



## **REVISED**

### **EXECUTIVE COMMITTEE MEETING NOTICE/AGENDA**

Posted at [www.scdd.ca.gov](http://www.scdd.ca.gov)

Notice also provided to all national press wire services

**DATE:** December 11, 2012

**TIME:** 10 a.m. – 12 p.m.

**LOCATION:** State Council on Developmental Disabilities  
1507 21<sup>st</sup> Street, Suite 210  
Sacramento, CA 95811  
(916) 322-8481

#### **TELECONFERENCE SITES:**

Palos Verdes Art Center  
550 Deep Valley Drive, Suite 261  
Rolling Hills Estates, CA 90274

Wallace Group  
Redwood Conference Room  
612 Clarion Court  
San Luis Obispo, CA 93401

*Pursuant to Government code Sections 11123.1 and 11125(f), individuals with disabilities who require accessible alternative formats of the agenda and related meeting materials and/or auxiliary aids/services to participate in this meeting should contact Robin Maitino at (916) 322-8481 or email [robin.maitino@scdd.ca.gov](mailto:robin.maitino@scdd.ca.gov). Requests must be received by 5:00 pm **December 5, 2012**.*

#### **AGENDA**

	<b><u>Page</u></b>
<b>1. CALL TO ORDER</b>	L. Shipp
<b>2. ESTABLISHMENT OF QUORUM</b>	L. Shipp
<b>3. WELCOME/INTRODUCTIONS</b>	L. Shipp

4. **APPROVAL OF OCTOBER 2012 MINUTES** L. Shipp 3

5. **PUBLIC COMMENTS**

*This item is for members of the public only to provide an opportunity to comments and/or present information to the Council on matters **not** on the agenda. Each person will be afforded up to three minutes to speak. Written requests, if any, will be considered first. The Council will provide a public comment period, not to exceed a total of seven minutes, for public comment prior to action on each agenda item.*

6. **ISSUES TO FOLLOW-UP FROM COUNCIL MEETING** L. Shipp

7. **FINDING OF NECESSITY** J. Aguilar

The Executive Committee is required to make a 2/3 finding that there exists a need to take immediate action to conduct a closed session and the need for a closed session came to the attention of the committee subsequent to the agenda being posted. Closed session will only proceed if finding is made.

8. **CLOSED SESSION - PERSONNEL**

Pursuant to Government Code 11126 (a)(1) the committee will have a closed session to consider the appointment, employment, evaluation of performance of a public employee.

9. **RECONVENE IN OPEN SESSION** J. Aguilar

Announcement of any action taken during closed session.

10. **SPONSORSHIP REQUEST**  
**FAMILY VOICES OF CALIFORNIA** M. Polit 8

11. **AREA BOARD 12 REQUEST TO SEEK**  
**ATTORNEY GENERAL OPINION** V. Smith/  
M. Corral 10

12. **ESTABLISH JANUARY COUNCIL AGENDA** All

13. **ADJOURNMENT** L. Shipp

Draft  
**Executive Committee Meeting Minutes**  
**October 18, 2012**

**Attending Members**

Lisa Cooley  
Leroy Shipp  
Olivia Raynor  
Jennifer Allen  
Jorge Aguilar

**Members Absent**

Ray Ceragioli

**Others Attending**

Roberta Newton  
Robin Maitino  
Mark Polit

1. **Call to Order**

Lisa Cooley called the meeting to order at 10:05 a.m. and established a quorum present.

2. **Welcome and Introductions**

Members and others introduced themselves.

3. **Approval of August 14 and September 5, 2012 Minutes**

It was moved/seconded (Ship/Allen) and carried to approve the August 14, 2012, Executive Committee meeting minutes and the September 5, 2012 meeting minutes as presented.

4. **Public Comments**

There were no public comments.

5. **Review of Bylaws/Committee Structures**

SCDD bylaws contain the structure and provisions of SCDD committees. Currently, the bylaws provide for 5 standing committees: 1) Executive, 2) Legislative and Public Policy, 3) Program Development, 4) Self-Advocates Advisory, and 5) Employment First; and, one sub-committee: Strategic Planning.

Prior to November 2010, the bylaws also provided for an Administrative Committee which was eliminated by Council action during the November 2010 Council meeting.

