

**IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF ALABAMA, NORTHERN DIVISION**

**ALABAMA DISABILITIES
ADVOCACY PROGRAM,
Plaintiff,**

V.

SAFETYNET YOUTHCARE, INC.
Defendant:

**CIVIL ACTION NO.:
CV:13-519**

COMPLAINT FOR INJUNCTIVE AND DECLARATIVE RELIEF

Preliminary Statement

1. The Alabama Disabilities Advocacy Program (“ADAP”) is Alabama’s designated, federally funded, program authorized by Congress to protect and advocate for the civil rights of persons with disabilities in Alabama.
2. ADAP seeks injunctive and declaratory relief against SafetyNet YouthCare, Inc., (“Defendant”) for failing or refusing to provide ADAP access to monitor all programs of SafetyNet Academy, including its “Moderate Program,” as authorized by law. SafetyNet Academy is operated by Defendant and is a child care facility licensed by the Alabama Department of Human Resources (“DHR”). ADAP files suit and seeks relief as described after making repeated efforts and failing to resolve this matter with Defendant in an agreed fashion.

3. ADAP brings this action against SafetyNet Youth Care, Inc., pursuant to the Protection and Advocacy for Individuals with Mental Illness Act of 1986 (“PAIMI Act”), 42 U.S.C. §§ 10801 et seq., and its implementing regulations, 42 C.F.R. §§ 51.1. et seq.; the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (“PADD Act”), 42 U.S.C. §§ 15041 et seq., and its implementing regulations, 45 C.F.R. §§ 1386.19 et seq.; the Protection and Advocacy of Individual Rights Program of 1993 (“PAIR Act”), 29 U.S.C. §§ 794e, et seq., and its implementing regulations, 34 C.F.R. § 381.1 et seq.

4. ADAP seeks preliminary and permanent injunctions preventing Defendant and its agents from denying ADAP full, complete, and timely access to monitor all portions of its facilities accessible to and used by individuals with disabilities, as authorized by the PAIMI Act, PADD Act and PAIR Act.

PARTIES

5. ADAP is Alabama’s designated federally funded program authorized by Congress to protect and advocate for the civil rights of persons with disabilities in Alabama. ADAP spends significant time and resources monitoring conditions and activities at licensed facilities like SafetyNet Academy, and advocating for the rights of children and youth with disabilities who reside in those facilities. ADAP files this complaint to address Defendant’s failure to allow ADAP to monitor Defendant’s facilities as authorized by law.

6. SafetyNet Academy is licensed by DHR, pursuant to *Ala. Code* § 38-7-1, et seq. (1975), as a child care institution for males 10-18 years old. Defendant is registered with the Alabama

Secretary of State as a domestic non-profit corporation formed on November 12, 2002¹ and its registered office for service is located at 80 Mel Bailey Drive, Minter, Alabama, located in Dallas County, Alabama. Defendant's website indicates its corporate offices are located in Minter, Alabama.² According to its filings with the Alabama Secretary of State, SafetyNet Academy is a "facility for troubled and needy boys and adolescents."³

JURISDICTION

7. Jurisdiction is proper in this court pursuant to 28 U.S.C. § 1331 as to the federal statutory claims.

VENUE

8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b). Defendant resides and is registered to conduct business in Dallas County, Alabama.

STATEMENT OF FACTS

ADAP's Access Authority and SafetyNet's Status as a "Facility"

9. In 1975, the PADD Act established the Protection and Advocacy ("P&A") System to monitor and investigate incidents of abuse and neglect and to pursue legal, administrative, and other appropriate remedies to safeguard the rights of individuals with developmental disabilities. Congress extended the protection and advocacy mandate to cover

¹ Alabama Secretary of State, Government Records, <http://arc-sos.state.al.us/cgi/corpname.mbr/input> (Enter under Entity Name: SafetyNet YouthCare, Inc.) (last visited October 3, 2013).

² SafetyNet Behavioral Healthcare, <http://safetynetbhc.com/locations.html> (last visited October 3, 2013) "SafetyNet Academy in Minter, Alabama houses our corporate office and a moderate and intensive program for males. SafetyNet Academy can house 40 intensive students and 20 moderate students."

³ Alabama Secretary of State, Government Records, <http://arc-sos.state.al.us/cgi/corpname.mbr/input> (Enter under Entity Name: SafetyNet YouthCare, Inc.) (last visited October 3, 2013)

individuals with mental illness with the enactment of the PAIMI Act in 1986. The scope of the P&A system was further expanded in 1993 when the PAIR Act was enacted.

10. To receive federal funding under the PAIMI, PADD and PAIR Acts, states must have in effect a P&A system. ADAP is designated as Alabama's P&A system.

11. Under the PAIMI Act, "any public or private residential setting that provides overnight care accompanied by treatment services" is a facility which a P&A is authorized to access and monitor:

Facilities *include, but are not limited to* the following: General and psychiatric hospitals, nursing homes, board and care homes, community housing, juvenile detention facilities, homeless shelters, and jails and prisons, including all general areas as well as special mental health or forensic units.

42 C.F.R. § 51.2 (emphasis added).

12. Under the PADD Act, facilities include "any setting that provides care, treatment, services and habilitation... Facilities *include, but are not limited to* the following: Community living arrangements..., day programs, juvenile detention centers, hospitals, nursing homes, homeless shelters, jails and prisons." 45 C.F.R. § 1386.19 (emphasis added).

13. Under the PAIMI Act, "care" and "treatment" are defined as services:

... provided to prevent, identify, reduce or stabilize mental illness or emotional impairment such as mental health screening, evaluation, counseling, biomedical, behavioral and psychotherapies, supportive or other adjunctive therapies, medication supervision, special education and rehabilitation, even if only "as needed" or under a contractual agreement.

42 C.F.R. § 51.2.

14. The PAIMI and PADD Acts provide ADAP reasonable unaccompanied access to all residents of a facility at reasonable times to provide P&A service and contact information, rights information, monitor compliance with respect to the rights and safety of service recipients, and to view and photograph all areas of the facility that are used by

residents or are accessible to residents. 42 U.S.C. §10805(3); 42 C.F.R. § 51.42(c); 42 U.S.C. §15043(H); 45 C.F.R. §1386.22(g).

15. The PAIMI and PADD Acts provide ADAP unaccompanied access to residents of facilities, including the opportunity to meet and communicate privately with such individuals regularly, both formally and informally, by telephone, mail and in person. 42 C.F.R. § 51.42(d); 45 C.F.R. § 1386.22(h).

16. ADAP has authority to interact regularly with those individuals who are current or potential recipients of protection and advocacy services. ADAP may use any appropriate techniques and pursue administrative, legal or other appropriate remedies to protect and advocate on behalf of, e.g., individuals with mental illness, to address abuse, neglect or other violations of rights. 42 C.F.R. § 51.31(a)(d).⁴

17. The access provisions of the PAIMI, PADD, and PAIR statutes are interrelated and it is clear that Congress intended that they be applied in a consistent manner. The PAIR Act expressly incorporates by reference the authority regarding access to facilities and records as well as the other general authorities granted to P&As set forth in the PADD Act. *See* 29 U.S.C. § 794e (f). Moreover, the preamble to the PAIMI Act regulations states that it is the goal of the U.S. Department of Health and Human Services “to ensure that all facets of the P&A system administered by the Department [i.e., the PAIMI and PADD Acts] are subject to the same requirements.” 62 Fed. Reg. 53549 (Oct. 15, 1997).

