

Disabilities Rights Center



Protection and Advocacy System for New Hampshire



www.drcnh.org

Injustice anywhere is a threat to justice everywhere.

- Martin Luther King, Jr.

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2003

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Message from Richard A. Cohen, Esq., Executive Director

The year 2003, my second year as Executive Director, marks the end of DRC's first 25 years and the beginning of its 26th year. This annual report, our first, symbolizes DRC's new expanded approach and vision. I have been fortunate to have been involved in the disabilities rights/community integration movement since the 1970's when legal advocacy, independent living, self advocacy, and families' movements emerged and converged to begin to create huge changes for people with disabilities. The way people with and without disabilities thought about disabilities changed, perhaps best symbolized by the establishment of the "People First" organization. During the 1970's and early 1980's, a wave of precedential court decisions and decrees and the passage of federal and state laws swept our country, expanding or enforcing the rights of individuals with disabilities. The independent living, self-advocacy, peer support, and family support movements continued to evolve and strengthen throughout the 1980's and 1990's. Clearly linked to these movements and events was the development of community based services, supports, treatment interventions, and assistive technology in education, work, and community living.



The net result was that people with disabilities experienced unprecedented improvement in their lives and integration into the mainstream of their communities. These developments and their causes and antecedents teach us that to create and sustain meaningful change **we need to work on many fronts**.

In New Hampshire, DRC has been a major force in change. DRC was created in 1978, as part of a national network known as the Protection and Advocacy System (the P&As). Congress recognized that the guarantee of legal and human rights and the promotion of "independence, productivity and integration" of people with disabilities into the community would not only take effective provision of legal advice and representation, but systemic, legislative and other policy work, outreach, consumer and public education, to be done, at least in part, with other groups. DRC has always stressed and placed the vast majority of its resources toward legal advocacy while also engaging in policy and community education work, often in collaboration with others.

Despite the progress since, for example, the passage of ADA and the closure of Laconia State School in 1990, progress has been slow or nonexistent on many fronts. Employment has remained an unrealizable goal for most. Supported employment in NH actually decreased during the boom years of the 90's. The education system continues to fail children with disabilities. Waitlists for services in the Vocational Rehabilitation, Mental Health, and Developmental Disabilities systems continue to deny consumers and families access to services. Funding has failed to keep pace with basic human needs. All of this is at a time when real wealth of our state and country continues to grow. No doubt in part because of decreased funding, some of our state service systems have become more bureaucratic and less creative and responsive to consumer and family needs.

In recent years, DRC has become increasingly convinced that to obtain and sustain change on an individual or collective basis, we must work on multiple fronts. The ability and the reality of obtaining redress through the court system remains a critical component to this multifaceted approach. Thus, while at the same time we have increased the capacity of our nonlegal approaches, we have expanded the number of attorneys focusing primarily on individual and impact litigation. We are proud of the work we do and look forward to continuing to find ways to use our independent and multifaceted approach in New Hampshire to strengthen the rights of our constituents to life, liberty, and the pursuit of happiness.



Message from John Kitchen, Esq., Board Chair

Since 1993, when I first joined the Board of Directors of the DRC, I have watched as the organization has grown in size and sophistication in fulfilling its mandate to protect and advocate for the rights of individuals with disabilities, serving both as a "Sword and Shield" for the New Hampshire disability community. The needs are great, and we are not able to do all things for all people, so careful planning is essential to ensure that we put our efforts where they will have the most impact for the most people. I am proud to be participating in our current efforts to plan strategically, with strong community involvement in setting our priorities, careful analysis of where we can be most effective, and an unwavering commitment to accomplish our goals. We believe in fundamental human rights and independence for people with disabilities. We have accomplished a lot since we were established in 1978 and look forward to many challenges in the future.

DISABILITIES RIGHTS CENTER: ADVOCATING FOR LIBERTY AND JUSTICE FOR ALL

2003: The Year in Review

As the DRC ends its 25th year of operation, we are in a time of growth and transition, with a new Executive Director and a renewed sense of mission and vision. With budgetary crises at both the state and federal levels, service systems stretched thin, and public benefits threatened, more and more people are left without needed supports. Those people are calling the DRC for help.

