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

Issue 57 — Work as of July 31, 2009

This report represents a summary of the work Disability Rights California staff has reported from May 1, 2009 to July 31, 2009. Many thanks to those who provided the material to make this report possible.

ABUSE AND NEGLECT

Investigations Unit Continues to Focus on Restraint and Seclusion in Schools

The Investigations Unit (IU) continues to focus on excessive restraint and seclusion of children in schools. The IU's eight open cases show the prevalence of school staff using restraint and seclusion when students do not comply with adult direction, rather than for behavior posing a risk of physical harm.

In one case, an elementary school age boy was restrained in a prone position (face down) or in seclusion with the door held shut nearly 40 times in nine months. Many of the prone restraints lasted over 30 minutes and at least two lasted more than an hour. The student was also secluded for long periods of time, the longest of which was nearly two and a half hours. Other students at that school have sustained injuries including large abrasions on the torso and arms and bruising. Several parents have elected to have their children home tutored rather than return to the abusive classroom environment.

The IU is providing technical assistance to the staff of Congressman Miller, Chair of the federal House Committee on Education and Labor, on proposed federal legislation. Mr. Miller held a hearing in May “to examine abusive restraint and deadly uses of restraint and seclusion in U.S. schools.” At the hearing, the staff from the General Accounting Office testified about their findings of hundreds of allegations of school-related "death and abuse" related to restraint or seclusion since 1990, the vast majority involving children with disabilities. At least twenty cases involved restraints that resulted in death. Disability Rights California is also a sponsor of AB 1538, which sets minimal safeguards for the use of restraint in schools. However, this bill has been changed to a two year bill with the intent to have the Legislature hear it next year.

Under contract with the Substance Abuse and Mental Health Services Administration in collaboration with the U.S. Department of Education, Leslie Morrison is the lead author on a white paper discussing deficits in current federal and state education laws addressing restraint and seclusion and challenging schools and school boards to embrace restraint and seclusion reform. The paper is due to be published in late summer. Leslie is also speaking at national conferences for people with disabilities about the issue of restraint and seclusion in schools.

Abuse and Neglect Goal 3, Obj. A

Disability Rights California Staff: Charis Moore, Ricardo Jauregui, Pamila Lew, Paul Duryea, Leslie Morrison

Other Counsel: No

Grant/Funding Source(s): PADD, PAIMI, EA

Disability Rights California Files Suit to Obtain Access to Evidence of Abuse and Neglect of Residents of Nursing Facility

(See Mental Health)

BENEFITS

Social Security Administration Reconsiders Client's Overpayment and Substantial Gainful Activity Determination

S.P. is a person with Downs Syndrome who works in a sheltered workshop. Her mother contacted Disability Rights California concerning notices S.P. received stating that she was no longer eligible for Social Security Disability Insurance (SSDI) because she was earning above substantial gainful activity (a maximum amount that SSA allows SSDI recipients to earn and still receive benefits). The notice also advised S.P. of an SSDI overpayment.

S.P. and her mother met with Disability Rights California staff who reviewed paperwork, explained the work rules, and advised the mother how to proceed. Because S.P. worked during the period of the overpayment in a sheltered workshop and received a subsidy, she never engaged in substantial gainful activity or incurred an overpayment. S.P.'s mother is working with an SSA representative to resolve these matters and has been told that in all likelihood, S.P.'s SSDI will be reinstated and that there will be no overpayment.

Benefits Goal 1, Obj. A

Disability Rights California Staff: Maria Iriarte

Other Counsel: No

Grant/Funding Source(s): PADD

A. C. Prevails in Appeal for Retroactive Protective Supervision

A.C. v. John Wagner, Director, Department of Social Services and David Maxwell-Jolly, Ph.D., Director, Department of Health Care Services, Case No. 34-2008-00011867, Sacramento Superior Court, Judge Michael P. Kenny.

On May 15, 2006, A.C., a young boy with multiple disabilities, applied for In-Home Supportive Services (IHSS) benefits. The IHSS eligibility worker at the county sent A.C.'s doctor a form to complete that was meant to assist the county in determining whether A.C. was eligible for protective

supervision. This service is allowed only when an IHSS recipient needs constant supervision due to a cognitive or mental impairment to avoid injury to him or herself.

A.C.'s doctor completed the form indicating the need for constant supervision but the county denied protective supervision. An OCRA advocate represented A.C. at an administrative hearing. At the hearing, A.C.'s mother testified that he could roll from his back to his front but not back again, and that doing so put him at risk of blocking his tracheotomy and suffocating. The administrative law judge indicated that he needed documentation of this behavior and when the behavior began. He ordered the county to get this documentation from A.C.'s doctor and therapists. Despite the fact that the county failed to secure any of the documentation, the ALJ ordered protective supervision, but only prospectively from December 1, 2006. A.J. appealed to the Superior Court.

On appeal, A.C. moved to augment the administrative record with a report from July 2006 from a therapist indicating that A.C. could roll from his back to his front. This report had been erroneously omitted from the administrative record.