18. The PAIMI Act’s implementing regulations state that a P&A entity such as ADAP has authority to access all residents of a facility where those with mental illness and emotional

⁴ ADAP also possesses the authority to investigate allegations of abuse/neglect. *See* 42 U.S.C. §15043(2)(B); 42 U.S.C. § 10805(1)(A) . However, this Complaint addresses only enforcement of ADAP’s authority to “monitor,” not to “investigate.”

disorders reside “despite the existence of any State or local laws or regulations which restrict informal access to minors and adults with legal guardians or conservators.” 42 C.F.R. § 51.42(e).

19. SafetyNet Academy, including its Moderate Program, is a residential setting that provides overnight care accompanied by treatment services. SafetyNet Academy constitutes a “facility” under both the PAIMI and PADD Acts and their implementing regulations. 42 U.S.C. §10802(3); 42 C.F.R. § 51.2.2; 42 C.F.R. § 1386.19; 42 U.S.C. §15043(a)(2)(H).

20. SafetyNet Academy is licensed to provide services to youth with emotional and behavioral disabilities in two programs at its Minter Campus: the Moderate Program and the Intensive Program. The Intensive Program is commonly known as a “psychiatric residential treatment facility for youth under the age of 21” (“PRTF”). Youths in either program may be diagnosed with such emotional and behavioral disabilities as Attention Deficit Hyperactivity Disorder, Depressive Disorder, Generalized Anxiety Disorder, Conduct Disorder, Bipolar Disorders or Obsessive Compulsive traits.⁵

ADAP’s Requests for Access and Defendant’s Denials of Those Requests

21. On numerous occasions in the past year ADAP communicated with SafetyNet Youth Care Inc.’s Chief Executive Officer, Mr. Lyn Wheatley, and Corporate Clinical Director, Ms. Sheila Hatfield, to describe ADAP’s authority to monitor and to seek to gain access to all parts of the SafetyNet Academy facility that provide care and treatment of any persons with disabilities, regardless of what particular SafetyNet program may serve those persons.

⁵ SafetyNet Behavioral Health Services, <http://safetynetbhc.com/intensive-treatment-programs.html>; <http://safetynetbhc.com/moderate-treatment-program.html> (Last Visited October 3, 2013)

22. ADAP's efforts to monitor and gain access to all parts of the SafetyNet Academy facility that provide care and treatment of any persons with disabilities, including its Moderate Program, have been denied.

23. In an October 2, 2012, letter to Mr. Wheatley and Ms. Hatfield, ADAP provided citations to its federal statutory authority to conduct monitoring activities in all parts of facilities providing care and treatment of any individuals with disabilities (Ex. 1). That request to monitor was denied.

24. On January 14, 2013, ADAP wrote to SafetyNet Academy Clinical Director, Ms. Valerie Schroeder, notifying her of ADAP's intent to conduct a monitoring visit to SafetyNet Academy in Minter, Alabama, on January 22, 2013, and informing her of ADAP's authority to monitor and gain access to SafetyNet's facilities. ADAP's January 14, 2013, letter explained in language similar to ADAP's October 2, 2012, correspondence ADAP's federal statutory authority to conduct monitoring activities, unaccompanied, in all parts of facilities like SafetyNet that provide care and treatment of any individuals with disabilities (Ex. 2).

25. On January 22, 2013, ADAP Senior Case Advocate Christy Johnson arrived at SafetyNet Academy and was told by Ms. Valerie Schroeder that she could meet with six boys who were outside playing Frisbee. After meeting with the residents playing Frisbee, Ms. Johnson asked Ms. Schroeder to allow her to meet with the residents assigned to the SafetyNet Moderate Program. Ms. Schroeder denied Ms. Johnson access to Defendant's Moderate program stating she was instructed not to allow ADAP to meet with the boys in the Moderate Program. Ms. Schroeder Ms. Schroeder stated ADAP was not allowed access to talk with Moderate Program residents because they do not receive psychiatric services. Ms. Johnson explained to Ms. Schroeder that the Protection and Advocacy Statutes allow ADAP broad access and allow ADAP to determine if a child meets the criteria to receive

P&A services; therefore, a facility like SafetyNet must allow P&A access to all residents. Ms. Schroeder stated she read and understood ADAP's letter prior to the January 22, 2013, visit, but she did not have authority to make decisions regarding ADAP's access. Ms. Schroeder referred Ms. Johnson to the DHR legal division to address ADAP's access to SafetyNet. Ms. Schroeder again denied Ms. Johnson access to Defendant's Moderate Program.

26. On January 23, 2013, ADAP wrote Mr. Wheatley requesting an opportunity to discuss ADAP's access authority to monitor so that future visits would occur without complication. (Ex. 3)

27. On April 29, 2013, ADAP wrote Ms. Schroeder to inform her of ADAP's intent to monitor Defendant's facility on Wednesday, May 1, 2013. (Ex.4)

28. On May 1, 2013, Ms. Johnson arrived at Defendant's facility and informed Ms. Hatfield she would like to meet with all SafetyNet Academy residents during her monitoring visit that day. Ms. Hatfield stated she was instructed to deny ADAP access to Moderate Program residents. On May 1, 2013, ADAP was again denied access to SafetyNet's Moderate Program.

29. On October 7, 2013, ADAP wrote SafetyNet Chief Executive Officer, Lyn Wheatley, stating that despite ADAP's numerous efforts to resolve its access to Defendant's Moderate Program over the past year, the Defendant continued to deny ADAP its right to monitor Defendant's facility. ADAP informed Mr. Wheatley it sought to resolve Defendant's failure to provide access within 14 days so as to avoid litigation. (Ex. 5)

30. On October 10, 2013, DHR wrote ADAP claiming ADAP has no legal basis to monitor Defendant's Moderate Program because: "Moderate facilities are not Intensive treatment programs and are not considered part of the Psychiatric Services for Individuals under the Age

of 21 ('Psych 21')." (Ex. 6)

31. On October 15, 2013, ADAP corresponded with Defendant's counsel to explain ADAP's authority under the PADD and PAIMI statutes, and their implementing regulations, to monitor facilities like Defendant's that provide care and treatment for individuals with disabilities. (Ex. 7)

32. On October 17, 2013, ADAP arranged to meet with counsel for Defendant and DHR at Defendant's facility on Monday October 21, 2013, to address ADAP's access authority and to seek to be granted access to monitor Defendant's Moderate Program by 5:00PM on October 21, 2013. (Ex. 8)

33. On October 21, 2013, ADAP met as arranged with counsel for Defendant and DHR, and with Defendant's Executive Director and Clinical Coordinator. ADAP explained again its authority to monitor Defendant's Moderate Program. ADAP again requested access to monitor Defendant's Moderate Program by 5:00PM on that date. Defendant, through its counsel and on the advice of DHR counsel, again denied ADAP access to monitor Defendant's Moderate Program.

34. Defendant has repeatedly refused to provide ADAP with access to all parts of Defendant's facility that provide care and treatment of any individuals with disabilities in violation of federal law.

35. Despite ADAP's repeated attempts to resolve the dispute described herein, Defendant has refused to allow ADAP to have access to Defendant's facilities in violation of the federal statutes and regulations cited herein.

CAUSES OF ACTION

36. The actions of the Defendant, its agents, and employees, violate and continue to violate

the ADAP's rights to exercise full, reasonable, and unaccompanied access to all residents of Defendant's facility at reasonable times to provide P&A service and contact information, rights information, monitor compliance with respect to the rights and safety of service recipients, and to view and photograph all areas of the facility which are used by residents or are accessible to residents in violation of the PAIMI, PADD, and PAIR Acts and their implementing regulations. 42 C.F.R. § 51.42; 42 C.F.R. § 1386.22; 34 C.F.R. §§ 381.1 et seq.

