

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

In the Matter of:

Claimant,

vs.

South Central Los Angeles Regional Center,

Service Agency.

OAH No. 2023040356

System Tracking No. CS0004027

DECISION

Nana Chin, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on June 15, 2023, in Los Angeles, California.

Claimant's mother (Mother) appeared on Claimant's behalf and was assisted at the hearing by independent facilitator, Evelyn Rodriguez. (Names are omitted and family titles are used to protect the privacy of Claimant and his family.) Mother and Ms. Rodriguez received Spanish language interpretation services.

South Central Los Angeles Regional Center (SCLARC or Service Agency) was represented by Tami Summerville, Appeals & Governmental Affairs Manager.

Testimony and documents were received into evidence. The record was closed on June 15, 2023.

ISSUE

Whether the Service Agency should be required to provide funding for an education attorney to advocate on Claimant's behalf at his new school district.

EVIDENCE RELIED UPON

Documents: Exhibits 1-13 and A-L

Witnesses: Edna Robles, Participant Choice Specialist; Mother; and Evelyn Rodriguez.

FACTUAL FINDINGS

Background

1. Claimant is a 15-year-old male consumer who qualifies for regional center services under the Lanterman Developmental Disabilities Services Act (Lanterman Act) (Welf. & Inst. Code, § 4500 et seq.) based upon a diagnosis of autism spectrum disorder (ASD).

2. Claimant has been enrolled in the Self-Determination Program (SDP), since January 2022. Each participant in the SDP is allocated funds, referred to as an SDP budget (or budget), to purchase services and supports necessary to implement their Individual Program Plan (IPP). The SDP budget allocated to each participant is

based on the total funds that were expended by the participant the prior year to purchase regional center services and supports, less any one-time costs. The budget may be increased as new needs are identified.

3. Claimant is using his SDP budget to purchase the following services and supports: 80 hours per month of personal assistance services; 36 hours per month of in-home respite services; nine hours per month of social skills training; therapeutic horse riding services for one hour per week; karate classes for one hour per week; music lessons for one hour per week; and one hour per week of community integration coaching services.

4. On November 12, 2021, Service Agency agreed to provide funding for a one-time educational advocacy assessment pursuant to its purchase of service (POS) guidelines.

5. On May 9, 2022, Service Agency agreed to provide advocacy support funds in the amount of \$5,124, for the services of Kevin Michele Finkelstein, a special education attorney. Mr. Finkelstein, however, billed for an additional \$1,400 in services.

6. On September 14, 2022, Mother requested an additional \$1,400 to pay Mr. Finkelstein's outstanding attorney's fees. Service Agency initially denied the request but later agreed to the additional funding on October 14, 2022.

7. After the additional funding was approved, Claimant requested another one-time increase in his SDP budget to receive preventative educational advocacy attorney services from Mr. Finkelstein.

8. On March 15, 2023, Service Agency issued a Notice of Proposed Action (NOPA) denying Claimant's request.

9. Mother filed the Fair Hearing Request on Claimant's behalf on March 31, 2023, to appeal Service Agency's decision.

Individualized Education Program (IEP)

10. Claimant was found eligible for special education services by the Lynwood Unified School District (District or Lynwood) primarily as a student with autism and secondarily as a student with speech and language impairment. Claimant attends Speech and Language Development Center (SLDC), a non-public school for special education students, within the Mid Cities Special Education Local Plan Area (SELPA). (Lynwood is one of three school districts that comprise the Mid Cities SELPA.)

11. In May 2022, an individualized education program (IEP) meeting was held with Claimant; Mother; Mr. Finkelstein; Lavydda Anderson, the Local Education Agency (LEA) representative; Daniel Arrizon, Special Education Specialist; Tanya Sanchez, SLDC Program Specialist; Monica Singh, Counselor; Karen Arribas, Speech Language Pathologist (SLP); Hicran Duz, Applied Behavior Analyst (ABA); Sylvia Wong, Occupational Therapist (OT); and Danielle Baker, Board Certified Behavior Analyst (BCBA) (collectively, IEP team). Translation services were provided during the IEP by a Spanish language interpreter.

12. According to the letter from Mr. Finkelstein, the annual/triennial IEP meeting was held over two days "to set new goals and change up services based on Independent Educational Evaluations." (Exh. 12.) (The IEP does not reflect the fact the meeting was held over two days.)

13. During the IEP, Lynwood agreed to provide Claimant with the following services: 120 minutes of adaptive physical education services per month; 330 minutes per month of direct speech services and 30 minutes per month of classroom

collaboration and consultation services; 480 minutes per month (240 minutes individually and 240 minutes in a small group) of counseling and guidance; 30 minutes per week of occupational therapy; 60 minutes per week of ABA services at school; and a one-to-one aide during school hours.

14. One of the services Mr. Finkelstein was able to secure for Claimant was placement at SLDC. (Exh. G.) The IEP team determined that the “least restrictive setting where [Claimant’s] needs can most appropriately be met is in a Non public [sic] school. . . [¶] The IEP team discussed the potential harmful effects of this setting including reduced interaction with general education peers, the possibility that [Claimant] will be unable to participate in some general education and/or elective classes and an increase in stress and anxiety as [Claimant] transitions to and from a separate setting. The IEP team has determined that benefits of a non-public school for the majority of the day outweigh any potential harmful effects.” (Exh. B, p. B53.)

15. Mother signed the IEP on May 14, 2022, agreeing to all parts of the IEP. (Exh. 5, p. A1212, Exh. C.)

Individual Program Plan

16. An annual review of Claimant’s IPP was conducted via Zoom on January 27, 2023, with Claimant, claimant’s parents (Parents), Ms. Rodriguez and service coordinator Jesus Evelyn Gonzalez.