On May 29, 2009, the Court granted A.C.'s motion and found him eligible for protective supervision. The Court found, however that since the evidence submitted dated back to July 2006, A.C. could receive retroactive benefits from August 1, 2006 and not back to May 15, 2006 (the date of application), as had been requested.

Benefits Goal 3, Obj. A

Disability Rights California Staff: Elissa Gershon, Tom DiVerde, and Matthew Pope

Other Counsel: No

Grant/Funding Source(s): PADD

Client Comes Home from the Hospital with 283 Hours of IHSS after County Discontinued her from Program

J.O. v. Alameda County Social Services Agency, State Hearings Division
J.O., a person with multiple disabilities including juvenile rheumatoid arthritis and traumatic brain injury, received 262.8 hours of IHSS per month

and lived in her own apartment until she broke her right leg and injured her right arm in an accident at work. Before moving to her own apartment, J.O. had lived in the community with a roommate.

After the accident, J.O. was an inpatient at a rehabilitation hospital and was unable to do most of the tasks she was able to do independently and needed more personal care hours when she returned home. When J.O.'s social worker was contacted about doing a reassessment at the hospital, J.O. received a notice discontinuing her services. J.O. appealed.

After the hearing request was filed and Disability Rights California sent a letter to the county explaining that they should have suspended, rather than discontinued J.O.'s services, the county rescinded the discontinuance notice and issued another notice properly suspending J.O.'s services until she returned home. The hearing went forward on the reassessment issue.

At the hearing, the ALJ issued a stipulated decision granting J.O. the maximum number of IHSS hours available (283). With 283 IHSS hours and other services including waiver personal care, J.O. was able to go home.

Benefits Goal 3, Obj. A

Discrimination Goal 1, Obj. A

Disability Rights California Staff: Fred Nisen

Other Counsel: No

Grant/Funding Source(s): PAIR

Client Found Eligible for IHSS, Including Protective Supervision

K.T., a 20-year-old Vietnamese-American man, lives with his monolingual-Vietnamese-speaking family. He is diagnosed with mental retardation and psychosis. He applied for IHSS but was denied. The Notice of Action (NOA) from the county stated that he did not need the services. K.T.'s family contacted Disability Rights California for help.

Disability Rights California evaluated the case and determined that K.T. was wrongly denied eligibility for IHSS and that he would need protective supervision in order to remain safely in his home. Disability Rights

California prepared a position statement and provided documentation, which included records from the regional center and his psychiatrist that demonstrated K.T.'s need for protective supervision. This paperwork was provided to the county hearing specialist, who eventually agreed that K.T. was eligible for protective supervision retroactive to January 2009.

Benefits Goal 3, Obj. A

Disability Rights California Staff: Terry Lindsay and Tho Vinh Banh

Other Counsel: No

Grant/Funding Source(s): PADD

Client gets IHSS Hours Back

A.L. called Disability Rights California to help her get her IHSS hours back after the county had terminated them because her social worker claimed that a requested document had not been received. Before the termination, the social worker gave A.L. a mere two day turnaround time to submit the document. In response to the social worker's request, A.L. dropped off the document at the county office and also had her doctor send it within a reasonable time, which was longer than two days. Following a number of calls by Disability Rights California to the social worker and her supervisor, A.L.'s hours were restored.

Benefits Goal 3, Obj. A

Disability Rights California Staff: Ann Menasche and Sean Danmole

Other Counsel: No

Grant/Funding Source(s): PAIR

Client Found Eligible for 250% Working Disabled Medi-Cal Program

S.B. contacted Disability Rights California after she received a notice that her Medi-Cal share of cost was increasing to \$700 a month. An advocate informed her that she was eligible for the 250% Working Disabled Medi-Cal program, which was specifically created for working people with disabilities to promote self-sufficiency and to encourage people with disabilities to seek employment without fear of losing healthcare. Under this particular Medi-Cal program, she would be responsible for paying a \$20 monthly premium rather than a \$700 share of cost. The advocate contacted the county

regarding S.B.'s eligibility for the program and S.B was found eligible for the program.

Benefits Goal 2, Obj. A

Disability Rights California Staff: Aleyda Toruno

Other Counsel: No

Grant/Funding Source(s): PABSS

DISCRIMINATION

Client's Section 8 Housing Voucher Reinstated

J.E. is a person with orthopedic and physical disabilities who contacted Disability Rights California when the local Housing Authority denied her extension on her Section 8 voucher to locate suitable housing. J.E. began receiving section 8 in 2006; however, the apartment she was in refused to provide her with heat, so she asked the Housing Authority to give her a new voucher so that she could find a more suitable place to live. Due to some disability-related credit issues, and issues with the previous landlord, J.E. found it extremely difficult to locate an accessible unit in the limited time the Housing Authority provided to her. Although the Housing Authority had granted J.E. several extensions, it failed to give her more than six-and-a-half additional months to locate housing. Her voucher was then revoked, resulting in J.E. becoming homeless and her health deteriorating.

