

Greetings to Friends and Supporters of the Arizona Center for Disability Law:

This is the first of what we hope will be a regular e-mail update on our activities. It is an opportunity to share with you some of the highlights of our work protecting the rights of individuals with disabilities, as well as letting you know about developments of interest in disability law and policy. I know all of you get too many e-mails as it is, so if this is a list you would prefer to opt out of, let us know and this will be the only e-mail you will receive from us. If you have ideas for updates or issues you would like us to address, let us know that as well.

### **IDEA - Special Education Law before Congress**

The ACDL receives over 1500 calls per year from families with children with disabilities seeking help with special education issues. The federal Individuals with Disabilities Education Act (IDEA ) has been a powerful tool in setting out legal requirements for children's services and affording families extensive due process rights when appropriate education and related services are not provided. Since the public school system in Arizona is the single largest provider of services to kids with disabilities in Arizona (88,000), the importance of a strong IDEA is paramount to all Arizona children's future success. All that may change under currently proposed federal legislation reauthorizing IDEA. Under the guise of "reducing paperwork" and allowing school districts more flexibility, many substantive rights of children will be lost. Children like " Benny" who was represented by the ACDL when the school system exited him from special education services without an evaluation or proper notice to the family. Under existing law, the Center was able to invoke stay put protections and maintain necessary services while the case proceeded. These long-held rights prevented Benny from being harmed by the school district's reckless disregard of the law.

A conference committee is being appointed to work out the differences between the House and Senate IDEA Bills, and it appears time may run out without passage of a bill before the November elections. However, proposals for changing the IDEA are likely to crop up next year and the ACDL and other advocacy groups across the country hope the message that IDEA is working is heard. To learn more about the IDEA reauthorization: [www.dredf.org](http://www.dredf.org)

**Abuse and Neglect - ACDL Staff Investigate How the System Fails individuals with Mental Illness**

We have all read the incidents in the news: a 41 year old man commits suicide in a locked behavioral health facility in Tucson after seeking treatment for depression (September 2002); a 32 year old woman involuntarily committed to Kino Community Hospital in Tucson is killed after being restrained by 4 people (July 2003); a 15 year old is shot and killed by Mesa Police after his family calls the police because he is threatening to kill himself with a knife (August 2003); and a 9 year old girl who is a ward of the state is shocked with a Taser after she is reported as a run away by a Tucson psychiatric residential treatment center; she is handcuffed and in the back of a police car at the time she is shocked (May 2004). These and other incidents like them are routinely reviewed by the ACDL as part of our protection and advocacy authority to investigate incidents of abuse and neglect of people with disabilities. The ACDL often plays the role of watchdog over the state agencies charged with monitoring the welfare of persons with mental illness, ensuring that investigations take place, that they are thorough and that corrective action is implemented. The ACDL also strives to increase public awareness of these incidents, such as the recent one involving the 9 year old girl with behavioral health issues who was "tasered". For our op ed piece on the issue go to: <http://www.tucsonweekly.com/qbase/Opinion/Content?oid=oid:58248>.

### **HELP AMERICA VOTE ACT - Ensuring Individuals with Disabilities are Accorded Full Participation in Elections**

People with disabilities voted in significantly lower numbers than their non-disabled peers in the last general election. As part of a grant that the ACDL received under the Help America Vote Act (HAVA), we are working to make sure these statistics change and that Arizonans with disabilities are fully engaged in the voting process in their communities. We are addressing the needs of persons with disabilities in the voting process on several fronts, including: making sure people know how to register to vote and when and where to vote (see attached fact sheet on voting); working with state and county election personnel to reduce barriers to persons with disabilities voting (see attached survey on how to determine if a polling place meets accessibility requirements under the ADA) and reducing the legal barriers for people with disabilities exercising the right to vote. Under Arizona law, persons under guardianship are currently prohibited from voting. Under proposed legislation last session, a Judge would make a separate finding on whether someone under guardianship retained the capacity to vote. Although that legislation did not pass, the ACDL and many other disability groups are meeting this summer to develop work on our approach to getting this legislation passed next session. If you would like to be involved in our efforts under HAVA, please contact [lcohen@acdl.com](mailto:lcohen@acdl.com); or [esissons@aol.com](mailto:esissons@aol.com).

## **Challenging AHCCCS' Policy Denying Incontinence Briefs to Children with Disabilities**

Arizona's Medicaid system, AHCCCS does not cover incontinence briefs for children who need them because of a disability. Although more than 36 states provide diapers under their Medicaid programs, Arizona only provides such briefs if the child develops an infection because of the lack of sufficient diapers. The ACDL is challenging this policy in a series of cases, including **Schulz v. Rogers** and **Bates v. Rogers**. The ACDL is claiming that under federal Medicaid law necessary health care for children includes treatment "to correct or ameliorate defects . . . and conditions." and "other . . . preventive, and rehabilitative services, . . . for the maximum reduction of physical or mental disability and restoration of the individual to the best possible functional level." The Administrative Law Judge in **Schulz** agreed and ordered that the incontinence briefs be provided to Timothy Schulz. That decision was overturned by the AHCCCS Director and the case is now on appeal in Superior Court. A Motion for Summary Judgment has been filed and is scheduled to be heard on July 26 in Maricopa County Superior Court. A copy of that motion is an attachment to this newsletter at "Schulz Opening Brief".

**To see upcoming trainings offered by the ACDL around the state:**  
<http://www.acdl.com/training.html>

**Thank you for your interest and continuing support for people with disabilities in Arizona!**

*Best wishes,*

*Leslie J. Cohen*

Executive Director

Arizona Center for Disability Law