The Legal Center’s successful challenge of Cherry Creek School District drives systemic change throughout the state

In September 2010, The Legal Center was contacted by a distraught mother whose child’s school placement was being changed following an episode of difficult and disruptive behavior. The mother was justifiably angry that her son’s school failed to follow the law by limiting her full participation in his “manifestation determination review.”

The Individuals with Disabilities Education Act (IDEA) provides that all children with disabilities have a right to a free appropriate public education, including children who are suspended or expelled. The IDEA has specific procedures for school administrators to follow when disciplining children with disabilities. These procedures balance the need to keep schools safe with the right of children with disabilities to receive an education. There is a process to determine if a student’s misconduct is a manifestation of his or her disability, and this prevents children from being punished for “misbehavior” that is related to their disability. The manifestation determination is made by a group that includes the child’s parent and the relevant members of the child’s Individualized Education Program (IEP) team. The group meeting is not a hearing and The Legal Center believes it is intended to be collaborative and non-adversarial, with participants focused on the child’s best interests.

After studying all the facts in this case, Elizabeth Collard, an attorney/investigator in The Legal Center’s Special Education Program, was convinced that the school had acted improperly. The case was undeniably complex, as the boy had serious disabilities, the school had acted improperly, and the law is clear that the manifestation review should have included his parent. The law also states that parents be allowed to select other representatives from their child’s IEP team. This was not done.

The Legal Center filed a state complaint against Cherry Creek School District with the Colorado Department of Education (CDE) and we are pleased to report that in January we received a decision in our client’s favor. The state complaints officer found that the district violated the IDEA and significantly impeded the parent’s opportunity to participate in the child’s manifestation determination review.

The state complaints officer also found that the district’s discipline policies were defective as they did not use the manifestation determination language that the manifestation determination team is selected “as determined by the parent and the LEA” (local education agency), did not advise the parent orally or in writing of the district/school IEP team members who would be attending the meeting, and did not notify the parent orally or in writing of her right to invite relevant members of the child’s IEP Team.

The district and the parent disagree on whether the school provided the mother with the Colorado Department of Education’s Procedural Safeguards Notice, but even if they did, this would not have supplied her with adequate notice concerning the IEP team members from the district/school who would be attending the meeting. Since the mother did not have this information, she could not make an informed decision as to whether the relevant IEP Team members who should attend the meeting.

Finally, the state complaints officer

With the help of The Legal Center a determined deaf student pursues her dreams

Rachella Ortiz on graduation day. Congratulations, Rachella!

Back in Spring 2009, we introduced you to two college students from Metropolitan State College of Denver who were pursuing degrees in special education, hoping to become teachers. These two students sought the assistance of The Legal Center when they learned that the college intended not to recommend them for teacher licensure – even if they met all the academic requirements – because the students were deaf. The college argued that being deaf meant that they could not pass the standards set for teachers by the Colorado Department of Education. Failure of the students to get this recommendation meant that they would be unable to become teachers in Colorado. The Legal Center gladly stepped in to help.

As we told you in 2009, The Legal Center attempted unsuccessfully to remedy the situation through informal negotiations, and was eventually forced to file a complaint with the U.S. Department of Education Office for Civil Rights. We also contacted the Attorney General’s Office, which represents the Colorado Department of Education. The Legal Center argued that licensing standards, like all the college’s rules and policies, are subject to the Americans with Disabilities Act (ADA), which requires that agencies make reasonable accommodations as needed for people with disabilities. The accommodation would have been to include the deaf students in the IEP team.

The college argued that the students were deaf and therefore could not meet the hearing要求. The college also argued that the students should be placed in a special education program. The college then offered to give them training to teach students who are deaf and hear impaired. The students’ attorneys rejected this offer because they believe that the students should be placed in a regular education program.

The college then contacted the school to ask whether the school would provide the students with the necessary accommodations. The school agreed to provide the students with the necessary accommodations.