During the September 12, 2012 Council meeting, the Council took action to establish an Ad-Hoc Committee for the purposes of continuing the investigation of the contracts and recommending an executive director.

It is staff's recommendation that the Executive Committee consider the respective responsibilities of the committees and recommend to the Council that:

- 1) The Administrative Committee should be re-established with similar functions and responsibilities and transfer the responsibility of contract review/investigation from the Ad-Hoc Committee to the Administrative Committee.
- 2) The Ad-Hoc Committee should function to screen, select and conduct initial interviews of potential candidates for executive director with reporting directly to Executive Committee. The Executive Committee could conduct secondary interviews and make the final recommendation to the full Council where final interviews could be conducted.

It was moved/seconded (Aguilar/Allen) and carried to recommend that the Council reestablish the Administrative Committee and, the first charge of the Committee would be to immediately continue the work of the Ad-Hoc Administrative Committee on finances and existing contracts.

## **6. Proposed Revisions to Organizational Chart**

In February 2010, following the departure of the previous Executive Director and two Deputy Directors, the Council submitted a management reorganization package to the Department of Personnel Administration (DPA), now Cal HR. The proposed new organization chart called for three Deputy Directors: Deputy Director for Administration; Deputy Director for Policy and Planning; and Deputy Director for Area Board Operations. During the ensuing two years, none of the three Deputy Director positions were filled. In February 2012, Executive Director Carol Risley submitted a revised reorganization package to DPA. This proposed organization chart

called for two Deputy Directors: Deputy for Policy and Planning and Deputy for Systems Monitoring and Area Board Operations. Instead of a Deputy Director for Administration, it was proposed that the position of Staff Services Manager I (the Budget Officer) be elevated to Staff Services Manager III and that individual supervise personnel, IT, budget, contracts and procurement. The SSM III in turn would report to the Executive Director, as do the Deputy Directors.

It is staff's recommendation that the Executive Committee request approval from the Council that a revised reorganization package be sent to CalHR with the following changes: replace the proposed Deputy Director for Systems Monitoring and Area Board Operations with a Deputy Director for Administration. The Deputy Director for Administration would supervise staff assigned to personnel, IT, budget, contracts and procurement. Without supervisory responsibilities, the SSM II would return to previous SSM I status and would retain the duties of Budget Officer.

It was moved/seconded (Aguilar/Raynor) and carried to recommend to the Council reestablish a three (3) deputy structure at the Council headquarters which would be: Deputy Director of Area Board Operations; Deputy Director of Policy and Planning; and Deputy Director of Administration.

It was moved/seconded (Aguilar/Allen) and carried to recommend to the Council that moving forward all changes to the organizational structure effecting deputy directors and above be approved by the Council prior to moving forward to CalHR.

**7. Request for Department of Finance (DOF) to Expand Audit of Council's Financial Affairs**

Based on the outcomes listed in the August 17, 2012 letter from DOF, the Executive Committee took the following action regarding the DOF audit:

It was moved/seconded (Aguilar/Allen) and carried to recommend that the Council authorize DOF to expand their audit, including but not limited to examining how allocations are distributed and tracked for area boards, headquarters, and grants.

It was moved/seconded (Shipp/Allen) and carried to recommend that the Council provide a 30-day notice to BRC to terminate their current self-advocacy contract without cause and further to have the self-advocates assist in crafting a new RFP to be released as soon as possible.

8. **Request to Initiate an Investigation of Personnel Issues**

The Executive Committee is recommending that based on the review of the prior Executive Director's evaluation and the number of specific comments that were made regarding Council operations, that an independent investigation takes place regarding personnel issues.

9. **Current Status of Council Operations**

Given the extensive scope of managerial and administrative duties currently being undertaken, it was moved/seconded (Shipp/Allen) and carried to recommend that the Council consider appointing Roberta Newton as Interim Executive Director. (1 abstention; 1 oppose)

10. **Conference Attendance Policy**

It was moved/seconded (Allen/Shipp) and carried to recommend that the Council adopt the SCDD Policy for Conference Attendance by Council Members with revisions.

