

PROTECTION & ADVOCACY 2019 Annual Report



DISABILITY LAW
COLORADO™

Protecting the rights of Coloradans of all ages since 1976



A Note on Our Work

Legal Services Director, Alison Butler



I think I begin every report by noting what a busy and successful year it has been, but there is a good reason why – it seems every year is busy and successful! Not to say that we have not experienced challenges or face on-going obstacles; of course, we have. The lucky thing for us is that we have a strong and passionate team and we work through issues in pursuit of better lives for our clients.

This year marked the 20th anniversary of the U.S. Supreme Court’s landmark decision in *Olmstead v. L.C.* In the ruling, the Court recognized that the Americans with Disabilities Act (ADA) establishes the right of individuals with disabilities to be integrated into the community as much as possible, and not be forced into unnecessary segregation. The *Olmstead* ruling and the principles upon which it is built are truly at the heart of the work of the Protection & Advocacy System. We work daily to ensure that people with disabilities live, work, play and receive services in integrated settings, alongside the broader community, free of abuse, neglect and rights violations. Pursuing this goal comes in various forms and the pages that follow talk about a few highlights from the last year.

This report is just a glimpse of the work we have done; many other clients are served every day. It is also important to note that all our work is done as a team – with many of our team members operating behind the scenes. We could not present the following victories without the support of administrative staff, volunteers and outside collaborators.

“Believe you can and you’re halfway there.”

Theodore Roosevelt

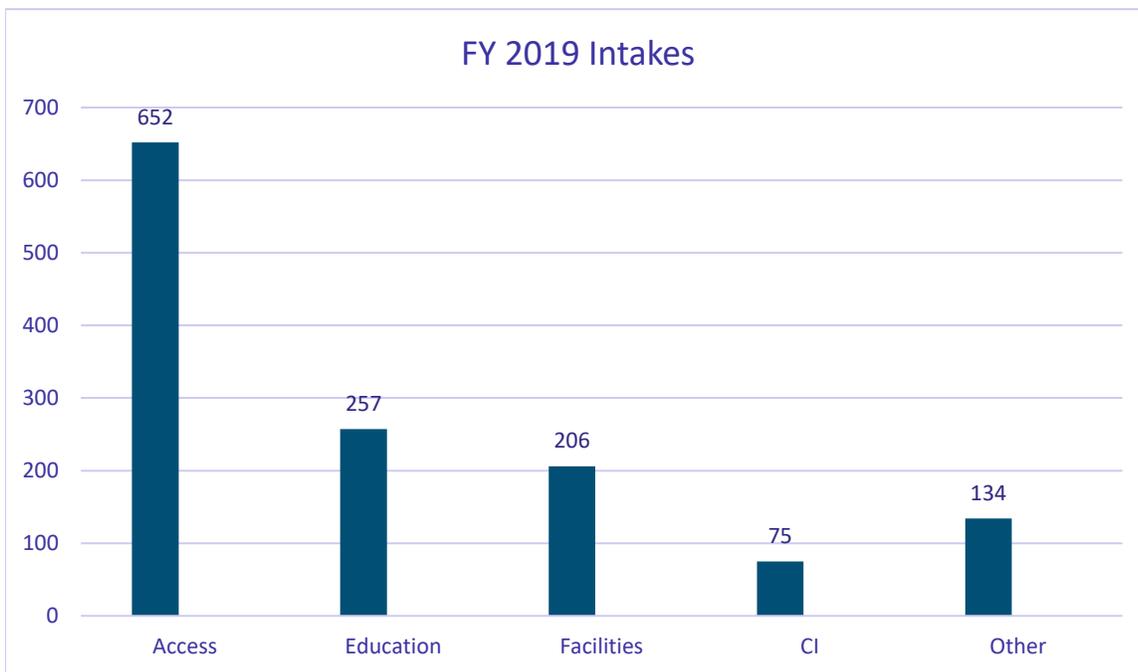


Original artwork from residents at Colorado Mental Health Institute at Pueblo

INTAKE TEAM



One of the most important jobs for the Protection & Advocacy System is done by our Intake Team. The Intake Team works with all the callers who contact Disability Law Colorado looking for a solution to their disability-related legal problem. They gather relevant information, provide self-advocacy assistance and work directly with the lawyers and advocates on cases. These ladies are the front lines for the important work of the Protection & Advocacy System.