The Legal Center was able to ensure that the students would get the accommodations they needed to complete school, including all of the academic requirements needed to become a teacher in Colorado. We are proud to announce that Rachella Ortiz, one of the students in the case, graduated from Metropolitan State College of Denver in May 2010 and earned her teaching certificate.

As a result of these interventions, The Legal Center was able to ensure that the students would get the accommodations they needed to complete school, including all of the academic requirements needed to become a teacher in Colorado.

Congratulations, Rachella! The Legal Center wishes Ms. Ortiz the best of luck in fulfilling her dreams. We hope that her story of overcoming obstacles will inspire other men and women with disabilities who are teaching for that shining star.
Since 1976, The Legal Center has advocated moving individuals with disabilities out of large congregate care institutional settings. Historically those institutional settings in Colorado’s Developmental Disabilities System were the three state home and training schools (now called regional centers) in Pueblo, Wheat- ridge and Grand Junction. In 1977, there were more than 1,500 individuals living in those institutions; today there are fewer than 180 persons living in the regional centers. However, with 260 individuals with developmental disabilities living in nursing homes, Colorado has more people with developmental disabilities institutionalized in nursing homes than in regional centers. In August of 2010, Colorado drafted the State Olmstead Plan to align with the 1999 U.S. Supreme Court’s Olmstead decision, which requires that services be provided in the most integrated setting possible. The plan, which includes data on the numbers of individuals of all ages living in nursing homes throughout the state, highlights the many barriers keeping people with disabilities from living a fully integrated life. As the Protection and Advocacy System (P&A), The Legal Center believes individuals with developmental disabilities should not be living in nursing homes, and we have created a new priority for 2011 to examine the use of institutional care for people with developmental disabilities in our state. With our authority as the P&A System, we have secured the names and locations of people with a developmental disability living in nursing homes from the Division for Developmental Disabilities. Of the 260 individuals placed in nursing homes, 51 are between the ages of 20 and 50. We will focus initially on these younger individuals. We plan to work in conjunction with the Colorado Long-Term Care Ombudsman Program to reach out to each of these individuals to identify why they have been placed in a nursing home setting, their views regarding where they would like to live. If an individual prefers not to live in a nursing home, The Legal Center will do what we can to assist the individual in finding a new home. This effort is based on the fundamental belief that people can and should live within their community as independently as possible.
Our donors make the difference! Thank you!

Our donors contributed:

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The following donors have made contributions since our Spring 2010 issue of Mainstream.

Business, Foundation and Organization Support
Anschutz Family Foundation

Individual Donors
- The Presidents’ Circle includes individuals making gifts of $500 or more in a year or annual gifts in any amount for over a decade.
- These gifts all contributed to a matching grant that the Anschutz Foundation matched 1:1 for every dollar that these donors contributed.

The Legal Center for People with Disabilities and Older People
Colorado's Protection & Advocacy System

In FY 2010, as The Legal Center celebrates its 35th year, our staff and volunteers accomplished significant results on behalf of people with disabilities and older people across Colorado.

- Direct service to 1,355 Coloradans statewide in housing (145 clients), employment (246 clients), mental health services (214 clients) and education (313 clients).
- Of these, 520 individuals received direct legal representation from The Legal Center, including direct legal assistance on behalf of 15 special needs students experiencing severe restraint in public school special education settings across Colorado.
- For those clients’ cases that were closed with a resolution, the outcome was in the clients’ favor 89% of the time.
- We provided more limited information and referral to 4,851 callers.
- Our educational programs reached 2,470 people.
- We launched Facebook and Twitter sites and began online fund raising efforts through the Community First Foundation’s Giving First Day and Giving.
- Our Long-Term Care Ombudsman and Legal Assistance Developer Programs use a service model comprised of local ombudsmen, pro bono and paid attorneys. The collective effort of this statewide network provided legal services to 4,120 older persons. Local ombudsmen visited 218 nursing facilities with a total of 20,255 beds, and 550 assisted living residences with 15,836 beds.
- Our website received over 72,000 visits, and Randy Chapman’s Ability Law blog received 15,003 hits.
- We sold 1,709 copies of our three major publications.

