

## Reauthorization of the Individuals with Disabilities Education Act (IDEA)

**T**HE INDIVIDUALS with Disabilities Education Act (IDEA) is before Congress for reauthorization, and on April 30, 2003, the House of Representatives approved H.R. 1350, a bill entitled "Improving Education Results for Children with Disabilities Act of 2003." As we go to press, the reauthorization process is in the Senate.

The House bill contains a number of dangerous provisions that would erode the civil rights of children with disabilities if they become law:

### Special

### Education

- The bill permits three-year rather than annual IEPs and eliminates short-term objectives and benchmarks. Proponents of this change call it an effort to reduce paperwork, but it will gut the core provision of IDEA.
- Voluntary binding arbitration, forced settlement discussions without an attorney, waiting periods, and statutes of limitations, all included in this bill, make it far more difficult for parents to participate in the process, to monitor school services and supports, or to adequately protect their children.
- An amendment presented by Rep. Ed Case (D-HI) would give the Governors of each State the authority to determine rates for awarding fees to attorneys who represent children with disabilities in special education cases. There are no limits on publicly funded attorneys who represent school districts. This amendment will make it much harder for disadvantaged families to find representation for their children and it assigns rates for attorney fees unlike those in any other area of civil rights law.
- H.R. 1350 does not contain full funding for IDEA and thus does nothing to ensure that additional resources will accompany its major changes to the law. The bill diverts funds from direct services to children with disabilities by allowing up to 15% of IDEA money to be used for a new prereferral program, to supplant local education funds, and to provide "supplemental services."

DREDF is particularly concerned about H.R. 1350's discipline provisions because they punish children for their disabilities.

- The bill allows schools to unilaterally remove any child with a disability whom it determines to have violated any school "code of conduct," regardless of severity. Under this provision, a student could be expelled for chewing gum, shouting out in class, or carrying a plastic eating utensil in their lunch box.

[IDEA] continues on page 3

## Court confirms broad reach of California disability rights laws

**O**N FEBRUARY 20, 2003, the California Supreme Court announced its decision for a broad interpretation of what constitutes a disability under California state law. *Colmenares v. Braemar Country Club* was the first case in a decade that the state high court has heard involving this issue. The case looked at the contested question of whether California disability rights laws afford broader protections for people with disabilities than the federal Americans with Disabilities Act (ADA).

Joseph M. Lovretovich of Woodland Hills, California and DREDF attorney Linda D. Kilb represented Francisco Colmenares in the high court. Kilb argued the case on December 4, 2002 in Los Angeles.

Francisco Colmenares was a dedicated Braemar employee for over 25 years. He began as a laborer at the club, working to maintain Braemar's golf courses, and was soon promoted to maintenance foreman. Colmenares excelled in his work despite a permanent back injury, until his last year of employment in 1997. At that time he was purposefully reassigned to a construction project that involved putting up wooden fences, digging ditches, and pouring cement. These were tasks that Braemar knew Colmenares would be unable to successfully perform due to his physical restrictions, and he was soon fired.

The *Colmenares* case addressed the breadth of the definition of "physical disability" under the California Fair Employment and Housing Act (FEHA), the state's key employment nondiscrimination statute. Colmenares filed his lawsuit in state court in 1999, asserting that his back injury is a "physical disability" under FEHA, and seeking redress for Braemar's termination on the basis of that disability.

Colmenares, who found work as a golf course foreman with another company after Braemar fired him, is pleased with the decision. "All I ever wanted was a job, a job to help me raise my family." Noted Lovretovich, a southern California attorney specializing in employment and labor law who has represented Colmenares from the beginning of his lawsuit, "We believe that this case has always been about Mr. Colmenares's desire to work and his capabilities, and today's decision endorses that view. The Court has made it clear that employers, as well as judges hearing nondiscrimination claims, must focus their attention on an employee's ability to do the job, rather than on the disability."

The potential differences between state and federal definitions of disability became critically significant beginning in the late 1990s, as the U.S. Supreme Court has moved to narrow the reach of federal civil rights laws. For example, recent federal

decisions have placed new restrictions on the types of conditions that qualify as "disabilities," and new restrictions on whether and how states can be sued under federal laws. Thus, strong state laws are an increasingly important resource for civil rights communities that want to ensure equal access.

In its unanimous *Colmenares* decision, the California Supreme Court confirmed that there has always been a "notable difference" between the federal Americans with Disabilities Act (ADA) and the state's FEHA, which was enacted a decade before the ADA. Specifically, while federal law covers individuals whose impairments "substantially limit" one or more major life activities, FEHA protects individuals with physical impairments that merely "limit" major life activities. This decision is in keeping with the high court's consistent recognition of the state's broad public policy and legislative commitment to nondiscrimination protection for all Californians.

The importance of the case is underscored by the fact that the California Attorney General, as well as a coalition of California disability community groups, filed "friend of the court" briefs on behalf of Colmenares. Attorney General Bill Lockyer praised the Court's decision, emphasizing, "Under this ruling, all Californians with physical disabilities will receive full protection in the workplace."

DREDF attorney Kilb highlights the broader impact of the *Colmenares* decision: "This opinion recognizes that California has broad and independent disability civil rights laws that must be interpreted as the California Legislature intended, on their own terms, notwithstanding the recent trend in the federal courts to narrow the reach of federal civil rights laws."

### California

### Supreme Court



In Memoriam

Diane Julie Lipton

1945-2002

Diane Lipton

with her daughter Chloe in 1979 (left).

