

DISABILITY RIGHTS NETWORK OF PENNSYLVANIA

Legal Report

July 1, 2009 - September 30, 2009

INTRODUCTION

This report briefly describes the law-related activities of DRN between July 1, 2009 and September 30, 2009 that were made possible, in whole or in part, by funds received pursuant to the Developmental Disabilities Assistance and Bill of Rights Act, the Protection and Advocacy for Individuals with Mental Illness Act, the Protection and Advocacy for Individual Rights Act, the Help America Vote Act, the Protection and Advocacy for Beneficiaries of Social Security program, and the Protection and Advocacy for Assistive Technology program. This Report focuses on DRN's litigation activities (court and administrative proceedings) and its major, law-related non-litigation activities. It generally does not describe the activities that DRN's legal staff undertook in other contexts (e.g., assisting individuals through informal means and intake).

I. Institutional Issues/Community Services

A. Litigation

Benjamin v. Dep't of Public Welfare (M.D. Pa.) (Judge Jones) -- DRN continues to litigate this lawsuit, filed in June 2009, on behalf of residents of state-operated mental retardation institutions to challenge their continued unnecessary institutionalization. The lawsuit alleges that the Department of Public Welfare (DPW) violates the integration mandates of the Americans with Disabilities Act (ADA) and Rehabilitation Act (RA) by failing to offer community supports and services to those residents. In September, the court granted the plaintiffs' motion for class certification. DPW filed a motion to dismiss in September, which is pending. The court issued a scheduling order that establishes a trial date of October 2010, and we have begun discovery. The parties met in July to discuss a possible settlement, but no further discussions have been held. (DD)

Jimmie v. Dep't of Public Welfare (M.D. Pa.) (Judge Vanaskie) -- DRN continues to litigate this lawsuit, filed in June 2009, on behalf of approximately 120 residents of state psychiatric hospitals who have diagnoses of mental retardation in addition to mental health or other diagnoses. We allege that DPW violates the integration mandates of the ADA and RA by failing to offer community supports and services to those residents who are appropriate for discharge. We also allege that DPW violates the ADA and RA by failing to modify their policies, practices, and procedures as necessary for people with mental retardation to benefit from the mental health treatment afforded at state hospitals. Finally, we allege that DPW violates the Due Process Clause of the Fourteenth Amendment to the Constitution by failing to assure that staff at the state hospitals are qualified to properly assess and treat individuals with mental retardation, failing to provide class members with necessary habilitation services, and failing to adapt the mental health treatment at the state hospitals so that residents individuals with mental retardation can benefit from it. In September, the court granted plaintiffs' motion for class certification. DPW filed its motion to dismiss, which is pending. We have begun discovery, and the court will hold a scheduling conference in mid-

October. The parties have had preliminary discussions about a potential settlement. (DD/PAIMI)

Dorohovech v. Dep't of Public Welfare (M.D. Pa.) (Judge Vanaskie) -- We continue to monitor implementation of the settlement in this lawsuit that challenged DPW's termination of individuals with mental retardation who lived in personal care homes (PCHs) from the Consolidated Waiver. The lawsuit was precipitated when DPW amended the Waiver to exclude PCH residents, but failed to give those individuals notice prior to the termination and the opportunity to remain in the Waiver by relocating to other housing options in violation of the Constitution, the federal Medical Assistance statute, and ADA. Pursuant to the settlement, DPW (with DRN advocates present) interviewed all individuals who had been terminated from the Consolidated Waiver because they lived in PCHs to determine whether they want to relocate to other residential options and be reinstated in the Consolidated Waiver. As reported previously, 41 individuals have been or will be reinstated in the Consolidated Waiver. An additional 8 people will remain in their PCHs, but will be reinstated in the Consolidated Waiver when their service needs increase. We have received additional documentation from the psychologist who evaluated the records of several clients to assure that their needs are being met. We remain concerned about one client and will confer with DPW counsel to ask that the psychologist conduct a further investigation of his needs. (DD)

B. Mental Health/Mental Retardation Services

Placeholder Rates and the P/FDS Waiver -- Due to changes required by the federal Centers for Medicare and Medicaid Services (CMS), DPW was required to adopt a more uniform rate structure for providers who offer services through the Consolidated and Person/Family Directed Support (P/FDS) Waivers. As of the beginning of the fiscal year on July 1, however, DPW had not yet finalized those rates. Instead, it has adopted "placeholder" rates, even though it admits that these rates are not accurate and, in many cases, they are artificially inflated. Services for individuals in the P/FDS Waiver cannot exceed \$26,000 annually. DPW's failure to finalize rates is extremely problematic for these individuals as they are forced to either accept less services due to higher rates or to choose not to reduce their service level and hope that the rates are significantly decreased prior to the end of the Fiscal Year so that their services will not be terminated during the Fiscal Year if they exceed the cap using the placeholder rates. In July 2009, we wrote to DPW to urge it to promptly address the problem. We have been told that DPW is "working on it," but in the meantime we are considering potential litigation to address the issue. (DD)

MSH Closure Follow Through -- Although Mayview State Hospital (MSH) closed in December 2008, the Steering Committee (on which DRN is represented) will continue to meet through June 2010 to monitor the provision of community services to former MSH residents. We continue to receive and review reports concerning the former MSH residents, the development of infrastructure, and the status of community waiting lists. We have

developed an acute Community Support Plan process, including an appeal procedure that is now being implemented for people in community hospitals. Also this quarter, 12 former MSH residents who remained on the grounds of MSH due to delays in the development of an LTSR have been relocated to an extended acute care facility. (PAIMI)

Access to MH/MR Services by People Who Are Deaf -- DRN continues to work on the following fronts to assure that adults and children who are deaf have access to appropriate mental retardation and mental health services:

- As reported previously, DPW's Office of Developmental Programs (ODP), based on a survey of providers, identified approximately 2,000 persons who are deaf, hard of hearing, or otherwise use sign language to communicate. Although ODP had agreed, among other things, to provide a budget model for a small, specialized group homes for this population, little progress has been made. Accordingly, we continue to explore potential litigation of this issue and have interviewed potential clients. (DD)
- We continue to monitor development of a residential program in southeastern Pennsylvania for youngsters who are deaf and have serious emotional disorders. After much negotiation, a provider is developing a 3-person residential treatment facility in Montgomery County. Renovations of the property will soon be complete and the facility will open after DPW conducts a licensing inspection. (DD/PAIMI)
- We successfully represented a woman in her 50s who is deaf, has mental illness, and has some physical health problems that require her to ambulate with a walker. She was living in a nursing home in Forest County because she had no other options and wanted to move to a more integrated setting. After we intervened, DPW agreed to fund her services in a residential program for people who are deaf in Montgomery County, and she moved in this quarter. (PAIMI)

Statewide Mental Health Integration Plan -- In September, DRN presented to DPW's Office of Mental Health and Substance Abuse Services (OMHSAS) a draft statewide integration plan for individuals with mental illness institutionalized in state hospitals and in congregate personal care homes. (PAIMI)

Autism Insurance Law and Medical Assistance Payment -- DRN has been working with the Pennsylvania Health Law Project to monitor issues arising out of the implementation of the Autism Insurance Law (Act 62) that took effect July 1, 2009. Act 62 requires private insurers to cover up to \$36,000 annually in autism services for many children under 21 who are enrolled in private insurance plans for employers with more than 50 employees. This quarter, we issued a fact sheet that answers some basic questions about Act 62, circulating it through our listserv and posting it on our website. (DD)

South Mountain Restoration Center Substitution Decision Making Policy -- Earlier this year, DRN reviewed DPW's policy for substitute decision making at South Mountain Restoration Center (SMRC), a state-operated nursing facility which serves many individuals who have mental illness, and wrote to DPW to identify a number of serious concerns about that policy. Among other things, we informed DPW that the policy appears to contravene Pennsylvania law by, at times, allowing the treatment team to provide substitute decision making -- even when the resident has a health care agent or health care representative who can make the decision -- and that the policy is at odds with medical ethics when it requires staff to breach patient confidentiality by informing a competent resident's health care agent or health care representative about any decisions by the resident to refuse health care. DPW has yet to provide us with a definitive response to our concerns. (PAIMI/PAIR)

Proposed Budget Cuts -- DRN legal staff continued to support mental health consumers and advocates in their opposition to proposed mental health budget cuts. We supported a letter writing campaign and assisted with a rally held in Pittsburgh. (PAIMI)

Proceeds From Sales of State Institutions -- We continue to advocate for legislation to assure that proceeds from the sale or secondary sale of land occupied by former state institutions remains in the mental health and mental retardation system. The Land Use Committee (comprised of members of the Pennsylvania Legislature and stakeholders) has asked for an independent assessment of the Mayview State Hospital property. When the assessment is received, the Committee will consider how to proceed. The legislation has not progressed due to the budget impasse this quarter, but we continue to urge legislators to support the bill. (DD/PAIMI)

Waiting List -- We continue to work with the Community Advocacy Coalition and the Waiting List Campaign to address the waiting list for community services. The Governor's proposed budget for Fiscal Year 2009-10 announced in February requested \$30.6 million in additional funding to provide services to nearly 800 people on the waiting list. Due to budget shortfalls, this proposed expansion is in jeopardy, and the advocates have been working to assure that at least some expansion is included in the final budget. (DD)

C. Community Integration for Individuals with Physical Disabilities

Proposed Service Definitions for OLTL Waivers -- This quarter, the Office of Long Term Living (which implements the Independence, OBRA, Attendant Care, Aging, Michael Dallas, and Commcare Home and Community-Based Waivers) circulated draft service definitions that it proposed to use in all of its Waivers. DRN attorneys reviewed the draft definitions and compared them with the existing Waiver service definitions and submitted extensive comments to OLTL on its draft. DRN noted a number of significant shortcomings in OLTL's proposal. In August, OLTL issued a purportedly revised draft. However, those revisions failed to take into consider any of DRN's recommendations and, indeed, a few

revisions actually worsened the proposed definitions further. DRN again commented on those revisions. (PAIR/AT)

Philadelphia Nursing Home -- DRN continues to work with Liberty Resources, Inc. (LRI), the Center for Independent Living in Philadelphia, to facilitate participation in community life by residents of the Philadelphia Nursing Home (PNH). As reported previously, we successfully secured evaluations for power wheelchairs of a number of PNH residents almost all of whom received power wheelchairs. This quarter, our last client received his evaluation. We also continue to provide technical assistance to LRI and ADAPT concerning advocacy strategies for the downsizing of PNH. (PAIR/AT)

Personal Care Homes/Assisted Living Residences -- DRN continues to work on issues relating to personal care homes (PCHs) and assisted living residences (ALRs). This quarter, we spoke with Senator Vance to advocate for changes in state law to afford due process protections to PCH and ALR residents who are threatened with eviction to assure that they receive a hearing prior to eviction. We also continue to work with the Pennsylvania Health Law Project and others in a coalition to assure that the proposed ALR regulations maximize protections for people with disabilities and other ALR residents. This quarter, we appeared before the Independent Regulatory Review Commission to discuss our concerns about DPW's proposed ALR regulations. (DD/PAIR)

II. Disability-Based Discrimination

A. Litigation

Disabled in Action of Pennsylvania v. SEPTA (E.D. Pa.) (Judge Pratter) -- This quarter, we achieved an important victory in this case after many years of litigation. We filed this lawsuit in 2003, alleging that SEPTA violated the ADA and RA by altering the entrances to the 15th Street Station of the Market-Frankford Line and the City Hall Station of the Broad Street Line in a manner that was not accessible to and usable by individuals with mobility disabilities. After the Court of Appeals reversed the district court's initial ruling that our client's claims were barred by the statute of limitations, the parties renewed their motions for summary judgment on the merits. In September, the district court granted summary judgment in favor of our client and against SEPTA. The court held that SEPTA's changes to the entrances constituted "alterations" under the ADA that required them to be accessible. The court rejected SEPTA's argument that the availability of other accessible entrances to those facilities was sufficient to satisfy its obligations under the ADA. The court also rejected SEPTA's assertion that it would not be feasible to make the entrances accessible. The court ordered SEPTA to submit a plan by the end of October to detail how it will implement the court's ruling to install elevators at the two locations. (DD/PAIR/AT/PABSS)