Legacy Society
The following donors notified The Legal Center that they included a gift in their estate plan.
- Alexander R. Arken
- Anonymous (2)
- J. Ferr Black
- Randy Chapman
- MerleGreen
- Paul Hunter
- Mary Ann Harvey
- Thomas Stamm
- Louise Todd & Gerald Stoll

The following donors notified The Legal Center in their estate plan, and we would like to again thank those donors who have included The Legal Center in their will.
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- Community First Foundation
- Equal Justice Works Foundation
- Greenrose Medical Supply
- Joe High United Way
- Joy & Rose Phillips Foundation
- Pikes Peak Community Foundation
- Louis & Harold Price Foundation
- Schramm Foundation
- Temple Hoyne Buell Foundation
- #Venture R, LLC

We apologize for omitting Mike Boswell’s name in the previous issue of Mainstream.

Correction: In Memory of Devon Goedjen and Clayton & Angel Ryan

In Honor of Miriam Hermann
In Honor of Marjorie Folkestad
John Hutchins
Patricia Carr
In Memory of John Carl
*Gregg & Mary Lou Peterson
In Memory of Dan Hoffman
*Jack Hanley
In Memory of Anna McCoy
*Don & Pat Echtermeyer
In Memory of John Winston Lennox
*Randy Chapman
In Memory of Stuart Stern
*Merril Stern and David Aschkinasi
In Honor of Julie Buxby
Jody Webb
In Honor of Randy Chapman
Dave Smith
In Honor of Lysa Dominguez & Kati Leasure
John Hutchins
In Honor of Marjorie Folkestad
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In Honor of Miriam Hermann
*Allen & Lee Hermann
In Honor of Raika Ryan
Clayton & Angel Ryan
Correction: In Memory of Devon Goedjen and Mike Boswell
Phyllis Brees Eberhard
Correction: In Memory of Devon Goedjen and Clayton & Angel Ryan

Don & Pat Echtermeyer

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In FY 2010, as The Legal Center celebrates its 35th year, our staff and volunteers accomplished significant results on behalf of people with disabilities and older people across Colorado.
Legal Center at 35 years

by Mary Anne Harvey

The mission of The Legal Center is to protect and promote the rights of people with disabilities and older people in Colorado through direct legal representation, advocacy, education, and legislative analysis. In providing legal services and advocacy for people with disabilities and older people, The Legal Center recognizes the inherent value of all people and will represent our client's wishes. The Legal Center embraces the values of empowerment, self-determination, independence and inclusion.

In providing legal services and advocacy for people with disabilities and older people, The Legal Center was established as a nonprofit corporation in 1976 by founders who had the remarkable foresight to create an organization serving people with all types of disabilities, and that vision has served us well, not only because it was the right thing to do, but as the Protection and Advocacy System has expanded nationally it has enabled us to expand our services in Colorado.

In 1977 The Legal Center was designated as Colorado’s Protection and Advocacy System for individuals with developmental disabilities. In 1986, The Legal Center participated in the creation of the Protection and Advocacy for Individuals with Mental Illness program, and in 1987 received the designation as Colorado’s Client Assistance Program for people receiving services from vocational rehabilitation.

In 1988 The Legal Center took over responsibility for two programs funded by the Older Americans Act— the State Long-Term Care Ombudsman Program and the Legal Assistance Development Program. During that same time period, The Legal Center was the first organization to provide legal assistance to people with HIV/AIDS.

In 1992 the Protection and Advocacy for Individual Rights program was funded. Additional Protection and Advocacy programs were added in 1995 for assistive technology, in 2002 for beneficiaries of Social Security and survivors of traumatic brain injury, and in 2004 to protect voting access for people with disabilities. We call it the VOTE! Program.

