

# DisabilityRights



## ARKANSAS

Protection and Advocacy and Client Assistance Program  
Services in the 3<sup>rd</sup> Congressional District

Fiscal Year 2017

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## BACKGROUND

**DISABILITY RIGHTS ARKANSAS (DRA)** is a private non-profit agency located in Little Rock, Arkansas. Since 1977, the Governor of Arkansas has designated DRA the independent Protection and Advocacy system for persons with disabilities in Arkansas. DRA operates under authority outlined in federal law, is funded primarily by the federal government and is governed by a Board of Directors. DRA collaborates with other disability rights and civil rights organizations, service agencies, the private bar and legal services to accomplish identified goals and objectives.

### **Protection & Advocacy for Individuals with Mental Illness (PAIMI)**

PAIMI serves individuals with a diagnosis of serious mental illness. PAIMI prioritizes services to individuals receiving care and treatment in a facility, and has a mandate to investigate complaints of neglect and abuse. See the Protection and Advocacy for Individuals with Mental Illness Act of 1986, as amended, 42 U.S.C. § 10801 *et seq.*

### **Protection & Advocacy for Individuals with Developmental Disabilities (PADD)**

PADD serves individuals with developmental disabilities, including intellectual disabilities, autism, epilepsy, cerebral palsy and neurological impairments. A developmental disability is a mental or physical impairment beginning before the age of 22, which is likely to continue indefinitely, limits certain major life activities and reflects a need for special care, treatment and/or individualized planning. See the Developmental Disabilities Assistance and Bill of Rights Act of 2000, 42 U.S.C. § 15001, *et seq.*

### **Client Assistance Program (CAP)**

CAP assists individuals with disabilities who have questions or have encountered problems while receiving or applying for vocational rehabilitation (VR) services from state VR agencies. CAP also advocates for those who receive services from Independent Living Centers (ILCs), The Division of Services for the Blind (DSB), and for those applying for or receiving services from Tribal VR offices. See the Rehabilitation Act of 1973, as amended, Title I, Part B, Sec. 112, 29 U.S.C. § 732.

### **Protection & Advocacy of Individual Rights (PAIR)**

PAIR serves individuals with disabilities who do not qualify for the protection and advocacy services described above. It is not limited to individuals with a specific disability or facing a certain issue. See the Protection and Advocacy of Individual Rights Program of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794e.

### **Protection & Advocacy for Assistive Technology (PAAT)**

PAAT serves individuals with disabilities with issues related to assistive technology devices and services. This includes investigating the denial of, and negotiating access to, assistive technology devices and services, as well as educational outreach efforts. See the Assistive Technology Act of 2004, 29 U.S.C. § 3004.

### **Protection & Advocacy for Beneficiaries of Social Security (PABSS)**

PABSS serves individuals with disabilities who receive Social Security Disability Insurance (SSDI) or Supplementary Security Income (SSI) and who are trying to return to work, obtain employment, or receive certain employment-related training and services. PABBS educates beneficiaries about Social Security's work incentives, and provides vocational rehabilitation and employment services advice.

Additionally, PABSS assists beneficiaries with understanding their rights regarding representative payees. See the Ticket to Work and Work Incentives Improvement Act of 1999, as amended, 42 U.S.C. § 1320b-21.

**Protection & Advocacy for Traumatic Brain Injury (PATBI)**

PATBI serves individuals diagnosed with a traumatic brain injury (TBI). PATBI provides advocacy support to individuals with TBI and their families. See the Traumatic Brain Injury Act, authorized as part of the Children’s Health Act of 2000, 42 U.S.C. § 300d-53.

**Protection & Advocacy for Voting Access (PAVA)**

PAVA educates and assists individuals with disabilities so they may enjoy full participation in the electoral process. These efforts include ensuring physical accessibility of polling places and informing individuals about the rights of voters with disabilities. See the Protection and Advocacy for Voting Access program of the Help America Vote Act of 2002, 42 U.S.C. § 15461-15462.

**CLIENTS**

The United States Census Bureau’s 2016 American Community Survey indicates the 3<sup>rd</sup> District’s total population is estimated to be 794,237, with a civilian, noninstitutionalized population of 788,161. Of that 788,161 total, 103,001 (13.1%) have a disability. In FY2017, DRA received 149 service requests from the 3rd District, or an average of 12.5 service requests per month.

**Clients by Age**

While DRA assisted every age demographic in the district, the table below shows that 35% of service requests were for clients under the age of 20 and 21% of requests were for those ages 55 or older.