Article on p. 3

photo: Peter Breinig/San Francisco Chronicle



**DEAR FRIENDS:**

*The Disability Rights Education and Defense Fund has been enormously saddened by the loss of our longtime colleague and special education expert Diane Lipton. We dedicate this issue of our newsletter to her memory.*

*The committed and motivated DREDF staff is pursuing a number of initiatives that are detailed in this newsletter:*

- *Training minority, low-income, and non-English-speaking parents to advocate for their disabled children*
- *Building an international database of disability laws and policies*
- *Promoting policy change to make all voting equipment and procedures accessible for citizens with disabilities*

*In Washington, we are working to safeguard the Individuals with Disabilities Education Act (IDEA) so that it gets reauthorized in 2003 without being significantly weakened, and we remain vigilant to challenges that threaten the Americans with Disabilities Act (ADA).*

*In the courts, we are battling for educational rights, employment protections for people with disabilities, community-based assistance services, and accessible public accommodations and transportation.*

*Our policy analysts are working with allies in the U.S. as well as in Japan and Costa Rica to build national and international disability advocacy coalitions.*

*Join us in the struggle for equality and dignity for all people with disabilities.*

*Best wishes,*

*Beverly D Bertaina*

*Beverly Bertaina, Chair and President, DREDF Board of Directors*

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# Loss of Diane J. Lipton a blow to special education advocacy & disability rights

**T**HE COMMUNITY OF PARENTS of children with disabilities and their advocates lost a tireless champion of civil rights when Diane J. Lipton, Director of the DREDF Children with Disabilities Advocacy Program, died on August 8, 2002, after a two-year battle with cancer.

Born in New York City in 1945, Lipton moved to northern California in 1962. She started her career as a teacher and rehabilitation counselor. She came to her true calling as an advocate for the civil rights of children with disabilities in 1979 when her daughter Chloe was segregated and deprived of her educational rights. With other parents, Lipton was able to orchestrate the closing of all disability-segregated schools in Richmond, California. After this successful campaign, Lipton decided to go to law school so that she could fight for the rights of all children with disabilities.

Lipton joined DREDF in 1980 as a parent organizer, then became Director of the Children and Family Advocacy Project, a position she held until the end of her life. She fought for the rights of children with disabilities for over two decades. In 1994, she won a historic national victory for integration of children with disabilities in the public schools (*Holland v. Sacramento City Unified School District*), a case for which she was lead counsel. Her commitment to the implementation and enforcement of IDEA (the Individuals with Disabilities Education Act) led her to become the driving force behind litigation against the

Ravenswood City Elementary School District in East Palo Alto for egregious violations of the rights of children with disabilities (see p. 7).

Diane Lipton was a key analyst of IDEA, advising members of Congress and playing a critical role in the



1997 reauthorization of IDEA. Senator Ted Kennedy of Massachusetts paid tribute to her: "We have lost one of our heroes, a woman who fought valiantly not only for her own child with cerebral palsy, but for all children across the nation."

Lipton received a number of awards and honors, including two American Jurisprudence Awards, the Distinguished Parent Award from the Association for Severely Handicapped (TASH), as well as honors and

awards from the Developmental Disabilities Council and the National Center in Educational Restructuring and Inclusion. The California chapter of TASH has created a Diane J. Lipton Memorial Cal-TASH Award and selected DREDF Directing Attorney Arlene B. Mayerson as the first recipient at its annual conference in February 2003.

Lipton never wavered from her convictions and her deep belief in social justice, and her professional life was devoted to ensuring the rights of children with disabilities. She continued to work until the day she died. Diane Lipton's legacy as a champion of the rights and dignity of children with disabilities endures in the Children and Family Advocacy Program she directed for so many years at DREDF.

## **COPAA Honors Diane Lipton**

On March 14, 2003, the Council of Parent Attorneys and Advocates (COPAA) honored Diane J. Lipton, who once said: "Finally what I think integration really means to parents of disabled kids, is the idea that it's OK to have a disabled child . . . I think it's very important to keep in mind that there is nothing to apologize for and it is not necessary for any of us to hide our child."

In addition to fighting for her daughter's education rights, Lipton also arranged, through extensive advocacy and organizing, to set up a supportive living agency so that adults with developmental disabilities can lead independent lives in their own homes.

## IDEA Policy Papers

DREDF has co-authored two policy reports concerning special education, one on private school voucher programs and the other on discipline plans.

The DREDF voucher report released with People for the American Way is entitled "Jeopardizing a Legacy: A Closer Look at IDEA and Florida's Disability Voucher Program" and can be read on DREDF's website at [www.dredf.org/press\\_releases/Vouchers.pdf](http://www.dredf.org/press_releases/Vouchers.pdf). This report analyzes a Florida program that sends students with disabilities to private schools not accountable under IDEA.

DREDF also participated in a report called "In the Best Interests of All" from the Children's Behavioral Alliance. This paper investigates the professional literature on positive behavior supports for children with disabilities. The report concludes that the behavioral provisions of IDEA '97 have not been fully implemented. This failure contributes to continuing problems with children who have significant emotional, social, and behavioral difficulties. The paper argues for increased use of positive behavioral supports and enhanced behavior services under IDEA. It can be read at [www.ccbd.net/content/pdfs/CBAPAPER---October1-Final.pdf](http://www.ccbd.net/content/pdfs/CBAPAPER---October1-Final.pdf).

[IDEA] continued from front page

- The bill eliminates the "manifestation determination" review process, which protects students from being unfairly punished for actions that are beyond their control because they are a result of the student's disability.
- The bill eliminates functional behavioral assessments and positive behavioral intervention programs.

