

Capitol People First et al. v. DDS et al.
**Four Regional Centers Enter Settlement Agreement and
Case is Stayed Pending Appeal**
Update, 10-3-06

The CPF class action lawsuit was filed in January 2002, seeking freedom for Californians with developmental disabilities from unnecessary isolation and segregation in institutions and access to the services they need to live in residential neighborhoods and participate as members of the community. The proposed class includes the approximately 3,000 regional center consumers who live in developmental centers and the 4,500 consumers who live in other large congregate institutions housing 16 or more including skilled nursing facilities and large private ICFs and CCFs.

**Settlement Agreement Will Result in Opportunities for People to
Receive More Integrated Supports of Their Choice**

The individual and organizational plaintiffs and Kern, Redwood Coast, Tri-Counties, and Valley Mountain Regional Centers are pleased to have arrived at a settlement of the *CPF* case which they all agree supports the goals of the Lanterman Act and other laws that people with developmental disabilities should live in the most integrated setting appropriate to individual need.

In the Settlement Agreement these four regional centers have agreed to do the following over the six year term of the settlement:

- **Reduce Total Number Of DC Residents** -- Assist many of their developmental center residents to move to quality community homes with the supports they need and choose and deflect other individuals from DC placement, all through the Community Placement Plan process, such that each regional center will have a reduced total number of DC residents at the end of six years;
- **Conduct Comprehensive Community Needs Assessments** with each of their consumers who live in other large institutional settings (such as skilled nursing facilities, sub-acute facilities, psychiatric hospitals, ICF/DDs and CCFs that house 16 or more) over the next four years;

- **Encourage Downsizing** -- Meet annually with the operator of each large private institution serving only people with developmental disabilities in their service areas to encourage the program to downsize to one or more living arrangements housing no more than six individuals and discuss the possibility of obtaining downsizing funding from DDS; and
- **Meet the Needs of Named Plaintiffs** -- Provide special help to the named plaintiffs served by these regional centers.

In exchange, the four regional centers will not have to be part of the *CPF* litigation. There are additional reporting and technical terms to the settlement. A hearing regarding the Settlement Agreement has been scheduled, requesting the court to issue a Judgment in the case approving the Settlement Agreement and retaining jurisdiction over the case during the term of the settlement.

Class Certification Is Denied and Action is Stayed Pending Appeal

Plaintiffs moved the court to certify the proposed class – meaning that the court would rule the 16 named plaintiffs could pursue the case on behalf of themselves and other individuals with common concerns. Although many similar disability rights cases across the nation and in California have been certified for class treatment, unfortunately the trial court in the CPF case denied class certification.

Plaintiffs believe the trial court is wrong and have appealed the denial of class certification. The entire case is on hold, called “stayed”, while the appeals court considers this issue. There is no definite timeline by which the appeal will be decided, but it could take many more months to be resolved.

Disability Rights Amici Support Plaintiffs’ Appeal

We are pleased to report that two *amicus curiae* (friend of the court) briefs have been filed in support of plaintiffs by prestigious disability rights and legal services agencies. These agencies felt strongly that the trial court’s decision denying class certification was wrong. One *amicus* brief was submitted by Washington Protection and Advocacy System, Public Interest Law Foundation, National Disability Rights Network, and Disability Rights and Education Defense Fund. The other was submitted by the Impact Fund, American Civil Liberties Union of Northern California, Asian Pacific American Legal Center, Equal Rights Advocates, Inc., Lawyers' Committee for Civil Rights of the San Francisco Bay

Area, Mexican American Legal Defense & Education Fund, Public Advocates, Inc., and Western Center on Law and Poverty.

Background of the Case

The *CPF v. DDS* case has been hotly contested for almost five years, with defendants filing dozens of motions and several appeals challenging the case. At the 2005 Supported Life conference, we reported that after years of wrangling, the court of appeal had ruled against defendants and had decided to allow plaintiffs' Medicaid and Lanterman Act causes of action to go forward.

Today, over 7,000 people with developmental disabilities still needlessly remain in large public and private institutions. The time they lose confined in institutions is irretrievable—it is time that could and should be used to acquire skills, develop independence, and participate as members of their communities. Every year, hundreds more find themselves at risk of placement in an institution due to the lack of community supports, including crisis intervention services.

The Plaintiffs

- The 16 individual plaintiffs seek to represent a class of over 7,000 Californians with developmental disabilities who reside in, or are at risk of placement in, developmental centers or other institutions and who have urgent needs for quality, stable community living arrangements.
- The three organizational plaintiffs are Capitol People First (a self-advocacy organization), California Alliance for Inclusive Communities, and Arc California.
- The two taxpayer plaintiffs assert that the State is spending tax dollars unlawfully by continuing to institutionalize individuals who could live successfully in community homes.

The Defendants

The lawsuit is filed against the State; the California Health and Human Services Agency; the Departments of Developmental Services (DDS), Health Services, Mental Health, and Finance; and the 21 local non-profit Regional Centers (which contract with DDS).

The Intervenors

The Court granted supporters of the large state developmental centers permission to join the lawsuit—called intervention. Intervenors are CASH-PCR, an organization composed, in part, of vendor organizations which broke away from California Arc and several individual developmental center residents—by way of their family members. The Judge limited the issues Intervenors are allowed to raise in the case to ensuring that the legal ability of parents and guardians to participate in the planning process and the ability of professionals to recommend placement in developmental centers are not adversely affected by this case.

Legal Theories

The lawsuit alleges that defendants are violating both state and federal statutory and constitutional rights that guarantee people with developmental disabilities the choice and opportunity to live as part of, rather than apart from, our neighborhoods and communities. Plaintiffs' claims are based on:

- The Lanterman Act, which the California Supreme Court said creates an entitlement to a sufficient array of services to support integration of people with developmental disabilities into the mainstream of community life. *Ass'n for Retarded Citizens—Cal. V. DDS*, 38 Cal.3d 384 (1984).
- The Americans with Disabilities Act (ADA) and other state and federal laws that prohibit discrimination on the basis of disability. The U.S. Supreme Court ruled that institutionalizing individuals with disabilities when community services can meet their needs is disability-based discrimination that violates the ADA. *Olmstead v. L.C.*, 527 U.S. 581 (1999).
- Federal Medicaid laws, which require that people be informed of, allowed the choice of, and promptly provided with, community service alternatives.
- Fundamental state and federal constitutional rights, including the right to liberty, privacy, and freedom of association.