
Regional Office Reports on Disability Rights California's Current Advocacy: Cases and Projects

Issue 56—Work as of April 30, 2009

This report represents a summary of the work Disability Rights California staff has reported from January 15, 2009 to April 30, 2009. Many thanks to those who provided the material to make this report possible.

ABUSE & NEGLECT

Investigations Unit Looks Into Alleged Improper Restraint of Student

The Investigations Unit (IU) received a report of excessive and improper restraint of an 11 year-old girl with a developmental disability in a public elementary school. Since C.G. was unable to communicate verbally what had happened, her mother learned about the incident from the school's written report, which indicated that C.G. had been manually restrained, and carried back to her classroom by four staff members each holding a limb.

The IU interviewed C.G.'s mother, reviewed school records, toured the school site, and met with the school administrators. C.G. had recently transferred to the school from a non public school out-of-state. She arrived at her new school without any behavior plan and without the assistance of a classroom aide, something that was provided in her previous school. At the time of the incident, only the classroom teacher had attended a restraint training program approved by the school district. After the incident, the vice principal requested that his staff immediately receive the necessary restraint training from the district. Subsequently, the vice

principal and three other staff have successfully completed the training. Additionally, a behavior plan was developed and implemented for C.G.

Abuse and Neglect Goal 3, Objective A

Disability Rights California Staff: Ricardo Jauregui, Pamila Lew

Other Counsel: N/A

Grant/Funding Source(s): PADD

Medical Board Disciplines Psychiatrist in Lithium Toxicity Death

In the Matter of the First Amended Accusation against Derek A. Ott, M.D., Physician's and Surgeon's Certificate No. A61601

File No. 06-2006-178587, Medical Board of California, Department of Consumer Affairs, Barbara Yaroslavsky, Chair, Panel B.

See previous Regional Office Report, October 2006.

In September 2006, the IU filed a complaint with the Medical Board of California (Medical Board) alleging that Dr. Derek A. Ott was directly responsible for E.N.'s death in 2004 from lithium toxicity. Dr. Ott was E.N.'s treating physician and failed to recognize well established signs and symptoms of lithium toxicity, did not adequately monitor E.N., and later doubled her dose despite her worsening condition. On April 17, 2009, the Medical Board adopted a Stipulated Settlement and Disciplinary Order as the Decision against Dr. Ott.

The Medical Board has ordered that Dr. Ott be publicly reprimanded for "repeated acts of negligence" in his care and treatment of E.N. by failing to adequately and appropriately obtain and review lithium blood levels. He must enroll in a clinical training or educational program to review basic clinical and communication skills common to all clinicians, as well as the medical knowledge, skill and judgment relating to his specialty or sub-specialty. Dr. Ott must complete courses in prescribing practices and medical record keeping and a minimum of 40 hours of clinical education in the area of practice in which he was found to be deficient. After the completion of the program, he must pass an examination. Finally, Dr. Ott's physical and mental health must also be thoroughly evaluated.

Dr. Ott must complete the program and courses at his own expense within 60 days of the Order. Failure to participate in and complete them will

constitute unprofessional conduct and will be grounds for further disciplinary action.

Abuse and Neglect Goal 1, Objective A

Disability Rights California Staff: Charis Moore, Paul Duryea, Leslie Morrison

Other Counsel: N/A

Grant/Funding Source(s): PAIMI, EA – Rights in Facilities

BENEFITS

Disability Rights California Receives 2008 Public Interest Organization of the Year Award from Howrey LLP

At its annual pro bono awards event in April, the East Palo Alto branch of the law firm of Howrey LLP honored Disability Rights California, naming it the 2008 Public Interest Organization of the Year. Elissa Gershon, Kim Swain, and Elizabeth Zirker accepted on behalf of Disability Rights California. Howrey LLP served as pro-bono co-counsel in *Chambers v. San Francisco*, and its predecessor, *Davis v. CHHSA*, two class action lawsuits alleging discrimination in the form of unnecessary institutionalization under the Americans with Disabilities Act. Howrey LLP also provided additional assistance during the course of the *Capitol People First et al v. Department of Developmental Service et al.* lawsuit, successfully defending depositions of Office of Clients Rights Advocacy (OCRA) staff.

The commitment and excellent legal work of Howrey LLP contributed significantly to the successful outcomes in all of these lawsuits. We are grateful for their invaluable assistance in furthering the rights of people with disabilities in San Francisco and across the state, and honored by their recognition.

Benefits Goal 1, Objective A

Disability Rights California Staff: Elissa Gershon, Kim Swain, Dara Schur, Elizabeth Zirker

Other Counsel: N/A
Grant/Funding Source(s): N/A

Client Obtains a Power Wheelchair Enabling Him to Work More Hours

See previous Regional Office Report, Fall, 2008 (Issue 53)

Previously, Disability Rights California had helped J.R. locate a Durable Medical Equipment (DME) vendor to help him obtain a power wheelchair, recommended by his doctor. More recently, J.R. was assessed for a new power wheelchair, and his vendor submitted a Treatment Authorization Request (TAR) to Medi-Cal, which Medi-Cal denied. The vendor asked J.R. to write a brief statement explaining why his current chair did not meet his needs, which the vendor could use to resubmit the TAR. A Disability Rights California advocate assisted J.R. in writing the statement and Medi-Cal then approved the wheelchair. With his new wheelchair, J.R. will now be able to increase his work hours.

Benefits Goal 2, Objective A

Disability Rights California Staff: Aleyda Toruno

Other Counsel: N/A

Grant/Funding Source(s): PABSS

Disability Rights California Advocate Assists Client in Obtaining Waiver of Overpayment

M.H. appealed a decision that her SSDI would cease because she no longer met the Social Security disability definition. While awaiting an Administrative Law Judge (ALJ) hearing, M.H. elected to continue receiving SSDI. She also began receiving Worker's Compensation (WC) benefits.

While on WC, M.H. went to her local SSA office with her WC pay stubs to report receipt of this money. The SSA representative explained that her file was at the ALJ's office, and that she should take her pay stubs to her hearing to present them to the ALJ. M.H. did as instructed.

M.H. attended the ALJ hearing and provided a copy of her WC pay check stubs to the judge's clerk. The judge's clerk advised her to report her checks monthly to her local SSA office, which she did. M.H. received an unfavorable hearing decision. However, soon after this decision, M.H.

received a notice from SSA that she continued to be eligible for benefits. She was confused and went to the SSA office to find out if the letter was correct. An SSA representative stated that the letter was correct and that she would continue to receive benefits.

Later, M.H. received an overpayment notice from SSA indicating she had to pay back \$80,229.80. The notice explained that the overpayment was due to her receipt of WC benefits. M.H. filed a waiver and eventually called Disability Rights California for assistance. While awaiting a hearing, she received a notice from SSA that she would not longer be getting SSDI because it had been issued in error.

A Disability Rights California advocate assisted M.H. in writing a statement that explained her attempts to understand her eligibility for benefits, the reassurances she received that she was eligible for benefits despite the judge's decision, and her attempts to report her WC benefits. At the hearing, the ALJ waived the overpayment.

Benefits Goal 1, Objective A

Disability Rights California Staff: Aleyda Toruno

Other Counsel: N/A

Grant/Funding Source(s): PAIMI

Staff Advocate Assists Client in Receiving Social Security Disability Insurance Benefits

R.T. was no longer able to work due to his disability and in April 2008 he applied for Expedited Reinstatement (EXR) of his SSDI benefits. He contacted Disability Rights California because his temporary benefits had terminated and he was unclear about what happened to his EXR application. By the time R.T. contacted Disability Rights California, it had been 10 months since he had applied for EXR.

EXR is a safety net for beneficiaries who successfully return to work, and later lose their entitlement to SSDI or SSI benefits and payments. EXR allows beneficiaries to receive 6 months of temporary or provisional benefits while SSA conducts a medical review. If the medical review determines that there is no medical improvement, the provisional benefits become permanent.

A Disability Rights California advocate contacted an SSA representative, who admitted that R.T.'s file had been lost. The advocate scheduled a meeting for R.T. to go into the SSA office with any medical records he had to help recreate his file. R.T.'s application was approved within a couple of weeks and his benefits were reinstated.

Benefits Goal 1, Objective A

Disability Rights California Staff: Aleyda Toruno

Other Counsel: N/A

Grant/Funding Source(s): PAIR

Disability Rights California Assists Client in Obtaining Specialized Wheelchair

G.C., a person with quadriplegia who receives Medicare and Medi-Cal, has been using a heavy duty front wheel drive power wheelchair for 25 years, which allows close accessibility to his workspace, eating, toileting, and counter top areas. The front wheel system also has a tighter turning radius, enabling him to use his van and function in his home. The wheelchair also has other features that G.C. needs, such as a power recliner for pressure relief and bladder management and a seat elevator, which allows him to reach his files and desktop items using his mouth sticks.

When his current wheelchair began to give him problems, he was evaluated by a physical therapist for a new chair. Medicare would not approve the wheelchair because Medicare only pays for mobility aids necessary for home use and it determined that the recommended wheelchair was not necessary. Medi-Cal also refused to approve the wheelchair, but instead approved a wheelchair that did not have appropriate suspension to be able to absorb vibrations and jostling, necessary to help control the severe chronic pain C.G. experiences in his neck, shoulders and back.