Injunctive Relief

37. ADAP does not have an adequate remedy at law to redress Defendant's failure to provide ADAP with access to Defendant's facility in violation of the PAIMI, PADD, and PAIR Acts and their implementing regulations. 42 C.F.R. §§ 51.42; 42 C.F.R. §§ 1386.22; 34 C.F.R. §§ 381.1 et seq.

38. ADAP will be irreparably harmed if the Defendant is permitted to continue denying ADAP with access to all residents of Defendant's facility and to portions of Defendant's facility that are used and accessed by residents of Defendant's facility. Defendant's past and continuing refusal to allow access causes irreparable harm to ADAP by preventing it from carrying out its statutory mandate to monitor facilities like the Defendant's for compliance with respect to the rights and safety of residents and to provide residents with information and training about how residents may obtain ADAP's services.

39. The Defendant will not be harmed by the issuance of the requested injunctive and declaratory relief because the Defendant is required by law to grant ADAP access to monitor all areas of its facilities accessible to individuals for whom it provides treatment.

40. Granting ADAP access to all residents of Defendant's facility and to all parts of

Defendant's facility where ADAP may lawfully gain access is in the public interest.

ADAP must have full and unaccompanied access to residents of Defendant's facilities and to all areas that are used by residents and are accessible to residents so

ADAP may fulfill its Congressional mandate to protect and advocate for the civil rights of persons, including children and youth, with disabilities. There is no lawful basis for

Defendant's refusal to deny ADAP with access to the residents of any program, including the Moderate Program, at Defendant's facility.

Declaratory Judgment

41. An actual controversy exists between ADAP and the Defendant regarding ADAP's authority to gain access to Defendant's Moderate Program located at Defendant's facility known as the SafetyNet Academy in Minter, Alabama. The controversy described is within the jurisdiction of this Court, and ADAP seeks a declaration of its right to gain access to Defendant's facilities, including Defendant's Moderate Program, pursuant to the relevant federal statutes and regulations identified in this Complaint.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays that this Court will grant the following relief:

- (A) Declare that ADAP shall have reasonable access under ADAP's federal access authority to all parts of Defendant's facility known as the SafetyNet Academy, including but not limited to the Moderate Program, which are used by and accessible to residents of Defendant's facility.

- (B) Declare that ADAP shall have reasonable access under ADAP's federal access authority to residents of Defendant's facility known as the SafetyNet Academy, including but not limited to the Moderate Program.
- (C) Declare that Defendant's denial of access by ADAP to Defendant's facilities, including but not limited to the SafetyNet Academy Moderate Program, and to residents of Defendant's facilities, is unlawful.
- (D) Issue a preliminary injunction enjoining the Defendant from further denying ADAP access to Defendant's facilities, including but not limited to the SafetyNet Academy Moderate Program, and to residents of Defendant's facilities including, but not limited to, the Moderate Program at SafetyNet Academy.
- (E) After a trial on the merits, issue a permanent injunction enjoining the Defendant from further denying ADAP access to Defendant's facilities, including but not limited to, the SafetyNet Academy Moderate Program, and to residents of Defendant's facilities including, but not limited to, the Moderate Program at SafetyNet Academy.
- (F) Award Plaintiff its costs and reasonable attorney fees; and
- (G) Grant Plaintiff such other relief as the Court deems necessary and just.

Respectfully Submitted,

/s/ David Slawkowski

David J. Slawkowski, ASB-0810D57S

Email: dslawkowski@adap.ua.edu

Alabama Disabilities Advocacy Program

Box 870395

Tuscaloosa, AL 35487

Telephone: (205) 348-4928

Facsimile: (205) 348-3909

ATTORNEY FOR PLAINTIFF

EXHIBIT 1

CV-13-519



October 2, 2012

Mr. Lyn Wheatley
Ms. Sheila Hatfield
Safety Net Academy
80 Mel Bailey Drive
Minter, AL 36761

RE: Alabama Disabilities Advocacy Program (ADAP) Access Authority
to Monitor and Investigate

Protection & Advocacy for
Persons with Developmental
Disabilities

Protection & Advocacy for
Individuals with Mental Illness

Protection & Advocacy of
Individual Rights

Protection & Advocacy for
Assistive Technology

Protection & Advocacy for
Individuals with
Traumatic Brain Injury

Protection & Advocacy for
Beneficiaries of Social Security

Protection & Advocacy for
Voting Accessibility

THE UNIVERSITY OF
ALABAMA
FOUNDED 1831

500 Martha Parham West
Box 870395
Tuscaloosa, Alabama 35487-0395
(205)348-4928
(800)826-1675
FAX (205)348-3909
adap@adap.ua.edu
www.ADAP.net

Dear Mr. Wheatley and Ms. Hatfield:

During the last few years, ADAP has worked closely with the Alabama Department of Human Resources and the Alabama Medicaid Agency to fulfill the mandate of the Children's Health Act of 2000 to investigate serious occurrences occurring in psychiatric residential treatment facilities for youth under the age of 21 (PRTFs).

This mandate builds off of ADAP's primary mission as part of our nation's protection and advocacy (P&A) system to protect the safety and rights of persons with disabilities. Given that it has been a while since our active engagement with PRTFs ramped up in earnest, we believe it might be helpful to reacquaint PRTF staff - and introduce new staff - to ADAP's federally-mandated monitoring and investigatory role as the state's P&A agency.

ADAP has served as Alabama's P&A agency since the system's creation through Congress' enactment of the Developmental Disabilities Assistance and Bill of Rights Act of 1975, 42 U.S.C. § 6041 et seq. (DD Act) and its subsequent expansion under both the Protection and Advocacy for Individuals with Mental Illness Act of 1986, 42 U.S.C. 10801 et seq. (PAIMI Act), and the Protection and Advocacy for Individual Rights (PAIR) Program, Rehabilitation Act of 1973, 29 U.S.C. 794e.

Shocked by the inhumane conditions found at many of the nation's hospitals, training schools and institutions for persons with mental retardation, Congress enacted the DD Act in 1975 to protect the human and civil rights of this vulnerable population. Reauthorized in 2000, the DD Act mandates that each state establish a protection and advocacy system authorized to:

(i) pursue legal, administrative, and other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights of (individuals with developmental disabilities) ... and

(ii) provide information on and referral to programs and services addressing the needs of individuals with developmental disabilities;

(B) have the authority to investigate incidents of abuse and neglect of individuals with developmental disabilities if the incidents are reported to the system or if there is probable cause to believe that the incidents occurred;

42 U.S.C. § 15043 (2000)

In 1986, the PAIMI Act was passed after congressional hearings and investigations substantiated numerous reports of abuse and neglect in state psychiatric facilities across the country. The PAIMI Act provides parallel protections for individuals with mental illness using the same mechanisms as the DD Act.

Under the Rehabilitation Act's PAIR program, P&As are authorized to use the same mechanisms as provided under the DD Act to serve persons with disabilities who are not eligible under either the DD Act or PAIMI Act. 29 U.S.C. § 794e.

Congress has continued to expand the mission of the P&A system beyond these three programs. Now, through a total of eight federally funded programs, P&As address a broad range of legal rights on behalf of persons with disabilities, whether those persons live in institutions or in community settings, including special education, employment preparation, healthcare access, architectural and programming accessibility, and voting.

