

ALABAMA DISABILITIES ADVOCACY PROGRAM (ADAP)

DOCKET REPORT

April 2019

Updates and new cases are indicated in **bold**.

Cases in which ADAP has acted in its own name

1. **Braggs, et al. (including ADAP) v. Dunn (DOC)**, USDC, M.D. Ala.

ADAP and the Southern Poverty Law Center sued, alleging a systematic and unconstitutional deprivation of required medical and mental health care on behalf of all persons housed in Alabama prisons, and alleging DOC fails to comply with the Americans with Disabilities Act (ADA) on behalf of individuals with disabilities. ADAP represents plaintiffs on disability-related claims and is a named plaintiff along with nearly 40 individuals. The case has been divided into three parts: ADA, mental health, and medical care. The Court found ADAP is an appropriate associational plaintiff authorized by federal law to represent the interests of inmates with serious mental health issues under PAIMI. ADAP is not counsel on the medical care claims.

ADA claims:

The Court approved a Consent Decree on ADA issues that requires DOC to implement a system-wide process to ensure compliance with physical and program components of the ADA. The Court also approved a supplement to the ADA settlement to ensure that inmates who have a serious mental illness or intellectual disability are entitled to the same ADA protections afforded inmates with physical disabilities under the original ADA settlement. Under the supplemental settlement, DOC will provide mandatory life skills/adaptive skill classes to all inmates diagnosed with an intellectual disability, and mandatory refresher courses to all inmates who meet the diagnosis, regardless of length of sentence or security classification. DOC will be under Court-ordered supervision and monitoring for a minimum period of five years to ensure compliance. **Based on finalization of the ADA Transition Plan to remove architectural barriers in DOC facilities, the plan proposes a lengthy period of architectural modifications to 13 or 14 major facilities which will require a phased approach over a period of 8 years to complete all necessary modifications. As a result, the period of court supervision and monitoring increased to ten years.**

Mental health claims:

Plaintiffs obtained injunctive relief to restrain DOC from allowing unsupervised access to razor blades by inmates, including inmates who have a documented history of self-harm with razor blades. The Court held a two-month long trial on constitutionally inadequate mental health care, and improper administration of involuntary medication for inmates with mental illness, and held DOC is violating the 8th Amendment in failing to provide constitutionally adequate mental health care. The Court approved a settlement addressing allegations that DOC failed to provide due process protections of the 14th Amendment regarding the administration of involuntary medication of inmates with mental illness. Pursuant to the settlement, DOC is under court supervision for a period of two years. **ADAP is the Court Monitor for both sections of the ADA Settlement and the Involuntary Medication Settlement.**

Next steps:

The Court is holding a series of trials through August to address remedies to constitutional violations in mental health care. To date, the Court has held hearings or approved settlement of plaintiffs' mental health claims on: Staffing, Individual Treatment Planning, Mental Health Coding, and Psychotherapy. The Court has taken under advisement the following issues: Segregation, Residential Treatment Units, Monitoring, Hospital-Level Care, and Discipline. Remaining issues that have not been tried yet are: Suicide Prevention, and Additional Mental Health Staffing. Bill, Ashley, MI, DD, PAIR, AT, TBI (Lonnie assists with monitoring.)

2. Hunter, et al. v. Perdue, USDC, M.D. Ala.

ADAP filed suit on behalf of persons charged with criminal offenses and committed to the custody of the Dept. of Mental Health (DMH) for inpatient mental evaluations and competency restoration treatment who languish in jails awaiting court-ordered services for impermissibly long periods of time. ADAP and DMH reached a settlement that provides for a 30-day deadline for the provision of court-ordered services, additional forensic hospital and community beds, stakeholder education, and monitoring of DMH's compliance with the agreement. After ADAP and DMH filed a supplemental stipulation outlining procedures for class members who need emergency treatment, the approved the settlement, appointed ADAP as class counsel and monitor, and entered a consent decree embodying the settlement agreement. **ADAP is monitoring implementation of the emergency treatment protocol and other aspects of DMH compliance. In January, ADMH failed to meet its Year 1 compliance benchmarks, and the parties agreed to engage a compliance consultant and prepare a remedial plan to bring ADMH into compliance by October.** Geron, Bill, Shandra, Lonnie, MI

