

**FY 2020 Q3 – Legal Report**  
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Note: IDR changed case management systems from the Disability Advocacy Database (“DAD”) to PANDA (“P and A”), effective April 20, 2020. The third quarter ran from April 1, 2020, through June 30, 2020. With the conversion of data from one system to another in the midst of the quarter, it is difficult to ensure effective reporting data for the full quarter. The below data will largely reflect from April 20, 2020, forward. The fourth quarter legal report data will be complete as the agency will be exclusively using the PANDA case management system throughout the entire quarter.

**I. Intake**

Intake handled 440 requests this quarter. Those requests resulted in:

<b>Federal Grant</b>	<b>Information &amp; Referral</b>	<b>Converted to Client Case</b>
<b>Agency All</b>	7	0
<b>CAP</b>	3	3
<b>PAAT</b>	0	0
<b>PABSS</b>	0	0
<b>PADD</b>	33	16
<b>PAIMI</b>	65	16
<b>PAIR</b>	16	11
<b>PATBI</b>	5	3
<b>PAVA</b>	4	0
<b>Rep Payee</b>	0	0
<b>Total</b>	<b>133</b>	<b>49</b>

**II. Team Data**

<b>Team</b>	<b>Opened in Quarter</b>	<b>Closed in Quarter</b>	<b>Active End of Quarter</b>
<b>Abuse, Neglect and Discharge</b>	5	3	14
<b>Civil Rights</b>	7	5	33
<b>Education</b>	3	9	19
<b>Employment</b>	8	6	8
<b>Health Care</b>	4	2	4
<b>Self-Determination</b>	3	0	7
<b>Total</b>	<b>30</b>	<b>25</b>	<b>85</b>

### III. Investigations

<b>Federal Grant</b>	<b>Opened in Quarter</b>	<b>Closed in Quarter</b>	<b>Active End of Quarter</b>	<b>Involves a Death</b>
<b>PADD</b>	8	4	26	13
<b>PAIMI</b>	4	3	5	1
<b>PAIR</b>	1	0	1	1
<b>Total</b>	<b>13</b>	<b>7</b>	<b>32</b>	<b>15</b>

### IV. Monitoring

<b>Federal Grant</b>	<b>No. of In-Person Visits</b>	<b>No. of Virtual Visits</b>	<b>No. of Unique Facilities</b>
<b>PADD</b>	0	40	3
<b>PAIMI</b>	0	99	9
<b>PAIR</b>	0	69	50
<b>Total</b>	<b>0</b>	<b>208</b>	<b>62</b>

### V. Policy

#### A. Public Comments

- Submitted comments regarding the Waiver Redesign Concept Paper to the Division of Developmental Disability and Rehabilitative Services on April 15, 2020.
- Signed onto a letter to the Public Broadcasting System, drafted by the Institute for Development of Human Arts, regarding the portrayal of serious mental illness on May 1, 2020.
- Signed onto a letter to Congress, drafted by the National Disability Rights Network, urging Congress not to allow COVID-19-related waivers in regard to the Individuals with Disabilities in Education Act nor vocational rehabilitation programs on May 1, 2020.
- Submitted comments in response to the notice of proposed rulemaking regarding changes to the Pre-Admission Screening and Resident Review (PASRR) process to the Centers for Medicaid and Medicare Services on May 19, 2020.
- Submitted comments regarding Voluntary Voting System Guidelines 2.0 Requirements to the U.S. Election Assistance Commission on June 22, 2020.

#### B. Other Public Policy Advocacy

- IDR drafted a letter to the Mayor of Indianapolis and Indianapolis Public Transportation Corporation officials, opposing proposed service cuts and/or fare increases to Open Door, the City's paratransit service in June 2020.

