

**Louisiana State Bar Association's
Legal Services for Persons with Disabilities Committee**

Meeting Date: Thursday, March 17, 2022

Time: 12:00 – 1:00 p.m.

Join Zoom Meeting

<https://us06web.zoom.us/j/87577413864?pwd=a3hlbFdPajBhUkRuVUU3OVRBRGJnUT09>

Meeting ID: 875 7741 3864

Passcode: 192733

ATTENDEES:

- *Elena Perez, Southeast Louisiana Legal Services – Co-Chair*
- *Debra Weinberg, Disability Rights Louisiana – Co-Chair*
- Blake Allen, Southeast Louisiana Legal Services
- Garret DeReus, Attorney at Law
- Derek Warden, Louisiana Supreme Court
- Paul Fleming, Jefferson Parish Public Defenders
- Joshua Holmes, CrescentCare Legal Services
- Emma Douglas, Disability Rights Louisiana
- Jodi Hill, Disability Rights Louisiana
- Sara Bacot, Disability Rights Louisiana
- Courtney Carter, Acadiana Legal Services Corporation
- Lauren Godshall – Tulane Law School
- Lauren Winkler – Southern Poverty Law Center
- Hannah Adams – Southeast Louisiana Legal Services
- Jessica Sawyer – Louisiana Fair Housing Action Center
- Chris Edmunds – Attorney at Law

LSBA Staff:

- Mariarenee Contreras – Projects Counsel and Staff Liaison

Guests:

- Jessi Domingue – Loyola Law School

MEETING MINUTES

1. Welcome & Introductions:

- 12.2.21 Meeting Minutes

Minutes approved by the Committee. Moved for approval by Blake Allen and seconded by Lauren Godshall.

- New Members and Guests

New members were asked to introduce themselves and the organization/office they are with to the LSPD Committee.

2. Policy/Legislative Updates:

- Law student volunteers are still needed to help track legislative changes and updates.
- *Mariarenee C. - This workgroup will be led by Lauren Godshall with the help of law students who will track State and Federal law changes and provide updates to the Committee. The Committee has not been able to recruit any law students at the moment but will be working on this during the summer and at future student skills training. The workgroup is also open to any law student interns who are interested in the Committee. The workgroup's purpose is only meant for research and educational purposes.*
- *Debra W. – Will share the Governor's Office of Disability Affairs' list of proposed bills for the new legislative session once they send it over to DRLA. The list will only provide the names of bills and law changes related to disability law but will help the Committee identify the items they will need to track. The list has not been finalized because people are still submitting bills, but Debbie will share it as soon as she receives it.*

The Governor of Louisiana has let the Emergency Declaration for COVID-19 lapse this week. This means there is no longer a state of emergency for COVID-19 in Louisiana and members may start seeing a lot of Medicaid appendices and waivers being cut off. During the state of emergency, the corresponding agency was mandated to continue any Medicaid services and coverage regardless of expiration dates.

- *Lauren G. – As mentioned, she will be leading the workgroup, but will provide updates of any changes in the law until after the legislative session has started since many of the bills are in their primary stages. There is a huge list this year and it may be hard to track all of them at the moment.*
- *Hannah A. – Added that the corresponding authority for Medicaid discharges is not the State's emergency mandate, but the federal government's emergency mandate.*
- *Debra W. - clarified that Hannah is right, but that she is worried the appendices waivers may have lapsed due to the State's mandate no longer being in effect. This is because the Medicaid emergency rule that came out in February only references Louisiana's state of emergency. The biggest waiver that may be at stake, is one that allowed parents or caregivers to be workers for their own children and family members. If anyone has any insight on this waiver, please reach out to Debbie. Hannah will check it out and circle back with the Committee.*
- *Derek W. - added that the bill ending forced sterilization for persons with disabilities was submitted at the end of February in Louisiana. Louisiana Law as it stands now allows an*

individual with a disability to be forcibly sterilized or have an abortion if their curator goes to the court and gets an order. However, the law itself does not necessarily provide any guidance to the Court on how to do that. Due to this, the law has also been traditionally incorporated into natural tutorships such as parents over their children. This has caused some problems in the past with Courts being immune to lawsuits related to this issue. Disability Rights Louisiana have had clients who were affected by this law and were forced to have a sterilization or almost subject to sterilization. Letters were sent to Louisiana's Right to Life organization a couple of years ago and they were able to pick up on the issue and has collaborated with Disability Rights Louisiana. Before the February Bill was submitted, many drafts were written, but Disability Rights Louisiana helped with the final draft. Emma D. added that Johnathan Trunnel helped with the research and drafting behind the new bill, and she will be reaching out to him to get more information.