Disability Rights California worked with The Assistive Technology Law Center, his therapist, and vendors to provide Medi-Cal with the medical justification for the wheelchair, which Medi-Cal continued to deny. However, after staff filed a request for a fair hearing, Medi-Cal agreed to provide him with the wheelchair.

Benefits Goal 1, Objective A

Disability Rights California Staff: Maria Iriarte, Marilyn Holle

Other Counsel: Lew Golinker of the Assistive Technology Law Center

Grant/Funding Source(s): PAAT

Disability Rights California Successfully Advocates for Waiver of SSDI Overpayment

J.D. began receiving SSDI due to her HIV and later returned to work. However, since she was unfamiliar with the work rules, she worked enough to lose her SSDI and incur an overpayment. J.D. met with an SSA representative who explained the work rules and how the overpayment occurred. J.D. agreed to a reduction in her monthly SSDI amount in order to repay the overpayment.

One year later, after having stopped working, J.D. was contacted by a former employer who wanted her to return to work. Before accepting the job offer, J.D. went to her local SSA office because she did not want to have another overpayment and wanted to make sure she understood the work rules. However, the SSA representatives she spoke with gave her incorrect information.

J.D. returned to work, but was later terminated. Two years later, SSA notified J.D. that she no longer qualified for benefits and she was eventually charged with a \$32,996 overpayment.

A staff advocate represented J.D. at a hearing at which the judge agreed that J.D. was not at fault for the overpayment. He found that SSA's actions and information were misleading and confusing and waived the overpayment.

Benefits Goal 1, Objective A

Disability Rights California Staff: Aleyda Toruno

Other Counsel: N/A

Grant/Funding Source(s): PABSS

Disability Rights California Assists Client to Leave Nursing Facility and Return Home

B.T. contacted Disability Rights California after she had been residing in a nursing facility for seven months obtaining rehabilitation. As a result of the length of her stay, her SSI was reduced to \$50 a month and she faced losing her Section 8 housing if she could not return to her apartment to pay the next month's rent. B.T. was eligible for In Home Supportive Services (IHSS), but was not receiving approval from her doctor to be discharged back to her apartment.

Disability Rights California staff worked with B.T.'s primary care doctor, the County IHSS workers, and the facility to 1) obtain a discharge plan 2) schedule some IHSS hours and a provider, and 3) arrange for the delivery of medically necessary devices for her apartment. B.T. was discharged back to her apartment and is currently working with the county to obtain more IHSS hours.

Benefits Goal 3, Objective A; Discrimination Goal 1, Objective A
Disability Rights California Staff: Sean Rashkis & Taymour Ravandi
Other Counsel: N/A
Grant/Funding Source(s): PAIR

T.K. Has Warrant Vacated So He Can Get Back on Social Security Benefits

T.K., a homeless man with physical and psychiatric disabilities resided at a county jail after an arrest for shoplifting, which was necessitated after his SSI benefits were cut off due to a 27-year old warrant out of Florida for a probation violation. Social Security suspends benefits only after it has contacted the jurisdiction issuing the warrant and that jurisdiction has indicated that it has no interest in paying to have the individual extradited to the home state so it can pursue the warrant. T.K.'s was unable to return to Florida on his own to deal with the warrant, due to his disability limitations and lack of income or benefits.

Disability Rights California contacted the State's Attorney Office in Florida on and successfully negotiated for T.K.'s warrant to be vacated if he paid the \$100 in court costs and fines he owed. Because T.K. had no income, a local church group donated the \$100 and the warrant was vacated.

Benefits Goal 1, Objective A

Disability Rights California Staff: Ann Coller

Other Counsel: N/A

Grant/Funding Source(s): PAIR

J.N. Gets Back on No Share-Of-Cost Medi-Cal

J.N., a person with developmental disabilities, has lived in a nursing home for the past 26 years. As a result of her father's retirement, J.N. was switched from the SSI program with no share-of-cost Medi-Cal to the Disabled Adult Child (DAC) program. Although the change should have had no effect on her Medi-Cal, J.N. was assessed a \$500 share-of-cost, meaning that she had to incur that much in medical expenses in a calendar month before Medi-Cal would begin to pay for medical expenses in that month.

Disability Rights California contacted the Department of Health Care Services on J.N.'s behalf and spoke with the person who monitors the DAC program for the state. Based on that advocacy, the share-of-cost issue was resolved in J.N.'s favor.

Benefits Goal 2, Objective A

Disability Rights California Staff: Maria Iriarte

Other Counsel: N/A

Grant/Funding Source(s): PADD

Disability Rights California Ensures Client Receives an in-home assessment

P.C. is a senior with multiple disabilities living in her own home with some in-home services. She and her family wanted her to be able to remain in the community, so they sought additional services through the Medi-Cal Nursing Facility/Acute Hospital (NF/AH) Home and Community-based Waiver program. Home and Community-Based (HCBS) Waivers are programs that offer Medi-Cal services to a limited number of people with disabilities to help them live at home instead of in a nursing facility. People with all types of disabilities are eligible as long as they would qualify for admission to a nursing facility, sub-acute facility, or acute hospital. They are called "Waivers" because they waive certain federal Medicaid rules in

order to provide different or more services than the State offers to other Medicaid (Medi-Cal) eligible people.

P.C. and her family submitted an application for NF/AH Waiver services, however Medi-Cal refused to do an in-person evaluation, and rejected her application. Disability Rights California staff intervened and contacted Medi-Cal on P.C.'s behalf. As a result, P.C. was evaluated in her home and found eligible for services under the Waiver at the Nursing Facility Level.

Benefits Goal 2, Objective A

Disability Rights California Staff: Elizabeth Zirker, Crystal Padilla, Elissa Gershon, Dan Brzovic

Other Counsel: N/A

Grant/Funding Source(s): PAIR

DISCRIMINATION

Court Approves CPF v. DDS Settlement; Monitoring of Settlement Implementation to Begin

(See Lanterman)

Disability Rights California Files Lawsuit Against Kaiser For Ejecting Service Dog from Hospital

K.M. v. Kaiser Foundation Health Plan et al.

U.S. District Court, Southern District, case# 09CV-0488 W POR

K.M. is a woman with physical and mental disabilities who uses a service dog, Shannon, to assist her with her disabilities. On June 10, 2007, K.M. was an in-patient at Kaiser Hospital in San Diego receiving treatment when, in the middle of the night, K.M. and her husband were woken up by staff and Shannon was ejected from the hospital.

On March 11, 2009, Disability Rights California, on behalf of K.M., filed suit against Kaiser for discrimination based on state and federal law. The suit seeks injunctive relief and damages to ensure that K.M. and other

individuals with disabilities using service dogs have full and equal access to Kaiser Hospital as a place of public accommodation.

On April 6, 2009, Kaiser filed an Answer to the Complaint. The case is scheduled for an Early Neutral Evaluation (early settlement conference) on June 2, 2009.

Discrimination Goal 3, Objective A

Disability Rights California Staff: Ann Menasche, Bernadette Bautista, Maria Iriarte

Other Counsel: N/A

Grant/Funding Source(s): PAIMI

Housing Authority Agrees Not to Take Actions Regarding Tenants with Psychiatric Disabilities at the Direction of Third Parties

J.B. has several disabilities, including a psychological disability, hypertension; and diabetes. She had lived independently with the rental assistance of a Section 8 voucher provided by the Housing Authority (HA) for several years until the HA suspended her Section 8 voucher when she was committed for psychiatric treatment in 2008. The HA took this action without notice to J.B. at the request of the client's county mental health caseworker and her estranged son.

E-mails between the HA and the county Department of Mental Health indicated that the HA's reason for suspending the subsidy was to support a physician's opinion that the client met the standard for the appointment of a mental health conservator because she was "unable" to meet her own needs for housing. The county mental health department did obtain a physician's letter to that effect, and the client was conserved. She is currently living in a board and care facility.

Disability Rights California filed a complaint with HUD on J.B.'s behalf, requesting that her Section 8 voucher be held open for one year. HUD presented the parties with a proposed Voluntary Compliance Agreement granting this relief. After further discussions with Disability Rights California, HUD later agreed to add a paragraph to the agreement prohibiting the HA from taking any action with regard to a client's housing, at the request of a third party, including a family member, physician or caseworker, unless the

third party has legal authority to make decisions regarding such action on behalf of the client. This agreement has been signed by all the parties.

Discrimination Goal 2, Objective A

Disability Rights California Staff: Pamela Cohen, Fred Nisen, Dan Brzovic

Other Counsel: N/A

Grant/Funding Source(s): PAIMI

Disability Rights California Provides Comments Regarding City of San Diego's Draft Consolidated Plan

On April 1, 2009, the City of San Diego submitted a draft five-year strategic planning and housing affordability document, called a "Consolidated Plan", for public comment. Once finalized, the 2010-2014 Consolidated Plan is to be submitted to HUD as part of its application for government grants including Community Development Block Grant (CDBG), HOME Investment Partnerships (HOME), and Emergency Shelter Grants (ESG).