**C. Workgroups and Committees**

- DD Network Meeting (Governor’s Council, IIDC, IDR)
- Governor’s Council for People with Disabilities Board
- Vocational Rehabilitation Services Commission
- Indiana Institute on Disability and Community (IIDC) Advisory Board
- Indiana State Board of Education, Education Dispute Resolution Working Group
- Indiana Department of Transportation, ADA Community Advisory Working Group
- Home and Community Based Services (HCBS) Workgroup
- Georgetown University’s National Center for Competence Community of Practice Indiana Transformation Leadership Team
- Bureau of Developmental Disability Services (BDDS) Institutional Modernization Workgroup
- Bureau of Developmental Disabilities Services (BDDS) Mortality Review Committee
- United States Attorney’s Office in the Southern District’s Disability Rights Roundtable
- Working Interdisciplinary Networks of Guardianship Stakeholders (WINGS) Indiana Adult Guardianship State Task Force
- Indiana Council of Community Mental Health Centers’ Mental Health, Addiction and Criminal Justice Collaboration Working Group
- National Alliance on Mental Illness (NAMI) Indiana Public Policy Committee
- Fair Housing Center of Central Indiana Board of Directors
- Center for Youth & Adults with Conditions of Childhood (CYACC) Advisory Board
- Back Home in Indiana Alliance Steering Committee
- Work to Include Coalition
- Indiana Association of People Supporting Employment First
- City of Fishers, Fishers Advisory Committee on Disability
- City of Indianapolis, Mayor’s Advisory Committee on Disability
- Human Rights Commissions at each state-operated facility
- Indiana School for the Deaf and School for the Blind Co-Location Advisory Committee (Legislative)
- Non-Cabinet Quarterly Meetings (Executive)

**VI. Litigation**

IDR continues representation in the following federal court cases:

Venue	File Date	Synopsis / Status
United States District Court, Southern District of Indiana	06/25/19	Plaintiffs initiated this class action lawsuit against the Governor and the Department of Child Services. Plaintiffs allege that the systemic failures within the foster care system have led to an overreliance on institutional placements for children with disabilities

		and have placed children at unnecessary risk of harm. Defendants' first motion to dismiss was denied in part and granted as to plaintiffs' claim under the Federal Adoption Act. Defendants filed a second motion to dismiss alleging that plaintiffs lack standing. This motion has been fully briefed. The parties have an upcoming conference call with the court to discuss the Case Management Plan and discovery.
United States District Court, Southern District of Indiana	08/06/19	This case, brought by two blind siblings and the National Federation of the Blind, maintains that Indiana's Family & Social Services Administration and its Division of Family Resources discriminated against blind individuals by failing to provide them with effective communications. As of June 30, 2020, the parties were conducting depositions and preparing to exchange expert disclosures.
United States District Court, Southern District of Indiana	10/04/19	Client's mother filed this lawsuit against individual and municipal defendants with the Indianapolis Metropolitan Police Department and the Marion County Sheriff's Office for violations under the Americans with Disabilities Act, the Rehabilitation Act, and the United States Constitution. The lawsuit alleges that client suffered unexplained injuries while incarcerated and the defendants failed to provide him with any accommodations or supports while in their custody. Discovery and depositions are ongoing with all defendants and the motion for judgment on the pleadings filed by medical defendants is awaiting a Court order.
United States District Court, Southern District of Indiana	05/13/20	Plaintiff has asserted claims against the Indianapolis Metropolitan Police Department and Marion County Jail under the Americans with Disabilities Act and the Rehabilitation Act for defendants' failure to provide the plaintiff with access to a qualified American Sign Language interpreter or any other means of effective communication during his underlying arrest and subsequent incarceration. Defendants have filed an answer to the complaint. Plaintiff will be amended the complaint to add the City of Indianapolis as a defendant and the parties will be filing their proposed case management plan with the Court and will start discovery.