The Housing Supervisor at the Housing Authority contended that it was policy to limit voucher extensions, granted as reasonable accommodations, to 180 days. Federal regulations require that an extension of an initial voucher term for a *reasonable period* be provided as a reasonable accommodation in order to make the program accessible to people with disabilities. Moreover, the Housing Authority must "[t]ake into account the special problem of ability to locate an accessible unit when considering requests by eligible individuals with handicaps for extensions of Housing Certificates or Housing Vouchers."

Shortly after Disability Rights California sent a letter to the Housing Authority educating it about the laws governing extensions, Disability Rights California received a letter from the City Attorney offering an additional 90-day extension. J.E. has an appointment with her Housing Specialist to sign her new voucher.

Discrimination Goal 2, Obj. A

Disability Rights California Staff: Ann Menasche and Amy Willis

Other Counsel: No

Grant/Funding Source(s): PAIMI

Client Readmitted Into a Mental Health Program as a Reasonable Accommodation

S.C., a person with a psychiatric disability, was expelled from a mental health program that provides various services from social activities to vocational services, after complaints of angry and abusive behavior against fellow clients and staff members.

Disability Rights California contacted the program, and arranged for S.C. to be readmitted to the program as a reasonable accommodation, as long as he complied with a new behavioral contract.

Discrimination Goal 3, Obj. A

Mental Health Goal 3, Obj. A

Disability Rights California Staff: Ann Menasche

Other Counsel: No

Grant/Funding Source(s): PAIMI

California's Supreme Court Rules that Statutory Damages under the Unruh Act are Available for Non-Intentional ADA Violations

Munson v. Del Taco, Inc.

California Supreme Court, Case No. S162818

See previous Regional Office Report No. 56

On June 11, 2009, the California Supreme Court issued its decision in the case of *Munson v. Del Taco, Inc.*, holding that statutory damages are

available under the Unruh Civil Rights Act for any ADA violation, including those where there is no intent to discriminate. The Supreme Court also overruled a court of appeals decision in *Gunther v. Lin* which held that proof of intent to discriminate was required.

The ADA prohibits a range of intentional and non-intentional discriminatory conduct including failure to remove barriers or to make reasonable accommodations for persons with disabilities.

Disability Rights California co-authored with the Impact Fund an amicus brief in support of respondent Kenneth Munson.

Discrimination Goal 3, Obj. A

Disability Rights California Staff: Ann Menasche

Other Counsel: Brad Seligman, the Impact Fund

Grant/Funding Source(s): PAIR

Disability Rights California and School District Reach Agreement that will Improve Accessibility at its only High School

Disability Rights California was contacted by a graduating high school senior who uses a wheelchair regarding accessibility barriers at the North Monterey County Unified School District. Disability Rights California engaged in substantial negotiations with the District and the parties arrived at a resolution.

Settlement terms include a schedule of architectural modifications to the high school and grounds, with most of the work to be completed in 2010, as well as some monetary damages and attorneys' fees. The recent graduate plans to use some of the damages to establish an annual award to "recognize a student leader who has overcome personal and physical obstacles to make a significant contribution" to North Monterey County High School.

Improvements will include modifications to the boys' locker room, access to the main entrance from the bus shelter and parking lot, modification to the entrance and counter in the main office and installation of handrails on the ramps to portable classrooms. The District will buy an accessible shuttle to

transport spectators and athletes with disabilities to the high school football field.

Discrimination Goal 3, Obj. A

Education Goal 3, Obj. A

Disability Rights California Staff: Fred Nisen and Stephen Rosenbaum

Other Counsel: No

Grant/Funding Source(s): PAIR

Disability Rights California Assists Person with Quadriplegia Get Technology to Access his Computer for Work

D.T., a person with quadriplegia, contacted Disability Rights California concerning his inability to fully access the Multiple Listing Service (MLS), a computer program that provides real estate agents with listings and other information of most homes currently for sale. D.T. is a real estate agent who uses voice recognition software to access the Internet and Windows. He was able to access the MLS when Tempo III, a software program, was being used. When the MLS service changed its software to Tempo V, it became inaccessible to D.T. Disability Rights California worked with counsel representing the MLS service and agreed to have a technician work directly with D.T. to help him access the MLS.

Discrimination Goal 3, Obj. A

Disability Rights California Staff: Maria Iriarte

Other Counsel: No

Grant/Funding Source(s): PAAT

Client Obtains Authorization from Housing Authority to Use Section 8 Voucher in a Residence Owned by her Father as a Reasonable Accommodation

Under the Section 8 housing program, a tenant may not use a housing voucher to rent housing from a family member, except as a reasonable accommodation for the client's disabilities. Because of her psychiatric disabilities, it was important to L.G. to continue living in the home in which she grew up, which was owned by her father (who no longer lives there).

When L.G. moved off of the waiting list for a Section 8 voucher, the Housing Authority told her that she could not use the voucher to continue living in the family home, because it was owned by her father. After obtaining advice from Disability Rights California, L.G. and her father were able to advocate successfully that she be allowed to use her voucher to live in the home owned by her father, as a reasonable accommodation for her disabilities.