Disability Rights California, working in collaboration with the San Diego Disability Action Coalition, submitted a letter and provided oral testimony criticizing the draft for its failure to prioritize the needs of the people with disabilities and others living on fixed incomes that are in most desperate need of affordable housing.

Discrimination Goal 2, Objective B

Disability Rights California Staff: Ann Menasche

Other Counsel: N/A

Grant/Funding Source(s): PAIMI-PAIR

Housing Authority Grants Two-Bedroom Voucher as a Reasonable Accommodation for Section 8 Recipient

D.F. is a person with disabilities who receives a section 8 voucher through a Housing Authority (HA). Upon the recommendation of the client's treating physicians, D.F. purchased bulky exercise equipment and medical supplies. She was able to fit the equipment and supplies in the two-bedroom unit where she is living, but would have been unable to fit them into a one-bedroom unit. The HA authorized a one-bedroom unit and informed D.F. that she would have to move into a one-bedroom unit or pay

the difference in the rent between a one-bedroom and a two-bedroom unit since she did not have a live-in aide.

Disability Rights California contacted the HA, assisted the client in obtaining additional documentation from her doctors, and convinced the HA to provide the client with the two-bedroom voucher as a reasonable accommodation.

Discrimination Goal 2, Objective A

Disability Rights California Staff: Ann Menasche

Other Counsel: N/A

Grant/Funding Source(s): PAIR

Disability Rights California Assists Client to Get Reinstated on the Section 8 Waiting list

In 2007, D.D. was dropped from the Section 8 waiting list. D.D. is frequently hospitalized due to his orthopedic and physical impairments, and thus had difficulty responding to the Public Housing Agency's (PHA) correspondence. As a result, he was dropped from the waiting list when he did not respond to the PHA's request to confirm interest in a Section 8 voucher, which he could not do because he was hospitalized.

Although a PHA may remove from the waiting list names of applicants who do not respond to PHA requests for information and updates, a decision to remove the name of a person with a disability is subject to a reasonable accommodation. If the applicant does not respond to the PHA request for information or updates because of a person's disability, the PHA must reinstate the applicant in his former position on the waiting list.

Disability Rights California contacted the PHA regarding D.D.'s removal from the wait list. As a result, the PHA agreed to reinstate his wait list status as of his original application date as a reasonable accommodation for his disabilities.

Discrimination Goal 2, Objective A

Disability Rights California Staff: Amy Willis (Law Clerk) and Ann Menasche

Other Counsel: N/A
Grant/Funding Source(s): PAIR

Disability Rights California Assists Client to Obtain Reasonable Accommodation from Retirement Community

B.S., a person with a disability, lives in a retirement community that advertises and about the free transportation that it provides to its residents. However, the facility's vehicle is not accessible to people who use wheelchair or scooters so B.S. has had to pay out of pocket for Paratransit whenever she wishes to leave the retirement community.

Disability Rights California staff drafted a letter to the client and advised her of the applicable laws and how she could request a reasonable accommodation. B.S. wrote to the management of the retirement community, attaching the letter drafted by Disability Rights California. In response, the retirement community agreed, as a reasonable accommodation, to reimburse B.S. for future Paratransit rides during the times when the other residents have access to the Community's free transportation.

Discrimination Goal 2, Objective A
Disability Rights California Staff: Bill Hershon and Fred Nisen
Other Counsel: N/A
Grant/Funding Source(s): PAIR

Disability Rights California Assists Client Keep Mobility Aid While at the YMCA

K.C., a person with a disability, was not being permitted to use his Segway in the Oakland YMCA, which he needs to get to and from the pool area where he performs exercises to increase his mobility. Disability Rights California staff and K.C. had conference calls with the YMCA and, after two months of negotiations, the YMCA agreed to formulate a policy that will provide a reasonable modification of current rules to allow K.C. access to the pool area with his Segway.

Discrimination Goal 3, Objective A
Disability Rights California Staff: Bill Hershon and Fred Nisen

Other Counsel: N/A
Grant/Funding Source(s): PAIR

Disability Rights California Helps Water Rights Activist with Mobility Limitations Gain Access to Hearing Process at State Water Resources Board

B.B., a long-time advocate on a variety of issues involving water rights, has mobility limitations that prevent him from participating in the public evidentiary hearings of the State Water Resources Board (Board), since the hearings are held at a location nearly three hours from his home. B.B. requested that the Board allow him to participate by telephone as a reasonable accommodation for his disabilities and the Board refused. Instead, the Board's attorney stated that, in order to have his testimony included in the public evidentiary hearings, B.B. would have to pay an attorney to depose him at his home and have a court reporter take down his responses to the deposition questions. B.B. could not afford to pay an attorney and a court reporter to come to his home.

At B.B.'s request, Disability Rights California contacted the Board's attorney and, when the Board did not respond, prepared a demand letter outlining B.B.'s rights to have access to the Board's hearings equal to the access the Board provides to persons without disabilities. Disability Rights California also provided the Board with examples of telephonic hearing policies (including policies that allow for telephonic hearings as a reasonable accommodation for a participant's disabilities) from other public entities, including the California Courts. In response to the demand letter, the Board granted B.B. the opportunity to provide oral and written testimony at its public evidentiary hearings.

Discrimination Goal 3, Objective A
Disability Rights California Staff: Stuart Seaborn
Other Counsel: N/A
Grant/Funding Source(s): PAIR

Disability Rights California Advocates to Bring Doors to Medical Building and Suite into Compliance With the ADA in Orange County

Disability Rights California represented M.O. in mediation sponsored by the US Department of Justice concerning a complaint under Title III of the ADA

against a private health care provider. M.O., whose physical condition includes paralysis on one side of his body and requires use of a wheelchair, filed the complaint to bring both the entrance to the medical office building and the door to his doctor's suite into compliance with the ADA.

Disability Rights California obtained information from the Orange County Assessor's Department confirming construction of the building in 1999 and thus, requiring that the building comply with ADA Accessibility Guidelines (ADAAG) provisions.

M.O. sought installation of automated doors but the building owner and the doctor determined that the cost of such installation was too great and instead made adjustments to the force limitations of the exterior door and installed door bells at the entrance to the suite as well as to enter and exit the restroom within the suite.

Disability Rights California obtained an inspection from Compliance Design Consultants, which found that the main entrance door and suite office door were in compliance with ADAAG standards. Two items of non-compliance were found: the exterior doormat was not securely attached to the ground surface and the International Symbol of Accessibility was not displayed at the building entrance. The building owner agreed to bring the building into compliance with these requirements.

Discrimination Goal 3, Objective A

Disability Rights California Staff: Michael Stortz and Griselda Delgadillo

Other Counsel: N/A

Grant/Funding Source(s): PAIR

PHA Reinstates Woman on Section 8 Waiting List Resulting in Eligibility for Voucher

Disability Rights California assisted S.M. in requesting a reasonable accommodation from a Public Housing Agency (PHA) for reinstatement of her position on section 8 waiting list. The PHA requested updated information in April 2007, which S.M. was unable to provide due to her psychiatric and physical conditions, and she was taken off the list, on which she had gotten her name in 2002. She requested an accommodation in December 2008 to have her name reinstated on the list. The PHA agreed

and her name soon came up for a voucher. As a result, she is now seeking to obtain housing that accepts the voucher.

Discrimination Goal 2, Objective A

Disability Rights California Staff: Michael Stortz

Other Counsel: N/A

Grant/Funding Source(s): PAIMI

California's Pilot Program Will Offer Telephone Speech Generating Devices

California's Deaf and Disabled Telecommunications Program (DDTP) lends equipment to California residents who have disabilities to allow them to use the telephone. The California Telephone Access Program (CTAP) administers this program and the California Public Utilities Commission (CPUC) has financial oversight over it. Funding for CTAP equipment is provided by the "California Relay and Communications Devices Fund" surcharge that appears on all California telephone bills.

CTAP's function is to provide telephone equipment to Californians with hearing, vision, movement, manipulation, speech, and/or cognitive disabilities that have difficulty using the telephone. Approved CTAP equipment includes the following: amplifiers, Braille TTYs, fax machines, headsets, ring signal devices, speech devices, switches, special telephones, TTYs, and accessories. However, none of these devices are appropriate for people with severe speech disabilities.

To be eligible for CTAP equipment a person must be: (1) a California resident, (2) with residential telephone service, (3) who, in the absence of specialized equipment and because of a certified disability, cannot use the telephone.

For persons with severe speech impairments, basic telephone access can be accomplished only with the aid of a speech generating device (SGD), which is an electronic augmentative and alternative communication device that generates oral speech at the user's direction. SGDs contain a display of picture symbols representing a word or whole message, a display of letters, or a display of whole words that can be assembled into a message selected by the user, which is then spoken in an age and gender appropriate voice.