In fiscal year 2003, DRC received approximately 1500 new requests for assistance from individuals and families with legal problems related to a disability. Staff provided outreach and training through conferences and presentations to over 1150 people. The new contacts had problems with:

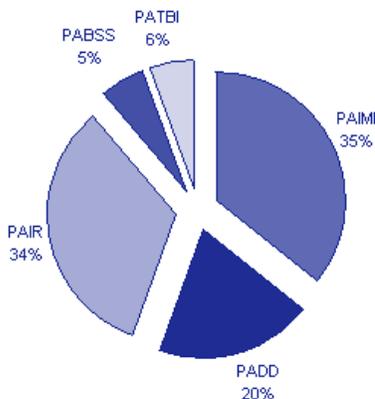
- Special Education
- Employment
- Housing
- Assistive Technology
- Access to, or Discrimination in, Mental Health and Developmental Disability Services
- Medical Services
- Financial Assistance
- Vocational Rehabilitation
- The Elimination of Physical Barriers in Public Accommodations
- Access to Voting and other Fundamental Civil Rights
- Freedom from Abuse, Neglect, and Unwarranted Restraint and Seclusion.

Three fourths of these callers received information and referral services. Another 25% received brief services or legal representation to resolve their problem. At the end of FY 2003, DRC had 143 ongoing open cases, including 5 class actions. DRC continued monitoring activities in two prior class actions, including further litigation in one. DRC also launched two new programs, Protection and Advocacy for Individuals with Traumatic Brain Injury, and the Help America Vote Act Protection and Advocacy Project. DRC made gains in the legislative area as described later in this report.

Our mission: DRC is dedicated to eliminating barriers existing in New Hampshire to the full and equal enjoyment of civil and other legal rights by people with disabilities.

- DRC Advocates Through...
- Short-term assistance for cases that can be resolved quickly
 - Full representation on cases that cannot be resolved quickly and fall within DRC priority areas
 - Information and Referral for all callers
 - Policy work before executive and legislative branches of government
 - Education and Training of consumers, families, professionals and lawyers.
 - Collaborative special projects: system change work in the policy arena; working with other legal or advocacy organizations on issues of common interest
 - Outreach through the website, informational pamphlets and materials, and information dissemination at conferences and other gatherings.

New Intakes for FY 03 by Program



Disposition of Cases

Brief or Extended Advocacy and Representation 25%



ENSURING ACCESS TO BENEFITS AND SERVICES

Ensuring that individuals with disabilities have access to the services and supports they need is a high priority for the DRC. In this time of budgetary constraints and changing priorities, both access to and the quality of human services are deteriorating, leaving many people without the supports they need. The U. S. Supreme Court, in the landmark decision *L.C. v. Olmstead*, created the hope of a better life in the community for people with disabilities. In 2003 the DRC had two ongoing Olmstead-related class actions concerning New Hampshire's waiting lists for Medicaid Community Care Waiver services for people with developmental disabilities and acquired brain disorders. DRC soon expects to go to trial on the ABD case. In addition, the DRC assists many people who have been improperly denied access to services or benefits.

Access to Mental Health Services

Janet was 21 years old when she contacted the DRC. She had been denied services from her local mental health center twice. Janet has both emotional and cognitive challenges. During Janet's high school experience, she lived in a specialized group home, receiving all needed services and treatment. She had no family to advocate for her. Once Janet was represented by the DRC, the mental health center agreed to immediately provide minimal services. After the results of an evaluation obtained by the DRC were reviewed, the center agreed to provide Janet with more extensive services.

Eligibility for Area Agency Services NH Supreme Court win In Re: Petition of Moore Center Services, Inc. (Area Agency VII)

The NH Supreme Court ruled in favor of a young man with learning disabilities when it affirmed the DHHS hearing officer's decision that he was eligible for developmental services under RSA 171-A. The hearing officer had concluded that William had a developmental disability by virtue of his specific learning disability, which substantially impaired his ability to function normally in society. In the Supreme Court, the Disabilities Rights Center successfully argued that "the fact that he also has mental illnesses, or that he can get state-funded services from other sources, should not preclude him from receiving the services under RSA 171-A that he needs and that he has a right to receive."