Discrimination Goal 2, Obj. A

Disability Rights California Staff: Pamela Cohen

Other Counsel: No

Grant/Funding Source(s): PAIMI

Client Obtains Extension of Section 8 Inspection to Accommodate Multiple Disabilities

L.Z., a person with multiple physical and psychiatric disabilities, including a severe anxiety disorder and sleep apnea, who receives housing under the Section 8 voucher program, contacted Disability Rights California regarding getting an extension of the annual Section 8 inspection of the unit. L.Z.'s disabilities make it difficult for her to leave her home or to receive visitors there. With support from the her physician, Disability Rights California worked with the Housing Authority to obtain an extension of the Section 8 inspection from June 2009 until September 2009, with other conditions including that the appointment take place in the afternoon, as a reasonable accommodation for her disabilities.

Discrimination Goal 2, Obj. A

Disability Rights California Staff: Pamela Cohen

Other Counsel: No

Grant/Funding Source(s): PAIMI

Disability Rights California and Other Legal Aid Programs Stop Move of Department of Social Services State Hearings in Alameda County to an Inaccessible Location

California's Department of Social Services (DSS), which runs programs such as Medi-Cal and In-Home Supportive Services (IHSS), has been allowing Alameda County to use its Downtown Oakland State Hearing

Division office to hold state hearings, even though counties are generally responsible for locating a space for state hearings. However, due to the budget crisis, DSS decided that it could no longer afford to allow Alameda County to use its facility for hearings. The County sought to relocate to an office that was very difficult to get to and where the closest bus stop was inaccessible to people with disabilities.

Disability Rights California signed on to a demand letter written by Bay Area Legal Aid and actively participated in a meeting with the Presiding Administrative Law Judge. As a result of the meeting, the County found another Downtown Oakland hearing location to hold the state hearings near accessible public transportation.

Discrimination Goal 3, Obj. B

Disability Rights California Staff: Fred Nisen

Other Counsel: Bay Area Legal Aid and Homeless Action Project, among others

Grant/Funding Source(s): PADD/PAIR

Disability Rights California Files a HUD Complaint against Housing Authority and HUD for Failing to Timely Grant a Reasonable Accommodation

B.B. v. Housing Authority of the County of Santa Clara and HUD, HUD Case Nos. 09-09-1230-8; 09-09-1230-4; 09-09-1230-D

B.B. has multiple disabilities, which make her housing needs very complex, including needing to be near her health care providers that are in an area where rents are well above average. She has received an exception payment standard (a subsidy above the amount usually allowed) for past units.

In September of 2008, B.B. requested an exception payment standard of above 120% of the fair market rent (FMR) because she had to move in October. That request was denied in late November because no unit was specified. In the meantime, B.B. located a unit and, to prevent homelessness, moved in October. Immediately after B.B. found out about the denial, she made another request for an exception payment standard of an approximately 124% of the FMR with details about the unit.

Even though the Housing Authority had all of B.B.'s medical documentation of her need for an exception payment standard, it requested more information a month after the denial. Then, B.B.'s doctor reiterated the information he had given the Housing Authority a few months earlier. Two months after the request was made, the Housing Authority forwarded the request to the Office of Public and Indian Housing (PIH) at HUD. PIH, in turn, took two months to approve the request. Four months after the request, it was approved. It took the Housing Authority another month to issue a housing assistance payments (HAP) contract, which was only retroactive to April 1, 2009.

In the meantime, B.B. was responsible for six months full rent. She paid the first four months with a grant that was supposed to be used for other needs, but she could not pay the rent for February and March. Therefore, her current landlord began eviction proceedings. However, the parties settled and B.B. is allowed to stay until her lease is up on September 30, 2009. But, she is still responsible for the rent for February and March.

On July 17, 2009, Disability Rights California filed an administrative complaint with HUD's Office of Fair Housing and Equal Opportunity (FHEO) against the Housing Authority and PIH seeking that the exception payment standard be retroactive to the date of her request and an expedited process for the next request.

Discrimination Goal 2, Obj. A

Disability Rights California Staff: Fred Nisen and Jacob Stipp

Other Counsel: No

Grant/Funding Source(s): PAIR

Disability Rights California Successfully Represents Tenant in Administrative Hearing to Retain a Two-Bedroom Section 8 Voucher as Accommodation for Disability

For a number of years, V.D. retained a two-bedroom Section 8 voucher as an accommodation for her disability. V.D. requires 24-hour care and her supportive living program service provider met that need by using rotating staff, which used the second bedroom. During her annual Section 8 voucher evaluation, V.D. requested the continued accommodation of

having a two-bedroom Section 8 voucher. However, the housing agency denied her request, stating that a second bedroom for a live-in aide is granted only when the live-in-aide lives in the residence 24 hours a day.

Disability Rights California represented V.D. at the administrative hearing. The Hearing Officer held in favor of V.D. stating that the accommodation provided her with equal access to the housing program.

