

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

A. R.

Claimant

OAH No. 2013050169

vs.

GOLDEN GATE REGIONAL CENTER

Service Agency.

DECISION

Mary-Margaret Anderson, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on July 29, 30, 31, and August 1, 2013, in Oakland, California.

Louise Katz, Attorney at Law, represented Claimant A.R., who was not present. His mother and father were present.

Rufus Cole, Attorney at Law, represented Golden Gate Regional Center (GGRC).

The record was left open to allow the parties to submit written closing argument. The briefs were timely received and marked for identification as follows: Claimant's Post-Hearing Brief, Exhibit HHH; GGRC's Closing Brief, Exhibit 21; and Claimant's Reply Brief, Exhibit III.

The record was scheduled to close on September 24, 2013, following the receipt of Claimant's Reply Brief. On September 25, 2013, however, GGRC filed a document entitled "Golden Gate Regional Center's Objection to Plaintiff's Closing Brief and Request to File Reply." On September 26, 2013, Claimant filed a document entitled

"Claimant's Response to GGRC's Objections to Plaintiff's Closing Brief and Request to File Reply." The filings were marked for identification as Exhibits 22 and JJJ, respectively. By Order issued October 3, 2013, GGRC's request to file a reply was denied, and the additional briefs were not considered in rendering the decision.

The record closed on October 3, 2013.

RULING ON POST-HEARING MOTION

On August 20, 2013, GGRC filed an "Objection to Evidence and Request for Exclusion." On August 26, 2013, Claimant filed an "Opposition to GGRC's Objection, Request for Exclusion."

At the hearing's conclusion, counsel were both invited to file copies of any statutes, regulations or policies regarding transfers between regional centers for clients who are temporarily residing in a different regional center catchment area. The following documents were received and marked for identification as follows: Exhibit I – GGRC's Case Management Procedure Manual, section 14, "Case Transfers Between Regional Centers and Between Marin, San Francisco and San Mateo Counties" (version filed August 20, 2013) and Exhibit II – Department of Developmental Services, Inter-Regional Center Consumer Transfer Guidelines, issued December 4, 1998.

GGRC objects to Exhibit II, which was submitted by Claimant. The first ground is that it was "submitted after the close of evidence and without consent or leave of Judge Anderson, OAH, or GGRC and its counsel." This argument is without a factual basis, as each party was invited to submit such documents for inclusion in the record. The second ground is that the document is "irrelevant as they are prepared by DDS, not the Regional Center; are 15 years old and not currently in place; and have no bearing on the issues before this tribunal." This argument also fails. The subject of the document is noted in its title, and is of the type described in the invitation.

Accordingly, GGRC's motion to exclude is denied. Official notice is taken of both Exhibit I and Exhibit II.

ISSUE

Whether GGRC is required to pay for Claimant's placement at "Project 6."

FACTUAL FINDINGS

1. Claimant, born November 11, 1998, is currently nearly 15 years of age. He receives services from GGRC pursuant to what is commonly referred to as the "fifth category" of eligibility: a condition similar to mental retardation or requiring treatment similar to what is required by a person with mental retardation. His diagnoses, however, have included Asperger's Syndrome and Autism.

Claimant's family resides within GGRC's catchment area. Claimant currently resides in a residential treatment facility with a school program in Van Nuys operated by The Help Group (Project 6).¹ Project 6 is within the catchment area of the North Los Angeles County Regional Center (NLACRC).

SPECIAL EDUCATION AND BEHAVIORAL HISTORY

2. Claimant has received special education services from his local school district for many years. Pursuant to federal law, the services have been provided in

¹ The Help Group is a nonprofit in Southern California that serves children with special needs. The services provided include specialized day schools and residential programs. Claimant resides in a group residence called Project 6 and when he first arrived, attended Bridgeport School. For ease of reference, "Project 6" is used to refer to the entirety of services that Claimant receives from The Help Group.

accordance with a series of Individualized Education Plans (IEP's), which are developed by school district personnel, parents, and other relevant participants. In 2008, Claimant's IEP provided for placement at ANOVA, a local non-public school that serves children with autism spectrum diagnoses. Claimant attended school at an ANOVA campus for grades four, five, and six. Towards the end of the 2010-2011 school year, when he was in the sixth grade, Claimant's behavior deteriorated significantly. He became very aggressive, including acting out violently without warning. For example, on one occasion, he attacked his mother from behind while they were shopping, and a bystander had to be persuaded not to call the police. Claimant made threats to other family members, and started eating non-food items, including his feces. He had to be watched at all times for his own safety and the safety of others. Claimant was at the time attending ANOVA's Santa Rosa campus. He was also having social problems at school.