Robertson v. City of McKeesport (W.D. Pa.) (Judge Ambrose) -- This quarter, we filed a motion for contempt based on the City's failure to comply with the terms of the consent order

in this ADA lawsuit that challenged McKeesport's failure to install curb ramps and maintain their sidewalks so they are usable by persons with mobility disabilities. Under the consent decree, McKeesport was required to install 1,000 curb ramps between 2005 and the end of 2009 at a rate of 200 each year. To date, the information from McKeesport indicates that it has installed only about 500 curb ramps. The City also has not repaired curb cuts that fail to meet ADAAG standards and has not complied with the agreement's provisions to assure that sidewalks are in good repair. Plaintiffs tried for over six months to work with the City to resolve these issues. These efforts proved fruitless as the City failed to respond, leading us to file the contempt motion. The motion asks the Court for remedies to bring the City into compliance by the end of 2011 and to impose fines if it fails to comply. At the end of the month, the City's attorney proposed an alternative order that would agree to the relief we sought but provide a longer timeline for implementation. (DD/PAIR)

Kerrigan v. City of Philadelphia (E.D. Pa.) (Judge Padova) -- In July, the court approved the settlement of this class action lawsuit that alleged that the City of Philadelphia and the Pennsylvania Department of State (DOS) violated the ADA and RA by failing to maximize the number of polling places that are accessible to voters with mobility disabilities. As reported previously, the Settlement Agreement requires all polling places in the City (approximately 1,100) to be independently evaluated by the United States Department of Justice (DOJ) or a private expert (paid for by the City and DOS) using an extensive accessibility survey. For polling places determined not to be accessible, the surveyors will make recommendations as to what, if any, temporary modifications could be used to make them accessible. For inaccessible polling places that cannot be made temporarily accessible on Election Day, the surveyors will identify any potential alternative accessible polling place sites (using certain agreed-upon standards). If the City or the Board of Elections rejects a recommendation, the plaintiffs can seek review of the decision by the Magistrate Judge who will determine whether the recommendation is required by the ADA. Either party can appeal the Magistrate Judge's ruling to the District Court. So far, DOJ and the private expert completed surveys of 248 polling places and found that: 93 are accessible; 108 are not accessible, but recommendations were made for temporary modifications to make them accessible on Election Day; and 47 are not accessible or able to be temporarily modified and were recommended for relocation to accessible sites. The City must respond to the recommendations in December. In addition, we have had ongoing discussions with the City, DOJ, and the private expert concerning issues relating to interpretation of the agreement. (DD/PAIR/AT)

Hawkins v. City of Philadelphia (E.D. Pa.) (Judge Fullam) -- DRN is representing a woman who is deaf in this lawsuit that alleges that the City violated the ADA by failing to provide her with sign language interpreters for hearings in Traffic Court to contest parking tickets. Trial was scheduled to begin in July, but was postponed to allow the parties to further explore settlement. In late September, the parties reached a general consensus on how to resolve the case. The City has tentatively agreed to include a separate telephone number on

parking tickets to be used to request interpreters and to assure that the staff who answered that line are trained in handling such requests. The City also tentatively agreed to allow for periodic testing of the process to assure that it worked. We are to report to the court by October 23 about the status of the agreement. (PAIR)

Keller v. City of Lancaster (E.D. Pa.) (Judge Brody) -- We continue to monitor implementation of the settlement of this ADA and RA curb ramp lawsuit. As reported previously, Lancaster is required to install about 475 missing curb ramps by November 30, 2009. The City's counsel informed us this quarter that the City appears to be ahead of schedule and expects to complete those curb ramps by the end of October. The City is also in the process of verifying the number of existing curb ramps that will need to be retrofitted because they are non-compliant with ADAAG standards. After it does so, we will discuss the timeline for retrofitting and whether any major modifications can be modified to provide usable curb ramps more cheaply and more quickly. (DD/PAIR)

Three Rivers Center for Independent Living v. Housing Authority of the City of Pittsburgh (W.D. Pa.) (Judge McVerry) -- We continue to monitor implementation of a settlement agreement in this class action litigation that alleged that the Housing Authority of the City of Pittsburgh (HACP) violated Section 504 of the RA by failing to assure that its public housing is accessible to persons with mobility impairments. Under the terms of the settlement agreement, approximately seven percent of HACP's public housing units will be made accessible by 2010. The agreement also requires HACP to track accessible housing units leased to persons who do not need accessible housing so that they can be made available to new applicants or existing tenants who need accessible homes. HACP continues to comply with the agreement's benchmarks. (DD/PAIR/AT)

B. Voting Access

Pennsylvania Voter Coalition -- DRN continues to work on implementation in Pennsylvania of the Help America Vote Act (HAVA), which is designed to assure access to the voting process for persons with disabilities. As part of the HAVA implementation process, we continue to participate in meetings of the Pennsylvania Voter Coalition. (HAVA)

Compliance with National Voter Registration Act -- DRN has been working with other voting advocates on issues relating to compliance with the National Voter Registration Act (NVRA). The 2008 registration data suggests widespread noncompliance with the NVRA. Although disability registration doubled in 2008 over 2007, almost all of the increase was in Allegheny and surrounding counties due to sustained efforts by advocates in that region. After reviewing this data, the Pennsylvania Voter Coalition wrote to Governor Rendell to express our concerns about the Commonwealth's NVRA non-compliance and to request a meeting. Secretary of State Cortés responded, and we met with him in September to discuss our concerns. Secretary Cortés agreed to host meetings with DPW and the Department of Aging to discuss strategies by which they can improve their efforts to register voters. In

addition, we have been working with Demos, a non-profit national public policy organization, and other advocates including the Pennsylvania League of Women Voters on a project to survey agencies required by NVRA to register voters. Demos has agreed to fund the surveys, and DRN and other Pennsylvania advocates are working to identify potential surveyors. (HAVA)

Disability Voting Coalition Meeting -- DRN is working to plan a statewide meeting of the Disability Voting Coalition in October 2009.

