

Advocacy Center
Quarterly Report to the DD Council
July 8, 2017

Update/progress on agency initiatives:

1. Voters with Disabilities

The Advocacy Center has received numerous complaints over the years regarding denial of assistance to voters who are entitled to help at the polls. We hope that the new law will result in fewer problems for voters with disabilities. Thanks to new legislation, after January 1, voters with disabilities who require assistance because of a disability will no longer have to provide proof of disability prior to receiving assistance.

Voters will be required to sign a statement, provided by the polling commissioners, attesting that they need assistance. A voter who needs assistance is entitled to the assistant of his or her choice, as long as the person providing assistance isn't the voter's union representative or employer, and isn't a candidate for election. Voters can also be assisted by a polling commissioner.

2. Monitoring of agencies employing people with disabilities at sub-minimum wages.

AC is engaged in an ongoing Sheltered Employment/14c Project- 14c refers to section 14c of the Fair Labor Standards Act, which allows for the payment of sub-minimum wages to employees with disabilities.

The scope of Advocacy Center's monitoring is to assess whether employers were:

1. Following Department of Labor Wage and Hour (DOL W&H) regulations in the payment of sub-minimum wages.
2. Actively referring consumers to Louisiana Rehabilitation Services for vocational rehabilitation services.
3. Actively engaged in a relationship with the local school district, creating a pipeline from special education programs to segregated employment settings.
4. Providing job training that could lead to competitive employment.

After the first round of monitoring, several 14c employment providers were found not to be in compliance with the 14c Labor Law. A disproportional number of "employees" were engaged in non-work activities, like coloring, despite expressing a desire to perform competitive work. Many people interviewed reported that no one has ever asked them if they would prefer working somewhere else. Nearly everyone interviewed did not know how much money they earned. Additional 14c employment provider monitoring is being planned for the near future.

AC is also planning a screening and Q&A session for a documentary film, "Bottom Dollars," which explores the issue of sub-minimum wage employment and its effect on people with disabilities living around the country. For more information about the film or to plan a free screening of your own, please visit <http://www.bottomdollarsmovie.com>.

3. ABLE Accounts now available in Louisiana.

Community Work Incentives Coordinators (CWIC) have been offering training to providers on ABLE Accounts. As of July 1, ABLE Accounts are available in Louisiana. ABLE accounts allow

individuals with certain means-tested benefits to save money without losing those benefits due to excess resources.

This program could be a game-changer for Medicaid Waiver, SSI, and Medicaid recipients (as well as many others). For now, enrollment must be done online. Beneficiaries can enroll in the program at: <https://www.able.osfa.la.gov/>.

For more information on ABLE accounts and their potential impact on your benefits, please contact the Advocacy Center's South Louisiana Benefits Planning Program at 1-855-877-8599.

4. Expanding the reach of Benefits Planning and Advisement Services

Advocacy Center received training from Virginia Commonwealth University's National Training Center to develop and implement a community capacity building initiative. The plan of the initiative is to increase community partner involvement in the initial phase of the benefits planning process, which is currently performed exclusively by Community Work Incentives Coordinators (CWICs).

Partners will provide basic information to non-working Social Security beneficiaries, allowing CWICs to focus on providing intensive benefits planning services. Community partners will receive free on-line training by SSA's Virginia Commonwealth Liaison on basic work incentives, referral protocols, and will receive ongoing mentoring from the Community Work Incentives Planning & Assistance Coordinators.

This program will be a great opportunity for community partners to learn more about benefits planning and extend the reach of the WIPA program to people all around the state.

Update/Progress Legal Services

1. Chisholm v. Gee

The Advocacy Center originally filed this case in 1997. This case specifically addresses the failure of Louisiana's Medicaid system to provide necessary services to children from 3-21 who have developmental disabilities and are on a waiting list for services. Prior to the filing of this case, these children were on a waitlist for services for years without necessary help in the meantime. Over the years, this case has been the vehicle for obtaining great strides for children with disabilities, expanding access to services including behavioral health services. In 2014, the parties entered into a stipulation, which included access to behavioral health services including Applied Behavioral Analysis. On January 4, 2017, LDH filed a motion to vacate the 2014 stipulation. We filed an opposition to this motion to vacate, and are awaiting a ruling from the Judge. During this time we filed noncompliance letters regarding improper notices, waiting times for ABA, and a proposed elimination of psychosocial rehabilitation. Oral argument on the motion to vacate is going to be held on July 19, 2017.

--Debra Weinberg, Jonathan Trunnell, and Sarah Voigt

2. A.S. v. IHSNO and LDE

The Advocacy Center filed this case on April 28, 2017. This case is on behalf of a 15-year old student with mobility impairment and is against a charter school in New Orleans and the Louisiana Department of Education. The charter school holds almost all classes on the second and third floor of the building, but does not have an elevator or other means for students to reach these classes, which are held on the second and third floors. Currently pending is a preliminary injunction and the school's answer is due July 10, 2017. We toured the building on June 26, 2017 and are attempting to negotiate a sufficient settlement. Otherwise, we will be proceeding with the preliminary injunction.

