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DISABILITY ADVOCATES, INC.'S RESPONSE TO A REQUEST FOR A SOLICITATION OF INTEREST TO BE DESIGNATED NEW YORK'S P&A/CAP AGENCY

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I. DAI HAS THE PROFESSIONAL EXPERIENCE AND QUALIFICATIONS TO EMPOWER, PROTECT AND ADVOCATE ON BEHALF OF PERSONS WITH DISABILITIES

Since 1989, Disability Advocates, Inc. (DAI) has been providing effective Protection and Advocacy (P&A) services to persons with disabilities across New York State. DAI is a not-for-profit corporation whose sole purpose, as stated in its bylaws, is “to provide advocacy services for persons with disabilities.” DAI is therefore not distracted by unrelated priorities. DAI is also independent from any agency that provides treatment, services or habilitation to persons with disabilities.

DAI currently provides the full range of P&A services to persons with disabilities under Protection and Advocacy for Individuals with Mental Illness program (PAIMI); Protection and Advocacy for Individual Rights program (PAIR); Protection and Advocacy for Beneficiaries of Social Security program (PABSS); Protection and Advocacy for Individuals with Developmental Disabilities program (PADD) in a cooperative arrangement with the Albany Law School PADD regional office; and legal backup to the Client Assistance Program (CAP).¹ Since 1989, DAI has consistently demonstrated its ability and its organizational capacity to lead an effective statewide P&A/CAP system for persons with disabilities.

A. CURRENT STAFF

Cliff Zucker has been the Executive Director of DAI since it began in 1989. During that time, he has been exclusively providing and managing P&A services to people with disabilities throughout the state. Prior to joining DAI, Cliff worked for the Rhode Island P&A System from 1987-1989. For over 25 years, his practice has been devoted to the representation of persons with disabilities in the P&A/CAP system. He has litigated cases concerning the right to

¹ Over the years, DAI has received funding from the Interest on Lawyers Trust Account Fund of the State of New York and the van Ameringen Foundation to advocate for the rights and protection of people with disabilities.

treatment in the most integrated appropriate setting, architectural accessibility of community residences, the rights of allegedly incapable indigent persons to counsel in guardianship proceedings, medical decision making for persons alleged to be incapable of making their own decisions, the rights of adults and children with disabilities in human research studies, and the rights of prisoners with serious mental illness to adequate mental health care. He has the proven ability to foster and encourage staff to identify issues of great importance to our clients, and to deliver legal work and advocacy of the highest quality in pursuit of those goals. Cliff is a graduate of Northeastern University School of Law.

Timothy A. Clune is the Deputy Director of DAI. Since 1990, his practice has been exclusively devoted to the representation of persons with disabilities in the P&A programs (except for a two year interlude, 2007-2009, when he served as Chief of the New York State Attorney General's Health Care Bureau). He has litigated many disability rights cases of national importance, including cases regarding the right to treatment in the most integrated appropriate setting, architectural accessibility of stadium theaters, conspiracies to deprive persons with disabilities of their civil rights, and RICO violations by abusive adult home operators. He has spearheaded our work on behalf of residents of adult homes with mental illness. Tim is a highly efficient attorney and effective manager. He continuously mentors and motivates staff to engage in high quality advocacy for our clients. Tim is often called upon to provide national and statewide training regarding protecting and advocating on behalf of people with disabilities. Tim is a graduate of Albany Law School.

Simeon Goldman is a Senior Staff Attorney with DAI, where he has exclusively provided P&A services to people with disabilities for the past 21 years. He teaches Mental Disability Law as an adjunct professor of law at Albany Law School, frequently speaks at continuing legal

education courses, and trains both service providers and individuals with disabilities. Simeon has authored training material regarding the housing rights of people with disabilities for the New York State Bar Association, and is currently co-editing its 2012 4th Edition of Representing People with Disabilities. Simeon was previously Director of Advocacy at the Capital District Center for Independence from 1988 to 1991, where he led local efforts to support the enactment of the Americans with Disabilities Act. He has extensive experience in combating efforts by municipalities to bar housing for persons with disabilities, assisting persons with disabilities in obtaining the home care they need to remain outside of institutions, and fighting employment discrimination. He also assists persons with disabilities in navigating the complex rules of Social Security, Medicaid and Medicare to enable them to return to employment, and frequently trains beneficiaries on these subjects. Simeon is a graduate of the SUNY Buffalo School of Law.