<b>Age Group</b>	<b>Number of Individuals</b>	<b>Percentage</b>
<b>4 and Under</b>	1	.5%
<b>5-9 Years</b>	18	12%
<b>10-14 Years</b>	14	9.5%
<b>15-19 Years</b>	19	13%
<b>20-24 Years</b>	14	9.5%
<b>25-34 Years</b>	12	8%
<b>35-44 Years</b>	23	15%
<b>45-54 Years</b>	15	10%
<b>55-59 Years</b>	15	10%
<b>60-64 Years</b>	9	6%
<b>65 or Older</b>	7	5%
<b>Unknown</b>	2	1%

## Clients by Underrepresented Groups

DRA seeks to provide services to underrepresented groups in our state. The following chart compares race and ethnicity demographics for the entire 3<sup>rd</sup> Congressional District with that of DRA's clients in the 3<sup>rd</sup> Congressional District.

Race	Estimate	As Percentage	DRA Clients	As Percentage
<b>Total Population</b>	794,237	---	149	---
<b>One Race</b>	769,356	96.9%	137	91.9%
<b>White</b>	659,604	85.7%	129	86.6%
<b>Black or African American</b>	24,659	3.2%	8	5.3%
<b>American Indian and Alaska Native</b>	8,440	1.1%	0	---
<b>Asian</b>	22,714	3%	0	---
<b>Native Hawaiian and Other Pacific Islander</b>	7,265	1%	0	---
<b>Some other race</b>	46,674	6.1%	0	---
<b>Two or more races</b>	24,881	3.1%	3	2%
<b>Unknown</b>			9	6%

## SERVICE REQUESTS

DRA received 179 requests for services in FY2017 from residents of the 3<sup>rd</sup> Congressional District. The charts below show the distribution of the requests by grant funding and by priority. The "none" category represents requests for services that did not fall into one of the established priority areas; requests that do not meet a priority are still provided assistance, but usually will be provided with information and referral services rather than case-level advocacy.

### Service Requests by Program

Program Funding Source	CAP	PAAT	PABSS	PADD	PAIMI	PAIR	PATBI	PAVA
<b>Count of Service Requests</b>	9	2	9	43	21	60	5	0

### Priority Areas Covered by Service Requests

Priority Area	Count of Service Requests
<b>Abuse, Neglect, and Exploitation</b>	12
<b>Community Integration and Access</b>	51
<b>Education</b>	29
<b>Employment</b>	18
<b>None</b>	39

Service Requests in the 3<sup>rd</sup> Congressional District reflect the most common problem area by far to be community integration and access, followed by education. Within the community integration and access priority, the most common issues for clients involved: housing, government benefits and services, architectural accessibility, and healthcare. Information and assistance is provided to clients wanting to return to work and clients wanting to leave institutional settings to live in the community. DRA monitors for abuse and neglect at facilities housing individuals with disabilities, and continues to be a primary resource for parents/guardians requesting assistance with special education issues. Whenever possible, DRA seeks to inform and educate clients so they may effectively self-advocate. In addition to empowering an individual to resolve issues for themselves, this serves to make the relationship between the client and the other party less adversarial than when a third party such as DRA intervenes, and also is a means by which DRA can serve more individuals with fewer resources.

### **Service Requests Specific to the 3<sup>rd</sup> District**

Example 1: A client who was nine years into a 10-year program to obtain her PhD in clinical psychology was informed by ARS that their policies did not permit them to provide assistance with advanced degrees, unless they are required for entry into a particular field of work, so ARS would not be providing any further assistance to the client while she completed her dissertation, which was the final requirement for the client to obtain her PhD. A DRA attorney assisted the client with appealing this decision, and argued in an administrative review that a PhD is nearly uniformly required for a professorship in psychology, which had been the client's goal throughout her relationship with ARS. The client subsequently received a favorable decision, with ARS agreeing to continued support for the client to obtain her PhD.

Example 2: A client with a visual impairment received partial assistance from ARS to take classes to prepare for an Emergency Medical Technician (EMT) exam. Upon failing the exam, the client was informed by the EMT licensing agency that she would have to take a refresher course and wait a year to retest. During this interval, the client found a cosmetology program that would provide the classes needed for her to complete coursework towards becoming a licensed cosmetologist and allow her to earn college credit simultaneously. She requested ARS change her employment outcome, so she could receive assistance from ARS to pursue this alternate program; ARS refused, stating she would have to continue with the EMT program if she wanted ARS's assistance. A DRA attorney filed an appeal of this decision, citing not only ARS's refusal to permit the client to change her employment outcome, but also their failure to provide adequate notice regarding their regulatory support for such a decision, as the client was never notified in writing of ARS's decision, nor was she ever told under what rule she was prohibited from amending her Individualized Plan for Employment (IPE). The attorney successfully argued these points during an administrative review, and the client subsequently amended her IPE and attended cosmetology school with ARS assistance.

