

# **OFFICE OF CLIENTS' RIGHTS ADVOCACY**

## **ADVOCACY REPORT**

**Winter 2003**

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### **BENEFITS**

#### **Judicial Error Corrected!!**

L.L. is a young woman who receives In Home Support Services (IHSS). In 2001 she was assessed to require 20.1 hours of personal care services. These services include such tasks as meal preparation or clean-up, bowel and bladder care, feeding, dressing, and bathing hygiene. As her needs were over 20 hours in these areas, L.L. met the criteria for "severely-impaired." At a hearing in 2001, she was found by the Administrative Law Judge (ALJ) to be eligible for protective supervision. As a "severely-impaired individual" she was therefore entitled to 283 hours per month of service. Yet, the ALJ made a mistake and classified her as "non-severely impaired" and therefore only entitled to 195 hours per month. Her advocate at the time requested a rehearing but was denied.

In January, 2002, OCRA filed a Writ of Mandamus to secure the additional hours for L.L. OCRA worked with the Attorney General's office to achieve a settlement. In December, 2003, the Superior Court Judge signed the negotiated settlement agreement. This agreement provides that a new decision will be issued classifying L.L. as "severely-impaired" and the county will pay L.L. the difference between what she received and to what she was entitled retroactively to the date of the initial application. Katie Casada Hornberger, CRA, Harbor Regional Center.

#### **Appropriate Services Granted!**

J.C. is a 4-year-old girl with autism and mild mental retardation who resides with her mother and two brothers. In August, 2002, J.C.'s mother, O.C., contacted the county requesting an assessment for IHSS services. The County denied IHSS services and O.C. contacted OCRA for assistance.

With OCRA's help, O.C. appealed the county's determination and agreed to conditionally withdraw J.C.'s appeal to allow the county to reassess J.C. The county took nearly one year to complete three separate home assessments and issued a Notice of Action (NOA) in July, 2003, authorizing just 35.9 hours of IHSS. The county denied protective supervision and related services and authorized few personal care services, citing J.C.'s young age as its reason. The county stated that J.C. primarily required only parental care and supervision. OCRA agreed to represent J.C. at hearing.

At hearing, OCRA argued J.C. required protective supervision, related services and more personal care services than what the county had authorized. The ALJ agreed with OCRA that J.C. required protective supervision and awarded 195 hours of IHSS per month back to August 7, 2002. O.C. received \$24,169.28 in retroactive payment. OCRA is assisting O.C. in reporting this retroactive payment to the Social Security Administration (SSA) in order to ensure that this money does not get misconstrued as countable income or an immediately available resource towards J.C.'s SSI eligibility. Now O.C. can pay off the debt she has incurred as a single mother of three children without financial support, upgrade her vehicle to one more reliable, and have enough left over as move-in costs for her Section 8 housing. Brian Capra, CRA, Westside Regional Center.

### **OCRA Helps Consumer Battle Medi-Cal.**

While riding down the street in her motorized wheelchair, G.W. was hit by a car. She sustained injuries from which she recovered, but her wheelchair was destroyed. The police found the driver totally at fault.

G.W. requested another motorized chair from Medi-Cal. Medi-Cal stated that they would not authorize a manual chair until an assessment was done to determine whether G.W. could "safely" use a motorized chair. G.W. had safely used a motorized chair for over 14 years. This occurred over the course of 5 months, during which time G.W. was homebound and becoming increasingly depressed.

The service coordinator contacted OCRA because of the difficulty G.W. was having in obtaining an assessment. Through the advocacy of the Assistant CRA, the assessment was finally accepted by Medi-Cal. G.W. will soon receive her motorized chair and enjoy her freedom again. Yulahlia

Hernandez, CRA, Cristina Bravo Olmo, Assistant CRA, North Bay Regional Center.

**OCRA Advocates for IHSS Benefits.**

S.F. and L.F. are a married couple in their 40's, both with a diagnosis of mental retardation. The living conditions in their mobile home were sub-standard. S.F. has diabetes and is unable to regulate his sugar levels himself. As a result his levels were in a very dangerous range most of the time. L.F. suffers from renal failure and goes to dialysis 3 times per week. Had she been able to follow her doctor's dietary instructions, she probably would not have a need for dialysis.

The couple was desperately in need of assistance with regulating their medications and their diet as well as assistance in keeping their house clean. Both seemed to have a diet that aggravated their medical conditions. When IHSS went out to do an assessment, the worker simply asked them if they were able to do certain things, such as cook and clean. They proudly answered that they could. So the worker ignored the obvious unkept conditions in their home and determined the couple was completely able to take care of its own needs and were thus ineligible for IHSS.

OCRA took this matter to hearing and argued that the social worker did not take into consideration the cognitive limitations of both S.F. and L.F. which resulted in their inability to maintain themselves in a safe and habitable environment and that it was the social worker's duty to evaluate the cognitive and emotional impairments of applicants. The judge agreed and found both S.F. and L.F. eligible for IHSS services. Maria Bryant, CRA, Lorie Atamian, Assistant CRA, Far Northern Regional Center.

**OCRA's Assistance In Obtaining Remand from Appeals Council Results in a Fully Favorable SSI Eligibility Decision.**

C.J. is a 35-year-old woman with moderate mental retardation. In April, 2000, C.J. applied for SSI. SSA denied C.J.'s application and she appealed. On June 11, 2001, C.J. went to a hearing and did not prevail. The ALJ adopted the opinion of SSA's consultative examiner, who concluded that C.J. was malingering. OCRA filed a request for review of the ALJ's decision with the Appeals Council on August 8, 2001. The Appeals Council denied C.J.'s request for review on May 3, 2002.

On May 5, 2002, OCRA submitted to the Appeals Council a request to reopen C.J.'s case. Along with the reopening request, OCRA attached a position statement asserting that the ALJ had abused his discretion and committed legal error during the hearing, and that his decision was based on a lack of substantial evidence and void as against public policy. OCRA included a new psychological evaluation report by the same psychologist who found C.J. eligible for regional center services along with other regional center documents. The Appeals Council agreed that the ALJ had based his opinion on a lack of substantial evidence and vacated the decision, remanding the case back to the same ALJ for further development. On September 15, 2003, OCRA attended C.J.'s remanded ALJ hearing. During a pre-hearing conference on the record, the medical expert agreed with the regional center psychologist's findings that C.J. met the criteria for SSI eligibility. Accordingly, the same ALJ who previously denied C.J. on the basis of malingering issued a fully favorable decision.