Discrimination Goal 2, Obj. A

Disability Rights California Staff: Sean Rashkis, Stuart Seaborn, and Lauren Hemman

Other Counsel: No

Grant/Funding Source(s): PADD

Disability Rights California Assists Voters with Disabilities on Election Day through Election Day Hotline

On May 19, 2009, Disability Rights California held an Election Day Hotline to assist people with disabilities to exercise their right to vote in the Special Statewide Election. Disability Rights California staff fielded five calls, which involved inaccessible polling places and voting equipment, the right of conservatees to vote, and the right to vote when in an out-of-county facility. Disability Rights California staff provided various levels of assistances from technical assistance to helping people file complaints with counties and the Secretary of State to directly calling the Registrar of Voters to resolve problems.

Discrimination Goal 4, Obj. A and B

Disability Rights California Staff: Fred Nisen, Hillary Sklar and various other staff

Other Counsel: No

Grant/Funding Source(s): PAVA

Disability Rights California Pursues a Poll Monitoring Project in El Dorado County

Disability Rights California pursued a poll monitoring project for El Dorado County to improve polling place accessibility. Many voters with disabilities still cannot exercise their right to vote. Part of the purpose of the Poll

Monitoring Project is to raise awareness of poll site accessibility issues in El Dorado County and enable more people with disabilities to exercise their right to vote.

Disability Rights California trained poll monitor volunteers to observe poll sites across El Dorado County. Disability Rights California provided information to volunteers on what to look for and how to fill out a survey that will be used to generate a report that will be shared with the County. The survey focused on problems that voters with disabilities encounter at the polls, including the unavailability of an accessible machine, access barriers, and poll worker attitudes. In addition, poll monitors immediately report compliance issues to Disability Rights California on Election Day. Before Election Day, Disability Rights California had some success in changing County behavior. While reviewing poll sites to determine which to monitor, Disability Rights California observed some accessibility issues and shared them with the County. Out of this communication, the County did make some changes, including switching poll sites from a less accessible to a more accessible location.

Discrimination Goal 4, Obj. B

Disability Rights California staff: Lori Shepherd, Tho Vinh Banh, and Nakida Gooden

Other Counsel: No

Grant/Funding Source(s): PAVA

Disability Rights California Expands Facility Voting Outreach Project to the Bay Area

Last year, Disability Rights California launched a project in Southern California where it sent packets of materials on voting rights for people with disabilities to institutions, such as nursing facilities. Along with these packets, Disability Rights California offered to provide voting rights trainings to residents and/or staff at the facility. Recently, the Bay Area Regional Office sent out the same packet of materials and offer to provide trainings to approximately 65 nursing facilities in Alameda and San Francisco counties. Currently, there is a voting rights training at a staff meeting at a nursing facility scheduled for August 3, with two other possibilities.

Discrimination Goal 4, Obj. B

Disability Rights California Staff: Bill Hershon and Fred Nisen
Other Counsel: No
Grant/Funding Source(s): PAVA

Disability Rights California Trains Staff at the Sylmar Health and Rehabilitation Center about the Voting Rights of its Residents

Voting rights staff in the Los Angeles Regional office trained Sylmar Health and Rehabilitation Center staff about the voting rights of its residents. Sylmar Health is classified as an IMD, a facility of more than 16 beds that is primarily engaged in providing treatment services for individuals with psychiatric disabilities. The training included information about the voting rights of facility residents. Topics included federal and state laws that affect voters with disabilities, voter registration rights and procedures, vote by mail, medical emergency ballots, a conservatee's right to vote, and the rights of voting residents who are domiciled in a county different than the IMD. The training was part of our Southern California Facility Outreach Project and was conducted at the request of Sylmar's staff.

Discrimination Goal 4, Obj. B

Disability Rights California Staff: Kevin Bayley and Hillary Sklar
Other Counsel: No
Grant/Funding Source(s): PAVA

EDUCATION

High School Student Allowed to Compete on Cross-Country Team

M.G. is 17-years-old and has an intellectual disability and specific learning disabilities. In June, Disability Rights California was retained by M.G.'s parent to ensure that her daughter had access to supports and services that would enable her to participate in extracurricular activities at her high school.

During the regular school year, M.G. participates in general education physical education with minimal modifications and as a member of the

school cross country and track teams. Although she has been a team member since her first year in high school, she had been denied the opportunity to practice with the cross country team and the track team during the off-season and on non-school days. As a result of Disability Rights California's advocacy, the District agreed to provide an aide so that M.G. could participate in the twice weekly practices held for her team throughout the summer and on Saturdays and will ensure that M.G. is permitted to travel with her track team to off-campus events to the same extent as her non-disabled teammates.

Education Goal 1, Obj. A

Disability Rights California Staff: Barbara Ransom

Other Counsel: No

Grant/Funding Source(s): PADD

District Stops Daily Suspension of Student with Behavioral Issues

R.T. was being punished for inappropriate behaviors instead of being provided a behavior support plan (BSP). After attending an individualized educational program (IEP) meeting, Disability Rights California was able to work with the team to develop a BSP based on a comprehensive functional behavior assessment by the school psychologist. R.T. was not punished for the remainder of the year and was in fact permitted to attend "Honor Hour" at his school, a monthly party for students with good behavior.