3. ADAP v. Governor of the State of Alabama, Alabama Medicaid Agency, Alabama Dept. of Mental Health, and Alabama Dept. of Human Resources

ADAP and the Center for Public Representation sent a demand letter to state officials on behalf of Medicaid-eligible children with severe emotional disturbance (SED) and autism spectrum disorders (ASD) denied medically-necessary intensive home-based services in violation of the Medicaid Act's Early and Periodic Screening, Diagnostic and Treatment (EPSDT) Program. Between March 2016 and October 2017, ADAP and CPR negotiated a resolution of claims with the Governor and relevant state agencies. In October 2017, the parties executed a Settlement Agreement which provides for the Governor's request for \$11 million in new funding for intensive home-based services (IHBS) and specifies services that will be available to children with SED, ASD, and ASD with co-occurring intellectual disabilities. The Settlement also appoints ADAP as the monitor to review compliance with the Settlement. In spring of 2018, the Governor announced the state Legislature's appropriation of the new funding and noted ADAP and CPR will have a role in the development and implementation of related services. **ADAP has worked with state officials to develop program specifications and medical necessity criteria for the IHBS provided under the Settlement. Roll-out of new services is scheduled to begin by November. ADAP also is working with the non-party State Department of Education to ensure that school officials understand how some of the IHBS might be categorized, depending on the individualized needs of**

students, as related services under the IDEA -- financial support for which could be obtained through Medicaid. ADAP continues to monitor implementation of the Agreement. Nancy, Geron, Andrea, DD, MI

Other Litigation

Mental Health and Forensic Cases

1. Ex Parte Woods - Court of Criminal Appeals

Woods has mental illness, resides at Bryce Hospital, and is subject to forensic commitment. After the state Dept. of Mental Health (DMH) petition for conditional release was denied in the trial court, DMH sought a writ of mandamus. ADAP filed an amicus brief in support of the position that Woods has met treatment criteria and should be released. Our brief analyzes why Woods was denied due process by the: 1) trial court where the DMH motion was denied, and 2) lack of an effective mechanism for appeal. The former issue is a highly individualized analysis, but the latter is a broader systemic issue. Lonnie, MI

2. State v. Young – Morgan Co. Circuit Court

Young was found NGRI in 2006 and is on a conditional release, living in a Cahaba Center group home. He would like to move to a supervised apartment, but the court will not consider his request without specific information from the Center, which they failed to provide. ADAP filed a motion compel the Center to produce the information, or treat the lack of information as evidence that Young is not a danger to himself or others and can move to a supervised apartment. Shandra, MI

3. State v. Roberts - Jefferson Co. Circuit Court

Roberts has mental illness and is subject to conditional release from a forensic commitment. His service providers at JBS Mental Health Authority recommended he be allowed to move to an independent apartment and, if things go well, be granted unconditional release. ADAP filed a proposal for modification which the court granted, which will allow Roberts to live in an independent apartment and, if things go well for a year, he will be granted unconditional release. Lonnie, MI

4. Bentley v. State, USDC, N.D. Ala.

Bentley is at the Taylor Hardin Secure Medical Facility (THSMF) on a forensic commitment. Though the state Dept. of Mental Health (DMH) believes Bentley has no mental illness and is not treating him for mental illness, a state court refused to order release. ADAP filed a petition for writ of habeas corpus seeking release. **After the magistrate judge filed his unfavorable recommendation, we filed our objection and await a ruling from the Court.** Lonnie, MI

5. State v. Jones, Etowah Co. Circuit Court

ADAP represents an individual whose conditional release allowed her to move from a state DMH facility to a community placement. Bill, MI

6. State v. R.M. - Tuscaloosa Co. Circuit Court

RM is a youthful offender, has intellectual disabilities and is subject to conditional release from forensic commitment. He lives in a group home pursuant to a conditional release order. After RM's provider asked ADAP to assist RM to obtain unconditional release, ADAP filed a petition for same. **The court ordered changes to the conditional release and is considering an unconditional release, but wants a risk assessment. The next hearing is set for June.** Lonnie, DD