In 1995 we opened our Grand Junction office to have a presence on the Western Slope. Although there have been significant changes in both public attitudes and in laws and regulations, The Legal Center still receives calls daily from people who have been notified that they or a family member are no longer eligible for services. In recent years we have witnessed a disturbing increase of incidents of seclusion and restraint of children in public schools. The recession has further taken a toll on funding for state and federal programs.

The Legal Center responds by investigating and reporting on incidents of seclusion and restraint, challenging employees who discriminate against people with disabilities, assisting individuals to get training and support so they can work, testifying before legislative committees, and addressing systemic issues in every system serving people with disabilities and older people in Colorado. In all settings we work to assure that people are safe and treated with dignity.

We develop information on relevant laws, regulations and systems and provide training in all aspects of our work. Our award-winning publications provide tools for individuals, parents and professionals to understand special education law and support aging parents in the community.

We have touched the lives of many thousands of people in Colorado throughout our history. We are proud of our achievements and determined to continue making a difference for the people we serve.

Financial Summary FY 2010

According to Center for Legal Advocacy's Audited Financial Statements for the year ended September 30, 2010.

- Government grants & contracts $1,907,842 88.0%
- Charitable contributions $226,901 10.5%
- Publications sales and fees $33,960 -
- Total Income $2,168,703 100.0%

- Programs 88.0%
- Fundraising 6.5%
- Administration 6.7%

% of total income

Income

Government grants & contracts $1,907,842 88.0%
Charitable contributions $226,901 10.5%
Publications sales and fees $33,960 1.5%
Total Income $2,168,703 100.0%

Expenses

Programs $1,936,388 88.8%
Fund Raising $98,443 4.5%
Administrative $144,530 6.7%
Total Expenses $2,179,361 100.0%
Net: ($594,191)

Ending Net Assets: $594,191

This information meets the better business bureau charity standards.
Two programs working together to protect and promote the rights of older adults

The Colorado Long-Term Care Ombudsman Program and the Legal Assistance Developer Program have just released their combined annual report for 2010. The two programs, administered by The Legal Center under a contract with the Colorado Department of Human Services Division of Aging and Adult Services, have a shared mission to protect and promote the rights of Colorado’s older adults and to improve their quality of life.

The program directors, Colorado Long-Term Care Ombudsman Shelley Hirt and Legal Assistance Developer Mary Catherine Rabbitt, work closely with the state’s 16 regional Area Agencies on Aging (AAA) to coordinate services statewide.

Colorado’s ombudsmen:
- Help resolve complaints about the facility or individual staff members, such as:
  - physical or verbal abuse
  - poor quality of care
- Help protect residents’ rights under the law—including the right to:
  - privacy in care and treatment
  - voice grievances without retaliation
- Help older adults:
  - understand their options for long-term care
  - choose the long-term care facility or community living arrangement that is right for them

Legal assistance providers help older adults with a variety of legal concerns including:
- foreclosures or eviction notices
- guardianship or collection agency for unpaid bills
- financial exploitation by a relative or caregiver
- unwanted guardianship action
- family members or professional care givers forcing them into a facility against their will
- denials, reductions, or terminations of public assistance benefits
- home modifications or services to allow them to continue living independently

We were pleased to see a reduction across all categories of complaints in nursing homes and assisted living residences, and attribute the decline to the hard work and dedication of Colorado’s ombudsmen. The Colorado Long-Term Care Ombudsman program is a part of the Colorado Culture Change Coalition (CCCC) whose mission is to “transform the culture throughout the long-term care continuum by affirming the dignity and value of each individual who lives and works in the settings. Culture change promotes flexibility and choice for residents in a welcoming, home-like atmosphere. We believe that culture change efforts by facilities, supported by state and local ombudsmen, have improved quality of care and reduced routine complaints.

