

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT

vs.

KERN REGIONAL CENTER,

Service Agency.

OAH No. 2018090127

DECISION

Administrative Law Judge Chantal M. Sampogna of the Office of Administrative Hearings heard this matter on October 24 and November 13, 2018, in Bakersfield, California.

Matthew F. Bahr, Attorney at Law, represented Kern Regional Center (KRC or Service Agency).

Claimant was not present and was represented by Diane B. Weissburg and Jerry A. Weissburg, Attorneys at Law.<sup>1</sup>

Oral and documentary evidence was received. The record was held open until November 26, 2018, for the parties to submit closing briefs, which were timely received and marked for the record as Exhibits 18 and K. The record was closed and the matter was submitted for decision upon submission of the briefs on November 26, 2018.

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<sup>1</sup> Titles are used to protect claimant and his family's privacy.

## ISSUE

Whether Service Agency must fund claimant's socialization skills program at Special Explorers Center (SEC) during extended afterschool hours and school vacation days.

## EVIDENCE RELIED UPON

Documents: Claimant's Exhibits 1 through 11, and 13 through 17; Service Agency's exhibits E, H, and I.

Testimony: Claimant's mother; Michelle Lynam; Karina Proffer; Damian Bowden; Claudia Sandoval; and Magalia Vidal Rivas.

## FACTUAL FINDINGS

### JURISDICTION

1. Claimant is a six-year-old boy who resides with his mother, father, and two younger sisters. Claimant is eligible for services under the Lanterman Developmental Disabilities Services Act (Lanterman Act) (Welf. & Inst. Code, § 4500 et seq.)<sup>2</sup> based on his diagnosis of Cerebral Palsy (CP), Autism Spectrum Disorder (ASD), and Intellectual Disability (ID). (§ 4512, subd. (a).) Claimant suffered a perinatal stroke, which is believed to be the cause of his CP and ID, as well as his cognitive visual impairment, which prevents him from accurately perceiving visual input. Claimant had been diagnosed with a form of epilepsy, which resolved when he was younger, though he continues to have seizures.

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<sup>2</sup> Further statutory references are to the Welfare and Institutions Code, unless otherwise designated.

## Claimant's Request for Modification of His Individual Program Plan (IPP)

2. A. Claimant's March 16, 2018 IPP, and September 26, 2018 IPP modification, provide in part that he will receive after school programming, Monday through Friday, and additional summer hours, two additional days per week, totaling 114 hours between June 4, 2018 and August 14, 2018.<sup>3</sup> The March 2018 IPP identified Valley Achievement Center (VAC) as the after school program provider; at claimant's request, the September 2018 IPP changed this provider to Special Explorers Center (SEC). IPP outcome goals include that claimant will improve his skills in self-care, hygiene, and socialization, i.e., washing his hands (baseline 10 percent independence), socializing with peers (baseline 57 percent of time spent in isolated play), and reciprocating greetings (baseline six percent). Though not denoted in his IPP, or IPP modification, the parties agree that parents have paid for daycare service for claimant when school is not in session and parents must work, and KRC has funded a one-to-one aid at daycare.

- B. 1) In a July 5, 2018 email to Magali Vidal Rivas, claimant's service coordinator, mother requested an IPP meeting to address additional socialization training and daycare options for claimant, and to consider whether VAC continued to meet claimant's needs.
- 2) Specifically, claimant had grown bigger, continued to need toileting and other self-care assistance, and was deficient in social skills, services his current daycare was having trouble providing. In addition, mother was returning to work after maternity leave and both she and father work full-time. Based on

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<sup>3</sup> This service provision is in accordance with KRC's Day/After-School Care Services Policy. (Ex. 5.)

- these changes, mother believed daycare no longer met claimant's needs and that he needed extended after school programming available during school vacation days.
- 3) An IPP meeting was held at mother's request, but mother's service request was not resolved. During the subsequent month, mother explored daycare and socialization program options.
- C. In an August 14, 2018 email to Juan Vieyra, claimant's prior Service Coordinator, and Ms. Rivas, mother reiterated her concerns and added that she did not believe claimant's service needs would be met on October 8, 2018, and November 19-21, 2018 (days VAC was closed but claimant's mother and father had to work).
- D. 1) On August 21, 2018, mother informed Ms. Rivas that Special Explorers Center (SEC) was available to claimant Monday through Friday, from 7:30 a.m. until 5:00 p.m., and on the school vacation days that mother and father must work. Mother specified that claimant needs additional programming during school vacation days and that claimant's daycare (which claimant had attended for over two years during school vacation days) could no longer meet claimant's needs due to his size, physicality, and disability symptoms, which had begun to pose a danger to himself and the other children in care.
- 2) Mother requested that by September 4, 2018, KRC approve mother's request for extended socialization hours with SEC through a purchase of service, or deny the request by issuing a Notice of Proposed Action (NOPA) so that mother could then request a fair hearing.
- E. In an August 31, 2018 email, Ms. Rivas, as she had on prior occasions during the summer, informed mother that she was researching all options for claimant. Within minutes, mother responded to Ms. Rivas via email explaining

