

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

v.

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2018100090

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on October 31, 2018.

Keri Neal, Consumer Services Representative, Fair Hearings and Legal Affairs, represented Inland Regional Center (IRC).

Claimant's mother appeared on behalf of claimant, with the assistance of Spanish language interpreter Gabino Pintado.

The matter was submitted on October 31, 2018.

ISSUES

Should IRC fund claimant's requests for either an educational advocate or attorney to act as claimant's legal representative in negotiations with claimant's school district regarding claimant's special education services, or in connection with Claimant's needs for special accommodations during lunch due to a medical condition?

## FACTUAL FINDINGS

1. Claimant is eligible for regional center services based on a diagnosis of Intellectual Disability. Claimant's mother is her authorized representative.
2. Claimant qualifies for, and receives, special education services under the categories of Intellectual Disability and Speech and Language impairment.
3. On September 7, 2018, IRC served claimant, through her mother, with a notice of proposed action denying claimant's request for an "educational advocate" that claimant's mother had requested because she felt claimant's school district was not providing claimant with acceptable special education services.

The Notice of Proposed Action stated the following:

Your request has been denied because during the recent IEP meeting held on August 27, 2018, [the school district] agreed to assess [claimant] for a 1:1 aide, to assist with academics. [Claimant] attends regular first grade class ... and receives RSP services. [Claimant] has a diagnosis of dysmaturation syndrome which causes hypoglycemia. Per a report dated July 30, 2018 from Dr. Cortez, Pediatric Endocrinology, it is important that she eat a typical lunch. The doctor recommends that mother be present to ensure that she eats lunch on time. IRC understands that [Claimant] is able to feed herself and that mother is there to ensure that she eats well. During the recent IEP the principal explained that last school year mother was allowed to feed [Claimant] in the lunch room. [Claimant] has twin sibling [sic] who attend this school, and has [sic] lunch at the same time. It was reported that due to mother's interference with the sibling's lunch

routine the school will no longer allow this. The school described the interference as mother eating from the sibling's lunch. The school has offered to have the school nurse, or health aide feed [Claimant] in the nurse's office. Once she is finished [Claimant] can join her peers in the lunch room. IRC understands that you want to be the one to monitor that [Claimant] is eating, as well as her blood sugar level. As a result, the school has made accommodations to allow you to feed her in an area near the nurse's office. The school is not allowing you in the nurse's office to protect the privacy of students there to see the nurse. The regional center is required to consider all generic resources when considering the purchase of services for a consumer. The school is considered a generic resource, who has offered appropriate accommodations for your child.

4. On September 9, 2018, claimant's mother filed a Fair Hearing Request on claimant's behalf objecting to IRC's decision not to provide the above-referenced services. She wrote that she did not feel claimant was receiving appropriate services from the school and she wanted a "lawyer" to be funded by IRC.

5. On October 10, 2018, IRC and claimant's mother attended an information meeting regarding the Fair Hearing Request. Following the informal meeting, IRC adhered to its determination that it would not fund a lawyer to assist claimant's mother in her interactions with claimant's school district. IRC sent claimant's mother memorializing the informal meeting. That letter stated:

[T]he issue at hand is whether IRC should hire an attorney to assist you with pursuing school services. IRC's Notice of Proposed Action letter dated September 7, 2018, stated that you ... requested an educational advocate however during the informal meeting you stated that you wanted an attorney to assist you.

During the informal meeting ... you explained that you wanted an attorney for your daughter because she is not receiving services at school that you believe she needs. You further explained that time has been lost for your daughter because she has not received needed services. **You stated that the request for services and/or supports through the school district take too long and that you want an attorney to pressure the school.** You don't believe that having an Individualized Educational Plan (IEP) meeting means that your daughter's needs will be met, and you believe that the school will deny services or supports that you request on behalf of your daughter.

[Y]ou believe that the school is violating your daughter's rights by now letting you eat in the cafeteria with your daughter. You provided IRC with a copy of the letter from the physician. I explained that the letter from the physician does not state that you are required to be present at our daughter's school while she eats and that the school has

provided different accommodations to assist your daughter....

Ms. Ventura [Claimant's consumer services coordinator] offered to assist you with advocating for your daughter at the next IEP meeting if you notify her of the next scheduled IEP meeting.

[A]dditionally, Ms. Ventura has provided you with advocates that are generic resources including: Exceptional Parents Unlimited and Disability Rights California. TASK is another resource ([www.taskca.org](http://www.taskca.org)) and a flyer is included with this letter. When I asked you if you had contacted these agencies, you stated that you had not done so. [Emphasis Added].

6. Daisy Ventura, Claimant's consumer services coordinator testified at the hearing and referred to documents to support her testimony. The following is a summary of both.