11. **November Council Agenda**

The November Council agenda was set as follows:

1) Dues for the NACDD

2) Committee Reports

- Executive Committee
- Nominating Committee
- Legislative and Public Policy
- Employment First Committee
- Program Development/Ad –Hoc Review Committee
- Self-Advocates Advisory Committee/Statewide Self-Advocacy Network

- Incompatible Activities Advisory

### 3) Member Updates

## 12. **Locations for 2013 Council Meetings**

The Executive Committee is requesting weigh-in from the Council on whether or not to have one-to-two Council meetings outside of Sacramento in 2013.

## 13. **Adjournment**

The meeting was adjourned at 1:20 p.m.

## AGENDA ITEM DETAIL SHEET

**ISSUE:** Family Voices of California.

**BACKGROUND:** Family Voices of California (FVCA) is a statewide collaborative of locally-based parent run centers working to ensure quality health care for children and youth with special health care needs.

FVCA builds the capacity of parent centers throughout California to provide families with the information and support they need to make informed decisions about the health care of their children. FVCA provides information and a forum for parent centers and families to advocate for improved public and private policies, builds partnerships between professionals and families, and serves as a vital resource on health care.

**ANALYSIS/DISCUSSION:** Family Voices of California (FVCA) is requesting a sponsorship of \$999.00 for the 2013 Family Voices Health Summit & Legislative Day, held on February 25-26, 2013 in Sacramento.

This annual event provides the opportunity for families of children and youth with special health care needs to hear from State Administration representatives, legislators, staff, and advocates about critical health policy issues that affect their children and communities. Participants then visit their local legislators and legislative leadership to discuss their child's special health care needs and the impact of proposed budget amendments on their children and families.

Outreach for the Summit and Legislative Day is conducted through the Family Voices Council Member Agencies (CMAs), monthly webinars and Family Voices website and listservs. Each CMA is responsible for identifying several family representatives of children and youth with special health care needs, inviting them to the Summit and arranging for the support they need to attend. During the conference, three breakout sessions are scheduled for family members and other conference attendees to discuss speaker content and prepare for the following day when families meet with their legislator.

**COUNCIL STRATEGIC PLAN OBJECTIVE:** Individuals with developmental disabilities have the information, skills, opportunities and support to advocate for their rights and services and to achieve self-determination, independence, productivity, integration and inclusion in all facets of community life.

**PRIOR COUNCIL ACTIVITY:** Since the beginning of FY 2012-13, the Council has awarded \$950.00 for sponsorship requests. The Council allocates \$25,000 per fiscal year for sponsorships. The fiscal year began July 1, 2012.

**RECOMMENDATION(S):** Award \$999.00 to Family Voices of California for individuals with developmental disabilities to participate in this program.

**ATTACHMENTS(S):** (1) Sponsorship request; (2) Sponsorship budget page; (3) 2012 Health Summit Report

**PREPARED BY:** Mark Polit, November 28, 2012

## AGENDA ITEM DETAIL SHEET

**ISSUE:** Submission of Council Complaint to Attorney General's office for review.

**BACKGROUND:** In September 2012, Area Board 12 office received a complaint alleging numerous contract violations by Inland Regional Center. Area Board 12 reviewed the materials of evidence submitted with such complaint and issued a letter to the Board of Inland Regional Center (IRC) and to the Department of Developmental Services (DDS) identifying concerns regarding alleged violations of the contract between DDS and IRC focusing on the provision titled "restricted use of funds". Such provision prohibits state contractors (thus regional centers) from using such funds to influence employees of the center either for or against unionization. Such prohibition is found in the Standard Agreement (aka contract) and California Welfare and Institutions Code Section 4638 and in California Government Code Sections 16645 through 16649. In reviewing the evidence submitted with the complaint letter, Area Board 12 concluded that on June 13, 2012 the Executive Director of IRC held a mandatory staff meeting which focused on the recent activities of IRC staff towards unionization. At that meeting the Executive Director, when speaking about the union, clearly stated "So don't lose. Don't lose your voice, your money -- just for empty promises. Vote No." Area Board 12 thoroughly reviewed the one hour audio recording of the mandatory meeting and found no evidence that the mandatory all staff meeting was focused on assisting staff in better serving regional center consumers or in creating a higher level of commitment to direct service coordination. On November 19, 2012 IRC issued a response letter to the Area Board 12 Chairperson and DDS. Such letter questions whether Area Boards have the authority to review such regional center practices and proffers, at great length, that the restriction on the use of funds via the contract language between DDS and regional centers is unenforceable.