Nina Loewenstein is a Senior Staff Attorney and has been with DAI since 2001. For the past 11 years, she has been exclusively providing P&A services to people with disabilities. Nina spearheaded our advocacy on behalf of prisoners with mental disabilities. As a result of her legal advocacy, settlement was reached in a major systemic case which brought far-reaching reforms to segregated confinement of prisoners with mental illness and mental health treatment in New York State prisons. She has testified before the New York State Legislature in support of legislation, which has now become New York law, limiting segregated confinement of prisoners with mental illness. She has conducted effective investigations under PAIMI authority in various prisons, leading to improvements in suicide watch of prisoners in infirmary settings, removal of heavy Plexiglas cell shields in special housing unit mental health programs, and improved mental health treatment for many prisoners with serious mental illness. Nina has taught several attorney continuing legal education programs regarding the rights of prisoners with disabilities and prison

litigation. She also has extensive experience representing persons with disabilities in employment and housing discrimination matters. Prior to joining DAI, Nina litigated discrimination cases on behalf of people with HIV/AIDS at the Legal Aid Society of Rockland County. Nina is a graduate of New York University School of Law.

Jennifer Monthie is a Staff Attorney and has been with DAI since she graduated law school in 2003. Jennifer has been exclusively providing P&A services to people with developmental disabilities for the past nine years. Prior to her legal career, Jennifer worked directly with adults and children with developmental disabilities to promote independence. She is a frequent trainer at attorney continuing legal education events regarding special education law, and organizes an annual conference to train parents, lay advocates and service providers to effectively advocate for individuals with disabilities. She also has spearheaded our efforts to promote community integration of individuals with developmental disabilities into the community. Jennifer is a graduate of Albany Law School.

Amy Lowenstein is a Staff Attorney and has been with DAI since 2007. Amy has been exclusively providing P&A services to people with disabilities, as well as legal advocacy under the Client Assistance Program, for the past five years. She has been integrally involved in our advocacy enforcing the rights of persons with disabilities to live in the most integrated appropriate setting, assisting victims of employment discrimination and assisting victims of discrimination in higher education. Prior to joining DAI, Amy clerked for Magistrate Judge Roanne L. Mann, in the Eastern District of New York, and served as an attorney at New York Legal Assistance Group, where she worked primarily on access to health benefits for people with disabilities. During law school Amy interned at DAI, New York Lawyers for the Public Interest

and Disability Rights Advocates, where her work was focused on disability rights. Amy is a graduate of Columbia Law School.

The new P&A/CAP will hire other experienced advocates for persons with disabilities to lead the various P&A/CAP programs.² This experienced team will be responsible for ensuring that the P&A/CAP programs are effective throughout every region of the state.

B. IF DESIGNATED AS THE P&A/CAP, A MAJORITY OF THE GOVERNING BOARD WILL BE INDIVIDUALS WITH DISABILITIES, AND FAMILY MEMBERS OF, OR ADVOCATES FOR, INDIVIDUALS WITH DISABILITIES

If designated as the new statewide PA&/CAP agency, the DAI Board will be greatly expanded to reflect the geographically, racially, and ethnically diverse population of the State. Specifically, the Board will be comprised of qualified individuals representing the North County, Capital District, Central New York, Western New York, Southern Tier, Hudson Valley, Metropolitan Region and Long Island.

DAI has already obtained a commitment from several highly qualified individuals with disabilities for consideration to serve on a newly expanded Board of Directors should DAI be designated as the new statewide P&A/CAP. More than a majority of the new Board will be comprised of persons representing the full range of disabilities which the P&A/CAP represents. There will also be significant representation by families of persons with disabilities who cannot speak for themselves. Thus, the new Board will immediately exceed the requirements in federal law for control by persons with disabilities.

The PAIMI Advisory Council will have a substantial role in advising the new Board. Moreover, although federal law does not require that a non-profit P&A/CAP have a PADD

² DAI's current staff are either individuals with disabilities, have family members with a disability, or are advocates. As the statewide P&A/CAP, DAI would hire similarly qualified staff, advocates and lawyers.