Despite its expanded mission, the P&A system remains committed to ensuring the safety and well-being of persons with disabilities who live in institutional settings. In part, P&As carry out this work by conducting on-site facility monitoring and investigations, empowered by federal law providing the P&As with broad access rights to facilities and to their residents and staff members.

ADAP's monitoring work brings it to a variety of facilities that provide persons with disabilities services, support, care or treatment. These settings include, but are not limited to, public or private residential settings like residential and day schools, day treatment programs, general and psychiatric hospitals, nursing homes, board and care homes, community housing, juvenile detention facilities, homeless shelters, and jails and prisons, including all general areas as well as special mental health or forensic units.

The goals of ADAP's facility monitoring are:

- To provide information on programs addressing the needs of individuals with disabilities to facility residents,

- To provide information about individual rights and ADAP's advocacy services to facility residents, and
- To monitor compliance regarding the rights and safety of residents.

As found in the DD Act, PAIMI Act and Rehabilitation Act of 1973, and interpreted through case law over the last thirty years, the P&A access authority for monitoring and investigation can be summarized as follows:

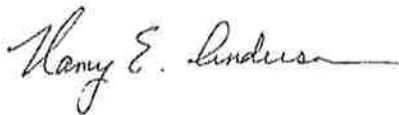
- Persons with disabilities may not be aware of their state's P&A or be able to contact the P&A on their own. To ensure that persons with disabilities have access to the agency's protection and advocacy services, federal law provides P&As with the right to unaccompanied access to all residents of a facility at reasonable times (including, at a minimum, normal working hours and visiting hours) to provide information, training and referrals to facility residents.
- P&As have broad authority to conduct -- without probable cause to suspect abuse or neglect or other justification -- on-site monitoring of health and safety conditions in both institutional and community settings.
- Access to facility residents and staff to discuss issues relating to rights protections and treatment may not be restricted in most circumstances, and notice to a facility is generally not required prior to meeting with residents or staff.
- P&A staff have a right to have unaccompanied access to residents, which includes the opportunity to meet and communicate privately with them, both formally and informally, by telephone, mail and in person. The right of informal access applies to all residents of a facility, including those who may eventually be found not to meet the P&A eligibility criteria. The P&A is the final arbiter of what individuals served by a facility are, or are not, P&A clients and a facility may not require, as a condition of granting access to records or facilities, that the P&A make a definitive showing that particular individuals have a disability.
- Permission of a parent or guardian of a resident is not necessary for P&A staff to meet informally with any resident. However, the P&A staff must honor a resident's request to terminate an interview. A request to terminate an interview should not mean, however, that the P&A never again approaches the individual. Most advocates have worked with clients who will not talk with them one day, but welcome a respectful approach on the next.
- The P&A is allowed reasonable, unaccompanied access to facilities and community settings to investigate potential abuse or neglect. This access includes the right to

speak with any service recipient or staff member who may have knowledge of the incident being investigated.

- The P&A has the right to access the records of individuals, including investigation reports of other agencies, with consent of the individual or his guardian. Even without such consent, under certain circumstances, the P&A has a right to such records if it has probable cause to believe that an abuse or neglect incident has occurred or it has received a complaint. The P&A is the final arbiter regarding the circumstances that amount to probable cause. One circumstance that would allow a P&A to access records without consent involves individuals who do not have a legal guardian, conservator or other legal representative, or when the individual's guardian is the State or one of its political subdivisions.
- Records must be provided to the P&A within three days of a written request in most cases. However, in the case of an investigation of a death or suspicion of an immediate threat to health or safety, records must be provided within 24 hours. Under the DD Act (and the PAIR Program), access to records under these circumstances is mandated without the consent of any third party (e.g., a guardian). Under the PAIMI Act, access must be afforded without such consent in the case of a death investigation; in the case where there is an immediate threat to health or safety and the individual has a guardian, access shall be provided over the guardian's objection (so long as his or her consent was sought).
- The P&A is required to protect the confidentiality of records provided to it to the same extent required by the facility/provider.

I hope this brief summary of ADAP's access authority has been helpful. If you have any questions, please do not hesitate to contact our office.

With very best regards,



Nancy Anderson
Attorney

EXHIBIT 2

CV-13-519



January 14, 2013

Ms. Valerie Schroeder
Academy Clinical Director
SafetyNet Academy
80 Mel Bailey Drive
Minter, Alabama 36761

Protection & Advocacy for
Persons with Developmental
Disabilities

RE: Alabama Disabilities Advocacy Program (ADAP) Access Authority to
Monitor and Investigate

Protection & Advocacy for
Individuals with Mental
Illness

Dear Ms. Schroeder:

Protection & Advocacy of
Individual Rights

During the last few years, ADAP has worked closely with the Alabama Department of Human Resources and the Alabama Medicaid Agency to fulfill the mandate to the Children's Health Act of 2000 to investigate serious occurrences occurring in psychiatric residential treatment facilities for youth under the age of 21 (PRTFs).

Protection & Advocacy for
Assistive Technology

Protection & Advocacy for
Individuals with
Traumatic Brain Injury

This mandate builds off of ADAP's primary mission as part of our nation's protection and advocacy (P&A) system to protect the safety and rights of persons with disabilities. We believe it might be helpful to reacquaint PRTF staff – and introduce new staff – to ADAP's federally-mandated monitoring and investigatory role as the state's P&A agency.

Protection & Advocacy for
Beneficiaries of Social Security

Protection & Advocacy for
Voting Accessibility

THE UNIVERSITY OF
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FOUNDED 1831

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500 Martha Parham West
Box 870395
Tuscaloosa, Alabama 35487-
0395
(205)348-4928
(800)826-1675
FAX (205)348-3909
adap@adap.ua.edu
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Shocked by the inhumane conditions found at many of the nation's hospitals, training schools and institutions for persons with mental retardation, Congress enacted the DD Act in 1975 to protect the human and civil rights of this vulnerable population. Reauthorized in 2000, the DD Act mandates that each state establish a protection and advocacy system authorized to:

(I) pursue legal, administrative, and other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights of (Individuals with developmental disabilities) ... and

(II) provide information on and referral to programs and services addressing the needs of individuals with developmental disabilities;

(B) have the authority to investigate incidents of abuse and neglect of individuals with developmental disabilities if the incidents are reported to the system or if there is probable cause to believe that the incidents occurred;

42 U.S.C. § 15043 (2000)

In 1986, the PAIMI Act was passed after congressional hearings and investigations substantiated numerous reports of abuse and neglect in state psychiatric facilities across the country. The PAIMI Act provides parallel protections for individuals with mental illness using the same mechanisms as the DD Act.

Under the Rehabilitation Act's PAIR program, P&As are authorized to use the same mechanisms as provided under the DD Act to serve persons with disabilities who are not eligible under either the DD Act or PAIMI Act. 29 U.S.C. § 794e.

Congress has continued to expand the mission of the P&A system beyond these three programs. Now, through a total of eight federally funded programs, P&As address a broad range of legal rights on behalf of persons with disabilities, whether those persons live in institutions or in community settings, including special education, employment preparation, healthcare access, architectural and programming accessibility, and voting.

Despite its expanded mission, the P&A system remains committed to ensuring the safety and well-being of persons with disabilities who live in institutional settings. In part, P&As carry out this work by conducting on-site facility monitoring and investigations, empowered by federal law providing the P&As with broad access rights to facilities and to their residents and staff members.