For a number of years, attorneys at The Assistive Technology Law Center in Texas (AT Center) worked to persuade the CPUC to cover SGDs in its CTAP program. Approximately three years ago, the AT Center invited Disability Rights California to join its effort. As a result, the CPUC is beginning a pilot program in June 2009 that will actually give rather than lend SGDs to eligible recipients. It will also require that the person exhaust other funding sources such as Medicare, Medi-Cal, private insurance, schools and/or regional centers before CTAP will approve the SGD. Over the next year, counsel will continue to be involved in monitoring the pilot project and providing technical assistance to CPUC, DDTP, and CTAP staff when requested.

Discrimination Goal 3, Objective A

Disability Rights California Staff: Maria Iriarte, Hillary Sklar, Marilyn Holle

Other Counsel: Lew Golinker and Garth Corbett of the Assistive Technology Law Center

Grant/Funding Source(s): PAAT

Disability Rights California Assists Client to Leave Nursing Facility and Return Home

(See Benefits)

EDUCATION FOR CHILDREN & YOUTH

Disability Rights California Successfully Advocates for Systemic Reform of a School District's Non-Compliance With Laws Governing Behavior Supports

Disability Rights California filed a class compliance complaint with the California Department of Education (CDE) on behalf of students in the Apple Valley Unified School District (AVUSD). The complaint alleged that for several years certain students had exhibited serious behavior challenges and the District routinely denied students' access to functional analysis assessments and positive behavior interventions as mandated a state law known as the Hughes Bill. Three of the students were regularly restrained and placed in segregated settings. The complaint alleged that physical restraint was used instead of positive behavior interventions developed from appropriate behavior assessments. As a remedy,

Disability Rights California sought systemic relief, including the hiring of a positive behavior support (PBIS) specialist/consultant to work with the district to develop and implement a strategy to incorporate positive behavior intervention for students in need district wide.

After Disability Rights California filed the complaint, AVUSD filed due process complaints against two of the students named in the complaint that had been restrained, which required the CDE to stop its investigation until the due process matter had been resolved. Disability Rights California responded by filing due process complaints based on the same claims that were in the compliance complaint.

After lengthy negotiations, all three cases were settled on April 16, 2009. Although the details of that settlement are confidential, Disability Rights California feels that the settlement will ensure systemic compliance with the Hughes Bill for all future students within the AVUSD.

Education Goal 1, Objective A

Disability Rights California Staff: Jenny Williams and Candis Bowles

Other Counsel: N/A

Grant/Funding Source(s): Southern Poverty Law Center/EA Children Young Adult Initiative

Child is Re-Instated in School

J.D. is a young child in the dependency system with diagnoses that involve speech and language disorders and possible reactive attachment disorder. Her adoptive mother contacted Disability Rights California because J.D. had recently been removed from her academic placement. When J.D. entered school, she was placed in an interim setting. The District then transferred her to a permanent placement, pursuant to her IEP. J.D. began attending there and began thriving in the placement. However, after several weeks of attendance, the district learned that J.D. was one year younger than the other students. Based on her age, the district removed her from the classroom and proposed a placement in a third program at a different school, promising to reinstate her in her current placement during the 09-10 school year.

This many transitions aggravated J.D.'s anxiety and disability and her parents did not agree with the change. As a result, the district did not

provide any academic placement. Although the age provision of the Education Code could be waived on a case by case basis, the Superintendent of the school district refused to waive this matter. Disability Rights California contacted the Superintendent and had a discussion about the removal. The Superintendent ultimately agreed to reinstate the student, and the student was allowed back into the classroom for the duration of the year.

Education Goal 1, Objective A

Disability Rights California Staff: Lauren Giardina

Other Counsel: N/A

Grant/Funding Source(s): EA Children and Youth Adult Initiative

Staff Attorney Helps Client Avoid Expulsion

N.C. is a 17 year-old who receives special education services due to a diagnosis of ADHD. She has a long history of behavioral problems including setting fire to a trash can and fighting. On February 18, 2009, N.C. allegedly slapped another student in her class. As a result of this event, a manifestation determination review meeting was held during which the school determined that the behavior was not a manifestation of her disability. Due to its conclusion, the school planned to proceed with a recommendation for expulsion. Disability Rights California intervened, contacting the attorney for the school district and advising her that it planned to file an expedited due process complaint challenging the manifestation determination review decision. Disability Rights California negotiated with the district and came to an agreement under which N.C. would transfer to another district high school and the school would not recommend expulsion. N.C. and her father were pleased with this option as they both felt her home school was not a good environment for her and the new high school, a continuation school, would allow N.C. to earn credits more readily toward a high school diploma. N.C. was then enrolled at the new high school and the school sent a letter to N.C.'s parents confirming that it was not proceeding with a recommendation for expulsion.

Education Goal 2, Objective A

Disability Rights California Staff: Connie Huang, Candis Watson Bowles

Other Counsel: N/A

Grant/Funding Source(s): Equal Access-CYAI

LANTERMAN

Court Approves CPF v. DDS Settlement; Monitoring of Settlement Implementation to Begin

Capitol People First et al. v. Department of Developmental Services et al.

Case No. 2002-038715, Alameda County Superior Court, Judge Robert B. Freedman, filed January 2002.

See previous Regional Office Report, Winter 2009. Also see DOL Report, Spring 2002 for a summary of the case.

Capitol People First was filed as a class action seeking community living arrangements for more than 7,000 Californians with developmental disabilities who are residents of the state developmental centers or other large private congregate facilities and people at risk of placement in such facilities.

On April 24, 2009 Judge Robert Freedman granted final approval of a settlement agreement which affirms the right of Californians with developmental disabilities residing in large institutions to have information and choice about community living options. Plaintiffs in this case are hopeful that the settlement will provide the class increased opportunities to live as a part of rather than apart from the community.

The next phase of this case allows for certain monitoring activities, including dispute resolution and enforcement mechanisms, to ensure that defendants are meeting their obligations under the terms of the settlement.

Background on the case, including legal documents and press coverage 2002-2009, can be read at

<http://www.disabilityrightsca.org/advocacy/cpfvdds/index.htm>.

Discrimination Goal 1, Objective A; Lanterman Goal 1, Objective A
Disability Rights California Staff: Barbara Dickey, Sujatha Jagadeesh Branch, Jonathan Elson, Elissa Gershon, Ellen Goldblatt, William Leiner, Maggie Roberts, Dara Schur, Kim Swain

Other Counsel: William Bates, Chris O'Connor and Jeanne Sheahan from Bingham McCutchen; Michael Schwartz, Richard Mulloy, Nikki Wyll and Aaron Wainscott from DLA Piper

Grant/Funding Source(s): PADD, PATT, Equal Access, Trust Fund

MENTAL HEALTH

Special Master Appointed in Katie A

Katie A. v. Bonta is a class action lawsuit filed in 2003 that seeks access to intensive, community-based mental health services known as wraparound services for foster children with unmet mental health needs. Wraparound refers to intensive, community-based, individualized services and supports that are provided through teams that link children and families with providers in child welfare, health, mental health, and education.

Because of the complexity of this case, the time and effort needed to resolve the issues at hand, and limitations on the Court's time, Judge Matz appointed Special Master Saletta, who also serves as Special Master in the related Emily Q v. Bonta case, which established an entitlement under Medi-Cal to therapeutic behavioral services for abused and neglected children in California.

As Special Master, Saletta will seek to facilitate agreement between the parties on several key issues, including:

- Which activities under the nine components of wraparound can properly be reimbursed by the Medi-Cal program (including technical questions about billing, coverage, provider qualifications, and reimbursement rates);
- How these activities and services should be coordinated with existing wraparound programs in the state;
- Which class members should be eligible to receive all nine components of wraparound;
- What data accurately measures the services provided to class members and the outcomes associated with these services; and
- What are the fiscal implications of providing all nine components of wraparound to class members given the state's current budgetary

situation and what are the potentials for cost-savings by providing wraparound instead of placing children in out-of-home care.

Saletta will have five months to determine whether the parties can reach agreement on these issues and will have an additional four months to produce a final written agreement or to make recommendations to the Court. He will serve as Special Master for one year.

Mental Health Goal 3, Objective A

Disability Rights California Staff: Michael Stortz & Andrew Mudryk

Other Counsel: Class action filed in 2003- Western Center on Law and Poverty, Disability Rights California, the American Civil Liberties Union of Southern California, the National Center for Youth Law, along with the law firm of Heller Ehrman

Grant/Funding Source(s): PAIMI

Court Requires Continued Expert Oversight of California's Therapeutic Behavioral Services (TBS) for Children in Emily Q

As mentioned above, Disability Rights California and co-counsel filed the Emily Q class action in 1998 to get home and community-based one-to-one behavioral aides for children in mental institutions and group homes who could appropriately live in more integrated settings. In 2001, the U.S. district court ruled granted judgment in favor of plaintiffs and ordered the state to provide a new Medi-Cal service called "Therapeutic Behavioral Services" (TBS) and the parties have been working on implementation of the judgment.

As part of the implementation, Plaintiffs' counsel will be conducting focused reviews of accountability and utilization rates regarding TBS. Those reviews of TBS services will take place this year in the following 10 California counties: San Diego, Los Angeles, Sonoma, Alameda, Monterey, Kern, Butte, San Joaquin, Tulare, and San Bernardino, with the first county stakeholder meeting to take place in San Diego.