Social Security Overpayment

Joan contacted the DRC about a Social Security overpayment notice. She wanted the DRC to assist her in restarting her benefits. As is common, she had a great deal of difficulty understanding Social Security's rules and procedures. A complicated situation evolved because Joan hadn't been certain who to contact at SSA or what to ask for. The confusion led to SSA sending the wrong form and long delays. With help from her advocate, Joan filed a request for waiver of her overpayment, and her benefits were reinstated. With the help of the advocate, Joan now is on a repayment schedule and receiving benefits.

ADVOCATING FOR BASIC RIGHTS AND FREEDOM FROM DISCRIMINATION

The core of the DRC's mission is to protect individuals with disabilities from harm such as abuse and neglect, coercive treatment, and discrimination in housing, employment, and government services. The DRC maintains a strong presence at New Hampshire Hospital. DRC advocates visit the facility and are trained to watch and observe certain activities, such as use of restraint and seclusion, medication administration, personal dignity, whether residents are being treated with respect, and other rights issues.



Dan Habib/Concern Monitor

Coalition for Family Law and Mental Health

Parents with mental illness often are treated unfairly when it comes to child custody and visitation. With alarming frequency, parents with mental illness lose custody of their children, not because of their inability to parent, but solely because they are diagnosed "mentally ill." Many also relinquish their rights for what they are told is a temporary period of time, only to learn later that the action was permanent. DRC, as part of a coalition with private and public agencies, lawyers and consumers is addressing discrimination against persons with mental illness in family law matters such as child custody and visitation. Achievements include: training of lawyers, guardians ad litem, judges, and mental health practitioners; creating system change through legislation; designing a direct service model in which consumers can obtain representation in family matters; and developing and disseminating an objective parental assessment tool to be used in judicial proceedings.

Inappropriate Restraint and Seclusion at NHH

The DRC intervened when a young woman at New Hampshire Hospital reported she had been put into four point restraints for, among other non-dangerous offenses, wearing a tank top. With the help of the DRC advocate, the inappropriate restraints were stopped and all subsequent incidents of restraint or seclusion on her unit were reviewed by a nurse to make sure the rules were followed. NHH also agreed to make it clear to unit staff that there was not a particular dress code that patients were required to adhere to.

"In many cases you may be the only voice of the disabled in need of assistance, as they have in many situations no other place to turn for help."

- comment on DRC input survey

ENSURING ACCESS TO A QUALITY EDUCATION

The Individuals with Disabilities Education Act entitles all educationally handicapped children to a free, appropriate public education. Other federal laws and NH law require that all children receive a quality education to prepare them to live, work and compete in the 21st century. Far too often, however, parents must struggle with school districts to obtain adequate educational evaluations, programs and related services. Worse, many students are excluded from school through suspensions or expulsions, and an alarming number of special education students drop out of school altogether. The overuse of punitive discipline creates a negative climate for many students, despite the promise of state programs to encourage positive behavioral supports for students. Because of the complexity of the laws and the difficulty in enforcing them, many parents seek legal assistance at some point in their child's school career. Roughly a third of the calls for help DRC receives concern problems with education. DRC can handle many of these cases, but not nearly all. The lack of attorneys in the state who take special education cases means many parents now go without legal assistance. To address this problem, the DRC, with the NH Bar, initiated a new program. The DRC, with other lawyers, offered training to interested attorneys in special education law. After the training, private attorneys volunteer to take special education cases through the Bar's Pro Bono program free of charge. For each referral, a DRC attorney is assigned to be available for consultation to the pro bono attorney. Through this program, we are making sure more parents are able to obtain the help they need to ensure their child receives an appropriate education.

