

UNFAIR HEARINGS

**How People with Intellectual &
Developmental Disabilities Lack
Access to Justice in California**

Plain Language Summary



**A report researched and co-authored by
Disability Rights California
Disability Voices United
Integrated Community Collaborative
Stanford Intellectual and Developmental Disabilities Law and Policy Project**

November 2021

REPORT SUMMARY

“I felt I had no voice there. There was so much intimidation.”

“How am I supposed to trust our service coordinator or my regional center again?”

“The judge spoke very fast and the interpreter could not translate everything he said, so I did not understand anything that was happening.”

“When the regional center has a team of lawyers and you can’t afford an advocate, it’s not really a ‘fair’ hearing.”

IMPORTANT LEGAL RIGHTS

People with intellectual or developmental disabilities (I/DD) served by regional centers have important legal rights. California’s Lanterman Act gives them the legal right to the services and supports they need to live, work, and play in their homes and communities, just like people without disabilities. But the statements above give us a look into how these legal rights look “on the ground.” They highlight how frustrating the fair hearing is for many people with disabilities and their families – especially people of color.

THE FAIR HEARING SYSTEM

When people served by regional centers have unmet needs, they have the right to demand the services and supports they need at a “fair hearing.” A *fair hearing* is a meeting with a judge, the regional center, the disabled person, the person’s family, and others involved in the case. It’s a chance to tell the judge about the problems with services. The judge is supposed to check if the regional center is meeting the person’s needs.

IS THE FAIR HEARING SYSTEM “FAIR?”

Regional centers were designed to *help* people with I/DD get needed services and supports. The hearing process was designed to *help* people work out disagreements. But the system can be so complex and unfriendly, especially for people of color, that it may actually *prevent* them from getting the very services they have a right to receive.

IT SEEMS MORE LIKE AN “UNFAIR HEARING”

Many disabled people and their families call it an “unfair hearing.” They feel the system treats them unfairly. And they do not feel heard. Our research supports those feelings.

In writing this report, one of our goals was to show how disabled people and their families who do not have lawyers experience the fair hearing system. To do this, the four disability rights organizations that wrote this report analyzed information from:

- The Department of Developmental Services,
- California’s 21 regional centers,
- The Office of Administrative Hearings,
- Lawyers who represent people served by regional centers, and
- A survey and follow up interviews with people served by regional centers and their families.

WHAT WE LEARNED

Our research, survey and interviews produced these worrisome findings:

Regional Centers Did Not Play by the Rules

Nearly all of the people we surveyed had one or more problems with the individual program planning (IPP) process. IPP meetings are where decisions about services and supported are supposed to be made. The most common complaint was an inability to move forward because the **regional center did NOT send a decision-maker to the IPP meeting**. People also reported problems with the process for working out disagreements. Regional centers and their lawyers would use this process to help themselves instead of helping the person.

A Black Box

Many people who responded to the survey said the system was a *black box* – hard for non-lawyers outside the box to access and understand.

Lawyers for Regional Centers – Not for the Person with I/DD

Regional centers have lawyers to help them at the hearings. But they do not provide lawyers for the person trying to get services. And many people served by regional centers cannot afford their own lawyer. Many people – especially those of color – think these are big problems that take away their voices and affect everyone.

Language and Cultural Barriers

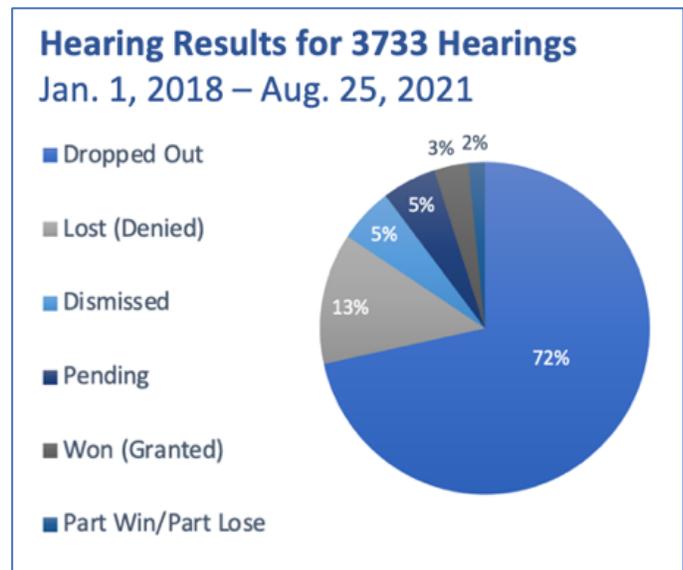
Language access is a right, but meetings and hearings often do not have trained interpreters. Translated materials are rare. Many people from other language and cultural groups are not used to asking questions to people in charge. This leaves them and their families *in the dark*—not able to understand what regional centers are saying.

No lawyer— why bother?

- More than half of people who responded to our survey said they *needed* legal help but could not afford a lawyer. Most of these were people of color.
- Most people decide to drop out of the process before the hearing.
- People who decide to take their case all the way to a hearing rarely win.