DREDF has been monitoring IDEA for many years and led the process that resulted in the law's 1997 amendments. With reauthorization again before Congress, DREDF launched the Rapid Response Network (RRN) in the spring of 2002. The RRN has organized a nationwide network of parents that now numbers over 3000 subscribers and is widely reposted on the websites of national advocacy organizations with whom DREDF is working in strenuous opposition to weakening the special education law.

Twenty eight briefings and nine action alerts to date have offered comprehensive coverage of Senate and House hearings, Commission hearings, Subcommittee and Committee deliberations, bill proposals and amendments, and grassroots activities. Full texts of the briefings are available on the DREDF website at [www.dredf.org/rapid.html](http://www.dredf.org/rapid.html). To subscribe, send an email to [preserveIDEA@dredf.org](mailto:preserveIDEA@dredf.org).

DREDF attorneys and advocates for IDEA also continue to monitor the implementation of this law. The problems in IDEA, DREDF believes, do not stem from undue regulation or paperwork burdens. Rather, the law is inadequately funded, teachers have caseloads that are far too large and receive inadequate training and support, and the law is improperly or incompletely implemented in most school districts.



## Developmental disability services in California

CALIFORNIA Assemblywoman Patricia Wiggins (D-7th) introduced a bill that proposes a structural overhaul of California's developmental disability service delivery system on February 19, 2003. AB 649 was reviewed by the State Legislative Council and went to the Human Services Policy Committee on April 29.

The Bureau of State Audits found in a 1999 review that workers in community programs receive inadequate wages and benefits and experience high

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turnover, making it difficult for people with developmental disabilities to secure the services they need and creating a chronic workforce shortage. The

bill's goal is to solve these problems by establishing local area agencies called Workforce Services Centers that would oversee the administration of developmental disability service workers in the state.

The Centers would recruit, train, and evaluate workers, establish a worker registry, handle administrative functions such as payroll and benefits, and broker services between workers and consumers. The goal is to streamline administrative functions, clearly define responsibility and accountability in a coordinated plan, and produce a more stable, better trained workforce to enable people with developmental disabilities to improve their quality of life. A voting board that includes people with developmental disabilities who are receiving services in the community would govern Workforce Services Centers.

AB 649 would require that Individual Program Plans (IPPs) also include the opportunity for persons with developmental disabilities and their families to select a self-determination mode of service delivery. The bill includes provisions to expand opportunities for people with developmental disabilities and their families to manage their own service arrangements and includes a stipulation that the Centers should employ people with disabilities to work in the Centers and as workers in the service delivery system.

AB 649 will go through various amendment processes before it comes up for a vote in the Assembly. DREDF is paying close attention to the progress of this bill.



Jenny Kern

## Argentine attorney in residence at DREDF

CHRISTIAN COURTIS, a disability rights attorney and legal scholar at the University of Buenos Aires in Argentina, spent the fall semester of 2002 collaborating with DREDF concerning international disability rights initiatives. Courtis also served as a visiting professor of law at Boalt School of Law, University of California,

### International

### Affairs

Berkeley. His current work concerns international human rights laws as a tool for protecting the rights of persons with disabilities

## Opposition to proposals legalizing assisted suicide

In 1999, in the face of Assembly Bill 1592 in the California legislature to legalize assisted suicide, DREDF joined ten other prominent national disability organizations in adopting a position against the measure and, more generally, against the legalization of assisted suicide and euthanasia. The California bill went down to defeat, due in part to an opposition coalition spanning the political spectrum that represented disability rights organizations, workers, poor people, physicians and other health-care workers, hospice organizations, Catholic groups, and right to life organizations.

A referendum on the same proposal was defeated in Maine in 2000 by a similar coalition. What happened in Maine exemplifies how the general public has typically reacted to assisted suicide proposals. Early polls showed strong support, but as education about the dangers of legalization occurred, the polls slowly but steadily shifted, with the opposition gaining at each polling. When the election was held, polls showed opposition exceeding support, and the referendum failed.

In 2002, DREDF Policy Analyst Marilyn Golden worked with a coalition in Hawaii to defeat the same assisted suicide bill. This year, bills have been or will soon be introduced in Hawaii, Arizona, and Vermont. In January, Golden was invited as one of three out-of-state experts to participate in a week of press meetings, forums, and other educational activities by the Hawaii Partnership for Appropriate and Compassionate Care, a broad coalition opposing assisted suicide. Also invited were Kathleen Foley, MD and Herbert Hendin, MD, editors of *The Case Against Assisted Suicide* (Johns Hopkins University Press, 2002).

DREDF continues to offer informational and organizational assistance to those who oppose these legalization efforts. The full DREDF policy statement explaining our opposition to efforts to legalize assisted suicide can be found on the website at [www.dredf.org/assistedsuicide.html](http://www.dredf.org/assistedsuicide.html).

## Long term care in California—COCO & the *Olmstead* decision

ON MAY 21, 2003, the final version of the California *Olmstead* Plan was introduced (see [www.chhs.ca.gov/olmstead.html](http://www.chhs.ca.gov/olmstead.html)). The plan resulted from several years of activism in California following the 1999 *Olmstead v. L.C.* U. S. Supreme Court decision. The Court ruled in *Olmstead* that unnecessary segregation of people with disabilities in institutions is a form of discrimination in violation of the Americans with Disabilities Act (ADA).

