

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made between Inland Counties Regional Center, Inc. (d/b/a Inland Regional Center, referred to herein as “IRC”) and [REDACTED] and [REDACTED] as Authorized Representative of [REDACTED]

I. RECITALS

The Recitals set forth herein are an integral part of this Agreement, and shall be used in any interpretation of this Agreement.

WHEREAS, on July 31, 2010, Disability Rights California (“DRC”) sent a letter to IRC, which alleged violations of due process under the state and federal constitutions as well as violations of the California Welfare & Institutions Code by IRC, pertaining to due process and related requirements regarding the denial, reduction, change, or termination of regional center services to IRC Clients;

WHEREAS, IRC and DRC thereafter engaged in extensive and lengthy arm’s-length negotiations, during which the affected IRC Clients elected not to pursue their legal right to seek immediate redress from IRC for the alleged violations via litigation;

WHEREAS, IRC has responded to DRC’s July 31, 2010 letter by putting numerous procedures in place to assure that client/consumer rights are honored in a timely and appropriate manner; and

WHEREAS, the Parties wish to work together to ensure that IRC Clients timely receive all communications, processes, and services to which they are entitled;

NOW, THEREFORE, in consideration of the above recitals, and for other good and valuable consideration the receipt of which is hereby acknowledged, the Parties agree as follows:

II. PURPOSE OF SETTLEMENT

The purpose of this Agreement is to ensure that each IRC Applicant, Consumer, or Authorized Representative:

1. receives timely written adequate notice, as required by California Welfare & Institutions Code §§ 4701, 4701.1 and 4710, prior to any reduction, change, and/or termination in IRC Services, including information regarding the right to request an appeal of the reduction, change, and/or termination, and information about the Consumer's right to receive Aid-Paid-Pending if a request for fair hearing is filed within 10-days of receipt of such Notice.
2. receives timely written adequate notice of a denial of a request for Services, including information regarding the right to request an appeal of the denial of the request for Services as required by California Welfare and Institutions Code § 4710(b);
3. has an opportunity to attend a timely informal meeting with IRC to attempt to resolve a dispute regarding a reduction, change, termination, or denial of a request for Services as required by California Welfare & Institutions Code §§ 4710.6(a) and 4710.7(a);
4. receives timely written adequate notice advising them of whether IRC will agree to participate in mediation to attempt to resolve a dispute regarding the reduction, change, termination, or denial of a request for Services for any Consumer who requests mediation, as required by California Welfare & Institutions Code § 4711.5(a); and
5. receives timely written response from IRC to any complaint including but not limited to complaints filed pursuant to California Welfare & Institutions Code § 4731.
6. receives timely written adequate notice of denial of eligibility as required by California Welfare & Institutions Code §§ 4701 and 4710.

III. TERMS OF AGREEMENT

A. Definitions

“Adequate Notice”

“Adequate Notice” means written notice that meets all of the requirements set forth in California Welfare & Institutions Code §§ 4701, 4701.1, 4710, and any other applicable law.

“Adopt”

“Adopt” means develop and implement by the effective date set forth in this Agreement.

“Aid-Paid-Pending”

“Aid-Paid-Pending” means continuing services provided by IRC through the resolution of an appeal, as set forth in California Welfare & Institutions Code § 4715.

“Applicant”

“Applicant” means someone who has applied for regional center services and either has not yet been determined to meet the definition of developmental disability set forth in Welfare & Institutions Code § 4512, subd. (a) or has been determined to be ineligible for regional center Services, and/or that person’s legal representative.

“Authorized Representative”

“Authorized Representative” means the person authorized to represent an Applicant or Consumer, as defined in California Welfare & Institutions Code § 4701.6.

“Consumer”

“Consumer” means a person who has a developmental disability that meets the definition of developmental disability set forth in Welfare & Institutions Code § 4512, subd. (a).

“Consumer Service Coordinator” or “CSC”

“Consumer Service Coordinator” “means a regional center employee whose primary responsibility includes preparing, implementing, and monitoring consumers’ individual program plans, securing and coordinating consumer services and supports and providing placement and monitoring activities,” as provided in Welfare & Institutions Code § 4640.6, subd. (d).

“Directors”

“Directors” means the individuals who supervise the work of the Program Managers.

“Intake NOA Log”

“Intake NOA Log” means a system adopted by IRC to be used by the Intake Program Manager to track intake eligibility determinations of Applicants for regional center services. The system will track: (a) the dates of eligibility determinations; (b) whether or not each applicant is eligible for regional center services; (c) if not eligible, the date the Notice of Action was sent to the Applicant and/or his or her Authorized Representative.

