

# Protection & Advocacy System Programs



Staff Attorney, Emily Harvey gives a “thumbs up” with client Bobby.

## **2018 ANNUAL REPORT** Promoting & Protecting Disability Rights

# A NOTE FROM DIRECTOR OF LEGAL SERVICES, ALISON L. BUTLER

It has been a tremendous year for the protection & advocacy staff. We have enjoyed victories for individual clients, across systems and legislatively. We have been recognized as experts in the media and stood our ground in litigation against the “big guns.” We have also seen abuses against people in facilities, heard about rights violations that we could not cure and listened to providers deny necessary services to our clients. We have witnessed the good and bad and, like we have done for the past 41 years, we have decided to stand our ground and fight for the rights of people with disabilities.



This report gives a brief overview of the work done over the last year by P & A staff. It describes efforts that oftentimes have been years in the making. It gives a sense of the many different avenues that P & A staff use to help ensure equal access and fundamental choice for people with disabilities. It also includes some fun pictures, evidencing that our staff both works hard and plays hard. We really have quite a team.

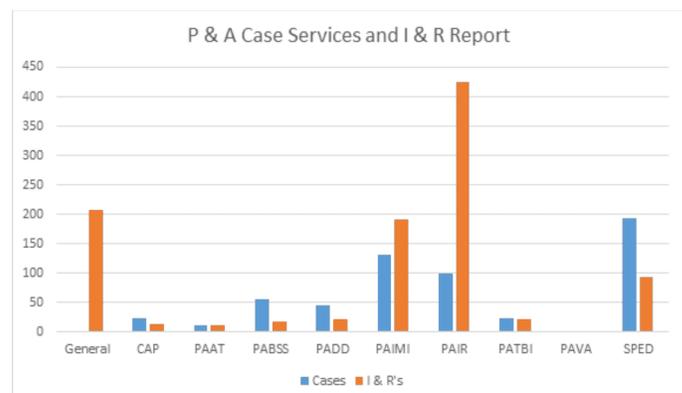
This has been a difficult year for me personally in many, many ways. But one bright light for me is working at Disability Law Colorado. Knowing that literally every day I can come to work and make progress to help ensure equality and choice and independence for people with disabilities kept me going. Knowing that I would see Dolly's smiling face and hear Kaytie's chipper voice as I entered the door energized me. To hear the excitement in the voices of staff as they described the cases they want to take on has been music to my ears. And to know that I have the support of our fearless leader, Mary Anne, every step of the way allows me to move ahead with confidence. I am incredibly grateful to serve alongside my amazing colleagues and know that you will enjoy reading about some of the few highlights from the last year.

## A LOOK BACK AT FISCAL YEAR 2018

What a year! We have been working on many systemic activities, but always make time to work on individual cases and issues, as well. There are far too many accomplishments and accolades to list everything, but here are a few highlights:

### *Statistics on Information & Referrals and Case Work*

We take our mission seriously and work hard to ensure that we are always looking at ways to empower individuals to advocate for themselves. This is a vital role of our Intake Team, who spend much of their time listening to individuals and providing them valuable information and resources so that they can protect their rights themselves. Intake Specialists also determine if a person needs further intervention from an attorney or advocate for their case. This is not an easy job –our front desk staff and Intake Specialists on are on the front line. Here are a few of their key statistics. In addition to over 3,000 calls and conducting over 1,000 intakes, staff from all teams contributed to the following statistics broken out by federal grant:



- **CAP (Client Assistance Program)** continued to advocate with individuals with disabilities navigating the Division of Vocational Rehabilitation through 24 cases and 14 I & R's.
- **PAAT (Protection & Advocacy for Assistive Technology)** worked across teams to assist individuals with disabilities who have trouble with assistive technology devices on 12 cases and 11 I & R's.
- **PABSS (Protection & Advocacy for Beneficiaries of Social Security)** advocated for individuals with disabilities wanting to return to the workforce in 56 cases and 17 I & R's.
- **PADD (Protection & Advocacy for individuals with Developmental Disabilities)** had 45 case services and 22 I & R's on issues ranging from Medicaid services, requests to get out of institutions to abuse and neglect in facilities.
- **PAIMI (Protection & Advocacy for Individuals with Mental Illness)** worked on a tremendous number of cases for individuals with mental illness in facilities and in the community, handling 131 cases and 191 I & R's.
- **PAIR (Protection & Advocacy for Individual Rights)** had significantly more cases this year with 100 cases and 425 I & R's. The Access Team worked on most PAIR issues, including housing and employment discrimination and access to public accommodations and many cases regarding service and assistance animals.
- **PATBI (Protection & Advocacy for Traumatic Brain Injury)** handled more than three times as many cases as last year for individuals with traumatic brain injuries with 23 and more than twice as many I & R's with 21.
- **PAVA (Protection & Advocacy for Voting Access)** focuses primarily on training and systemic work, but helped in 2 individual cases, as well.
- **SPED (Special Education)** had 193 cases and 93 I & R's covering issues from failure to provide meaningful inclusion or education in the least restrictive environment to unlawful restraint and seclusion.



We served clients aged 2 to 90 in 51 of Colorado's 64 counties. 39% of our cases were from rural areas, while 61% were in urban settings.

**Total of 794 Information & Referrals**  
**Total of 586 Case Services**

# COMMUNITY INTEGRATION TEAM

Community integration is at the core of our value system. We believe that everyone should be able to live in the community with the services and supports. Our Community Integration Team fights to make sure that happens. Here are a few of the team's successes:

**Moving Toward Independence** - Disability Law Colorado was notified that a 19-year-old with disabilities was residing in a nursing home after a stay in Children's Hospital because his foster father had dropped out of the picture while he was at Children's. The state had advised his team to move forward with transitioning him to a host home, but the team still felt uneasy because he did not have a guardian and had not verbally expressed a desire to move out of the nursing home. Disability Law Colorado wrote a letter to his team supporting their decision to move forward with transition despite this, and the team was grateful to have our support behind them in moving forward.

**You Need to Get Them Out** - In November of 2016, Disability Law Colorado filed a complaint with the Department of Justice alleging that the State of Colorado is violating its obligation to provide services to people with disabilities in the least restrictive environment, in accordance with *Olmstead v. L.C.*, by ineffectively running a program called Colorado Choice Transitions. The State relies heavily on the Colorado Choice Transition Program as evidence that it is complying with *Olmstead*, but there are pockets of the state that do not have providers to allow the process to work. Furthermore, even when the services do exist, they are inconsistent and often very delayed. Finally, in 2018, we were contact by the Department of Justice and this week they are visiting Colorado to gather more information in hopes of launching a statewide investigation into the failure of the CCT program in Colorado. Stay tuned!

**A Place to Call Home** - Disability Law Colorado has been working with an individual in his 50's for almost two years, trying to help him move out of a nursing home and into a host home through the Colorado Choice Transitions Program. There have been many roadblocks along the way, including family members who oppose transition, nursing home staff opposing transition, and the unavailability of a transition coordinator for a long period of time, but we have stuck by his side throughout. Happily, just last week, he was able to leave the nursing home and move into a host home of his choosing. He now has a Bronco's themed room (per his request) and is already enjoying eating new foods and taking outings in the community.



## **Continued Benefits for an Undocumented Person with**

**Disabilities** – DLC staff was alerted by another advocacy organization about a man with significant I/DD who had been in the foster care system for many years and eventually aged out. He was now living in a host home and the state sent notice to the host home that they were going to stop paying for his housing and care. The host home was unable to provide care without receiving resources from the state. Disability Law Colorado staff went to the Medicaid hearing and made many arguments about why the man should continue receiving Medicaid funds, but due to his status being in the country without documentation, we did not have a successful legal argument. However, DLC staff did not stop there. DLC worked with individuals in the state to convince them of the moral merits of the case and the state agreed to stoop pursuing the case legally. We have received assurances from Health Care Policy & Finance (HCPF) that they will not pursue the case.