C. Access to Government Services

McDonald v. Pennsylvania State Police (W.D. Pa. (Judge McVerry) -- DRN and private co-counsel filed a lawsuit last quarter to challenge the refusal of the Pennsylvania State Police (PSP) to re-certify our client to work as a municipal police officer based on his lawful use of a prescribed medication. Under Pennsylvania law, individuals who want to work as municipal police officers must be certified by a PSP Commission to determine if they are fit to work as police officers. Our client, who had previously been certified to work as a police officer, was denied re-certification because he was taking a particular medication related to a disability, even though an evaluation by an independent physician chosen by the PSP Commission concluded that he was fit to work as a police officer. The lawsuit contends that PSP's actions violate the ADA and RA. In addition, the lawsuit contends that PSP violates the Due Process Clause of the Fourteenth Amendment to the Constitution by failing to provide appropriate notice and an opportunity to appeal the decision to deny re-certification. Last quarter, the PSP filed a partial answer that responded to the ADA and RA claims, but filed a motion to dismiss the due process claims on the basis that the re-certification process confers no property interest and, as such, notice and a hearing are not constitutionally required. We have responded to that motion and are awaiting a decision. (PAIR)

Allentown Curb Ramps -- We continue to work with LRI's Allentown office to assure that Allentown continues its recent commitment to survey streets resurfaced since 1992 to determine whether curb ramps were installed and to install missing curb ramps. Allentown has committed to installing at least 300 curb ramps by the end of 2009. We also have received the surveys completed to date and will be reviewing them. (DD/PAIR)

Accommodations for Parents with Disabilities Involved in the Children and Youth System -- DRN continues to advocate to assure that appropriate services and accommodations are provided to parents with disabilities to enable them to retain custody of their children. (DD/PAIMI)

D. Access to Public Accommodations

Equal Access to Health Care -- DRN continues to work on issues relating to access to health care for people who are deaf.

- We have been mentoring the Behavioral Health Task Force for Persons who are Deaf, Deaf/Blind and Hard of Hearing, a group devoted to improving health services for persons who are deaf or deaf/blind. In addition to providing general information on grants, legal issues, and advocacy strategies, DRN supports the group by drafting documents concerning the legal rights of people who are deaf, deaf/blind, and hard of hearing and by serving on the editing committee that explains other materials to the group to assist it to develop materials that can be usable by its constituents. (PAIMI/PAIR/DASH)
- We are planning a conference in November 2009 between the Behavioral Health Task Force for Persons who are Deaf, Deaf/Blind and Hard of Hearing, which is based in western Pennsylvania, and two organizations in eastern Pennsylvania that advocate for people who are deaf and have mental health issues. The conference will enable the groups to share success stories and will include participation by DPW's Office of Mental Health and Substance Abuse Services. We anticipate that this is the beginning of greater advocacy coordination among these groups. (PAIMI/PAIR)

E. Access to Housing

Philadelphia Visitability Legislation -- DRN continues to work with advocates from ADAPT and Liberty Resources, Inc., providers, and Philadelphia officials to develop strategies to secure enactment of visitability legislation in Philadelphia in accordance with Pennsylvania's Residential Tax Credit Act. This quarter, we met with Councilman Jones and he agreed to introduce the bill into the Licensing and Inspections Committee shortly and to seek additional sponsors for it. Prior to enactment, we also must receive approval from the Pennsylvania Department of Labor and Industry to assure that the bill is consistent with and does not provide less protection than state law. (DD/PAIR/AT)

Allegheny County Visitability Legislation -- Although Allegheny County enacted visitability legislation some time ago, it became apparent that the process to approve tax credits for developers had broken and many applications were not processed in a timely manner so as to jeopardize the eligibility of developers for the credit. This quarter, we worked to identify and fix this problem. (DD/PAIR/AT)

Accessibility of Multifamily Housing Complex -- DRN continues to provide technical assistance to a private attorney who filed an administrative complaint against the owner and developer of a multifamily housing complex in Philadelphia to challenge their failure to comply with the accessibility provisions of the Fair Housing Act (FHA). In July, we visited the property to survey it regarding the primary issue, *i.e.*, whether the hilly terrain made it structurally infeasible for the defendants to comply with the FHA's accessibility requirements. Given our review, it would appear that the defendants might have a colorable structural infeasibility defense although they still would be required to make a certain

percentage of the existing first floor units accessible. The private attorney has been in communication with the attorney for the defendants to discuss its compliance. (DD/PAIR)

Housing for People who Are Deaf -- DRN continues to work with Allegheny County's Local Housing Option Team on an incubator project to develop housing for individuals who are deaf. Action Housing has submitted an application to the United States Department of Housing and Urban Development to develop Section 811 housing for approximately 10 people who are deaf or deaf/blind. Three Rivers Center for Independent Living has agreed to provide any services that the residents may need. (DD/PAIMI/PAIR)

F. Access to Employment

Employment Conference -- DRN, together with Temple University's Institute on Disabilities and the Developmental Disabilities Council, is co-sponsoring the employment strand of the November 9 TASH conference in Pittsburgh. We have reviewed workshop proposals concerning the employment of people with disabilities and have helped to promote the conference. (DD/PABSS)

III. Education/Child Care

A. Litigation

Bethlehem Area School Dist. v. D.Z. (E.D. Pa.) (Judge Gardner) -- DRN is representing the mother of a youngster with disabilities who has been sued by the school district for attorneys' fees for allegedly pursuing her rights under the Individuals with Disabilities Education Act (IDEA) for "improper purposes." The School District alleges that the woman has pursued multiple proceedings under the IDEA and under Pennsylvania's program for gifted children (both her son with disabilities and her second child are in the gifted program). The School District also uses complaints filed by the mother with the federal Office of Civil Rights (OCR) concerning the District's failure to accommodate her need for Chinese-language interpretation. The School District contends that all of these proceedings were designed to drive up its costs so that it would agree to a private educational placement for the woman's son. This claim is based on an alleged statement that the woman made to a mediator, even though mediation statements are required by the IDEA to be confidential. Given the lawsuit's potential to intimidate many parents from pursuing their rights under the IDEA, we agreed to represent the mother. In late September, we filed a motion to strike most allegations of the School District's complaint (including the mediation statement, allegations concerning proceedings involving the gifted program, and allegations concerning her OCR complaints) and to dismiss the complaint in its entirety. (DD)