Guardianship

1. In the matter of W.C. - Colbert Co. Probate Court

WC is the beneficiary of a special needs trust managed by the Alabama Family Trust (AFT). The former Director of the AFT asked ADAP to enter WC's case to assure that WC receives appropriate care. **ADAP was appointed as WC's GAL, and continues to monitor WC's placement in a group home.** James, MI

2. In the Matter of K.V. – Jefferson County Probate Court

ADAP represents a person who wishes to challenge the court's appointment of his son as guardian. The case is set for a hearing in May. Shandra, MI

3. In the Matter of D.D. – Macon Co. Probate Court

DD has mental illness, is deaf, and is subject to guardianship and conservatorship. The guardian and conservator became unable to perform. After DD's service providers at JBS Mental Health Authority concluded DD no longer needed a guardian or conservator, ADAP filed a petition for termination. Lonnie, MI

4. In the Matter of B.M. - Washington Co. Probate Court

BM has intellectual disabilities and was subject to guardianship and conservatorship. The guardian and conservator became unable to perform. After BM's service providers at the Arc of Southwest Alabama believed BM no longer needed a guardian and conservator, ADAP filed a petition for termination. The termination was granted and BM's rights were restored. Lonnie, DD

Medicaid

1. In Re P.S. v. Medicaid – Admin. Complaint

PS is a 3-year-old diagnosed with Beckwith Weidemann, Hypotonia, and 2Q37.3 Deletion. PS's mother contacted ADAP because PS had been found ineligible for state Medicaid Waiver benefits. ADAP's appeal is pending. Andrea, PAIR

2. In Re M.M. v. Medicaid – Admin. Complaint

MM's application for state Medicaid Waiver benefits was denied by the state Dept. of Mental Health. ADAP's appeal is pending. Andrea, DD

3. J.J. v. State Dept. of Mental Health (DMH) - HHS OCR Admin. Complaint

ADAP filed a complaint after determining JJ was at risk of an unnecessary and inappropriate institutionalization in a nursing home and, as a result, the loss of vital

home and community-based services to which he is entitled as a beneficiary of the Alabama Intellectual Disabilities Medicaid Waiver. Despite the fact that none of JJ's hospital treating physicians indicated JJ required nursing home level of care, his risk of continued institutionalization arose from DMH's failure to ensure sufficient medical group home beds and staffing in the community. Geron, DD

Juvenile Matters

1. In Re C.H. - Tuscaloosa Co. Juvenile Court (Law Clinic)

ADAP was assigned as GAL for CH who has mental health issues. After CH was detained by juvenile authorities, ADAP secured an appropriate placement and CH entered into a consent decree. The consent decree was eventually dismissed, but CH lost his placement and is in DHR custody. **While CH remains in DHR custody, ADAP continues to work with CH's family and school regarding IEP eligibility and enforcement, but DHR has not worked with ADAP to speed up the process of IEP eligibility.** Jenny, MI

2. In Re L.C. - Tuscaloosa Co. Juvenile Court (Law Clinic)

ADAP was appointed as GAL for LC at an initial hearing when the defense attorney requested we be appointed because of his concern that the school-based offense that led to charges should have been addressed through education services rather than juvenile court. It also became clear that LC was removed from his ADHD medication by doctors treating him for other medical conditions. Since LC was charged, his alternative school documented consistent progress, and LC returned to his typical school recently with no behavior problems since returning. Jenny, MI

3. In Re T.L. - Tuscaloosa Co. Juvenile Court (Law Clinic)

ADAP was appointed as GAL to help TL return to school after an expulsion. Though TL's mother indicated TL had never been evaluated to see if he qualified for services, his mother refused our offer of assistance. After we discussed with the juvenile probation officer our intent to file to be relieved from the case, he asked for time to urge the mother to accept our assistance. We still have had no contact with the mother. Jenny, MI

