



Disability and Guardianship Project

1717 E. Vista Chino A7-384 • Palm Springs, CA 92262
(818) 230-5156 • www.spectruminstitute.org

December 15, 2020

California Court of Appeal
Fourth District, Division Two
3389 12th Street
Riverside, CA 92501

Re: Request for Publication Under Rule 8.1120
Conservatorship of Navarrete, No. E070210 (Dec. 4, 2020)

To the Court:

Spectrum Institute requests this Court to issue an order certifying for publication the opinion in the case mentioned above. We have joined the letter being submitted to the Court by the Disability Rights Education and Defense Fund and other organizations. However, we are also sending a separate letter to alert the Court's to other relevant information that is uniquely in our possession.

The right of adults with developmental disabilities not to associate with persons is a matter of continuing public interest. It is especially relevant to the nearly 50,000 such adults who are currently living under an order of conservatorship. (See attached data supplied by the Department of Developmental Services pursuant to our Public Records Act requests.)

While the Lanterman Act is clear that adults with developmental disabilities have the same constitutional rights as all other adults, the statement of rights in Welfare and Institutions Code Section 4502 is vague as to the right of such adults to choose not to associate with another person. Regulations promulgated by DDS are also ambiguous on this matter. That is why in 2015, Spectrum Institute asked the department to clarify this issue. (See attached letter to DDS Director Santi Rogers dated January 30, 2015.)

Since the freedom of choice to associate or not associate is an issue of significant interest to tens of thousands of adults with developmental disabilities – whether they are conserved or not – the opinion of this Court in the *Navarrete* case should be certified for publication. It clarifies the law on a matter of continuing public interest.

We join with other disability rights and disability services organizations in requesting this Court to issue an order certifying its opinion for publication in the official reports.

Respectfully submitted:

Thomas F. Coleman
Legal Director
Spectrum Institute
(State Bar No. 56767)



2100 Sawtelle, Suite 204, Los Angeles, CA 90025 • (818) 230-5156
www.disabilityandabuse.org • tomcoleman@disabilityandabuse.org

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.

tomcoleman@spectruminstitute.org

Subject: Public Records Act (PRA) Request
Attachments: PRA - Legal Status of DDS Population 1.2019 to 12.2019.xlsx

From: Sanders, Alexandra@DDS <Alexandra.Sanders@dds.ca.gov>
Sent: Wednesday, December 9, 2020 7:43 AM
To: tomcoleman@spectruminstitute.org
Cc: Blythe, Tom@DDS <Tom.Blythe@dds.ca.gov>
Subject: Public Records Act (PRA) Request

Hi Mr. Coleman. Per your request, please see the attached data regarding conservatorships between January 2019 and December 2019.

Thank you in advance. I hope that you have a great day.

Alexandra Sanders
Department of Developmental Services
Appeals, Complaints, and Projects Section
1600 9th Street, Room 340
Sacramento, California 95814
Desk: (916) 654-1164
Fax: (916) 654-3641

**Conservatee Status of California DDS RC Population
Age 18 and Over on 01/01/2019 and 12/31/2019**

Reginal Center	Legal_Status								
	2-Public Guardian	3-Has Cons. - not DDS	4-Director of DDS	5-Court (Dependent Child)	7-RC Director	8-Other	9-Unknown	N-No Guardian/C onserv	R-Parent or Relative
ACRC	86	1,898	58	23	*	82	35	9,737	1,183
CVRC	57	982	12	15	*	37	*	8,310	913
ELARC	25	686	*	*	21	32	12	3,099	1,868
FDLRC	*	853	14	*	55	54	*	3,074	539
FNRC	37	736	*	*	*	23	0	3,019	677
GGRC	58	800	*	*	0	25	*	4,052	733
HRC	39	1,392	35	*	0	28	19	4,725	553
IRC	70	834	24	64	38	45	16	13,131	4,590
KRC	10	429	21	15	0	28	*	3,864	492
NBRC	21	945	14	*	*	*	16	4,197	127
NLACRC	14	1,230	21	42	*	31	*	7,797	2,368
RCEB	30	1,043	21	23	0	73	*	7,431	2,506
RCOC	*	2,271	31	13	0	*	*	9,214	115
RCRC	67	190	0	*	*	20	15	1,578	384
SARC	34	1,421	18	15	*	16	45	5,260	2,445
SCLARC	43	1,346	35	48	*	64	34	5,905	99
SDRC	26	2,686	62	34		26	25	9,362	1,828
SGPRC	19	1,173	37	30	*	30	0	4,797	1,042
TCRC	24	876	20	*	*	16	*	5,843	257
VMRC	21	310	*	14	0	131	*	5,368	851
WRC	28	404	12	*	17	14	*	2,473	1,512

Tabulation by Spectrum Institute:

The chart that appears above was provided to Spectrum Institute by the Department of Developmental Services pursuant to a Public Records Act request. The tabulations that appear below were done by Spectrum Institute of the data provided by DDS in this record.

