

DISABILITY RIGHTS NEW JERSEY
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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

DISABILITY RIGHTS NEW JERSEY, A New
Jersey Nonprofit Corporation

Plaintiff,

v.

TODD BARCLIFF, in his official capacity as the
Warden of the Essex County Juvenile Detention
Center, DENNIS HUGHES, in his official capacity as
the Director of the Essex County Juvenile Detention
Center, and ESSEX COUNTY JUVENILE
DETENTION CENTER

Defendants.

Case No.

Judge:

Magistrate Judge:

**VERIFIED
COMPLAINT**

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND
COSTS**

Plaintiff Disability Rights New Jersey, a New Jersey nonprofit corporation,
brings this action against Todd Barcliff, in his official capacity as the Warden of
the Essex County Juvenile Detention Center, Dennis Hughes, in his official

capacity as the Director of the Essex County Juvenile Detention Center, and the Essex County Juvenile Detention Center.

I. INTRODUCTION

1. This action seeks to enjoin Defendant Todd Barcliff, Defendant Dennis Hughes, and the Essex County Juvenile Detention Center (collectively “Defendants” or “Essex JDC”) from continuing to violate federal and state laws that grant Plaintiff, Disability Rights New Jersey (“Plaintiff” or “Disability Rights NJ”), access to records for the purpose of fulfilling its mandate as the protection and advocacy system for people with disabilities in New Jersey.
2. Due to Defendants’ continuing violation of federal and state law, Plaintiff seeks declaratory, preliminary, and permanent injunctive relief to (1) enjoin Defendants from denying access to records of youth with disabilities confined in the Essex JDC, (2) enjoin Defendants from denying access to speak with youth at Essex JDC; and (3) enjoin Defendants from denying Disability Rights NJ from taking photographs of the facility.
3. Plaintiff files suit and seeks relief as described after making repeated efforts to resolve this matter with the Defendants.

4. Plaintiff also seeks attorneys' fees and costs, and any other available relief.
5. Each paragraph of this Complaint incorporates all others without specific restatement.

II. JURISDICTION AND VENUE

6. Jurisdiction is vested in this Court as this case raises a question of general federal law, 28 U.S.C. § 1331.
7. Plaintiff's cause of action arises under the Protection and Advocacy for Individuals with Mental Illness Act of 1986 ("PAIMI Act"), 42 U.S.C. § 10801 et seq.; the Developmental Disabilities Assistance and Bill of Rights Act of 2000 ("PADD Act"), 42 U.S.C. § 15041 et seq.; and the Protection and Advocacy for Individual Rights Act ("PAIR Act"), 29 U.S.C. § 794e.
8. Venue is proper in this Court under 28 U.S.C. § 1391(b). Defendants are located in this district, and the events and omissions complained of occurred in this district.
9. Plaintiff's office is located in Trenton, New Jersey.
10. Essex JDC is located in 80 Duryea St., Newark, New Jersey.

III. PARTIES

11. Plaintiff is a non-profit corporation duly incorporated in the state of New Jersey. Disability Rights NJ is the designated protection and advocacy system (“P&A System”) for people with disabilities for the State of New Jersey.
12. Plaintiff files this Complaint in its own name to redress injuries to itself in fulfilling its mandate to protect and advocate for the rights of people with disabilities in New Jersey.
13. In 1975, Congress established the P&A System to protect and advocate for the rights of persons with developmental disabilities and reauthorized the system in the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (the “PADD Act”). 42 U.S.C. § 15041 *et seq.* Congress provided P&A systems with the authority to investigate incidents of abuse and neglect against individuals with developmental disabilities and pursue legal, administrative, and other remedies on their behalf. 42 U.S.C. § 15043(a).
14. Congress thereafter expanded the scope of the P&A System to provide protection and advocacy services to all persons with disabilities. The Protection and Advocacy for Individuals with Mental Illness Act of 1986 (the “PAIMI Act”) provides for the protection of rights of individuals