3. At the end of the 2010-2011 school year, it was decided that Claimant would be taught at home for seventh grade with the hope that he could be stabilized and that his behavior would improve.

4. The home school program was somewhat successful in a strictly academic sense, but Claimant's behavior eventually deteriorated to an intolerable level. His parents continued to obtain professional help and advice, and were advised to place Claimant in a residential/educational setting outside of their home. The professionals involved, who included Melanie Johnson, Ph.D., Bryna Siegel, Ph.D., and psychiatrist Scott Olson, M.D., all strongly recommended a residential placement. For example, in a letter dated January 9, 2012, Dr. Olson wrote that

[Claimant] has been unable to function in a school program designed for children who have pervasive developmental disorders. He is currently in an extremely restrictive home academic placement. In this isolative home placement he is

not able to work on all of the social, academic, and development goals that are critical to accomplish in an educational setting. Therefore, he requires placement in a residential treatment program in which he will receive the intensive structure and support he needs in order to be able to function in a school setting.

5. Claimant's parents pursued a change in his IEP through meetings with the school district. They also investigated possible placements, and at a time not revealed in the record located Project 6. An IEP meeting was convened on January 11, 2012. Participants included Dr. Olson, and all of the recommendations for residential treatment were presented to the school district representatives. Nonetheless, the school district determined that it required more testing. Claimant's parents cooperated with the requested additional testing, which occurred over a two-month time period.

6. On March 1, 2012, another IEP meeting was convened. The school district rejected the continued recommendations for immediate, out-of-home placement, and offered a 60-day diagnostic placement in a school setting. The proposal included an academic schedule similar to the home program, with Claimant to be taught one-on-one for five hours daily in a separate structure, but on school grounds. District representatives represented this offer as giving them a chance to observe Claimant further and develop a plan that worked for him.

7. Dr. Siegel conducted a follow-up evaluation and issued a report dated May 1, 2012. She attended an IEP meeting on June 4, 2012, and reiterated her strong opinion for residential placement. Nonetheless, the district continued in its offer of March 1.

8. The hearing testimony of Drs. Siegel, Johnson, Olson, and Claimant's mother, along with various written reports, was persuasive that residential placement

was the best option for Claimant at that time. Claimant's aggressive behaviors had increased to the extent that there were very reasonable fears for his safety and the safety of family members. Dr. Siegel's opinion as to the likely ramifications of continuing the status quo is instructive. In her report following her May 1, 2012, evaluation, she wrote, in pertinent part:

We are concerned he is becoming increasingly less able to adapt to the outside world, the longer he stays home, and that he is a real danger (physically and emotionally) to himself and household members, particularly his younger sister.

Residential treatment is recommended as soon as possible to address [Claimant's] aggressive behavior. There are clearly many antecedents for [Claimant's] maladaptive behaviors and since most of his time is at home now, many of these antecedents are necessarily embedded in his home environment. Placement outside his home will be the first time it will be possible to get a handle on how these antecedents may contribute to his difficulty and to begin behavior planning to remodel a more functional environment where he can more successfully adapt.

[Project 6] has an excellent reputation for its schooling of [students with similar diagnoses] and their affiliated residential facility will be able to provide [Claimant] with needed behavioral and educational supports.

PLACEMENT AND SERVICES AT PROJECT 6

9. Claimant's parents decided not to accept the district's offer, and to place Claimant at Project 6 using their own funds. They entered into two contracts with The Help Group, to commence July 6 and July 9, 2012, respectively. The first is entitled "Residential Agreement Project 6" and states that the Project 6 Group Home will "provide Special Education Services to the Student, and any other services specified below: Room & Board [and] Daily Mental Health Services." The second contract is entitled "Bridgeport School Enrollment Agreement Sherman Oaks Campus." It agrees to provide Claimant "Special Education Services to the Student and any other services specified below: Summer School, Transportation, Regular School Year, [and] Transportation." The combined cost of the programs for one year is \$154,374.50.