Donovan K. v. Dep't of Public Welfare (E.D. Pa.) (Judge Golden) -- DRN, together with the Education Law Center, continues to litigate this case filed on behalf youngsters under age three who have severe disabilities, are institutionalized, and are not provided with early

intervention services. The lawsuit alleges that DPW violates Part C of the IDEA, , which requires the state to assure the provision of early intervention services to youngsters who need them. We continued to work toward a resolution of this case. This quarter, based on our negotiations, DPW issued a bulletin that addresses the obligations of counties to assure that children in institutions receive necessary early intervention services. DPW has also agreed to send letters to, among others, children and youth agencies and Medical Assistance HMOs to inform them that children they have referred or will refer in the future to institutional facilities must also be referred for early intervention services. We drafted these letters and are awaiting DPW's review. We also sent letters to three counties where most of the children in these facilities live to inform them that they must arrange for early intervention services to those youngsters. Additionally, the named plaintiff, Donovan K., was discharged to his home where he has been doing well. Since this case has yet to be finally resolved, the parties also submitted their discovery plan to the court this quarter. (DD)

B. Administrative Complaints

C.R. v. Delaware County Vocational School (Due Process) -- We are representing a 17-year-old girl with serious emotional disorders who attends the Delaware County Vocational School on a part-time basis to study cosmetology. The school would not allow her to return this year after she failed last year by one point because she had not been provided with the emotional support classes that her Individualized Education Plan (IEP) required and because her teacher harassed her and allowed students to harass her on the basis of her disability. We sought a due process hearing to challenge the school's failure to implement the IEP in violation of the IDEA and the disability harassment in violation of Section 504 of the RA and to require the school to allow her to return. In September, the school agreed to allow her to return to a different campus with a different teacher. The school, however, has sought to dismiss the due process complaint on the basis that vocational schools are not "local educational agencies" and, therefore, have no obligation to provide supports and services under the IDEA. (PAIMI)

D.S. v. Gettysburg Area School District (Due Process) -- We are representing a 12-year-old boy with Pervasive Developmental Disorder (PDD) and Oppositional Defiant Disorder who has not attended school in years because the School District would not offer him an educational placement. As a result, his parents placed him in a series of partial hospitalization programs and, more recently, a Residential Treatment Facility (RTF). Prior to this school year, the school district again recommended a partial hospitalization program, but the parents refused since it is not an educational placement. After we filed for a due process hearing, the school district agreed to place him on an interim basis in an elementary school emotional support classroom and to evaluate him in that classroom. The school district, however, has not provided him with any appropriate supports and services for PDD. (DD)

Franklin Learning Center (PDE Division of Compliance) -- As we reported previously, the Division of Compliance (DOC) of the Pennsylvania Department of Education (PDE)

responded to our complaint about the Franklin Learning Center (FLC), a segregated school operated by Lincoln Intermediate Unit # 12 that serves 200 children with disabilities from five school districts in Franklin County, and ordered corrective action that requires the school districts to have the Pennsylvania Training & Technical Assistance Network conduct training on the use of restraints. This quarter, the school districts submitted their plans to implement DOC's corrective action plan. (DD)

C. Non-Litigation Advocacy

Early Intervention Services in Philadelphia -- We continue to work with the Education Law Center (ELC) on issues relating to access to early intervention services in Philadelphia. DRN and ELC have received numerous complaints that Elwyn, the contractor hired by Philadelphia to provide early intervention services, has failed to assure their access to necessary services. This quarter, after we alerted Elwyn about our concerns, we were contacted by DPW's Office of Child Development and Early Learning (OCDEL) to inform us that OCDEL was investigating issues relating to Elwyn's provision of early intervention services in Philadelphia and to request that we cease our efforts to bring Elwyn into compliance to give OCDEL time to do the same. In September, we informed OCDEL that we would give it some time to work with Elwyn only if it agreed to assure that Elwyn promptly takes certain steps to address the most pressing issues. We are awaiting OCDEL's response. (DD)

Special Education for Youngsters in the Children and Youth System who are in Congregate Care -- DRN, ELC, and the Juvenile Law Center (JLC) continue to advocate to assure that Pennsylvania youngsters in the custody of children and youth agencies who are placed in congregate care have access to special education services. We have been concerned that the Commonwealth fails to identify and evaluate many of these youngsters. Others, who have been determined to need special education services, do not have access to those services because they do not have parents or "surrogates" who can make decisions. As reported previously, DPW's Office of Children, Youth and Families (OCYF) issued a bulletin to assure that youngsters in foster care receive appropriate education services and agreed to use a screening instrument twice annually to identify youngsters who need special education, who need changes in their special education services, or who need other remedial assistance. The screening instrument is finalized, but is not yet in use. We are also waiting for the Pennsylvania Department of Education (PDE) to issue a manual that will address the use of surrogates. (DD)

Special Education for Youngsters in Residential Treatment Facilities -- We continue to have discussions with PDE and DPW about the rights of youngsters in RTFs to receive special education services. After months of delay, PDE this quarter issued a Basic Education Circular (BEC) to make clear that a youngster in a RTF still has the right to attend the local school district (rather than the facility's school) if appropriate and that parents retain their rights to participate as the educational decision-makers for youngsters in those facilities.