On December 31, 2003, C. J. attended her first interview with SSA to determine her retroactive and ongoing benefits. After offsetting C.J.'s retroactive SSI payment for her welfare benefits received over this time, C.J.'s net retroactive award will be approximately \$26,000, which will be issued in increments of \$9,300 every 6 months for the next year and a half. C. J. intends to purchase a home through Home Ownership Made Easy (H.O.M.E.) for her and her six children, with considerable down payment assistance coming as a result of her participation in the Section 8 Housing Tenant Voucher Program over the past year. This program allows people who have participated in the Section 8 program for one year as a tenant to get monthly mortgage subsidies through Section 8 by transferring his/her voucher to the Los Angeles County Housing Authority. Brian Capra, CRA, and Meriah Harwood, Assistant CRA, Westside Regional Center.

**Foster Parent Should Receive Regional Center Rate.**

D.A. and R.A. are brothers. Both are regional center clients who have lived in the same foster home since 1995. Since that time, the county has paid the foster parent the county rate for the brothers' care when she should have been paid the regional center rate. After learning of the mistake, the foster mother appealed the county's rate determination and called OCRA for assistance. The county thereafter began paying the regional center rate. OCRA represented D.A. and R.A. at the administrative hearing and

requested retroactive payments for them from 1995 to the present. The hearing decision is pending. Eulalio Castellanos, CRA, Kern Regional Center.

**OCRA Representation in Medi-Cal Appeal Gets County to Discontinue Medi-Cal Share of Cost.**

J.G. knew that he needed dental work and a new pair of glasses, but he couldn't afford either. In order for Medi-Cal to pay for them, J.G. would first have to pay his \$329 monthly Share of Cost. Alameda County had assigned this Share of Cost, because instead of SSI, J.G. received more than \$900 a month in Disabled Adult Child Social Security (DAC) benefits. Paying his Medi-Cal Share of Cost would result in his having only \$620 left per month, and that wasn't enough to cover his expenses.

J.G. persuaded an optician to accept payments for an eye examination, but he couldn't keep up with the payments, and he couldn't get the new glasses he needed. On learning about this, J.G.'s regional center case manager contacted OCRA. When OCRA met with J.G., he explained that he had received SSI and Medi-Cal without a Share of Cost before his mother died, but that the SSI had stopped once he began receiving DAC benefits on his deceased mother's Social Security account. This should not have happened. Federal law states that people who lose SSI for that reason have a right to continue getting Medi-Cal without a share of cost. When OCRA helped J.G. file an appeal to remove the Share of Cost, a County Appeals Unit worker researched J.G.'s claims and realized the mistake. The county immediately ended his Share of Cost and agreed to provide for Medi-Cal coverage of the eye examination he had gotten. Now that he has Medi-Cal without a Share of Cost, J.M. can get the health care he needs. Marsha Siegel, CRA, Regional Center of the East Bay.

**OCRA's Success in Getting New Wheelchair for Man Ends Lengthy Wait and Avoids Further Injury.**

V.H. is a 57-year-old man diagnosed with cerebral palsy and tuberculosis who uses a wheelchair for ambulation. V.H. lives independently with supported living services, and has recently recuperated from a bout of pneumonia. In February, 2003, a therapist discovered that V.H.'s wheelchair brakes were worn and required repair. The durable medical equipment vendor took the wheelchair to make the repairs. In the meantime, the supported living vendor

provided an inadequate “loaner” wheelchair. V.H. utilized this uncomfortable and unsafe wheelchair until December, 2003, when the loaner’s seat collapsed and V.H. fell through, suffering a detached toenail and a severe rug burn. The supported living vendor then referred the case to OCRA to assist in expediting the long-delayed wheelchair repairs.

The Assistant CRA immediately contacted the wheelchair vendor to investigate and to advocate for a prompt repair. Although admitting its unacceptable quality of service, the vendor then required a new prescription. The Assistant CRA contacted the regional center’s Occupational Therapy Coordinator who had a new prescription quickly written to prevent further delay. Filomena Alomar, Assistant CRA, Valley Mountain Regional Center.

**OCRA Assists Client at Final Hour.**

R.W., a regional center consumer diagnosed with mental retardation, was denied SSI eligibility. R.W.’s Independent Living Services (ILS) worker contacted OCRA requesting assistance on behalf of R.W. An SSA eligibility hearing was scheduled for R.W., but R. W. had not been able to secure legal representation for the upcoming hearing. OCRA requested a continuance on behalf of R.W. to try to gain sufficient time to gather additional documents and information. The SSA denied the request for continuance, stating that R.W.’s case had been continued twice. OCRA prepared to represent R.W. at her SSI eligibility hearing, assuring that R.W.’s ILS worker and a regional center service coordinator would attend the hearing on R.W.’s behalf. The hearing officer found RW eligible for SSI benefits. Maria Bryant, CRA, Alta California Regional Center, Lisa Navarro, Assistant CRA for Special Projects.

**IHSS Hours Reduction Successfully Appealed.**

L.W. is an adult with Down Syndrome living in the community with his parents. He was notified by Lake County that IHSS services would be reduced from the maximum of 283 hours per month to 195 hours because he had alternative resources for these services and because he no longer met the definition of a “severely impaired” individual. L.W.’s mother, the IHSS provider, contacted OCRA for help.

OCRA assured that an appeal was filed in time for aid to continue unchanged pending the appeal, and arranged for the mother to document the actual hours spend providing services contained in the IHSS program. The mother testified at the hearing about the actual hours needed. With this detailed information, OCRA could argue at the hearing that the consumer is “severely impaired.” The ALJ accepted OCRA’s position that regional center services cannot be considered alternative resources based on a State Department of Social Services All-County Directive. The ALJ’s decision fell slightly short of finding the consumer met the “severely impaired” definition because he did not require quite the 20 hours per week for necessary personal care tasks. However, relying on All-County Letter 93-30, the ALJ correctly ordered that the maximum of 283 hours per month be maintained because the consumer was entitled to protective supervision of 195 hours in addition to other awarded services. This totaled more than 283, so continuation of the maximum hours was ordered. Doug Harris, Associate CRA, Redwood Coast Regional Center.

