights NC ensures that children with mental illness residing in residential placements receive appropriate discharge planning and treatment when their residential facility is eliminated.**

Z.C. is a 14-year-old who is diagnosed with ADHD, Oppositional Defiant Disorder and Reactive Attachment Disorder. Z.C. was involuntarily committed to a state psychiatric hospital a few weeks after his mother deployed to the Middle East with her unit in the Army. Upon her return, Z.C.'s mother began advocating for Z.C. to receive treatment in an appropriate setting close to her home, so that she could participate in his treatment. The state (through ValueOptions) denied Z.C.'s request for placement in a Level IV facility, prompting Z.C.'s mother to contact Disability Rights NC.

## Disability Rights NC Western Office Opened

Disability Rights NC recently opened an office in Asheville, NC. The western office is staffed by one attorney, two advocates and an intake specialist.

*Where, after all, do universal human rights begin? In small places, close to home—so close and so small that they cannot be seen on any map of the world. Yet they are the world of the individual person: the neighborhood he lives in; the school or college he attends; the factory, farm or office where he works. Such are the places where every man, woman and child seeks equal justice, equal opportunity, equal dignity without discrimination.*

Eleanor Roosevelt

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## What it means...

**CAP/DA** is a North Carolina Home and Community-Based Services Waiver that provides a package of services to allow adults (age 18 and older) who qualify for nursing facility care to remain in their private residences.

**CAP MR/DD Waiver:** Community Alternatives Program for Persons with Mental Retardation/Developmental Disabilities is a special Medicaid program started in 1983 to serve individuals who would otherwise require care in an intermediate care facility for people with mental retardation/developmental disabilities (ICF/MR). It allows these individuals the opportunity to be served in the community instead of residing in an institutional or group home setting. The Medicaid cost for community care must be cost-effective in comparison to the cost of more facility based care (ICF/MR) care.

**Intensive In-Home Service** is a team approach designed to address the identified needs of children and adolescents who, due to serious and chronic symptoms of emotional, behavioral and/or substance use disorders, are unable to remain stable in the community without intensive interventions. This service may be provided only to individuals through age 20.

**LME:** Agencies of local government (area authorities or county programs) who are responsible for managing,

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With the assistance of a Disability Rights NC attorney, Z.C.'s treatment team enrolled him in a day treatment program and developed a treatment plan that enables Z.C. to live successfully in his mother's home.

J.B. is a 14-year-old boy with oppositional defiant disorder who was placed in a group home to address his behavior problems and issues with authority. He has done very well in the group home, but his mother called us about her concerns related to discharge. She did not think J.B. was ready to come home.

Disability Rights NC went to several meetings and made several contacts about the case. Ultimately, the team determined that J.B. did need to move to a less restrictive environment, but that the best placement was a level II therapeutic foster home, not J.B.'s family home.

Initially, J.B.'s provider told his mother that there weren't any level II homes available. Disability Rights NC made a call to the system of care coordinator and determined that while J.B.'s current provider didn't have a home available, many other providers did. Disability Rights NC contacted the case manager, who looked outside of their provider group immediately and identified a home for J.B..

## Accommodations to Support Community Inclusion

**Disability Rights NC ensures that people with disabilities receive the accommodations they need to participate in community life.**

Disability Rights NC provides assistance to citizens who call because their request for an accommodation has been denied. Recently, several individuals called because their healthcare providers refused to provide a sign-language interpreter during their appointment. Disability Rights NC successfully worked with the healthcare providers to meet the needs of these patients.

In addition to providing advocacy and legal services on an individual basis, the staff of Disability Rights NC takes proactive steps to ensure that community services are accessible to individuals with disabilities. Two recent examples involve changes to the City of Raleigh's downtown parking system and a project addressing the emergency preparedness of individuals with disabilities.

Disability Rights NC has been involved in discussions regarding downtown parking in Raleigh and potential changes to that system. Disability Rights NC advocated on behalf of people with disabilities to help make sure that the new pay systems addressed accessibility

issues and that the issue of accessible parking downtown remained an important area of consideration and improvement.