that she interpreted Ms. Rivas's response to mean KRC is denying claimant's request, and mother again asked that KRC issue a NOPA.

- F. Claimant submitted a Fair Hearing Request on September 4, 2018, in which mother provided the following information:

[Claimant] has cerebral palsy, seizures, and autism. During vacations, daycare setting, even with a one-to-one aide, does not meet [claimant's] needs. [Claimant] attends an afterschool social skills program; extended hours are not available during vacation periods at current program. KRC will not pay for additional expanded program.

Parent requested repeatedly that [claimant] be allowed to attend an additional social skills program with expanded hours paid for by KRC during vacation periods. Parent has requested this from KRC but KRC has not respond. [sic] Parent requesting KRC be ordered to fund expanded afterschool/vacation social skills program for [claimant].

- G. On September 24, 2018, Ms. Rivas and mother met to review claimant's IPP, agreed on changing claimant's socialization skills program from VAC to SEC, but did not reach an agreement on final provision of services. The September 26, 2018 IPP Approval Form states that KRC knows parent requested to change claimant's program from VAC to SEC, which was approved; mother explained on this form why she refused to approve the IPP, that she had previously requested extended hours at SEC during vacation periods when school is not in session "as [claimant] cannot attend daycare and needs additional socialization." (Ex. 14.)

- H. At mother's request, on September 25, 2018, Michelle Lynam, claimant's daycare provider, sent mother an email detailing claimant's service needs, how her daycare had been meeting these needs, and that due to claimant's increased age and size, coupled with his underlying physical, visual, communication, behavioral, and self-care challenges, she could no longer provide daycare to claimant. Mother sent this email to Ms. Rivas.
- I. In a September 27, 2018 email to Ms. Rivas, mother confirmed the purpose of her note on the IPP Approval Form, acknowledged that KRC transferred claimant's purchase of service from VAC to SEC, but stated that claimant's request for expanded hours at SEC was outstanding. Mother also wrote that she had heard from Ms. Rivas verbally that KRC would be denying claimant's request for expanded hours at SEC and that a NOPA would be forthcoming. Finally, mother requested a NOPA denying the expanded hours request.

3. Ms. Rivas's sent her supervisor, Karina Proffer, KRC Program Manager, mother's August 14, 2018 request. Ms. Proffer and Ms. Rivas testified at hearing that based on their conversations with each other and with mother, and based on mother's emails, by the end of September 2018 they understood mother was requesting claimant's IPP include expanded hours at SEC for socialization skills. Despite this knowledge, Ms. Rivas and Ms. Proffer also testified at hearing that they did not know what programming claimant was seeking, were unclear as to whether daycare or other programming was needed to meet claimant's needs, and that KRC failed to issue a NOPA because throughout the summer and early fall they continued to research service options.

4. A. On November 9, 2018, just a few days before the second day of hearing, claimant's mother met with Ms. Rivas and Ms. Proffer to complete claimant's IPP. KRC denied claimant's request for services, continued to offer a one-to-one aide if

mother could locate a daycare for claimant, and continued to offer 69 hours of socialization skills per month through SEC, and for the Extended School Year (ESY) (month of June). Ms. Proffer informed mother that KRC was working on daycare options and would have this matter resolved by the end of the 2018-2019 school year.

- B. KRC had provided claimant an ABA assessment in November 2017 and approved the funding of ABA services to claimant. Mother delayed the implementation of these services because at the time she was in a high-risk pregnancy, and subsequently on maternity leave until April 2018. Because the ABA services were to be provided in-home, mother decided it would be best to suspend the commencement of these services. During the late summer and early fall of 2018, Ms. Rivas mentioned that claimant would need another ABA assessment to determine his socialization skills needs. Mother did not understand why another assessment would be necessary, either for ABA or for socialization skills, and did not receive any written request from KRC for an ABA assessment until approximately November 9, 2018, which mother signed.
- C. KRC did not issue a NOPA or any written document denying claimant's request for services.