- with mental illness, 42 U.S.C. § 10801 et seq.; and the Protection and Advocacy of Individual Rights Program (the “PAIR Act”) was created to protect the rights of all other individuals with disabilities who are not covered under the PADD and PAIMI Acts. 29 U.S.C. § 794e et seq.
15. Plaintiff has statutory authority and standing to pursue legal, administrative, and other appropriate remedies to ensure the protection of individuals who are or will be receiving care and treatment in New Jersey facilities, including people with disabilities who are institutionalized in facilities such as Essex County JDC.
 16. Defendant Todd Barcliff (“Defendant Barcliff”) is the Warden of Essex JDC, created under and governed by the laws of the State of New Jersey. Defendant Barcliff is sued in his official capacity.
 17. Defendant Dennis Hughes (“Defendant Hughes”) is the Director of Essex JDC, created under and governed by the laws of the State of New Jersey. Defendant Hughes is sued in his official capacity.
 18. Defendant Essex JDC is a youth detention center operated under the direction of Defendants Barcliff and Hughes.
 19. Defendants are ultimately responsible for the operation of Essex JDC in conformity with the laws of the United States and New Jersey.

20. Essex JDC confines youth charged with crimes before their 18th birthday.
At Essex JDC, these youth await a hearing or pre-hearing release.
21. Essex JDC receives youth from Essex, Passaic, Union, and Hudson Counties under a contract with each county.
22. Currently, multiple youth in Essex JDC have a mental, physical, developmental, and/or behavioral disability.
23. Individuals who are confined at Essex JDC receive special education services and accommodations for their disabilities under the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1974, and the Individuals with Disabilities Education Act.
24. Defendants operate a facility as defined in 42 U.S.C. § 10802(3) and 42 C.F.R. § 51.2.
25. Defendants operate a location, as provided in 42 U.S.C. § 15043(a)(2)(H), and a service provider, as provided in 42 C.F.R. § 1326.27(c), because services, supports, and other assistance are provided there to individuals with disabilities.

IV. STATEMENT OF FACTS

A. Denial of Records Access

26. Essex JDC provides housing, medical, recreation, education, holistic and social services to detained youth.
27. Essex JDC is the largest youth detention center in New Jersey. In 2022, Essex JDC had an average daily population of seventy-three youth.
28. Plaintiff has identified at least eleven specific youth with disabilities that were confined to Essex JDC within the last year.
29. In early 2023, Plaintiff became aware of allegations of abuse and neglect of youth with disabilities at Essex JDC.
30. On May 26, 2023, Plaintiff wrote to Defendant Barcliff to notify him of its intent to monitor and provided an explanation of Plaintiff's legal authority to do so. (Hereafter the "May 26, 2023 Letter"). Exhibit A.
31. The May 26, 2023 Letter also requested that Defendant Barcliff provide specific documents for Plaintiff's review. The documents requested were not individual records or directory information, but documents related to Essex JDC's policies and procedures. Exhibit A.
32. Defendant Barcliff failed to respond to the May 26, 2023 Letter.

33. On July 19, 2023, Director Jill Hoegel, Disability Rights NJ's Director of Investigations and Monitoring ("Director Hoegel"), followed up with Defendant Barcliff by forwarding a copy of the May 26, 2023 Letter via email and requesting a meeting.
34. On July 24, 2023, Essex JDC staff emailed the requested policy and procedure documents to Plaintiff but did not respond to the request for a meeting to discuss a visit to Essex JDC.
35. On October 17, 2023, Plaintiff received a referral stating that there were a group of youth at Essex JDC that were not permitted to go to school.
36. The referral stated that there were at least four youth with disabilities that had not been permitted to attend school since September 2023.
37. In following up on this referral, Plaintiff received reports from confidential sources that youth with disabilities in Essex JDC were subjected to the improper use of isolation as a form of punishment.
38. On December 15, 2023, Plaintiff sent a letter to Defendant Barcliff stating that it had probable cause to believe that that abuse or neglect has occurred at Essex JDC and invoked its authority to access records related to an investigation of abuse or neglect. Exhibit B.