3. 2020 Justice Index:

- Judges Training Planning Group – General Update

Derek W. – Provided an update that he is working with Melanie and will be presenting with her at the Judge's Spring Conference. The training is on Supportive Decision Making and how it fits into Interdiction Law. Justice Griffin will be introducing Melanie and Derek for their presentation, but Melanie will be leading most of the training. This training is only open to Judges, but Melanie will also be working on a companion bench card to go with the training. This will be a great opportunity to help get the word out about the Committee with our state judges.

Elena P. – Gave additional background about the training's purpose. The 2020 Justice Index was just released this past year and provided some insight on the accessibility issues our State is currently facing in state courts. The Committee decided that they would use the Justice Index results this year to help create new initiatives. Derek W. added that a lot of the issues are just about educating the public and the legal community.

- Court Website and Services Accessibility Workgroup – Recruitment

Debra Weinberg – Will be reaching out to Tina Pineda from Disability Rights Oregon to give the workgroup a bit of guidance on how to further the accessibility of court websites. However, this workgroup is fairly new and is still in the process of creating new initiatives for the Committee to work on. If anyone is interested in joining, please reach out to Marie. Debra Weinberg will also be sharing Disability Rights National guidelines with the Committee as a reference.

The group will be looking at:

- i. *State Courts and their current accessibility features.*
- ii. *Identify the current accessibility features that need improvement.*
- iii. *Identify accessibility features that may be missing from court websites.*
- iv. *Creating a best practice guide for state court websites and lawyers.*

4. Disability Assistance Network:

- Updating DAN:
 - i. Updating Roster & New Attorney Recruitment
 - ii. Bar Journal Publication – *To Provide General Education about the Resource*

Elena P. and Debbie W. provided some background information about Disability Assistance Network. The program is meant to be public legal directory that provides information about attorneys in the area who work on disability related issues. Currently the directory only lists attorneys by their designated parishes but is not searchable by an attorney's specialty or practice area in disability law. The other issue is that non-profit attorneys are currently listed, but not their designated organization. The Committee would like to change this by simply listing designated organizations to ensure that callers are reaching someone rather than having their calls bounce back because a staff attorney has moved into another practice area.

Elena added that the directory is being used and it is important to find ways which we can update it. Marie provided that the Committee can work on writing a short article about DAN and will work with Monte to see what some of the internal steps the LSBA will need to take to help modify the directory to include some of the features that were suggested today and in past meetings.

- Modest Means Directory – Education Law Section

Chris E. suggested that it would be a good idea to add lawyers to the directory who may be interested in the practice of IDEA law. This can be done by creating an entire new section to the directory for Education law. The only issue is that many parents cannot afford an attorney and may not be able to pay an attorney so this may be a project for the Pro Bono subcommittee to take on. Another concern is that an attorney cannot receive any damages under the IDEA so there might not be any incentive for low bono attorneys to take on these types of cases.

The State is currently facing a great need for advocates to practice in this area. The pandemic has exasperated the issue of schools failing to provide proper accommodations and services to students with and without disabilities. A lot of these cases are fact intensive and require a lot of planning which is hard for the current number of private attorneys to take on all on their own. If schools are going to start following the law, efforts to ensure accountability need to be made.

Debbie W. Added that there are now 3 private attorneys who are working with Disability Rights Louisiana that are taking these cases. This is partially because in Louisiana, the 5th Circuit is not quite as great place to get fees. There is a fee shifting statute that allows for attorneys to earn some compensation for these cases, but it takes a lot of work and time before an attorney is compensated for their efforts and the money is still not enough. So the first steps to help address this issue may need to be to promote additional training on disability education law for attorneys working with children and families. An example of this is providing training to CINC attorneys who have clients with special educational needs.

Chris E. and Debbie W. - added that another solution is for specialized education attorneys to provide a mentorship model for new attorneys interested in this area of the law, but there are not enough attorneys who work in this area to provide such mentorship. However, the best model of such project would be the Criminal Justice Reform Act which provides that for a public/private public defender collaboration. Maybe this is something the Committee or members can work on developing with federal courts and the Department of Education.

Debbie W. added that the Committee might not have an immediate solution right now, but the Modest Means directory will be a great place to start. Chris E. agreed and it is a great way for attorneys to attain the knowledge on other areas of the law. The whole purpose is for parents to have as much resources as possible to advocate for their children.

Elena P. provided some background information about the Modest Means Directory. It is not meant to provide pro bono services. This is a legal directory for persons who are under the 200-500 % bracket of the federal poverty guidelines and do not qualify for legal aid services. Attorneys who have signed up for the Directory will sometimes modify their legal fees to help ensure persons have the legal representation they need.