Example 3: DRA received a request for assistance from the parent of a seven-year-old who exhibited difficulties with transitions and social situations, particularly after special education services were discontinued without a reevaluation and the client was placed in a regular classroom without any supports. The student subsequently began getting suspended, and was ultimately placed in an alternative learning environment (ALE) for behaviors commonly associated with autism. The student was also reportedly placed in restraints during some behavior incidents. The parent requested he be evaluated, but the district reportedly talked her out of it each time she made the request. DRA filed for due process on the student's behalf, whereupon the school district quickly agreed to evaluate the student, provide behavioral supports, and move him from the ALE back to a school setting.

Example 4: DRA received a request for assistance from the parent of a 13-year-old student after her written request for an evaluation was denied by the school district, with the school district reportedly responding that the student was "too smart" for special education services, but that the parent could have him evaluated at her own expense if she so chose. The evaluation the parent paid for recommended supports and services for the student; in the meantime, the student exhibited some behaviors that the school district responded to by beginning expulsion proceedings. DRA intervened prior to the conclusion of the expulsion hearing and filed for due process, which halted the expulsion. The due process proceeding resulted in the school district vacating the expulsion, conducting an evaluation and functional behavior assessment, and transferring the student to a school more suitable for his needs.

Example 5: An individual with a traumatic brain injury requested assistance from DRA in appealing a reduction in his Medicaid Waiver services. DRA represented the client through the Medicaid appeal process, including an impartial hearing, and the client's services were subsequently restored.

## PROJECTS

### **Systemic Issues**

Arkansas lacks any binding regulation or law on the use of restraint against students with disabilities in the public schools. Although the Arkansas Department of Education issued "guidance" on the use of restraint, the guidance is not binding or mandatory. Many school districts in the state are either unaware of the guidance or refuse to follow the guidance. Thus, students with disabilities continue to be subjected to and at risk of the unsafe, excessive and inappropriate use of restraint at school. This impacts many students with developmental disabilities, particularly those with Autism Spectrum Disorder and other disabilities with behavioral and communication challenges. To address this problem on a systemic level, DRA wrote and published a White Paper to educate the public and advocate for the adoption of binding standards and law related to the use of restraint on students with disabilities in the public school setting. The White Paper was disseminated publicly at the time of its release and continues to be distributed. DRA also met with stakeholders who might be interested in assisting with the development and adoption of the needed binding regulation and law. The release of the White Paper revealed the ongoing need for further education and advocacy around the issue of restraint, reflected in part by some of the public reaction and comments to the White Paper and what is perceived by some in the public as a need to restrain and use corporal punishment for students who have atypical behaviors. The Arkansas Department of Education claims that it is "powerless" to promulgate any regulations, although it had previously done so with respect to time out regulations. DRA intends to use the White Paper as a vehicle to assist in training and raising public awareness and systemic advocacy to obtain the needed enforceable regulations and law.

DRA has continued to monitor and provide public comment on proposed rule changes that impact the education of students with disabilities throughout the state. DRA provided comment on the state's proposed Every Student Succeeds Act (ESSA) plan on two separate occasions and encouraged ADE to review the proposed plan to better reflect the needs of students with disabilities. In addition, DRA attorneys participated in three task forces that ADE organized to address issues of students with disabilities, including a task force charged with reducing the special education paperwork used by school districts across the state and developing a manual to better explain the process to parents. DRA also participated on a task force to address the education needs of students with disabilities in various

correctional settings across the State, and a task force meant to reform the dispute resolution process for students with disabilities. At the meetings, needed reforms were identified, including state regulations that differ from federal requirements, process-related discrepancies, and an overall lack of understanding of due process by both stakeholders and parents. Despite identification of these issues, DRA has not seen any meaningful changes to the process. ADE disbanded this task force without resolution, but did retain an expert to address needed changes to state regulations. DRA will continue to monitor these issues and their impact on students with disabilities. DRA also participated in a Youth Justice Reform Board comprised of judges, DYS staff, and other stakeholders to address the overuse of the juvenile justice system for youth, including those with disabilities, across the state. The board identified a number of issues, and has subsequently joined another group that was also tackling juvenile justice reform. This reconstituted board will continue to meet in 2018, and DRA will continue to participate on this board and advocate for needed changes to the juvenile justice system.