## VII. Success Stories

### A. CAP

- *Employment* – “Vivian” sought representation for her appeal of VR’s postsecondary funding determination. Vivian was attending an out-of-state university that met her plans for employment as well as her disability-related needs. IDR represented Vivian in informal and formal appeal processes, and ultimately obtained a settlement agreement in which VR provided more than \$16k in additional postsecondary support for Vivian. After the state court judge dismissed Vivian’s judicial review case, IDR closed her case with the agency.
- *Employment* – “Monica” requested that IDR represent her in her appeal of VR’s Fall 2018 postsecondary support determination. Monica disagreed with VR’s position that she could obtain her education in-state. Monica was attending a University that met her training and educational needs, as well as providing instruction in ASL. IDR represented Monica at her administrative hearing, agency review, judicial review, and settlement negotiations. Ultimately, in exchange for Monica’s dismissal of her state court case, VR provided Monica with \$7,422 to repay the student loans she took to continue attending the out-of-state university. IDR closed the case after the parties to the settlement agreement completed their responsibilities.
- *Employment* – “Rick” and his guardian contacted IDR for assistance advocating for VR to provide postsecondary services so he could pursue his goal to become a 3-D printer engineer. Fact-finding revealed that VR consistently failed to provide Rick with informed choice – of his employment outcome, of services, and of providers. VR wanted Rick to enter Discovery services to select an employment goal, although he had clearly utilized informed choice in the engineering goal. The IDR Advocate successfully helped Rick to advocate for an IPE amendment. VR removed Discovery services and added postsecondary services, to enable him to go to college for a trial semester.

### B. PAAT

- *Civil Rights* - “Linda” contacted IDR regarding a complaint that the alarm on her wheelchair intended to alert her to the fact her seat elevator was engaged on non-level ground was consistently malfunctioning. Specifically, Linda reported that the alarm would regularly sound when she engaged the seat elevator in areas that were unquestionably level. For instance, the alarm would sound at the grocery store, her doctor’s office, and in her living room. By the time Linda contacted IDR, technicians with the wheelchair provider had made approximately five unsuccessful attempts to resolve the issue. Following fact-finding, IDR agreed to represent Linda in communications with the wheelchair provider and manufacturer. In a letter to the provider and manufacturer, IDR explained that pursuant to Indiana’s Assistive Technology Lemon Law, the parties had a

responsibility to replace or adequately repair the alarm, refund the full purchase price of the wheelchair, or replace the wheelchair in its entirety. At the conclusion of its own fact-finding process, the manufacturer agreed to simply replace the wheelchair. Linda confirmed these modifications were completed satisfactorily before her case with IDR was closed.

### C. PADD

- *Education* – “Jeff” was a patient at Riley Hospital for Children. He has Cerebral Palsy and requires several medications to help reduce seizures. Some of his prescribed medications were “off label,” meaning that while they were Federal Drug Administration (FDA) approved drugs, the doctor was prescribing for a use different than what the reason medications originally obtained approval. The American Academy of Pediatrics supports the use of “off label” drugs and states that “[p]ractitioners use their professional judgment to determine these uses. As such, the term ‘off-label’ does not imply an improper, illegal, contraindicated, or investigational use.” However, Jeff’s school nurse refused to administer a prescribed “off label” drug during the school day based on a school district policy. Jeff’s mother was referred to IDR by Riley’s School Program. She did not feel comfortable sending Jeff to school without him taking his prescribed medication. As such, at the time the case was referred to IDR, Jeff was unable to attend school in person. During the course of IDR advocacy, the school district first allowed the school nurse to administer Jeff’s prescribed medication in spite of its policy, and then ultimately changed the policy altogether. They also agreed to provide Jeff compensatory time because of the time he missed.
- *Education* – IDR was contacted by the parents of “Dan,” an elementary school student. Dan’s parents called IDR with concern that his school was refusing to provide Dan with adequate ASL interpreter services during his for school day; the school was only providing an interpreter for 90 minutes per week. They were also concerned with his limited access to the general education setting. IDR successfully advocated for Dan to have interpreter services throughout the school day, and for Dan to also be switched from a self-contained life skills class to a setting that combined time in a general education classroom and a resource room.
- *Employment* – “Joshua” contacted IDR because he wanted to return to work after a period of paid leave. Joshua was concerned that the employer would not adequately accommodate him in his efforts to return to work. IDR and Joshua entered a Legal Representation Agreement for IDR to advocate for the employer to provide him with reasonable accommodations (i.e., limited time working in the queue, as it distracts Joshua, and sharing autism-related communication tips with co-workers). After two remote meetings, the employer agreed that Joshua would only work in the queue for one hour per day and permitted him to share his communication preferences with co-workers and supervisors through a tip sheet. Joshua was satisfied with these accommodations, and IDR closed his case when the employer had implemented them.