10. Jason Bolton is a licensed clinical psychologist and the chief psychologist for The Help Group. His duties include overseeing all aspects of mental health for the agency and the admissions process for the residential programs and schools. Dr. Bolton credibly testified about The Help Group in general, Project 6, and affiliated programs.

11. Project 6 is licensed through the California Department of Social Services as a group home. (It is clearly not a mental institution, dormitory, or hospital.) It is currently licensed for 32 beds, but the program has determined its capacity to be 17, and the population is currently 11. Although the various schools have different names and locations, it is a 24-hour program, with ongoing coordination between the homes and school sites. Children may attend school as a day program only, but if in a residential program, must attend an affiliated school. There are meetings that include staff from both, and at any IEP meeting representatives of both are present.

12. The services provided are extensive. Claimant attends a school program during traditional school hours, and is provided transportation to and from the school grounds. He has a private room and shared bath at the Village Glen residence location.

All meals are provided, as is individual and group therapy, and family therapy. Staff are available at all times, and address daily living and social skills development. Each child has a behavior plan, and the children are often taken into the wider community to practice the skills they are learning. Claimant's parents visit monthly, and participate in family therapy sessions.

13. The primary source of Project 6 funding is public school districts. Of the 11 children (including Claimant) in residence at the time of the hearing, nine were funded by their respective school districts.

14. Bolton recalls that approximately five years ago he participated in a meeting with regional center representatives concerning possible vendorization. He recalls that there was significant interest, but that he was advised the regional center would not be able to vendor because of the size of the facility and the preference to place children in facilities of no more than four beds. He does not recall that any particular statute or regulation was mentioned.

Project 6 has had residents over the years who have paid directly, but had "arrangements with regional centers to reimburse parents." A current resident is being reimbursed by a regional center for 50 percent of the cost.

15. It is unclear when Claimant's parents reached the decision to enroll Claimant at Project 6, but it was communicated to GGRC staff in March, and it appears that Claimant was accepted as early as mid-May 2012. Claimant's parents did not appeal the school district's decision not to offer residential placement, despite their disagreement with it. The reasoning behind their decision was not revealed. Meanwhile, Claimant's application for regional center services was in process.

REGIONAL CENTER HISTORY

16. Claimant first applied for regional center services in 2005, but his application was denied. On December 28, 2011, his mother requested he again be

evaluated. GGRC considers such requests as not “initial,” and that they therefore do not require processing pursuant to the timeline that applies to a first application.

17. By letter dated March 7, 2012, Telford I. Moore, Ph.D., GGRC Psychologist, opined that newly submitted information warranted “a reconsideration of [Claimant’s] eligibility for GGRC.” On March 22, 2012, Claimant’s mother signed an application form, and intake social worker Mabel Rodriguez met with the family to perform an assessment on March 29, 2012. Rodriguez’s Social Assessment Report contains information concerning the family’s decision to place Claimant at Project 6. She describes a conversation with Claimant’s mother on the topic as follows:

Post meeting, [Claimant’s mother] shared that she and her husband had decided to have [Claimant] residentially placed in a residential school program in Southern California. [Claimant’s mother] states that this option was discussed several months ago due to an increase of [Claimant’s] maladaptive behaviors that were creating much disharmony in the home and that necessitated his return to home-schooling last year.

18. On July 5, 2012, a meeting was convened at GGRC to facilitate the decision regarding eligibility. At the conclusion, GGRC staff advised that a decision would be made as soon as possible. Placement options were not discussed at the meeting. By letter dated July 12, 2012, Claimant’s parents were notified that Claimant had been found eligible. Meanwhile, Claimant had been moved to Van Nuys. Claimant’s parents had enrolled Claimant at Project 6, and the affiliated Bridgeport School, for one year, with a start date of July 6, 2012.

19. The next step after a determination of eligibility is the creation of an Individual Program Plan (IPP) for the consumer. GGRC did not undertake the development of an IPP for Claimant. On July 13, 2012, GGRC staff requested Claimant's new address in preparation for the transfer of his case to NLACRC, the regional center that serves the Van Nuys area. The information was provided by his parents, and GGRC staff began the transfer process by discussions with NLACRC staff. On August 15, 2012, NLACRC officially accepted the transfer effective August 16, 2012.

