

REMINDER: VOR's ANNUAL CONFERENCE IS ONE WEEK EARLIER THAN IN PAST YEARS!

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VOR 2010 ANNUAL CONFERENCE and INITIATIVE

June 4 - 9, 2010

The Liaison Capitol Hill

Washington, D.C.

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VOR Weekly E-Mail Update

January 8, 2010

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FEDERAL RESOURCE

1. President's Committee for People with Intellectual Disabilities Reports

LEGAL BRIEFS

2. SOUTH CAROLINA: Suit alleges funds for disabled transferred

3. WASHINGTON, D.C.: Judge continues oversight of Washington's care of disabled

CALIFORNIA NEWS

4. Judge Rejects Some California Furloughs

5. Union says overtime hours at PDC skyrocket

6. One Wish: If it is good enough for Santa

VOR and YOU

7. VOR says goodbye to long-time member, friend and former Board Member, Skip Landen: Memorial donations accepted
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FEDERAL RESOURCE

1. President's Committee for People with Intellectual Disabilities Report

Capitol Insider

Disability Policy Collaboration

Volume 15, Issue 1

January 4, 2010

The President's Committee for People with Intellectual Disabilities (PCPID) recently completed scanning and posting all of its past Reports to the President. Nearly 30 reports published between 1967 and 2004 are now available at:

http://www.acf.hhs.gov/programs/pcpid/pcpid_public.html

LEGAL BRIEFS

2. SOUTH CAROLINA: Suit alleges funds for disabled transferred

The Post and Courier
Tuesday, December 29, 2009

A group of disabled residents has asked the South Carolina Supreme Court to stop a deep round of cuts next month to in-home care because they say state officials have put millions in federal stimulus money in a "rainy-day fund" that should have been used to avoid the cutbacks.

The group filed a lawsuit that alleges the Department of Disabilities and Special Needs has received \$54 million in stimulus money this year but that 90 percent of it, intended to preserve jobs and protect Medicaid services, has been transferred to a reserve fund created by the Legislature -- what the suit describes as a violation of the stimulus bill that could put South Carolina's future funding at risk.

The Greenville News reported earlier this year that the agency might have sidestepped the cuts if state money and stimulus funds had been used differently.

The suit also alleges that the agency had more than \$7 million that could have offset the cuts and that once stimulus money is included, it will receive more money in 2010 than it did in 2009.

At issue is the use of tens of millions of dollars in stimulus money while thousands of families face the reduction or elimination of in-home care that allows them to hold jobs while sustaining relatives with mental retardation and spinal cord injuries.

State employees were off Thursday through Monday, and agency spokeswoman Lois Park Mole said no one was available to respond.

Agency Commissioner Rick Huntress of Greenville said he hadn't heard about the suit but that commissioners repeatedly have asked for stimulus money to be restored to the agency. He said he wasn't familiar with the "excess" money the suit alleges the agency had.

Agency officials have said that budget cuts have made the reductions to respite care, adult companions and other services unavoidable come January but that it would have been possible to maintain services if the Legislature had allowed the agency to keep more of the stimulus funds it qualified for.

Carolyn Myers of Camden, chairmother for the membership of the advocacy group Voices for the Voiceless, said parents and caretakers of people who have severe handicaps are worried about what will happen come Jan. 1 because of the looming budget cuts. Myers, who has a son who is severely physically handicapped, said there is much uncertainty about what services will no longer be available after the New Year.

Myers said the number of hours she receives from a personal care assistant for her son might drop from 45 to 28 hours a week. She said that would mean her 31-year-old son Albert most likely would have to be placed in an institution for care, because his needs are too great for her to handle alone. Myers said that she is a 68-year-old widow and can't take on as much of her son's care as she once could. Although his physical needs are great, Myers said her son is "delightfully mentally alert."

The suit names 15 defendants in state government, including agency commissioners and administrators, the head of the state Department of Health and Human Services, and the members of the state Budget and Control Board.

Attempts to reach the officials Monday were unsuccessful. A spokesman for Gov. Mark Sanford said the Governor's Office will review the suit. Huntress said agency commissioners have urged consumers to lobby legislators to restore more stimulus money.

Critics have said the agency had other ways to avoid the cuts, such as getting special permission to run a temporary deficit.

3. WASHINGTON, D.C.: Judge continues oversight of Washington's care of disabled

By Henri E. Cauvin
Washington Post
Saturday, December 19, 2009

A federal judge on Friday rejected the District's bid to end the court oversight imposed 33 years ago as part of a class action lawsuit over the care of people with developmental disabilities.