Disability Rights NC is working with various other entities to assist the Family Support Network in planning an effective project that will help people with disabilities and their families be more prepared in the case of an emergency. Disability Rights NC also monitors the legislative committee studying our state's emergency planning.

## Education

**Disability Rights NC promotes the use of positive behavioral supports for students with special needs, thereby reducing the inappropriate use of seclusion or restraint and number of students out of school due to unilateral action of school administrators.**

E.H. is a 15-year-old male in DSS custody. He was prevented from enrolling in public school after moving from one county to another to receive court-ordered treatment in a group home following a felony sex-offense conviction. E.H.'s group home manager contacted Disability Rights NC.

Based upon his diagnosis of bipolar disorder and ADHD and his history of behavioral incidents at school, Disability Rights NC sent a demand letter to the school system's Exceptional Children (EC) Director requesting a comprehensive evaluation to determine E.H.'s eligibility for EC services. After numerous contacts among Disability Rights NC, the EC Director, the school's attorney and the DSS guardian, E.H. was allowed to enroll at the local high school so that the evaluation process could begin. He is attending classes full-time and, at his own request, is receiving afterschool tutoring from his geometry teacher.

R.C. is a nonverbal 15-year-old boy with a metabolic disorder, severe autism and mental retardation who exhibits aggressive behaviors. Disability Rights NC successfully convinced the school district not to file criminal charges and not to change his long-term placement to homebound services. The school district adopted Disability Rights NC's recommendation that the school contract with an independent consultant to develop a behavior intervention plan. The school is currently following the consultant's recommendations, which include training all staff who will come in contact with R.C., hiring and training a one-on-one aide for R.C., and designating a separate space within the classroom to minimize distractions for R.C.

## What it means...

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coordinating, facilitating and monitoring the provision of mental health, developmental disabilities and substance abuse services in the catchment area served. LME responsibilities include offering consumers 24/7/365 access to services, developing and overseeing providers, and handling consumer complaints and grievances.

## Useful Acronyms

**ADHC** – Attention Deficit Hyperactivity Disorder

**DHHS** – NC Department of Health Human Services

**DHSR** – NC Division of Health Service Regulation

**DMH/DD/SAS** – NC Division of Mental Health, Developmental Disabilities, Substance Abuse Services

**DPI** – NC Department of Public Instruction

**DSS** – NC Division of Social Services

**EC** – Exceptional Children

**ICF/MR** – Intermediate Care Facility for (people with) Mental Retardation

**LMEs** – Local Management Entities

**MH** – Mental Health

**PRTF** – Psychiatric Residential Treatment Facility

## Disability Rights NC Board of Directors

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## Facility Conditions

### Disability Rights NC continues its ongoing monitoring of conditions in facilities regulated by the Division of Health Service Regulation (DHSR).

Staff from Disability Rights NC monitored more than 30 facilities from January 1 to March 31, 2010 including adult care homes, group homes for people with mental illness and/or developmental disabilities and/or traumatic brain injury and psychiatric residential treatment facilities.

One of the most closely monitored facilities is a 60-bed psychiatric residential treatment facility (PRTF) that serves adolescents in the southwestern part of the state. Disability Rights NC receives and reviews restraint reports provided twice a month by the facility and maintains regular contact with facility management regarding the inappropriate and improper use of restraints. Disability Rights NC reviews videotape of the restraint actions and reports its observations and allegations of abuse and neglect to the state regulatory agency, DHSR. Disability Rights NC is working to ensure that this facility is safe for the children it serves.

Disability Rights NC also monitors individual cases when an injury has occurred. W.D. is a young person with mental illness and intellectual disabilities who was seriously injured, requiring surgery, while in residence at a state-operated developmental disability center. The cause of the injury was never determined. Disability Rights NC requested a copy of the DSS investigation into the incident and reviewed the facility's internal investigation. This work resulted in the elimination of the use of prone restraint in W.D.'s behavior plan and an agreement by the facility to review all residents' behavior plans that allow the use of manual restraints.

## Investigation of Deaths

### Disability Rights NC investigates reported deaths and other serious allegations of abuse that occur while people with disabilities are in the care and treatment of others in accordance with case selection criteria.