- *Abuse, Neglect and Discharge* – IDR opened an investigation on behalf of “Betty” after receiving a report from her legal guardian of physical abuse by a direct service professional (DSP). Although the IDR investigation was unable to substantiate the report of abuse, inappropriate communications by the DSP toward Client were confirmed, and the staff member was reportedly removed from the home. During the course of an unannounced monitoring visit to Client’s home following the conclusion of the abuse investigation, a number of safety hazards were discovered, including burned-out electric outlets and an improperly functioning furnace. After the waiver provider failed to address these concerns in a timely manner, IDR reported them to BDDS and local code enforcement. This finally spurred action on the part of the provider, and a local code enforcement officer later confirmed the concerns were properly repaired. Without notice to the legal guardian or any accommodations provided to Client, the provider then began renovations on the waiver home. Although the provider had adopted a policy generally prohibiting visitors during the COVID-19 pandemic, contractors were coming and going from the home without the use of personal protective equipment. IDR notified BDDS of the issue, an incident report was filed, and the renovations were halted. Client and her roommates have since transitioned to a new waiver provider.
  
- *Investigations* – IDR received a complaint letter from an outside organization alleging that many of a service provider’s homes, especially in the southern Indiana region, were infested with bed bugs and roaches. The author stated that many reports had been made to the state agencies with no success of eliminating the bed bugs. IDR reviewed the outside report along with a number of reports from ISDH and determined that making an additional report to ISDH for appropriate investigation would be a better use of our resources. The report was sent to ISDH on March 3, 2020. An investigation was conducted and ISDH had findings to substantiate the allegations at issue and issue a finding of an immediate jeopardy. An immediate jeopardy finding means that the surveyor determined that the facility was non-compliant, which cause or created the likelihood of serious injury, and immediate action is necessary to prevent further risk of harm. While IDR did not complete the investigation itself, we were able to review the findings of ISDH in the original complaint and the complaint filed by IDR to ensure that a thorough investigation was completed. IDR frequently files reports with licensing agencies to ensure that the proper agency is conducting proper investigations. The results are much stronger and more immediate when the licensing agency completes the investigation; in this case, the immediate jeopardy was issued and the provider had to immediately correct the violations or possibly face termination from Medicaid/Medicare programs within 23 days of the date of the survey, a much stronger response than had IDR conducted the investigation.

#### **D. PAIR**

- *Health Care* – “Gladys” was ready for discharge from her hospital, after getting accustomed to a tracheotomy and ventilator support. However, the hospital planned to transfer Gladys to a nursing home, rather than her own home, because its COVID-19 visitation policy precluded Gladys’ family from coming to the hospital and learning how to care for her trach, a prerequisite to her going home. Gladys’ granddaughter and daughter contacted IDR for assistance. IDR provided direction for requesting a reasonable accommodation to the hospital’s visitation policy on Gladys’ behalf. These instructions helped Gladys’ family advocate for her, and the hospital eventually agreed to send respiratory therapists to Gladys’ home to train Gladys’ family in trach care. These simple actions allowed Gladys to return home rather than go to a nursing home.

#### **E. SUPPORTED DECISION-MAKING**

- Work continued on the development of a state plan to further the use of supported decision-making. Melissa Keyes gave 1 invited presentation on supported decision-making this quarter to the Evansville Bar Association. This presentation resulted in a case referred to IDR to assist a person with a disability in preventing the establishment of a guardianship.

#### **F. COVID-19 Related Work**

- *Monitoring* - In response to COVID-19 restrictions and regulations, IDR found it necessary to alter its regular monitoring activities and approaches. What was previously an in-person activity needed to be quickly adapted to become a virtual activity. Facilities with which monitoring relationships already existed were the first to be targeted. Per this new virtual monitoring process, contact was made with each facility to inquire as to how they were responding internally to the virus spread and pandemic regulations. IDR wanted to ensure appropriate policy and planning was in place at facilities that serve people with disabilities to protect and safeguard from COVID-19 outbreak, including continued appropriate staffing and services at these facilities to prevent abuse and neglect. After initial contacts with facility administrators, IDR personnel have contacts with some of the residents at each facility. IDR personnel conducted virtual monitoring “visits” with all state-operated facilities and CRMNFs and expanded the project to private secure facilities, long-term care facilities (nursing homes), and assisted living facilities. All monitoring visits conducted this quarter were completed “virtually.”