**ANALYSIS/DISCUSSION:** IRCs response letter of November 19, 2012 contends two distinct issues: 1. That SCDD and Area Boards do not have the authority to review regional center policy and practices. 2. That the restriction on the use of state funds for activities either in support of or in opposition to employee unionization

via their contract with DDS would be found "unenforceable" by a court. While the letter from IRC references numerous cases at the federal level, we do not agree with the outcome of their analysis and do believe that a recipient of state funds has a requirement to comply with the terms of their contract. It is paramount to note that the concern of Area Board 12 does not surround the issue of IRCs staff and whether they unionize but rather the use of state funds intended to support direct client service delivery being used improperly.

**COUNCIL STRATEGIC PLAN OBJECTIVE:** None

**PRIOR COMMITTEE ACTIVITY:** None

**RECOMMENDATION(S):** Refer matter to Attorney General's office for review.

**ATTACHMENTS(S):** Letter from Area Board 12 to the Inland Regional Center Board and Department of Developmental Services dated October 10, 2012 and letter from Inland Regional Center to Area Board 12 dated November 19, 2012.

**PREPARED BY:** Vicki Smith, Executive Director Area Board 12



# Area Board XII

## Office of the California State Council on Developmental Disabilities

To protect and advocate for the civil, legal and service rights of persons with developmental disabilities.

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10 October 2012

Drew Cutler, M.D.  
Board President, Inland Regional Center  
Pediatrics – Faculty Medical Offices  
Loma Linda University Medical Center  
11370 Anderson Street  
Loma Linda, CA 92354-3450

Terri Delgadillo  
Director, Department of Developmental Services  
PO Box 944202  
Sacramento, CA 94244-2020

Re: ALLEGED CONTRACT VIOLATIONS AND NON-COMPLIANCE OF INLAND REGIONAL CENTER

Dr. Cutler and Director Delgadillo:

This letter is a written follow up to a verbal report and request made to the board members of Inland Regional Center (IRC) (and to the Department of Developmental Services (DDS) via the IRC Board Meeting) on September 10, 2012. Such report and request is concerning a letter received by our office dated August 28, 2012 (See Attachment 1) outlining a potential violation(s) of IRCs contract by the Executive Director when a “mandatory all-staff meeting” was called to be held on June 13, 2012 (See Attachment 2) and at that meeting the Executive Director of IRC discusses the question of unionization and states “So don’t lose. Don’t lose your voice, your money – just for empty promises. Vote No.” (See Attachment 3, Meeting 2 at 7:05 minute marker). We’d be remiss to not also point out that at that same meeting on June 13, 2012 a question is asked by an employee to the Executive Director as to why the meeting was called because the Lanterman Act at Welfare and Institutions Code, Section 4638 expressly prohibits such action (See Attachment 3, Meeting 4 at 3:58 minute marker).

**Question under review:** Did the actions of the IRC Executive Director on June 13, 2012 violate the Standard Agreement (and Amendment(s)), Agreement Number ‘HD099008’, Amendment Number ‘C Series’, Provision 21 – “Restricting Use of State Funds.”? (See Attachment 4)

**Authority of Area Boards:** The California State Council on Developmental Disabilities coordinates its responsibilities through thirteen Area Boards. Area Boards are in part, governed by Welfare and Institutions (WIC) Code, Section 4548 (g)...“area boards shall review the policies and practices of publicly funded agencies that serve or may serve persons with developmental disabilities, to determine if the programs are meeting their obligations under local, state, and federal laws.”

**Background:** IRC is governed by the Lanterman Act (WIC 4500 et. seq.) in its provision of services to people with developmental disabilities in Riverside and San Bernardino counties. IRC serves approximately 26,700 people with developmental disabilities and their families through a Standard Agreement (“contract”) with the California Department of Developmental Services. IRC was placed on “probation” by DDS in a letter dated January 19, 2011 for a variety of contract violations and issues surrounding intimidation and retaliation. As a result of such action by DDS, a letter from DDS to IRC dated May 20, 2011 stipulates that “The Board and regional center executive management must immediately become well versed in all aspect of the regional center’s contract with the Department and related laws...”