39. On December 18, 2023, Plaintiff received a response from Jerome M. St. John, Esq., Essex County Counsel, denying access to records and requiring “the identity of the person(s) Disability Rights New Jersey is purportedly advocating for and further, proof that those individuals are developmentally disabled.” Exhibit C.
40. Mr. St. John also requested evidence that Disability Rights NJ had the “consent of the subject individual(s) to advocate on their behalf or alternatively” and that Disability Rights NJ “has engaged the proper legal process to obtain said consent.” Exhibit C.
41. Defendants did not provide a directory of names and contact information for youth confined in their Detention Center as part of its December 18, 2023 response.
42. On December 22, 2023, Disability Rights Legal Director Michael Brower sent another letter to Mr. St. John outlining Plaintiff’s access authority. Exhibit D.
43. On January 2, 2024, Disability Rights NJ spoke with Mr. St. John to provide further information on Disability Rights New Jersey’s access authority.

44. Through counsel, Plaintiff then sent a follow up email on January 5, 2024 highlighting Essex JDC's duty to provide access to directory information which includes the names, addresses, and telephone numbers for the individual or their parent/legal representative/guardians. Exhibit E.
45. In the January 5, 2024 email communication to Mr. St. John, Plaintiff explained that, by federal regulation, the facility had three days to provide directory information but agreed to allow additional time for Defendants to produce the requested information in an effort to avoid litigation. Exhibit E.
46. Prior to filing this complaint, Plaintiff conferred repeatedly with Defendants through their counsel to secure access to records and Essex JDC without resorting to litigation.
47. To date, Defendants have not produced the records Plaintiff requested on December 15, 2023.
48. Plaintiff continues to receive complaints about widespread abuse and neglect against the youth confined in Essex JDC.
49. Plaintiff continues to receive reports that youth with disabilities in Essex JDC are not receiving appropriate medical treatment, are experiencing extensive unjustified lockdowns resulting in isolation, are being denied

educational services, and are subjected to assaults at the hands of other youth.

B. Access to the facility and youth, including taking photographs

50. On February 9, 2024, Director Hoegel emailed Defendant Barcliff to inform him of Disability Rights NJ's intentions to begin conducting on-site investigation and monitoring visits to Essex JDC. Exhibit F.
51. Plaintiff conducted its first monitoring visit on February 21, 2024 and conducted five more monitoring visits in April 2024.
52. On the visits where Director Hoegel provided Warren Barcliff specific advanced notice, Disability Rights NJ staff were only permitted to enter areas of the facility where youth were not present, and only accompanied by Essex JDC staff.
53. On three occasions, Disability Rights NJ's staff were permitted very minimal interaction with any youth while facility staff was present.
54. On April 25, 2024, Director Hoegel sent an email to Defendant Barcliff informing him of a planned monitoring visit for the following day, April 26, 2024, and another for "early next week". Exhibit G.
55. On April 29, 2024, Disability Rights NJ staff members arrived at Essex JDC and were not allowed to enter the facility due to an alleged lack of

- staff availability. Essex JDC staff told Disability Rights NJ staff that specific advance notice was required to ensure access.
56. Disability Rights NJ staff waited for approximately three hours while counsel for Plaintiff conferred with Defendants' counsel to resolve the complete denial of access.
 57. Even after trying to resolve the denial of access to the facility through counsel, Plaintiff was only permitted to access units and areas of Essex JDC where youth were not present.
 58. Observations of Disability Rights NJ staff during their limited investigation and monitoring visits support many of the reports that initially provided Plaintiff with probable cause to investigate the facility.
 59. On July 3, 2024, Director Hoegel sent an email to Defendant Barcliff stating that Plaintiff would resume in-person visits on July 8, 2024.
Exhibit H.
 60. On July 30, 2024, Director Hoegel again sent an email to Defendant Barcliff stating that Disability Rights NJ staff would visit the facility the next day and planned to take pictures stating, "we do NOT take any photographs of youth or of staff, but we will need access to all areas of the facility that are accessible to the youth." Exhibit I.