ADAP's monitoring work brings it to a variety of facilities that provide persons with disabilities services, support, care or treatment. These settings include, but are not limited to, public or private residential settings like residential and day schools, day treatment programs, general and psychiatric hospitals, nursing homes, board and care homes, community housing, juvenile detention facilities, homeless shelters, and jails and prisons, including all general areas as well as special mental health or forensic units.

The goals of ADAP's facility monitoring are:

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- To provide information about individual rights and ADAP's advocacy services to facility residents, and
- To monitor compliance regarding the rights and safety of residents.

As found in the DD Act, PAIMI Act and Rehabilitation Act of 1973, and interpreted through case law over the last thirty years, the P&A access authority for monitoring and investigation can be summarized as follows:

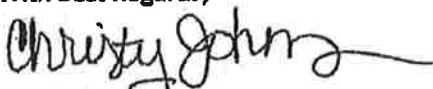
- Persons with disabilities may not be aware of their state's P&A or be able to contact the P&A on their own. To ensure that persons with disabilities have access to the agency's protection and advocacy services, federal law provides P&As with the right to unaccompanied access to all residents of a facility at reasonable times (including, at a minimum, normal working hours and visiting hours) to provide information, training and referrals to facility residents.
- P&As have broad authority to conduct – without probable cause to suspect abuse or neglect or other justification – on-site monitoring of health and safety conditions in both institutional and community settings.
- Access to facility residents and staff to discuss issues relating to rights protections and treatment may not be restricted in most circumstances, and notice to a facility is generally not required prior to meeting with residents or staff.
- P&A staff have a right to have unaccompanied access to residents, which includes the opportunity to meet and communicate privately with them, both formally and informally, by telephone, mail and in person. The right of informal access applies to all residents of a facility, including those who may eventually be found not to meet the P&A eligibility criteria. The P&A is the final arbiter of what individuals served by a facility are, or are not, P&A clients and a facility may not require, as a condition of granting access to records or facilities, that the P&A make a definitive showing that particular individuals have a disability.
- Permission of a parent or guardian of a resident is not necessary for P&A staff to meet informally with any resident. However, the P&A staff must honor a resident's request to terminate an interview. A request to terminate an interview should not mean, however, that the P&A never again approaches the individual. Most advocates have worked with clients who will not talk with them one day, but welcome a respectful approach on the next.
- The P&A is allowed reasonable, unaccompanied access to facilities and community settings to investigate potential abuse or neglect. This access includes the right to

• speak with any service recipient or staff member who may have knowledge of the incident being investigated.

- The P&A has the right to access the records of individuals, including investigation reports of other agencies, with consent of the individual or his guardian. Even without such consent, under certain circumstances, the P&A has a right to such records if it has probable cause to believe that an abuse or neglect incident has occurred or it has received a complaint. The P&A is the final arbiter regarding the circumstances that amount to probable cause. One circumstance that would allow a P&A to access records without consent involves individuals who do not have a legal guardian, conservator or other legal representative, or when the individual's guardian is the State or one of its political subdivisions.
- Records must be provided to the P&A within three days of a written request in most cases. However, in the case of an investigation of a death or suspicion of an immediate threat to health or safety, records must be provided within 24 hours. Under the DD Act (and the PAIR Program), access to records under these circumstances is mandated without the consent of any third party (e.g., a guardian). Under the PAIMI Act, access must be afforded without such consent in the case of a death investigation; in the case where there is an immediate threat to health or safety and the individual has a guardian, access shall be provided over the guardian's objection (so long as his or her consent was sought).
- The P&A is required to protect the confidentiality of records provided to it to the same extent required by the facility/provider.

I hope this brief summary of ADAP's access authority has been helpful. I would like to schedule a monitoring visit to the Minter campus Tuesday, January 22. I will contact you by phone to discuss any questions you may have and to schedule a time for this visit.

With Best Regards,



Christy Johnson

Senior Case Advocate

cc: Lyn Wheatley, CEO

Sheila Hatfield, Corporate Clinical Director

EXHIBIT 3

CV-13-519

From: Anderson, Nancy
Sent: Wednesday, January 23, 2013 10:30 AM
To: 'lyn@safetynetacademy.org'; 'sheilahatfield@safetynetacademy.org';
'valerie.schroeder@safetynetacademy.org'; 'sheila.hatfield@safetynetacademy.org'
Subject: ADAP access denied

Dear Mr. Wheatley, Ms. Hatfield, and Ms. Schroeder,

Please see attached letter (plus two referenced attachments) regarding ADAP's access authority and the outcome of yesterday's monitoring visit.

Best Regards,

Nancy

Nancy Anderson
Attorney
Alabama Disabilities Advocacy Program (ADAP)
The University of Alabama
Box 870395
Tuscaloosa, AL 35487
205/348-6803 (desk)
205/348-4928 (main)
205/310-4784 (mobile)
205/348-3909 (fax)
nanderso@adap.ua.edu
Web: www.adap.net
Satisfaction Survey: <http://www.adap.net/satisfaction.html>

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January 23, 2013

Mr. Lyn Wheatley
Executive Director
Safety Net Academy
80 Mel Bailey Drive
Minter, AL 36761

RE: Denial of Access at Safety Net/Minter

Dear Mr. Wheatley: --

Protection & Advocacy for
Persons with Developmental
Disabilities

Protection & Advocacy for
Individuals with Mental Illness

Protection & Advocacy of
Individual Rights

Protection & Advocacy for
Assistive Technology

Protection & Advocacy for
Individuals with
Traumatic Brain Injury

Protection & Advocacy for
Beneficiaries of Social Security

Protection & Advocacy for
Voting Accessibility

THE UNIVERSITY OF
ALABAMA
FOUNDED 1831

500 Martha Parham West
Box 870395
Tuscaloosa, Alabama 35487-0395
(205)348-4928
(800)826-1675
FAX (205)348-3909
adap@adap.ua.edu
www.ADAP.net

ADAP Senior Case Advocate Christy Johnson went to Safety Net/Minter yesterday to conduct a monitoring visit and was denied access to speak to all facility residents. Clinical Director Valerie Schroeder told Ms. Johnson she was allowed to speak to Intensive Program residents only and not to Moderate Program residents.

As Ms. Johnson's main point of contact for this visit was going to be Ms. Schroeder and since Ms. Schroeder is relatively new to Safety Net, we provided her on January 14, 2013 with the same letter we sent to you in October 2012 outlining the scope of ADAP's access authority to monitor and investigate (see attachments). Among the key provisions of ADAP's access authority outlined in these letters is a description of ADAP's right to unaccompanied access to all residents of a facility. In addition, I spoke to Ms. Schroeder last week to confirm Ms. Johnson's visit and to answer any questions she had about ADAP's access authority in relation to the (then) approximately 22 youth on campus.

It appears that despite this outreach to you and your staff, there are lingering questions as to the scope of ADAP's access authority. I welcome the opportunity to clarify this matter so Ms. Johnson's subsequent monitoring visits occur without complication. I will contact you next Monday, January 28, to discuss this matter. In the meantime, as required under federal law, when ADAP's access to facilities, programs, residents or records is denied, a provider must promptly provide ADAP with a written statement of the reasons for the denial (see 45 C.F.R. Section 1386.22(l) and 42 C.F.R. Section 51.43). Please send this statement to me at the address below by Friday, January 25.