IDR was one of the first P&As to successfully implement strategies to continue monitoring activities. When determined safe, staff will resume in-person activities as they are individually comfortable, with appropriate personal protective equipment.

- *Prisons* – IDR created a survey for offenders within the Indiana Department of Corrections and sent the survey to approximately 25 inmates (former and current IDR clients), requesting information about any changes to the prisons’ cleaning

schedule, quarantine procedures, access to medical services, classes, and the offender grievance procedure. We will analyze the responses and reach out to IDOC, as necessary.

- *Hospital Visitor Policy* - IDR was contacted about a troubling situation at Methodist Hospital, a hospital within the Indiana University Health network. It was indicated that a family member with Down syndrome had been hospitalized at Methodist Hospital for three weeks with COVID-19. She was sedated for the majority of that time. However, when she became awake and breathing on her own, she understandably did not know why she was there and why she could not go home or have anyone there with her. Based on the Indiana University Health hospital restrictions and visitor policy created in response to the pandemic, Methodist Hospital denied the parents' request to visit their daughter.

IDR contacted Indiana University Health on April 14, 2020, and urged them to adopt a policy on hospital visitors during the COVID-19 emergency that specifically includes exceptions for people with disabilities who may require a support person to stay with them during emergency room visits and hospitalizations. While the Indiana University Health policy included a number of exceptions to its "no visitors" restriction (e.g., one parent or guardian per pediatric or minor patient), it excluded guardians, family, and other caregivers of people with disabilities from participation in their care. IDR maintained to Indiana University Health that individuals with disabilities who required communication or behavioral supports in hospital situations retain their rights to reasonable accommodations under federal law, including the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act, and Section 1557 of the Affordable Care Act (ACA), even in a pandemic. IDR provided model language that Indiana University Health could adopt to ensure these necessary accommodation be permitted.

Within a week, Indiana University Health indicated that a policy change had been made network-wide, and that requests for an exception to the Visitor Restrictions, to permit one consistent visitor for an adult patient with a disability who needs assistance due to the specifics of the disability and who may greatly benefit from permitting one consistent visitor, would be allowed, subject to the approval of the facility's Chief Nursing Officer/Chief Medical Officer or their designees, with the proper precautions taken to contain the spread of infection.

The family member affected by the restrictive policy provided an update to IDR: "After just one day of my mom being allowed in the room with her, she has made such great progress! She was cleared to eat regular food (before it was soft or mashed only) so she can hopefully get her feeding tube out. They didn't know that she was having trouble feeding herself so she hadn't been eating much. But my mom is now able to help feed her. She's also made progress with speech and PT because she is more willing to trust them with my mom by her side. She moved out of her bed into a chair for the first time in 3 weeks! We are so grateful

for these baby steps! The doctor hopes to move her down one more level in the hospital within the next few days and she will no longer be on a floor with other patients with coronavirus. Then she will be ready to come home and continue PT and rehab at home.”

- *Education* – On April 8, 2020, IDR released an FAQ on Educational Services fact sheet providing much needed guidance to families on educational requirements during the pandemic. IDR also worked with Communication to create a webinar detailing this important information.
- *Voting* – On April 20, 2020, IDR provided comments to Indiana Election Commission about necessary and appropriate voting accommodations to ensure Hoosiers with disabilities have a full and equal opportunity to vote privately and independently in the rescheduled primary election.
- *Medical Rationing* – IDR researched Indiana’s mass casualty triage procedure, and reviewed it for compliance with HHS OCR’s new guidance. IDR wanted to ensure that any medical rationing policies and guidance were non-discriminatory and did not have a disparate impact on people with disabilities. On April 16, 2020, IDR also signed-on to a letter to HHS regarding Crisis Standards of Care.
- IDR continues to actively address and respond to new issues related to COVID-19 that emerge each day. IDR staff have been completing continuing education in regard to COVID-19 advocacy, (virtually) attending weekly and bi-weekly state agency meetings addressing COVID-19 related issues, and tracking local school corporation re-opening plans, among other activities.