61. On July 31, 2024, Disability Rights NJ staff arrived at Essex JDC with a digital camera to take photographs of the facility, as previously explained to Defendant Barcliff.
62. On July 31, 2024, Essex JDC refused Plaintiff access to the facility to take pictures.
63. Plaintiff's counsel conferred with Essex Assistant County Counsel, Gary J. Cucchiara, regarding Essex JDC's refusal to allow Plaintiff to take photographs of the facility.
64. After Essex JDC conferred with their counsel, they again refused to allow Disability Rights NJ staff to take photographs of the facility.
65. Without the outstanding records, Plaintiff cannot complete a thorough investigation of abuse and/or neglect.
66. Plaintiff needs records in a timely fashion to conduct a thorough investigation.
67. Plaintiff needs to speak with individuals at the facility in a timely fashion to conduct a thorough investigation.
68. Plaintiff needs to take photographs of the facility in a timely fashion to conduct a thorough investigation.

V. CLAIMS FOR RELIEF

COUNT I: Violation of the PAIMI Act

69. As the P&A System for individuals with disabilities in New Jersey, Plaintiff has access to facilities in New Jersey providing care or treatment to individuals with mental illness. 42 U.S.C. § 10805(a)(3).
70. A facility “may include, but need not be limited to, hospitals, nursing homes, community facilities, for individuals with mental illness, board and care homes, homeless centers, and jails and prisons.” 42 U.S.C. § 10802(3).
71. PAIMI regulations elaborate on the definition of a facility to explicitly include “juvenile detention facilities.” 42 C.F.R. § 51.42.
72. Plaintiff is charged to investigate instances of abuse and neglect of individuals with mental illness. 42 C.F.R. § 51.42(b).
73. Plaintiff has access to the records of individuals with mental illness who consent or whose guardian authorizes access to records, regardless of whether the P&A has probable cause to suspect the individual has been subject to abuse or neglect. 42 U.S.C. § 10805(a)(4); 42 C.F.R. § 51.41(b)(1).
74. Probable cause means reasonable grounds for belief that an individual with mental illness has been, or may be at significant risk of being

subject to abuse or neglect. The individual making such determination may base the decision on reasonable inferences drawn from his or her experience or training regarding similar incidents, conditions or problems that are usually associated with abuse or neglect. 42 C.F.R. § 51.42.

75. When the P&A System has probable cause to suspect an individual has been subject to abuse or neglect, it has access to records without authorization for individuals:
 - a. Who have died, or
 - b. Who have no guardian or other legal representative, or whose guardian is the State, and cannot authorize access because their whereabouts are unknown or they have a mental or physical condition that prevents them from authorizing access, or
 - c. Whose guardian, conservator, or other legal representative refuses to act after good-faith effort by the P&A to contact them to offer assistance and obtain authorization. 42 U.S.C. § 10805(a)(4)(C); 42 C.F.R. § 51.41(b).
76. Plaintiff has probable cause to believe that abuse and neglect has occurred or is occurring at Essex JDC.
77. Under the PAIMI Act, Disability Rights NJ is entitled to have access to all records of “any individual (including any individual who has died or

whose whereabouts are unknown) . . . with respect to whom . . . there is probable cause to believe such individual has been subject to abuse or neglect.” 42 U.S.C. § 10805(a)(4)(b)(iii). Access to records “shall be extended promptly to all authorized agents of a P&A system.” 42 C.F.R. § 51.41(a). These records can include “reports prepared by any staff of a facility rendering care and treatment or reports prepared by an agency charged with investigating reports of incidents of abuse, neglect, and injury occurring at such facility that describe incidents of abuse, neglect, and injury occurring at such facility and the steps taken to investigate such incidents.” 42 U.S.C. § 10806(b)(3)(A).

78. When a facility denies a P&A System’s request to access records based on lack of authorization, its response must include a directory of names, addresses, telephone numbers, or other contact information for the individuals or their parent, legal guardian, or other legal representative to allow the P&A System to obtain authorization. 42 C.F.R. § 51.43.
79. Plaintiff requested records from the Defendants on December 15, 2023, but Defendants have refused to provide either the requested records or directory information containing the names, addresses, telephone numbers, or other contact information for the individuals or their parent,

legal guardian, or other legal representative as required by 42 C.F.R. § 51.43.