U.S. District Judge Ellen Segal Huvelle said the important organizational changes the city had made were only beginning to show results and were hardly enough to ensure that the improvements would last.

"It's not just creating a structural umbrella to make things better," the judge said at the close of a day and a half of hearings in the case, *Evans v. Fenty*. "We've got to see it on the ground."

A new mayor, a new attorney general and a new agency aren't enough to justify ending the court's role in the case, Huvelle said. Delivering her decision from the bench, Huvelle took aim at the office of D.C. Attorney General Peter J. Nickles, saying his hard-line legal strategy in the case was not serving anyone's interest, least of all the 600 people whose care the court is charged with overseeing.

"I say this to the attorney general: You have responsibilities to the public, to the vulnerable people involved here and to the taxpayers," Huvelle said. "If you think court intervention is evil, come up with a way to resolve this case through a remedy."

In an interview, Nickles said he has been working to do just that for three years but the plaintiffs are intent on having a court-appointed receiver run the Department of Disability Services, no matter what improvements the agency makes. "It's very frustrating because DDS, like a lot of our agencies, has done a lot of good things," Nickles said.

Nickles has been leading the effort to end the lawsuit and several other long-running class actions involving social services and the special education system.

After a Supreme Court ruling in June, the attorney general has argued in one class action after another that the ruling in *Horne v. Flores* effectively mandated an end to cases such as *Evans*.

The original constitutional violations that spawned the cases were corrected long ago, according to the city's argument, and orders that obligate the District to reach various benchmarks should be thrown out.

Huvelle's decision, which she said she will lay out in a written opinion, is not binding on other federal District Court judges who are considering similar requests.

Filed in **1976**, *Evans* was prompted by conditions at Forest Haven in Laurel, which housed developmentally disabled D.C. residents until its court-ordered closure in 1991. About 600 former Forest Haven residents are still living, and their care is the focus of the *Evans* lawsuit.

CALIFORNIA NEWS

4. Judge Rejects Some California Furloughs

Summary: A California Superior Court judge has ruled that the Governor of California abused his discretion when, by executive order, he placed more than 200,000 state employees on unpaid furloughs three days a month. The lawsuit was filed by the Service Employees International Union (SEIU) on behalf of workers whose pay comes from sources other than the state's general fund. In its suit, the SEIU argued that the governor acted illegally, because the furloughs were designed to create savings for the general fund but affected workers who weren't paid from it. The court agreed and also noted evidence cited by the SEIU that the furloughs had negative effects including slowing Social Security disability reviews and creating delays at the DMV. "When furloughs are implemented to save money, yet their implementation in some agencies saves nothing and increases costs, such a policy is arbitrary, capricious and unlawful," Judge Roesch wrote. Aaron McLear, the governor's spokesman, criticized the ruling but said it wasn't unexpected. He said 24 cases concerning furloughs have been filed in courts. The governor has won some and lost some, he said, and in each case, the loser appeals.

"We expect that this issue will be decided by the state Supreme Court and that we will win," Mr. McLear said.

Related case: The California Association of Psychiatric Technicians (CAPT) filed a similar lawsuit against furloughs on behalf of its members who work in developmental centers. Their case will be before the court on January 15.

Judge Rejects Some California Furloughs

By Stu Woo and Don Clark
Wall Street Journal
January 2, 2010

An order by a California judge to halt furloughs of some state workers adds a new headache for Gov. Arnold Schwarzenegger in a continuing struggle to address the state's budget woes.

Alameda County Superior Court Judge Frank Roesch on Thursday ruled that Mr. Schwarzenegger abused his discretion with two executive orders, which placed more than 200,000 state employees on unpaid furloughs three days a month. The union that challenged the furloughs estimated that 30,000 to 50,000 workers were affected by the judge's ruling, most of them represented by unions.

The governor's office said it would appeal the ruling and would ask the judge to stay the order during that process. Service Employees International Union Local 1000, which filed the suit, said it planned to argue against the stay and seek back pay for the workers affected by the orders.

Since the summer of 2008, California has closed a cumulative \$75 billion budget shortfall through a combination of tax increases and spending cuts, as well as one-time stimulus funds and accounting maneuvers. As part of budget-balancing efforts, Mr. Schwarzenegger signed executive orders in December 2008 and July 2009 that reduced salaries and work days of state employees.

5. Union says overtime hours at PDC skyrocket

By Jenna Chandler
December 22, 2009
The Porterville Recorder

Hundreds of psychiatric technicians at the Porterville Developmental Center have accumulated massive amounts of overtime, according to new statistics that one union says cost taxpayers up to \$180,000 in November alone.