Disability Rights NC reviewed 45 deaths between January 1 and March 31, 2010. Federal and state laws require certain facilities to report to Disability Rights NC any deaths caused by homicide, accident, suicide or violence as well as any death that occurs within seven days of the patient's restraint or seclusion. For state-operated facilities, a recent state law extended this reporting obligation for all deaths that occur at their facilities or within 14 days of the individual's discharge.

As a matter of course, the staff at Disability Rights NC reviews the autopsy report and DHSR survey investigations of each death, if applicable. The staff is designing a database that will capture all information needed to document the deaths and identify dangerous trends.

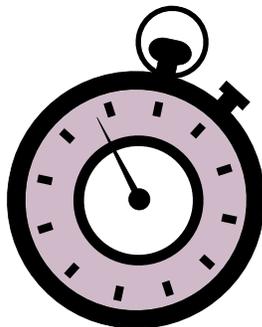
## Incarcerated Individuals

**Disability Rights NC ensures that service needs of people with disabilities who are in juvenile justice facilities and prisons are correctly identified and treated while they are incarcerated and when they transition to the community.**

The Team monitored the progress of E.E., an individual with a mental illness, through the Johnston and Wayne County criminal systems. E.E. was released back to the community and placed in a mental health group home on a Thursday. By Thursday night the owner wanted to discharge him. Over the next weekend, E.E. was involuntarily committed and spent several days in a hospital emergency room. Disability Rights NC staff asked the Attorney General's office and high level DHHS staff to admit E.E. to a state-operated facility. He eventually was admitted to Cherry Hospital, where he remains despite pending criminal charges for assault filed against him by two employees. At Disability Rights NC's behest, DHHS staff agreed to attend E.E.'s treatment team meetings at Cherry Hospital, where the absence of an appropriate placement for E.E. in the community or state-operated mental health system will be addressed.

### 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.disabilityrightsncc.org](http://www.disabilityrightsncc.org).



*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. Disability Rights NC is a 501(c)(3) nonprofit organization.*

## Disability Rights NC Works to Eliminate the Death Penalty for People with a Mental Illness

Disability Rights NC is pushing for the General Assembly's adoption of House Bill 137/Senate Bill 309 in the short session that began on May 12. The Bill would eliminate consideration of the death penalty for criminal defendants with a severe mental disability.

The need for this legislation was highlighted recently in the case of Abdullah Shareef. In April 2010, Mr. Shareef was found guilty of using a car to run down random pedestrians in Fayetteville, killing two. Shareef had been diagnosed with paranoid schizophrenia and was in a psychotic state when his actions caused death and injuries. He avoided the death penalty, but was sentenced to life without parole. However, the availability of the death penalty at sentencing in Mr. Shareef's case extended the length of his trial and significantly increased its cost.

If you are interested in learning more about this issue, we would be happy to come speak to your organization or to provide you with materials about this issue. Contact Kristin Parks at [kris.parks@disabilityrightsncc.org](mailto:kris.parks@disabilityrightsncc.org).



**Investigations Team members Angie Downs and Cas Shearin. Not pictured: Kathy Smith.**

## Focus on Disability Rights NC The Investigations Team

The Investigations Team is responsible for three components of Disability Rights NC’s work. It investigates serious allegations of abuse and neglect involving people with disabilities. It reviews death reports that agencies are required by state and federal law to provide to Disability Rights NC, and, in some cases, investigates these deaths. Thirdly, the team actively monitors facilities where people with disabilities reside.

In response to harsh budget cuts, the monitoring component was expanded last year. Now, nearly every staff member at Disability Rights NC is assigned to monitor facilities across the state on a monthly basis, including adult care homes, group homes serving people with mental

illness and/or developmental disabilities and/or traumatic brain injury, all state-operated facilities, intermediate care facilities for people with mental retardation and facilities which serve children with disabilities. The Investigations Team oversees this project. In the first six months of the project, staff members identified facilities that were not complying with the law and worked with the facilities’ staff to make critical changes to policies and procedures. Disability Rights NC staff members also identified residents who needed legal advocacy and assistance.

Three advocates make up the Investigations Team: Cas Shearin (Team Leader), Angie Downs and Kathy Smith.

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