Also this quarter, we reached a general agreement with DPW about language for a DPW bulletin to address this issue. In addition, we met with officials from DPW and PDE to discuss a number of issues relating to education in RTFs. At the meeting, DPW agreed to coordinate its reviews of RTFs with PDE's reviews of the schools in RTFs to address PDE's concerns that the RTFs blamed DPW whenever PDE raised problems with the schools in RTFs. In advance of these coordinated reviews, PDE will provide trainings to the RTFs they will be visiting concerning the new PDE BEC and DPW Bulletin. (DD/PAIMI)

Judicial Oversight of Special Education for Youngsters in Children and Youth Services

-- DRN continues to work with ELC, JLC, and the Support Center for Child Advocates to develop means by which juvenile courts in Pennsylvania can assure that youngsters in the dependency and delinquency systems have access to special education services and necessary health care. Earlier this year, we submitted proposed amendments to the Pennsylvania Rules of Court to require courts to check on the children's special education and health needs together with commentary on the proposed rules and memoranda that explain the need for the rules changes. The committee is still deliberating on our proposals. (DD)

Seclusion Regulations and Potential Complaint -- Legislation has been introduced and is expected to pass that would require the State School Board to issue regulations that govern the use of seclusion in schools. We expect to work to assure that those regulations adequately protect the rights of children with disabilities. The legislation was triggered by revelations that the East Goshen School District had used seclusion rooms for youngsters in its autism classes without the parents' knowledge or permission. This quarter, we met with families whose children were unlawfully placed in seclusion by that school district, and we agreed to assist them to file an administrative complaint. (DD)

School Reports of Criminal Conduct by Students -- Together with ELC, JLC, the Mental Health Association, and others, DRN continues to monitor the status of Senate Bill 56 that would require schools to report students to the police for certain criminal conduct, including aggravated assault. Since last quarter, the bill has not advanced. (DD/PAIMI/PAIR)

Advocacy for Individual Students -- DRN assists a number of children and their families to secure appropriate education placements, including the following examples:

- The mother of a daughter with ADHD was informed by the child's Philadelphia charter school that the child had been dis-enrolled for the new school year because the mother did not complete the necessary forms. The mother did not complete the forms because she has a disability and was hospitalized at the time. The mother asked us to assist to have the child re-enrolled because she had shown vast improvement in the charter school. The disenrollment appeared to be unlawful under state law. After we contacted the school about the issue, the school agreed to re-enroll the child. (DD)

- We assisted the family of a youngster who, after he was placed in a Washington County RTF, was sent to a segregated private school. Since he had to return to the RTF for the beginning of this school year, we successfully assisted the family to secure an alternative educational placement. In addition, after we informed the school district that the child's IEP violated the law by allowing almost unlimited use of restraints, the district agreed to substantially modify that aspect of the IEP. (PAIMI)
- DRN is assisting the family of a child with autism who has severe self-injurious behaviors that have not improved, resulting in almost daily use of restraints and injuries caused by the use of restraints. Due to the ineffectiveness of the behavioral supports, the child has made little educational progress. The child's family did not fully understand his rights due to misrepresentations by the school district. DRN is reviewing the child's file and consulting with an expert in our effort to secure compensatory education for him. (DD)
- DRN is assisting the family of a student with PDD, ADHD, Oppositional Defiant Disorder, and Intermittent Explosive Disorder who exhibits frequent aggressive behaviors in the classroom, resulting in the use of frequent restraints and the school asking his parents to take him home from school almost every day in the last school year. The student is in a life skills classroom, which is not appropriate educationally but which provided the highest level of support for his behaviors. We secured an Independent Educational Evaluation of the child at the school district's expense and are working with an expert to develop an appropriate educational program for him. We also will request compensatory education. (DD/PAIMI)

Transition Conference -- DRN has been planning a conference titled "Moving Forward: Transition Conference for Youth" that will provide youngsters and their families with information about services and opportunities available to them to assure their effective transition out of the educational system. The conference will be held in November in Fort Washington, and all available spaces are already filled. (PABSS)

IV. Access to Health Care and Assistive Technology

Pennsylvania Assistive Technology and Employment Collaborative -- DRN continues to work on the Pennsylvania Assistive Technology and Employment Collaborative to provide outreach and training to employers about the use of assistive technology in the workplace. This quarter, we conducted a training of more than 50 advocates, employers, and human resources professionals on the use of assistive technology in the workplace and the PABSS program. (PABSS)

Assistive Technology in Nursing Facilities -- DRN continues to work on issues relating to access to assistive technology to enable nursing facility residents to live in the community. Last quarter, we sent a letter to Pennsylvania's Office of Long Term Living to challenge its failure to provide nursing facility residents with notice and appeal rights when it denies requests for exceptional DME (i.e., high-cost DME that is to be funded by DPW rather than the nursing facility). We received a response this quarter and are evaluating our next steps. (PAIR/AT/PABSS)

Home Health Care Agency Regulations -- This quarter, DRN worked to assure that the final Department of Health regulations that govern home health care agencies meet the needs of people with disabilities by assuring that the regulations provide access to necessary home care; that consumer-employers are not subject to the regulations; and that the regulations incorporate the Independent Living philosophy. The regulations will go into effect this year. (PAIR/PABSS)

Home Health Services for Children with Mental Retardation -- DRN was contacted this quarter by the parent of a youngster with mental retardation whose Medical Assistance HMO, Keystone Mercy, denied her request for home health aide services on the basis that it was not a covered Medical Assistance service for a medically stable youngster. Keystone Mercy's attorney informed DRN that this denial reflected Keystone Mercy's position and that it had issued similar denials to other youngsters with mental retardation. After we contacted DPW to complain about these unlawful denials, DPW informed Keystone Mercy that its position was erroneous and, ultimately, Keystone Mercy approved the home health aide request for our client. Keystone Mercy also acceded to DPW's request to review its files to identify any other youngsters who were unlawfully denied such services. DRN will be issuing an alert to the community to ask people who continue to encounter this issue to contact us. (DD)

Health Care in Facility for Medically Fragile Children and Adults -- We continue to investigate complaints about health care provided at Cambridge Point Pleasant, a facility in Bucks County that provides services to children and adults who are medically fragile. This quarter, we received a report from a doctor hired by DPW to investigate the facility. The report did not identify any significant concerns. We are awaiting a report from a nurse who DRN hired to review the records of seven youngsters who died at the facility in the last year. We also placed the nurse in contact with a former official of a similar type of facility to discuss issues to be reviewed. (DD)