# FACILITIES TEAM

One reality for people with disabilities is that they may end up living in a facility at some point in their lives. While we fight to ensure that people are not forced into such situations, we also work from the inside to ensure that people with disabilities living in facilities are free from abuse, neglect and other rights violations. This is the foundation of the protection and advocacy system and we take it seriously. Here are examples of some of the team's best work:

**Let's Look at What's Happening** - Over the past few months, the team has monitored several facilities throughout Colorado using access authority granted to Protection & Advocacy agencies by federal law. In visiting these facilities, staff looked to determine whether residents and individuals served by the facilities received appropriate treatment, were free from abuse and neglect, and had their rights respected. Facilities monitored include regional centers, mental health hospitals, youth corrections centers, day treatment programs, and residential child care facilities. This monitoring uncovered several problem areas that the Facilities Team intends to further review, including residing in the least restrictive environment, receiving appropriate mental health treatment, and providing adequate educational services for youth with disabilities.



**Continuing the Fight Over the Jail Wait Litigation** – Our staff has been working for more than seven years on the issue of people who are incarcerated and awaiting competency evaluations or restoration treatment languishing in jails. We joined a coalition (the “Jail Wait Team”) and served as plaintiff in a lawsuit against the Colorado Department of Human Services. In 2012, the parties reached a settlement, securing protections and decreased wait times for people awaiting evaluations. Unfortunately, in 2015 we found that CDHS had violated the settlement agreement and another lawsuit was initiated. Again, we were able to reach a settlement in 2016; however, during our on-going monitoring, we found concerning issues that have led to wait times being extended yet again and were forced to move to re-open the case after negotiations to remedy the situation failed. This is breaking news as the hearing on the cross motions for summary judgement will be heard in federal court tomorrow – September 28th. Stay tuned, but rest assured that our team's dogged determination will not stop until no person with severe mental illness is made to languish in jail without proper treatment.

**Let Me Out of Here** – Our staff got a complaint from a mother asking for our assistance for her son who has Intellectual and Developmental Disabilities, a mental health diagnosis and a spinal condition that requires a wheel chair for mobility. Her son was in a county jail on minor charges, waiting to be transferred to the Colorado Mental Health Institute at Pueblo for a competency evaluation. Though the charges were minor, the son could not meet the bond's conditions for release, so he remained in jail. Disability Law Colorado staff contacted the public defender on the case, informing him that due to the State's failure to timely admit patients to CMHIP, his client could be sitting in jail for several months. Our staff then acted, working with the client's mother to find a suitable host home employing proper supervision. Our staff also obtained a letter from her son's psychiatrist describing his progress with a new treatment plan and medication. This information was given to the public defender, who successfully convinced the court to release the client to the host home, while continuing the charges indefinitely.

# ACCESS TEAM

The Access Team receives the most calls and works hard to fight for individuals with disabilities having equal access to . . . well, the world! The team works on issues from employment rights, to housing discrimination and access to public accommodations. Here are some recent successes:

**A Solution for Children with Diabetes in Day Care – Finally!** – In 2013, our staff filed a complaint with the U.S. Department of Justice charging that La Petite Daycare discriminated against our client – and all other children with diabetes – by failing to provide reasonable accommodations and care necessary to treat diabetes. The DOJ began investigating in 2014, but it wasn't until this year that a nationwide settlement was finally reached. The Settlement Agreement requires that day care staff provide proper care, including testing and insulin, for all children needing such care. Additionally, since our client was now well into elementary school and could no longer benefit from the injunctive changes in the Agreement, the settlement provided her a \$10,000 payment to help compensate her and her family.

**Proper Treatment for a Budding Doctor** - A client with significant physical and related mental health issues contacted us because she was in the process of being dismissed from her medical school program. Due to her disabilities, she requested a leave of absence - an accommodation easily approved through the school's policy manual. She was granted her requested leave, however, while she was on "leave," she was required to complete course work, tests, and meet deadlines - essentially removing any benefit the leave would have provided had it been treated as "leave." Disability Law Colorado staff sent a demand letter to the medical school explaining that by not providing our client with a true medical leave during the last year, they had failed to accommodate her in violation of the Americans with Disabilities Act. Additionally, we requested a true year of leave for our client to rest and recuperate so that she could return to school after her leave. The school saw the error of its ways, granted the leave and rescinded the threatened dismissal from the program.