4. In Re A.H. - Tuscaloosa Co. Juvenile Court (Law Clinic)

ADAP was appointed as GAL for AH when she went to Court for a school matter related to AH's mental health status. After AH attended alternative school, typical school, and alternative school in succession, she returned to her typical school. **Shortly after returning to her typical school she was placed on homebound status. Recently she has been allowed to attend partial days in school in an attempt to progress to attending for full days before the next school year begins.** Jenny, MI

5. In Re X.G. - Tuscaloosa Co. Juvenile Court (Law Clinic)

ADAP was appointed as GAL for XG whose delinquency issues arose from altercations at school. We are seeking resources to help XG remain in the community, including an evaluation of his current school services. XG was in the alternative school, but

transitioned to his typical school where he made A's and B's in the fall semester. Though he is going to school, he is older than his classmates and would prefer to at a different program. He remains on probation. **He has had no new charges and no major school incidents for the year. He has been able to remain in his typical school for the entire school year.** Jenny, MI

6. In Re C.H. - Tuscaloosa Co. Juvenile Court (Law Clinic)

ADAP was appointed as GAL for CH who faced allegations of making fake telephone calls to police about guns being in the school. CH was evaluated and qualified for services. When CH picked up new charges he did not appear for his court date and was not found in the community for many months. **In early 2019 he picked up new charges in both Jefferson and Tuscaloosa Counties. After the Court committed him to DYS until his 18th birthday, he was placed in a DYS bed at a psychiatric residential treatment facility.** Jenny, MI

7. In Re T.C. - Tuscaloosa Co. Juvenile Court (Law Clinic)

When ADAP was appointed as GAL, TC faced charges related to an altercation at school, needed appropriate education services, and faced expulsion. **After TC's IEP was rewritten she began the year attending her typical school and completed her probation. In January she was involved in an altercation at school and has refused to attend school since. The IEP team has met several times and determined homebound status is the least restrictive environment. TC's family agreed to have her see someone at community mental health to determine if they can address her refusal to go to school.** Jenny, MI

8. In Re D.D. - Tuscaloosa Co. Juvenile Court (Law Clinic)

ADAP was appointed as GAL for DD, who faced charges related to an altercation at school, to make sure DD receives needed education services. DD has an IEP, but every incident he had at school was deemed not a manifestation of his disability and nothing was changed in his behavior plan. We requested the school's outside psychologist work one-on-one with DD since DD's records indicate such an intervention has been discussed but not implemented. **DD is doing better in school, but the family does not agree how DD will finish school. DD has completed his probation.** Jenny, MI

9. In Re Q.T. - Tuscaloosa Co. Juvenile Court (law Clinic)

ADAP was appointed as GAL for QT, who faced theft charges. QT had never been evaluated for mental health services or for an IEP or 504 plan. After ADAP's appointment, QT was evaluated and diagnosed with ADHD. Upon receiving QT's diagnosis, the school agreed to evaluate him for services. QT remained on probation with a requirement that he wear an ankle monitor. **After QT allowed the monitor's battery to run out he eloped, his probation was revoked, and he was sent to a 30-day program. He is now complying with probation and his ankle monitor, and has returned to his typical school.** Jenny, MI

10. In Re K.T. - Tuscaloosa Co. Juvenile Court (Law Clinic)

ADAP was appointed as educational GAL only. KT has significant mental health diagnoses and has spent much of his life since age 9 in institutions. Though he has returned home, he is not complying with the court's order regarding where he may reside. As a result, his mother has not been able to enroll him in school. We are work with KT's attorney and regular GAL to re-enroll KT in school. **We recently joined a request seeking to have a psychiatric evaluation completed for KT. Though the Department of Mental Health insisted KT's problems were behavior-related, the new psychiatric evaluation indicates severe psychiatric issues are a major concern and continued detention is causing KT's condition to worsen.** Jenny, MI

11. In Re J.H. - Tuscaloosa Co. Juvenile Court (Law Clinic)

ADAP was appointed as GAL for JH after his juvenile case was concluded. He remains on probation. **Though we have attempted to get JH back in typical school several times, his outbursts have led to new juvenile charges. He remains on homebound, but is likely to finish his course work for the year before the end of the semester. Our goal is that JH can attend school for a few hours to receive social skills training if he completes his course work before summer recess.** Jenny, MI