Services for Youngsters in Foster Care who Are Deaf -- DRN worked with an audiologist from the Children's Hospital of Philadelphia to develop a survey to be used by children and youth agencies in Philadelphia to identify the needs of deaf children in the foster care system. The survey was finalized last quarter after the audiologist received comments from DRN and individuals with experience in the foster care system. In September, the survey was

distributed via an association of foster care agencies and we expect to receive the results in October. (DD)

Mental Health Advance Directives -- DRN has been working with other advocates, including Mental Health America of Allegheny County and NAMI Southwest to facilitate the development and use of mental health advance directives through better training and developing means to register the directives so that health care providers can determine if the individuals have such directives and, if so, what they entail. (PAIMI)

Stays of Adverse Administrative Hearing Decisions by Medical Assistance Entities -- This quarter, we were contacted by a person who won an appeal of the denial of Medical Assistance benefits by a Medical Assistance HMO, but was unable to secure the needed services because the HMO sought and received a stay of the decision from the Secretary of Public Welfare. After we complained to DPW, it reversed the decision, and our client was afforded the services ordered by the administrative law judge. However, excerpts of DPW's contracts with its Medical Assistance HMOs suggest that the Secretary has authority to issue stays of administrative hearing decisions in favor of recipients pending reconsideration. We have asked DPW to revise its contracts, arguing that they violate the law. We are awaiting a response. (DD/PAIMI/PAIR/AT)

V. Forensic Issues

A. Litigation

Williams v. Philadelphia Prison System (E.D. Pa.) (Judge Surrick) -- DRN continues to co-counsel this class action lawsuit filed on behalf of individuals detained or serving sentences in Philadelphia's jails. The lawsuit primarily alleges that overcrowded facilities violate the Constitution. DRN's focus is on individuals with serious mental illness who are incarcerated in these institutions. The plaintiffs' motion for class certification and the City defendants' motion to join Philadelphia judges and the Secretary of the Pennsylvania Department of Corrections as indispensable parties are pending. In August, we served discovery requests on the defendants concerning mental health treatment in the jails and the impact of overcrowding on detainees with mental illness. The defendants' responses are due in early October. (PAIMI)

B. Non-Litigation Advocacy

Accessibility of Philadelphia Jails -- DRN was contacted by man with paraplegia who uses a wheelchair who alleged that there are a multitude of serious physical accessibility issues in Philadelphia's jails. He informed us that the holding and quarantine areas lack accessible toilet and shower facilities and that the drug treatment program and work release facilities are inaccessible. The man who contacted us was required by the court to participate in the drug treatment and work release programs to be discharged, but he cannot do so because they are

not accessible. We met with this inmate and others with physical disabilities in the prisons who supported his allegations. We asked the Philadelphia Prison System to meet with us to discuss these issues, and a meeting is scheduled for October. (PAIR)

Isolation of Inmates with Mental Illness -- DRN continues to work on issues relating to inmates with mental illness in Pennsylvania's state prisons, focusing on their placement in restricted housing units (i.e., isolation) due to disciplinary violations. This quarter, we received information that we had requested concerning inmates with serious mental illness in the Restricted Housing Units (RHUs). This information is troubling because it suggests that the number of inmates with mental illness in the RHUs has declined even as the population in the prisons continues to increase, which is unlikely. (PAIMI)

Transition Planning for Inmates with Mental Illness -- DRN and other mental health advocates continue to work toward development of a pilot program for five counties to develop "in-reach" programs. These programs would fund forensic peer specialists to work with inmates with mental illness to help them to secure benefits and housing before they leave jail and then to follow up to promote stability after they transition to the community. We met in July with mental health staff from the five counties for a presentation on forensic peer specialists. The counties remain concerned about funding for the program and we are working with them to address this issue. (PAIMI)

PCCD Mental Health and Justice Advisory Council -- A DRN attorney has been appointed to the Mental Health and Justice Advisory Council of the Pennsylvania Commission on Crime and Delinquency (PCCD). The Council reviews responses to requests for proposals relating to forensic activities developed by the Commonwealth, including mental health courts and reentry programs. (PAIMI)

Death Penalty and People with Mental Retardation -- DRN continues to monitor legislative actions to implement the Supreme Court's decision in *Atkins* that barred execution of persons with mental retardation and participated in a telephone conference call this quarter to assess the status of legislative efforts to address this issue. (DD)

VI. Education/Trainings/Technical Assistance/Outreach

- A DRN attorney continues to work with the Outreach Committee to assure that DRN's services reach unserved and underserved communities, including rural, deaf, aging, Hispanic, and Asian communities. We researched media to identify outreach strategies for these communities. We also created a Cable Clearinghouse on Sharepoint for improved distribution of our public service announcements. (DD/PAIMI/PAIR/AT/PABSS)
- On July 17, 2009, a DRN attorney spoke about voting issues for people with disabilities at the Westmoreland County ADA Celebration that was attended by about 75

people. We distributed "Your Right to Accessible Polling Places"; "Your Right to Assistance in Voting," and "Voter I.D. Requirements and Election Day Issues." (HAVA)

- A DRN attorney spoke on July 20, 2009 about voting issues for people with disabilities at the Armstrong County ADA Rally that was attended by about 50 people. We distributed "Your Right to Accessible Polling Places"; "Your Right to Assistance in Voting," and "Voter I.D. Requirements and Election Day Issues." (HAVA)

- On July 24, 2009, a DRN attorney spoke about voting issues for people with disabilities at the Allegheny County ADA Celebration that was attended by about 100 people. We distributed "Your Right to Accessible Polling Places"; "Your Right to Assistance in Voting," and "Voter I.D. Requirements and Election Day Issues." (HAVA)

- A DRN attorney gave a presentation on August 17, 2009 to 15 members of the peer support and advocacy network in Allegheny County about mental health advance directives. We distributed DRN's general and intake brochures. (PAIMI)