Special Education and Assistive Technology

Craig is a sophomore in high school with a learning disability. He receives special education services to assist him in increasing his ability to read and write. His special education team determined assistive technology (AT) would be helpful to assist him in reaching the goals outlined in his individualized educational plan and bought computer software for his use at school and home. However, the school provided little training in using the software, so he did not learn to use it effectively. After a due process hearing where Craig was represented by a DRC attorney, the hearing officer found that the minimal training was NOT sufficient to help him meet his IEP goals. Specifically, the hearing officer found, "the School District's failure to provide the adequate instruction to Student in the use of this equipment constitutes a denial of FAPE [free appropriate public education]." This case is the first in New Hampshire where a failure to provide assistive technology training has been found to be a denial of a free appropriate public education.



The Right to a Free, Appropriate Public Education

Students with mental illness are all too often placed in inappropriate educational settings by school districts. Their parents are often forced to take whatever is offered, despite the parents' conviction that a particular program would be much more appropriate for their child. Laura is a teen with serious emotional problems. While very bright, Laura could not tolerate the structure of her educational program. Her anxiety made it almost impossible for her to attend school and, when she did attend, she was so anxious that she was unable to learn. Laura's parents asked for an alternative placement, one that they felt would result in less anxiety and an enhanced opportunity for Laura to learn. After Laura's parents retained the DRC, the attorney negotiated with the school district and, eventually, was able to get the school district to agree to place Laura in the more appropriate placement.

Transition to Adulthood

Jimmy, a student with cerebral palsy, approached his 21st birthday unprepared for life after school. The school had done an inadequate job with his educational services and transition planning. Jimmy had missed a lot of school due to lack of teacher coverage and training and transportation problems. With the assistance of the DRC attorney, Jimmy's parents filed for a due process hearing against the school district. After extensive negotiations and mediation, Jimmy's parents and the school district reached a settlement agreement for Jimmy to get an additional year of compensatory education past his 21st birthday, with appropriate transition planning, to better prepare him for adulthood.

ENSURING RIGHTS TO FULL ACCESS AND INCLUSION IN PUBLIC AFFAIRS AND ACCOMMODATIONS

The DRC works toward making government services and buildings, polling places and voting, businesses, hospitals and other private places of accommodation accessible to all persons with disabilities. The DRC created a full time community access coordinator position, to engage in primarily nonlegal strategies and to join with other organizations to enforce access to voting, public accommodations, and public buildings and programs and assistive technology.

Access In Public Accommodations

The DRC favorably settled a class action case, *Davis v. May Department Stores*, usually referred to as the Filene's case. Plaintiffs, all persons with mobility impairments, brought this ADA action in United States District Court to remedy civil rights violations committed by Filene's against persons with mobility disabilities at several NH stores. Filene's discriminated against persons with mobility disabilities by failing to provide them with full and equal access to merchandise, as well as services such as accessible payment counters. Filene's agreed to make enhancements to the aisle widths within these stores to assure that persons with physical disabilities have access to most of its merchandise. It has also agreed, among other things, to make minor changes where necessary to its bathrooms, fitting rooms, and cash register counters to assure compliance with the ADA.

"Without DRC our family would have been lost. We would have been victims of a system that pushes the legal ramifications to see if they can get away with injustices to person's with disabilities."
-from a DRC survey

Access to Public Transportation

A man from the Portsmouth area asked the DRC for help with accessing the COAST bus system. While the bus itself was accessible for his wheelchair, the loading area was not, and he was obligated to wait in the street on a busy road. With the help of a DRC advocate and numerous letters, phone calls and meetings, the COAST bus system finally moved the bus stop to a safer location.

Help America Vote Act

The HAVA project is primarily focused on systemic change rather than on individual representation. The DRC is directing its efforts toward improving New Hampshire policies and practices related to the rights of individuals with disabilities to vote and the state's compliance with HAVA. The DRC is working to educate NH residents with disabilities about voting rights and responsibilities. A DRC attorney did an extensive analysis of the preliminary State Plan and submitted written comments to the state for improvement of the plan. A survey of polling places is planned for the primary, in order to identify problems with accessibility. Participation in voter registration drives are planned. The strong collaboration with the Governor's Commission on Disability and Granite State Independent Living will ensure the success of the project.