12. In Re D.W. - Tuscaloosa Co. Juvenile Court (Law Clinic)

ADAP was appointed as GAL for DW after his juvenile case was concluded and he was placed on probation. Though DW's records indicate good academics, he appears to have a significant mental health history that has not been addressed at school and only recently by community mental health. **While ADAP was attempting to have DW found eligible for services, he received adult charges for which he remains in jail.** Jenny, MI

13. In Re J.D. - Tuscaloosa Co. Juvenile Court (Law Clinic)

ADAP was appointed as GAL to address ongoing school issues. Though JD is 13 years-of-age and has disabilities and an IEP, he was expelled from school. Though he received some homebound services, no one was keeping grades or consistently providing him the curriculum for his 7th grade year. After ADAP attended an IEP meeting in which consistent homebound services were put in place, JD was reinstated in the school system as a current student. The team determined the work JD has performed so far can be graded and enough time remains in the semester for JD to complete his work and be promoted. The IEP team will meet again before the end of the semester to determine whether JD needs summer services. Jenny, MI

14. In Re C.W. - Tuscaloosa Co. Juvenile Court (Law Clinic)

ADAP was appointed as GAL to address ongoing school issues. CW was placed on homebound after altercations at the alternative school. At the IEP meeting the principal insisted CW was refusing to try any school work and was getting in trouble as a result. A review of CW's paperwork indicated that, despite being in middle school, his reading and math levels are at a second grade level. Though school officials insisted CW didn't put forth effort in testing, testing from the year before showed CW's performance at a first grade level which indicates some improvement over the year. Thus, extra reading and social skills training were

included in his IEP. CW is on homebound status with the goal that he return to his typical school for the 2019-20 school year. Jenny, MI

Special Education Advocacy

1. In re Birmingham City School System (BCSS), Office of Civil Rights (OCR), U.S. Dept. of Ed.

ADAP filed a complaint with OCR against BCSS alleging BCSS denies students with serious and chronic health conditions access to needed special education and related aids/services in violation of Section 504 of the Rehabilitation Act of 1973 and Title II of the American with Disabilities Act of 1990. The complaint alleges BCSS: 1) fails to identify and refer these students for evaluation to determine if they qualify for special education and related services; 2) fails to individualize its programming for such students; 3) inappropriately limits homebound services by pre-determined board policy and practice; and 4) refers these students when they are absent for legitimate health reasons to juvenile court, subjecting them to intrusive and unnecessary legal intervention. **The parties mediated a settlement through OCR, which provides for compensatory education for students with health conditions who received inadequate homebound services for the 2017-18 and 18-19 school years. ADAP is monitoring implementation of the agreement, including related advocacy with the State Dept. of Education to ensure its new statewide student management system incorporates Section 504 information to ensure better tracking of such students.** Nancy, PAIR

2. I.S. v. Montgomery Public Schools (MPS), State Due Process Complaint

Working with the Bazelon Center for Mental Health Law, ADAP filed a complaint against MPS on behalf of a then-ten year old student with severe emotional disturbance (SED). The complaint was filed under the Individuals with Disabilities Education Act (IDEA), the Americans with Disabilities Act (ADA), and Section 504 of the Rehabilitation Act of 1973. The complaint alleges MPS failed to identify IS in a timely manner as a student requiring special education services, denied IS specialized instruction and related services he needs to receive FAPE, and discriminated against IS by failing to make reasonable modifications in its policies, practices, or procedures as necessary to avoid discrimination on the basis of disability. The complaint also alleges MPS denies students with SED the specialized instruction and related services they need to receive FAPE. As a result, MPS students with ED are not performing at grade level, progressing at school, and being educated with their nondisabled peers to the maximum extent appropriate. Pursuant to a 2011 Settlement Agreement, a mutually-agreed consultant reviewed special education programming in MPS and presented her report. After MPS hired its own expert to address compliance, the parties mediated implementation of the settlement. **As the 2018-19 school year comes to an end, MPS continues to use an ADAP-recommended consultant from the previous related agreement and agreed to do so for the 2019-20 school year as well.** Jenny, Nancy, MI