The *Olmstead* decision requires that people with disabilities receive services in the most integrated setting possible. The Court found that unjustified isolation in institutions is discrimination because institutional placement of persons with disabilities who can handle and benefit from community settings:

- perpetuates unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life
- severely diminishes the everyday life activities of individuals, including family relations, social contacts, work options, economic independence, educational advancement, and cultural enrichment

In response to this decision and to the fact that California took no action when the decision was handed down, a group of disability organizations in California, led by Protection and Advocacy (PAI) and including DREDF, formed the Coalition of Californians for *Olmstead*, or COCO, in 2000. COCO now has 35 member organizations from around the state, and is working to draft and implement a comprehensive, effectively working plan for moving people with disabilities in California, including seniors, to integrated community settings at a reasonable pace and assisting others to avoid institutionalization.

California houses more people with disabilities, including seniors, in institutions than any other state. There are 160,000 nursing home beds, with approximately 95,000 occupied daily. Additionally, 10,000 Californians are confined in state hospitals for people with developmental or psychiatric disabilities and other large public or private institutions. In addition, people whose services are inadequate, who are homeless, and who do not qualify for existing community-based programs are "at risk of institutionalization."

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### Disability Policy

A State can demonstrate compliance with its ADA obligations by showing that it has a comprehensive, effectively working plan for placing qualified persons with disabilities in less restrictive settings. States must also establish a waiting list that moves at a reasonable pace not controlled by the State's endeavors to keep its institutions fully populated.

In 2000, Governor Gray Davis said that the Long Term Care Council (of the California Health and Human Services Agency) had the central role in implementing *Olmstead* in California. Over the next two years, COCO used a series of meetings, letters and advocacy to get the State to start implementing

*Olmstead*. In April 2002, COCO and other advocates testified at a special legislative Hearing on *Olmstead* implementation chaired by former Assemblywoman Dion Aroner and others. Many consumers told their

stories very powerfully at this hearing.

In April 2002, after the Senate and Assembly passed budget bill language requiring an *Olmstead* plan, the Long Term Care Council voted that the Health and Human Services Agency (CHHS) should produce an *Olmstead* plan by April 2003. In July 2002, the Agency staff presented its process for developing an *Olmstead* plan. COCO, PAI, other advocates, and consumers objected to the process, saying it did not include significant consumer participation (or *any* participation from consumers residing in institutions), put all the responsibility on community agencies to gather input, and did not involve the State players in collaboration with the community. In August 2002, Governor Davis signed the budget bill that requires the Agency to deliver an *Olmstead* Plan to the legislature by April 1, 2003.

From November 2000 through January 2003, Work Groups met across California to discuss various aspects of the State's *Olmstead* plan. Topics included Principles for the *Olmstead* Plan in Sacramento, Assessment Strategies in San Diego, Crisis Services Coordination and Advocacy in Fresno, Community Capacity in Los Angeles, and Quality Assurance in Oakland.

CHHS developed six principles for the *Olmstead* Plan:

1. A comprehensive, effectively working plan
2. A plan development and implementation process

[COCO] continues on page 8



Nancy Riege

## Advocacy for Costa Rican women with disabilities

[left] Andrea Vargas boards Costa Rica's first lift-equipped bus for its inaugural ride.

**F**OR THE FIRST TIME in Costa Rican history, women with disabilities have begun to establish an agenda to advocate actively on behalf of their issues. With funding from the Bureau of Educational and Cultural Affairs of the U.S. Department of State, three DREDF policy analysts and advocates worked with women leaders of

### International Affairs

El Foro por Los Derechos Humanos de las Personas con Discapacidad (Forum for the Human Rights of Persons with Disabilities—El Foro), a growing activist organization in Costa Rica with which DREDF has been collaborating for over a year. Under the leadership of Board member and consultant Jenny Kern, DREDF sponsored the Costa Rican Women with Disabilities Leadership Project on September 4-14, 2002 in Berkeley, California and on December 3-8, 2002 in San José, Costa Rica.

In September, four women leaders of El Foro—Catalina Devandas, Yanira Pessoa, Gabriela Valverde, and Andrea Vargas—explored the work of the many disability rights NGOs in the northern California Bay Area. Then in December 2002, 20 Costa Rican women leaders with

disabilities from throughout the country attended a five-day meeting in San José, Costa Rica conducted by Jenny Kern, DREDF Policy Analyst Marilyn Golden, and consultant Anne Finger. The focus was on leadership skills, including legal rights and advocacy, movement-building strategies, fundraising, media skills, and gender and disability issues such as violence, family rights, overprotection, and sexuality. In March and April, El Foro Secretary Guadalupe Lobo visited the Bay Area to spend more time with the disability community.

Building upon the success of the first DREDF—El Foro collaboration in December 2001, a project called The Training Program for the Social, Economic, Political, and Cultural Strengthening of People with Disabilities in Costa Rica, disabled women came together to organize themselves as leaders to promote their individual and collective rights. This ongoing collaboration is growing as the emerging network of international grassroots organizations continues to exchange strategies, tools, and techniques with the goal of fully integrating people with disabilities into all of our communities. DREDF continues to build transnational alliances with disability rights advocates around the world.

## Department of Justice: San Francisco failing to serve people with disabilities in the most integrated settings

### Laguna Honda

**O**N APRIL 1, 2003, the U.S. Department of Justice (DOJ) informed the City and County of San Francisco that, after lengthy investigation of Laguna Honda Hospital (LHH), DOJ concludes “that the City continues to violate Title II of the ADA [Americans with Disabilities Act] by failing to serve persons with disabilities in the most integrated appropriate settings.” [Text available at [www.usdoj.gov/crt/split/](http://www.usdoj.gov/crt/split/)]. In the letter, Assistant Attorney General Ralph F. Boyd, Jr. states that “...the Attorney General may institute a lawsuit to correct deficiencies...”