In addition to the 1,324 intakes conducted, the Intake Team fielded an additional 1,744 calls, providing high quality information and referral services and responded to an average of 25-30 web submissions per week.

FACILITIES TEAM



The Facilities Team works with individuals with all types of disabilities who reside in a variety of facilities, including jails, prisons, regional centers, nursing homes and others. They conduct investigations, provide individual representation and participate in systemic litigation to ensure that individuals are free from abuse, neglect and rights violations. Here are a few examples of their successes over the last year:

The Facilities Team has continued to devote substantial time and attention to CMHIP (Colorado Mental Health Institute at Pueblo) on issues directly impacting the lives of residents at the institution. For example, in December, Meghan presented a training for CMHIP staff on patients' rights and *Olmstead* as part of the Facilities Team's ongoing engagement with leadership at CMHIP to improve progression and patient care. CMHIP administration has also invited Meghan and Liz to present at an executive level on recommendations for improving outcomes for court involved residents, specifically those committed to the institution after a finding of not guilty by reason of insanity. Additionally, the Team works with individual clients at the facility and meets monthly with administration to address systemic issues.

The Team began monitoring the GEO Aurora Immigration Detention Facility during the past year. The Team has worked directly with detainees, as well as developing relationships with stakeholder groups and federal and institution level decision makers at ICE and GEO. These collaborations have allowed the Team significant access to the facility and at least one detainee was released from the detention center after the Team raised concerns over the detainee's conditions of confinement.

For nearly a decade, the Team has been working on the "Jail Wait" case. In this case, Disability Law Colorado, led by Mark and Jenn and in conjunction with a

team of fabulous volunteer attorneys, has pursued claims against the Colorado Department of Human Services (CDHS) for failing to timely evaluate and provide restoration treatment to individuals in the criminal justice system for whom competency has been raised. After re-opening the case for a second time, the Team was able to settle the case in April, including on-going court oversight, the appointment of experts to monitor compliance, clear timelines for evaluation and admission to CMHIP, and imposition of fines for CDHS' failure to comply. The agreement has already resulted in multi-million-dollar fines and the parties are working on putting the fines to good use, likely including providing much-needed supported housing for class members.

The Team rounds out its work by spending time providing technical assistance to attorneys' in other organizations whose work compliments that of Disability Law Colorado. Such organizations include the Colorado Public Defender's Office, RMIAN (Rocky Mountain Immigrant Advocacy Network) and the Colorado Lawyers' Committee. The Team is happy to work with partners to expand the reach of legal support to individuals with disabilities living in institutions throughout Colorado.



COMMUNITY INTEGRATION TEAM



The Community Integration Team works to ensure that individuals with disabilities in Colorado do not face unnecessary obstacles to staying in or returning to the community. The Team's work includes representation of individuals who have lost their necessary supports or services in the community, threatening to force them into institutionalization, systemic work to address state-wide laws, regulations or policies that impact the population, and investigations of abuse and neglect. Here is some of their best work from this year:

Disability Law Colorado was contacted in the Spring of 2019 regarding a child with significant, though not life-threatening, disabilities who was being considered for withdrawal of life-sustaining medication, nutrition, and hydration. The pre-teen was set to die based on a plan devised by the child's parent and a local hospice following hospitalization for a treatable condition. Hospital staff approached one of the child's parents and discussed pursuing withdrawal of medication the child had taken for years, along with withdrawal of nutrition and water, in order to hasten the child's death. The parent sought the opinion of the hospital's ethics committee and, in an admittedly rushed process, the ethics committee determined that such action would not be unethical. It is worth noting that the ethics committee did not include both parents, current treatment providers or other interested parties and the process appears to have followed the appropriate process. The Team learned of this situation and immediately launched an investigation, ultimately finding that the child was not afforded due process in the decision to hasten the end of life. Other Team members have now filed to intervene in a related court case to ensure the child's right to live is protected.

Last year welcomed our new Protection & Advocacy program – the Representative Payee program. Under this new grant, the Team receives referrals from the Social Security administration to conduct financial investigations of Representative Payees to ensure that they are acting in accordance with their duties as an appointed financial holder for individuals with disabilities who receive Social Security benefits. This is an exciting new program, allowing us to visit and monitor Representative Payees across the state. We have hired two investigators and they are quickly become a part of the overall Protection & Advocacy programs, helping on all types of investigations, as time allows.