80. Defendants' refusal to provide Plaintiff with access to records violates the PAIMI Act and its implementing regulations.

81. Plaintiff is also authorized to have reasonable unaccompanied, unannounced access to public and private facilities and programs in the State, which render care or treatment for individuals with mental illness, and to all areas of the facility which are used by or are accessible to those individuals, at all times necessary to conduct a full investigation of an incident of abuse or neglect. 42 C.F.R. § 51.42(b). The P&A system shall have reasonable unaccompanied access to residents. Residents include adults or minors who have legal guardians or conservators. 42 C.F.R. § 51.42(b) and (d). Unaccompanied access to residents includes the opportunity to meet and communicate privately with individuals regularly, both formally and informally, by telephone, mail and in person. 42 C.F.R. § 51.42(d).

82. Plaintiff is also authorized to have physical access to the facility to allow "inspecting, viewing, and photographing all areas of the facility which are used by residents or are accessible to residents." 42 C.F.R. § 51.42(c).

83. Defendants' refusal to allow access to the facility and to allow photographing all areas of the facility violates the PAIMI Act and its implementing regulations.
84. Defendants' violation of the PAIMI Act and its implementing regulations interferes with Plaintiff's federal mandate to protect people with disabilities in New Jersey.
85. Defendants' violation of the PAIMI Act and its implementing regulations interfere with the rights of individuals incarcerated at Essex JDC to have access to a meaningful and effective P&A System.
86. Pursuant to 42 U.S.C. § 10805(a)(1)(B), Plaintiff is authorized to pursue administrative, legal, and other appropriate remedies to ensure the protection of individuals with mental illness who are receiving care or treatment in New Jersey.
87. Plaintiff Disability Rights New Jersey is entitled to relief under 42 U.S.C. § 10805(a)(3) and 42 C.F.R. § 51.41(c).

COUNT II: Violation of the PADD Act

88. Plaintiff is authorized by the PADD Act to have access at reasonable times to any individual with a developmental disability in a location in

- which services, supports, and other assistance are provided to such an individual. 42 U.S.C. § 15043(a)(2)(H).
89. Regulations state “facilities include but are not limited to the following: community living arrangements (e.g., group homes, board and care homes, individual residences and apartments) day programs, juvenile detention centers, hospitals, nursing homes, homeless shelters, jails and prisons.” 45 C.F.R. § 1386.19.
 90. Plaintiff is authorized to have unaccompanied access to individuals with developmental disabilities at all times necessary to conduct a full investigation of an incident of abuse and neglect. 45 C.F.R. § 1326.27(b).
 91. Access to individuals with developmental disabilities includes the opportunity to meet and communicate privately with individuals regularly, both formally and informally, by telephone, mail, and in person. 45 C.F.R. § 1326.27(d).
 92. Access also includes “inspecting, viewing, photographing, and video recording all areas of a service provider's premises or under the service provider's supervision or control which are used by individuals with developmental disabilities or are accessible to them.” 45 C.F.R. § 1326.27(c)(2)(iii)

93. A P&A System shall have reasonable unaccompanied access to public and private service providers, programs in the State, and to all areas of the service provider's premises that are used by individuals with developmental disabilities or are accessible to them. Such access shall be provided without advance notice and made available immediately upon request. This authority shall include the opportunity to interview any individual with developmental disability, employee, or other persons, including the person thought to be the victim of such abuse, who might be reasonably believed by the system to have knowledge of the incident under investigation. 45 C.F.R. § 1326.27(b).
94. The P&A system also has access to the records of individuals with developmental disabilities who consent or whose guardian authorizes access to records, regardless of whether the P&A has probable cause to suspect the individual has been subject to abuse or neglect. 42 U.S.C. § 15043(I); 45 C.F.R. § 1326.25.
95. When the P&A system has probable cause to suspect an individual has been subject to abuse or neglect, it has access to records without authorization for individuals:
- a. who have died, or