With very best regards,

Nancy Anderson
Attorney

cc: Valerie Schroeder
Sheila Hatfield



October 2, 2012

Mr. Lyn Wheatley
Ms. Sheila Hatfield
Safety Net Academy
80 Mel Bailey Drive
Minter, AL 36761

RE: Alabama Disabilities Advocacy Program (ADAP) Access Authority
to Monitor and Investigate

Protection & Advocacy for
Persons with Developmental
Disabilities

Protection & Advocacy for
Individuals with Mental Illness

Protection & Advocacy of
Individual Rights

Protection & Advocacy for
Assistive Technology

Protection & Advocacy for
Individuals with
Traumatic Brain Injury

Protection & Advocacy for
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Dear Mr. Wheatley and Ms. Hatfield:

During the last few years, ADAP has worked closely with the Alabama Department of Human Resources and the Alabama Medicaid Agency to fulfill the mandate of the Children's Health Act of 2000 to investigate serious occurrences occurring in psychiatric residential treatment facilities for youth under the age of 21 (PRTFs).

This mandate builds off of ADAP's primary mission as part of our nation's protection and advocacy (P&A) system to protect the safety and rights of persons with disabilities. Given that it has been a while since our active engagement with PRTFs ramped up in earnest, we believe it might be helpful to reacquaint PRTF staff - and introduce new staff - to ADAP's federally-mandated monitoring and investigatory role as the state's P&A agency.

ADAP has served as Alabama's P&A agency since the system's creation through Congress' enactment of the Developmental Disabilities Assistance and Bill of Rights Act of 1975, 42 U.S.C. § 6041 et seq. (DD Act) and its subsequent expansion under both the Protection and Advocacy for Individuals with Mental Illness Act of 1986, 42 U.S.C. 10801 et seq. (PAIMI Act), and the Protection and Advocacy for Individual Rights (PAIR) Program, Rehabilitation Act of 1973, 29 U.S.C. 794e.

Shocked by the inhumane conditions found at many of the nation's hospitals, training schools and institutions for persons with mental retardation, Congress enacted the DD Act in 1975 to protect the human and civil rights of this vulnerable population. Reauthorized in 2000, the DD Act mandates that each state establish a protection and advocacy system authorized to:

(i) pursue legal, administrative, and other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights of (individuals with developmental disabilities) ... and

(ii) provide information on and referral to programs and services addressing the needs of individuals with developmental disabilities;

(B) have the authority to investigate incidents of abuse and neglect of individuals with developmental disabilities if the incidents are reported to the system or if there is probable cause to believe that the incidents occurred;

42 U.S.C. § 15043 (2000)

In 1986, the PAIMI Act was passed after congressional hearings and investigations substantiated numerous reports of abuse and neglect in state psychiatric facilities across the country. The PAIMI Act provides parallel protections for individuals with mental illness using the same mechanisms as the DD Act.

Under the Rehabilitation Act's PAIR program, P&As are authorized to use the same mechanisms as provided under the DD Act to serve persons with disabilities who are not eligible under either the DD Act or PAIMI Act. 29 U.S.C. § 794e.

Congress has continued to expand the mission of the P&A system beyond these three programs. Now, through a total of eight federally funded programs, P&As address a broad range of legal rights on behalf of persons with disabilities, whether those persons live in institutions or in community settings, including special education, employment preparation, healthcare access, architectural and programming accessibility, and voting.

Despite its expanded mission, the P&A system remains committed to ensuring the safety and well-being of persons with disabilities who live in institutional settings. In part, P&As carry out this work by conducting on-site facility monitoring and investigations, empowered by federal law providing the P&As with broad access rights to facilities and to their residents and staff members.

ADAP's monitoring work brings it to a variety of facilities that provide persons with disabilities services, support, care or treatment. These settings include, but are not limited to, public or private residential settings like residential and day schools, day treatment programs, general and psychiatric hospitals, nursing homes, board and care homes, community housing, juvenile detention facilities, homeless shelters, and jails and prisons, including all general areas as well as special mental health or forensic units.

The goals of ADAP's facility monitoring are:

- To provide information on programs addressing the needs of individuals with disabilities to facility residents,

- To provide information about individual rights and ADAP's advocacy services to facility residents, and
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As found in the DD Act, PAIMI Act and Rehabilitation Act of 1973, and interpreted through case law over the last thirty years, the P&A access authority for monitoring and investigation can be summarized as follows:

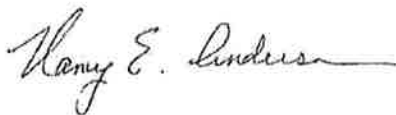
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- Access to facility residents and staff to discuss issues relating to rights protections and treatment may not be restricted in most circumstances, and notice to a facility is generally not required prior to meeting with residents or staff.
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- The P&A is allowed reasonable, unaccompanied access to facilities and community settings to investigate potential abuse or neglect. This access includes the right to

speaking with any service recipient or staff member who may have knowledge of the incident being investigated.

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- The P&A is required to protect the confidentiality of records provided to it to the same extent required by the facility/provider.

I hope this brief summary of ADAP's access authority has been helpful. If you have any questions, please do not hesitate to contact our office.

With very best regards,



Nancy Anderson
Attorney



January 14, 2013

Ms. Valerie Schroeder
Academy Clinical Director
SafetyNet Academy
80 Mel Bailey Drive
Minter, Alabama 36761

Protection & Advocacy for
Persons with Developmental
Disabilities

RE: Alabama Disabilities Advocacy Program (ADAP) Access Authority to
Monitor and Investigate

Protection & Advocacy for
Individuals with Mental
Illness

Dear Ms. Schroeder:

Protection & Advocacy of
Individual Rights

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Protection & Advocacy for
Assistive Technology

Protection & Advocacy for
Individuals with
Traumatic Brain Injury

This mandate builds off of ADAP's primary mission as part of our nation's protection and advocacy (P&A) system to protect the safety and rights of persons with disabilities. We believe it might be helpful to reacquaint PRTF staff – and introduce new staff – to ADAP's federally-mandated monitoring and investigatory role as the state's P&A agency.

Protection & Advocacy for
Beneficiaries of Social Security

Protection & Advocacy for
Voting Accessibility

THE UNIVERSITY OF
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ADAP has served as Alabama's P&A agency since the system's creation through Congress' enactment of the Developmental Disabilities Assistance and Bill of Rights Act of 1975, 42 U.S.C. § 6041 et seq. (DD Act) and its subsequent expansion under both the Protection and Advocacy for Individuals with Mental Illness Act of 1986, 42 U.S.C. 10801 et seq. (PAIMI Act), and the Protection and Advocacy for Individual Rights (PAIR) Program, Rehabilitation Act of 1973, 29 U.S.C. 794e.

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Shocked by the inhumane conditions found at many of the nation's hospitals, training schools and institutions for persons with mental retardation, Congress enacted the DD Act in 1975 to protect the human and civil rights of this vulnerable population. Reauthorized in 2000, the DD Act mandates that each state establish a protection and advocacy system authorized to:

(i) pursue legal, administrative, and other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights of (Individuals with developmental disabilities) ... and

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Congress has continued to expand the mission of the P&A system beyond these three programs. Now, through a total of eight federally funded programs, P&As address a broad range of legal rights on behalf of persons with disabilities, whether those persons live in institutions or in community settings, including special education, employment preparation, healthcare access, architectural and programming accessibility, and voting.

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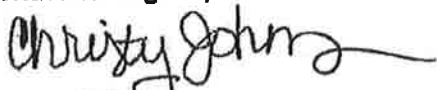
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- The P&A is required to protect the confidentiality of records provided to it to the same extent required by the facility/provider.