--Ken Kolb, Debra Weinberg, Ron Lospennato

3. Tangipahoa Parish School District

We filed a state complaint against Tangipahoa Parish Public Schools on June 19, 2017 regarding an elementary school student with autism, including allegations regarding outdated and illegal policies and practices for restraint, unsafe school procedures related to self injurious behaviors, unnecessary use of a self contained classroom and other isolation from typical peers, failure to provide academic instruction and testing sufficient to show a present level of performance, and failure to provide educational records. The early resolution meeting is set for June 29, 2017. If the complaint is not resolved at that meeting, the Louisiana Department of Education will have until August 18, 2017 to issue its findings.

--Debra Weinberg

4. St. Tammany School District

We are providing representation for a 13-year-old student with autism and neurological disabilities who was removed her from school by the school district and placed in a homebound setting as an interim placement for 45 days. We filed a Due Process Complaint regarding placement and the appropriateness of her education. The school district then filed an expedited Due Process Complaint alleging the student was dangerous and therefore should remain in the homebound placement for 45 days. The case was settled in mediation leading to increased services and protections for the student as well as \$5,000.00 in attorney's fees to AC. We are now assisting the parents in their request for either placement at a step down facility or reimbursement for educational services at the facility.

--Debra Weinberg and Sarah Voigt

5. A.S. v. VIBE (an Orleans Parish Type2 Charter School)

AS is a 15 year-old student who receives special education services at the International High School of New Orleans (IHSNO). The school is a three-story building that does not have an elevator or a lift. Most of AS's classes are on the second floor. She has a congenital condition that impacts on her mobility. As a result of her condition, she had surgery on one of her feet. When she was medically cleared to return to school, her parents requested that she be accommodated as due to her surgery, she was not able to climb stairs. They requested that her class be moved to the first floor. The school refused to do this. It only offered to have her sit in an office and receive her academic instruction from her teacher and a paraprofessional.

After the school's refusal to negotiate a solution that included A.S. with other students and provided her with meaningful access to her program, we filed a federal law suit seeking injunctive relief requiring the school to provide the appropriate accommodation for AS as she will have surgery on her other foot late this summer. After filing the case, the school agreed to take a number of steps to ensure that A.S. is included more in her classes.

The school has also agreed to consider making a number of changes that will result in A.S. integration in the school next school year (2017-18). We have requested a preliminary injunction from the court, but have held off pursuing it while we are in negotiations. We are hoping to reach a settlement, but, that failing, we will seek injunctive relief from the court in the federal court.

Success Stories

1. Fair Result from a Fair Hearing

AC's CAP Program assisted Ms. L.G. to get Louisiana Rehabilitation Services (LRS) to reverse its denial of funding for summer school. LRS' stated reason for the decision was lack of funding and its summer school exception policy.

CAP reminded LRS that its denial based on lack of funding is inconsistent with federal regulations because it places arbitrary limits on services. LRS maintained its decision, which prompted CAP to request a fair hearing. In addition to lack of funding, LRS cited its general policy, which states, "summer school requires an exception by the Executive Director." The exception was denied.

Ms. L.G. won at her fair hearing. The Fair Hearing Officer ruled that the Master's degree in this case is a continuous program, meaning that summer school is required to receive a Master's degree in Ms. L.G.'s particular Master's program. Additionally, the Officer ruled that lack of funding is not consistent with federal regulations because it places an arbitrary limit on services. Ms. L.G. will be attending her summer school courses with full funding by LRS.

Questions-

- Does LRS have a plan to avoid and address future funding cuts?
- Is LR looking to build or increase funding capacity in collaboration with the Louisiana Work Force Commission? Is this possible?
- Can LRS develop a plan other than the LWC/LRS website to post updates on services, funding and other public LRS topics? The LRS site does not have information or updates for clients and services providers that could be helpful and decrease inconsistent information in the community.

2. SSI Recipient Receives Waiver – On road to self sufficiency.

JG is an SSI recipient who receives Medicaid waiver services. He had no prior work history but was hired newly out of college for a salary of \$50k per year. He had dreamed of working in his chosen field but was told that he would lose his waiver services. After contacting WIPA, his CWIC was able to counsel him on the work incentives available to him, including the waiver spend-down program for the medically needy. This entitles him to transition off of SSI benefits in a controlled and deliberate manner and continue to receive his waiver services.

3. SSI Recipient Transitioning to Financial Independence

Mr. JS is living with HIV and receives Supplemental Security Income (SSI), Social Security Disability Insurance (SSDI), Medicare, Medicaid and assistance through the Louisiana AIDS Drug Assistance Program (ADAP). When he first contacted the South Louisiana Benefits Planning Program, he had just begun working part time as a Recovery Technician, earning approximately \$866 gross per month. The CWIC explained the following to JS: With earnings of \$866 per month, he would retain his SSDI payments and that after 9 months of earning at this level he would automatically begin a 3-year Extended Period of Eligibility (EPE). His SSI payments would be reduced to \$0 but, despite this, his total financial outcome is much higher while he is working. His SSI eligibility and Medicaid coverage would remain in place due to a rule called 1619(b). And he would continue to be covered by Medicare and ADAP.

Upon hearing all of this, JS decided to apply for and accept a full-time position with Volunteers of America, earning approximately \$1,558 gross per month. He feels comfortable pursuing this goal with the knowledge that he will retain all of his forms of health insurance and that, although his SSI and SSDI payments will be suspended, he will be able to get them back if he must stop working or reduce his work below the SGA level within 3 years.