Debbie W. reminded members that education law is a specialized area and that it would be a good idea to include some companion training on certain topics related to education law. There is a lot of IDEA law that overlaps with the ADA/504 Rehabilitation Act and attorneys are sometime capable of making special crossclaims that can help create a better outcome for their clients. However, these kinds of claims and practices are not always obvious to new attorneys and therefore it would be important to have CLEs or recordings leading up to the implementation of this section in the Modest Means Directory.

Elena P. added that similar trainings for attorneys and the public have been led by the Committee in the past

5. Engaging Law Students:

- LSU – Apprenticeship Week, January 5, 2022 – General Update

Jodi H. provided information about Apprenticeship Week. The training provided education on interviewing and communication skills for working with clients with disabilities, children, and persons with limited English proficiency. The training was led in collaboration with the LSBA's Language Access and Children's Law committees. Positive feedback was received and students were also able to learn about the different programs offered by the LSBA.

- Cultural Competency Law Skills Training at Loyola – March 18th, 2022 – General Update

Debbie W. added that she will be presenting with Emma D. at Loyola tomorrow. This skills training will be a bit different from the one held at LSU. This skills training will focus on the attorney responsibilities under the State's code of ethics, the national ABA standards and rules of professionalism, and federal discrimination laws. 34 percent of adults in Louisiana have a

disability which means it doesn't matter what practice area attorneys go into, everyone is bound to help/represent a client who has a disability. This will be an important training and more information about how it goes will be shared at the next meeting.

- Law Skills Training at Tulane/Loyola for Fall Semester? – *Volunteer Recruitment/Ideas*

Marie C. added that the Spring semester is wrapping up soon, but if any members have topics or ideas for skills trainings in the Fall, please let the Committee know. We can reach out to professors at the local law schools and the Committee is always looking for new attorneys to lead these trainings.

Debbie W. suggested doing a skills training on education law for Loyola or Tulane. This may be another way to recruit future attorneys. Even a general admin skills training or helping to write a law review article with law students about the practice of IDEA law. Jessica S. suggested reaching out to David Katner from Tulane's Juvenile Law Clinic and getting more information about getting these kinds of skills trainings started.

Chris E. recommended a book to members from the "In a Nutshell Series". The book is on federal disability law and is written by Professor Ruth Colker. You can find it on Amazon and has a great section on IDEA law. Debbie W. added that she can provide a list of citations from Louisiana law that can be helpful for new attorneys to read.

6. Upcoming CLES/ Events:

- [Equal Justice Conference – May 11th -14th](#)
 - Justice Fridays Training – Disaster Law Series at the Bar Center on June 10, 2022
Marie C. – Reported that Equal Justice Fellows from both Disability Rights Louisiana and SLLS will be working on putting together a training series on disaster law topics. We are in the process of planning the event, but it will be held in-person at the Bar Center. The trainings will also touch on issues related to disability law.
 - Disability Law Training Series – December 2022
 - i. Volunteers for Planning Group
 - ii. Training Topic Ideas

Marie C. – will follow up on this item at our next Committee meeting. The Committee will be forming a planning group for the training day series which will be held in-person in December.

- LSPD & Access to Justice Program at the GODA Conference
 - i. Training Topic Ideas/ Volunteers
Debbie W. and Marie C. – added that they will be working on hosting a session at this year's GODA conference. The purpose of this session is to provide general education a legal topic related to disability advocacy. This will be more of a "Know Your Rights" session

but will also provide an opportunity for the Committee to share about the public resources that are available through the LSBA and other legal partners.

- Other Events – *Open Discussion*

7. Other Business – *Open Discussion*

- *Derek W. shared that his article on Damages Actions under Title II of the ADA and 504 Rehabilitation Act in the 5th Circuit is officially done and will be published in WestLaw for anyone who wants to read it. He will be sharing the link with the Committee after this meeting. The article talks about how attorneys can win damages under the ADA and the 504 Rehabilitation Act since the 5th Circuit still is not clear about this topic. During his research, Derek reviewed all decisions under the 5th Circuit because the Court keeps saying that something more than deliberate indifference is being used, but nothing else is used. The outcome of many of these cases would have remained the same if simply the standard for deliberate indifference would have been used as it is done in every other Circuit. Derek compared the 5th Circuit's decisions with other decisions that were made in other Circuits as well. The only cases that are different are those from the 2nd Circuit because of the wrong application of the law and the 11th Circuit uses deliberate indifference but is the only one that says you have a policy maker.*

8. Adjournment: Next Meeting on Thursday, May 19th – Hybrid Meeting at the Bar Center/Zoom