Mental Health Goal 3, Objective A

Disability Rights California Staff: Michael Stortz, Maggie Roberts, Agnes Williams

Other Counsel: Class action filed in 1998- Western Center on Law and Poverty, Disability Rights California, the American Civil Liberties Union of

Southern California, Mental Health Advocacy Services of Los Angeles, and the Bazelon Center for Mental Health law.

Grant/Funding Source(s): PAIMI

Mental Health Services Obtained for L.C.

In January of 2008, L.C., an eight year old boy dually diagnosed with autism and mood disorder, was denied his request for consultation and medication management by a psychiatrist. The county mental health plan denied his request on the ground that he had autism and autism is not a covered diagnosis under Medi-Cal.

Disability Rights California filed a fair hearing on L.C.'s and submitted evidence that L.C. has mood disorder, in addition to autism, and mood disorder is a covered diagnosis under Medi-Cal. The hearing was held in April of 2009. Disability Rights California is waiting for the ALJ's decision.

Mental Health Goal 3, Objective A

Disability Rights California Staff: Maggie Roberts

Other Counsel: N/A

Grant/Funding Source(s): PADD

VOTING

Secretary of State Bowen's HAVA State Plan Committee and Voting Accessibility Advisory Committee Solicit Input from Disability Rights California

The HAVA State Plan Committee met this past quarter to review the draft state plan, which was originally developed in 2004. In order to be eligible for HAVA federal funds, the state has to give a progress report on its plan and update it as needed. The plan must address voting systems, provisional ballots, poll site materials, and a statewide database. Disability Rights California commented on the draft plan update focusing on improving better reporting on the progress made regarding accessible voting systems, provisional ballots, and poll site materials. Secretary of State staff will amend the Plan based on input received and hold another meeting to finalize the Committee recommendations sometime during the summer of 2009.

The Secretary of State's Voting Accessibility Advisory Committee has been reviewing proposed guidelines for surveying and identifying accessible poll locations. Last winter, the Secretary of State contracted with the Department of Rehabilitation to develop guidelines, a survey instrument, and training in order to update the current information available from the Secretary of State's office on this topic. The information will be used by County Election Offices to survey and identify poll locations that are accessible or can be made accessible through "mitigating" measures, which are temporary fixes that can be made to a poll location so it is accessible on the day of the election. Such temporary fixes can include temporary ramps, propping doors open, and creating accessible parking by marking off areas. Disability Rights California reviews and comments on guidelines as they are developed.

Voting Goal 4, Objective B

Disability Rights California Staff: Margaret Jakobson, Hillary Sklar, Fred Nisen, Lori Shephard

Other Counsel: N/A

Grant/Funding Source(s): PAVA

Disability Rights California Views, Comments on Voting Systems to be Purchased by the City of Los Angeles

Staff members from Disability Rights California viewed demonstrations of the machines that the City of Los Angeles is contemplating purchasing in the next few years to update the voting equipment used in city elections. Staff members were able to test the machinery to determine how accessible it would be to voters with varying disabilities and varying levels of disability. In addition, staff members questioned representatives of the companies producing the machines to determine how they planned to maintain or increase the accessibility of their systems in the future and to see how they took into account in their designs the needs of voters with disabilities.

At the end of the process, staff members conferred with other community advocacy groups that had been present at the demonstrations and submitted comments to the City. The comments made clear the characteristics of any voting equipment that Disability Rights California feels are essential in order for that equipment to be accessible. At present,

there has been no further action by the City to purchase any equipment but Disability Rights California will continue to press to be involved in discussion of any such potential purchases or any further evaluation to that end.

Voting Goal 4, Objective B

Disability Rights California Staff: Hillary Sklar, Kevin Bayley

Other Counsel: N/A

Grant/Funding Source(s): PAVA

Disability Rights California Completes November 2008 General Election Los Angeles County and City of Los Angeles Poll Monitoring Report

During the November 2008 General Election, Disability Rights California monitored over 40 poll sites in Los Angeles County and the City of Los Angeles for accessibility and Help America Vote Act compliance. After the election, staff completed a report based on their findings, which identifies two broad issues that would impact the ability of voters with disabilities. The first issue is the lack of proper poll site set-up by poll workers and the second relates to physical barriers that prevent poll site access. In the report, Disability Rights California discusses 7 general findings and recommendations toward improving poll site accessibility. The findings include the provision of: 1) accessible parking; 2) signs to mark accessible pathways; 3) accessible pathways that are stable and firm; 4) information about the availability of assistive devices such as a magnifying glass to use; 5) unobstructed space for voters to maneuver around within the poll site; 6) a voting environment that is conducive to voting; and 7) an accessible voting system that is fully operational.

Disability Rights California will share the report with the Los Angeles County Registrar of Voters and the Los Angeles City Elections Division and will set up a time to meet with both entities to discuss ways to improve poll site accessibility for voters with disabilities.

Voting Goal 4, Objective B

Disability Rights California Staff: Lori Shepherd, Tho Vinh Banh, Hillary Sklar, Margaret Jakobson

Other Counsel: N/A
Grant/Funding Source(s): PAVA

Voting Rights Outreach Project to Consumers in Facilities

Before the November 2008 election, Disability Rights California staff gave a survey to people with disabilities living in mental health facilities in Riverside and San Bernardino counties. The survey found that people living in facilities were often uninformed about how to exercise their rights to vote. This information was consistent with our previous findings concerning the widely varying practices that facilities engage in to inform people of their rights to vote.

After the election, Disability Rights California created a Voting Rights in Facilities project in Southern California. Voting rights materials from Disability Rights California and the Bazelon Center were sent to approximately 89 facilities in Southern California, ranging in size from small board and care homes to some of the largest skilled nursing facilities in the state. The materials were accompanied by a flyer providing Disability Rights California's phone number so that facility residents could get more information regarding their right to vote. The flyer also included an offer to perform a training to facility residents and staff about the voting rights that people in facilities have. Currently, Disability Rights California staff is in the process of calling each facility that received that packet in order to follow up and again provide an opportunity to offer an outreach and training event.

Voting Goals 4 & 5, Objective B

Disability Rights California Staff: Kevin Bayley, Garnet Magnus and Griselda Delgadillo, Margaret Jakobson, Hillary Sklar

Other Counsel: N/A

Grant/Funding Source(s): PAVA/EA-RIF

Disability Rights California Observes and Comments on Alameda County's First 2009 Poll Inspectors' Training

On Tuesday, April 28, Disability Rights California staff attended the first 2009 training of Alameda County Poll Inspectors. There were several instances that were troubling, which Disability Rights California staff pointed out in an e-mail to the Registrar of Voters, including:

- a) The presenter, who overall did a great job, referred several times to people with disabilities as “handicapped.”
- b) There was no emphasis on the need to place accessible signage so that persons with access issues would know where to vote.
- c) One of the slides in the presentation reminded poll workers to be respectful of persons in protected classes such as race, gender, and national origin, but there was no mention of persons with disabilities.
- d) Poll inspectors were not trained on how to troubleshoot potential problems with the touch screen machines.

In a response to the e-mail, the Registrar of Voters agreed to rectify each of these issues.

Voting Goal 4, Objective B

Disability Rights California Staff: Fred Nisen and Bill Hershon

Other Counsel: N/A

Grant/Funding Source(s): PAVA

GLOSSARY OF SELECTED TERMS

“A&D FPL PROGRAM” or AGED & DISABLED FEDERAL POVERTY LEVEL PROGRAM (Also referred to as the Medi-Cal 133% Program)

Individuals or married couples whose income is more than SSI levels, but who are still considered low income, may be eligible to receive Medi-Cal with no share of cost under this program. Under this program an individual who needs assistance with personal care and/or housekeeping tasks so they can remain safely in their homes can also receive these services with no share of cost.

AB 2726/3632

Assembly Bills 2726 and 3632 provides referrals to County Mental Health Services for children with special education needs beyond what schools can offer. These services are considered special education services.

“ADHD” or ATTENTION DEFICIT-HYPERACTIVITY DISORDER

Attention deficit-hyperactivity disorder (ADHD) is a neurobehavioral disorder that affects 3-5 percent of all American children. It interferes with a person's ability to stay on a task and to exercise age-appropriate inhibition (cognitive alone or both cognitive and behavioral). Some of the warning signs of ADHD include failure to listen to instructions, inability to organize oneself and school work, fidgeting with hands and feet, talking too much, leaving projects, chores and homework unfinished, and having trouble paying attention to and responding to details. There are several types of ADHD: a predominantly inattentive subtype, a predominantly hyperactive-impulsive subtype, and a combined subtype. ADHD is usually diagnosed in childhood, although the condition can continue into the adult years.

ALTERNATIVE DISPUTE RESOLUTION (ADR)

Methods of resolving disputes without official court proceedings. These methods include MEDIATION and ARBITRATION.