I hope this brief summary of ADAP's access authority has been helpful. I would like to schedule a monitoring visit to the Minter campus Tuesday, January 22. I will contact you by phone to discuss any questions you may have and to schedule a time for this visit.

With Best Regards,



Christy Johnson

Senior Case Advocate

cc: Lyn Wheatley, CEO

Sheila Hatfield, Corporate Clinical Director

EXHIBIT 4

CV-13-519



Sent Via Email & U.S. Mail

April 29, 2013

Ms. Valerie Schroeder
Clinical Director
SafetyNet Academy
80 Mel Bailey Drive
Minter, Alabama 36761

Protection & Advocacy for
Persons with Developmental
Disabilities

Protection & Advocacy for
Individuals with Mental
Illness

Protection & Advocacy of
Individual Rights

Protection & Advocacy for
Assistive Technology

Protection & Advocacy for
Individuals with
Traumatic Brain Injury

Protection & Advocacy for
Beneficiaries of Social Security

Protection & Advocacy for
Voting Accessibility

THE UNIVERSITY OF
ALABAMA
FOUNDED 1831

RE: Monitoring & Investigation

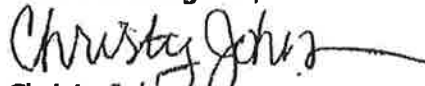
Dear Ms. Schroeder:

ADAP plans to conduct a monitoring visit and an investigation on Wednesday, April 1 beginning at 10:00 a.m. at SafetyNet Academy.

During the monitoring, ADAP plans to meet with all residents at SafetyNet to inform of ADAP's services. In addition, ADAP will conduct a record review and interviews with D. M. and staff as necessary regarding a serious occurrence on 4/5/13.

Please contact me should you have questions.

With Best Regards,


Christy Johnson
Senior Case Advocate

cc: Sheila Hatfield
Lyn Wheatley

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Tuscaloosa, Alabama 35487-
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adap@adap.ua.edu
www.ADAP.net

EXHIBIT 5

CV-13-519

ALABAMA DISABILITIES



VIA EMAIL & US MAIL

October 7, 2013

Mr. Lyn Wheatley
Chief Executive Officer
SafetyNet Academy
80 Mel Bailey Drive
Minter, Alabama 36761

RE: Alabama Disabilities Advocacy Program (ADAP) Access Authority to Monitor and Investigate Safety Net Programs

Dear Mr. Wheatley:

Protection & Advocacy for
Persons with Developmental
Disabilities

Protection & Advocacy for
Individuals with Mental Illness

Protection & Advocacy of
Individual Rights

Protection & Advocacy for
Assistive Technology

Protection & Advocacy for
Individuals with
Traumatic Brain Injury

Protection & Advocacy for
Beneficiaries of Social Security

Protection & Advocacy for
Voting Accessibility

Since October 2012, ADAP has been attempting to work with SafetyNet Inc. to inform and educate you and your staff on its federal access authority to monitor and investigate all areas of SafetyNet facilities used by and accessible to individuals with disabilities. Specifically, ADAP has communicated with SafetyNet through numerous written correspondences and in person meetings explaining its right to access the Moderate Program of SafetyNet Academy located in Minter, Alabama. Each time ADAP has requested access to the Moderate Program, SafetyNet has refused ADAP access and has directed ADAP to State DHR Legal Counsel for justification for its denial.

At this time, SafetyNet has left ADAP with no meaningful option other than to take legal action to gain access to SafetyNet Academy's Moderate Program. A copy of ADAP's complaint is enclosed requesting a Declaratory Judgment and Injunctive Relief against SafetyNet for its refusal to grant ADAP access to the Moderate Program and to award ADAP costs and attorney's fees per 28 U.S.C. § 2202, 42 U.S.C. § 1988, and 45 C.F.R. § 1386.25. ADAP intends to file this complaint with the U.S. District Court of the Southern District of Alabama within 14 days of the date of this letter.

We hope to hear from you soon so that this issue can be resolved quickly and avoid litigation. You may contact me at (205) 348-7679 or at amixson@adap.ua.edu.

THE UNIVERSITY OF
ALABAMA
FOUNDED 1831

Sincerely,

Andrea J. Mixson
Staff Attorney

Enc.

CC: Mr. Dave Slawkowski, Esq.

500 Martha Parham West
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EXHIBIT 6

CV-13-519



ROBERT BENTLEY
Governor

State of Alabama
Department of Human Resources

S. Gordon Persons Building
50 Ripley Street
P. O. Box 304000
Montgomery, Alabama 36130-4000
(334) 242-1310
www.dhr.alabama.gov



Nancy T. Buckner
Commissioner

October 10, 2013

VIA FACSIMILE & US MAIL

Honorable Andrea Mixson
Alabama Disabilities Advocacy Program
University of Alabama
500 Martha Patham West
Tuscaloosa, Alabama 35487-0395

RE: *Alabama Disabilities Advocacy Program (ADAP)*
Request for Access to SafetyNet Moderate Programs

Dear Ms. Mixson:

The Alabama Department of Human Resources ("DHR") is in receipt of correspondence from you to Lynn Wheatley, Director of SafetyNet Youth Care, Inc. ("Safety Net") and the attached Complaint for Injunctive and Declarative Relief against SafetyNet. In the Complaint, you seek access to all the Moderate Programs of SafetyNet. Additionally, you indicate the intention to file the Complaint within fourteen (14) days of the letter dated October 7, 2013.

In an effort to resolve these issues DHR, as the licensing authority for SafetyNet is willing to implement a protocol for access to SafetyNet's moderate program. Neither DHR nor SafetyNet are admitting that any of the allegations in the Complaint are true. DHR and SafetyNet agree to access by ADAP to SafetyNet's moderate program based upon Eleventh Circuit standard for intensive programs set out in the case of *Alabama Disabilities Advocacy Program v. J.S. Tarwater Developmental Ctr.*, 97 F.3d 492 (11th Cir. 1996). Therefore, access to the SafetyNet Moderate Program is conditioned upon:

- a) an incident or complaint made to ADAP as to the SafetyNet's moderate program; *or*
- b) there is probable cause to believe an incident has occurred at SafetyNet's moderate program.

Please note that in accordance with ALA. CODE § 26-14-3 (1975), reports of child abuse and neglect must be made to DHR immediately. Therefore, it is the expectation that ADAP, as a mandatory reporter under the statute; report to DHR any allegations of abuse or neglect.

DHR does not concede that ADAP has a sufficient legal basis for the relief sought should the complaint be filed. Moderate facilities are not Intensive treatment programs and are not

Mixon Letter
ADAP
10/10/2013

considered a part of the Psychiatric Services for Individuals under the Age of 21 ("Psych. 21"). As such, DHR is willing to implement this protocol in good faith to resolve this matter as to SafetyNet.

The basic premise of the protocol is stated above. However, we will submit a formal draft for your review and suggestions if you agree with the proposed protocol for SafetyNet. Please advise me within seven {7} days if you agree. DHR is interested in resolving this matter expeditiously.

I look forward to hearing from you soon about the proposed protocol.