- b. Who have no guardian or other legal representative, or whose guardian is the State, and cannot authorize access because their whereabouts are unknown or they have a mental or physical condition that prevents them from authorizing access, or
 - c. whose guardian, conservator, or other legal representative refuses to act after good-faith effort by the P&A to contact them to offer assistance and obtain authorization. 42 U.S.C. § 15043(a)(2).
96. If the P&A determines there is probable cause to believe that the health or safety of an individual is in serious and immediate jeopardy, no consent from another party is needed. 45 C.F.R. § 1326.25.
97. Plaintiff has probable cause to believe that abuse and neglect has occurred or is occurring at Essex JDC.
98. Defendants' refusal to provide Plaintiff access to records violates the PADD Act and its implementing regulations.
99. Defendants' refusal to allow access to the facility and to allow photographing all areas of the facility violates the PADD Act and its implementing regulations.

100. Defendants' violation of the PADD Act and its implementing regulations frustrates and interferes with Plaintiff's federal mandate to protect people with disabilities in New Jersey.
101. Defendants' violation of the PADD Act and its implementing regulations interferes with the rights of individuals incarcerated at Essex JDC to have access to a meaningful and effective P&A System.
102. Pursuant to 42 U.S.C. § 15043(a)(2)(A)(i), Plaintiff is authorized to pursue legal, administrative, and other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights of such individuals within New Jersey who are or who may be eligible for treatment, services, or habilitation.
103. Plaintiff is entitled to relief under 42 U.S.C. § 15043(a)(2)(H) and 45 C.F.R. § 1326.27(d).

COUNT III: Violation of the PAIR Act

104. The PAIR Act provides Plaintiff with the authority to serve individuals with disabilities who are not otherwise eligible for protection and advocacy services under either the PADD Act or PAIMI Act. 29 U.S.C. § 794e(a)(1).

105. The PAIR Act incorporates the same general authorities of access as the PADD Act. 29 U.S.C. § 794e(f)(2).
106. Plaintiff reiterates its access authority as previously outlined in Counts I and II under the PAIMI and PADD Acts. See 42 U.S.C. § 15041.
107. Plaintiff has probable cause to believe that abuse and neglect has occurred or is occurring at Essex JDC.
108. Defendants' refusal to allow Plaintiff access to records violates the PAIR Act and its implementing regulations.
109. Defendants' refusal to allow access to the facility and to allow photographing all areas of the facility violates the PAIR Act and its implementing regulations.
110. Defendants' violation of the PAIR Act and its implementing regulations interferes with Plaintiff's federal mandate to protect people with disabilities in New Jersey.
111. Defendants' violation of the PAIR Act and its implementing regulations interferes with the rights of individuals incarcerated at Essex JDC to have access to a meaningful and effective P&A System.
112. Pursuant to 29 U.S.C. § 794e(f)(3), Plaintiff is authorized to pursue legal, administrative, and other appropriate remedies or approaches to ensure

the protection of, and advocacy for, the rights of such individuals within New Jersey who are or who may be eligible for treatment, services, or habilitation.

113. Plaintiff is entitled to relief under 29 U.S.C. § 794e(f)(2).

RELIEF REQUESTED

WHEREFORE, Plaintiff requests the following relief:

1. Exercise jurisdiction over this case;
2. Issue declaratory judgment that Defendants have violated Plaintiff's rights under the PAIMI Act, PADD Act, and PAIR Act;
3. Issue an Order requiring Defendants to turn over records previously requested by Disability Rights NJ;
4. Issue an Order requiring Defendants to provide future records requested by Disability Rights NJ in accordance with Plaintiff's records access authority;
5. Issue an Order requiring Defendants to provide Plaintiff with reasonable unaccompanied and unannounced access to inspect, view, and photograph all areas of Essex JDC used by or accessible to individuals confined there pursuant to its federal and state authority, and to interview individuals confined in Essex JDC and staff pursuant to its federal and state authority;
6. An award of prevailing party costs, disbursements, and attorney fees pursuant to Fed. R. Civ. Proc. 54; and
7. Such other relief that the Court deems appropriate.

Respectfully submitted,

DISABILITY RIGHT NEW JERSEY

Dated: August 6, 2024

By: /s/ Bren Pramanik
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