Advisory Council, DAI will establish one to further inform the Board regarding the delivery of P&A/CAP services.

C. DAI HAS AN APPROPRIATE FISCAL SYSTEM WHICH WILL ENSURE COMPLIANCE WITH OMB CIRCULAR A-133 AND IRS 990 FILINGS

Since its inception, DAI has been in full compliance with OMB Circular A-133 and is up to date on its IRS 990 filings. If designated as the statewide P&A/CAP, DAI will hire a full-time Chief Financial Officer and sufficient staff with the appropriate financial expertise to manage its sizeable budget. The financial team will ensure compliance with all applicable rules and regulations governing federal funds. DAI will also hire a Human Resources Director and sufficient administrative staff to efficiently manage this statewide, multi-office organization. Finally, each P&A/CAP program will be managed by an experienced attorney responsible for ensuring the coordinated statewide delivery of the respective P&A/CAP services.

II. DAI WILL CONTINUE TO EMPOWER, PROTECT AND ADVOCATE ON BEHALF OF ALL INDIVIDUALS WITH DISABILITIES

For over 23 years, DAI has effectively and consistently undertaken advocacy of statewide and national importance. Our advocacy efforts have included individual legal assistance, negotiation, mediation, technical assistance, referrals, and when necessary, individual litigation, class action and other impact litigation. DAI has conducted extensive investigations of abuse and neglect complaints in adult homes, psychiatric centers, juvenile justice facilities and correctional facilities. DAI also engages in public education, coalition building, and legislative and policy advocacy. Finally, DAI's expertise is often called upon to conduct statewide and national trainings on disability related issues.

DAI has a proven track record of establishing and successfully operating P&A/CAP programs. DAI will continue to deliver services to people with disabilities of the highest quality as the statewide P&A/CAP.

A. IMMEDIATE ACTIONS

Should DAI be designated, it would do business under the name, *Disability Rights New York*.³ A single independent P&A/CAP will then serve New York through a network of regional offices, which will be governed and led by a single Board of Directors and a centralized management. Statewide policies and priorities set by people with disabilities will specifically protect the rights and advance the interests of people with disabilities throughout the state.

DAI will conduct outreach in each of New York State's 62 counties in order to ensure it understands the issues affecting people with disabilities across the entire state, and to make known the availability of statewide P&A/CAP services. This initial outreach will be broadly publicized in all media formats and coordinated with all the appropriate constituent and family groups. Future similar outreach will be conducted routinely by the new P&A/CAP.

A toll-free hotline will be immediately established and widely publicized for direct contact with a P&A/CAP staff member during business hours for complaints, requests for assistance, and for input regarding specific regional and statewide issues. Additionally, we will create an accessible website (www.DisabilityRightsNY.org), and a corresponding email address (____@DisabilityRightsNY.org), will be launched.

B. INITIAL TRANSITION PERIOD

It is extremely important to maintain continuity of services for the many people with disabilities who are being served by the current P&A/CAP system. Consequently, there will be a comprehensive planning/transition period of no less than one year, during which existing contracts with the current P&A/CAP providers will be continued. The activities of each current

³ The national trend is to refer to each state's P&A/CAP as *Disability Rights [State Name]*. This is desirable because it identifies the organization as the state P&A/CAP. Most persons with disabilities are not aware that New York has a P&A/CAP system, because it has never effectively functioned as a single statewide system.

provider will be reviewed to identify the scope and effectiveness of services that it now provides. All this information will be synthesized to inform the evaluation of the current delivery model by the Board of Directors and the PAIMI and PADD advisory councils, and to enable them to design the best service delivery model for the new P&A/CAP and set statewide and regional priorities.

The ultimate decision on how P&A/CAP service delivery is organized will be made by the Board of Directors after the planning/transition process described above. There is room for improvement within the existing system. The current P&A/CAP system is a collection of federally funded programs which each serve a defined group of persons with disabilities and which collectively serve all persons with disabilities. Currently, there are 20 P&A/CAP contractor offices providing services under 40 different contracts. Regional contracts under the various programs are geographically inconsistent with one another. Many counties are served by more than one provider of P&A/CAP services, which confuses clients and makes it difficult to effectively address regional issues. Some grants are so small that it is difficult to efficiently and effectively use resources. DAI will use the transition period to review the current system and to design and implement an effective, strategically focused statewide P&A/CAP program.