The federal civil rights investigators found that “a significant number of LHH residents are unnecessarily isolated in the nursing home.” In 1999, the Supreme Court, in the *Olmstead* decision, found that such unnecessary isolation is illegal because it violates the ADA. (See *Long term care in California*, previous page.)

The investigators examined LHH records and interviewed residents, concluding

[LAGUNA HONDA] continues on page 6

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**Congresswoman Nancy Pelosi will be the featured guest at the August 7, 2003 DREDF reception in San Francisco.**

## Japanese disability community drafts anti-discrimination law—DREDF provides U.S. perspectives



Mary Lou Breslin (front row left) with members of LADD and executives from NHK Public Welfare Foundation in Tokyo.

**I**NSPIRED BY international civil rights and anti-discrimination advances in 48 countries, the Japanese disability community has crafted a campaign to secure a national disability rights law similar to the Americans with Disabilities Act (ADA). The campaign is being led by LADD—Legal Advocates for Defense of Disability Discrimination, a national alliance of disability rights attorneys and advocates, with support from the NHK Public Welfare Organization.

To consult on the process that led to enactment of the ADA in the US, DREDF Senior Policy Advisor Mary Lou Breslin was invited to participate in a series of public forums held in cities throughout Japan in October 2002, along with German disability rights attorney Theresia Degener and David Ruebain of Great Britain. Breslin and Degener appeared on NHK Public Television and met with members of the Japanese Diet—the legislature—to discuss international advances, the successes of the ADA and the challenges that have arisen since its passage, and to promote a disability rights perspective.

### International Affairs



## MIUSA sponsors US/Japan disability professional exchange program to develop emerging leader network

**M**OBILITY INTERNATIONAL (MIUSA) sponsored a US/Japan Disability Professional Exchange Program on cross-cultural perspectives in leadership and disability rights in February 2003. MIUSA is an agency that specializes in leadership training, community service, cross-cultural experiential learning, and advocacy for the rights and inclusion of persons with disabilities around the world. The exchange program is funded by the Japan Foundation Center for Global Partnership and involves a bi-lateral exchange between MIUSA in Eugene, Oregon, and Footloose in Tokyo, Japan, an organization led by people with disabilities that works toward equal citizenship between people with and without disabilities in Japanese society. DREDF

Children's Advocacy Program Assistant Rachel Krokus spent two weeks in Japan as part of the 2003 program.

The ten-day program brought together diverse cross-

disability delegations comprised of emerging leaders and professionals between the ages of 21 and 65 from different regions of the United States and Japan. The U.S./Japan Exchange aims to increase international cooperation and cross-cultural understanding between citizens of Japan and the U.S. in order to improve opportunities and the realization of equal rights for people with disabilities in both countries. The program also works to improve opportunities in leadership, education, employment, and full citizenship for people with disabilities in the U.S. and Japan.

Japan is seeking to create barrier-free public places and to implement community organizing for change. Learning about the Americans with Disabilities Act (ADA) and IDEA and creating positive alliances between people with and without disabilities are important parts of the program.

## Harkin and Lantos support UN Convention

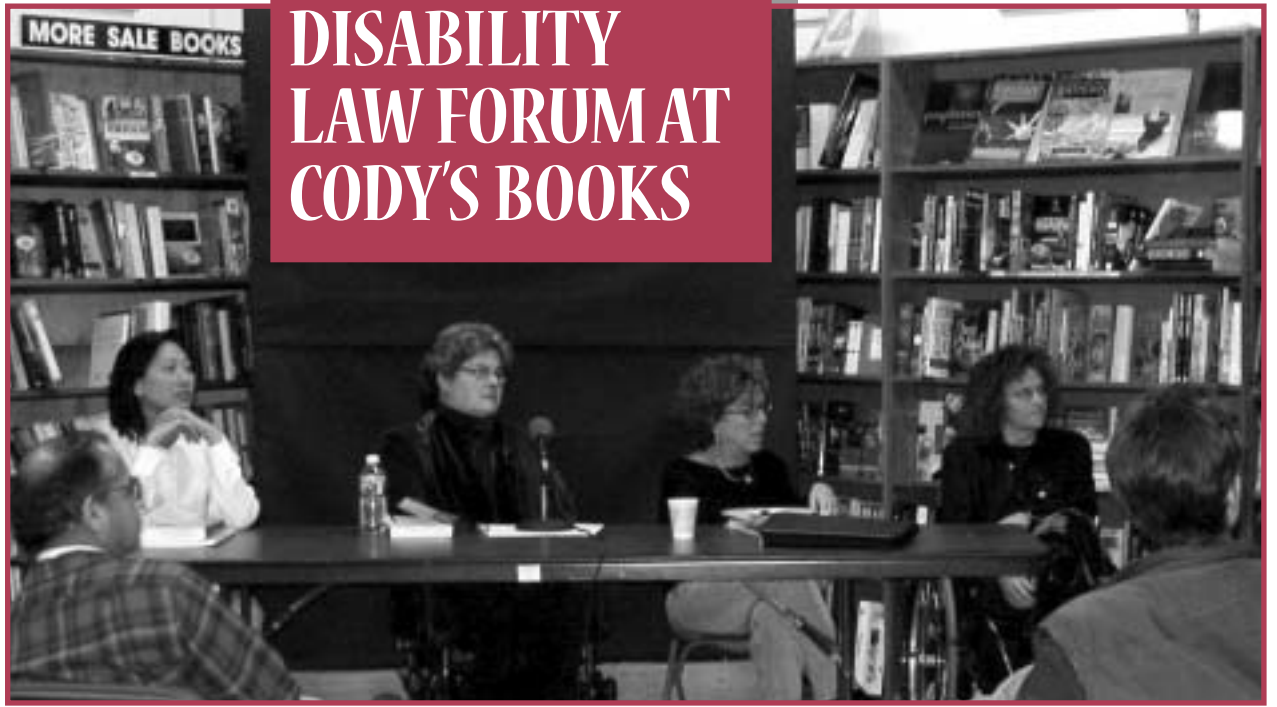
**S**ENATOR TOM HARKIN (D-IA) and Representative Tom Lantos (D-CA) have introduced a Concurrent Resolution in Congress stating that the United States should seek to play a leading role in drafting a United Nations (UN) Convention on the Rights of Persons with Disabilities. The resolution asserts that a UN Convention is in the spirit of the Americans with Disabilities Act (ADA).