Dan Habib/Concord Monitor

LEGISLATIVE AND PUBLIC POLICY ADVOCACY

DRC was busy in the legislative and policy area on issues of concern to the disability community. Some highlights:

A Bill Providing Protection for Parents in Guardianship for Minor Cases (HB 620). DRC, along with the Coalition for Family Law and Mental Health and the Mental Health Consumer Council, worked with legislators and the probate court on this bill in the 2003 and 2004 state legislative sessions. The bill provides important protections to parents who are faced with a loss of guardianship of their children to the state or other third party. The bill passed and will take effect on January 1, 2005.

The Statewide Accountability Bill to Implement the No Child Left Behind Act (HB 139). DRC offered input and testimony and worked with legislators and Department of Education officials about the importance of tracking suspension and expulsion (including in-school suspension) of all children, including children with disabilities and other subgroups. DRC offered input regarding tracking attendance as one of the measures in addition to statewide assessment scores and graduation rates of school performance and to help determine necessary corrective actions to improve schools. DRC addressed the need for giving additional authority to the Department of Education to require complete and accurate data from schools on these and other measures.



Deaf and Hard of Hearing Bill Specifying When An Interpreter is Required (HB 138). DRC offered input and testimony about the need to bring New Hampshire's law into compliance with the ADA. While the bill has not yet passed, one

of the benefits is that the Police Standards and Training Council has now incorporated into their training of police officers information about the importance of obtaining interpreters when police are communicating with deaf witnesses, victims, and defendants

Rules for the Newly Created State Licensing Board for Interpreters for the Deaf and Hard of Hearing. DRC's Executive Director, as a member of the licensing board, was instrumental in crafting the first rules for this board.

Department of Education (DOE) Complaint System. DRC responded to efforts to restrict DOE's obligation and authority to independently and thoroughly investigate complaints filed by parents and others alleging that schools are denying children appropriate education. The complaint system is the primary means for parents to grieve a violation without the necessity of getting a lawyer, which is beyond the means of most parents. By the end of the process, there was agreement for the need to have an independent complaint and investigation process.

State Budgetary Issues. DRC, in collaboration with other groups, was partially successful on several fronts. Waitlist funds necessary to provide services to some, but not all, individuals with developmental disabilities or brain injuries were obtained. Proposed budget cuts by the Governor in mental health, developmental disabilities, and DCYF were partially restored, although the amount of funding in each of those areas was well below the amount needed. A move was defeated that would have transferred up to 15 million dollars of federal education money targeted for special education and No Child Left Behind into the general fund as revenue.

A Bill for Creating Tax Incentives for Hiring Persons with Disabilities (HB 770). DRC presented input and testimony on this bill. A study committee was created to make recommendations on whether and how such a law should be designed

A Bill (HB 715) to confine persons with developmental disabilities accused of certain crimes and found incompetent to stand trial on the highly restrictive secure psychiatric unit of the NH State Prison. DRC provided testimony on this bill, which did not pass.

OUTREACH AND EDUCATION

The laws that protect people with disabilities are difficult to understand and enforce. For a person with a disability, lack of information about rights and how to assert them can be an enormous obstacle. Providing information about legal rights and teaching and supporting people to advocate for themselves is a high priority for the DRC. The current resources of the DRC are not nearly enough to provide individual advocacy for all eligible individuals in the state. The DRC is developing additional ways to reach out to our constituency with information and support for self-advocacy. To that end, the DRC added a new position, Outreach Advocacy Specialist, in August 2003 to expand our outreach capacity.



As New Hampshire grows and diversifies, the DRC is also reaching out to culturally diverse groups around the state. Beginning with an excellent plan from consultant Connie Lane, the DRC has been improving its capacity to assist people of diverse cultures. Spanish-speaking staff have received language training, ties with minority groups have been forged and strengthened, and staff are paying greater attention to the ways in which we can reach out to ethnic minorities with disabilities.