2019 data:

Total adults who were regional center clients: 171,873
 Clients in conservatorships: 49,637 (29%)
 parent/relative as conservator: 25,082
 DDS as conservator: 435
 Not DDS as conservator: 22,505
 Public guardian as conservator: 709
 Regional center as conservator: 131
 Other as conservator: 775
 Clients not in conservatorships: 122,236

2016 data:

Comparison to 2016 data provided by DDS pursuant to Public Records Act request:
 Total adults who were regional center clients: 155,780
 Clients in conservatorships: 43,341 (28%)

**Adult Regional Center Consumers (Age 18 and Up)
Client Master File Data as of December 1, 2016**

Request 1: The number of adult clients served by each regional center.

Request 2: The number of adult clients served by each regional center who are conservatees.

See table below and corresponding key on the following page.

Regional Center	Legal Status 2	Legal Status 3	Legal Status 4	Legal Status 5	Legal Status 7	Legal Status 9	Legal Status N	Legal Status R	Other	Grand Total
ACRC	101	1,209	59	31	3	26	8,347	1,756	71	11,603
CVRC	52	824	15	22	1	8	7,767	661	39	9,389
ELARC	31	570	8	8	20	14	2,907	1,641	29	5,228
FDLRC	6	472	13	9	55	6	2,699	817	47	4,124
FNRC	42	731	5	6	3	1	3,035	552	23	4,398
GGRC	41	659	6	8	0	5	4,014	536	29	5,298
HRC	29	846	39	18	0	15	4,134	972	18	6,071
IRC	63	304	25	65	42	13	12,322	3,671	47	16,552
KRC	5	359	26	9	4	0	3,532	387	31	4,353
NBRC	22	735	14	12	1	10	3,990	217	11	5,012
NLACRC	10	1,005	23	38	1	13	7,524	1,632	32	10,278
RCEB	46	590	25	29	6	11	6,554	2,944	69	10,274
RCOC	4	1,658	33	19	0	0	8,625	5	2	10,346
RCRC	56	196	0	4	1	14	1,568	268	14	2,121
SARC	45	1,085	19	11	3	78	4,812	2,244	25	8,322
SCLARC	55	836	41	52	3	24	5,413	147	77	6,648
SDRC	19	2,014	59	25	0	26	8,602	1,626	13	12,384
SGPRC	22	853	39	37	9	0	4,799	996	26	6,781
TCRC	46	471	21	9	1	10	4,311	1,477	40	6,386
VMRC	27	264	15	12	0	4	4,939	738	124	6,123
WRC	45	217	15	15	16	13	2,106	1,645	17	4,089
Grand Total	767	15,898	500	439	169	291	112,000	24,932	784	155,780

Legal Status Key

'Legal Status' answers the question: "Does the consumer have a judicially appointed guardian or conservator?"

Legal Status	Description	Definition
2	Public Guardian	The public guardian for the county of residence of the consumer is the consumer's conservator. (Probate Code sections 2920, 2921)
3	Has Conservator -- Not DDS	The consumer has a conservator who is not the director of the Department of Developmental Services (DDS).
4	Director of DDS	The director of DDS is appointed as either guardian or conservator of the consumer and/or estate of a consumer. (Health and Safety Code sections 416, 416.5, 416.9)
5	Court (dependent child)	A minor consumer who is adjudged by the court to be a dependent of the court because of parental issues or the child's criminal conduct. (Welfare and Institutions Code section 300 or 601)
7	Regional Center Director	The director of a regional center that is the actual probate conservator or guardian of a consumer, as contrasted with being delegated the responsibility of performing conservatorship duties by DDS when DDS is the actual conservator. (Health and Safety Code section 416.19, Probate Code sections 1500, 1514, 1801, 2351.5)
9	Unknown	
N	No Guardian/Conservator	The consumer does not have a judicially appointed guardian or conservator.
R	Consumer's Parent or Relative	A family member of the consumer has been appointed probate conservator (for an adult) or guardian (for a minor). (Probate Code sections 1500, 1514, 1801, 2351.5)
Other		The consumer has a guardian or conservator other than the possibilities above, such as a private conservator.