#### Claimant's Request for Fair Hearing Established Jurisdiction

5. A regional center must provide adequate notice to the recipient and the authorized representative by certified mail no more than five working days after the regional center makes a decision without the mutual consent of the recipient or authorized representative to deny the initiation of a service or support requested for inclusion in the IPP. (§ 4710, subd. (b).) Adequate notice requires a written notice informing the applicant, recipient, and authorized representative of at least the specific law, regulation, or policy supporting the action. (§ 4701, subd. (d).)

6. In this matter, KRC failed to provide claimant a NOPA and failed to give claimant adequate written notice informing claimant or mother of the law, regulation, or policy supporting KRC's refusal to provide claimant's requested service. Without giving proper notice of the legal or policy bases for the denial, KRC may not at hearing rely on sections 4686.2 and 4692, as cited in KRC's Closing Brief, to deny claimant's request. (See Ex. K (KRC's Closing Brief).)

7. Any recipient of services, or authorized representative of the recipient, who is dissatisfied with any decision or action of the service agency which he believes to be illegal, discriminatory, or not in the recipient's best interests, must, upon filing a request within 30 days after notification of the decision or action complained of, be afforded an opportunity for a fair hearing. (§ 4710.5, subd. (a).)

8. The request for a fair hearing must be made in writing on a hearing request form provided by the service agency. (§ 4710.5, subd. (b).)

9. Though KRC failed to provide adequate notice to claimant of its denial of claimant's service request, it was established by a preponderance of the evidence that claimant made a written request for services, which KRC verbally, and by its lack of action, denied. In response to this denial, and in compliance with section 4710.5, claimant requested a fair hearing. Jurisdiction has been established.

#### CLAIMANT'S NEED FOR REQUESTED SERVICE

##### School

10. Claimant attends Rosedale Unified School District, Independence Elementary, Monday through Friday, from 7:45 a.m. until 1:35 p.m. Through his Individualized Education Plan, claimant receives ESY services for four weeks during the summer.



## Daycare

11. A. Ms. Lynam has provided licensed childcare for over 12 years in her three-bedroom and two-bathroom home, with a teacher to child ratio of one to six. Ms. Lynam testified as to how claimant's needs had changed since she first began providing childcare to him in spring of 2015.

B. Ms. Lynam provided daycare to claimant during winter, spring, and summer breaks when school was not in session and when claimant did not have other programming or appointments. Ms. Lynam has always provided claimant a one-to-one aide, whose duties included shadowing claimant, by staying within arms-length of claimant, and assisting claimant with eating, ambulating, and toileting.<sup>4</sup> Claimant's CP limits his ability to pull-down and pull-up his pants, and claimant continues to need his diapers changed.

C. In 2016, Ms. Lynam concluded she could not meet claimant's needs. Developing challenges to daycare provision included claimant's lack of socialization skills, e.g., claimant does not, without prompting, interact or communicate with peers, and he seeks out adult attention and assistance solely to have his needs met, e.g., to use an iPad. Mother met with Mr. Vieyra, claimant's service coordinator at that time, and he suggested claimant receive socialization skills with a one-to-one aide when school was not in session. In January 2017, claimant began a socialization skills program at VAC. Between January 2017 and October 2018, VAC provided claimant after school programming, which included socialization skills, Monday through Friday, from approximately 2:15 p.m. until 5:00 p.m.

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<sup>4</sup> Claimant wears a bioness device, which sends electrical current down one leg, which otherwise drags or falls limp, limiting his ambulation.

D. With the addition of the VAC after school program, Ms. Lynam was able to provide daycare to claimant through August 2018. However, during the summer of 2018, Ms. Lynam and mother spoke about claimant's changing needs. In part, during the summer claimant exhibited an increase in tantrums and behavioral challenges, which have since subsided and were likely a side effect of a medication he is no longer taking. However, regardless of claimant's behavioral challenges, Ms. Lynam could no longer accommodate claimant's continued limits in self-care and communication, which persisted despite his increased age and size (claimant now weighs approximately 50 pounds), or his need for a safe space for outside play. Specifically, his vision challenges, coupled with his symptoms from his ID and ASD, result in him walking on or over infants and younger children, unable to see them clearly, and leave him unable to respond to verbal directions.<sup>5</sup> Similarly, claimant is rarely able to be redirected, but is now stronger, which has resulted, for instance, in him pulling a mirror down, and it shattering. In addition, claimant continues, at times, to have seizures, and he requires full assistance with toileting and diapering; however, Ms. Lynam's daycare does not have a changing table or facilities large enough to accommodate claimant's size, and does not have staff capable of physically assisting him with seizures.