AMICUS CURIAE

Disability Rights California is often asked to appear as an organizational “*amicus curiae*,” or “*friend of the court*” in court cases raising important issues for people with disabilities. Appearing as an “*amicus*” means that DISABILITY RIGHTS CALIFORNIA submits a brief to the court raising

issues as an organization, rather than on behalf of individual clients, because the issues are important to us as an advocacy organization or important to people with disabilities. When DISABILITY RIGHTS CALIFORNIA appears as *amicus curiae*, DRC Staff usually assists with drafting and revising the brief, and co-signs the brief with other interested parties.

ARBITRATION

When a person that isn't involved in the case looks at the evidence, hears the arguments, and makes a decision.

BEHAVIOR INTERVENTION PLAN

Plans made by a local educational agency (LEA) as part of an individualized education program (IEP), to change the behavior of students who harm themselves, assault others, or are destructive.

“BPAO” or BENEFITS, PLANNING, ASSISTANCE, AND OUTREACH

The Social Security Administration (SSA), as authorized by the Ticket to Work and Work Incentives Improvement Act of 1999, awarded cooperative agreements to a variety of community organizations called Benefits Planning, Assistance, and Outreach (BPAO) projects. These BPAO projects provide all SSA beneficiaries with disabilities (including transition-to-work aged youth) access to benefits planning and assistance services. The goal of the Benefits Planning, Assistance, and Outreach (BPAO) Program is to better enable SSA's beneficiaries with disabilities to make informed choices about work. Each BPAO Project has Benefits Specialists who will:

- Provide work incentives planning and assistance to SSA's beneficiaries with disabilities
- Conduct outreach efforts to those beneficiaries (and their families), who are potentially eligible to participate in Federal or State work incentives programs; and
- Work in cooperation with Federal, State, and private agencies and nonprofit organizations that serve beneficiaries with disabilities.

“BWE” or BLIND WORK EXPENSES

If the Social Security Administration (SSA) considers you statutorily blind, you can have your actual benefit amount increased by up to 100% of all your work expenses, whether or not those expenses are related to your disability. You can claim transportation expenses, the cost of lunch at work,

and even the taxes you pay because of earnings. If your SSA Claims Representative agrees that your claimed work expenses can be included in a BWE, you may be able to recover up to 100% of those expenses by increasing your SSI check up to its maximum. Exactly how much your SSI benefit may increase depends on your living situation, your earned and unearned income, and the amount of your BWE.

CALWORKs

CalWORKs is California's welfare program for people who have children under 19 years old. CalWORKs provides money for children and the relatives caring for them. Work and training is required of most parents. Adults can only get CalWORKs cash aid for five years in a lifetime. If you qualify under the rules, you are entitled to cash aid from the county.

“CDR” or CONTINUING DISABILITY REVIEW

Social Security Administration (SSA) reviews disability cases periodically to see if the person with a disability still meets SSA disability rules. SSA performs two types of reviews, a medical Continuing Disability Review and a work Continuing Disability Review. Under a work review, SSA looks at earnings to determine if an individual is eligible for monthly benefits. A medical review determines if an individual is meeting the medical requirements to collect disability. If the person does not meet the medical requirements, SSA may stop the disability benefits.

“CI” or COUNTABLE INCOME

Countable Income is the amount of your income that is included in calculations to determine your eligibility for Supplemental Security Income (SSI) benefits.

CLASS ACTION

A lawsuit brought by one or more persons on behalf of a larger group where certain individuals (called “class representatives” or “named plaintiffs”) act on behalf of a larger group of people who have similar issues. The court has to determine whether a case can proceed as a class action. If so, certain specific procedures apply relating to how the members of the larger group can get notice of the lawsuit and participate in it.

CONSERVATOR, CONSERVATEE and CONSERVATORSHIP

Conservatorship is a legal proceeding in which an individual or agency (to be known as the “conservator”) is appointed by a court to be responsible

for a person who needs assistance in activities of daily living (the “conservatee”). A Conservator of the person must ensure that the conservatee is properly fed, clothed, and housed. A Conservator of the estate is responsible for managing the conservatee’s money and other property. One individual may serve as either conservator of the person or conservator of the estate or both. Conservatorship applies to an adult, i.e., a person eighteen (18) years of age or older.

COURT APPOINTED SPECIAL ADVOCATES (CASA)

These are specially trained volunteers who are appointed by a juvenile court to provide advocacy to children in the foster care system. CASA responsibilities include gathering information regarding the child; advocating for the child in IEP meetings and other forums; and making recommendations to the juvenile court about the child’s best interests.

“CYA” or CALIFORNIA YOUTH AUTHORITY

The California Youth Authority (CYA), a California State agency of facilities for youths who have committed serious offenses.

DAMAGES

Money that the losing side must pay to the winning side to make up for losses or injuries. There are three kinds of damages: (1) "compensatory," meaning money to pay for the actual cost of an injury or loss; (2) "punitive" or "exemplary," meaning an amount of money that's more than the actual damages. Acts as punishment or deterrence for willful or malicious acts; and (3) statutory damages, which are specific amounts in the law awarded for specific legal violations.

DECLARATION

A statement that a person writes and files with the court. It tells the judge why the person should win the case. Sometimes, a person signs this under penalty of perjury.

DECLARATORY JUDGMENT

A judgment of the court that explains what the existing law is or expresses the opinion of the court without the need for enforcement.

DEMURRER

A “demurrer” is a specific kind of request filed with the Court in response to a lawsuit. A demurrer alleges that even if the facts are true, there is no legal

violation. The court decides on the demurrer at a hearing after both parties present memos and argument to the court.

DEPOSITION

Written or oral testimony given under oath in front of an authorized third person like a court reporter. Depositions take place outside of the court. They allow the parties to get a record of a person's testimony, or to get testimony from a witness that lives far away. They can help the lawyers prepare their court papers called "pleadings." (See also DISCOVERY.)

“DDS” or CA DEPARTMENT OF DEVELOPMENTAL SERVICES

The California Department of Developmental Services (DDS), which funds and oversees services to people with developmental disabilities in California.

“DFEH” or DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

The California Department of Fair Employment and Housing is the state agency that investigates employment and housing discrimination claims and is responsible for enforcing state fair housing and fair employment laws, including disability rights laws in the housing and employment context.

“DHS” or CA DEPARTMENT OF HEALTH SERVICES

The California Department of Health Services (DHS), which funds and oversees health services in California, including nursing home care and home care.

DISCOVERY

The gathering of information (facts, documents, or testimony) before a case goes to trial. Discovery is done in many ways, such as through depositions, interrogatories, or requests for admissions. It can also be done through independent investigation or by talking with the other side's lawyer.

DISMISSAL WITH PREJUDICE

When a court dismisses a case and will not allow any other suit to be filed on the same claim in the future.

DISMISSAL WITHOUT PREJUDICE

When a court dismisses a case, but will allow other suits to be filed on the same claim.

“DMH” or CA DEPARTMENT OF MENTAL HEALTH

The California Department of Mental Health (DMH), which funds and oversees mental health services in California.

“DOE” or DEPARTMENT OF EDUCATION

“DSS” or CA DEPARTMENT OF SOCIAL SERVICES

The California Department of Social Services (DSS) funds and oversees public assistance programs in California, including CalWORKS (family assistance) and case management for personal care services.

DYSAUTONOMIA

(Familial) Dysautonomia affects the autonomic nervous system, which controls involuntary actions such as digestion, breathing, tearing, and the regulation of blood pressure and body temperature. This condition also affects the sensory nervous system, which controls activities related to the senses, such as taste and the perception of pain, heat, and cold.

“EA” or EQUAL ACCESS

Disability Rights California receives grants from the state Equal Access to Justice Program to serve indigent people with disabilities on specified projects.

ELLIS ACT

The Ellis Act (California Government Code §§ 7600 et seq.) is a California law that bars local governments from enacting regulations, such as condominium conversion ordinances, that would prevent some landlords from leaving the rental housing market.

EN BANC

Court sessions where all the judges of a court participate, instead of the usual number. For example, the U.S. circuit courts of appeals usually use panels of three judges, but all the judges in the court may decide certain matters together. When that happens, they are sitting *“en banc”* (sometimes spelled “in banc”). It comes from the French language and means “on the bench.”

“EPSDT” or EARLY AND PERIODIC SCREENING, DIAGNOSIS, AND TREATMENT

The Early and Periodic Screening, Diagnosis, and Treatment Program (EPSDT) provides health care diagnostic and treatment services to individuals under age 21. Under federal law, California must give people under age 21

specified diagnostic services. They also must provide treatment services to correct or ameliorate defects and physical and mental illnesses and conditions discovered as a result of the diagnostic services.

EXCEPTION PAYMENT

“Exception Payment” is a subsidy above the amount usually allowed.

“EXR” or EXPEDITED REINSTATEMENT

This term is used under The Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) programs to allow benefits for a person with a disability to be reinstated quickly if they are no longer working. It provides for temporary benefits during a period of evaluation, rather than requiring a new application for benefits.

“EPE” or EXTENDED PERIOD OF ELIGIBILITY

This term is used under the Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) programs to provide additional protections to people whose disabilities may only allow periodic employment. Under these programs, if you stop working you may automatically have your benefits restored without having to reapply.