**But I Don't Speak Your Language** – A Deaf Client contacted Disability Law Colorado because he had been denied a sign language interpreter for a job interview. Unable to communicate with the potential employer, the client was forced to withdraw his application. Disability Law Colorado staff filed a complaint with the Colorado Civil Rights Division alleging disability discrimination for denying a reasonable accommodation of a sign language interpreter. After an unsuccessful mediation with the Colorado Civil Rights Division, our staff was able to negotiate a favorable settlement on behalf of the client, including monetary damages and a press release - [www.disabilitylawco.org/news](http://www.disabilitylawco.org/news)

**At Last – A Red Rocks Concert Season Everyone Can Enjoy** - After over a year of litigating and negotiations, our staff, together with the Civil Rights Education and Enforcement Center (CREEC) and the Colorado Cross Disability Coalition (CCDC), reached a resolution with the City of Denver in the class action suit regarding physical accessibility at Red Rocks. While little can be done to increase physical accessibility at the City's historic amphitheater, the lawsuit charged the City with failing to ensure that the few accessible seats that exist were being bought and used by people requiring accessibility features. The settlement requires vast changes in the sale of tickets and enforcement of policies at the famous venue. Monitoring compliance with the Agreement will continue for two years, but most reports from the summer concert season were positive.



**I Need My Dog!** - A young woman with a mental health disability contacted Disability Law Colorado in July of 2017, explaining that her landlord would not allow her to have an emotional support animal. She had experienced a traumatic event in her home that led to PTSD and wanted an animal to help her feel safe and mitigate the effects of her PTSD. Disability Law Colorado wrote a letter to the landlord explaining the law, and that they needed to allow our client to have an emotional support animal. Following receipt of our letter, the landlord contacted our client and told her she would be allowed to have an emotional support animal. The landlord initially tried to put size and weight restrictions on this animal, but Disability Law Colorado explained that these restrictions were not allowed. The landlord acquiesced, and our client was able to get an emotional support animal that made her feel safe in her housing.

**I Can Vote!** - Protection & Advocacy staff worked with Disability Law Colorado's Long-Term Care Ombudsman on several issues affecting voters in facilities where residents' voting rights were affected by signature match issues and other issues related to capacity limitations. Together we were able to provide outreach and education to the directors of nursing homes and assisted living residences, as well as the Colorado Department of Human Services so that the voters of all ages living in facilities were not disenfranchised.

## EDUCATION TEAM

Though the federal government does not provide the protection and advocacy system any specific funds to advocate on behalf of children with disabilities in school, such advocacy has always been at the heart of Disability Law Colorado. We recognize that inclusion and meaningful integration in school sets young people up to be more successful as independent adults. Here are some examples of the team's great work:

**A Rare Win for Parents in Due Process** – Our Grand Junction staff scored a rare win for parents this spring. The case involved a student who had significant learning disabilities, but high aspirations of attending college. To follow his dream, he needed to take two years of a foreign language. Unfortunately, the district offered few choices and were not willing to accommodate the student's disability-related needs. The student's mother filed a complaint with the Colorado Department of Education and won! However, the school district immediately hired an attorney and filed a due process complaint with the Office of Administrative Courts and refused to implement the remedies required by the complaint's officer. We stepped in to represent the parent (and student), culminating in a two-day administrative court hearing. Despite school districts winning 87% of all such hearings, our GJ staff secured a win for the parents, forcing the school district to accommodate the student's needs.



**What's Really Going on Out There** – Staff undertook a statewide monitoring project this year, visiting 17 schools in districts throughout Colorado. We toured schools, spoke to staff, administrators and students and reviewed documents. Through these efforts, we found a trend regarding the underutilization of transition services through the Division of Vocational Rehabilitation for students on Individualized Education Programs (IEPs). We are now finalizing a public report that will be circulated to every school district in the state and to the Colorado Department of Education for further disbursement.