Education Goals 1 & 2, Obj. A

Disability Rights California Staff: Candis Bowles

Other Counsel: No

Grant/Funding Source(s): EA

District Agrees not to Retain Student Denied Eligibility for Special Education Services

A.C. was denied special education services for two years, even though his mother repeatedly asked for assistance because her son was struggling academically. When, after two years, the school district agreed to make him eligible for special education, it also took the position that he was so far behind that he needed to be retained. A.C.'s mother asked Disability

Rights California to challenge the retention recommendation and instead obtain intensive instruction for AC during the summer months. His mother also felt that A.C. was being provoked by teachers, which would lead to frequent suspensions.

Disability Rights California attended the IEP meeting and the District agreed not to retain A.C., to provide him with intensive academic instruction over the summer, to conduct a behavioral assessment, and to develop a behavior support plan to address frequent disciplinary problems.

Education Goals 1 & 2, Obj. A

Disability Rights California Staff: Candis Bowles

Other Counsel: No

Grant/Funding Source(s): EA

Student Facing Suspension Remains in School and Receives Various Assessments

Fifteen-year-old M.V retained Disability Rights California when faced with a school district recommendation for expulsion from school and a “manifestation determination” meeting by an IEP team. M.V. qualifies for special education due to ADHD and Tourette’s syndrome. Disability Rights California’s lawyers argued that M.V. had not been offered appropriate behavioral supports and interventions and, as a result, an incident occurred, prompting the District to remove him from the general education setting.

In June, two IEP meetings were held to discuss whether M.V.’s conduct was a “manifestation” of his disability, in which case he could not be expelled. The District initially took the position that M.V. had been provided all appropriate supports and services and therefore should not be allowed to return to his particular school. The IEP team was divided on whether M.V.’s behavior was a manifestation of his disability. The District decided to offer a “functional analysis” assessment for an in-depth look at M.V.’s behavioral issues and an independent psycho-educational evaluation to determine if he needed any additional supports. The District also agreed to keep M.V. in the same educational setting.

Education Goals 1 & 2, Obj. A

Disability Rights California Staff: Jennifer Williams and Candis Bowles
Other Counsel: No
Grant/Funding Source(s): SPLC

Child of Limited-English Proficient Parent Deemed Eligible for Special Education Following Two Year Student Study Team Process

I.C. is a 6-year-old Latina/Native American girl who, as a kindergartner in 2008, was referred to the school's Student Study Team (SST) due to concerns about her academic progress, fine motor skills, distractibility, and memory issues. She also has residual health issues resulting from her cancer treatment that her parents believe have affected her progress at school.

At an SST follow-up meeting as a first grader, her parents expressed continuing concerns that the daily English learning and other resource supports were not sufficient to address her reading, math, and language barriers as well as her lack of motor skills and fatigue. Over a two year period, the team made no referral for special educational services. Disability Rights California helped I.C.'s mother, who speaks limited English, to understand the special education laws, and requested assessments in Spanish to determine I.C.'s eligibility for Special Education. In May 2009, I.C. was finally deemed eligible for Special Education services due to her speech and language impairment and her "other health impairment," as described under Special Education laws. An IEP meeting was held and Spanish language services were made part of the educational plan.

Education Goal 2, Obj. A

Disability Rights California Staff: Phyllis Preston
Other Counsel: No
Grant/Funding Source(s): EA

Student with Psychiatric Disability and Deafness Released from Juvenile Hall after Six-Month Stay

M.H. is an 18-year-old student with deafness and schizophrenia. Before the onset of schizophrenia, he was getting A's and B's while attending his local

high school and had no criminal record. However, after being arrested for vandalizing two high schools, M.H. was charged with a felony for over \$35,000 in property damage and was placed at the Juvenile Hall where he stayed for approximately six months.

Disability Rights California advocated for M.H.'s release to his parent. The interdisciplinary team at Juvenile Hall had recommended that he be moved to a locked residential placement. Disability Rights California worked with M.H.'s juvenile court attorney to inform the judge about such resources as AB 3632 mental health services, Special Education, therapeutic behavior services and "wrap-around" services, and emphasized M.H.'s desire to finish high school and attend a four-year university. M.H. was eventually released into the community, since the juvenile court administration had failed to find him appropriate locked placement.

Disability Rights California represented M.H. at an IEP meeting, where the team placed him in home instruction over the summer. He was successful in making up credits that would count towards high school graduation. This fall, he will attend a day treatment program and will receive therapeutic services that include one-to-one and family therapy as well a full-time sign language interpreter.

Education Goal 3, Obj. A

Disability Rights California Staff: Carmen Varela

Other Counsel: No

Grant/Funding Source(s): PADD

Child Gets Placement in Least Restrictive Preschool Setting

J.S. is three years-old and has spinal muscular atrophy and uses a walker or wheelchair throughout the day. His IEP requires physical, occupational, and speech therapy and placement in a general education classroom. One of his IEP goals was to learn to navigate his environment using his wheelchair and walker, and to be able to interact appropriately with his non-disabled peers without being isolated.

Despite the IEP agreement, the school district placed J.S. in a special day preschool class, claiming that there was no available general education preschool classroom. A Disability Rights California attorney informed the district of its duty to provide J.S. with an education in the least restrictive

environment and later attended an IEP meeting on J.S.'s behalf. The district eventually offered J.S. a choice of placement in two different mainstream preschool programs. He will begin attending a general education preschool program in September, with appropriate supports.