The UN General Assembly endorsed the UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities in 1993. In November 2001, the General

Assembly established a committee to consider proposals for a comprehensive treaty to protect and promote the rights and dignity of persons with disabilities.

The Resolution Sen. Harkin and Rep. Lantos introduced specifies that the Secretary of State should send a delegation of recognized U.S. disability rights movement leaders to the UN Ad Hoc Committee.

## INTERNATIONAL DISABILITY LAW FORUM AT CODY'S BOOKS



Silvia Yee, Mary Lou Breslin, Arlene B. Mayerson and Marilyn Golden speak at Cody's

Bernard Cachon

**O**VER 40 PEOPLE packed Cody's Books on Telegraph Avenue in Berkeley, California to hear DREDF Attorney and International Law Fellow Silvia Yee, Senior Policy Advisor Mary Lou Breslin, and Directing Attorney Arlene Mayerson discuss the state of disability rights around the globe on February 21, 2003. The three talked about their new book, *Disability Rights Law and Policy: International and National Perspectives*, published in November 2002 by Transnational Books. DREDF Policy Analyst Marilyn Golden, a contributor to the book, also joined them.

Disability Rights Law and Policy can be ordered at bookstores or through online booksellers.

Readers who need an electronic version of the book on CD-ROM can contact DREDF directly about alternative formats. In addition, the essays in the book are available at [www.dredf.org/symposium/papers.html](http://www.dredf.org/symposium/papers.html).

## International electronic law & policy clearinghouse launched

**D**REDF IS LAUNCHING a comprehensive Internet-based International Clearinghouse of Disability Law and Policy with a grant from the Mertz Gilmore Foundation. The DREDF website already houses the text of laws from 49 countries that have enacted some form of disability legislation or regulations. The Clearinghouse will enable disability rights leaders around the world to work collaboratively in designing and implementing meaningful human rights protections for people with disabilities in a transnational forum.

The Clearinghouse will make available every country-specific disability law, with translations and summaries in several languages, in a searchable form. The Clearinghouse will eventually serve as a portal to policy discussion boards and an electronic list server, and will allow participants to make contact with disability advocates globally.

The Clearinghouse will provide an Internet-based source for the global exchange of national and international disability anti-discrimination laws, policies, regulations, case law, standards, and other resources by attorneys, advocates, policy experts, researchers, and others. By using Internet communication networks and technology, these resources can be made available to the largest number of advocates around the world.

[LAGUNA HONDA] continued from page 5

that "Of the 115 records reviewed . . . experts identified 52 residents who could live in the community based on the type of . . . supports and services currently provided in San Francisco." The 29-page letter identifies specific residents who have "no medical needs being supported by LHH."

DOJ identifies longstanding, significant deficiencies in LHH policies and practices, including inadequate assessments and inadequate discharge planning.

Regarding the plan to spend \$401 million for a replacement facility, each of whose 1,200 beds will cost \$127,000 each year to operate, the DOJ states that "community integrated options could be provided at a fraction of the cost of staying in LHH."

In July 2000, the Independent Living Resource Center of San Francisco (ILRCSF) and residents of Laguna Honda Hospital filed a class action lawsuit against the City and County of San Francisco, seeking access to community-based long-term care services to avoid unnecessary institutionalization in nursing facilities. The lawsuit, *Davis et al. v. Department of Health and Human Services et al.*, alleges that the City and County of San Francisco, as well as several State agencies, discriminate against people with disabilities by committing the vast majority of available funding to institutional care instead of community-based care.

Plaintiffs are represented by a coalition that includes DREDF along with Protection and Advocacy, Inc. of Oakland; the National Senior Citizens Law Center in Los Angeles; the Bazelon Center for Mental Health Law in Washington, D.C.; the Law Offices of Andrew Thomas Sinclair in Oakland; Howrey Simon Arnold & White, LLP, in Menlo Park; and the American Association of Retired Persons (AARP) Foundation Litigation in Washington, D.C. The DOJ filed a friend of the court brief in support of the plaintiffs.

International  
Affairs

International  
Affairs

International  
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International  
Affairs

## Disability community beats back a challenge to the ADA

### Supreme Court

The California disability community won a tremendous victory when its advocacy efforts prompted the Medical Board of California and the Office of the Attorney General of California to file a withdrawal on March 6, 2003 from their appeal to the Supreme Court in *Medical Board of California v. Hason*. Governor Gray Davis wrote in a February 27, 2003 letter to the Medical Board “that by withdrawing this case, the Board will protect patients without jeopardizing the centerpiece of protections from discrimination for disabled Americans.”