12. Since the beginning of summer 2018, mother has conducted diligent and repeated searches for daycares in her vicinity, and has found none able to meet

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<sup>5</sup> Claimant's optometrist, Penelope Souter, M.D., described claimant's vision to mother as 'Swiss cheese' vision: claimant has holes in what he visually perceives, does not always see people or things in his pathway, has no safety awareness, and is a fall risk.

claimant's needs. Claimant's Service Coordinator and Program Manager have not met claimant or assessed his needs or ability to receive daycare services. They have not identified a daycare that can meet his needs.

#### Valley Achievement Center

13. VAC provides after school care Monday through Friday, from 1:00 p.m. until 5:00 p.m. VAC is closed during many school vacation days, and is additionally closed during its in-service training days. (See Ex. 7, VAC's 2018-2019 Uniform Calendar, which shows VAC is closed approximately 17 days when school is not in session but when parents would have to work.) VAC offered claimant socialization skills up to 69 hours per month, and during the ESY. VAC does not offer any extended hours.

14. When claimant attended VAC, he generally arrived at 2:15 p.m., got off the bus, used the restroom, hung up his back pack, and participated in VAC's general afterschool program. He received socialization skills between 3:30 p.m. and 4:30 p.m. VAC offers a more comprehensive social skills program, but claimant does not qualify for this program due to his need for toileting assistance and his limited communication skills. As of September 2018, VAC's limited daily operation hours also did not meet claimant's needs; due to a change in father's work schedule, he could no longer pick claimant up by 5:00 p.m.

#### Special Explorers Center

15. Damian Bowden, the owner and director of SEC, testified at hearing. Mr. Bowden has a bachelor's degree in criminal justice with a minor in child psychology. He has 14-years' experience working with children with special needs through his work in schools, with probation departments, and as director of SEC. SEC is currently vendored

with KRC to provide socialization skills programs. Mr. Bowden was previously licensed as a childcare provider.<sup>6</sup>

16. SEC hours of operation vary depending on consumer and parent need; though its handbook states it is open from 12:00 p.m. until 5:00 p.m., SEC is available to consumers from 7:00 a.m. until 6:30 p.m. In addition, SEC is open on school vacation days, and it does not have in-service breaks.<sup>7</sup>

17. Claimant is eligible for, and has been receiving, SEC's socialization-training program which provides "adaptive recreation, integration opportunities, public recreation and leisure, as well as activities to enhance interpersonal relationships." (Ex. 4.) Mr. Bowden testified that SEC's socialization program includes self-help skills, including toileting and hygiene, and that SEC provides social skills from the moment the child arrives at the program, until the child leaves for the day, and addresses all issues or deficits that prevent a consumer from socializing with peers. SEC works with many KRC consumers, and provides socialization to consumers beyond the 69 hours per month provided for in KRC's Day/After-School Care Services Policy. (See Ex. 5.)

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<sup>6</sup> SEC is not vendored with KRC to provide Applied Behavioral Analysis (ABA) services, though it does provide ABA services through insurance companies. SEC does not provide ABA services to claimant.

<sup>7</sup> These expanded hours are necessary for claimant based his service needs and mother and father's work schedules, which require parents to drop claimant off at 7:30 a.m. and pick him up at 5:30 p.m.

18 A. Claimant began attending SEC on October 8, 2018, just a few weeks before the first hearing date.<sup>8</sup> SEC has been working with claimant on socializing with peers, following the program schedule, eating, and toileting, using claimant's IPP goals as a foundation. Claimant requires one-to-one assistance for toileting and to transition from activities, which parent have been funding. Since claimant began at SEC, Mr. Bowden has worked closely with claimant, observing his strengths and deficits, and providing direct services to claimant.

B. Based on his experience directing SEC and working with children with special needs, Mr. Bowden believes claimant would benefit from the requested extended hours. This extended time would allow SEC to work with claimant on socializing in public, developing stranger danger, and to work more deeply on the skills previously mentioned. Though claimant attends SEC three hours per day, because SEC must meet all of its consumers' needs during that time, and because those hours include transitioning into and out of the program, as well as eating and toileting, these hours can go by quickly, limiting the time available for the provision and practice of the social skills program. Mr. Bowden explained that for these reasons the extended hours would not be duplicative or 'over' programming, but would rather provide SEC an opportunity to work more closely with claimant on his socialization needs.