FAIR HEARING

A hearing in front of an agency or administrative law judge to review an agency decision. People have certain rights in fair hearings such as the right to present evidence, to cross examine and to have findings supported by evidence.

FAIR MARKET RENT (FMR)

The Fair Market Rent (FMR) is the amount that the Housing and Urban Development (HUD) sets for rent. Tenants have to pay extra if rents exceed the FMR, as they usually do because the FMR's are unrealistically low.

“FIFTH CATEGORY” REGIONAL CENTER ELIGIBILITY

A person is eligible for the "fifth category" if he or she has a condition that is similar to mental retardation and/or has treatment needs that are similar to a person with mental retardation.

FORENSIC

A term used by both DDS and DMH and intended to indicate individuals who have had some involvement with the criminal justice system, though

sometimes used too broadly for people with aggressive behavioral challenges. The intersection between the mental health system and the criminal justice system is often called “forensic mental health.” In California, there are 6 different commitment categories for people who are involved with the mental health system because of their contact with the criminal justice system.

“G-TUBE” or GASTROSTOMY TUBE

A Gastrostomy Tube (G-Tube) is a tube that is placed on the stomach to vent for air or drainage, and/or is an alternate way for feeding.

GUARDIAN AD LITEM

An adult appointed by a court who represents a minor child an individual who has difficulties in acting on his or her own behalf. Comes from Latin meaning for the "purposes of the lawsuit."

GUARDIANSHIP

A guardianship applies only to minors, i.e., person under the age of eighteen (18) years. The principal purpose of guardianship is to provide protection for a child who has no parent.

HABEAS CORPUS

A “writ of *habeas corpus*” is a judicial mandate to someone who has custody of a person ordering that the person be brought to the court so it can be determined whether or not that person is lawfully confined and whether or not the person should be released from custody. A habeas corpus petition is a petition filed with a court by a person who objects to the person’s own or another’s confinement, or to the conditions of confinement. The term comes from Latin.

“HHS” or HEALTH & HUMAN SERVICES

HHS is the federal agency overseeing health and human services.

“HIPAA” or HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT

The new federal Health Insurance Portability and Accountability Act (HIPAA) protects the privacy of medical records and other confidential health information, and restricts access to records except under specified circumstances.

“HOUSING CHOICE VOICHER” OR “SECTION 8”

Housing Choice Vouchers, often referred to as Section 8 Vouchers, help subsidize rents for lower income tenants, including tenants with disabilities. The local Public Housing Authority (PHA) pays part of the tenant's rent when the tenant rents from a private landlord.

“HUD” or U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

The U.S. Department of Housing and Urban Development (HUD) funds and regulates many housing and community development programs for lower income people and people with disabilities, including Section 8.

“ICF-DD-N” or INTERMEDIATE CARE FACILITY DEVELOPMENTALLY DISABLED-NURSING

Intermediate Care Facility-Developmentally Disabled-Nursing (ICF-DD-N) are a category of community facilities licensed by the California Department of Health Services (DHS), which generally house 6 residents.

“IDEA” or INDIVIDUALS WITH DISABILITIES EDUCATION ACT

The Individuals with Disabilities Education Act (IDEA) is the federal statute that requires school districts receiving federal funds to provide all students who have a categorically defined disability with a free appropriate public education (FAPE) in the least restrictive environment. FAPE includes specialized instruction and related services that meet the state educational standards and are implemented as called for in a student's individualized education program (IEP).

“IEP” or INDIVIDUALIZED EDUCATION PROGRAM

An Individualized Education Program (IEP) describes the educational program that has been designed to meet the unique needs of a child with disabilities. Each child who receives special education and related services must have an IEP, which is an individualized document developed in consultation with the parents, school, advocates, students (as appropriate), and health professionals.

“IHSS” or IN-HOME SUPPORTIVE SERVICES PROGRAM

The In-Home Supportive Services Program (IHSS) helps pay for services to eligible people to enable them to stay in their own homes. To be eligible you must be blind or have a disability or be over 65 and need these services so you can remain safely in your home. IHSS is an alternative to out-of-home care such as nursing homes or board and care facilities.

“IMD” or INSTITUTION FOR MENTAL DISEASE

An IMD is defined in the Code of Federal Regulations at 42 CFR 435.1009 as a facility of more than 16 beds that is primarily engaged in providing treatment services for individuals diagnosed with mental illness.

IMPLIED WARRANTY OF HABITABILITY

The right to get an apartment in good condition.

IN-HOME OPERATIONS HOME AND COMMUNITY-BASED SERVICES (IHO-HCBS WAIVER)

The new IHO HCBS waiver combines several existing waivers, including the NF/AB waiver, to expand the number of slots and services that waiver recipients who would otherwise be institutionalized in a nursing facility, sub acute facility or acute hospital can receive in the community.

INDIAN CHILD WELFARE ACT (ICWA)

This is a federal law to protect the integrity of American Indian families. It acknowledges and implements the tribe’s right to intervene in state child custody proceedings.

INJUNCTION

An injunction or permanent restraining order is a court order requiring someone to take specific actions or ordering them to stop certain behaviors, based on legal obligations. It is issued after both sides have been heard by the court in a hearing or trial. The court order specifies the specific actions, people and time for compliance.

IN FORMA PAUPERIS (IFP)

A court says a person does not have to pay a filing fee because the person can't afford it. In Latin, it means "in the manner of a pauper."

IN PROPIA PERSONA (IN PRO PER)

In Propia is when a person represents himself or herself without a lawyer. This comes from the Latin for "in one's own proper person." (See also PRO PER AND PRO SE.)

INTERROGATORIES

Written questions asked by one party in a lawsuit, which the opposing party must answer in writing.

INTERVENOR

A person who voluntarily participates in a lawsuit or other proceeding brought by other people. The court must approve the participation of the intervener.

“IOLTA” or INTEREST ON LAWYERS TRUST ACCOUNTS

This is a method of funding for legal services to low income people and people with disabilities. It is also referred to as “Trust Fund”. It is administered by the State Bar Association. Disability Rights California receives IOLTA funding.

“IPP” or INDIVIDUAL PROGRAM PLAN

California’s Lanterman Act provides that persons with developmental disabilities are entitled to “IPPs,” or Individual Program Plans that identifies the person’s goals and the services and supports they will get to help them meet their goals. This action plan helps provide community supports to prevent institutionalization of people with developmental disabilities.

“IRWE” or IMPAIRMENT RELATED WORK EXPENSES

This term is used under The Social Security Disability Insurance (SSDI) AND Supplemental Security Income (SSI) programs to refer to out-of-pocket expenses that are needed in order to be able to work. These expenses are deducted from earnings before certain benefit calculations are made.

JUDGMENT (JUDGEMENT)

The judge's final decision in a case.

LANTERMAN ACT

The California law which grants people with developmental disabilities an entitlement to services and supports.

LEVEL 14 GROUP HOME PLACEMENTS

Level 14 refers to a rate classification that reflects the staffing needs of an individual in Community Care Licensing Facilities. 14 is the highest rate available.

“LPS” or LANTERMAN-PETRIS-SHORT ACT

The Lanterman-Petris-Short Act is one of the main California laws governing services to and treatment of people with mental illness. It covers certain conservatorship proceedings as well as establishes that persons are statutorily entitled to individualized treatment that is least restrictive of their personal liberties.

MANIFESTATION DETERMINATION

The manifestation determination meeting is a meeting of the relevant members of the IEP team to determine whether a child with a disability may be expelled or have his placement changed for more than 10 consecutive school days. At the meeting, the IEP team reviews the relevant information from the student's file, including the IEP and any information from teachers and the parents and then decides two things: 1) was the behavior caused by, or did it have a direct and substantial relationship to, the child's disability, and 2) was the behavior the direct result of the school's failure to implement the IEP? If the team answers yes to either question, the child cannot be expelled and a placement change would require the consent of the parent or a hearing officer's order. If the IEP team members representing the school district believe the answer to both questions is "no" and the parent disagrees, the parent can appeal to a special education hearing.

MEDI-CAL (See Medicare)

Medi-Cal is California's program to pay for medical care for many low income people, especially families, children, people with disabilities, and the elderly. Medi-Cal is funded by the state and federal government. There are many Medi-Cal programs with different rules. Depending on which program you qualify for and how much money you make, Medi-Cal may pay for all your medical expenses or only part of them.

MEDICARE (See Medi-Cal)

Medicare is a federal health insurance program which provides benefits for eligible people. There are two parts to the program: "Part A" is hospital insurance and "Part B" is medical insurance. Medicare does not cover everything, and is not free for most people.

MOTION

An oral or written request made by a party to an lawsuit before, during, or after a trial asking the judge to issue a ruling or order in that party's favor.

"MSSP" or MULTIPURPOSE SENIOR SERVICES PROGRAM

The Multipurpose Senior Services Program (MSSP), operated by the California Department of Aging, provides case management and a range of services to assist seniors with disabilities to live independently.

NURSING FACILITY WAIVER

The Nursing Facility Waiver allows someone who is otherwise eligible for nursing facility services to instead receive services in the community. It is called a "Waiver" because it waives certain federal Medicaid rules in order to provide different or more services than the State offers to other Medicaid (Medi-Cal) eligible people.