C. REGIONAL OFFICES

A reorganized system will have regional offices which serve clearly defined regions of the state, and will effectively address issues of concern to people with disabilities in each region. A reorganized system will have a sufficient number of regional offices, and those offices will receive sufficient resources to provide effective services and will be held accountable for doing so.⁴ Employees of the P&A/CAP will work exclusively on disability related advocacy, and each

⁴ Compelling testimony at CQC-APD's public forums called for continuing to place CAP advocates in the Independent living Centers (ILCs). Although federal law disqualifies many

P&A/CAP program will have a statewide coordinator, responsible for statewide supervision, coordination of efforts, outreach, and insuring that work of the regional office is consistent with the priorities of the particular program.

The regional offices will be in the communities they serve and could ideally employ most of the persons who now work for a scattered and uncoordinated system. Consequently, people with disabilities will benefit from the local knowledge in the regional offices and receive effective individual and systemic advocacy. The regional offices of Disability Rights New York could possibly be established through contracts with regional providers who receive leadership, supervision and direction from Disability Rights New York. Discussions are underway with several of the current P&A/CAP contractors regarding the provision of services during a transition period under the supervision and leadership of the statewide P&A/CAP. The decision on how service delivery can best be organized, including any use of contractors, ultimately will be decided by the reconstituted disability-led governing board.

D. ABUSE AND NEGLECT INVESTIGATIONS UNIT

The new P&A/CAP will be responsible for conducting abuse and neglect investigations that are independent of the state. The creation of a new P&A/CAP coincides with the creation of the new Justice Center for the Protection of People with Special Needs (Justice Center) to replace the Commission on Quality of Care and Advocacy for Persons with Disabilities (CQC-

ILCs from being the CAP or CAP contractors, ILCs currently provide CAP services in New York under a “grandfather clause.” See 34 CFR § 370.2. ILCs are disfavored by the CAP regulations because as providers of services under the Vocational Rehabilitation Act they are not sufficiently independent. It is uncertain whether the “grandfather clause” would apply in a re-designated CAP. If the federal oversight agency allowed ILCs to continue to be “grandfathered,” we could continue to contract with ILCs, subject to the “direct day-to-day supervision” required by 34 CFR § 370.2(g)(3). If such an arrangement is unacceptable to the Federal oversight agency, then CAP employees could work out of space rented from ILCs, which would assist ILC clients in accessing CAP services, and vice versa. As part of the planning process, decisions will be made about the number of CAP regional offices.

APD). The Justice Center, an approximately 400 person agency, will have more resources and broader powers to investigate abuse and neglect than CQC-APD now has.

The P&A/CAP is intended to supplement, and not supplant, resources available in the state. A key component of the transition and planning process will be developing investigatory priorities and protocols that best use resources to ensure independent review of allegations of abuse and neglect in appropriate cases, without duplicating the investigative activities undertaken by the Justice Center and provider agencies.⁵ The P&A/CAP Investigations Unit will be appropriately staffed with skilled investigators to undertake this responsibility.

III. DAI HAS PROVIDED HIGH QUALITY AND EFFECTIVE P&A/CAP SERVICES FOR MORE THAN TWO DECADES

For more than two decades, DAI has been providing high quality individual and systemic P&A services to people with disabilities throughout New York State. Since 1999, DAI has settled 366 cases without litigation and 65 cases with litigation. DAI has also provided counsel and advice to 7,823 clients, provided brief services to 1,435 clients, and has made 8,687 referrals. The following is a sample of the breadth of services that DAI has provided:

A. INDIVIDUAL REPRESENTATION

1. Right to Emotional Support & Service Animals

- DAI prevented the eviction of our client who needed to keep a service dog to cope with her mental illness.
- DAI obtained supportive housing for our client who was denied housing because he needed a service dog.

⁵ We will seek technical assistance from the National Disability Rights Network as well other P&A/CAP systems, such as Disability Rights California and Disability Rights Texas, regarding their abuse and neglect investigations.