**M.L. Continues to Be Eligible For SSI.**

M.L. is a 44-year-old year old male who was diagnosed with autism in 1978. He was originally granted SSI because of his autism diagnosis. In May, 2001, M.L. was found by the SSA to be no longer disabled. M.L. filed a timely appeal and OCRA agreed to represent him at the administrative hearing. OCRA hired an expert who evaluated M.L and prepared a report which was submitted to the SSA. At the hearing, the ALJ did not take any testimony but concluded that based on all of the evidence in the record, M.L.’s disability has not ceased. M.L. continues to be eligible for SSI. Katherine Mottarella, CRA, Jacqueline Phan, Assistant CRA, Tri-Counties Regional Center.

**IHSS Termination Appealed Resulting in Restoration and Increase.**

E.H is a regional center consumer who had been living with her mother, who was her primary caregiver. E.H. relied, in part, on 195 hours per month of IHSS hours of support to maintain her in the community. In April 2003, E.H.’s mother encountered personal problems, making it impossible to continue providing IHSS support and E.H was temporarily placed in a group home. E.H. returned to live with her mother in July when the mother’s problems were resolved. The mother tried to have the IHSS restored,

including payment for services rendered during the first half of April for which a time sheet had not previously been submitted. The county told E.H.'s mother it was too late to process the April time card. It also made and broke three appointments to reassess E.H.'s current IHSS needs and restore services. Her mother then contacted OCRA. OCRA advised her to file a state hearing request for both the failure to pay her for April, and to act on the request to reassess E.H.'s current need and begin services. After the appeal was filed, the county appeals representative contacted E.H. and began a series of negotiations attempting to resolve E.H.'s IHSS problems. With OCRA's counsel, E.H.'s mother successfully negotiated payment for April, 2003 and an increase to the IHSS maximum of 283 hours per month. Doug Harris, Associate CRA, Redwood Coast Regional Center.

## **CRIMINAL JUSTICE**

### **Judge Suspends Woman's 6 -Year Prison Sentence.**

A 45-year-old consumer with cerebral palsy lived with her elderly husband, who was very ill, until his death. With no generic resources to help and support this couple with disabilities in the community, they went without crucial healthcare and independent living services for years. When K.P.'s husband died, K.P. was charged with his death. After some investigation, the criminal charges were reduced to charges of elder abuse. While her charges were pending, the regional center found K.P. eligible for services and agreed to recommend and provide supported living services. When the probation report recommended a locked facility, the regional center changed its clinical and case management recommendation to a developmental center placement, refusing to provide any community-based placement or 24-hour support despite its first agreement to do so. In light of this new regional center recommendation, defense counsel requested OCRA's technical assistance and advocacy.

OCRA provided technical assistance and support to private defense counsel on the mandates of the Lanterman Act obligating the regional center to provide a wide variety of supports and services to ensure the consumer resides in the least restrictive environment. At defense counsel's request, the CRA attended the sentencing hearing and advocated that K.P. could be maintained safely in a community placement to serve out her probation terms. The CRA reviewed how 24- hour supported living works, to what



extent one-to-one support could be provided by the regional center and how emergency support may even be more effective than the probation or police department could offer for someone with K.P.'s disabilities. Despite the prosecutor's and probation department's adamant objections, the judge agreed with OCRA and suspended the 6-year prison sentence, believing that the consumer could be safely supported in the community on strict probation with 24-hour support. K.P. presently resides in a crisis care home with 24-hour support until an apartment can be located and prepared to meet K.P.'s unique needs. Leinani Neves, CRA, Valley Mountain Regional Center.

**Young Man with Head Injury Obtains Positive Treatment Outcome in Juvenile Court.**

When T.C. was 9, he was struck by a motor vehicle while riding a bicycle and received multiple orthopedic injuries and a severe closed head injury. T.C. is now 16, and his mother came to OCRA seeking assistance when T.C. became involved with juvenile court. Mother had applied for regional center eligibility when TC was 15, and, while the regional center psychologist found he had a full-scale IQ in the mildly mentally retarded range, the multi-disciplinary team found him ineligible.

The CRA attended T.C.'s juvenile hearings and informed his Public Defender and the judge that T.C. was involved in the regional center eligibility process. The judge granted continuances to permit T.C. to obtain an extensive psychological evaluation by an independent clinical psychologist and to await T.C.'s eligibility determination. At an informal meeting, the regional center reviewed the new psychological evaluation, and found T.C. eligible for regional center services as a person with a condition similar to mental retardation. At the next juvenile court hearing, as a new client of the regional center, T.C. became eligible for the diversion program, including treatment and positive interventions rather than incarceration. Enid Perez, CRA, Central Valley Regional Center.

## **FAMILY LAW**

### ***OCRA Outreach Results in Intervention with Child Protective Services for Monolingual Cantonese Speaking Family.***

OCRA did an outreach at the Chinese Families of the Disabled yearly conference. At that time , OCRA met with a family who has an 18-year-old son. A.Y. has autism and is in his last year of high school. He has a younger brother who went to school with a bruise on his arm. He told his teacher and the nurse that A.Y. had injured him. Child Protective Services (CPS) had been called and had visited the family and given them a list of conditions that had to be met. The parents felt that their son could not have injured his brother and did not understand why they had to meet the conditions set by CPS.

A therapist at the Chinese Public Health Clinic as well as a family friend contacted OCRA, while the parents were in their office. They translated for OCRA and were able to find out the names of the various agencies and individuals the family had contacted regarding this matter. OCRA called the regional center and spoke to the social worker, explaining the importance of regional center involvement, as CPS would want to see that the regional center client would be receiving treatment and other services to deal with his possible aggression towards his brother.

OCRA contacted all of the parties and arranged a meeting at the regional center. It was asked that the social worker, supervisor and psychologist be present. OCRA also assisted the therapist at Chinese Public Health Services in composing a letter to the court explaining the family's compliance with the requirements set by CPS. At the regional center meeting, service options for A.Y were discussed. The regional center agreed to provide out-of-home weekend respite for A.Y. and to contract with a behavioral specialist. The family agreed to find a therapist for both their sons.

OCRA contacted the CPS worker after the meeting as agreed and gave her an update and reiterated the family's compliance with CPS requirements. The CPS worker stated that the family was not in danger of having its younger son removed from the home if the family continued to comply with the CPS plan. Katy Lusson, CRA, Golden Gate Regional Center.