The Standard Agreement Amendment (aka Contract) between DDS and IRC contains language concerning “Restricting Use of State Funds.” This is standard language used from year to year as it binds the regional centers to statutory language found in California Government Code Sections 16645 through 16649 (See Attachment 5) and California Welfare and Institutions Code Section 4638 (See Attachment 6). To paraphrase, both sections explicitly prohibit regional centers from using Operations funds in influencing employees of a regional center regarding their decision to organize/unionize or not to organize/unionize. Why? Because such activity has nothing to do with service provision (Purchase of Services) for the consumers of IRC. Regional Centers pay their staff through Operations funds and purchases services for clients through POS funds. When staff is attending a “mandatory all-staff meeting” their pay is funded by Operations funds. To paraphrase WIC Section 4620 (a), regional centers activities are to “reflect a strong commitment to the delivery of direct service coordination” and as questioned in the complaint letter dated August 28, 2012 (Attachment 1), “What was the impact of approximately five hundred hours of staff time that could have been used for direct client services? (Estimated at one hour per staff)...What was the impact of the loss of administrative hours that could have been used to support Case Management in client service and paying vendors?” After reviewing the entire audiotape of the IRC “mandatory all-staff meeting” of June 13, 2012, we have found no evidence that what was discussed sought to improve the skill set for the employees to better fulfill their essential job functions and therefore not in any manner related to reflecting “a strong commitment to the delivery of direct service coordination” as outlined in WIC Section 4620 (a).

In addition to the formal question posed above (which was presented at the IRC Board Meeting of September 10, 2012) Area Board 12 is concerned with actions taken at that same board meeting with the appointment of new members and the composition of IRC’s board. At the September 10, 2012 meeting, IRC’s board appointed four new members to the board bringing the total number of members to fifteen of the seventeen available. None of the four new members are consumers of the regional center. Currently IRC has only one consumer on its board and with two vacancies and only one other member term expiring prior to July 2014, it does not allow IRCs board composition to be in compliance with WIC 4622 (e) (See Attachment 7) which requires that at least twenty-five percent of the board composition to be consumers (which in this case would be at least five seats of the seventeen). Perhaps more concerning is that the issue was raised during the discussion of the motion made to seat the four new members, and the board passed the motion anyway. We would refer back to the letter from DDS to IRC once again of May 20, 2011 which stipulates that “The Board and regional center executive management must immediately become well versed in all aspect of the regional center’s contract with the Department and related laws...” While this office understands the difficulties of recruiting consumers to the board, our

concern rests with the fact that the board knowingly appointed new members even after being made aware that there were not enough seats left to be in compliance. Should four additional consumers approach the board to join today, there would not be enough seats to appoint them and hence, be in compliance.

**Area Board 12 Concerns:** The State Council on Developmental Disabilities, Area Board 12 is highly concerned with the viability of IRCs contract with DDS given:

- The failure of IRC to fulfill contractual obligations and the continued probation even after the Department of Developmental Services letter of May 20, 2011.
- The numerous complaints that this office continues to receive from employees of IRC.
- The most recent actions of the Executive Director on June 13, 2012 at the “mandatory all-staff meeting” which appear to violate the contract between DDS and IRC as well as Government Code Sections 16645 through 16649 and Welfare and Institutions Code Section 4638.
- The recent activities of the IRC Board in failing to comply with WIC 4622(e).

Should there be any questions with regard to this letter, please do not hesitate to contact me via email at [Vicki.Smith@scdd.ca.gov](mailto:Vicki.Smith@scdd.ca.gov) or in writing to: SCDD, Area Board 12, 650 E Hospitality Ln, Ste 280, San Bernardino, CA 92408.