- DAI has advocated for many individuals with disabilities who needed the emotional support of their animal to enable them to successfully live in their home.

2. Fair Housing Rights for Tenants with Disabilities

- DAI obtained a reasonable accommodation for our client with a mobility impairment who was refused an alternative entrance to his apartment building.
- DAI reversed a discriminatory practice of denying adult home residents access to selection preference for subsidized housing.
- DAI intervened on behalf of a man with cerebral palsy who was being compelled by OPWDD to give up his apartment to move into a group home.
- DAI prevented the eviction of our client by negotiating a repayment plan with the housing provider for back rent owed.
- DAI successfully represented an adult home resident who was psychiatrically hospitalized in retaliation for refusing to move out of the home.
- DAI prevented an eviction which would have left a woman with a mobility impairment and her daughter homeless.
- DAI prevented the eviction of our client, a family with an autistic child who, as a result of the child's disability, often paced at night and sometimes yelled.

3. Accessibility for Individuals with Mobility Impairments

- DAI obtained a parking space for our client close enough to her workplace so she could safely and reliably get from her car to her office.
- DAI negotiated an agreement with a condominium board to make a handicapped parking space available to our client with a disability.

- DAI successfully advocated for a ramp at a local restaurant after the owner refused to install one or otherwise make the restaurant accessible.
- DAI obtained access for our client, a 16-year-old with paraplegia, who could not attend a town sponsored event because it was held at an inaccessible location. DAI also negotiated for all future town sponsored events to be held at accessible locations.
- DAI negotiated an agreement with the Village of Schaghticoke that all meetings would, at the request of any attendee, be moved to the accessible first floor of the firehouse.
- DAI obtained the installation of a permanent ramp at the entrance of a 12-story apartment building where several residents with mobility impairments lived.

4. Veterans Subjected to Discriminatory Conduct

- DAI represented a veteran who was fired from her job because she required temporary medical restrictions. DAI obtained a settlement of \$10,000 for our client.
- DAI represented a veteran with serious mental illness who was denied access to appropriate day treatment services. DAI negotiated for the provision and payment for appropriate services.
- DAI negotiated with a landlord to have a ramp installed at the entrance to the apartment of our client, a veteran who recently had his legs amputated.

5. Community Placements for Individuals with Disabilities

- DAI successfully advocated for community placements for two individuals with developmental disabilities languishing in a nursing home.
- DAI obtained Medicaid home health services for an alert and capable 69-year-old man who was previously terminated from home health services and forced into a nursing home.

- DAI assisted the mother of a child with a disability in obtaining a stop sign outside her home so that her child could remain at home and safely play out doors.

6. Beneficiaries of Social Security Benefits

- DAI has persuaded numerous creditors to remove restraining notices from our clients' bank accounts that only contained exempt Social Security benefits.
- DAI obtained a waiver of a \$100,000 overpayment for our client, a self-employed individual who is blind, and who supports his family through self-employment.
- DAI obtained a waiver of a \$20,000 overpayment at an administrative hearing for our client who had exceeded the Substantial Gainful Activity limit because he had worked mandatory overtime at a seasonal job.
- DAI obtained a waiver of a \$6,000 overpayment for our client who had been wrongly accused by the Social Security Administration of improperly spending funds.

7. Rights of Employees with Disabilities

- DAI won a jury trial on behalf of our client with cerebral palsy, whose hours as a social services case manager were cut because she began using a wheelchair. Her hours were restored and she was compensated for five years of lost wages.
- DAI successfully represented our client who was terminated by her employer because she needed a short-term hospitalization.
- DAI obtained a settlement for our client who was terminated from her job after the employer refused to allow her to work with a job coach.
- DAI got our client reinstated to employment and obtained a reasonable accommodation of medical leave for her recovery from an episode of mental illness.

- DAI obtained a reversal of a decision to deny our client a Certified Nursing Assistant training program at a local nursing home because she had a disability.
- DAI settled litigation against the Girl Scouts after they terminated our client in retaliation for exposing their refusal to serve a girl with HIV.
- DAI obtained a \$2,500 settlement and letter of apology from a local fast food restaurant for our client that was discriminated against because she received supported employment services.
- DAI represented a resident physician with a learning disability in an appeal of a hospital's decision not to renew her contract after denying her request for a reasonable accommodation.
- DAI obtained a settlement for our client who was terminated by an employer after becoming aware of our client's brain tumor. This was one of the first PABSS employment discrimination cases to be litigated.
- DAI obtained fair wages for a beneficiary of social security with a learning disability who was employed for nine years but only received sub-minimum wages.
- DAI obtained a reversal of a county policy regarding special needs trusts that forced our client, a beneficiary of social security, to abandon a job re-training program.