Ms. Ventura explained that Claimant is receiving speech and language therapy as well as specialized educational services from the school district, as per Claimant's IEP. On August 27, 2018, according to Claimant's IEP Team meeting note, Claimant's mother requested a 1:1 aide. The school psychologist told Claimant's mother that the school would respond to the request within 15 days. Claimant's mother told the school she did not want 15 days to pass before anything was done. In response, the school explained that there were legal time period they were required to follow in considering new requests.

Also discussed at the IEP Team meeting was Claimant's need to have her lunch monitored for health reasons. The note was very clear about the special

accommodations that had been made for Claimant, such as letting her eat in the health office and letting Claimant's mother be present at the school while Claimant ate her lunch. The school felt that because Claimant's blood sugar could become dangerously low due to her health challenges, the nurse's office was the safest place for her to eat lunch. Claimant's mother was not satisfied and told the school she did not want Claimant eating lunch next to a bathroom and where other children are sick. The IEP Team meeting note also discussed the fact that previous accommodations had been offered to Claimant but Claimant's mother was unwilling to try the accommodations out for 30 to 60 days as they recommended. Further, it was noted that while Claimant's mother was permitted to initially be in the lunch room with Claimant to monitor Claimant's eating, Claimant's mother was "observed to be breaking the rules and encouraging her child to disobey staff."

Claimant's mother said she felt Claimant was "being discriminated against" by being made to eat in the front office instead of the cafeteria. According to Ms. Ventura, Claimant's mother wants an educational advocate or lawyer to help her resolve her complaints about Claimant's eating accommodations at school. Ms. Ventura told Claimant's mother she would attend Claimant's IEP meetings to help advocate, and also provided Claimant's mother with generic resources such as legal aid groups and other disability rights organizations.

7. Millee Martin-Walton is a Program Manager at IRC and testified at the hearing. Ms. Martin-Walton stated that IRC's responsibility on any request for services is to consider generic resources, family responsibility, and their purchase of service policies. IRC denied Claimant's mother's request for an educational advocate or attorney because there are generic resources available, which were provided to Claimant's mother. Moreover, the records provided show that the school is working with Claimant's mother in accordance with the law and offering accommodations. Although it is rare,

IRC in some circumstances may be able to fund an educational advocate or attorney. However, there is no evidence in this case to suggest that the school is not doing what they are supposed to be doing in connection with Claimant's special education services and health services. There is no evidence that Claimant's school district is not complying with applicable law.

8. Claimant's mother testified that she is here because of the "rights" of her daughter. Claimant's mother wants her daughter to succeed in school and she feels the school is "giving her the run around." She has been "fighting" for years to obtain services and "they are not giving [her] help because it is about spending money." Regarding the 1:1 aide, Claimant's mother said the evaluation was completed but the 1:1 aide was denied. Claimant's mother said it was because the school "always" had an excuse. Regarding interactions with Claimant's principal, Claimant's mother said "that lady has attacked me in my integrity" and treats her "like a poor person." Claimant's mother denied eating her daughter's lunch in the cafeteria. Claimant's mother said she had been accused of letting her daughter cut in line, and she has "a letter from the doctor saying that my daughter does not have to wait."<sup>1</sup> Claimant's mother said the principal is always attacking her and does not want her to defend her "daughter's rights." Claimant's mother said she needs an attorney so "this lady" can "take notice" that she was "not alone."<sup>2</sup>

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<sup>1</sup> No such letter was provided.

<sup>2</sup> Claimant's mother went on to testify about an incident she claimed happened at Claimant's school where she was made to wait to pick up her daughter while other parents were permitted to pick up their children first. Again, she blamed the principal for improper conduct. Regardless of whether this incident did or did not occur, it has

## LEGAL CONCLUSIONS

### BURDEN OF PROOF

1. In a proceeding to determine whether an individual is eligible for services, the burden of proof is on the claimant to establish by a preponderance of the evidence that IRC should fund the requested service. (Evid. Code, §§ 115, 500; *McCoy v. Bd. of Retirement* (1986) 183 Cal.App.3d 1044, 1051-1052.)

### THE LANTERMAN ACT

2. The Legislature enacted a comprehensive statutory scheme known as the Lanterman Developmental Disabilities Services Act (Welf. & Inst. Code, § 4500 et seq.) to provide a pattern of facilities and services sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of handicap, and at each stage of life. The purpose of the statutory scheme is twofold: 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 independent and productive lives in the community. (*Assn. for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 388.) Welfare and Institutions Code section 4501 outlines the state's responsibility for persons with developmental disabilities and the state's duty to establish services for those individuals.

3. Welfare and Institutions Code section 4512, subdivision (b) defines "services and supports" as:

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nothing to do with the Fair Hearing Request and was not considered in reaching a conclusion in this matter.



[S]pecialized 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, or toward the achievement and maintenance of independent, productive, normal lives. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option ... Nothing in this subdivision is intended to expand or authorize a new or different service or support for any consumer unless that service or support is contained in his or her individual program plan.