“IPP”

“IPP” means the Consumer’s individual program plan as developed pursuant to California Welfare & Institutions Code §§ 4646-4648.

“IRC”

“IRC” means the Inland Counties Regional Center, Inc. (d/b/a as “Inland Regional Center”).

“IRC Fair Hearings and Legal Affairs Unit”

“IRC Fair Hearings and Legal Affairs Unit” is the IRC department responsible for overseeing fair hearings for the agency, among other duties.

“Monitoring Period”

“Monitoring Period” means the twenty four (24) months from the date of the latest signature on this Agreement, which may be extended for an additional twelve (12) months upon presentation by DRC to IRC of documentation showing ten (10) separate incidents of non-compliance by IRC within the preceding twelve (12) months.

“Notice of Action” or “Notice” or “NOA”

“Notice of Action” or “Notice” or “NOA” means a written notice informing an Applicant or Consumer of a proposed reduction, change, termination, denial of a Service or Services, or denial of eligibility for regional center services, and of the Applicant’s or Consumer’s rights in connection with the proposed reduction, change, termination, denial of Services, or denial of eligibility, in accordance with Welfare & Institutions Code §§ 4701, 4701.1 and 4710.

“Program Managers”

“Program Managers” mean the individuals who supervise the work of CSCs.

“Quarterly Reports”

“Quarterly Reports” means written reports that are prepared by CSCs after review of Consumer’s/s’ progress and needs during the immediately preceding quarter.

“Senior Intake Coordinators”

“Senior Intake Coordinators” mean the individuals charged with completing intake and assessment procedures for regional center Applicants within the legally mandated time frames prior to transferring the eligible cases to ongoing Consumer Service Coordinator caseloads.

“Service” or “Services”

“Service” or “Services” means the type and amount of services and service components set forth in a Consumer’s IPP, as that term is defined in California Welfare & Institutions Code § 4646.

“Service Request Log”

“Service Request Log” means a system adopted by IRC to be used by all IRC Program Managers to track requests for Services made by Consumers and/or their families, and/or their Authorized Representatives. The system will track: (a) the dates on which the Services were requested; (b) the type(s) of Service(s) requested; (c) whether the Service(s) was/were approved or denied; (d) if the Service(s) was/were approved, the date the Service(s) was/were approved; (e) if the Service(s) was/were denied, (i) the date that the Service(s) was/were denied, (ii) the reason for the denial, and (iii) the date that the NOA was sent to the Consumer and/or his or her Authorized Representative.

“Title XIX Notes” (A.K.A. Targeted Case Management)

“Title XIX Notes” are interdisciplinary notes by which CSCs and others keep track of their time and services, including contacts with families, Consumers and Authorized Representatives, for purposes of accountability and for compliance with the requirements of the Department of Health and Human Services and Title 42, Code of Federal Regulations § 441.18.

B. Requests for Services

In order to ensure that IRC timely responds to Consumers' requests for Services, IRC will take the following steps within the Monitoring Period:

1. Service Request Log

IRC, including IRC Program Managers will use a Service Request Log to track requests for Services made by Consumers and/or their families and/or their Authorized Representatives. The system will track: (a) the dates on which the Services were requested; (b) the type(s) of Service(s) requested; (c) whether the Services(s) was/were approved or denied; (d) if the Service(s) was/were approved, the date the Service(s) was/were approved; (e) if the Service(s) was/were denied, (i) the date that the Service(s) was/were denied, (ii) the reason(s) for the denial(s) and (iii) the date that the Notice of Action was sent to the Consumer and/or his or her Authorized Representative. The Service Request Log form is attached and incorporated herein as **Exhibit A**.

2. Title XIX Logs

- a. IRC will require that IRC's CSCs log all requests for Services in the Title XIX Logs.
- b. IRC will provide ongoing training as set forth in Section E below for CSCs, regarding this requirement and ensure that CSCs document all Service requests in the Title XIX Logs.

3. Quarterly Reports

- a. IRC will require CSCs to document all requests for Services in Consumer Quarterly Reports. The information to be documented in the Quarterly Reports will include:
 - i. the type of Service requested;
 - ii. the date the Service was requested;
 - iii. the date the Service was approved, if approved;
 - iv. the date the Service was denied, if denied;
 - v. the reason for the denial, if denied;

- vi. if the Service was denied, the date the NOA was sent to the Consumer and/or his or her Authorized Representative; and
 - vii. the relevant period for the quarterly review.
- b. The Quarterly Review forms currently used by IRC have been modified to include the information in Paragraph 3 a) I-VI above. The form includes an area entitled “Services Requested in the Last Quarter,” where the CSC will list the above information. The “Quarterly Report” form is attached and incorporated herein as **Exhibit B**.