8. Appropriate Educational Services

- DAI has assisted hundreds of children in obtaining a free and appropriate public education, including: advocating for a less restrictive setting for a student with fetal alcohol syndrome; preventing a student with Down Syndrome from being secluded from her peers; obtaining an assistive device for a student with a hearing impairment; ensuring appropriate transition services from preschool to kindergarten for a child with cerebral

palsy; and advocating for protection for numerous children with disabilities who were being bullied at school.

- DAI obtained a \$12,000 settlement for a college student with a learning disability who was denied a reasonable accommodation by the school.
- DAI obtained re-admission into a college program for a student with a disability who was denied access because he was told his seizures “looked bad” and were disruptive.
- DAI obtained an agreement from a university to not charge our client a higher fee for a single room which he needed as a reasonable accommodation for his disability.

9. Sign Language Interpreter Services

- DAI obtained a sign language interpreter for our client after a doctor refused to provide this service. The doctor apologized and agreed to provide interpreters in the future.
- DAI obtained a reversal of Community Care Physicians' policy which refused to pay for the provision of sign language interpreters for its patients.
- DAI filed an administrative complaint with the U.S. Department of Justice on behalf of our client, an individual who was refused a sign language interpreter by Glens Falls Hospital.

10. Appropriate Medicaid Services

- DAI successfully represented our client who was told that his Medicaid aides could no longer drive his vehicle to take him outside his home, which would have left him home-bound.
- DAI obtained 15 hours of home care per day for our client who needed the service to avoid nursing home placement.

- DAI successfully advocated for an increase of personal care service hours from 35 per week to 65 per week for a pregnant woman with scoliosis and cerebral palsy.
- DAI obtained restoration of private duty nursing services for a medically frail young girl after the county attempted to terminate these services.
- DAI obtained a temporary cushion and later a customized cushion for our client who had been unsuccessful in obtaining this equipment despite numerous requests.

11. Appropriate Health Care

- DAI obtained reinstatement of our client's health insurance coverage after he was terminated by an HMO because he was a part-time, rather than a full-time student.
- DAI obtained the provision of controlled pain medication on a timely basis for our client who had severe and chronic pain due to a spinal injury.
- DAI obtained prescription drug coverage for a working beneficiary with cancer who could not have continued to work without her pain medication.
- DAI negotiated the restoration of our client's right to use his wheelchair after a nursing home prohibited him from using it because he had bumped into people. The facility agreed to provide an appropriate amount of time for our client to explore the facility in his wheelchair while being monitored for safety by staff.
- DAI successfully advocated for community outings for our client who lived in an OPWDD funded community residence.
- DAI obtained for our child client restoration of essential therapies that enabled him to succeed in school and the community.
- DAI obtained services for a child who was determined to be eligible for OPWDD services but had not received services for over six months.

- DAI obtained the necessary respites services for twins with autism necessary for them to remain with their family.

B. SYSTEMIC LITIGATION ADVOCACY

1. Insurance Coverage for Individuals with Mental Illness

- DAI obtained a landmark decision by the Second Circuit Court of Appeals that an insurance company cannot deny life insurance coverage based solely on an applicant's mental illness.

2. Linguistically Appropriate Services in Psychiatric Centers

- DAI negotiated a settlement agreement with New York State to provide linguistically appropriate mental health services to patients who had been involuntarily committed.

3. Abuse & Neglect of Adult Home Residents with Disabilities

- DAI obtained over a \$10 million dollar settlement for 17 adult home residents who were subjected to unnecessary prostate surgery as part of a Medicaid scam. These residents are now living in appropriate homes with proper care.

4. Access to Stadium Seating in Theaters

- DAI settled a case against Hoyt's/Regal movie theaters ensuring that people who use wheelchairs are no longer relegated to the worst seats in the house. All wheelchair spaces are now located in the prime viewing areas of the stadium theaters.