One transfer document states that NLACRC has accepted "case management services only," with GGRC retaining "fiscal responsibility." Another document entitled "Inter-Regional Center Transmittal" states that NLACRC "Will provide shared case management effective: 8/16/2012."

20. On a date not established in the record, NLACRC began the IPP process. A letter dated September 27, 2012, from NLACRC was sent to "Care Provider" at the Project 6 address. It states that Suneeta Viser was assigned to be Claimant's Service Coordinator and that she "will be working with you . . ." and would be in contact within two weeks. Claimant's mother did not receive the letter, and did not receive any other communication from NLACRC at that time.

21. In October of 2012, Claimant's mother received a telephone call from his therapist, who told her that NLACRC wanted to have an IPP meeting in two days. Despite the short timeframe and Claimant's parents' inability to travel to Van Nuys on such short notice, Claimant's therapist advised against a postponement. Anxious to begin the process, Claimant's mother agreed to the meeting and to appear by telephone.

22. An IPP meeting was convened on October 16, 2012. A Project 6 Residential Staff Supervisor and Claimant were present in person with Case Manager Suneeta Viser. Claimant's parents were on the telephone. During this meeting was when Claimant's

mother learned for the first time that there was a misunderstanding about who was paying for the placement at Project 6: when she was asked to provide the contract with the school district. Claimant's mother was shocked that NLACRC was unaware that the family was paying for the placement, as she believes it was well known at GGRC. On November 30, 2012, Viser wrote a case note that she had completed the IPP (the written document) and submitted it to her supervisor for approval.

23. The IPP includes the information that Claimant is living at Project 6 and receiving services towards goals that the case manager (Viser) will monitor. In the section "Part III – Desired Outcomes," there are five sub-sections with an identified outcome. Within each sub-section there is a chart entitled "Funding Considerations" followed by the following headings: "Generic," "Private" and "Parental Responsibility for." Next to each, there are "yes" and "no" checkmark spaces under the headings "Applicable" and "Obtained." In each of the five sub-sections, the yes boxes next to "Generic" are checked under "Applicable" and "Obtained." "Private" and "Parental Responsibility for" are checked "no" under "Applicable." Thus, it is communicated that generic funding is applicable to the services Claimant receives through Project 6, and that the funding has been obtained. The source is not identified.

After receiving the IPP in mid-December 2012, Claimant's mother contacted Viser to discuss it. Claimant's mother did not understand the use of the term "generic," and asked Viser for help. Viser told her that it typically refers to the school district. Claimant's mother was distraught and confused. She said to Viser words to the effect of "you know that they are not paying for this and GGRC knows it too." She explained that the family was being financially drained paying for Project 6 and needed help. Viser said that she would call her counterpart at GGRC and "try to work something out," and that "we will get back to you." Viser's case notes state that on December 13, 2012, she told Claimant's mother "this is a shared case so Golden Gate would have to provide funding not

NLACRC." The notes also state that Viser spoke with Wendy Nauman at GGRC and told her that Claimant's mother "is requesting the RC fund for group home services at project 6/ village glen commons."

24. In an email to Nauman on January 23, 2013, Viser wrote that she was "unaware until after I completed the IPP that the . . . family was funding [Claimant's] placement independently."

25. In the meantime, there were emails back and forth discussing the respective responsibilities of the two organizations, and it was eventually concluded that GGRC had fiscal responsibilities only, and that all case management would be handled by NLACRC. This included most of the paperwork, with the purchase for service order form the only paperwork to be completed by GGRC. This description of the division of responsibility is contradicted, however, by a transfer document referencing "shared case management." (See Finding 19, above.)

26. Claimant's mother felt that things "were falling through the cracks," due to the involvement of the two regional centers. By email on January 23, 2013, Claimant's mother requested payment for residential services. She also requested a joint IPP meeting. Viser emailed Claimant's mother that there was no need for a meeting, because she would speak with Nauman directly and try to resolve the issue.

27. From the email correspondence and testimony at hearing, it appears that staff members at both regional centers were unclear on the relationship and responsibilities of the two organizations in this situation. During January and February of 2013, confusing and in some cases inaccurate information was exchanged. For example, it was learned that Project 6 was not vendored, and there was disagreement about which regional center might pursue vendorization, or whether such was possible. It was ultimately asserted that DDS regulations prohibited funding Claimant's placement at Project 6. On February 13, 2013, Viser left a telephone message for Claimant's mother

stating “we are only allowed to vendor homes that are six beds and under and Project 6 has more of a dormitory, has over 14 beds.” She goes on to say that they should approach the school district at the next IEP meeting to pay for the placement.