Sincerely,



Sharon E. Ficquette

General Counsel

Phone: (334) 242-9330

Fax: (334) 242-0689

Cc: Lyn Wheatley
Honorable Martha Thompson

EXHIBIT 7

CV-13-519

ALABAMA DISABILITIES



ADVOCACY PROGRAM

VIA EMAIL (mlt@hfsllp.com) & US MAIL

October 15, 2013

Ms. Martha Thompson, Esq.
Huie, Fernambucq, & Stewart, LLP
2801 Highway 280 S. Suite 200
Birmingham, Alabama 35223-2484

**RE: Alabama Disabilities Advocacy Program (ADAP) Access Authority
to Monitor and Investigate Safety Net Programs**

Protection & Advocacy for
Persons with Developmental
Disabilities

Protection & Advocacy for
Individuals with Mental Illness

Protection & Advocacy of
Individual Rights

Protection & Advocacy for
Assistive Technology

Protection & Advocacy for
Individuals with
Traumatic Brain Injury

Protection & Advocacy for
Beneficiaries of Social Security

Protection & Advocacy for
Voting Accessibility

THE UNIVERSITY OF
ALABAMA
FOUNDED 1831

500 Martha Parham West
Box 870395
Tuscaloosa, Alabama 35487-0395
(205)348-4928
(800)826-1675
FAX (205)348-3909
adap@adap.ua.edu
www.ADAP.net

Dear Martha:

I received correspondence dated October 10, 2013 from Alabama Department of Human Resources (DHR) General Counsel Sharon Ficquette regarding ADAP's access authority to monitor the Moderate Programs at SafetyNet Youth Academy. Given that your and Mr. Lyn Wheatley's names were on the distribution list, I assume you are representing SafetyNet, Inc. in this matter.

Ms. Ficquette's correspondence fails to acknowledge the scope of ADAP's access authority to facilities such as the SafetyNet Moderate Program. ADAP's access authority as Alabama's Protection and Advocacy agency (P&A) agency is laid out in the Protection and Advocacy for Individuals with Mental Illness Act of 1986 ("PAIMI Act"), 42 U.S.C. §§ 10801 et seq., and its implementing regulations at 42 C.F.R. §§ 51.1 et seq.; the Developmental Disabilities Assistance and Bill of Rights Act of 2000 ("PADD Act"), 42 U.S.C. §§ 15001 et seq., and its implementing regulations found at 45 C.F.R. §§ 1385 et seq.; and the Protection and Advocacy of Individual Rights Program of 1993 ("PAIR Act"), 29 U.S.C. §§ 794e, et seq., and its implementing regulations at 34 C.F.R. §§ 381.1 et seq.; and 42 U.S.C. § 1983.

First, ADAP's access authority is not limited to investigation activities, but includes the following activities related to monitoring: interacting with all residents of a facility, providing ADAP contact information to residents, viewing and photographing facility areas used by and accessible to residents, and physically observing all areas of a facility used by or accessible to residents. See 42 U.S.C. §10805; 42 C.F.R. § 51.42(c); 42 U.S.C. §15043; 45 C.F.R. §1386.22(g). A number of cases affirm a P&A's authority to conduct monitoring: *Mississippi Protection and Advocacy System, Inc. v. Cotten*, 1989 WL 224953 (S.D. Miss.); *Pennsylvania Protection and Advocacy, Inc. v. Royer-Greaves School for the Blind*, 1999 WL 179797 (E.D. Pa.); *Robbins v. Budke*, 739 F.Supp. 1479 (D.N.M. 1990); *Kentucky Protection and Advocacy Division v. Hall*, No. 3:01cv-538-H (W.D. Ky., 2001) (unpublished); *Michigan Protection and Advocacy Service, Inc. v. Miller*, 849 F. Supp. 1202 (W.D. Mi.1994).

Second, contrary to Ms. Ficquette's suggestion, ADAP's access authority to monitor facilities is not limited to facilities classified as Intensive Treatment

Programs or Psychiatric Services for Individuals under the age of 21. The PAIMI regulations broadly define the term "facility" as follows:

Any public or private residential setting that provides overnight care accompanied by treatment services. Facilities include but are not limited to the following: general and psychiatric hospitals, nursing homes, board and care homes, community housing, juvenile detention facilities, homeless shelters, and jails and prisons, including all general areas as well as special mental health or forensic units.

42 C.F.R. § 51.2 (emphasis mine)

Likewise, the terms "care" and "treatment" are defined under the PAIMI regulations as those services:

Provided to prevent, identify, reduce or stabilize mental illness or emotional impairment such as mental health screening, evaluation, counseling, biomedical, behavioral and psychotherapies, supportive or other adjunctive therapies, medication supervision, special education and rehabilitation, even if only "as needed" or under a contractual arrangement.

42. C.F.R. 51.2

Thus, under the PAIMI Act, facilities include any public and private entities that serve in part or whole- individuals with mental illness, and in which one or more individuals with mental illness reside or may reside, when those entities provide some care or treatment for person with mental illness, even if those services are only incidental to the primary function of the entity. SafetyNet's Moderate Programs clearly fit within the PAIMI regulation's broad definition of facilities and are accessible to ADAP for monitoring purposes as well as investigation purposes.

While Ms. Ficquette states in her correspondence that DHR and SafetyNet are willing to implement a protocol for ADAP's access to SafetyNet's Moderate Program, ADAP will not enter into a protocol with SafetyNet that will place limits on the monitoring and investigative activities it is authorized under federal law to conduct.

ADAP has successfully defended our access rights across a variety of settings and involving a variety of defendants which also included the recovery of attorney's fees. If ADAP and SafetyNet cannot resolve this matter this week, ADAP intends to file its complaint against SafetyNet on October 21, 2013. We hope to hear from you soon so this issue can be resolved. You may contact me at (205) 348-7679 or at amixson@adap.ua.edu.

Sincerely,



Andrea J. Mixson
Staff Attorney

CC: Mr. Lyn Wheatley
Ms. Sharon Ficquette, Esq.
Mr. Dave Slawkowski, Esq.

Mixson, Andrea

From: Hackney, Christa
Sent: Wednesday, October 16, 2013 12:34 PM
To: mlt@hfsilp.com
Cc: sharon.ficquette@dhr.alabama.gov; lyn@safetynetacademy.org
Subject: Letter to MH
Attachments: Ltr to M Thompson (ADAP) 10 15 13.pdf

Please see attached.

Christa Hackney, LCSW
Senior Case Advocate
Alabama Disabilities Advocacy Program (ADAP)
The University of Alabama
Box 870395
Tuscaloosa, AL 35487-0395
205.348.3471 (direct)
205.348.4928 (main)
800.826.1675 (toll free)
205.348.3909 (fax)
chackney@adap.ua.edu
Web: www.adap.net
Satisfaction survey: <http://www.adap.net/satisfaction.html>

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EXHIBIT 8

CV-13-519

Mixson, Andrea

From: Mixson, Andrea
Sent: Thursday, October 17, 2013 2:40 PM
To: Martha Thompson (MThompson@huilaw.com)
Cc: sharon.ficquette@dhr.alabama.gov; 'Tucker, James (jtucker@adap.ua.edu)'; Slawkowski, Dave; lyn@safetynetacademy.org
Subject: Safety Net Access
Importance: High

Martha:

Thank you for your call this afternoon. ADAP will agree to meet with SafetyNet counsel, SafetyNet staff, DHR counsel, or any other representatives you and your client should delegate in your absence, no later than Monday, October 21, 2013 at the SafetyNet Minter Campus to: 1) discuss our federal access authority with you and 2) to be accorded access to monitor the SafetyNet Academy Moderate Program by 5:00PM on 10.21.2013.

We hope to hear from you soon.

Best Regards,
Andrea

Andrea J. Mixson, Staff Attorney
Alabama Disabilities Advocacy Program (ADAP) University of Alabama
526 Martha Parham West
Box 870395
Tuscaloosa, AL 35487-0395
205-348-7679
205-348-3909 (fax)
1-800-826-1675 (toll-free)

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