Last fall, the Team released a report, *Quest for Equal Pay for Equal Work*, exposing the practice of paying people with disabilities subminimum wage. The report highlighted the benefits of competitive integrated employment for individual workers and the community at large. Building off the success of this report, the Team began working with The Arc of Colorado, The Alliance and a group of stakeholders to propose legislation to end subminimum wage in the 2020 legislative session. The group has been meeting since the summer and are on the verge of finalizing a proposal and working with legislators to support a transition out of subminimum wage and into competitive integrated employment.

The Team has been working with two brothers with physical disabilities who live in the same nursing home and seek to move into an apartment in the community together. One of the brothers initially tried to self-refer for the transition program in Colorado but was told he needed a referral from the nursing home. The program specifically allows self-referral, so the Team stepped in to assist with the referral, and with ensuring both brothers' enrollment date was appropriate. After over a year of waiting for a transition coordinator, we were just notified that both brothers have been assigned a Transition Coordinator to help aid in their transition to the community. This is a huge step in the right direction that came about due to the Team's intervention in the situation. The Team will continue to work with the brothers and work on the overall system to ensure others are not stuck in this void.

ACCESS TEAM



The Access Team is our largest team covering many areas of the law. The Team works to remedy discrimination and rights violations against people with disabilities in the workplace, housing and public accommodations. The Team also includes our VOTE! Program, which works to ensure that all people with disabilities have access to the polls to make their vote count. Because the work is so broad, the Team tries to take on cases that affect not just the complainant, but also have underlying systemic issues. Here are a few amazing examples:

The Team worked with a persistent and determined individual who, in 1994 suffered a traumatic brain injury. Thereafter, the individual took charge of her health and her future and attended cognitive retraining programs and initiated services with the Division of Vocational Rehabilitation (DVR). Fast forward 25 years to when Olivia responded to the individual's concerns that her newest venture with DVR was halted due to disagreement regarding her vocational aspirations. The individual was determined to attend college to become a sign language interpreter. This goal was met with skepticism by DVR, who expressed doubts regarding the individual's ability to successfully complete the necessary coursework due to her disability. Disability Law Colorado jumped in and advocated for the individual to have the opportunity to demonstrate her capability to attend college. Based on the Team's intervention, the individual is currently attending her third semester at Colorado Mesa University and working toward her goal of becoming a sign language interpreter!



The Team received a call from a parent of a minor child with disabilities who received a notice that they would be evicted if the child caused more disturbances in the housing unit due to the child's disability. Despite the parent's efforts to prevent or minimize the child's behaviors through therapy, medication and other services, the behaviors continued in an unpredictable manner, even requiring

police involvement on one occasion. The Team immediately stepped in to assist the family in requesting a reasonable accommodation in order to halt an eviction. Due to on-going issues with the child's disabilities and behaviors, the landlord continued to threaten eviction. Recognizing that having an eviction on their record would impede the family's ability to obtain stable housing, the Team stepped in to negotiate a mutual rescission of the lease, allowing the family several weeks to move and set up stable housing for the child to return to after receiving out of home treatment.

A veteran with related mental health disabilities contacted the Team because her landlord was refusing to grant her request to have a service animal in her home. The veteran had provided the necessary documentation, but the landlord was refusing because the animal was a puppy, who was a service animal in training. Colorado state law specifically protects service animals in training, so the Team provided the veteran the necessary legal resources so she could give it to her landlord as a self-advocate. Once the landlord received this information, he granted the veteran's reasonable accommodation request to have the service animal in training with her in her home.

The Team worked with a husband and wife who were denied services at a midwifery practice where the CEO had instituted a blanket policy that the practice could not serve Deaf patients or their companions. The Team attempted to remedy the situation but was ultimately forced to file a complaint of discrimination with the Colorado Civil Rights Division (CCRD). The CCRD found that the practice had discriminated against the clients based on disability and the case is now with an Administrative Law Judge.

The Team assisted a client who was working with a counselor at DVR, but who had seen no progress on her case in over 10 months. With the Team's assistance, DVR finalized the client's employment plan, scheduled her for related and necessary eye care and hearing aid appointments and provided her a laptop. However, during this process, the counselor refused to fund the client's textbooks, so the Team initiated an appeal to the Supervisor I. The Supervisor overturned the counselor's refusal and granted the client's request for textbooks. The client is now attending college, with all necessary supports and services, and looks forward to obtaining employment following graduation.