Sincerely,

Vicki L. Smith  
Executive Director  
SCDD, Area Board 12

/enclosures

cc: IRC Board Members  
Brian Winfield, Department of Developmental Services



# INLAND REGIONAL CENTER

*...valuing independence, inclusion and empowerment*

P. O. Box 19037, San Bernardino, CA 92423

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November 19, 2012

Stacy McQueen, Chair  
Board of Directors, Area Board XII  
State Council on Developmental Disabilities  
12590 Iroquois Road  
Apple Valley, CA 92308

Terri Delgadillo, Director  
Department of Developmental Services  
P.O. Box 944202  
Sacramento, CA 94244-2020

In re: Alleged Contract Violations and Non-Compliance of Inland Regional Center

Dear Ms. McQueen & Director Delgadillo:

This letter is written in response to the letter of October 10, 2012 from Vicki L. Smith, Executive Director, Area Board XII, State Council on Developmental Disabilities, with regard to certain "concerns" Ms. Smith has expressed with respect to Inland Counties Regional Center, Inc.(IRC). Specifically, Ms. Smith contends that (1) IRC is not in compliance with Article I, Section 21 of its contract with the Department of Developmental Services (DDS) in that IRC has used state funds in violation of *Gov't Code* §§16645-16649 and *Welfare and Institutions Code (WIC)* §4638; (2) IRC is not in compliance with *WIC* §4622 regarding the membership of IRC's Board of Trustees and (3) Area Board XII has the authority to raise these questions. Since Ms. Smith's letter has been widely distributed, IRC cannot remain silent and must respond to the specific claims set forth in her letter.

Ms. Smith has raised questions about matters that IRC believes are outside the scope of authority of the State Council on Developmental Disabilities (SCDD) and Area Board XII and that are more appropriately within the oversight responsibilities of DDS with respect to the regional center system.

It is IRC's belief that the SCDD and the Area Boards have no responsibility for overseeing the operations of the regional centers or a regional center's contract with DDS. Under the *Lanterman Act*, DDS has the responsibility of overseeing the operations of the regional centers and making sure that the performance of the regional centers is in compliance with their contracts with DDS. In furtherance of DDS's responsibilities under the *Lanterman Act* and as a result of IRC's probationary status, IRC is experiencing extensive oversight by DDS.

IRC's Board of Trustees, management and staff have worked closely with DDS to address and resolve those issues that gave rise to IRC's probationary status. IRC has continued to make progress in that regard and is confident that the probationary status will be removed.

*WIC* §§4520-4555 govern the scope of the operations for the SCDD and the Area Boards. The SCDD and the Area Boards were established to comply with the requirements of the *Developmental Disabilities Assistance and Bill of Rights Act of 2000* (Public Law 106-402 at 42 USC §15001 et seq.). *WIC* §4548(a) specifically provides that "Area boards shall locally assist the state council with the implementation of subtitles A and B of Title I of Public Law 106-402 (42 USC §15001 et seq.)." There is nothing in the *Developmental Disability Assistance and Bill of Rights Act of 2000* or the *WIC* which grants any oversight responsibilities to the SCDD and the Area Boards with respect to how regional centers utilize their operations budget. Even DDS is limited in that regard. (See *Association For Retarded Citizens -- California v. Department of Developmental Services* (1985) 38 Cal. 3d 384, 389-395)

It is clear that *WIC* §4548(g)(1), the subsection relied upon by Ms. Smith for her authority to question how IRC utilizes its operations budget, only deals with publicly funded agencies other than regional centers since that very same subsection makes reference to a regional center notifying the Area Board when publicly funded programs fail to meet their obligations in serving persons with developmental disabilities. The language relied upon by Ms. Smith appears to have been taken out of context and then applied to IRC.

In addition, in *WIC* §4548(i) the legislature stated that Area Boards were not to duplicate the functions assigned to other agencies that are "routinely responsible for monitoring, regulating or licensing programs for person with developmental disabilities." This would clearly bar the SCDD and Area Board XII from any attempt to monitor or regulate a regional center when such activities are clearly assigned by the legislature to DDS.

Ms. Smith contends that IRC has engaged in activity in violation of state law and its contract with DDS regarding restrictions on the use of state funds with respect to union activities. First of all, there can be no argument that the SCDD and Area Board XII have absolutely no oversight responsibilities with respect to any union activities at IRC.

When IRC became aware of union activities involving IRC and its employees, IRC solicited an opinion from legal counsel as to what IRC's rights, obligations and responsibilities

were regarding how IRC could respond to the union activities, taking into consideration state and federal law and IRC's contract with DDS. IRC was provided with a legal analysis of the specific contractual and statutory provisions raised by Ms. Smith in her letter. I would have hoped that Ms. Smith would have done the same.