After the hearing – not so good either

Many clients had problems after the hearing, too. Even if the person won, some regional centers would not follow the judge’s order. Or if the person lost but their situation changed, some regional centers still would not look at the person’s new situation or give needed services. People also said they could not appeal because they could not afford a lawyer.



HOW TO MAKE THE SYSTEM FAIRER

We think there should be changes that could bring the system closer to its original goal – providing a system that helps people with I/DD to live like people without disabilities. DDS also agrees there are problems with the fair hearing system and wants to see changes.

DDS could do more...

For starters, DDS could:

- Let people have more say about how the hearing process should work
- Investigate problems and fix them as needed
- Team up with disabled people and their families to train judges every year
- Make all fair hearing decisions public
- Do a better job of making sure the whole system works for everybody

Our two most important ideas are:

1. **Move the fair hearings process to Department of Social Services (DSS).** Many other systems in California that serve disabled people, including IHSS, use the DSS fair hearing process. They are more used to working with disabled people who do not have lawyers. Their process is easier and less formal. We believe people served by regional centers will find it fairer, less intimidating, and easier to understand.
2. **Take steps to improve access to justice** for people with I/DD, and especially to ensure more fairness for people of color. Too many people of color are treated unfairly when they disagree with their regional center. The changes we want would help those communities protect their rights.

In the table on the next pages, we describe the way things are now, and the way we think things should be instead.

Focus: Regional Center “Customer Service”

How Things Are Now	How Things Should Be
The way they work now, regional centers often make people wait too long for services, say “no” too much when people do ask for services, and make people feel hurt or upset.	Regional centers should work with people and their families in ways that are faster, easier to understand, and more focused on what they truly want and need.
Regional centers don’t send decision-makers to IPP meetings, which means it takes longer to make important decisions.	Regional center decision-makers must go to all IPP meetings.
A regional center committee may make its own decisions <i>without giving</i> the person or their family a chance to speak up or be part of that decision.	Decisions about services must be made only at IPP meetings so disabled people and their families can be part of making the decision.
Regional centers can take as much time as they want to decide about a service. This is known as <i>denial by delay</i> .	Regional centers must clearly approve or deny requested services by a specific deadline.
Many Notices of Action do not explain why the regional center said no to a service.	All Notices of Action must be in plain language. Notices that say no to something must clearly explain why the regional center said no. If there is a hearing about the denial, the regional center must prove why the service is <i>not</i> needed.

Focus: Alternative Dispute Resolution - Informal Meetings and Mediation

How Things Are Now	How Things Should Be
<p>The regional center doesn’t feel pushed to work out disagreements before going to hearing because nothing bad happens to them if they go to hearing and lose.</p> <ul style="list-style-type: none"> There is no extra cost for the regional center if they go to hearing without fixing the disagreement first, and Regional centers don’t have to make up for services that they should have given but didn’t. 	<ul style="list-style-type: none"> The regional center has more reasons to try to work out disagreements before going to hearing, because if they lose at hearing it will have to: Make up for services that it should have given but didn’t, or Pay extra costs for not providing needed services.
<p>The regional center must offer an informal meeting with a regional center decision maker, if the person asks for one. But this meeting usually helps the regional center, not the person.</p> <p>A person may ask for mediation, which is a way to solve problems with the help of a person that doesn’t work for the regional center. But the mediation will only happen if the regional center agrees. If the regional center does agree to the mediation, the regional center does not need to give the person anything before the mediation.</p>	<p>The informal meeting with a regional center decision maker will only happen if both sides want it.</p> <p>Mediation must happen if the person served by the regional center asks for it. Two days before the hearing, the regional center must tell the person in writing why they said no to the service the person asked for. The regional center has to do this using plain language.</p>