The DRC has also worked to strengthen collaboration with other agencies and is involved in at least 33 separate projects involving joint task forces or multi-agency advocacy efforts.



Our outreach activities this year have included:

- Launching of the DRC Website: www.drcnh.org: 19,222 hits in September alone
- Involvement in over 45 trainings with a combined audience of over 1150
- Development of a series of rights pamphlets and brochures
- Frequent participation in print and radio news stories affecting people with disabilities via press releases, interviews, and serving as a resource for the media
- Creation of the special education Pro Bono referral program, in collaboration with the NH Bar Association
- Expansion of outreach to minority communities

OUR PRIORITIES

October 2004-September 2007

- I. Rights to Self-Determination and Freedom From Coercion, Abuse and Neglect, Inappropriate Restraint and Seclusion, and Other Harm
- II. Access to or Prevention of Discrimination in Public Accommodations, including Transportation, Government and Government Funded Services, Voting and Assistive Technology
- III. Access to Necessary Services, including Health, Mental Health, Vocational Services in the Least Restrictive and Most Integrated Environment
- IV. Access to Quality Education and Services to Enable Children to Lead Healthy, Independent and Productive Lives
- V. Right to Equal Employment Opportunities
- VI. Promotion of Self-Advocacy, Collaboration, and Diversity through Education and Outreach

If you would like to see the full plan of Priorities, Goals, and Objectives, please contact the Disabilities Rights Center or go to www.drcnh.org.

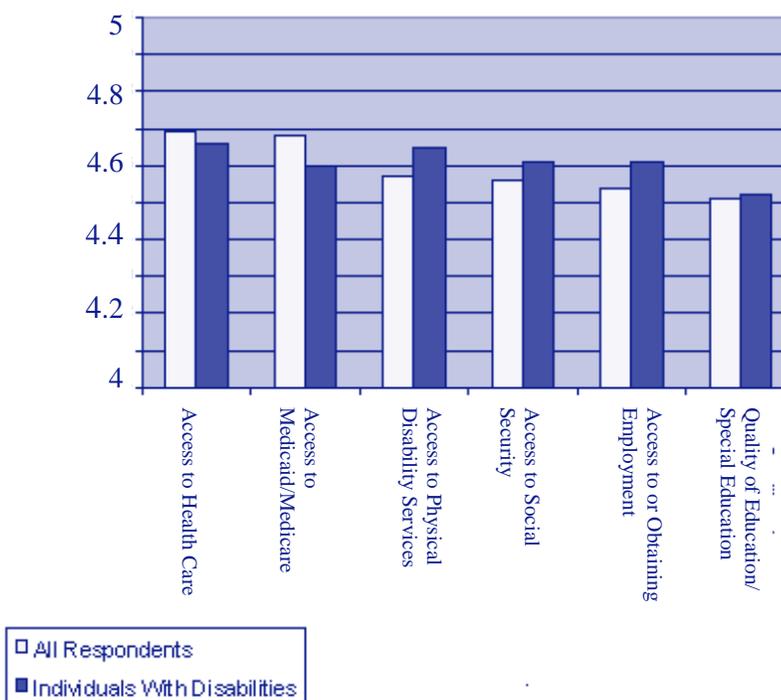
PUBLIC INPUT AND STRATEGIC PLAN

As the fiscal year closed, the DRC began embarking on a priority and strategy setting process that will set our course over the next three years and beyond. We have completed an extensive process of obtaining input from our constituents and the public through a public input survey, specialized input groups and forums, a survey of existing needs assessments, and an analysis of case trends and client satisfaction. The DRC is committed to faithfully understanding and addressing the issues and priorities of our many and diverse constituencies, to dedicating ourselves to working on behalf of people with disabilities on the most important issues, using the most effective strategies, to ensure people with disabilities take their rightful place in our communities as equal participants. We asked our constituents:

- What areas, problems, or issues should DRC prioritize or focus on?
- What strategies should DRC employ to achieve priority goals and objectives?
- Are there ways DRC can improve or change any of its approaches in order to be more effective in implementing its mission, meeting priorities and carrying out strategies?
- How and in what areas should DRC collaborate and form partnerships?