4. The Department of Developmental Services (DDS) is the public agency in California responsible for carrying out the laws related to the care, custody and treatment of individuals with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4416.) In order to comply with its statutory mandate, DDS contracts with private non-profit community agencies, known as "regional centers," to provide the developmentally disabled with "access to the services and supports best suited to them throughout their lifetime." (Welf. & Inst. Code, § 4620.)

5. A regional center's responsibilities to its consumers are set forth in Welfare and Institutions Code sections 4640-4659.

6. Welfare and Institutions Code section 4646 requires that the Individual Program Plan and the provision of the services and supports be centered on the individual with developmental disabilities and take into account the needs and preferences of the individual and the family. Further, the provisions of services must be effective in meeting the IPP goals, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

7. Welfare and Institutions Code section 4648 requires regional centers to ensure that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and to secure services and supports that meet the needs of the consumer, as determined by the IPP. This section also requires regional centers to be fiscally responsible.

8. In implementing Individual Program Plans, regional centers are required to first consider services and supports in natural community, home, work, and recreational settings. (Welf. & Inst. Code, § 4648, subd. (a)(2).) Services and supports shall be flexible and individually tailored to the consumer and, where appropriate, his or her family. (*Ibid.*) A regional center may, pursuant to vendorization or a contract, purchase services or supports for a consumer in order to best accomplish all or any part of the Individual Program Plan. (Welf. & Inst. Code, § 4648, subd. (a)(3).)

9. The regional center is required to consider all the following when selecting a provider of consumer services and supports: A provider's ability to deliver quality services or supports to accomplish all or part of the consumer's individual program plan; provider's success in achieving the objectives set forth in the individual program plan; the existence of licensing, accreditation, or professional certification; cost of providing services or supports of comparable quality by different providers; and the consumers, or,

where appropriate, the parents, legal guardian, or conservative of a consumer's choice of providers. (Welf. & Inst. Code, § 4648, subd. (a)(6).)

10. The regional center is also required to consider generic resources and the family's responsibility for providing services and supports when considering the purchase of regional center supports and services for its consumers. (Welf. & Inst. Code, § 4646.4.)

11. Welfare and Institutions Code section 4659, subdivision (c), prohibits IRC from purchasing services available from generic resources when a consumer or family chooses not to pursue this coverage.

#### EVALUATION

12. The Lanterman Act and the applicable regulations set forth criteria that a consumer must meet in order to qualify for regional center services. Claimant had the burden of demonstrating the need for the requested service or supports, here, an educational advocate or attorney. Claimant did not meet that burden.

It is not the responsibility of IRC to provide an attorney or educational advocate to assist a parent with "pressuring" a school district or otherwise challenging the school district with regard to special education services being provided. If a parent does not believe his or her daughter is receiving appropriate special education services through a school district, it is the parent's responsibility to professionally engage the school district and pursue an appeal with the school district, if necessary, in accordance with applicable law. The law governing special education is found in state and federal statutes, codes, and regulations. The law applicable to regional center services, however, is found in the Lanterman Act.

Claimant's mother appears to have a difficult relationship with the principal of Claimant's school district. Whether Claimant's mother's adversarial relationship with the school district is her own fault or the fault of the school district personnel with whom

she deals is not the concern of this decision. The sole issue is whether it is appropriate for IRC to hire educational advocate or attorney for Claimant. On this record, it is not. There is no evidence that the school has disregarded any of Claimant's mother's requests. There is no evidence that the school is violating applicable law. There is no evidence that the school is "discriminating" against Claimant in connection with its provision of special education services. Although Claimant's mother disagrees with the type of services being provided, that is not a sufficient reason to justify the hiring of an attorney or educational advocate.

Finally, IRC is prohibited from funding the requested service by law. There are generic resources available, both legal and non-legal, to assist Claimant's mother with advocating for Claimant. Further, Ms. Ventura has offered to attend Claimant's IEP meetings and workshops to assist Claimant's mother with seeking special education services. Finally, to the extent Claimant's mother believes the school district is "discriminating" against Claimant regarding Claimant's eating situation due to Claimant's health challenges, that issue is a civil rights issue connected to a medical/health problem that has nothing to do with Claimant's qualifying diagnosis at regional center (Intellectual Disability). Discrimination is a civil rights matter, and it is not a regional center's responsibility to hire attorneys or advocates to pursue civil rights matters on behalf of consumers.

Claimant's mother's frustration in not being provided services she desires for her daughter is understandable. She clearly wants the best for her daughter. Nonetheless, pursuant to applicable law, Claimant's request must be denied.

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## ORDER

Claimant's appeal from Inland Regional Center's determination that it will not fund an educational advocate or attorney to act as claimant's legal representative in negotiations with claimant's school district regarding claimant's special education services, or in connection with Claimant's needs for special accommodations during lunch due to a medical condition, is denied.

DATED: November 13, 2018

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KIMBERLY J. BELVEDERE  
Administrative Law Judge  
Office of Administrative Hearings

## NOTICE

**This is the final administrative decision. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within ninety days.**