

## Settlement Reached re: DIR Services

The case against Eastern Los Angeles Regional Center for denying DIR services has reached a proposed settlement. ELARC has signed the Proposed Settlement Agreement, as have all the Class Representatives, as have the attorneys on both sides. On June 10th, the Court granted "Preliminarily" approval of the Agreement. The Settlement Agreement will not be "Final" and thus will not have any legal effect until the Court "finally" approves it, which will likely not take place until September 2010. Under CA law, since it is a class action, all the parties need to be notified of the law suit itself, and of the settlement and they need to be given a chance to "object." It is not expected that anyone will object but by law there is allowance for a certain amount of time to lapse in which people can object if they so choose. At that point, the proposed settlement agreement is publicly filed and anyone can access it.

This is a brief summary of events, and of the Proposed Settlement Agreement itself.

On February 19, 2010, Judge Mohr of the Superior Court of Los Angeles, granted Class Plaintiffs' motion for a preliminary injunction, which required that the Defendants immediately reinstate and continue to fund DIR treatment programs for all Class Members pending final resolution of the matter and put on hold all pending fair hearings that dealt with the termination of DIR services. Following this Order, both parties entered into discussions in an effort to settle the case. After substantial negotiations, spanning several months, the parties reached an agreement settling the matter, and have negotiated and entered into a final Proposed Settlement Agreement. The Proposed Settlement Agreement was signed by the Defendants and their counsel on May 20, 2010, and by all the named plaintiffs and Class Counsel on the days immediately following. On May 28, 2010, this Proposed Settlement Agreement was submitted to the Court, with a Motion for an Order: (1) Preliminarily Approving the Proposed Settlement Agreement; (2) Conditionally Certifying the Settlement Class; (3) Approving Class Notice; and (4) Setting the Date for Final Approval. This Motion was unopposed by the Defendants.

On June 10th Judge Mohr granted a motion for Preliminary Approval of the Settlement Agreement. Class Notice will be mailed out to all Class Members, and the process of reaching Final Approval of the Settlement Agreement is set in motion. Although both parties to the dispute have signed the agreement, and it is the intention of both parties that it become final. It is NOT a final agreement until the Judge finally approves it, which will likely not take place until sometime around September 2010. However, the Preliminary Injunction will remain in place until that date, and in the interim, ELARC will be required to undertake a number of affirmative steps in preparation for final approval.

The Proposed Settlement Agreement spells out, in great detail, many items which ELARC is forbidden under the Proposed Settlement Agreement as well as many things which the Proposed Settlement Agreement affirmatively requires it to do. The Proposed Settlement Agreement, once approved by the Court, will apply to all Class Members. Under the Proposed Settlement Agreement this includes: all children who (1) have been,

are currently, or will hereafter become consumers of ELARC; and (2) have been, or will hereafter be diagnosed or provisionally diagnosed with autism.

As noted, the Proposed Settlement Agreement is quite lengthy. These are some of the key provisions of the agreement:

Under the Proposed Settlement Agreement, ELARC is permanently and finally enjoined from:

- Terminating or denying funding for DIR treatment programs or failing to make them available.
- Classifying, labeling, characterizing or identifying DIR treatment programs as "experimental," "non-medical therapy," "specialized recreation," or "social recreational" as those terms are used in the Trailer Bill.
- Pressuring or asking a Class Member to give up, barter, or reduce any other service in order to get DIR. Offer incentives to choose an alternate (such as ABA) service instead of DIR. Put in place disincentives for choosing DIR over another type of treatment program.
- Terminating, refusing to renew or denying applications for vendor contracts based on the fact that the vendor in question provides DIR.
- Engaging in any sort of retaliatory behavior against a Class Member or anyone involved in the lawsuit.

Under the Proposed Settlement Agreement, ELARC is required to do the following:

- To the extent not already done, reinstate DIR for any Class Member who had their service terminated in the wake of the Trailer Bill and cancel any related fair hearing.
- Go back through their files and identify any Class Member who, since the passage of the Trailer Bill, should have been assessed as needing or should have been referred to a DIR treatment program. ELARC must offer to reassess the children in question and provide DIR if they so need/desire them.
- ELARC must continue, in good faith, to make funding for DIR available to any and all Class Members.
- First, on a yearly basis, as evidence of this good faith, ELARC must provide statistics on how many consumers had DIR added to their IPPs, and provide statistics for the last several years on this. This requirement continues until 2014.
- Second, as soon as Final Approval of the Proposed Settlement Agreement, at each IPP that takes place for any Class Member (so any child with autism), the service

coordinator will be required to provide the parent with 2 new documents. The first is a "DIR Informational Notice" that lays out, briefly, what DIR is and how it can benefit a child with autism and the second is an Informal Complaint form, which allows a parent to lodge a complaint that will go to the attorneys and to Gloria Wong and which requires response by ELARC within 5 days.

-- Should it become necessary (because of expanding need) ELARC must solicit additional, new DIR vendors.

-- ELARC must make sure that all its employees and service coordinators fully understand the terms of the Agreement and understand that non-compliance is not an option.

Also part of the Agreement contains several provisions that allow Class Counsel (Gibson Dunn and Public Counsel) the right to review ELARC's files and ensure that they are in good faith compliance with the Agreement. Any non-compliance is actionable and will be brought to the Court's attention.