Complaints about admission, discharge and eviction saw a 16 percent reduction from 2009, a tribute to the efforts of ombudsmen to educate residents, families and facility staff about the regulations that protect residents during an involuntary discharge. Sadly, some of the discharges result from misuse of the resident’s funds by family members or guardians with power of attorney; and here the picture for 2010 is much more worrisome. Financial exploitation of older adults, whether living in nursing homes or their own homes, has intensified in the past couple of years at the economy has worsened. In 2010, local legal assistance providers worked together with local ombudsmen to handle numerous cases of residents being forced from long-term care facilities for non-payment due to the failure of their relatives to send the senior’s Social Security or other income to the facility. In most instances, we are able to find a solution, but these cases take up many hours of the legal providers’ and ombudsmen’s time and cause untold distress to the older adults. In one case an older woman was represented in a court action to recover funds improperly transferred from her bank account by her granddaughter, and in another case an older adult needed legal assistance in responding to a foreclosure due to a fraudulent transfer of the home’s title by a relative with a Power of Attorney.

For a copy of the full annual report, please call or email The Legal Center or download it is PDF form from our website.

The Everyday Guide to Special Education Law, Second Edition

By Randy Chapman, Esq., has been updated to include the most recent changes in federal law including:
- the IDEA requirements for services plans for children placed in private schools
- how to file complaints with State Education Agencies for violations of the IDEA including obtaining compensatory services
- timelines for resolving disputes under the IDEA and how to use “mediation” and the new “resolution process”
- the evaluation process and response-to-intervention (RTI)

This edition has been so popular, it is now in its second printing.

Published in January 2011, the WORKBOOK is an indispensable companion to The Legal Center’s bestseller The Everyday Guide to Special Education Law. Dr. Jacque Phillips, an experienced special education teacher and recently licensed attorney, joins forces with Randy Chapman, author of The Everyday Guide, to help parents and teachers understand the likely outcome of special education cases so that parents and school districts can avoid unnecessary legal entanglements. In addition to a wealth of practical information, the book features actual cases presented in a concise, story-telling format. Each case gives the views of the players started as arguments, together with brief explanations of the special education law relevant to that specific issue. Readers can try to predict the outcomes based on what they have learned—answers are provided at the end of each case.

The Preventing Litigation in Special Education WORKBOOK can be purchased for $19.95. The Everyday Guide to Special Education Law is available for $24.95. BUT both books can be purchased together for only $35.00.

Legal assistance providers help older adults with a variety of legal concerns including:
- foreclosures or eviction notices
- harassment by collection agency for unpaid bills
- financial exploitation by a relative or caregiver
- unwanted guardianship action
- family members or professional care givers forcing them into a facility against their will
- denials, reductions, or terminations of public assistance benefits
- home modifications or services to allow them to continue living independently

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Annual Attorneys’ Night Out – June 23, 2011

Don’t forget to mark your calendar to attend our 6th Annual Attorneys’ Night Out and Auction on Thursday, June 23. Once again the Denver Bar Association -Young Lawyers Division will host our annual fundraiser thanks to our friends at the Blake Street Tavern. Glenlivet will be providing the scotch tasting, and a complimentary wine or beer will be provided along with hot appetizers at this benefit for The Legal Center.

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To join the list of sponsors or to contribute an auction item, please contact Joshua Anderson at janderson@thelegalcenter.org or (303) 722-0300 ext. 216. For more information or to purchase tickets, please visit www.thelegalcenter.org. (Look for the Attorneys’ Night Out icon on the lower right.) Admission is $25 prepaid online or $50 at the door.

Follow news about The Legal Center online at www.thelegalcenter.org!

Randy Chapman’s Ability Law Blog (updated regularly) – http://randychapman.wordpress.com

Facebook – http://www.facebook.com/pages/The-Legal-Center-for-People-with-Disabilities-and-Older-People - please become our friend and receive regular updates on The Legal Center

Twitter – http://twitter.com/thelegalcenter - for brief tweets about our work

Giveo (NEW) – www.thelegalcenter.giveo.com - for fundraising campaigns and news about The Legal Center

Community First Foundation – www.givingfirst.org, select The Legal Center, and make your gift. Should you wish, recurring gifts can be set up in just one visit to the website.

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