5. Community Integration for Residents in Nursing Homes

- DAI, with co-counsel, negotiated a settlement with the state ensuring that all nursing home residents with mental illness who are capable of living in the community will be offered that opportunity.

6. Fair Housing Opportunities for Individuals with Disabilities

- DAI, with co-counsel and the U.S. Department of Justice, successfully fought the City of Middletown's exclusionary land use practices against the establishment of housing for individuals with disabilities after the planning board refused to grant a special use permit. The Second Circuit Court of Appeals' decision in this matter is the leading fair housing case in this circuit.
- DAI obtained permanent housing for 16 homeless individuals with mental illness after obtaining summary judgment against the City of Troy Planning Board for violations of the Fair Housing Act.
- DAI ensured that residents in supportive housing were afforded due process rights by successfully advocating for community residence regulations.

7. Appropriate Mental Health Services in Correctional Facilities

- DAI and co-counsel negotiated a statewide settlement on behalf of thousands of prisoners with mental illness who were not receiving necessary mental health care. The settlement resulted in a vast expansion of mental health treatment opportunities for prisoners with mental illness and moved many prisoners with mental illness who were suffering in Special Housing Units (solitary confinement) to appropriate, secure, mental health treatment settings.

C. SYSTEMIC NON-LITIGATION ADVOCACY

1. Policy Reform

- DAI, co-counsel, and a coalition of concerned family and advocates successfully advocated for a State law that restored special education services for children with disabilities who are home schooled.

- DAI obtained changes to OPWDD's Medicaid *Notice of Decision* which was confusing and misleading. The notice regarding the right to continued assistance pending a hearing was buried in fine print, and the deadline for timely requesting a hearing was not clearly stated.
- DAI obtained Section 8 housing for residents of adult homes and nursing homes who had been denied access because it was presumed that they had adequate housing.
- DAI convinced Albany County to correct erroneous information that it was relying on in determining eligibility for the Medicaid Buy-In Program for Working People with Disabilities.
- DAI persuaded VESID to stop misinforming beneficiaries about eligibility for the Ticket-to-Work Program and its benefits.
- DAI obtained a reversal of a VESID policy which had stopped necessary funding for child care, without which our client could not complete a nursing program.
- DAI worked with the Saratoga Performing Arts Center (SPAC) and the NYS Department of Parks and Recreation to address all non-structural accessibility issues at SPAC.
- DAI developed written guidelines to assist clinicians, advocates, providers and family members in establishing eligibility for OPWDD services for people with Asperger's syndrome. As a result, there has been a decrease in inappropriate denials of services to people with Asperger's syndrome.

2. Accessible Transportation

- DAI advocated for accessible parking spaces by persuading a mall to improve signage and agree to enforce prohibitions against illegal parking in accessible spaces.

- DAI and the U.S. Department of Justice obtained accessible routes between stores at a local mall.
- DAI facilitated the purchase of accessible minivans by two local taxi services in the Capital District.

3. Educational Reform

- DAI successfully negotiated with several school districts to stop denying access to independent educational evaluations for children seeking special education services.
- DAI is advocating with OCFS to improve the provision of general and special educational services in its facilities including, conducting Functional Behavioral Assessments of students whose behaviors impede their learning, implementing Behavioral Intervention Plans, and providing individualized programming to address behavioral concerns so children do not remain in unnecessarily restrictive settings.
- DAI is working with a coalition of concerned parent groups, legislators and advocates, for legislation to address the problem of physical restraint of children with disabilities in schools.
- DAI and a coalition of advocates obtained passage of a state law which places the burden of proof on school districts, rather than the parent, when the parent requests a fair hearing. This law removes an unfair burden from the parents, who do not have the resources to marshal evidence that a school district has.

D. COALITION BUILDING & TRAINING

- DAI was involved in a successful effort in Albany County to establish written principles and a working process to minimize the hostility and distrust which often surrounds the siting of group homes. DAI facilitated and played a major role in a meeting with many

local elected officials and housing providers to hear about the Good Neighbors Project, and to discuss other issues surrounding site selection for community residences.