Focus: Fair Hearings

How Things Are Now	How Things Should Be
<p>The Office of Administrative Hearings (OAH) runs all the fair hearings about disagreements between regional centers and the people they serve. DDS hearings are not as formal as rules in a court trial. But OAH judges usually require both sides to follow strict rules that are hard for people to understand and follow when they don't have a lawyer helping them. For example:</p> <ul style="list-style-type: none"> ▪ At least 5 days before the hearing, the person and regional center MUST give each other the following things: <ul style="list-style-type: none"> ○ copies of the documents they will bring to the hearing; and ○ a list of people they want to be at the hearing and the things those people will talk about. ▪ If the person wants to move the hearing to a later date, they have to give a good reason and explain why. ▪ Regional centers can use public money to hire lawyers. But most people cannot afford their own lawyers. Even if the person can afford a lawyer, there aren't many lawyers who know a lot about regional centers and why someone might disagree with theirs. 	<p>The Department of Social Services (DSS) will run all fair hearings about disagreements between regional centers and the people they serve. DSS will use its own judges and use the same rules they use for other types of disagreements. These rules are easier to understand and follow than OAH's rules. For example:</p> <ul style="list-style-type: none"> ▪ At least 2 days before the hearing, the regional center must give the person the following things: <ul style="list-style-type: none"> ○ copies of the documents the regional center will bring to the hearing; and ○ a list of the people the regional center wants to be at the hearing and the things those people will talk about. ▪ The person does NOT have to share their evidence or witness list before the hearing. ▪ Regional centers may not hire lawyers unless the client hires a lawyer first. ▪ Hearings will be fair and informal to encourage both sides to speak openly. ▪ The person can move the hearing to a later date <i>once</i> without having to give a reason.
<p>We don't know why so many people who ask for hearings later drop out and say they don't want a hearing anymore. We hope it is not because people think the process is too hard or unfair, or makes them feel too disrespected.</p>	<p>DDS must find out why people drop out of the fair hearing process. Whenever someone says they don't want a hearing anymore, DDS should ask why and write down the answer. This information must be made public and also sent to lawmakers.</p>
<p>The person must use the fair hearing process for any kind of legal problem that has to do a regional center service, or a regional center service provider, even if the problem isn't about whether a person was able to get a service that they needed. That means a person has to go through fair hearing even when the problem is one that really belongs in a court, such as:</p> <ul style="list-style-type: none"> ▪ Discrimination, which means treating people differently or badly because of who they are. ▪ Personal injury, which means when someone gets hurt because a service provider or regional center wasn't careful enough. ▪ Or other issues not really about whether someone needs regional center services. 	<p>If a person has a legal problem that is not about whether the regional center gave them the services they needed, they may file their case in a state or federal court if they want to. They do not have to go through the fair process first if they don't want to.</p>

Focus: After the Fair Hearing

How Things Are Now	How Things Should Be
<p>If the regional center wins the fair hearing...</p> <p>The person must file a case in superior court within 90 days if they want another court to review the hearing decision. That is complicated, expensive, and requires a lawyer. Even if the person wins in superior court, they will probably not get reimbursed for their legal fees.</p>	<p>If the regional center wins the fair hearing...</p> <p>The person may ask DSS to review the decision within 30 days. The person may also file a case in superior court within 1 year if they want another court to review the hearing decision. If the person wins this case, the regional center must pay the person's legal fees.</p>
<p>If the client wins the fair hearing...</p> <p>OAH has no power to make sure the regional center follows the hearing decision. And the regional center can:</p> <ul style="list-style-type: none"> ▪ Appeal the decision to superior court, and ▪ Use public money to hire lawyers. 	<p>If the client wins the fair hearing...</p> <p>DSS has the power to make sure the RC follows the fair hearing decision. The regional center may also appeal to superior court. But if the client wins the appeal, the regional center must pay the client's legal fees.</p>

Focus: Managing the Fair Hearing Process

How Things Are Now	How Things Should Be
<p>OAH is supposed to make fair hearing decisions (with names and other personal details taken out) available to the public upon request. But since 2018, many decisions are still not available.</p>	<p>DDS must keep a current list of all decisions, including data about the race and ethnicity of people who ask for hearings. DDS must share this data with regional centers and the public. All hearing decisions must be posted on the internet. People must be able to easily search for and find the hearing decisions that will help them prepare for their case.</p>
<p>DDS is supposed to train OAH judges every year on the Lanterman Act, and involve Disability Rights California, the State Council on Developmental Disabilities, and other organizations with those trainings. But they did not have any trainings for several years. And DDS is still in charge of giving the trainings. Disabled people and groups who advocate for them are not allowed to help lead those trainings or decide what they should be about.</p>	<p>Disabled people and other groups that advocate for them, like Disability Rights California and the State Council on Developmental Disabilities, should help develop and lead trainings on the Lanterman Act. Judges must get Lanterman Act training at least once a year. DDS will give lawmakers information about these trainings.</p>
<p>There is a lot of data showing that regional centers don't spend as much on services for people of color as they do on services for white people. This has been happening for many years, which feels unfair to a lot of people. But so far, judges have not had any training about this or the way it can make people feel like the system is unfair.</p>	<p>Trainings for judges should talk about all the data that shows how regional centers don't spend as much on services for people of color as they do on services for white people. Judges should learn about why this seems unfair, and how it makes people of color feel. Training for judges should also include all the different types of people served by regional centers and their families, including people of color:</p>
<p>No one person or office is in charge of looking at the entire fair hearing process and making sure that it's fair and working the way it's supposed to work. Someone fair should be in charge of reviewing and investigating problems with the fair hearing process.</p>	<p>DDS reviews all hearing decisions proposed by DSS hearing officers.</p>
<p>People with I/DD and their families do not have a formal way to give feedback to OAH, and suggest ways to make the system better.</p>	<p>DSS will set up a <i>fair hearings advisory committee</i>. The committee will be made up mostly of people with I/DD and their families. It will also include advocates regional center, and the judges who hear these cases. The committee will be a place where people can give feedback about the fair hearing process and suggest ways to make it fairer and easier to use.</p>

People with I/DD deserve equal access to justice and a system they can trust. We urge the state to not just think about these recommendations, but to actually make them happen. **Now is the time!**