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January 30, 2015

Mr. Santi J. Rogers
Director
Department of Developmental Services
P.O. Box 944202
Sacramento, CA 94244-2020

Re: Request to Amend Regulations on Social Rights

Dear Director Rogers:

Our review of DDS Regulations on "Client's Rights" indicates a need to clarify with more specificity the right of clients to freedom of association. The case of a client at the Westside Regional Center was brought to our attention which caused us to look carefully at the current regulations found in Section 50510 of Title 17 of the California Code of Regulations. (See enclosed copy of this section). A summary of Gregory's Case explains how the constitutional and statutory rights of this young man to freedom of association and freedom of religion have been violated. (See enclosed summary of Gregory's Case.)

The Lanterman Act states unequivocally: "Persons with developmental disabilities have the same legal rights and responsibilities guaranteed all other individuals by the United States Constitution and laws and the Constitution and laws of the State of California." (See enclosed copy of Lanterman Act Statement of Rights.) The Statement of Rights also focuses on "personal liberty of the individual" and "least restrictive conditions," as well as a "right to religious freedom and practice," and a "right to social interaction." It also mentions a client's "right to make choices in their own lives" including "relationships with people in their community" and "leisure" activities.

The Department has promulgated regulations interpreting and implementing the rights mentioned in the Lanterman Act. With respect to the "right to religious freedom and practice" specified in that Act, the regulations explain it in greater detail, stating that it encompasses: "A right to religious freedom and practice, *including the right to attend services or to refuse attendance, to participate in worship or not to participate in worship.*" (Section 50510(a)(4)) The italicized language was placed in the regulations to explain the scope of the statutory language.

An additional phrase should be added to subdivision (6) so that it states "A right to social interaction and participation in community activities, *including the right to associate with specific individuals or not to associate with them.*" We are asking that the italicized language be added to the regulations so that it is abundantly clear that the right to social interaction includes the constitutional right to freedom of association. As the United States Supreme Court once clarified, "Freedom of association . . . plainly presupposes a freedom not to associate." (Roberts v. United States Jaycees, 468 U.S. 609, 622 (1984))

We would like to discuss this request with your staff so that we may learn what additional steps, if any, we need to take to have this regulation amended. Thousands of people with developmental disabilities will benefit from such a regulatory clarification.

Very truly yours,

A handwritten signature in blue ink that reads "Thomas F. Coleman".

THOMAS F. COLEMAN
Legal Director
(818) 482-4485

Lanterman Developmental Disabilities Services Act

California Welfare and Institutions Code

Statement of Rights

4502. Persons with developmental disabilities have the same legal rights and responsibilities guaranteed all other individuals by the United States Constitution and laws and the Constitution and laws of the State of California.

No otherwise qualified person by reason of having a developmental disability shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity, which receives public funds.

It is the intent of the Legislature that persons with developmental disabilities shall have rights including, but not limited to, the following: (a) A right to treatment and habilitation services and supports in the least restrictive environment. Treatment and habilitation services and supports should foster the developmental potential of the person and be directed toward the achievement of the most independent, productive, and normal lives possible. Such services shall protect the personal liberty of the individual and shall be provided with the least restrictive conditions necessary to achieve the purposes of the treatment, services, or supports. (b) A right to dignity, privacy, and humane care. To the maximum extent possible, treatment, services, and supports shall be provided in natural community settings. (c) A right to participate in an appropriate program of publicly supported education, regardless of degree of disability. (d) A right to prompt

medical care and treatment. (e) A right to religious freedom and practice. (f) A right to social interaction and participation in community activities. (g) A right to physical exercise and recreational opportunities. (h) A right to be free from harm, including unnecessary physical restraint, or isolation, excessive medication, abuse, or neglect. (i) A right to be free from hazardous procedures. (j) A right to make choices in their own lives, including, but not limited to, where and with whom they live, their relationships with people in their community, the way they spend their time, including education, employment, and leisure, the pursuit of their personal future, and program planning and implementation.

4502.1. The right of individuals with developmental disabilities to make choices in their own lives requires that all public or private agencies receiving state funds for the purpose of serving persons with developmental disabilities, including, but not limited to, regional centers, shall respect the choices made by consumers or, where appropriate, their parents, legal guardian, or conservator. Those public or private agencies shall provide consumers with opportunities to exercise decisionmaking skills in any aspect of day-to-day living and shall provide consumers with relevant information in an understandable form to aid the consumer in making his or her choice.

Spectrum Institute
Disability and Abuse Project
www.disabilityandabuse.org

California Code of Regulations
Title 17, Division 2
Chapter 1 - General Provisions
SubChapter 5 - Clients' Rights
Article 2 - Rights of Persons with Developmental Disabilities

§50510. Application of This Subchapter.

Each person with a developmental disability, as defined by this subchapter, is entitled to the same rights, protections, and responsibilities as all other persons under the laws and Constitution of the State of California, and under the laws and the Constitution of the United States. Unless otherwise restricted by law, these rights may be exercised at will by any person with a developmental disability. These rights include, but are not limited to, the following:

(a) Access Rights.

(1) A right to treatment and habilitation services. Treatment and habilitation services shall foster the developmental potential of the person. Such services shall protect the personal liberty of the individual and shall be provided under conditions which are the least restrictive necessary to achieve the purposes of treatment.