C. Applications for Eligibility

In order to ensure that IRC provides timely adequate notice to Applicants, IRC will take the following steps within the Monitoring Period:

1. Intake NOA Log

IRC, including IRC Intake Program Managers, will use a log, similar to the Service Request Log, to track intake eligibility determinations of Applicants for regional center services. The system will track: (a) the dates of eligibility determinations for all applicants found ineligible; (b) the date the Notice of Action was sent to the Applicant and/or his or her Authorized Representative. The Intake NOA Log is attached and incorporated herein as **Exhibit C**.

D. Notices of Action (NOAs)

1. For NOAs involving initial regional center eligibility, Senior Intake Coordinators will write NOAs using templates that have been developed by the IRC Fair Hearings and Legal Affairs Unit and attached hereto as **Exhibit D**. Senior Intake Coordinators will also be responsible for ensuring that each NOA includes an appeal packet. By January, 2014, Senior Intake Coordinators involved will be trained on issuing NOAs consistent with Welfare & Institutions Code § 4710 (e).
2. For NOAs involving ongoing services, requests for new services, or continued eligibility for regional center services, IRC will require Program Managers to write NOA's using templates that have been developed by the **IRC Legal Affairs Unit** and attached hereto as **Exhibit E**. Program Managers will forward the proposed NOAs to the

IRC Fair Hearings and Legal Affairs Program Manager who will review the NOAs to ensure that the appropriate template is used and completed, prior to sending them to Consumers and/or their Authorized Representatives.

3. By January, 2014, IRC will designate staff responsible for mailing out NOAs with appeal packets to the Consumers and/or their Authorized Representatives for NOAs as outlined in sections D.1. and D.2. of this Agreement. Staff shall acknowledge, by checking a box on a form or other manner of written verification, that an NOA and appeal packet were sent out. By January, 2014, IRC will implement quality control procedures where at least 5% of the NOAs sent out by staff every month are reviewed by supervisors, or other qualified staff identified by IRC, to ensure that each NOA was sent out with an appeal packet. The procedures shall also require that if any deficiency is found, it will be corrected by issuing a new NOA including an appeal packet, and that staff involved will be trained on proper procedures.

E. Job Descriptions

1. Consumer Service Coordinator (CSC) Job Description

IRC will revise its CSC job description to reflect the responsibilities outlined in B.1-3. A copy of the revised job description is attached as **Exhibit F** and is incorporated herein by reference. Program Managers will evaluate the performance of CSCs, among other things, with regard to their compliance with the documentation requirements described in Section B of this Agreement.

2. Senior Intake Coordinator Job Description

If not already in the job description, by January, 2014, IRC will revise its job description for the Senior Intake Coordinator position to reflect the responsibilities outlined in D.1. and D.3. A copy of the revised job description is attached as **Exhibit G** and is incorporated herein by reference.

F. Fair Hearings, Informal Meetings, & Mediation

1. In order to ensure that deadlines are met with regard to fair hearings, IRC's Fair Hearings and Legal Affairs Unit will use a calendaring system on Microsoft Outlook that will track the deadlines and other

relevant dates pertaining to fair hearing requests of Applicants, Consumers, family, and/or Authorized Representatives.

2. In order to ensure that deadlines are met with regard to fair hearings and that Applicants or Consumers are afforded their rights under the “Lanterman Developmental Disabilities Services Act “(the “Lanterman Act”).” and any other applicable law, IRC will track the following information on an Excel spreadsheet for each request for a Fair Hearing:
 - a. name of the Applicant or Consumer;
 - b. date of receipt of the hearing request;
 - c. whether Aid-Paid-Pending was provided;
 - d. issue for fair hearing;
 - e. whether informal meeting was requested;
 - f. date of informal meeting and explanation of any postponement;
 - g. the resolution, if any, reached at the informal conference;
 - h. whether mediation was requested;
 - i. if mediation is to be held, the date of mediation;
 - j. if mediation occurs, the resolution reached at the mediation;
 - k. date of the fair hearing; and
 - l. resolution of the hearing (summarized if necessary).
3. IRC will continue to utilize the template that is attached hereto as **Exhibit H** to inform Applicants, Consumers, and/or Authorized Representatives, regarding responses to requests for informal meetings and mediation. IRC may revise this form from time to time as necessary. Any changes made will be in compliance with the Lanterman Act. If the form is revised during the Monitoring Period, IRC will provide a copy to Disability Rights California for comment. If Disability Rights California does not approve the draft, then the IRC Fair Hearings and Legal Affairs Unit (or its designated representative) will work with Disability Rights California to produce a form acceptable to both IRC and Disability Rights California.