### **Mother Increases Visitation with Child.**

R.A. is a consumer diagnosed with mild mental retardation. She has a 9-year-old daughter, M.M., who is also a consumer of the regional center. R.A. does not have custody of her daughter and her visits are at the discretion of her ex-mother-in-law who has legal guardianship of M.M. The visits are inconsistent, minimal and never overnight.

R.A. petitioned the court for termination of the guardianship. The petition was denied and the court recommended that R.A. receive a complete psychological evaluation before any change to the visitation schedule could result. The court investigator required that the evaluation come from a specific doctor in order to assure the competency of the report. The consumer could not afford to independently pay for this particular doctor's services. The regional center denied her request for financial assistance saying that the court order to get an evaluation was not based on her disability.

R.A.'s visitation rights remained inconsistent and the legal guardian continued to deny R.A. any overnight visits with her daughter, saying that this evaluation had to take place before she could allow a change. OCRA asserted that the denial of guardianship over the daughter was based on R.A.'s lack of parenting skills, which is based on her developmental disability of mild mental retardation.

The regional center changed its position and agreed to pay for the evaluation. Also, parenting skills classes will be put into the IPP so that R.A. can have overnight visits with her daughter and feel confident about her abilities to care for M.M. Noelle Ferdon, CRA, Far Northern Regional Center.

## **HOUSING**

### **Eviction from Subsidized Housing Prevented.**

M.W lives independently in subsidized housing with supported living services. He has both developmental and psychiatric disabilities. He and his supported living staff neglected to pay the rent for November and December, 2003. M.W. was served with a summons and complaint for Unlawful

Detainer (UD) on December 14, 2003, because he had not responded to a three-day notice to pay or quit the premises. The supported living staff contacted OCRA the morning of the last day to file an answer to the UD. OCRA prepared a response to the UD and counseled the consumer and his supported living staff regarding grievance process rights in the consumer's subsidized apartment. In addition, a strategy was suggested for negotiating with the landlord's attorney to try to get the UD rescinded. The answer was filed on time. The supported living staff contacted the landlord's attorney. All past due rent was paid and accepted, and the UD withdrawn, allowing the consumer to remain in his subsidized housing. Doug Harris, Associate CRA, Redwood Coast Regional Center.

**30-day Notice Rescinded and Behavior Modification Services Provided at Group Home.**

I.W. is a 13-year-old boy who has autism and who lives in a level-4i group home. I.W.'s father called OCRA when I.W. received a 30-day notice to vacate the home because of incontinence. The group home owner had requested behavior modification services from the regional center. However, she did not receive a response to her request. OCRA discussed with the owner of the group home I.W.'s imminent threat of being institutionalized should he be required to vacate the home and the process for receiving services from the regional center. OCRA then worked with the regional center to have I.W. evaluated by a behaviorist. The regional center agreed to purchase 20 hours per week of one-on-one behavior intervention services, and the group home owner rescinded the 30-day notice. Joe Tontodonato, Assistant CRA, San Diego Regional Center.

**PERSONAL AUTONOMY**

**Blanket Denial of Rights Averted at Group Home.**

OCRA received a flurry of telephone calls from panicked consumers, family members, and service providers during the holiday week. At least a half dozen consumers and their family members had been told by the staff at their group homes that they could no longer (1) watch television with commercials, (2) have visits with family outside the home, (3) have unsupervised outings in the community, (4) have pets, or (5) use their home

walkie talkies. The residents were told that their treating psychologist had ordered these denials of rights as part of their treatment plan. With the Christmas and New Year holidays fast approaching everyone was extremely upset at the blanket denials that had been imposed.

All of the consumers who contacted the OCRA office live in one of three homes operated by the same owner. As part of the home's program, all of the residents in these three group homes participate in weekly counseling sessions with the same licensed psychologist.

The CRA called an emergency meeting at one of the group homes with representatives from the regional center, day programs, group home agencies, consumers, and family members. Prior to the meeting, the CRA conducted an investigation of the denial of rights allegations by speaking individually with each consumer who called and/or their family member, the group home owner, and representatives from the regional center.

At the meeting, the CRA presented information to everyone regarding the denial of rights process and how good cause must exist for each individual denial of right. The CRA was able to obtain confirmation from the regional center that none of the denials would take place. The regional center assured all of the residents and their families that all decisions regarding denial of rights would go through the IPP planning process in the future and not be solely the decision of the treating psychologist. Eva Casas-Sarmiento, CRA, Guadalupe Moriel, Assistant CRA, Regional Center of Orange County.

### **J.L. Obtains Necessary Accommodations to Maintain His Job.**

The parents of J.L., an adult consumer, contacted OCRA after J.L. was threatened with termination from his job of many years at a local bank. J.L. was reported to have performance issues and was believed not to be "growing" with his job.

Investigation revealed that J.L.'s alleged performance issues coincided with the hiring of a new supervisor. Further investigation revealed that this supervisor was acting in a manner that was insensitive to both J.L.'s disability of autism and his Chinese culture. This insensitivity caused J.L. a great deal of anxiety and stress, which in turn resulted in performance issues.

PAI staff worked in conjunction with OCRA staff to help J.L. and his family advocate for disability and culturally appropriate accommodations from his employer. PAI and OCRA staff convened a meeting involving J.L., his father, his employer, Department of Rehabilitation staff, regional center staff and staff from a supported work program to review J.L.'s job description, discuss changes expected to occur in J.L.'s job duties over the next year, and explore accommodations that would support him in performing his job duties. To help clarify disagreements between the client and employer regarding J.L.'s performance, the Department of Rehabilitation agreed to fund an Employment Situation Assessment and full time job coach services.

J.L. remains on the job at this time, with a new supervisor, clarified job duties and accommodations necessary to perform those job duties. He is now flourishing. Katherine Mottarella, CRA, Tri-Counties Regional Center, Michelle Uzeta, Protection & Advocacy, Inc.

### **Consumer Uses Small Claims Court to Collect Damages.**

In August, 2002, R.S. began working in an enclave at a local company supported by habilitation services. His multiple diagnoses includes Prader-Willi Syndrome, which can include inappropriate food-taking behavior. The habilitation services agency staff was aware that his work environment must be void, or reasonably void, of food. Otherwise, he would eat any food available, including that belonging to coworkers. Three weeks after his hiring, workers at the company reported food missing from their area. A brief investigation found that R.S. had taken the food. R.S. was terminated. During the investigation, the employer broke into R.S.'s locker.