Education Goal 3, Obj. A

Disability Rights California Staff: Lauren Giardina

Other Counsel: No

Grant/Funding Source(s): EA

Student Improperly Excluded after Bullying Incident is Reinstated at his Middle School and “Graduates” with his Peers

J.A. is an eighth grade student with specific learning disabilities, depression, and an anxiety disorder. Because he was both socially and academically successful in the classroom with accommodations, he attended school with a Section 504 plan instead of an IEP.

J.A. and his friends were frequently bullied by other students. Parents and J.A.'s therapist believe that due to J.A.'s shyness and anxiety, he was a target for other students. The school district did not protect J.A. from being bullied. After several incidents involving the same student, J.A. pushed the aggressor, held a small razor (enclosed in a plastic cartridge) to the boy's throat and said he would kill him. J.A. was immediately suspended under a zero tolerance policy and was not allowed to return to school for 45 days. The district conducted a “manifestation determination” meeting and found that J.A.'s behavior was indeed a manifestation of his disability, but continued to suspend him for 45 days.

J.A.'s mother contacted Disability Rights California more than 60 days after the suspension was ordered. Although 45 days had passed, J.A. was still suspended and had not received any academic instruction. Disability Rights California provided his mother with technical assistance (by telephone) throughout her IEP meeting. The district agreed that J.A. could be reinstated in school, but not to his original school. His mother did not accept the proposed placement at a school several miles across town, as she believed this would aggravate his anxiety disorder and depression

Disability Rights California wrote a demand letter on the student's behalf, indicating that anything beyond placement at J.A.'s original school would not be "appropriate" under the law and would amount to an illegal disciplinary proceeding and expulsion. J.A. was immediately reinstated in the general education environment and "graduated" to high school with his class. His mother, given information about filing complaints against the district, has since decided to file a disability discrimination complaint with the U.S. Department of Education Office for Civil Rights.

Education Goal 2, Obj. A

Disability Rights California Staff: Lauren Giardina

Other Counsel: No

Grant/Funding Source(s): EA

Supreme Court Rules in Favor of Student in Special Education Case

Forest Grove v. TA, United States Supreme Court

At the June 2009 Board meeting, we reported that we signed on to an amicus brief that was submitted on behalf of TA, an Oregon student who struggled in school, largely due to inattention, throughout much of his educational career. Although TA's family had him assessed for special education by the school district, the school district failed to diagnose him with attention deficit hyperactivity disorder (ADHD), and did not find him eligible for special education and related services. Therefore, the school district determined that it was not required to provide TA with a free and appropriate public education (FAPE). As a result, TA's parents funded a private assessment that determined that TA had ADHD, and his parents privately funded his education. When they sought reimbursement from the school district, the district argued that since TA was not eligible for special education before his receipt of privately funded services, the school district was not responsible for refunding TA's parents for those services.

TA's parents filed for a due process hearing on the issue of whether they should be reimbursed for privately provided services. The Administrative Law Judge agreed with TA's parents and ordered that they be reimbursed for the services.

The school district appealed to the US District Court, which decided that while TA should be eligible for special education, that since he was not eligible when his parents began providing services, his parents were not entitled to reimbursement. TA's parents appealed to the Ninth Circuit Court of Appeals, which agreed with TA's parents.

The United States Supreme Court agreed to hear the case and heard oral arguments on April 28, 2009. Disability Rights California signed on to an amicus brief, drafted by the National Disability Rights Network (NDRN), on behalf of TA.

On June 22, 2009, the Supreme Court affirmed the Ninth Circuit opinion, ruling in favor of the parents.

Education Goal 1, Objective A

Disability Rights California Staff: Andrew Mudryk and Lauren Giardina
Other Counsel: Morrison Foerster drafted the brief on behalf of NDRN and Disability Rights California signed on as a supporter.

Grant/Funding Source(s): PADD

LANTERMAN

Regional Center Eligibility Obtained for Adult Client following Joint Representation by Disability Rights California and the Public Defenders' Office

R.H., a 45-year-old adult, was found incompetent to stand trial based on the results of psychological tests in which he scored in the mentally retarded range. The court involved with his placement at county jail was receptive to placing R.H. in the community, which would have required that R.H. receive services from the Regional Center. However, the Regional Center denied eligibility, finding that there was no evidence of a developmental disability before age 18.

Disability Rights California agreed to co-counsel the case with the Public Defenders' Office. Co-counsel obtained declarations from family members and school staff who knew R.H. when he was a minor. The family members and school staff reported how R.H. had a condition similar to

mental retardation and required services similar to a person with mental retardation (called the “fifth category” under the Lanterman Act) when he was a minor. Before the hearing, co-counsel provided this information to the Regional Center and argued that R.H. met eligibility under both the category of mental retardation and “fifth category.”

Following representation of co-counsel, the Regional Center determined that R.H. was eligible for regional center services. Plans are being made to move the client out of jail and provide him with regional center services.