28. The communications that followed concern what course should be taken given the parents’ request for regional center funding of the placement, and the regional centers’ belief that they could not accommodate that request for a variety of reasons. (Some of the reasons were eventually admitted to be erroneous. For example, at one point in time Project 6 was characterized as a “mental institution.”) Claimant’s parents have not signed the proposed IPP, which contains the erroneous information that Claimant’s placement is funded by a generic resource. Claimant’s mother continued to ask appropriate questions, tried to help begin a vendorization process for Project 6, and repeatedly requested a joint IPP meeting. No meeting was granted. Instead, GGRC and NLACRC determined that a dispute over funding existed between the parties, and that an end to “the back-and-forth” was needed. It was decided that filing a Notice of Proposed Action (NOPA) denying funding was the appropriate next step, and that as GGRC was the funding regional center, it should be filed by GGRC.

REQUEST FOR FAIR HEARING

29. In a NOPA dated April 3, 2013, GGRC notified Claimant that it “denies your request [for] funding of [Claimant’s] placement at Project 6.” In the “Reason for action” section, it states:

GGRC was not involved in placing [Claimant] at Project 6. Additionally the placement appears to be educational in nature. Regional Centers are prohibited from funding facilities larger than 16 beds and Project 6 has 72 beds and is not vendored by NLACRC. NLACRC does not intend to

vendor Project 6. Purchase reimbursement cannot be used to circumvent the law regarding payment in large, un-vendored facilities.

In the section "Authority for action (law, regulation, and/or policy in support of the action)" it cites Welfare and Institutions Code sections 4646, subdivision (d); 4648, subdivision (a)(8); 4648, subdivision (a)(3)(E); 4659, subdivision (a)(1); and 4648, subdivision (9)(B).

30. The wording of the NOPA seems to belie the agreement of division of labor between the two regional centers. It implies that GGRC retained the right to refuse to fund a service agreed upon by NLACRC, if, for example, it was "not involved" in the placement. And yet, at hearing GGRC staff described GGRC's role very narrowly as only paying for services.

31. In a Fair Hearing Request dated May 1, 2013, Claimant requested a fair hearing based upon "GGRC's denial of funding for consumers therapeutic program (residential and educational) and failure to vendorize consumers program." In the section that asks for a description of what would be needed to resolve the complaint, it states "Regional Center's funding of consumers therapeutic program (educational and residential components)." A pre-hearing motion to dismiss was partially granted, and the portion of the request that states "failure to vendorize consumers program" was stricken.

This hearing followed, with the sole issue GGRC's funding of Claimant's placement at Project 6.

LEGAL CONCLUSIONS

1. The purpose of the Lanterman Developmental Disabilities Services Act

[i]s two-fold: to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more productive and independent lives in the community.

(Association for Retarded Citizens v. Department of Developmental Services (1985) 38 Cal.3d 384, 388.)

2. The Department of Developmental Services (DDS) is the state agency charged with implementing the Lanterman Act. The Act, however, directs DDS to provide the services through agencies located in the communities where the clients reside.

[T]he state shall contract with appropriate agencies to provide fixed points of contact in the community

Therefore, private nonprofit community agencies shall be utilized by the state for the purpose of operating regional centers.

(Welf. & Inst. Code, § 4620.)

3. In order to determine how the individual consumer shall be served, regional centers are directed to conduct a planning process that results in an IPP. This plan is arrived at by a planning team that includes the consumer or his representatives, regional center representatives, and other appropriate participants. Decisions about what will be included and "purchased by the regional center or obtained from generic agencies shall be made by agreement" of the planning team. *(Welf. & Inst. Code, § 4646, subd. (d).)* Once in place:

A regional center may . . . purchase service . . . from an individual or agency which the regional center and consumer . . . or parents . . . determines will best accomplish all or any part of that [IPP].

(Welf. & Inst. Code, § 4648, subd. (a)(3)).