4. In order to ensure that requests for informal hearings are timely, IRC will ensure that one or more of the five (5) available Program Managers will be trained to do informal meetings.
5. For the twelve (12) months following the final signature on this Agreement, if IRC becomes out of compliance with regard to any timely informal meetings or request for mediations, except when necessary to accommodate an Applicant, Consumer, and/or Authorized Representative, it will notify via e-mail, within ten (10) business days of the knowledge of the noncompliance, the Managing Attorney at the DRC San Diego office.

G. Complaints

1. IRC will respond to all complaints within twenty (20) working days of receipt of such complaints.
2. In order to ensure timely response to any complaints received, IRC will take the following steps:
 - a. The primary person responsible for responding to complaints will be the IRC Fair Hearings and Legal Affairs Program Manager as designated by the Executive Director. As needed to ensure the timely response to complaints, additional Directors or Program Managers will be designated by the Executive Director.
 - b. The Fair Hearings and Legal Affairs Unit will maintain an Excel spreadsheet to track the receipt and response to complaints. The spreadsheet will track the following data:
 - i. nature of the complaint;
 - ii. date of complaint;
 - iii. due date for response to complaint;
 - iv. response and date of response; and
 - v. person assigned to respond to the complaint.
 - c. The Fair Hearings and Legal Affairs Unit will continue to post the due date for responses to complaints to Outlook with reminders to the appropriate staff responsible for responding to the complaints.

- d. For the twelve (12) months following the final signature on this Agreement, if IRC becomes out of compliance with regard to the timely response to complaints, it will notify via e-mail, within ten (10) business days of the knowledge of the noncompliance, the Managing Attorney at the DRC San Diego office.

H. Training

1. On an ongoing quarterly basis, IRC will provide training to CSCs and Program Managers in subject areas that may include best practices, advocacy, Service delivery, Consumers' rights and identification of additional resources.
2. Throughout December 2010 and January 2011, Program Managers and Case Management staff, agency-wide, received training on the following topics: Notices of Action, Fair Hearings, Informal Meetings, Mediations, and Welfare & Institutions Code § 4731 Complaints. IRC will continue to provide this training to all new staff during the new staff orientation.
3. Program Managers will provide ongoing training in the subject areas in G.1. and G.2., to individual CSCs and at unit staff meetings, as needed. The IRC Directors will sit in on randomly selected trainings to determine whether any Program Manager needs additional support in providing training to the CSCs.
4. All training materials pertaining to the topics listed in G.1. and G.2. will be available to staff on the IRC intranet.
5. For the twelve (12) months following the last signature on this Agreement, IRC staff receiving the training described in G.1. and G.2. will receive pre- and post-tests regarding these training areas in order to determine whether they have satisfactorily learned the substance of the training materials. IRC will take appropriate remedial action to assure satisfactory results.

I. IRC Self-Monitoring of Implementation

1. IRC shall continue to conduct regular self-monitoring in order to ensure that the provisions set forth in Sections B-H above are adequately and timely implemented. This self-monitoring shall include the following:

- a. Continue Quarterly Reviews of all the processes described above in Sections B-H of this Settlement Agreement.
- b. IRC will continue to conduct quarterly audits of IRC's responses to service requests and intake denials of eligibility. Much of the review process will be done by the Fair Hearings and Legal Affairs Unit and the remainder by designated Program Managers, under the supervision of the IRC Fair Hearings and Legal Affairs Program Manager. They will review a random sample of no less than ten (10) Consumer/Applicant files in each quarter. Of this sample, at least one (1) file must involve a request for fair hearing. They will compare the spreadsheet tracking the fair hearings and the underlying documentation in the files and Service Request Log to determine if they are consistent, and if they are in compliance with this Agreement and applicable law.
- c. Any noncompliance discovered as a result of these reviews will be reported to the IRC Executive Director or designee, and to the appropriate IRC Program Managers. The Program Managers will work with the staff who have been found out of compliance and take reasonable measures to ensure future compliance.