- On August 18, 2009, DRN attorneys gave presentations on "School-wide Positive Behavioral Support: A Legal Perspective" to about 80 staff persons of Intermediate Unit 28. We distributed a PowerPoint presentation on PBS; the ELC/DRN June 2008 "Report on Positive Behavioral Support"; and the fact sheet on "School Discipline for Students with Disabilities." (DD/PAIMI)

- A DRN attorney gave a presentation on August 19, 2009 to about 25 staff of Allegheny County mental health providers concerning mental health advance directives. We distributed DRN's general and intake brochures. (PAIMI)

- On September 4, 2009, a DRN attorney gave a "Legislative and Regulatory Update" on education issues to 38 parents and advocates via a webinar at locations in Allegheny, Westmoreland, and Somerset counties hosted by the Western Pennsylvania Coalition of Education Advocates. We distributed PowerPoint presentations on this topic. (DD)

- A DRN attorney gave a training on September 4, 2009 to 3 pediatric residents at Children's Hospital of Philadelphia on Medical Assistance and other benefits for children with disabilities. (DD/AT)

- On September 16, 2009, we gave a presentation to 80 housing program managers for supported housing programs for people with mental illness about the Fair Housing Act's disability discrimination provisions, including the right to reasonable modifications. (PAIMI/PAIR)

- A DRN attorney met on September 16, 2009 with the Executive Director of Won Community Service Center in Abington, which serves about 6,000 low-income immigrants from Korea, Russia, Haiti, Burma, and Latin America. We provided them with 35 DRN

brochures and 25 copies each of the following: "Assistive Technology for Persons with Disabilities: An Overview"; "Augmentative Communication Device Funding for Children: What Parents Need to Know"; "Assistive Technology for Children with Disabilities"; "The Basics of Special Education Law"; "Problems with Your Motorized Wheelchair? Your Rights Under Pennsylvania's Motorized Wheelchair Warranty Act"; "Children on Medical Assistance Should Never Pay a Co-Pay for Prescriptions Even When They Have Other Coverage"; and the PABSS general fact sheet. (DD/PAIR/AT)

- On September 18, 2009, DRN attorneys gave a presentation on "Education Issues from Enrollment to Disputes" to about 35 attorneys at a Continuing Legal Education course. We distributed a PowerPoint presentation on "Educational Rights of Students in Pennsylvania" and fact sheets on special education evaluations, IEP development, LRE decisions, school discipline, and dispute resolution. (DD/PAIMI)

- DRN attorneys spoke on September 22, 2009 with 12 attorneys at DLA Piper in Philadelphia about pro bono representation of families of children with disabilities in special education cases. We distributed the DRN brochure. (DD)

- On September 23, 2009, a DRN attorney gave the keynote address at a meeting of about 270 consumers and staff at Community Interactions, a mental health and mental retardation provider in Delaware County, and spoke about DRN and current issues affecting people with mental illness and mental retardation. We distributed the DRN brochure. In addition, DRN received an award from Community Interactions for our dedication and commitment to people with disabilities. (DD/PAIMI)

- A DRN attorney presented a webcast on September 24, 2009 for 53 advocates, employers, and human services professionals concerning the use of assistive technology in the workplace and the PABSS program. We distributed a PowerPoint presentation and DRN's general brochure. (AT/PABSS)

- On September 27, 2009, DRN attorneys participated in an outreach event at the Korean Folk Games Festival in Montgomery County attended by about 60 people. We distributed 5 DRN brochures; 10 DRN brochures in Spanish; 2 copies of "Children on Medical Assistance Should Never Pay a Co-Pay for Prescriptions Even When They Have Other Coverage"; 5 copies of "The Basics of Special Education Law"; 2 copies of "Early Intervention Services for Children with Disabilities Under Age 3"; 1 copy of "Getting Medical Assistance for a Child Under 21 with a Severe Disability, Mental Illness, or Behavior Disorder Under the Loophole" (Pennsylvania Health Law Project); and 3 copies of the "I'm Just Like You" coloring books. (DD/PAIMI/PAIR)

- DRN attorneys provide ongoing consultation or technical assistance to the following groups:

- Governor's Commission for Children and Families and Governor's Commission for Persons with Disabilities
- Mental Health and Mental Retardation Coalition
- ODP's Planning Advisory Committee
- Pennsylvania Developmental Disabilities Council
- Philadelphia Bar Association's Public Interest Section, Legal Rights of Persons with Disabilities Committee, and Delivery of Legal Services Committee
- Community Advocacy Coalition
- OneVoice
- The VALUE Coalition
- Achieva's Dental Health Task Force
- Philadelphia's Affordable Housing Coalition
- Mayview State Hospital Service Area Plan Steering Committee
- Torrance State Hospital Service Area Plan Steering Committee
- HealthChoices Behavioral Health Advisory Committee
- Mental Health and Justice Advisory Council of the Pennsylvania Commission on Crime and Delinquency
- OMHSAS's Adult Advisory Committee and Behavioral Health Clinical Committee
- Pennsylvania State Independent Living Council's Employment Committee
- Pennsylvania Rehabilitation Council's CareerLink Accessibility Committee
- Temple University's Institute on Disabilities' Advisory Council
- PIAT's Community Advisory Council and Assistive Technology Resource Centers
- Allegheny County-City of Pittsburgh Task Force on Disabilities
- Western Pennsylvania Coalition of Education Advocates

- Stakeholders Planning Task Force
- Financial Implementation Advisory Task Force (FIAT)
- NAMI Southwestern Pennsylvania Public Policy Committee
- Allegheny County Local Housing Options Task Force (LHOT) and LHOT's Incubator Project for People who are Deaf
- Southwestern Pennsylvania Behavioral Health Pharmacy and Therapeutics Committee
- Center for Hearing and Deaf Services
- Behavioral Health Task Force for People who are Deaf, Deaf-Blind, and Hard of Hearing
- Deaf Behavioral Health Consortium of Southeastern Pennsylvania
- Committee on Healthcare Needs of Children in Substitute Care
- Disability Voting Coalition
- Pennsylvania Voter Coalition
- Pennsylvania Voice Advisory Council
- Disability Investigative Group
- City of Pittsburgh Visitability Implementation Committee