DRA engaged in systemic advocacy to address ongoing problems and rights violations in the state-operated juvenile justice system. Although many of the youth in those facilities have serious mental illness, some have co-occurring developmental disabilities. DRA monitored the secure juvenile treatment facilities, met with officials from the State's Division of Youth Services (DYS), engaged other stakeholders, and engaged the media to heighten awareness of problems with the services and treatment provided in the facilities. These problems included a lack of treatment and education services at the facility, as well as upon discharge to the community. The State made some changes to the system, and has represented that it would retain an expert to review its system, improve educational services, and otherwise provide services that will support meaningful transition to the community.

DRA conducted extensive monitoring of settings in which persons with mental illness reside, were placed and/or were committed, including the Arkansas State Hospital (ASH), Psychiatric Residential Treatment Facilities (PRTFs), Juvenile Detention Centers (JDCs), Secure Juvenile Treatment Facilities (SJTFs), Residential Care Facilities (RCFs), and Human Development Centers (HDCs). This monitoring was critical during a time when the Arkansas Department of Human Services (DHS) is undergoing reorganization and there is confusion and a lack of robust oversight by the state. DRA's presence through monitoring and its interactions with clients and facility staff had a positive impact and provided a necessary safeguard/protection against abuse and neglect. DRA followed up with DHS anytime there were concerns in the facilities and with the state's oversight. Over the course of the fiscal year, DRA staff monitored all of the PRTFs in the state, as well as routinely reviewing serious incident reports provided by these facilities, which enabled DRA staff to gain information about practices in these facilities. When a serious incident report raised concerns, DRA would follow up with the facility and with an onsite visit if necessary. Through monitoring, DRA was able to identify concerns with the overmedication of youth in one of these facilities. DRA continues to monitor PRTFs and gather information to develop a systemic strategy to address these concerns.

Throughout the last two years, DRA has engaged in monitoring and data collection at sheltered workshops and DDTCS programs that have a pre-vocational component across the state. DRA monitored these programs to not only ensure the absence of abuse, neglect, and exploitation, but also to ensure that individuals are given meaningful opportunities to obtain competitive, integrated employment. This process began with data collection to better understand the breadth of sheltered workshops in our state, and the effect on our state's disability population, then progressed to collaborating with Arkansas Rehabilitation Services (ARS) to provide guidance to sheltered workshops/DDTCS programs regarding their obligations and restrictions under the new Section 511 regulations. Finally, the sheltered workshops were monitored again to ensure that ARS was fulfilling its

obligations under Section 511, and to assist individuals who did not have a relationship with ARS. DRA just released a report of our findings regarding sheltered workshops and DDTCS programs with pre-vocational components in our state, and will include recommendations for future steps the state must take to achieve a more inclusive employment community for individuals with disabilities.

DRA met with Arkansas Rehabilitation Services (ARS) to address a number of topics; chief among them the revision of ARS's policy manual, which requires administrative rule-making. DRA was permitted access to ARS's proposed rules and regulations prior to them being published for public comment, resulting in DRA pointing to a number of problems with the proposed regulations that would require revision to bring the policies into compliance with federal law and regulations. This prevented state rule-making that could have had a detrimental impact on persons with disabilities who could benefit from vocational rehabilitation services.

### **Coalition Building**

DRA is a part of the Developmental Disabilities Network, along with Partners for Inclusive Communities (Partners) and the Arkansas Governor's Developmental Disabilities Council (DDC). As a minimum allotment state, DRA partners with other entities whenever possible, as a means to maximize efficiency and more effectively utilize our limited resources. These partners include the Arkansas Waiver Association (AWA), AARP, the Arkansas Autism Resource and Outreach Center (AAROC) and Arkansas Advocates for Nursing Home Residents (AANHR). Together, we discuss issues impacting the disability community in Arkansas and how we can best collaborate to address those issues. DRA also works with the Mental Health Consumer Advisory Councils in each congressional district to empower consumers and promote self-determination.

### **Veterans' Issues**

As in 2016, DRA co-hosted an annual conference in 2017 for brain injury survivors under the PATBI grant. The purpose of the conference is to build a strong self-advocacy and support system within the TBI community. DRA also spearheaded a successful effort for Governor Asa Hutchinson to declare March 2017 Brain Injury Awareness month. An average of almost 21,000 service members annually have been diagnosed with traumatic brain injury since 2000, resulting in traumatic brain injury often being referred to as the signature wound of the Iraq and Afghanistan wars.

We hope this report has been beneficial in providing an overview of our programs and services. Please don't hesitate to reach out to us if we can answer any questions or provide you with further information about our work.

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