At issue in the *Hason* case was whether Congress has the constitutional authority to subject States to suits for money damages under Title II of the Americans with Disabilities Act (ADA). DREDF had filed an *amicus curiae* brief to the Court on behalf of Senators Edward Kennedy and Tom Harkin, former Senator Bob Dole, and Representative Steny Hoyer, arguing that the ADA is an indispensable tool for enabling full citizenship for Americans with disabilities, the promise of the ADA is just beginning to be realized, and the ADA is in keeping with the fundamental principles of equality embodied in the Fourteenth Amendment. Directing Attorney Arlene B. Mayerson and Disability Policy and Law Fellow and staff attorney Silvia Yee worked on the brief with Claudia Center of The Legal Aid Society–Employment Law Center in San Francisco.

## Recovered drug user re-applies for job

The Supreme Court granted *certiorari* in another disability related case, *Raytheon Company v. Hernandez*, on February 24, 2003. This case concerns the application of Title I of the ADA when a former employee, who previously tested positive on a company drug test and was released for violating a company rule, subsequently undergoes treatment for substance addiction and re-applies for a position with his former employer. At issue is whether the employer is required to go behind “neutral” employment policies to ensure that its hiring practices do not discriminate against applicants or former employees who have the disability of a former substance addiction.

## Sidewalks for all?

The City of Sacramento’s application to the Supreme Court for *certiorari* in the case of *City of Sacramento v. Barden* is currently pending. Sacramento applied for *certiorari* on November 25, 2002, arguing that municipal sidewalks are not an “accommodation” under Title II of the ADA, and therefore municipalities are not required to ensure that city sidewalks are accessible to people with disabilities. On March 3, 2003, the Supreme Court invited the Solicitor General of the United States to file a brief in this case expressing the views of the United States.

## Lawsuit increases accessible senior housing in Palo Alto

A SETTLEMENT has been reached in a fair housing lawsuit involving violations of architectural design and construction requirements that apply to new construction. The settlement will result in substantial access improvements for people with disabilities at the Lytton Courtyard apartment complex in Palo Alto, a 51-unit building open to low-income, senior tenants. The lawsuit included intensive multi-year negotiations focused on developing detailed retrofit plans to correct illegal access problems. The suit involved both federal and California fair housing laws and was filed in U.S. District Court in San Jose in July 2000 by DREDF and co-counsel Legal Strategies Group of Emeryville, California, on behalf of institutional plaintiff Midpeninsula Citizens for Fair Housing (“MCFH”), a non-profit organization dedicated to the elimination of all forms of illegal housing discrimination. In addition to undertaking the retrofit, the building’s owner and architect have

also agreed to implement policies to ensure disability nondiscrimination in the future, and to pay damages to MCFH.

Federal law requires that 5% of the units in federally funded housing facilities must be fully accessible to people with mobility impairments, including those who use wheelchairs. A further 2% of federally funded units must have features that ensure access for persons with hearing and vision impairments. In addition, the federal Fair Housing Act specifies that all units in multi-family housing constructed for occupancy after 1991 must have certain adaptive design features that enhance access for tenants with disabilities, regardless of whether federal funding is involved. Comparable California laws also have new construction requirements, some of which exceed federal requirements. Even though it was built in part with federal money, Lytton Courtyard failed to meet the 5% – 2% accessible unit requirements. The Lytton Courtyard apartments, which opened for

## NEW REMEDIAL PLAN IN RAVENSWOOD

IN 1996, DREDF and co-counsel filed a lawsuit against the Ravenswood City Elementary School District in East Palo Alto, California for failing to provide educational services guaranteed by the Individuals with Disabilities Education Act (IDEA) to children with disabilities.

After protracted class action litigation, the district, led by Superintendent Charlie Mae Knight, was held in contempt of court in October 2001. After months of intensive negotiations, the plaintiffs and a newly elected Board of Directors entered into a revised consent decree and remedial order. As one of its first actions, the new Board fired Superintendent Knight and the out-of-state private law firm that had represented the previous recalcitrant Board.

Judge Thelton E. Henderson of the United States District Court in San Francisco has adopted a First Amended Consent Decree entered between the parties as final settlement of this case. The decree includes mechanisms for increased parent participation and a state-of-the-art integration plan.

DREDF and the Youth and Education Law Project continue to mon-

itor the implementation of the revised decree within the district. Ensuring the revised decree’s implementation remains an integral part of the settlement agreement, and the Court retains jurisdiction if the revised decree is ineffectively or incompletely implemented.

Because this litigation has gone on for so long, the original plaintiffs in the case have already aged out of the public education system. DREDF worked relentlessly in this lawsuit to enable the children who follow these pioneers to find appropriate and inclusive educational services in the Ravenswood City schools. Part of the original Consent Decree has entailed settlement of the compensatory education claims raised by those children who failed to receive special education services from the district.

DREDF is co-counsel in this case with Rony Sagy of Sagy Law Associates, William Koski of the Youth and Education Law Project in Stanford, and Robert Feldman and Colleen Bal of Sonsini, Wilson, Goodrich & Rosati. The California Department of Education was a defendant in the case along with the school district.

## Mollie Stone’s welcomes shoppers with disabilities

A N AMICABLE collaboration between DREDF and Mollie Stone’s Natural Foods has resulted in access improvements that will benefit shoppers with disabilities, including the adoption of universal design features in a renovation that is now underway at Mollie Stone’s Palo Alto, California store, located at 164 California Avenue.