**Third Time's A Charm** - Clients initially contacted our office in November of 2016 with concerns about their son being sent home an hour early every day as a matter of school district policy, without any discussion regarding student's individual needs. Clients were also concerned about their son's placement at a segregated school for children with disabilities. Initially, we filed a complaint with the U.S. Department of Education, Office for Civil Rights (“OCR”) solely regarding the shortened school day issue and reached a Resolution Agreement between the District, the BOCES, and OCR. One component of the Agreement was that an IEP meeting would be held to determine if student was owed any compensatory services. We attended that meeting with clients and were disappointed with the services offered by the District/BOCES. At that time, we were also increasingly concerned about student's placement at the Day Treatment Center because of the physical space and seeming inability of staff to provide appropriate services for the student. We then filed a Due Process complaint with the Colorado Department of Education alleging a failure to provide a free appropriate public education and appropriate compensatory services in violation of federal law. We successfully mediated those issues, reaching a settlement agreement for the clients. However, once again, circumstances changed, and the student was not receiving all services as required by the settlement. We again represented the client to amend the settlement agreement through an addendum, so he would get all services to which he was entitled.

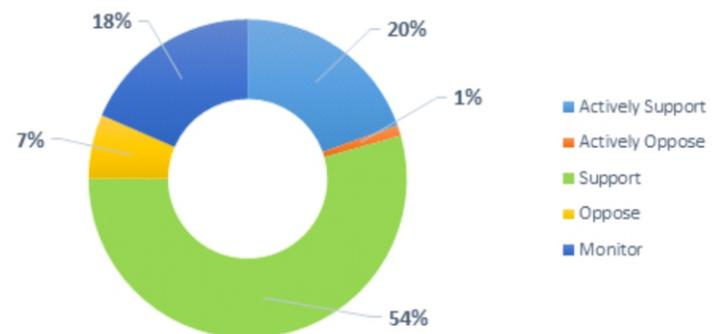
## LEGISLATION

What better way to help create systemic change than going straight to the source and affecting laws! That is precisely what Disability Law Colorado staff did once again this year. As an organization (including protection and advocacy programs as well as Older Americans programs), we reviewed and analyzed 99 bills, including contacting legislators or testifying in committee hearings regarding 19 of those bills. In many instances, legislators and other stakeholders contacted Disability Law Colorado to seek our assistance in passing legislation. Here are a few key highlights and a graph summarizing our efforts:



**Legislative Advocacy on the Federal Level:** In an exciting and somewhat unexpected development, this year our national organization, National Disability Rights Network, was able to secure funding for a new P & A program – the Protection & Advocacy for Representative Payee Beneficiaries. The program will conduct investigations into potential misuse of Social Security funds by individual and organizational representative payees. WE are grateful for this important new work.

2018 Legislative Bills



Additionally, our staff and many of our clients were involved in protests to stop the reduction of Medicaid benefits at the national level. Though none of our staff got arrested (can't say the same about our clients), we made sure that the disability voice was heard.

# TRAININGS & INFORMATIONAL RESOURCES

Since we cannot possibly reach every individual with a disability and those who provide services, we place a high value on providing training and informational resources to the community. Over the past year, we have addressed many issues from supported decision making, to service and assistance animals to special education protections. Here are a few examples:

**Training CDE on Restraint Investigations:** Following our success in the 2017 legislation session of getting stricter laws regarding restraints in schools, we were invited to train the new investigators at the Colorado Department of Education regarding best practices in investigating a claim of inappropriate restraint or seclusion.

**Is My Cat a Service Animal?** Emily Harvey was invited to present at the National Disability Rights Network's Annual Conference. She and an advocate from the Paralyzed Veterans of America trained nationwide attorneys and advocates in the protection and advocacy system on the nuances of service and assistance animals.

