

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

In the Matter of:

CLAIMANT

v.

INLAND REGIONAL CENTER, Service Agency

OAH No. 2021020072

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on June 3, 2021, via Microsoft Teams due to the ongoing public health emergency related to the COVID-19 pandemic.

Senait Teweldebrahn, Fair Hearings Representative, Fair Hearings and Legal Affairs, represented Inland Regional Center (IRC).

Claimant's mother appeared on behalf of claimant, who was not present.

Oral and documentary evidence was received. The record was closed and the matter submitted for decision on June 3, 2021.

ISSUE

Must the regional center fund one hour per day, five days per week, of cognitive-sensory academic instruction for claimant at the Linda Mood Bell Academy (LMB Academy) during the regular school year, in addition to the 240 hours of cognitive-sensory academic instruction it already funds during the summer when claimant is not in school?

FACTUAL FINDINGS

1. On December 18, 2020, IRC sent claimant's mother a notice of proposed action denying her request that IRC fund one hour per day, five days per week, of cognitive-sensory academic instruction for claimant at the LMB Academy during the regular school year. Claimant's mother filed a fair hearing request contesting the denial; this hearing followed. The following factual findings are based on the documents admitted as evidence (including jurisdictional documents, claimant's Individualized Program Plans (IPPs), internet printouts regarding the LMB Academy, and communications between IRC and claimant's mother), along with the testimony of Candace Bustillos, claimant's consumer services coordinator of four years; Christine Slaughter, a behavioral services coordinator at IRC; and Pamela Hutt, a behavioral specialist at IRC.

2. Claimant is a 13-year-old boy who is a consumer of IRC based on a diagnosis of mild intellectual disability and autism spectrum disorder. Claimant currently receives the following services funded by IRC: 45 hours per month of preferred provider respite, 130 hours per month of temporary respite during the pendency of the COVID-19 pandemic; and 240 hours of instructional services from the

LMB Academy during the summer when he is not in school. Claimant receives In-Home Supportive Services in the amount of 264 hours per month.

3. LMB Academy is an accredited K-12 private academic institution that offers academic instructional services to clients. Regional centers are prohibited by law from funding academic instructional services for children aged 3 to 17. The school districts, through the creation of Individualized Education Program plans (IEPs), are responsible for a minor's academic instructional services as well as tailoring those services to the individual consumer in order to provide them a free and appropriate public education.

4. Claimant began attending the LMB Academy during the summer in 2015. IRC began funding the services pursuant to claimant's mother's request in 2019. IRC did not have the LMB Academy as a vendor in 2019 and is aware of the prohibition against funding academic instructional services. However, in the interest of thinking "outside the box," IRC requested a program design from the LMB Academy. IRC worked with the LMB Academy so that they could become a vendor. The purpose of accepting the LMB Academy as a vendor was solely to provide claimant with services during the summer in lieu of summer camp, and IRC also reasoned that the services aimed at sensory and cognitive development during the summer would benefit claimant by giving him a head start on the school year. IRC has been funding the LMB Academy for claimant since that time, during summer only, in the amount of \$2,600 per week, or, approximately \$30,000 per summer.

5. Claimant's mother acknowledged that the LMB Academy is a costly program but as a parent, she feels it helps her son. Claimant's mother repeatedly stressed throughout the hearing that the "service" she is interested in is the cognitive and sensory instruction, not "academic" instruction. She would like claimant to become

a productive and independent person and believes the LMB Academy would help him do that. She has made requests through the school district and insurance, but they always deny the request. The process has been challenging and difficult. She simply wants what is best for her son and feels the additional time throughout the school year would provide the "continuity" he needs.

6. According to the LMB Academy program design, the purpose of the LMB Academy is to provide academic instruction on a one-to-one basis tailored to each client's needs because "all children and adults" should be able to "learn to read and comprehend to their potential." The LMB Academy's instructional method was "pioneered . . . to develop the sensory-cognitive processes that underlie reading and comprehension." The program recommends an academic regimen of four hours per day, five days per week, to help the client "achieve educational milestones." The LMB Academy program design outlines many different sensory-cognitive curriculum components, all of which are aimed at helping a client develop reading, writing, comprehension, and math skills.

7. Nothing in the LMB Academy program design, or any documents provided regarding the LMB Academy, indicate that the LMB Academy is intended to address behavioral concerns, act as a replacement for applied behavioral analysis services (ABA), or function as the type of services a consumer would receive through specialized individual training (SIT). Behavioral services are meant to address behavioral problems, adaptive skills, and creating a skill set to help a consumer benefit throughout his or her life. SIT and other services IRC offers also focus on similar goals but use different approaches. Although each component of the sensory-cognitive curriculum utilizes specialized techniques to help clients meet their goals, there is no

question that the curriculum of the LMB Academy constitutes private academic instruction.

LEGAL CONCLUSIONS

Burden and Standard 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 (Lanterman 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:

[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 IPP and provision of services and supports be centered on the individual and take into account the needs and preferences of the individual and family. Further, the provision of services must be effective in meeting the IPP goals, reflect the preferences and choices of the consumer, and be a 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 IPPs, 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 IPP. (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. In 2009, the enactment of Welfare and Institutions Code section 4648.5 eliminated a regional center's authority to purchase certain services. Subdivision (a)(3) of section 4648.5 provides specifically that a regional center may not purchase "educational services for children three to 17, inclusive, years of age." An exemption from the general prohibition on the purchase of specific services may be granted on an individual basis when the regional center determines that the service is a "primary or critical means" for ameliorating the physical, cognitive, or psychosocial effects of the consumer's developmental disability, or the "service is necessary to enable the consumer to remain in his or her home and no alternative service is available to meet the consumer's needs."

Evaluation

12. Claimant had the burden of proving that he meets the exception to the general prohibition on regional centers from funding educational services like those provided by the LMB Academy. Claimant did not meet that burden. Although claimant may benefit from the cognitive-sensory curriculum offered at the private academic institution, the service falls squarely within the prohibition set forth in Welfare and Institutions Code section 4648.5, subdivision (a)(3). When offered in lieu of a summer camp or other summer program during the time claimant is not attending school, it serves a permissible purpose. However, when offered during the year when normal academic instruction is provided, it is the responsibility of the school district to address claimant's educational needs through the creation and amendment of his IEPs.

13. An exception to this prohibition exists only when the regional center determines that the service is a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of the consumer's developmental disability, or the service is necessary to enable the consumer to remain in his or her home and no alternative service is available to meet the consumer's needs. On this record, it was not established by a preponderance of the evidence that the instructional services provided at the LMB Academy are a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of claimant's developmental disability, that attending the LMB Academy during the school year is required to maintain claimant in his home, or that no alternative service is available to meet claimant's needs.

ORDER

Claimant's appeal from Inland Regional Center's determination that it will not fund one hour per day, five days per week, of academic instruction for claimant at the LMB Academy during the regular school year is denied.

DATE: June 11, 2021

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 90 days.