EDUCATION TEAM



The Education Team works on all legal issues relating to the education of children with disabilities from birth to 21 in Colorado. The Team's work includes representation of children through the IDEA (Individuals with Disabilities Education Act) and Section 504 processes, investigations of abuse and neglect of students, including allegations of improper seclusion and restraint, and broad systemic efforts to effectuate policy changes district or state- wide. The Team has been busy over the last year, including:

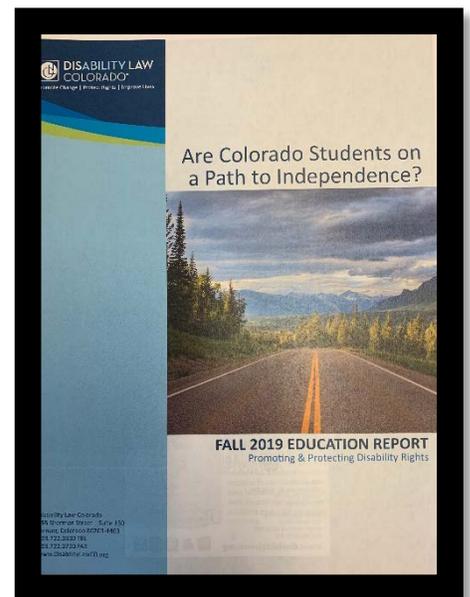
The Team was contacted by the mother of a student with physical disabilities who was homeschooling her child. To encourage inclusion with typically-developing peers, the mother attempted to enroll her child in a homeschool enrichment program. Unfortunately, a staff member at the program made assumptions about the child's disability and used those assumptions to deny the child admittance to the program. The Team stepped in to assist and filed a disability discrimination complaint with the Office of Civil Rights. The school district's attorney agreed to negotiate and the parties reached a settlement agreement requiring policy changes, training, and a stipulation to allow the child into the program. The district further agreed to provide enrollment data to Disability Law Colorado, allowing us to monitor the enrollment of children with disabilities into the program for the Fall 2019 and Spring 2020 semester.

Two years ago, the Team was alerted to a new school for students with disabilities that opened in an old prison with little work done to make the building look or feel like a school. After many open records requests and obtaining a new client, we finally had enough information to file a systemic complaint against the day treatment program itself, as well as every district placing students there, and the Colorado Department of Education (CDE). We filed the complaint with OCR in November of 2018, and when we agreed to drop charges against districts who

removed their students in favor of more appropriate placements, districts immediately began removing students. Over the course of OCR's investigation, we continued to do our own investigation and found that CDE had monitored the day treatment program and found violations of the law, leading to a revocation of the school's status as an approved facility school. We further learned that as of February 2019, the program ceased operations. This was a great win because children in northeast Colorado will no longer be sent to a segregated day treatment program located in an old prison, and districts are instead pressured to find services in more inclusive and appropriate environments.

The Team was alerted that a large school district in Colorado had improper and concerning policies related to service animals. We contacted and worked with the school district's attorney to address our concerns with the policies and approve policy revisions. We are confident the new policies better accord with the law and protect the rights of students, parents, and other members of the public who wish to attend events hosted by or at the district's facilities.

Over the course of the last 18 months, the Team has been visiting and monitoring schools throughout the state of Colorado to evaluate their conformity with laws regarding students with disabilities, specifically regarding providing transition services and the use of assistive technology. What we found was that schools did not consistently know about transition services available through DVR. Failing to involve DVR in a student's transition plan makes it significantly less likely that the student will go on to college or competitive integrated employment. Moreover, schools seemed to under-use and under-report assistive technology devices. Again, these devices can be a significant help for a student transitioning out of high school. The report focuses on how to resolve these issues through training and better collaboration and the Team has agreed to facilitate such efforts. Stay tuned to hear about better transition plans in the future. View the report on our website!



OTHER IMPORTANT WORK

In addition to the work outlined above, the Protection & Advocacy Teams spend significant time working on other important tasks that further the mission of Disability Law Colorado to protect and promote the rights of people with disabilities in Colorado. Below are some examples of other types of work we undertake.

LEGISLATION

One area that the Protection & Advocacy staff has really increased in recent years is working with the legislature. For us, changing laws that impact people with disabilities is the ultimate way to affect systemic change. In just the last few years we have been able to create new laws, improve proposed changes in laws and kill proposed laws that would negatively impact people with disabilities.