**Let's Vote!** Olivia Pilcher and Jennifer Levin have been busy all year training folks on their right to vote. These trainings occurred across the state and oftentimes included a partnership with other organizations to help get out the vote! One such collaboration took place with the Arc of Weld County, Envision (a Community Center Board) and the Clerk & Recorder of Weld County. The Clerk presented on the voting process, including signature verification, and Jennifer presented on legal rights. There was a machine for people to do mock voting, which included all the accommodations like sip and puff and toggles with raised buttons to indicate how to move the cursor on the screen. There were about 30 people who attended, including 15 people with disabilities. It proved to be a very useful few hours with lots of questions and hands-on activities.

**Let Us Tell You Who We Are** – Various Disability Law Colorado Staff presented around the state about Disability Law Colorado's services. We presented to community members, bar associations, service providers, disability advocates and schools from Durango to Steamboat, Grand Junction to Denver.

**Parents Encouraging Parents** – Each year for 35 years, the Colorado Department of Education has sponsored a program called Parents Encouraging Parents. It provides training and support for parents who are navigating the public school system with children with disabilities. Every year we present at the three state-wide conferences and last year was no exception. We presented in Breckenridge, Colorado Springs and Crested Butte to over 100 parents regarding their rights in the education arena. We also did smaller break-out sessions on hot topics, including restraint and seclusion, animals in school and private school reimbursement.

**Is This Animal Allowed Here?** – Responding to the overwhelming amount of calls and visits to our website, this year our Access Team devoted significant resources to educating the public on the rights of people with disabilities to have service and assistance animals. We created easy to read and carry informational cards and are in the midst of presenting trainings in Denver, Alamosa, Vail, Durango and Grand Junction.



# COMMITTEES AND TASK FORCES

To further our efforts to protect and promote the rights of people with disabilities statewide, our staff members serve on a wide variety of committees and task forces to be a voice for people with disabilities, including:

- AT Partners (Emily)
- CES Waiver Renewal Stakeholders Committee (Patrick)Colorado Choice Transitions Advisory Council (Meghan)
- Colorado Bar Association, Disability Law Section (Jenn, Vice Chair)
- Colorado Department of Education Alternative Dispute Resolution Committee (Jennifer Levin)
- Colorado Developmental Disabilities Council (Patrick)
- Colorado Lawyers Committee Election Protection Committee (Jennifer Levin)
- Colorado Nonprofit Association (Mary Anne)
- DD/SLS Waiver Renewal Stakeholders Committee (Patrick)
- Denver Bar Association's Access to Justice Committee (Shannon)
- Denver DA Advisory Council on Mental Health (Mark)
- Diversity Community of Practice workgroup (Patrick)
- Electronic Visit Verification Stakeholders Committee (Patrick and Emily)
- HCPF/OCL Advocates Communication Committee (Patrick)
- JFK Advisory Council (Alison)
- Mindsource TBI Advisory Board (Anna French)
- National Disability Rights Network Board of Directors (Mary Anne)
- State Rehabilitation Council (Anna French)
- The Children and Youth Mental Health Treatment Act Advisory Council (Mark)
- The Lawyers Committee Jail Wait Litigation Team (Mark & Jenn)
- Waiver Implementation Council (Patrick)

## OUR PROTECTION & ADVOCACY TEAMS

Mary Anne Harvey, Executive Director  
Alison L. Butler, Director of Legal Services

### Facilities Team

Meghan Baker  
Mark Ivandick  
Liz Kenny\*  
David Monroe  
Olivia Pilcher  
Jenn Purrington

### Access Team

Anna French  
Emily Harvey  
Shannon MacKenzie  
David Monroe  
Olivia Pilcher  
Jenn Purrington\*

### Intake Team

Kaytie Angeli  
Angie Garberding  
Emily Harvey\*  
Lynnsey Munroe  
Dolly Tarachand

### Administrative Team

Kaytie Angeli  
Julie Busby  
Anna Dubnikov  
Jim McBride  
Lynnsey Munroe  
Lisa Nares  
Dolly Tarachand

### Education Team

Emily Harvey  
Jennifer Levin\*  
David Monroe  
Olivia Pilcher

### Community Integration Team

J. Patrick Hackney\*  
Emily Harvey  
David Monroe  
Olivia Pilcher

### Volunteers

Fern Black  
Howard Hertzberg

\*Team Leaders