3. In re M.M. - Jefferson Co. Family Court

ADAP was appointed as GAL to ensure appropriate special education and community support services are provided to MM. MM receives special education services at his local

high school. **ADAP monitors to ensure FAPE is provided and is working with the ISP team to explore community living once MM leaves DHR custody.** Andrea, DD

4. In re T.R. - Talladega Co. Family Court

ADAP was appointed as co-GAL for TR, a child placed in a children's nursing home to ensure that DHR obtains all medically necessary services, including special education, for transition to a home environment. **TR now receives special education services five days a week in a local school setting.** Andrea, DD

5. In re I.R., I.R., and B.W. - Jefferson Co. Family Court

ADAP was appointed as co-GAL for these siblings to advocate for special education services, including appropriate behavioral supports, in their respective school districts. **ADAP attended IEP meetings and interviewed school teachers and behaviorists to ensure needed services are in place.** Andrea, MI

6. In re F.H. - Madison Co. Family Court

ADAP was appointed as co-GAL and education surrogate for FH, a child placed in a foster care home to ensure DHR obtains all medically necessary services, including special education, for transition to a community placement. Andrea, TBI

7. In re G.P. - Jefferson Co. Family Court

After ADAP's appointment as GP's attorney, we focused on GP's interest in receiving treatment in a community setting and transition services that would enable GP to live independently once his dependency case is closed. **GP now lives with his mother and his family court case is closed.** Andrea, MI

8. In re C.H. - Madison Co. Family Court

ADAP serves as CH's co-GAL and education surrogate to ensure CH receives special education services in the least restrictive environment appropriate to his needs. Andrea, MI

Other

1. Justin Shepherd v. R&R Dairy Queen, L.L.C., USDC, N.D. Ala.

Shepherd has PTSD and other disabilities and uses a service animal. He was denied access to a Dairy Queen in Decatur because of his service animal. After Shepherd attempted to address the issue with the owner, ADAP filed suit alleging violations of Title III of the ADA. Lonnie, MI

2. In Re J.R. - U.S. Dept. of Justice (DOJ) Admin. Complaint

JR is deaf and participated as a victim in municipal court criminal proceedings in Dothan, seeking restitution. The court failed to provide effective communications throughout, preventing JR's equal access to the process. The DOJ Office of Justice Programs (OJP) is investigating. Lonnie, PAIR

3. In Re D.F. - HUD Admin. Complaint

DF has emotional disabilities and a prescribed assistance animal who lives with DF in DF's apartment. DF took all required steps to qualify to have the animal in his apartment, pursuant to the Fair Housing Act. Regardless, his landlord challenged his right to have the animal and denied his request. ADAP filed a complaint with HUD, and **the parties are participating in a conciliation process.** Lonnie, PAIR

4. In Re A.B. - FHWA Admin. Complaint

AB has mobility impairments. When she travels through Alabama twice each year she needs to use interstate rest area and welcome center facility restrooms, but ALDOT's facilities are not accessible. After AB was injured trying to use a noncompliant facility, she complained to ALDOT and was told the issue would be fixed. After ALDOT failed to address her complaints and she continued to be unable to use the facilities on her trips, ADAP filed a complaint alleging violations of ADA/504 and seeking FHWA's assistance to negotiate a settlement between AB and ALDOT. The complaint was settled informally. ALDOT is letting bids on related improvements and will hold public meetings. **ADAP is monitoring improvements. Two rest area facilities at issue have received accessible restrooms and work is underway on two others.** Lonnie, PAIR

5. M.R. v. Demopolis City Schools (DCS) - Ofc. of Civil Rights (OCR), U.S. Dept. of Ed.

MR is a student in DCS, a public school system whose facilities are inaccessible to students with disabilities who have mobility impairments. MR's complaint alleges violations of the ADA and Section 504 of the Rehab Act. After OCR investigated the complaint, DCS entered a resolution agreement with the United States Department of Education's Office for Civil Rights regarding Demopolis Middle School. OCR and ADAP are monitoring implementation of the resolution agreement. **OCR reports DCS is complying with terms of the settlement.** Lonnie, AT