Our constituents identified many important issues. Problems with health insurance, both public and private, and housing, transportation, special education, and employment problems were frequently cited. The lack of funding for services was seen as a critical problem. There was a call for education of the public and attitudinal change, as well as information and training for effective self advocacy. Suggestions were made to expand our capacity to provide individual advocacy, to collaborate more, both with other disability-specific groups and with

Public Input: Most Important Areas for DRC Focus



broader coalitions on issues of shared concern, to improve the visibility of the DRC, and to consider providing services in locations other than Concord.

The first phase of the process ended with a strategic plan, which may be seen in its entirety on our website, www.drcnh.org. Many of the activities and strategies specified in the plan can be done with existing resources, others are contingent on additional funding or the collaborative will of the disability community and its advocates. We look forward to the next few years as we work together to implement the plan.

"The strengths of the DRC from my perspective include providing advocacy for those that might not otherwise be heard. Advocacy for one student in my opinion leads to improvement for many students. As a special services director, having my feet held to the fire is a sure way of preventing me from becoming complacent."

-comment on a survey



PART OF A NATIONAL NETWORK OF PROTECTION AND ADVOCACY AGENCIES

DRC is part of a federally created protection and advocacy system and thus receives most of its funding and direction from seven federal grants:

Protection and Advocacy for Persons with Developmental Disabilities (PADD) is authorized by the DD Bill of Rights Act and funded by the U.S. Department of Health and Human Services.

Protection and Advocacy for Individuals with Mental Illness (PAIMI) is authorized by a statute of the same name and funded by the U.S. Department of Health and Human Services.

Protection and Advocacy for Individual Rights (PAIR) is funded by Rehabilitative Services Administration of the U.S. Department of Education.

Protection and Advocacy for Assistive Technology (PAAT) is funded by the National Institute on Disability and Rehabilitation Research within the U. S. Department of Education.

Protection and Advocacy for Beneficiaries of Social Security (PABSS) is funded by the Social Security Administration.

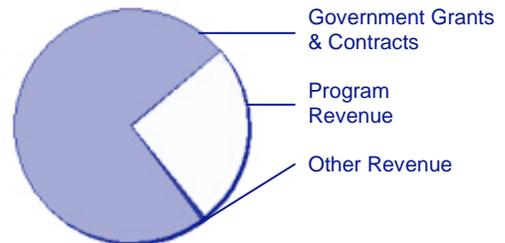
Protection and Advocacy for Persons with Traumatic Brain Injury (PATBI) is funded by Human Resources Services Administration of Department of Health and Human Services.

Voting Rights Protection and Advocacy was enacted as part of the Help Americans Vote Act of 2002. It is funded by the U.S. Department of Health and Human Services.

FINANCIAL HIGHLIGHTS October 1, 2002—September 30, 2003

REVENUES		
Government Grants & Contracts	1,159,952	74%
Program Revenue (Grantor Restricted)	396,391	25.3%
Other Revenue	10,136	0.6%
	1,566,479	100%
EXPENDITURES		
Wages & Benefits	939,259	75%
Occupancy	78,661	6.3%
Supplies & Materials	85,284	6.8%
Program/Client Costs	58,157	4.6%
Staff Development	25,034	2.1%
Systems & Equipment	25,790	2%
Other Expenses	39,669	3.2%
	1,251,853	100%
Excess of Revenue over Expenses	314,626	
Net Assets, Beginning of Year	362,890	
Net Assets, End of Year	677,516	

REVENUES



EXPENDITURES



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Ronald Lospennato, Esq. Legal Director		Lynne Zygmunt, Esq. Supervising Intake Attorney

“DRC is critical as a watchdog for protecting the rights of the disabled.”

- comment on DRC input survey

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www.drcnh.org

This report is available in alternative formats. Contact Julia Freeman-Woolpert concerning the format you require