C. Based on his experience as a licensed daycare provider, Mr. Bowden knows that SEC's socialization skills program is a different program, and satisfies a different need, than a daycare: a daycare has no obligation for service provision towards socialization goals, but rather is a service which maintains a

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<sup>8</sup> SEC writes assessment reports after a consumer has received services for 30 days. At the time of hearing, SEC had not drafted its report for claimant.

child's safety and security until a parent picks the child up after work; SEC's socialization skills program serves the consumer's needs, working directly with consumers to develop and strengthen the consumer's ability to socialize with peers and in the community.

#### KRC's After School Care Services Policy

19. KRC cites to sections 4646.4, subdivision (a)(4), and 4620.2, in support of its "Day/After-School Care Services Policy (April 5, 2011) (Draft Pending Final Approval From Department of Developmental Services)" (Policy). (Ex. 5.) The purpose of KRC's Policy is to address working parents facing challenges to balance competing priorities and responsibilities.

KRC may support families with the purchase of after school care or a portion of day care and paid care providers with after-school care when one or more of the following occur: ... both parents of a two-parent household are engaged in full-time employment ... and providing such support will enable the continuation of employment ...; [t]he child's needs require specialized care which is in excess of that provided to nondisabled children of the same age...; such care is not available to the family ... through usual resources found in communities at usual cost ...; the cost of such extra and specialized care is reasonable. ¶...¶

Typically, KRC will fund only for specialized services or additional supervision required in after school or day care. The family will fund for regular after school or day care

program, as they would have to do with a child who did not have a disability. ¶...¶

After school, extended day, year, and Saturday programs are designed for children ... living at home who have a constant need for a structured setting beyond the primary day program to prevent deterioration in their behavior or who have significant self-help skill deficits. These services are purchased only when they are necessary to maintain the consumer in the family home.

The purchase of up to 3 hours per day or 69 hours per month of extended day services programming may be considered if either ... criteria is met: The client has serious behavior problems requiring intervention beyond that expected of a regular after-school setting ... OR The client has significant self-help skill deficits for his ... age requiring skilled intervention beyond that expected of a regular after-school program ... AND such are not available to the family through usual resourced found in communities ....

The hours of extended day may be increased on a case-by-case basis during the months when school or regular program hours are reduced. All authorized hours for these types of programs are to be coordinated with respite.

(Ex. 5.)

## LEGAL CONCLUSIONS

1. The Lanterman Act governs this case. An administrative “fair hearing” to determine the rights and obligations of the parties is available under the Lanterman Act. (§§ 4700-4716.) Claimant requested a fair hearing to appeal a denial of his request to have Service Agency fund claimant’s socialization skills program at SEC during extended afterschool hours and school vacation days. Jurisdiction was established. (Factual Findings 1-9.)

2. The party asserting a claim generally has the burden of proof in administrative proceedings. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.) In this case, claimant bears the burden of proving, by a preponderance of the evidence, that claimant requires the requested service. (Evid. Code, §§ 115, 500.)

3. The state is responsible to provide services and supports for developmentally disabled individuals and their families. (§ 4501.) Regional centers are “charged with providing developmentally disabled persons with ‘access to the facilities and services best suited to them throughout their lifetime’” and with determining “the manner in which those services are to be rendered.” (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 389, quoting from § 4620 [*ARC v. DDS*].)

4. A regional center must provide specialized services and supports toward the achievement and maintenance of the consumer’s independent, productive, and normal life that allows the consumer to “approximate the pattern of everyday living available to people without disabilities of the same age.” Regional centers are responsible for conducting a planning process that results in an IPP, which must set forth goals and objectives for the consumer. (§§ 4501, 4512, subd. (b), 4646.5, subd. (a).)

5. The services to be provided to any consumer must be individually suited to meet the unique needs of the individual client in question, and within the bounds of the



law each consumer's particular needs must be met. (See, e.g., §§ 4500.5, subd. (d), 4501, 4502, 4512, subd. (b), 4640.7, subd. (a), 4646, subds. (a) & (b), 4648, subd. (a)(1) & (a)(2).) The Lanterman Act assigns a priority to services that will maximize the consumer's participation in the community. (§§ 4646.5, subd. (a)(2), 4648, subd. (a)(1) & (a)(2).)