OCRA referred R.S. to the State Department of Fair Employment and Housing, advising that he request an investigation for discriminatory practice. R.S. filed a complaint against the employer. After investigating, the Department found that the employer was not aware of the Prader Willi diagnosis and was therefore not liable for failure to provide reasonable accommodation.

R.S. again contacted OCRA for assistance. The CRA suggested that he file with the Small Claims Court and provided the appropriate PAI publications. R.S.'s mother filed a discrimination suit in Small Claims Court naming both the employer (for the broken lock) and the habilitation services agency (for three times his lost wages) as defendants. The habilitation services should

have requested an accommodation from the employee to prevent the problems from arising. The mother, who is the conservator, was appointed Guardian Ad Litem. At the trial, she cited Title III of the Americans with Disabilities Act and the State Unruh Act for the legal rationale. The mother utilized the services of the Small Claims Court Advisor in her preparation of the case.

Less than one week before the trial, the employer settled for \$500. However, the habilitation services provider would not settle. R.S. proceeded to trial against the one remaining defendant. At trial, the court ordered the habilitation services agency to pay \$445. in damages for its actions. Matt Pope, CRA, Eastern Los Angeles Regional Center.

## **REGIONAL CENTER**

### **C. G. Gets Regional Center Services.**

C.G. and her adopted mother received 16 hours a month of respite for the past 2 years from the regional center. The regional center terminated respite in May, 2003, without written notice. The family was given a number of reasons verbally by the service coordinator explaining the reason for termination. C.G.'s mother contacted OCRA for help.

OCRA agreed to provide technical assistance. The CRA instructed C.G.'s mother to request an appeal packet verbally and follow up with a written request. C.G.'s mother made several requests and was never provided with an appeal packet by the regional center. The service coordinator finally sent C.G.'s mother a letter in October, indicating that C.G. was unable to appeal because the authorization for respite had expired in May. C.G.'s mother decided to file for hearing and the CRA assisted in filling out the appeals form. One week after the fair hearing request was sent, C.G.'s mother received a phone call from the regional center indicating that respite would be reinstated and compensatory hours would also be given, retroactive from June 1, 2003. Aimee Delgado, CRA, Rita Colleen Snykers, Assistant CRA, San Gabriel/Pomona Regional Center

### **Regional Center Agrees to Provide Services.**

K.A. and K.A., twin sisters, had been diagnosed in the past with mild cerebral palsy and mild mental retardation. They received regional center services as young children, but services stopped when their mother began to home school them at the age of 6. Before their 18th birthday, their mother requested services be reinstated for her daughters from the regional center and was denied.

The family called OCRA for help. The Assistant CRA agreed to provide technical assistance. The Assistant CRA guided the mother on how to carefully request and prepare for the regional center intake process. OCRA reviewed the regional center files and school files and recommended that the mother get independent evaluations on her daughters. The mother had an independent evaluation done on the twins and, with the help from OCRA, was successful in having the twins' cases reactivated by the regional center. Aimee Delgado, CRA, Rita Colleen Snykers, Assistant CRA, San Gabriel/Pomona Regional Center.

### **Denial of Regional Center Eligibility Reversed.**

E.M. is a 19-year-old woman who first applied for regional center services in 1987 and was denied. She applied a second time when she was about to turn 18 and was again denied in March of 2002. Neither denial was appealed. She again applied for eligibility in 2003, after asking OCRA for assistance.

E.M. struggled throughout her life with significant behavioral and intellectual limitations and suffered major psychiatric problems in her mid-teens when her father became ill and subsequently died. Testing by the schools and the regional center over the years had consistently identified speech and language delays amidst general delays in motor, social and academic skills. Nevertheless, cognitive estimates varied from low average to mild mental retardation with the latter scores usually being attributed to various causes such as lack of cooperation and emotional problems.

OCRA asked an independent psychologist to review E.M.'s case and perform his own evaluation. He concluded that her scores in the range of mild mental retardation most likely were an accurate reflection of her cognitive skills and that prior evaluators had misread the reason for the



scores. The CRA, with input from the psychologist, developed a case for eligibility based on E.M.'s requiring treatment similar to someone with mental retardation. After reviewing the analysis, the regional center requested additional functional information from E.M.'s school and the family, and finally found her eligible for regional center services. Frank Broadhead, CRA, Redwood Coast Regional Center.

### **Housing Agreed to for Consumers.**

The facility in which numerous regional center consumers were living closed. The facility staff then moved all of the consumers into community homes, except for 7 consumers. The facility could not place these consumers because the regional center considered these consumers at a lower-needs placement level.

The facility could not place the consumers until the need of each consumer was resolved. The CRA and Assistant CRA conducted a training to the parents of consumers on the fair hearing process. OCRA also contacted the Area Board 12 and together met with facility staff to provide technical assistance on establishing the need of each consumer. The regional center then agreed to raise the levels of all consumers to level 3 and the consumers were all moved into community homes. Bernadette Bautista, CRA, Rubidia Vasquez, Assistant CRA, Inland Regional Center.

### **Regional Center Offers Respite to Consumer-Mother.**

P.C. is an adult consumer living with her partner, their four year-old son, and her 6-year-old daughter from a prior relationship. P.C. received respite services for her children while her son was involved in the Early Start Program. When he reached age three, those services were terminated as the son does not have a developmental disability. P.C.'s daughter also does not have a disability. Several months later, due to stresses of parenting, medical issues, and family crises, P.C. again asked for respite to help maintain her family. The regional center refused, stating respite was only possible if the children were regional center consumers.

P.C. and her partner contacted OCRA. OCRA concluded they were entitled to respite. The Lanterman Act provides parents with developmental disabilities the same array of services and supports provided to parents of children with developmental disabilities. This includes respite for parents,

as well as child care and similar services. P.C. and her partner appealed the denial and OCRA agreed to represent them at a fair hearing. One week prior to the hearing, the regional center contacted OCRA and indicated there was no need for a hearing given the laws OCRA had cited. The notice of action was rescinded and the regional center agreed to contact the family to determine the amount of respite services needed. Doug Harris, Associate CRA, Redwood Coast Regional Center.