“OCRA” or OFFICE OF CLIENT’S RIGHTS

“ODD” or OPPOSITIONAL DEFIANT DISORDER

Oppositional Defiant Disorder (ODD) is a type of disruptive behavior disorder characterized by a recurrent pattern of defiant, hostile, disobedient, and negativistic behavior directed toward those in authority, including such actions as defying the requests or rules of adults, deliberately annoying others, arguing, spitefulness, and vindictiveness that occur much more frequently than would be expected on the basis of age and developmental stage.

OPINION

A judge's written explanation of a decision of the court or of a majority of judges. A dissenting opinion disagrees with the majority opinion because of the reasoning and/or the principles of law on which the decision is based. A concurring opinion agrees with the decision of the court but offers further comment. A *PER CURIAM* OPINION is an unsigned opinion “of the court.”

“OPR” or OFFICE OF PATIENT’S RIGHTS

ORDER TO SHOW CAUSE

A court order that makes someone go to court to explain to the judge why he or she did not follow the rules.

“PAAT” or PROTECTION & ADVOCACY FOR ASSISTIVE TECHNOLOGY

Beginning in 1998, DISABILITY RIGHTS CALIFORNIA received limited funds under the Protection and Advocacy for Assistive Technology (PAAT) Act to increase access to assistive devices and equipment.

“PABBS” or PROTECTION & ADVOCACY FOR BENEFICIARIES OF SOCIAL SECURITY

Under the Protection and Advocacy for Beneficiaries of Social Security (PABSS) Act, DISABILITY RIGHTS CALIFORNIA provides advocacy assistance to Beneficiaries of Social Security Disability or Supplemental Security Income (SSI), and to people who are working and are beneficiaries of Medicare, Medi-Cal or In-Home Supportive Services (IHSS) about securing or requiring employment.

“PADD” or PROTECTION & ADVOCACY FOR DEVELOPMENTAL DISABILITIES

In 1978, DISABILITY RIGHTS CALIFORNIA became the agency in California responsible for protecting and advocating for the rights of people with developmental disabilities under the federal Developmentally Disabled Assistance and Bill of Rights Act of 1978.

“PAIMI” or PROTECTION & ADVOCACY FOR INDIVIDUALS WITH MENTAL ILLNESS

The Protection and Advocacy for Individuals with Mental Illness Act of 1986 (PAIMI) extended Disability Rights California’s mandate to people with psychiatric disabilities.

“PAIR” or PROTECTION & ADVOCACY FOR INDIVIDUAL RIGHTS

The Protection and Advocacy of Individual Rights Act of 1992 (PAIR) extended Disability Rights California’s mandate to people with physical, learning and sensory disabilities.

“PASRR” or PREADMISSIONS SCREENING AND RESIDENT REVIEW

This is a federally mandated psychosocial, psychiatric and physical evaluation of persons admitted to nursing facilities or at risk of being placed in nursing facilities, funded by the Department of Mental Health and administered by independent contractors. It helps identify the need for specialized services and helps identify appropriate community placements rather than institutionalization.

“PATBI” or PROTECTION & ADVOCACY FOR TRAUMATIC BRAIN INJURY

Protection & Advocacy for Individuals with Traumatic Brain Injury (PATBI) assures that people with traumatic brain injury receive appropriate services

and supports within their own communities. Disability Rights California promotes the rights of people with Traumatic Brain Injury (TBI) through advocacy assistance, education, and outreach to build TBI community awareness and support for inclusion. This program was established by federal grants from the Department of Health and Human Services.

“PAVA” or PROTECTION & ADVOCACY FOR VOTING ACCESS

Part of the Help America Vote Act of 2002 (HAVA) was the Protection and Advocacy for Voting Access (PAVA) program. PAVA expanded Disability Rights California’s ability to work for full participation in the electoral process for people with disabilities, including registering to vote, casting a vote and accessing polling places.

PRO BONO

Legal work done for free. From the Latin meaning "for the public good." Private firms often work with DISABILITY RIGHTS CALIFORNIA “*pro bono*” – without charge to clients.

PRO PER

People who present their own cases in court without lawyers (See also *IN PROPIA PERSONA* and *PRO SE*.)

PRO SE

People who present their own cases in court without lawyers (See also *PRO PER* and *PRO SE*.)

PROTECTIVE SUPERVISION

Protective supervision is supervision for individuals who, because of cognitive or mental impairments, need continuous supervision in order to prevent self-inflicted harm while living at home.

PURCHASE OF SERVICES (POS)

Purchase of Services (POS) dollars is money used by people served under the Lanterman Act. It allows the person with a developmental disability to directly pay service providers.

RIESE HEARING

A hearing to determine an individual’s capacity to refuse administration of psychotropic medication.

REGIONAL CENTERS

Non-profit corporations which, under the provisions of the Lanterman Act, contract with the Department of Developmental Services to provide service coordination to individuals with developmental disabilities and assist people to obtain the supports they need. There are 21 Regional Centers in California, each serving a different geographical area.

SECTION 8

Section 8 is a federally funded housing assistance program that provides to low income families. The vouchers allow the family to rent any apartment or house where the landlord will accept them, and pay a limited amount of money, generally 30% of the family's income. Section 8 is operated by local housing authorities and usually has a long waiting list.

SELF-DIRECTED SERVICES

"Self-Directed Services" is a new model for providing services to people with developmental disabilities that allows them to manage their own budgets and gives them more control over providers.

"SELPA" OR SPECIAL EDUCATION LOCAL PLAN AREA

The Special Education Local Plan Area (SELPA) is an administrative unit under California law that joins together one or more local school districts in a geographic area. This allows districts to share in the coordination, funding, personnel or other administration of services for special education students. School districts with large populations usually stand alone as a single-district SELPA.

"SGA" or SUBSTANTIAL GAINFUL ACTIVITY

Substantial Gainful Activity is the term used by Social Security when evaluating earned income and "work activity" of individuals applying for or receiving disability benefits.

There are two criteria that determine SGA: (1) Substantial activity: work that involves doing significant physical or mental work, or a combination of both, that is productive and for profit. (2) Gainful work activity: work performed for pay or profit; work of a nature generally performed for pay or profit; or work intended for profit, whether or not a profit is realized.

This is a monthly amount that is specified by Social Security for individuals who are employed or self-employed. SGA may be determined by work done or hours worked in a month. Monthly SGA earnings limits are

adjusted annually based on fluctuations in the national average wage index.

“SRO” OR SINGLE ROOM OCCUPANCY

Single room occupancy hotels, or residency hotels, provide single room apartments with shared bathrooms for low income individuals. This is an important source of housing for people with disabilities who live on fixed incomes.

“SSI” OR SUPPLEMENTAL SECURITY INCOME

Supplemental Security Income (SSI) is a cash benefit program for low-income people 65 and over and for people of any age, including infants and children, who are blind or have disabilities. CAPI is a similar program for immigrants who do not qualify for SSI.

STATUTE

A law passed by the United States Congress or a state legislature.

STATUTE OF LIMITATIONS

A law that says how much time you have to file a lawsuit after something happens.

STAY

An order by a court that stops any further action in the case for a certain period of time.

SUMMARY JUDGMENT

When the judge decides a case without going to trial. The decision is based on the papers filed by both sides.

TEMPORARY RESTRAINING ORDER (TRO)

A Temporary Restraining Order (TRO) is a court order requiring immediate action. It is an emergency remedy of brief duration issued by a court only in exceptional circumstances, usually when immediate or irreparable damages or loss might result before the opposition could take action.

“TBS” or THERAPEUTIC BEHAVIORAL SERVICES

Therapeutic Behavioral Services (TBS) is a Medi-Cal mental health service. It provides short-term one-to-one assistance to children or youth under age 21 who have behaviors that are too hard for their families or foster placement to

handle, such as tantrums, assaultive behavior or destruction of property. TBS can be provided to children at home, in a group home, in the community, during evening and weekends, and at other times and places as needed. The county mental health plan develops a behavior intervention plan and assigns a trained behavior aide to a child/youth for as many hours per day as needed. The county may also authorize another mental health organization to develop the plan and assign the behavior aide.

TRANSCRIPT

A record of everything that is said in a deposition, hearing or trial. Transcripts may be prepared from tape recordings or may be done by certified court reporters that use special equipment to make a word-for-word record of the proceeding.

“TWP” or TRIAL WORK PERIOD

A “Trial Work Period” under Social Security Disability law allows people with disabilities to test their ability to work for at least 9 months without reducing their Social Security Disability Income. During the TWP, an individual will receive full SSDI benefits regardless of how high their earnings might be, so long as they have a disability.

UNRUH CIVIL RIGHTS ACT

This law provides protection from discrimination by all business establishments in California, including housing and public accommodations, because of age, ancestry, color, disability, national origin, race, religion, sex, or sexual orientation.

WRIT

A court order that says certain action must be taken.

WRIT OF MANDATE

A court order to a government agency, including another court, or to a private entity requiring it to follow the law by correcting its prior actions, ceasing illegal acts, or taking certain actions.

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