4. A particular IPP notwithstanding, the direct purchase of services by regional centers is restricted in many respects. Regional centers are specifically charged to provide services in the “most cost-effective and beneficial manner” (Welf. & Inst. Code, § 4685, subd. (c)(3)) and with “the maximum cost-effectiveness possible” (Welf. & Inst. Code, § 4640.7, subd. (b).) To duplicate a service available elsewhere to a consumer is obviously not a cost-effective use of public funds. Accordingly, regional centers are required to “first consider services and supports in the natural community” (Welf. & Inst. Code, § 4648, subd. (a)(2).) They are required to “identify and pursue all possible sources of funding . . . [including from] school districts.” (Welf. & Inst. Code, § 4659, subd. (a)(1).) And finally, they are prohibited from using regional center funds “to supplant the budget of any agency which has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services.” (Welf. & Inst. Code, § 4648, subd. (a)(8).)

5. Services available through other agencies that serve the public are referred to as “generic resources.” In Claimant’s case, as for all consumers under age 22, the principle generic resource is the local school district, which is responsible for providing educational services. Federal law requires school districts to provide such services to students with special needs and disabilities. Because some students require intense services in order to access education, residential programs can be and are funded by school districts, depending upon the facts of the particular case.

6. The move of a regional center consumer to another regional center's catchment area is addressed by Welfare and Institutions Code section 4643.5, subdivision (c). In pertinent part, it states

the level and types of services and supports specified in the consumer's [IPP] shall be authorized and secured, if available, pending the development of a new [IPP] for the consumer. If these services and supports do not exist, the regional center shall convene a meeting to develop a new [IPP] within 30 days. Prior to approval of the new [IPP], the regional center shall provide alternative services and supports that best meet the [IPP] objectives in the least restrictive setting. [DDS] shall develop guidelines that describe the responsibilities of regional centers in ensuring a smooth transition of services and supports from one regional center to another, including, but not limited to, pretransferring [sic] planning and a dispute resolution process to resolve disagreements between regional centers regarding their responsibilities related to the transfer of case management services.

7. In accordance with the requirement set forth in Welfare and Institutions Code section 4643.5, subdivision (c), DDS has developed guidelines entitled "Inter-Regional Center Consumer Transfer Guidelines." The following provisions are pertinent to this matter:

4. Transfers between regional centers should be coordinated between the Chief Counselors, or at a similar level reflecting the importance of this responsibility.

5. The provision of services and supports to a consumer or his/her family should not be delayed or withheld by either regional center pending the administrative transfer of a case.

6. The sending regional center should retain case management and fiscal responsibility for a consumer until the receiving regional center has effectively assumed such responsibilities. The receiving regional center should be deemed to have "effectively assumed" responsibility when a new service coordinator has been identified, a new or revised individual program plan (IPP) . . . has been developed, and the consumer is receiving the services and supports listed in the new or revised IPP

DISCUSSION AND ANALYSIS

8. The factual history of this matter reveals an intense period of several months when Claimant's parents were desperately seeking a way forward that would keep everyone safe, and provide Claimant a meaningful education. The family was in crisis. A solution was being sought for a myriad of problems, and regional center eligibility was seen, appropriately, as a resource. Unfortunately, the eligibility process was in progress during this time; Claimant was not yet a client of GGRC. That resource was therefore not available to Claimant at a crucial time when a very important decision had to be made. Also at that time, the school district, which had been providing services, was not offering services consistent with the expert opinions obtained by the parents. Claimant's parents, understandably, decided to follow the professional advice and enrolled Claimant in a very expensive residential program.

What Claimant's parents did not do, however, is highly significant: they ceased pursuing funding from the school district. Special education and regional center services have similar processes when there is a dispute about services. Parents who disagree about the services offered by the district may appeal through a fair hearing process. For reasons not explained, Claimant's parents decided not to avail themselves of this right, instead requesting regional center funding for all of the services being provided Claimant through Project 6. This is the primary reason why their appeal must fail. As set forth in the statutory references above, generic resources must be pursued first. And this "pursuit" must be completed, including by making such appeals as are available. Parents may not choose a service, no matter how needed or appropriate, and demand payment, without exhausting all funding options.

There are certainly some services broadly defined as educational that regional centers may provide, as opposed to the education required to be provided by the public schools. These include behavioral intervention programs that assist children to function in the home and community. But in this case, Claimant requests GGRC to pay for all of his educational and therapeutic needs, despite the failure to pursue funding from the agency primarily responsible for educating him. GGRC has a duty to provide services to Claimant, but so does the school district. Claimant's parents are not required to appeal a school district's decision, but if they choose not to do so, this does not mean that GGRC must pay for the service. To do so would violate the Lanterman Act.