### **Regional Center Reverses Denial of Eligibility.**

D.T. was a client of the regional center for 4 years due to a diagnosis of mental retardation. He was on SSI, lived in a board and care home Monday through Friday, and worked at a day program. Unexpectedly, D.T. was terminated from regional center eligibility on the basis that he was no longer developmentally disabled.

The CRA and Assistant CRA met with the consumer's father to educate him regarding eligibility, began gathering medical and academic records, and spoke to the regional center appeals specialist regarding eligibility. The regional center then agreed to continue the consumer's eligibility. Bernadette Bautista, CRA, Inland Regional Center.

### **Consumer Found Eligible Under 5<sup>th</sup> Category Prior to Hearing.**

R.B. is 20-years-old and has cognitive impairments and a severe hearing loss as well as mental health issues. She had applied for regional center eligibility under the 5<sup>th</sup> category, and had been assessed by the regional center team. R.B.'s mother called OCRA to ask for assistance because R.B. had not received a Notice of Action from the regional center.

During investigation, OCRA determined that when the regional center had done its home visit, the sign language interpreter had eliminated the signs that did not make sense and had put R.B.'s signs into English order. OCRA called the regional center and requested a second home visit with a different interpreter. OCRA was also to be included in the meeting.

OCRA arranged for R.B. to have an independent assessment by a team that knew how to assess people with multiple disabilities and with hearing impairments. The assessment was completed and sent to the regional

center. Before the scheduled appointment with the regional center staff, R.B. received a letter from the regional center finding her eligible for regional center services. Katy Lusson, CRA, Golden Gate Regional Center.

**OCRA Settles Regional Center Eligibility Case for Youngster.**

A.R. is a 4-year-old boy with a diagnosis of pervasive developmental disorder not otherwise specified (NOS). A.R. sought regional center eligibility under the criteria for ‘autism’. The regional center denied eligibility.

OCRA agreed to provide direct representation at the eligibility hearing. OCRA began the process of obtaining records and contacting potential witnesses. OCRA retained a neuropsychologist to complete a comprehensive review and submit a report regarding his findings. OCRA also contacted the staff at A.R.’s current educational placement, and asked if they could submit a letter concerning regional center eligibility. OCRA began working on the evidence packet and completing the witness preparation in order to proceed to the hearing.

OCRA submitted the expert’s report and the educational placement’s letter to the regional center a few days before the document exchange was scheduled. After reviewing the additional information, the regional center contacted OCRA and agreed to settle the case and find A.R. eligible for services. Marvin Velastegui, CRA, Gloria Torres, Assistant CRA, San Andreas Regional Center.

**Mediation Secures Early Start Agreement for ABA, Speech Therapy, and Occupational Therapy Services.**

J.M. was already close to 3-years-old when she was found eligible for Early Start services because of a diagnosis of autism. Eight to twelve weeks later, the recommended speech therapy and occupational therapy began. With not much time remaining before her third birthday, her parents and the regional center discussed how to provide a recommended intensive autism program. The regional center contracted for an assessment by an Applied Behavior Analysis (ABA) agency. ABA techniques were so successful that J.M. made progress during the assessment. Her parents wanted her to receive in-home ABA, but since she was now three, they could not persuade the

regional center to provide the service. J.M.'s parents paid for the ABA themselves. They then contacted OCRA, who advised them that Early Start law forbids delay in the provision of services and forbids cost to the child's parents.

After discussing the situation and reviewing J.M.'s records, OCRA agreed to represent her in an Early Start appeal. At mediation, OCRA and her parents set out the facts and dates relating to J.M.'s assessments, the recommendations for services, and the actual provision of services, as well as the parents' concerns and hopes for their daughter. With this understanding of the situation, and even though J.M. had already turned three, the parties reached a mediation agreement that the regional center would reimburse J.M.'s parents for the cost of the speech therapy assessment and ABA services already paid for, and would provide additional, or compensatory, speech therapy, occupational therapy, and ABA services. Her parents are advocating for comparable services in her preschool program. Marsha Siegel, CRA, Regional Center of the East Bay.

### **Regional Center Provides Dentures.**

M.D. is a 61-year-old man with a diagnosis of epilepsy, mild mental retardation and deafness. He spent much of his childhood in state hospitals prior to his diagnosis of deafness. M.D. has no upper teeth and only seven lower teeth. He was denied funding for dentures by DentiCal and subsequently made a request to the Regional Center to provide funding. They too denied him, stating that the loss of his teeth was not a direct result of his developmental disability. The Assistant CRA took this matter to an informal hearing and argued that the loss of his teeth was due to the large amounts of Dilantin and Phenobarbital he has taken to control his seizures, thus making the loss of his teeth a direct result of his developmental disability. The regional center agreed and is paying the entire amount of the cost to get M.D. his much-needed dentures. Lorie Atamian, Assistant CRA, Far Northern Regional Center.

## **SPECIAL EDUCATION**

### **Compensatory Classes Obtained.**

R.B. is a 20-year-old attending a Los Angeles Unified School District High School. He currently resides in a regional center group home. His group home administrator was present at his last few IEP meeting but R.B.'s mother was not present. When his mother secured copies of the documents, she discovered that R.B. was not receiving any Speech and Language (LAS) services despite the fact that he clearly needed them. His prior goals included utilizing a Picture Exchange Communication System (PECS) and simple signs.

R.B.'s last IEP stated that no LAS services had been provided because no therapist was available. R.B.'s mother and regional center caseworker filed for hearing to secure both future services and compensatory time. They contacted OCRA for help at the mediation with the school district. OCRA represented at the mediation on behalf of R.B.

At the mediation, OCRA secured 30 hours of compensatory services and future services. The compensatory services must be completed by the end of the 2003/2004 school year when R.B. will finish his educational career with the district. The LAS services actually started the next week before an implementation IEP was drafted. R.B. is now receiving the services he needs to be more independent when he completes high school next spring. Katie Casada Hornberger, CRA, Harbor Regional Center.