J. Individual Relief

██████████ ██████████

- a. IRC will amend ██████████ IPP to provide a day program that includes appropriate transportation services taking into account ██████████ medical needs; and
- b. IRC will provide Services to help ██████████ address his weight, including an assessment by its Dietician. The Dietician will work with ██████████ to address his weight.

IV. TERM OF AGREEMENT

The term of this Agreement shall begin January 13, 2013 and shall continue for twenty four (24) months unless extended for an additional twelve (12) months upon presentation by DRC to IRC of documentation showing ten (10) separate incidents of non-compliance by IRC within the preceding twelve (12) months (the "Monitoring Period"). This Agreement may be renewed for an additional term upon the written agreement of the parties.

V. ENFORCEABILITY, DISPUTE RESOLUTION, AND NON-WAIVER OF CLAIMS AND DEFENSES

1. Disability Rights California can enforce the specific terms of this Agreement on behalf on any IRC Consumer.
2. If at any time during the Monitoring Period, Disability Rights California believes that IRC is not substantially in compliance with this Agreement, Disability Rights California shall contact IRC's counsel to request a consultation with the Executive Director of IRC. The parties shall make a good faith attempt to informally and timely resolve the dispute.
3. If an informal resolution cannot be reached by the parties within thirty (30) days, unless otherwise mutually agreed upon by the parties in writing, Disability Rights California may pursue all available legal remedies.
4. Nothing in this Agreement shall be deemed to limit the ability of Disability Rights California to fulfill its federal mandates pursuant to the "Protection and Advocacy for Individuals with Mental Illness (PAIMI) Act," 42 U.S.C. § 10801, et seq. and the regulations promulgated thereto, 42 C.F.R. § 51; the "Developmental Disabilities Assistance and Bill of Rights (DD) Act," 42. U.S.C. § 15041, et seq. and the regulations promulgated thereto, 45 C.F.R. § 1386; and the "Protection and Advocacy for Individual Rights (PAIR) Act," 29 U.S.C. § 794e, and California Welfare & Institutions Code § 4900, et seq.
5. Nothing in this Agreement shall be deemed to limit the ability of any IRC Applicant, Consumer or Authorized Representative to seek relief of any kind to which they would be otherwise entitled under state or federal law, including, but not limited to claims for damages and individual remedies available in any administrative hearings.

VI. REASONABLE ATTORNEYS FEES

The parties agree that for the purposes of this Agreement, Disability Rights California has provided service, and IRC agrees to pay Disability Rights California reasonable attorneys' fees in the amount of \$ \$30,000.00 within sixty (60) days from the date of the latest signature on this Agreement.

VII. ENTIRETY OF AGREEMENT AND SEVERABILITY

This Agreement constitutes the entire agreement among the parties and supersedes all prior agreements, written or oral, between IRC, Disability Rights California and the named IRC Consumer. In the event any provision or term of this Agreement is determined to be or is rendered invalid or unenforceable, all other provisions and terms of this Agreement shall remain unaffected to the extent permitted by law.

VIII. AGREEMENT BINDING ON PARTIES, SUCCESSORS, AND ASSIGNS

1. This Agreement shall be binding on the parties, and shall inure to the benefit of their respective employees, agents, officials, heirs, transferees, legal representatives, assigns, and successors in interest.
2. The signatories to this Agreement certify that they have the authority to bind the parties to this Agreement and any successors and assigns.

IX. COUNTERPARTS OF SIGNATURES

For convenience, the signatures of the parties to this Agreement may be executed on separate pages, which, when attached to this Agreement, shall constitute the parties' complete agreement and shall be binding on the parties. More than one counterpart of this Agreement may be executed by the parties hereto, and each executed counterpart (whether via facsimile, electronic submission, such as PDF, photocopy or original) shall be deemed an original.

Dated:

[REDACTED] [REDACTED]
Authorized Representative for
[REDACTED] [REDACTED]

Dated:

[REDACTED] [REDACTED]

Dated:

Carol A. Fitzgibbons
Executive Director
Inland Counties Regional Center, Inc.

Dated:

Marybeth Feild
Board of Trustees, President
Inland Counties Regional Center, Inc.

Approved as to form:

Dated:

Judith A. Enright
Attorney for IRC
Enright & Ocheltree, LLP

Dated:

Maria F. Iriarte
Attorney for [REDACTED]
Disability Rights California

Dated:

Terri D. Keville
Attorney for [REDACTED]
Davis Wright Tremaine LLP

Dated:

Dara Schur
Director of Litigation
Disability Rights California