*Gov't Code* §§16645-16649 purport to prohibit private employers that receive state grants or funds from using those funds "to assist, promote, or deter union organizing." In the case of *Chamber of Commerce, et al v. Brown, et al* (2008) 128 S. Ct. 2408, the U.S. Supreme Court addressed the question of "whether two of its provisions -- §16645.2, applicable to grant recipients, and §16645.7, applicable to private employers receiving more than \$ 10,000 in program funds in any year -- are pre-empted by federal law [the National Labor Relations Act (NLRA)] mandating that certain zones of labor activity be unregulated." (*Chamber of Commerce, supra*, 2411)

Ms. Smith contends that *Gov't Code* §§16645-16649 are applicable to prevent IRC from using operations funds to influence its employees regarding whether or not to form a union because any such activity by IRC has nothing to do with the purchase of services for IRC's consumers. However, that was not the legislative intent in enacting *Gov't Code* §§16645-16649. "As set forth in the preamble, the State of California enacted AB 1889 [*Gov't Code* §§16645-16649] for the following purpose:

'It is the policy of the state not to interfere with an employee's choice about whether to join or to be represented by a labor union. For this reason, the state should not subsidize efforts by an employer to assist, promote, or deter union organizing. It is the intent of the Legislature in enacting this act to prohibit an employer from using state funds and facilities for the purpose of influencing employees to support or oppose unionization and to prohibit an employer from seeking to influence employees to support or oppose unionization while those employees are performing work on a state contract.' 2000 Cal. Stats. ch. 872, § 1." (*Chamber of Commerce, supra*, 2411)

The prohibition in *Gov't Code* §16645.7 "encompasses 'any attempt by an employer to influence the decision of its employees' regarding '[w]hether to support or oppose a labor organization' and '[w]hether to become a member of any labor organization.' § 16645(a). The statute specifies that the spending restriction applies to 'any expense, including legal and consulting fees and salaries of supervisors and employees, incurred for . . . an activity to assist, promote, or deter union organizing.' § 16646(a)." (*Chamber of Commerce, supra*, 2411)

While the NLRA contains no express preemption provision, the Supreme Court has held that preemption was impliedly mandated by Congress to the extent necessary to implement federal labor policy. One rule of preemption forbids the National Labor Relations Board (NLRB) and the States from regulating conduct that Congress intended should be unregulated and "left

to be controlled by the free play of economic forces.’ (Citation omitted). [The] *Machinists* preemption is based on the premise that ‘Congress struck a balance of protection, prohibition, and laissez-faire in respect to union organization, collective bargaining, and labor disputes.’ (Citation omitted).” (*Chamber of Commerce, supra*, 2412) The Supreme Court has described the *Machinists* preemption as “creat[ing] a zone free from all regulations, whether state or federal. (Citation omitted)” (*Chamber of Commerce, supra*, 2417)

The Taft-Hartley Act, enacted by Congress in 1947, amended the NLRA by adding §8(c) [29 U.S.C. § 158(c)], which protects speech by both unions and employers from regulation by the NLRB. §8(c) provides as follows:

“The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this subchapter, if such expression contains no threat of reprisal or force or promise of benefit.”

Its enactment “manifested a ‘congressional intent to encourage free debate on issues dividing labor and management.’ (Citation omitted). ... We have characterized this policy judgment, which suffuses the NLRA as a whole, as ‘favoring uninhibited, robust, and wide-open debate in labor disputes,’ stressing that ‘freewheeling use of the written and spoken word . . . has been expressly fostered by Congress and approved by the NLRB.’ (Citation omitted).” (*Chamber of Commerce, supra*, 2413-2414)

In a 7-2 vote, the U.S. Supreme Court held that the federal *Machinists* preemption applied to *Gov’t Code* §§16645.2 and 16645.7. (*Chamber of Commerce, supra*, 2412) The fact that the California statutes restricted the use rather than the receipt of state funds did not “significantly lessen the inherent potential for conflict” with the NLRA. (*Chamber of Commerce, supra*, 2416) “California plainly could not directly regulate noncoercive speech about unionization by means of an express prohibition. It is equally clear that California may not indirectly regulate such conduct by imposing spending restrictions on the use of state funds.” (*Chamber of Commerce, supra*, 2414-2415)

Therefore, *Gov’t Code* §§16645-16649, and specifically §16645.7, cannot be enforced against IRC notwithstanding the fact that the contract between DDS and IRC requires that IRC comply with the statutes. Any attempt by the state to enforce the contractual provision would face the same problems as the statute itself and a court would find the contractual provision unenforceable on the same grounds as the statutes were found to be preempted by federal law and, therefore, unenforceable.