6. One important mandate included within the statutory scheme is the flexibility necessary to meet unusual or unique circumstances, which is expressed in many different ways in the Lanterman Act. Regional centers are encouraged to employ innovative programs and techniques (§ 4630, subd. (b)); to find innovative and economical ways to achieve the goals in an IPP (§ 4651); and to utilize innovative service-delivery mechanisms (§§ 4685, subd. (c)(3), 4791).

7. Reliance on a fixed policy "is inconsistent with the Lanterman Act's stated purpose of providing services 'sufficiently complete to meet the needs of each person with developmental disabilities.' (§ 4501.)" (*Williams v. Macomber* (1990) 226 Cal.App.3d 225, 232-233.) The services to be provided to each consumer will be selected on an individual basis. (*ARC v. DDS, supra*, 38 Cal.3d at p. 388.)

8. Although regional centers are mandated to provide a wide range of services to implement the IPP, they must do so in a cost-effective manner, based on the needs and preferences of the consumer, or where appropriate, the consumer's family. (§§ 4512, subd. (b), 4640.7, subd. (b), 4646, subd. (a).)

9. Services and supports means specialized services and supports or special adaptations of generic services and supports directed toward the "alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability," and may include day care, child care, behavior training and behavior modification programs, and social skills training. (§ 4512, subd. (b).)

10. ABA is “the design, implementation, and evaluation of systematic instructional and environmental modifications to promote positive social behaviors and reduce or ameliorate behaviors which interfere with learning and social interaction.” (§ 4686.2, subd. (d)(1).) A regional center may not purchase ABA services for purposes of providing respite, day care, or school services. (§ 4686.2, subd. (b)(3).)

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11. Regional centers may not compensate a behavior management program, social recreation program, socialization training program, client/parent support behavior intervention training program, or other identified programs for providing any service to a consumer on any of the following holidays: January 1; the third Monday in January; the third Monday in February; March 31; the last Monday in May; July 4; the first Monday in September; November 11; Thanksgiving Day; December 25; or the four business days between December 25 and January 1. (§ 4692, subd. (a).)

12. A. Claimant established the following by a preponderance of the evidence (Factual Findings 10 through 19):

B. Social skills training is its own, unique service and support under the Lanterman Act. Claimant’s request for extended social skills through SEC is not a request for ABA or daycare. (Legal Conclusions 9-10).

C. Claimant’s request is based on claimant’s unique needs which result from his multiple diagnosis, the fact that he is growing older and bigger, and that both of his parents work full time. Claimant has not requested the extended hours be provided on days prohibited by section 4692, subdivision (a). Daycare alone does not meet, and cannot accommodate, claimant’s unique needs during the time school is not in session and parents must work, which is required by the Lanterman Act. (Legal Conclusions 5-6).

- D. As required by the Service Agency's Policy, claimant requires a structured setting beyond the primary day program to prevent deterioration of his behavior, he has significant self-help skill deficits, and there are no alternative generic resources available to meet claimant's need. (Legal Conclusion 8.)
- E. Based on his significant self-help skill deficits for his age which require skilled intervention beyond that expected of a regular after school program, and based on the unavailability of the requested service to the family through usual resources found in communities, claimant established that limiting the provision of the requested service to three hours per day or 69 hours per month would be reliance on what the Service Agency presented as a fixed policy, and inconsistent with the Lanterman Act. Rather, claimant has satisfied the Service Agency's Policy exception to this limit, demonstrating that he requires an increase in the extended hours, beyond the initial three hours per day or 69 hours per month provided for in the Policy. (Legal Conclusion 7.)

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13. Claimant's appeal shall be granted. The Service Agency shall be ordered to provide funding for claimant's expanded socialization skills program at SEC from 7:30 a.m. until 5:30 p.m. when school is not in session and parents are scheduled to work. This order will be subject to the service limitations provided in section 4692, subdivision (a). Though claimant requested attorney fees, claimant did not establish that such a request is warranted in this case (see *Samantha C. v. State Dept. of Developmental Services* (2012) 207 Cal.App.4th 71).

## ORDER

1. Claimant's appeal is granted. The Service Agency is ordered to provide funding for claimant's expanded socialization skills program at SEC from 7:30 a.m. until

5:30 p.m. when school is not in session and parents are scheduled to work. This order will be subject to the service limitations provided in section 4692, subdivision (a).

2. Attorney fees are not ordered.

DATED:

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CHANTAL M. SAMPOGNA  
Administrative Law Judge  
Office of Administrative Hearings

## NOTICE

This is the final administrative decision; all parties are bound by this decision. Any party may appeal this decision to a court of competent jurisdiction within 90 days.