



# **Disability Rights Center of Arkansas, Inc.**

**The Protection & Advocacy  
(P&A) System**

# The P&A Network

- ▶ There are fifty-seven (57) P&A Systems in the United States and its territories including the District of Columbia and an American Native P&A
- ▶ Collectively, the P & A agencies are the largest provider of legally based services to people with disabilities in the United States

# P&A For Arkansas

- ▶ DRC is the P&A system designated to protect and advocate for the legal and civil rights of Arkansans who have disabilities pursuant to the following federal laws:
  - The Protection and Advocacy for Individual Rights Act (PAIR), 29 U.S.C. § 794e
  - The Developmental Disabilities Act (DDA), 42 U.S.C. § 15041, *et seq.*
  - The Protection and Advocacy for Individuals with Mental Illness Act (PAIMI), 42 U.S.C. § 10801, *et seq.*
  - The Protection for Individuals with Traumatic Brain Injuries (PATBI), 42 U.S.C. § 300d-53

# DRC's Mission Statement

- ▶ To passionately assist the lives of people with disabilities through education, empowerment and protection of their legal rights

# DRC's Priorities for 2014

- ▶ Community Integration and Institutions
- ▶ Housing
- ▶ Employment
- ▶ Education
- ▶ Accessibility

# Overview of Authorities

- ▶ The PAIMI Act and the Developmental Disabilities Assistance and Bill of Rights Act (DD Act) provide P & A authority to:
  - **Monitor** facilities where services are provided to individuals with disabilities
  - **Investigate** allegations of abuse and neglect of individuals with disabilities
  - **Access** records

# Abuse and Neglect

- ▶ **Abuse** – “means **any act or failure to act** by [an employee] of a facility rendering care or treatment which was **performed, or which was failed to be performed**, knowingly, recklessly, or intentionally, and which **caused, or may have caused**, injury or death to an individual with” a disability.

- 42 U.S.C. § 10802 – PAIMI
- 45 C.F.R. § 1385.19 - PADD

# P & A Abuse and Neglect Investigations

## ▶ The P & A shall:

- “[H]ave the authority to investigate incidents of abuse and neglect of individuals with [developmental disabilities/mental illness] if the incidents are reported to the system or if there is probable cause to believe that the incidents occurred.”

- 42 U.S.C. § 15043(a)(2)(B) – PADD (and PAIR/PAAT/PATBI by reference)
- 42 U.S.C. § 10805 (a)(1)(A) - PAIMI



# Abuse and Neglect

- ▶ **Neglect (PAIMI)** – “means a negligent **act or omission** by any individual responsible for providing services in a facility rendering care or treatment **which caused or may have caused injury or death** to an individual with mental illness or which placed an individual with mental illness **at risk of injury or death**, and includes an act or omission such as”:
  - The **failure to establish or carry out an appropriate individual program** or treatment plan;
  - The **failure to provide a safe environment**, including failure to maintain adequate numbers of appropriately trained staff.
    - 42 U.S.C. § 10802

# PADD Regulations

- ▶ A system shall have reasonable unaccompanied access to public and private facilities which provide services, supports, and other assistance for individuals with developmental disabilities in the State when necessary to conduct a full investigation of an incident of abuse or neglect under section 142(a)(2)(B) of the Act.

# PAIMI Regulations

- ▶ A P&A system shall have reasonable unaccompanied access to public and private facilities and programs in the State which render care or treatment for individuals with mental illness, and to all areas of the facility which are used by residents or are accessible to residents. The P&A system shall have reasonable unaccompanied access to residents at all times necessary to conduct a full investigation of an incident of abuse or neglect.

# P & A Monitoring Authority

- ▶ The P&A system shall:
  - PADD (PAIR/PAAT/PATBI) - “have access at reasonable times to any individual with a developmental disability in a location in which services, supports, and other assistance are provided to such an individual.” 42 U.S.C. § 15043(a)(2)(H)
  - PAIMI – “have access to facilities in the State providing care or treatment.” 42 U.S.C. § 10805(a)(3)

# Access to Facilities

## ▶ Monitoring:

- In general, the P & A has the authority to access locations where services and treatment is provided to individuals with disabilities to monitor compliance with respect to the “rights and safety” of the individuals with disabilities, or to speak with the individuals to provide information and training
  - 45 C.F.R. §1386.22(g) – PADD
  - 42 C.F.R. § 51.42 (c) - PAIMI

# Denial of Access

If a system is denied access to facilities and its programs, individuals with developmental disabilities, or records covered by the Act it shall be provided promptly with a written statement of reasons, including, in the case of a denial for alleged lack of authorization . . . .”

PADD regulations

# Case Examples

- ▶ 12 year old boy diagnosed with autism, ADHD, anxiety disorder, disruptive behavior disorder, and a seizure condition was being bussed nearly three hours per day (6:15-7:50 am), was suspended numerous times for disciplinary issues on the bus. Parent was told by the bus driver that the child would have to be in restraints to ride the bus. Child was also restrained in the classroom. Child's seizure condition caused him to stop breathing when restrained. Parent contacted DRC because child had begun to exhibit heightened and regressive behaviors – nightmares, smearing feces on the wall, increasingly fearful to go to school. Parent found out from an aide that restraints were being applied routinely in the classroom

# Case Examples

- ▶ A 12 year old boy diagnosed with Autism, Mood Disorder NOS, ADHD, Oppositional Defiant Disorder, Anxiety Disorder, and partially deaf in one ear has been repeatedly restrained by teachers and school resource officers when he refused to follow verbal commands to begin work or refused to make eye contact with the teacher. Behavior documentation sent to the Parent stated child was “deescalated”; child reported to Parent multiple staff and school resource officer were involved



# Case Examples

- ▶ An 11 year old boy diagnosed with autism and ADD was restrained at school after refusing to follow a verbal command by a teacher. The teacher grabbed his wrists, pulled his arms across his body, and restrained him for an unknown amount of time. Parent contacted DRC after the incident occurred. Initial medical evaluation at ACH indicated that child's arm was fractured. Parents were never notified by staff that a restraint occurred; child reported it to Parent

# Case Examples

- ▶ A 10 year old boy diagnosed with Autism, Separation Anxiety Disorder, Math Learning Disorder, Developmental Coordination Disorder, and Borderline Intellectual Functioning was restrained, hit, and cursed at school by a paraprofessional on several occasions. Parent contacted DRC after child's arm was injured from one of the restraints and sustained bruises from being pushed to the ground. Parent was not told of the restraints by staff; child reported to Parent

# DD Network



**Arkansas Governor's Developmental  
Disabilities Council**



**Disability Rights Center of Arkansas**



**Partners for Inclusive Communities  
University Center for Excellence in  
Developmental Disabilities**

# **Disability Rights Center of Arkansas, Inc.**

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