DREDF had approached Mollie Stone’s about access concerns on behalf of two regular patrons of the Palo Alto store, Brian Bolitho, a local artist, and Joe A. Villareal. For years, the California Avenue site has been the primary grocery store for both men, who are wheelchair users and long-time residents of Palo Alto Mayfield neighborhood. Established in 1986, Mollie Stone’s operates seven full-service grocery stores throughout the San Francisco Bay Area, offering a wide range of goods and amenities. Mollie Stone’s is also actively involved in community service activities, including an extensive donation program. “Our primary goal is to satisfy the communities that we serve,” emphasizes Mollie Stone’s co-founder David Bennett, “and we welcomed the opportunity to address the issues identified by our valued customers.”

Eager to improve the shopping experience for all its patrons, Mollie Stone’s engaged in extensive discussions on how to best incorporate features of universal design into its Palo Alto store. The resulting major renovation will ensure that all shoppers have access to products and services. “Mollie Stone’s commitment to quality and value are enhanced by adopting universal design to accommodate customers with disabilities,” says Villareal, who commends the grocer’s remodel plan. This sentiment is echoed by Bolitho, who notes, “I’m very pleased to be involved in furthering wheelchair access.”

In addition to the renovation, Mollie Stone’s has implemented detailed policies to ensure that portable barriers such as shopping carts and “wet floor” cones do not obstruct access, and to ensure prompt and courteous employee assistance for shoppers with disabilities when requested.

occupancy in June 1995, also lacked the adaptive design features required in new buildings.

Following the filing of MCFH’s lawsuit, the U.S. Department of Justice filed a companion lawsuit on behalf of the United States, seeking to highlight the importance of compliance with new construction requirements through its involvement in the Lytton Courtyard

case. “Both lawsuits focused on ensuring that the very clear architectural access mandates of fair housing laws become a reality for mid-peninsula residents,” says DREDF attorney Linda D. Kilb. “We hope that enforcement actions like this will also encourage other housing providers and architects to pay careful attention to building standards in future design and construction efforts.”



# PARENT PROJECT RECEIVES TWO GOVERNMENT AWARDS

## US Department of Education PTI grant renewed for five years

The US Department of Education has approved a five-year renewal of DREDF's federal grant under the Individuals with Disabilities Education Act (IDEA) to serve as a federal Parent Training and Information Center (PTI). Each state in the United States has at least one designated PTI center to provide training and information to parents of infants, toddlers, children, and youth with disabilities. The Technical Assistance Alliance for Parent Centers (the Alliance) coordinates the PTIs in each state through four regional centers. For a complete list of PTIs, go to the Alliance website at [www.taalliance.org/PTIs.htm](http://www.taalliance.org/PTIs.htm).

DREDF is part of the Northern

California Coalition along with Parents Helping Parents in Santa Clara, Support for Families of Children with Disabilities in San Francisco, and Matrix Parent Network and Resource Center in Marin and is responsible for providing information and advocacy in Alameda, Contra Costa, and Yolo Counties. DREDF Parent Advocates train approximately 400 parents, caregivers, and professionals, mail informational materials to about 500 families, and provide consultation and technical assistance to another 1,400 callers each year.

## Alameda County hires DREDF

Alameda County has awarded DREDF a contract to train county social workers and local foster families and adoptive families of children with disabilities. DREDF will deliver basic special education rights trainings to County staff, caregivers, and students.

DREDF Attorney **Linda D. Kilb** has been elected to the Board of the Legal Aid Association of California (LAAC), a statewide membership organization dedicated to supporting legal services programs and helping them meet the needs of low-income and historically disenfranchised clients.

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Alain McLaughlin

New  
advocates  
join Parent  
Project staff

**EILEEN CRUMM AND SHERRY HEARNE** have joined the DREDF Children and Family Advocacy Program staff as Parent Advocates.

**Eileen Crumm** brings the experience and skills of a vocal and successful advocate for the rights of children with disabilities; she has worked with regional centers, school districts, and public accommodations to ensure fair access, appropriate assessment, and non-discrimination for students with disabilities. Crumm honed her skills advocating for the rights of her disabled son.

**Sherry Hearne** comes to DREDF with the assignment to collaborate with parents in communities of color and immigrant communities to broaden our effectiveness in special education advocacy. Hearne is heading our Low-Income and Non-English-Speaking Parent Training Project, which has received funding from Washington Mutual, SBC Pacific Bell, Kaiser Permanente, and the Foundation of the State Bar of California. The project targets underserved populations in Contra Costa and Alameda Counties in northern California and does focused outreach to foster and kinship adoption families. Hearne also comes to DREDF with a wealth of experience in her own family, which includes two children with developmental disabilities, a son with cerebral palsy and a daughter with Down Syndrome.

Parenting  
Project

[Top] Eileen

Crumm

with her son Will;

[right] Sherry

Hearne with her

children

Jeremy and Lauren.



Alain McLaughlin

[OLMSTEAD] continued from page 4

- that provides for the involvement of consumers and other stakeholders
3. The development of assessment procedures and practices that prevent or correct current and future unjustified institutionalization of persons with disabilities
  4. An assessment of the current availability of community-integrated services, the identification of gaps in service availability, and the evaluation of changes that could be made to enable consumers to be served in the most integrated setting possible
  5. Inclusion in the plan of practices by which consumers are afforded the opportunity to make informed choices among the services available to them
  6. Elements in the plan that provide for oversight of the assessment and placement process in order to help ensure that services are provided in the most integrated setting appropriate, and to help ensure that the quality of the services meets the needs of the consumers.

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DREDF's Implementation Guide offers a detailed, thorough analysis of all the law's provisions, encompassing ADA legislative history, the statute, and regulations.

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