Lanterman Goal 3, Obj. A

Disability Rights California Staff: Timothy Poe

Other Counsel: Los Angeles Public Defenders’ Office

Grant/Funding Source(s): PADD

Client Obtains Eligibility for Regional Center Services

M.D. is 22-years-old and was denied eligibility for regional center services twice. Disability Rights California advised M.D.’s mother to submit a positive SSI decision and the school district’s adaptive skills assessment to the regional center. M.D.’s mother did so and the Regional Center found M.D. eligible for regional center services.

Lanterman Goal 4, Obj. C

Disability Rights California Staff: Connie Huang

Other Counsel: No

Grant/Funding Source(s): Equal Access

MENTAL HEALTH WORKGROUP

Disability Rights California Files Suit to Obtain Access to Evidence of Abuse and Neglect of Residents of Nursing Facility

Disability Rights California v. SunBridge Braswell Enterprises, Inc. dba Sierra Vista Rehabilitation Center

Case No. CV-09-3664 VBF (FFMx), Federal District Court, Central District of Calif., Judge Valerie Baker Fairbank

In October 2008, Disability Rights California began receiving reports of excessive force in the use of physical restraint at Sierra Vista Rehabilitation Center, which is a nursing facility in San Bernardino that serves individuals with psychiatric and developmental disabilities.

Disability Rights California requested statistics on the number of restraint incidents at the facility in 2008 and other information and records relevant to our abuse investigation. The facility denied our request to many of the requested records, citing peer review and quality assurance privileges as well as contesting our probable cause determination concerning all individuals at the facility.

In addition, in response to our request to meet with individuals at the facility on an informal basis, provide information to such persons, and monitor health and safety conditions, defendant denied our access to the facility and imposed onerous terms and conditions on such physical access.

On May 22, 2009, we filed a Complaint for Declaratory and Injunctive Relief and Motion for Preliminary Injunction to enforce our access authority under federal and state law. Defendant subsequently filed a Motion to Dismiss. A consolidated hearing on the motions is pending. We are currently engaged in confidential settlement discussions.

Abuse and Neglect Goal 3, Obj. C
Mental Health Goal 1, Obj. A

Disability Rights California Staff: Dara Schur, Michael Stortz, Kevin Bayley, Rachel Scherer, Maria Iriarte, Kim Swain; Law clerks: Michelle Reed, Theo Fedoruk, Benjamin Eisenberg, Amy Willis, Sean Danmole

Other Counsel: No

Grant/Funding Source(s): PAIMI 60%; PADD 40%

Psychiatric Hospital Ends Shackling of Immigrant Detainees

See previous Regional Office Report, Issue No. 56

Under mounting pressure by Disability Rights California and San Diego County's Mental Health Director, Alvarado Parkway Institute (API), a psychiatric hospital, recently ended its practice of shackling detainees of the Immigration and Customs Enforcement (ICE) being treated there. Disability Rights California, working in collaboration with the ACLU and Mental Health Advocacy Services advocated for termination of the practice, consistent with patients' rights guaranteed under state and federal law, resulting in the director assigning the County Patients Rights Advocates to conduct their own investigation.

On June 22, 2009, the Mental Health Director sent a notice to API that the hospital had been found in violation of state law and requested that API submit a plan of correction. On July 6, 2009, API submitted a plan of correction that included an agreement that API would inform ICE that detainees at API may not be shackled, and would provide them the full panoply of patients' rights guaranteed under state law. Disability Rights California has since confirmed that the shackling and blanket denials of patients' rights of ICE detainees at API have ended. Currently, API is no longer receiving ICE detainees except on an emergency basis. Those accepted by API for treatment in an emergency are no longer being shackled and are being provided with the full patients' rights provided for under California law.

Before API's change in policy, ICE detainees in need of acute psychiatric care were sent to API where they were kept shackled to their beds 24 hours per day and kept in virtual isolation. They were denied all opportunities for socialization, group therapy, phone calls, television, or visitors. Detainees were denied exercise unless it could be done "at bedside" with shackles on. Family and friends were not informed of the detainees' whereabouts nor were detainees allowed to contact them.

Mental Health Goal 1, Obj. B

Disability Rights California Staff: Ann Menasche and Bernadette Bautista

Other Counsel: Greg Pleasants, Mental Health Advocacy Services; Sean Riordan, ACLU of San Diego and Imperial Counties

Grant/Funding Source(s): PAIMI

Alameda County Agrees to Allow Patients Rights Advocates to Assist Residents of Nursing Facilities

At the request of the Alameda County Patients Rights Advocates (PRAs) office, Disability Rights California challenged the County's position that PRAs are limited to serving patients in psychiatric hospitals, and that their jurisdiction does not extend to individuals who receive mental health services in the county's nursing facilities. As a result of Disability Rights California's advocacy, the Alameda County Department of Behavioral Health Care Service and the County Counsel have agreed in writing that PRA jurisdiction should extend to serving nursing home residents in their county.

Mental Health Goal 1 and 2, Obj. B

Disability Rights California Staff: Pamela Cohen

Other Counsel: No

Grant/Funding Source(s): PAIMI

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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