*WIC* §4638 contains language that is similar to and just as far-reaching as *Gov’t Code* §§16645-16649. Additionally, the last paragraph of *WIC* §4638 specifically recognizes the rule

of federal preemption by providing that "Nothing in this section shall be construed as limiting the employers rights under Section 8(c) of the National Labor Relations Act." Since one of the bases that the U.S. Supreme Court relied upon in finding preemption [§8(c) of the NLRA] is specifically referenced in *WIC* §4638, the reasoning of the Supreme Court in finding that preemption applied to *Gov't Code* §§16645-16649 would apply with equal force to *WIC* §4638, thereby making it unenforceable.

Accordingly, IRC can engage in any and all conduct allowed under §8(c) of the NLRA and the contractual provision seeking to require that IRC comply with *Gov't Code* §§16645-16649 and *WIC* §4638 cannot be enforced against IRC and cannot restrict IRC in the use of state funds that are used for appropriate activities under §8(c) of the NLRA.

Even though the activities of IRC are within its rights under the NLRA, Ms. Smith criticizes the time spent by IRC in exercising its free speech rights by advocating its position at an all staff meeting regarding the union organizing efforts. Clearly it is in the best interest of all of IRC's employees to be fully informed on both sides of the union issue. That is exactly what Congress intended in enacting §8(c) of the NLRA and what the US Supreme Court described as "favoring uninhibited, robust, and wide-open debate ... ." (*Chamber of Commerce, supra*, 2414)

Furthermore, Ms. Smith makes the argument that an all staff meeting was improper because it took time away from IRC's employees that could have been spent providing direct client services. If one takes this argument to the extreme, then any activity by IRC staff that is not involved in providing direct client services would be a misuse of time and money. Therefore, it would seem that IRC would be better off not providing any vacation time, longevity leave or similar benefits to its employees because such benefits would reduce the time available for providing direct client services. I doubt that IRC staff would espouse that as a goal and IRC does not advocate it. Rather, it is pointed out to show that the argument has no merit.

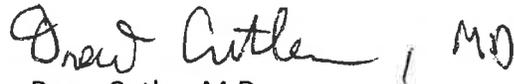
Finally, with respect to Ms. Smith's concern about the composition of IRC's Board of Trustees and the fact that it does not currently have the required number of consumer members, the Board of Trustees is actively seeking consumers who would be able to serve on IRC's Board. This problem is not unique to IRC as it is not the only regional center whose governing board does not meet all of the statutory requirements for members. IRC will continue to work towards recruiting consumers and other appropriate individuals to serve on IRC's Board of Trustees so that it will be in compliance with the statutory requirements.

IRC would welcome the opportunity to have a constructive dialogue with Ms. Smith and the members of the Board of Directors of Area Board XII on how to work together in order to better support consumers and their families. This would truly be the best use of valuable time and limited resources rather than having to respond to unfounded accusations.

Stacy McQueen, Chair  
Terri Delgadillo, Director  
November 19, 2012  
Page 6

Thank you for your attention to this matter and should you have any questions, please feel free to contact me.

Very truly yours,

A handwritten signature in black ink that reads "Drew Cutler, M.D." with a stylized flourish at the end.

Drew Cutler, M.D.  
President, Board of Trustees  
Inland Counties Regional Center, Inc.

Encl. Area Board XII Letter dated October 10, 2012

Copy: Members of the Board of Directors, Area Board XII  
Vicki L. Smith, Executive Director, Area Board XII  
Leroy G. Shipp, Chairperson, State Council on Developmental Disabilities  
Carol Risley, Executive Director, State Council on Developmental Disabilities  
Brian Winfield, Department of Developmental Services  
Allan Smith, Department of Developmental Services  
Inland Regional Center Board of Directors  
Carol A. Fitzgibbons, Executive Director, IRC