9. GGRC identified two other categories in the NOPA as grounds for denial. Both are rejected. The first, that "GGRC was not involved in placing [claimant] at Project 6," is difficult to understand. There is no requirement that a regional center be involved in a placement for such to be included in an IPP and funded. The second concerns assertions that regional centers may not fund certain facilities. Given the result reached that denies the appeal, this reason will not be fully discussed. But the evidence was not

clear or persuasive that the nature of Project 6, or its failure to be vendorized, or its size or number of beds, prevents a regional center from funding, directly or indirectly, any part of its program.

10. Turning to Claimant's arguments, he presented numerous theories as grounds for relief. One of them is a citation to the section that requires regional centers to "pursue funding," for the proposition that it is GGRC's responsibility to pursue funding from the school district. (Welf. & Inst. Code, § 4659, subd. (a)(1).) But it is the parents' responsibility to "pursue" the school district; they are the only ones with the authority to do so. Regional centers are required to provide advocacy services on behalf of consumers, but not at the level of an attorney and not as substitutes for family members or other authorized representatives. In this matter, regional center eligibility had not yet been determined during the months when the parents were seeking placement via the IEP process. Going forward, advocacy assistance with the school district is available as a regional center service.

11. Claimant also requested relief based upon equitable principles, including estoppel and unclean hands. These arguments are without merit. Claimant's arguments bring to mind an action seeking punitive damages against a private party in a civil action. No authority was cited that would permit the application of such equitable principles in this administrative appeal.

12. All contentions or theories advanced by a party not specifically addressed herein, have nonetheless been considered, and are rejected.

CONCLUSIONS

13. Application of the applicable law and regulations to the facts of this matter requires the denial of Claimant's request that GGRC fund his placement at Project 6. The principle basis for the denial is that doing so would supplant the generic resource that is his local school district. This is not to say, however, that some regional center funding of

the placement would not be warranted when and if the school district is eliminated either entirely or partially from the funding equation, or even prior to that time, if an appropriate service can be parsed out from the program as a whole.

At present, Claimant does not have a completed IPP. The process was truncated when GGRC and NLACRC decided to issue a NOPA. It is essential that the process begin again as soon as possible. As stated above, there may well be options for regional center funding of a portion of the Project 6 placement, and of course, Claimant is entitled to have an IPP in place. Although a fair hearing on the funding issue might still have been necessary, the facts demonstrated a breakdown in communications, as well as a lack of knowledge, and the issuance of a NOPA before all possible avenues were explored. The Act and DDS guidelines make clear that special attention is required in transfer cases, but the opposite happened here. It is particularly troubling that Claimant's mother's very reasonable and repeated request to have a joint IPP meeting was ignored and/or denied.

The DDS guidelines reference the necessity for the involvement of Chief Counselors in transfer cases. It is unclear whether the designation is still in use, but this situation requires the involvement of regional center staff with a high degree of knowledge and authority. Accordingly, GGRC will be ordered to complete two tasks. First, it must reach clear agreement with NLACRC on each organization's responsibilities to Claimant. The arrangement must be workable and in compliance with the Lanterman Act. Second, it must convene an IPP meeting within two weeks, and include as a member of the team a staff member equivalent to the Chief Counselor position. As NLACRC is not a party, a joint IPP meeting cannot be ordered, but it is hoped that it will participate in a similar fashion.

ORDER

1. Claimant A.R.'s appeal is denied. GGRC is not required to fund Claimant's placement at Project 6.
2. GGRC staff at the level of a Chief Counselor shall meet with NLACRC staff to determine the specifics of their joint responsibilities to Claimant as soon as possible, and report the outcome to Claimant's parents. In doing so, GGRC shall comply with the law and any DDS guidelines concerning consumer transfers, and if a dispute arises, shall notify DDS.
3. GGRC shall convene an IPP meeting concerning Claimant as soon as possible, but in no event later than two weeks from the date of this decision, absent the agreement of Claimant's parents. The team shall include staff at the level of Chief Counselor.

DATED: October 15, 2013

_____/s/_____

MARY-MARGARET ANDERSON

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Judicial review of this decision may be sought in a court of competent jurisdiction within ninety (90) days.