The California Association of Psychiatric Technicians (CAPT) found that its 759 local members worked 5,900 hours of overtime in November—a 257 percent increase since September.

The state-run hospital for the severely mentally disabled is grappling with maintaining a staff-to-client ratio while implementing unpaid furloughs.

"This is a big concern for us," CAPT consultant Brady Oppenheim said. "Our concern is for the taxpayers who are having to foot the bill."

This summer, Gov. Arnold Schwarzenegger trimmed \$425 million from the state's budget shortfall by mandating that state workers had to take off three days of every month without pay through June 30, 2010. PDC, because it is a 24-hour facility, follows an exception: employees work without pay and bank their furlough leave credits for a later date.

PDC administration and CAPT agree that it is difficult to maintain that ratio while implementing the furloughs.

In August, when overtime hours cost about \$45,000 a month, Executive Director John Sawyer said that PDC administration was following the state's orders. He said the mandates were difficult to adhere to, because time off affects the quality of services provided to clients.

Sawyer declined to comment for this article. The Department of Developmental Services did not immediately return phone calls or e-mails.

Oppenheim also credits the surge in overtime hours to the layoff of 60 temporary union members who could have worked to cover permanent employee absences, and a hiring freeze. Local CAPT members, typically clad in red shirts, have protested the hiring freeze many times along West Morton Avenue and outside the PDC.

"The governor is not looking at how his cuts are affecting [the developmental centers,]" Oppenheim said.

The PDC is one of 21 developmental centers statewide that provide a myriad of services, such as specialized health care and recreational opportunities, to people with medical or behavioral program needs. Admission to one of the facilities requires either a formal determination that an individual meets stringent admission criteria, or a court order.

According to a report by the Senate Office of Oversight and Outcomes, the level-of-care staff in state developmental centers and mental hospitals had accumulated 269,149 unpaid furlough hours by the end

of August. The report, released in October, also found that the furloughs have failed to save the \$108 million projected by the administration in the prison healthcare system, and paying overtime and hiring private workers to fill in for furloughed employees will more than offset any savings.

CAPT is seeking to lift the state's hiring freeze at 24-hour facilities and the reduction or elimination of unpaid furloughs. The union's lawsuit is scheduled for hearing Jan. 15.

Last week, a state judge ruled that Schwarzenegger's unpaid furloughs on thousands of correctional officers violated labor and wage laws, and ordered the state to pay the prison workers for the unpaid hours they have worked.

The lawsuit was filed by the California Correctional Peace Officers Association.

This is the first such study completed by CAPT, but similar reports could be completed at other developmental centers in the future, according Oppenheim.

"Looking ahead, we probably will see similar results," she said.
California is facing another deficit → \$21 billion - in the new fiscal year starting July 1, 2010.

Contact Jenna Chandler at 784-5000, Ext. 1050, or jchandler@portervillerecorder.com.

6. One Wish: If it is good enough for Santa

**San Francisco Chronicle
Letters to the Editor
December 25, 2009**

Regarding the story, "Mall Santa right jolly about his seasonal work," (Dec. 21): One thing about this article jumped out at me: All 8,000 professional Santas must pass background checks before being allowed near children.

If we require this standard of Santas throughout the United States, why aren't we at least requiring the same of those who work with people with developmental disabilities and mental illnesses?

There are only four states - California, Colorado, Kansas and Arkansas - that formally train, license, regulate and check their direct-care mental health and developmental staff. There is no regulation for staff in the other 46 states, nor are there national licensure or education requirements.

Please tell Santa that all I want for Christmas is licensed, regulated, professional staffing for all of our most vulnerable Americans.

TONY MYERS, President
California Association of Psychiatric Technicians
Rancho Cucamonga

VOR and YOU

7. VOR says goodbye to long-time member, friend and former Board Member, Skip Landen: Memorial donations accepted

VOR said goodbye to long time member and former VOR Board Member, Skip (Gustav) Landen on December 10, 2009. Skip was blessed with many more years of happiness and good health, more than even he thought possible following a lengthy battle with cancer. His widow is long-time VOR member, Marian Hill-Landen, someone he found love with later in life. [Donations](#) to VOR are being accepted in Skip's memory.

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Editor: Tamie Hopp, VOR Director of Government Relations & Advocacy

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TO JOIN OR CONTRIBUTE: \$25 per individual, \$150 per family organization, or \$200 per provider/professional organization. Extra donations are welcome!

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