In the 2019 legislative session, we had staff from all teams involved in various bills. Staff members reviewed laws, spoke with stakeholders, educated legislators and publicly testified about the impact of various bills. One bill that we spent substantial time on this year was Senate Bill 223. SB 223 proposed key changes to the competency system for individuals in the criminal justice system. The bill built off the Jail Wait litigation's Consent Decree, essentially codifying many of the gains the Jail Wait Team made into statute so that people with disabilities in jail awaiting competency proceedings would be protected for years to come. It was a long, tough battle to gain consensus on the bill, but Disability Law Colorado staff hung in there until the end, resulting in what the court expert, Neil Gowensmith, called "the most significant piece of forensic mental health legislation in Colorado in years."

The P & A teams also worked hard on legislation regarding access to voting, housing reforms, issues regarding guardianship, ensuring free training for parents of school-aged children with disabilities, and many more.



"[SB 223] was the most significant piece of forensic mental health legislation in years."

Neil Gowensmith, Special Master

TRAININGS & INFORMATIONAL RESOURCES

Another important area for the P & A teams is to provide educational presentations and materials for stakeholders to allow broader access to people across the state and to empower people with disabilities the ability to self-advocate. Each year, we hand out dozens of resource packets, fact sheets and tips to community members and this past year was no exception. Some of the areas on which we provided resources include:

- Attorneys from our Access Team went on a multi-day road trip to provide training on service and emotional support animals in Alamosa, Durango, and Grand Junction. The trainings were well-attended, and we were even interviewed about the trainings for a local news station in Grand Junction.
- In coordination with our sister organization in Washington's video advocacy project, Rooted in Rights, we participated in creating two videos – one explaining reasonable accommodations in housing and the other explaining rights of people with disabilities under *Olmstead*. This was a great chance to collaborate with other P&As throughout the country in order to create resources for individuals seeking tools to assist with self-advocacy.
- Our Grand Junction staff responded to local concerns by creating and training community members on Social Security and Social Security Disability issues. Not only did this help train many people, but it also helped the local community better understand our services and the trainings led to an increase in clients for our Grand Junction office.
- Attorneys from all our teams were trained and volunteered to answer phones at the Election Protection Call Center on election day. This nonpartisan hotline provides information to callers to ensure they can vote in the election.
- Following in the footsteps of our former Legal Services Director, our Education Team attorneys again participated in three free trainings for parents of school-aged children with disabilities. The conferences, called Parents Encouraging Parents (PEP) are put on by the Colorado Department of Education and Disability Law Colorado has been participating for nearly 40 years.
- Our Community Integration Team attorneys jumped at the chance this year to train several service providers on the benefits of supported decision-making for individuals with disabilities.

COMMITTEES AND TASK FORCES

We cannot do this important work on our own – there is strength in numbers! To leverage that strength, members of the Protection & Advocacy Teams work on various committees that further the mission of Disability Law Colorado. Here are the committees we participated in on in the last year include:

- AT Partners (Emily, Chair)
- Behavioral Health Task Force, Long Term Competency Subcommittee (Alison, Co-Chair)
- CANDO (Mary Anne)
- Colorado Transitions Advisory Council (Emily)
- Colorado Bar Association, Disability Law Section (Jenn, Vice Chair)
- Colorado Department of Education Alternative Dispute Resolution Committee (Jennifer)
- Colorado Department of Education Remedies Subgroup (Alison)
- Colorado Developmental Disabilities Council (David)
- Colorado Nonprofit Association (Mary Anne)
- Denver DA Advisory Council on Mental Health (Mark)
- Denver Election Protection Committee (Jennifer)
- Diversity Community of Practice workgroup (Olivia)
- Human Rights Committee Workgroup (Liz)
- JFK Advisory Council (Alison)
- Just Vote Election Protection (Jennifer)
- Juvenile Justice Roundtable (Meghan)
- Mindsource TBI Advisory Board (Anna)
- National Disability Rights Network Board of Directors (Mary Anne)
- Secretary of State's Bipartisan Election Advisory Commission (Jennifer)
- State Rehabilitation Council (Anna)
- Subminimum Wage Stakeholders Group (Alison)
- The Children and Youth Mental Health Treatment Act Advisory Council (Mark)
- The Colorado Lawyers Committee Election Protection Committee (Jennifer)
- The Colorado Lawyer's Committee Foster Care Subcommittee (Meghan)
- The Colorado Lawyers Committee Jail Wait Litigation Team (Mark & Jenn)

PROTECTION & ADVOCACY TEAMS

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