### **Student Will Remain in His Regular Education Classroom.**

D.W. is diagnosed with autism. D.W.'s school district also wanted to label D.W. as having an emotional disturbance with a tendency to engage in inappropriate sexual touching. The district wanted to transfer D.W. out of the regular classroom to a more restrictive environment. Consequently, the district requested an evaluation from the County Department of Mental Health. D.W.'s parents contacted OCRA. OCRA attended an IEP meeting and requested a simultaneous independent evaluation. The conclusion from both evaluations was that D.W. was doing well in the regular education classroom with his one-to-one aide. As a result, D.W. will remain in his

current educational placement. Eulalio Castellanos, CRA, Kern Regional Center.

**School District Will Provide Sign Language Instruction.**

A.V. is a student diagnosed with autism who requires sign language instruction. A.V.'s mother requested such services for her son and called OCRA when the school district denied them. OCRA contacted the district's Director of Special Education and after some informal advocacy, the district agreed to provide the additional instruction. Eulalio Castellanos, CRA, Kern Regional Center.

**Minor Returns to School with Health Aide Assistance and a Full Assessment of Special Education Needs.**

Y.R., a 7-year-old diagnosed with cerebral palsy and seizure disorder has not attended school this year or received a school assessment to address her special education needs. The school refused to allow Y.R. to attend school until Y.R.'s mother or the regional center provided a nurse. Y.R.'s mother contacted OCRA for assistance.

OCRA agreed to discuss the matter with the school, Y.R.'s doctor, and regional center staff and assist in creating an effective strategy for having Y.R. return to school with appropriate services in place. The school agreed to Y.R.'s return to school with a school district classroom health aide and to conduct a full evaluation of Y.R.'s special education needs, including occupational and physical therapy. Tim Poe, CRA, North Los Angeles County Regional Center.

**Student Retains In-Home Behavior Therapy.**

I.I. is a client of the regional center and attends school in the Los Angeles Unified School District. The parents contacted OCRA after an unsuccessful IEP meeting. At the IEP meeting, the parents had refused to sign an IEP that would have taken away in-home behavior therapy. The district wanted to terminate the full 10 hours per week of therapy. The parents filed for due process.

At the mediation, the CRA argued that I.I. continued to need the therapy. After negotiation and discussion, the school agreed to cut the weekly therapy

by 2 hours per week from 10 hours to 8 hours, and to increase the monthly supervision of the therapist from 4 hours to 6 hours per month. Matt Pope, CRA, East Los Angeles Regional Center.

**Immediate Full inclusion Placement With 1:1 Aide Is Result of OCRA Advocacy.**

J.H. was placed in a special day class for children with severe disabilities. Perhaps because there was no full time teacher, the children in the special class were particularly rowdy, and J.H.'s behavior began to deteriorate. During this same time period, J.H. was being successfully mainstreamed, with one-to-one support, into a general education first grade reading class. J.H.'s parents decided that inclusion in a full time general education placement would be more appropriate for J.H., and began requesting an IEP meeting. After a month of unanswered requests for an IEP meeting, J.H.'s parents contacted OCRA.

An IEP meeting was scheduled and held for J.H., at which his parents and OCRA advocated for full inclusion. School district members of the IEP team were firmly opposed to such placement and said he could not be fully included because he was below the first grade academic level. The staff also maintained that J.H. should not be fully included because his self image would suffer.

The district scheduled a second IEP meeting to which the Director of Special Education was invited. The Assistant CRA worked to keep the IEP team focused on J.H.'s right to the least restrictive environment and his record of successful mainstream experiences when he was provided with full support. The day after this IEP meeting, J.H. was placed in a general education first grade as a full-inclusion student, with full one-on-one support. Celeste Palmer, Assistant CRA, Regional Center of the East Bay.

**Sexual Abuse Complaint Filed and Investigated.**

Z.R. is a 7-year-old boy who has autism and who was sexually abused at school. Z.R.'s mother had Z.R. examined at a hospital then called OCRA to determine what else to do. OCRA confirmed that the abuse had been reported to the child protective services agency and to the police. OCRA recommended convening an emergency meeting with Z.R.'s mother and regional center service coordinator plus school personnel. OCRA requested

that the service coordinator contact the regional center's on-call psychologist, who performed an emergency evaluation. OCRA also asked the service coordinator to purchase the services of a behavioral specialist to perform an assessment of Z.R. to evaluate his need for psychological treatment. A new educational placement was obtained at the emergency IEP. Finally, OCRA requested and secured double the respite hours for Z.R.'s mother pending a change in Z.R.'s educational placement.

Subsequently, OCRA assisted Z.R.'s mother in filing a complaint with the Superintendent's Office of the School District as well as the Professional Practices Division of the Commission on Teaching Credentialing. Joe Tontodonato, Assistant CRA, San Diego Regional Center.

***Student Makes Swift and Significant Progress.***

B.G., a 9-year-old student with autism, was attending a special day class for students with severe disabilities in his mountain community. He was successfully mainstreamed with the support of a one-on-one paraprofessional who provided services including assistance with his academic goals, communication training including American Sign Language, behavioral intervention, sensory integration therapy, and a home program 5 times per week. None of these services were documented in his IEP and when the paraprofessional moved, all of his services stopped. B.G.'s progress also stopped.

B.G. developed very aggressive behaviors and showed regression in his academic, social, and communication skills. The family reported regression and aggressive behaviors in the home. The district reassigned him to a classroom of children described as "medically fragile." School personnel reported 100-150 aggressive acts each day. He caused injury to himself and the staff, hospitalizing one. B.G. was suspended for 10 days, and the police were called. The SELPA director questioned the regional center about an out-of-home placement into an urban school district that would provide an appropriate program.

OCRA demanded that the district create a program for B.G. that was designed for a student with autism. OCRA contacted a non-public school (NPS) for children with autism that was considering opening a school in a community one hour away. The district agreed to fund an Independent Educational Evaluation (IEE) by the NPS. The NPS attended B.G.'s



IEP/Manifestation Determination meeting and participated in designing an educational program. Following suspension, B.G. began to attend a program created for him. The district provided a classroom, a supervising teacher and two aides. The NPS provided an aide and a behaviorist to lead the program and to train the district staff. Within days, B.G.'s aggressive behaviors were reduced to 1-2 per day. He began to make academic progress, to communicate his needs, and to interact socially with the staff. The NPS completed the IEE and recommended that B.G. be integrated with his peers. He is working on academic goals and is expected to be speaking 10-20 words by the next reporting period. Kay Spencer, Assistant CRA, Central Valley Regional Center.