- DAI and the Capital District Center for Independence (CDCI) are jointly undertaking a project to 1) identify and correct accessibility problems at large area shopping centers; and 2) identify and correct those job applications with illegal disability-related questions.
- DAI and the Independent Living Center of the Hudson Valley reached out to county medical societies to offer training to physicians on the legal requirement to provide effective communication to deaf patients and how to arrange for sign language interpreters. This addressed the widespread problem of patients with hearing impairments being unable to receive and communicate vital information with their health care providers.
- DAI serves as a member of the New York State Association of Independent Living Education Committee. This Committee has actively pursued reform of education for individuals with disabilities, including protections for children subjected to inappropriate physical restraint while in public schools.

1. Special Education Task Force

- A DAI staff attorney serves as the Chairperson for the Special Education Task Force which is comprised of over 200 parents, advocates, school district personnel, and attorneys, who work collaboratively to ensure that children with disabilities are educated in the least restrictive setting and receive a free appropriate education. The primary mission of the Task Force is to ensure that families and school personnel have the knowledge and skills to enable them to effectively assist students with disabilities. Through its annual conference, the Task Force has trained over 3,200 advocates,

attorneys, law students, parents, school personnel and community providers on a variety of topics affecting students with special needs; created and distributed over 3,000 copies of a free 60-page publication, *Special Education in Plain Language* throughout the state; and holds bi-monthly forums to address systemic issues in special education. The Task Force website www.nyspecialtaskforce.org and list-serve is used to share information and resources.

2. Community Education

- DAI provided training at New York State Division of Human Rights conferences regarding the rights of people with disabilities under the Fair Housing Act.
- DAI provided training to the affirmative action officers of New York State agencies regarding rights of employees with mental illness.
- DAI provided training to beneficiaries with traumatic brain injury about returning to work as part of a panel presentation led by VESID at six conferences over the course of three years.
- DAI trained job coaches for beneficiaries with mental disabilities regarding rights and work incentives annually for each of the past five years.
- DAI trained attorneys who represent beneficiaries with disabilities about Supplemental Security Income (SSI) work incentives and employment rights at three New York State Bar Association continuing legal education programs.
- DAI trained beneficiaries with mental illness and their service providers about work incentives at two state-wide conferences sponsored by the Association for Community Living and New York Association of Psychiatric Rehabilitation Services.

- DAI trained beneficiaries with HIV and cancer on their legal rights when returning to employment at a Health Law Conference sponsored by Albany Law School.
- DAI trained Medicaid service coordinators for people with developmental disabilities on their clients' eligibility for the Medicare Savings Program and preventing and combating consumer debt collection against SSI and Social Security Disability beneficiaries.

E. DAI HAS EFFECTIVELY AND EFFICIENTLY PROVIDED CAP SERVICES

DAI provides legal backup and frequent technical assistance to the regional CAP coordinator to support his advocacy with ACCESS-VR and the Commission for the Blind and Visually Handicapped (CBVH). DAI also has supported statewide and national efforts on vocational rehabilitation issues. The DAI CAP attorney has served as a presenter and trainer on due process and hearing advocacy skills at a National Disability Rights Network conference, and developed a training on federal vocational rehabilitation laws that is used by the network to train CAP advocates nationally.

DAI also provides direct legal assistance to CAP consumers experiencing problems with accessing and maintaining services from ACCESS-VR and CBVH. Over the past 10 years, DAI has been able to resolve every CAP case it has accepted for legal representation prior to hearing. For example:

- DAI persuaded VESID to waive its college training durational limit, allowing our client with mental illness to complete his Bachelor's degree, and to reimburse him for tuition and other costs he incurred during the time period VESID had refused to fund his college education.

- DAI successfully advocated for our client at an administrative review resulting in ACCESS-VR's decision to reinstate her goal of becoming a teacher and to support Bachelor's level education towards that goal.
- DAI persuaded CBVH to reopen our client's case and pay for the replacement of low vision aids that had been stolen from our client and without which he was unable to work.

IV. CONCLUSION

For all of the above reasons, DAI respectfully submits that it has the commitment, the qualifications, and the demonstrated experience to be designated the new statewide P&A/CAP agency.

Dated: June 7, 2012

Respectfully submitted,

/s/
Cliff Zucker
Executive Director