(2) A right to dignity, privacy, and humane care.

(3) A right to participate in an appropriate program of publicly-supported education, regardless of the degree of handicap.

(4) A right to religious freedom and practice, including the right to attend services or to refuse attendance, to participate in worship or not to participate in worship.

(5) A right to prompt and appropriate medical care and treatment.

(6) A right to social interaction and participation in community activities.

(7) A right to physical exercise and recreational opportunities.

(8) A right to be free from harm, including unnecessary physical restraint, or isolation, excessive medication, abuse or neglect. Medication shall not be used as punishment, for convenience of staff, as a substitute for program, or in quantities that interfere with the treatment program.

(9) A right to be free from hazardous procedures.

(10) A right to advocacy services, as provided by law, to protect and assert the civil, legal, and service rights to which any person with a developmental disability is entitled.

(11) A right to be free from discrimination by exclusion from participation in, or denial of the benefits of, any program or activity which receives public funds solely by reason of being a person with a developmental disability.

(12) A right of access to the courts for purposes including, but not limited to the following:

(A) To protect or assert any right to which any person with a developmental disability is entitled;

(B) To question a treatment decision affecting such rights, once the administrative remedies provided by law, if any, have been exhausted;

(C) To inquire into the terms and conditions of placement in any community care or health facility, or state hospital, by way of a writ of habeas corpus, and

(D) To contest a guardianship or conservatorship, its terms, and/or the individual or entity appointed as guardian or conservator.

(b) Personal Rights. Each person with a developmental disability who has been admitted or committed to a state hospital, community care facility, or health facility shall have rights which include, but are not limited to, the following:

(1) To keep and be allowed to spend one's own money for personal and incidental needs.

(2) To keep and wear one's own clothing.

(3) To keep and use one's own personal possessions, including toilet articles.

(4) To have access to individual storage space for one's private use.

(5) To see visitors each day.

(6) To have reasonable access to telephones, both to make and receive confidential calls, and to have calls made for one upon request.

(7) To mail and receive unopened correspondence and to have ready access to letter-writing materials, including sufficient postage in the form of United States postal stamps.

(8) To refuse electroconvulsive therapy ("ECT").

(9) To refuse behavior modification techniques which cause pain or trauma.

(10) To refuse psychosurgery. Psychosurgery means those operations currently referred to as lobotomy, psychiatric surgery, and behavioral surgery and all other forms of brain surgery if the surgery is performed for any of the following purposes:

(A) Modification or control of thoughts, feelings, actions, or behavior rather than treatment of a known and diagnosed physical disease of the brain.

(B) Modification of normal brain function or normal brain tissue in order to control thoughts, feelings, actions, or behavior.

(C) Treatment of abnormal brain function or abnormal brain tissue in order to modify thoughts, feelings, actions, or behavior when the abnormality is not an established cause for those thought, feelings, actions, or behavior.

(11) Other rights as specified by administrative regulations of any federal, state, or local agency.

(c) Rights of State Hospital Residents. In addition to all of the other rights provided for in this subchapter, each person with a developmental disability who resides in a state hospital shall be accorded the following rights:

(1) If involuntarily detained, to have access to a current and up-to-date copy of the California Welfare and Institutions Code. This right includes the right to have assistance from the Clients' Rights Advocate in the reading and understanding of the Code.

(2) To give or withhold consent for treatments and procedures, in the absence of a judicial order or other provision of law which provides for the exercise of this right to devolve to another party.

(3) To be provided with the amount of funds specified in Welfare and Institutions Code Section 4473 for personal and incidental use if, following the initial thirty (30) days of state hospital residency, the person is not receiving an amount of income for such use which is equal to or greater than the amount authorized by Section 4473.

Note

Authority cited: Section 11152, Government Code. Reference: Sections 4423, 4473, 4503 and 4504, Welfare and Institutions Code.

Relevant Court Decisions

Freedom of Religion:

"Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or nonattendance." *Everson v. Board. of Education*, 330 U.S. 1, 15-16 (1947)

Comment: An adult conservatee has the right not to attend church services.

Freedom of choice:

"[I]t is clear that among the decisions that an individual may make without unjustified government interference are personal decisions relating to marriage, procreation, contraception, *family relationships*, and child rearing and education." *Carey v. Population Services International*, 431 U.S. 678, 684-85 (1977) (Emphasis added)

Comment: An adult conservatee has the freedom of choice to determine the nature and extent of his or her family relationships.

Freedom of association:

"Freedom of association . . . plainly presupposes a freedom not to associate." Justice Brennan, writing for the majority, in: *Roberts v. United States Jaycees* 468 U.S. 609, 622 (1984)

Comment: An adult conservatee has the right not to associate with a parent or anyone else.

Right Not to Associate:

"Even though developmentally disabled, as an adult Leon has a right not to have contact with appellant if he so chooses. fn. 5 (Welf. & Inst. Code, §§ 4501, 4502.)" (*Conservatorship of Sides* (1989) 211 Cal.App.3d 1086, 1092-1093.)

Comment: In this case, the appellant was the mother of Leon. Leon is a person with a developmental disability. The Court of Appeal opinion cites the Statement of Rights in the Lanterman Act as its authority that the conservatee has the right to refuse contact with a parent. The right to refuse visitation is part of the normal rights afforded to any adult.