**Special Education Student Reclassified.**

J.P. is a 5-year-old boy in a regular education kindergarten class. His parents contacted OCRA because J.P. was supposed to be receiving resource services and was not. The parents were also concerned that J.P. was not receiving all of the services in his IEP. After reviewing J.P.'s IEP, OCRA became convinced that J.P. was actually a full-inclusion student who had been misclassified and would be better served if he was classified as a full-inclusion student.

OCRA called the school administrator and scheduled an IEP. The CRA suggested that if J.P. were reclassified as a full-inclusion student, he would receive the services of a full-inclusion specialist. This would give J.P.'s parents the type of coordination they were requesting. It was also requested that a resource specialist provide compensatory services for the time missed. At J.P.'s IEP, the team agreed to classify him as a full-inclusion student. They also agreed to the compensatory time from the resource specialist. Katy Lusson, CRA, Golden Gate Regional Center.

**OCRA Assists Family to Specify and Implement IEP Goals.**

E.F. is in a special education day class. The regional center case manager sought OCRA's assistance with E.F.'s special education problems. After speaking to E.F.'s mother, it determined that E.F. was not receiving the speech and language services identified in her IEP. It was also determined that E.F.'s goals and objectives were vague and unmeasurable and that her placement needed to be re-evaluated.

At the IEP, OCRA was able to have E.F.'s goals and objectives rewritten. The IEP team agreed to provide the speech and language services as written in the IEP. The administration also agreed to show the mother two new placement options for her child and to reconvene the team after she visited these classes. Katy Lusson, CRA, Golden Gate Regional Center.

### **OCRA Puts a Halt to Lunchtime Segregation.**

K.L. attended high school and was in a special education class. A new rule had been implemented stating that students who attended special education classes could not leave the cafeteria at lunchtime because it was too dangerous for them to wander around in the playgrounds.

OCRA went to the school and investigated the lunchtime procedure. After confirming that the procedure segregated special education students, OCRA spoke with the principal about the procedure. The lunchtime procedure was immediately changed and more staff were added to supervise the students. Bernadette Bautista, CRA, Inland Regional Center.

### **One-to-One Aide to Assist with Special Activities.**

J.A. is a mainstreamed student in high school. This is her first year of high school and she has been attending a high school out of her district because last year's IEP team had recommended this placement. J.A. has mild mental retardation due to fetal alcohol exposure. She was adopted as an infant and her mother had always provided her with many activities in settings that were not specifically for youngsters with disabilities.

J.A. was in the church choir and had recently gone on a five-day trip with the choir during which she had no special support or supervision. J.A. and her mother were unhappy because J.A. had been excluded from extra-curricular activities and her special education teacher was being overly protective with her. One example of this was that J.A. wanted to eat lunch with the general population and her teacher wanted her to eat with the special education students. The mother had attempted to negotiate with the

district administrator to get J.A. transferred to her home school but without success.

Mother called and asked OCRA to represent J.A. at the IEP meeting that had been set-up to discuss these issues. OCRA interviewed J.A. and determined that indeed J.A. did want to transfer and was not happy in her present placement. OCRA spoke to the administrator and an IEP meeting was set. At the meeting, the teacher and administrator agreed that J.A. had been treated unfairly in relation to the extra-curricular activities. The IEP team determined that J.A.'s needs were not being served in her present class and that her home school had a program that would be better able to meet her needs. The school also agreed to provide a one to one aide to assist J.A. with the extra-curricular activities that she is entitled to attend, which includes drama club and a choral group. Katy Lussion, CRA, Golden Gate Regional Center.

### **School Addresses Many Needs.**

N.S. is a 5-year-old girl who has Down Syndrome, is non-ambulatory, and legally blind. The school district had refused to assess the child's physical therapy (PT) needs for more than two years and were changing her placement from a vision-impaired pre-school program to a kindergarten program with no vision component. In spite of the facts that N.S. could not walk, that her parents had asked for physical therapy many times over a period of more than two years, and that her condition was not covered under other programs, the school district maintained that that it was not responsible for PT.

When the district insisted that N.S. be placed in a kindergarten classroom that did not provide any vision services, N.S.' parents sought help from OCRA. OCRA advocacy at an IEP meeting resulted in a signed Assessment Plan for PT, for a durable medical equipment needs assessment, and for a U.C. Berkeley vision assessment. It was also decided at that meeting that N.S. would remain in her current placement for the vision-impaired until the recommendations from the vision assessment could be reviewed.

When the district failed to meet required timelines, OCRA filed a complaint with the California Department of Education. At a subsequent IEP meeting, the school district agreed to provide N.S. with ongoing PT for two hours per

week, plus an additional 20 hours compensatory education before August, 2004, and 10 hours per year of extra consult time for classroom staff and parents. The school district also provided N.S. with a walker, a car seat and a stroller, and is acquiring leg supports. It was decided that N.S. will stay in the vision-impaired program unless the vision report recommends otherwise. Celeste Palmer, Assistant CRA, Regional Center of the East Bay.

**Special Education Settlement Reached through Mediation.**

When K.R.'s behavioral outbursts increased to a level no longer suitable for a regular education setting, he was placed in a special day classroom. In his SDC class, he was receiving minimal attention from various aides assisting in the classroom. K.R.'s behaviors continued to exceed controllable levels. In October, 2003, at the recommendation of an IEP meeting held in April, 2003, K.R.'s mother asked that a one-to-one aide be assigned to K.R. throughout his school day and that the district conduct a Functional Behavioral Analysis (FBA) in order to develop an appropriate behavioral intervention plan (BIP).

The district refused the first request stating that K.R. receives one-to-one *attention* from the aides in the classroom. K.R.'s mother then filed for fair hearing. When she also filed a compliance complaint to get the FBA done, the district agreed to conduct the FBA. Despite the recommendations made in the FBA and the BIP, no one-to-one aide was offered.

OCRA agreed to proceed to Fair Hearing with the mother. At mediation, the district representatives initially continued to assert that K.R. receives one-to-one attention satisfactory to his needs. The various assessments showed that K.R. is more responsive to individual attention, and is more functional when he has one specified person around him consistently. The district finally agreed to provide a full time one-to-one aide who will work only with K.R. The district also agreed to extend his aide time from 8:30 a.m. to 2:30 p.m., his entire school day. C. Noelle Ferdon, CRA, Far Northern Regional Center.