17. The “Desired Outcome” in the area of the IPP report that relates to Claimant’s education is that Claimant “continue participating in his special education program, 5/5 days per week, in order to develop his functional skills e.g. cognitive, social-emotional, communication, and self help. [SLDC] will provide roundtrip

transportation with an aide.” (Exh. L, pp. B127-1288.) No funds were allocated to support the goal.

18. Parents agreed to notify Service Agency of Claimant’s IEP meetings at least two weeks in advance, so Claimant’s service coordinator could attend if possible. There was no indication in the IPP report that there were any ongoing disputes between Claimant and Lynwood.

Service Agency’s Contentions

19. Service Agency provided funding for the educational attorney to assist Claimant with interacting with Lynwood. The issues the attorney was assisting Claimant with, however, have been resolved. According to SCLARC’s POS guidelines, SCLARC is unable to provide legal services for academic support when there is no current controversy. As there is no current controversy, there is no current need for an educational attorney. Claimant has moved from the District and may request support if an issue does arise at Claimant’s new school district.

Claimant’s Contentions

20. Service Agency provided funding for a special education attorney because Lynwood had been highly aggressive in its interactions with Parents. Mr. Finkelstein advocated for Claimant and was able to secure assessments and services Claimant would not otherwise have been able to secure without Mr. Finkelstein’s assistance.

21. Claimant is currently enrolled in a non-public school for special education students in the new district. The current placement is highly restrictive and does not support Claimant’s educational goals. Claimant needs the services of a

special education attorney so that he can be placed in a school where he is able to interact with students without special needs.

Mother's Testimony

22. Claimant began attending SLDC in 2019. Mother objected to Claimant's placement at SLDC because she did not believe the school would meet Claimant's needs. Lynwood, however, overrode her objections and placed Claimant at SLDC. Claimant attended SLDC via Zoom for approximately one and one half years.

23. Claimant began attending SLDC in person at the end of 2021. Mother again expressed her concerns to Lynwood regarding the propriety of the placement. Specifically, SLDC's student population generally has disabilities that are more severe than Claimant's. While at SDLC, Claimant has been physically attacked by another student on at least two occasions. (Reports of the incidents which occurred on March 16, 2022, and May 18, 2023, were admitted into evidence as Exhibit I and J.) In addition, Mother could see Claimant was beginning to model the negative behaviors of other SLDC students.

24. Lynwood, however, again overrode her concerns. Mother found her interactions with Lynwood to be extremely difficult. Mother relayed that on the one occasion, they laughed at her when she tried to speak English. Because of these difficulties, Mother asked Service Agency for assistance with interacting with Lynwood. Claimant's service coordinator accompanied her to an IEP meeting but was unable to help because Lynwood terminated the meeting quickly.

25. Mother subsequently obtained the services from Mr. Finkelstein. With his assistance, Mother was able to obtain OT and ABA evaluations from the District. (Mother is still waiting for an inclusion assessment.)

26. The family has since moved and are now part of the Compton Unified School District. Mother feels it is important to have the services of an educational attorney to ease Claimant's transition to the new school district and ensure Claimant gets every appropriate service and support.

LEGAL CONCLUSIONS

Jurisdiction

1. Pursuant to Welfare and Institutions Code section 4710.5, subdivision (a), "Any applicant for or recipient of services . . . who is dissatisfied with any decision or action of the service agency which he or she believes to be illegal, discriminatory, or not in the recipient's or applicant's best interests, shall . . . be afforded an opportunity for a fair hearing." (All further statutory references are to the Welfare and Institutions Code unless noted otherwise.) As Claimant timely requested a hearing to appeal SCLARC's NOPA, jurisdiction in this case was thus established. (Factual Findings 1 & 7-9.)

Standard of Proof

2. As no other statute or law specifically applies to the Lanterman Act, the standard of proof in this case is preponderance of the evidence. (See, Evid. Code, § 115.)

Applicable Law

3. In enacting the Lanterman Act, the Legislature accepted responsibility to provide for the needs of developmentally disabled individuals and recognized that services and supports should be available to enable persons with developmental

disabilities to approximate the pattern of everyday living available to people of the same age without disabilities. (§ 4501.)

4. The IPP is developed through a process of individualized needs determination. (§ 4646, subd. (b).) A regional center is required to secure the services and supports that are effective in meeting the stated goals of the consumer's IPP, "reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources "of the consumer, as determined in the consumer's IPP. (§ 4646, subd. (a).)

5. When purchasing services and supports for a consumer, a regional center shall ensure, among other things, "[c]onformance with the regional center's purchase of service policies, as approved by the [Department of Developmental Services]," and "[u]tilization of generic services and supports if appropriate." (§ 4646.4, subds. (a)(1) & (2).)

6. The services and supports that may be listed in an IPP include, among others, "advocacy assistance, including self-advocacy training, facilitation and peer advocates." (§ 4512, subd. (b).)

7. Section 4648, subdivision (b)(1) provides that the regional center is responsible for "advoca[ting] for, and protect[ing] the civil, legal, and service rights of persons with developmental disabilities . . ." as established in this division. "Whenever the advocacy efforts of a regional center to secure or protect the civil, legal, or service rights of any of its consumers prove ineffective, the regional center or the person with developmental disabilities or his or her parents, legal guardian, or other representative may request advocacy assistance from the state council." (§ 4648, subd. (b)(2).)

Analysis

8. Here, Service Agency agreed, through the IPP process, to provide Claimant with educational advocacy support services through an attorney to protect Claimant's right to free appropriate public education (FAPE).

9. Mother testified that the educational attorney was successful in assisting her with obtaining necessary educational services for Claimant from Lynwood, resulting in Mother agreeing to all parts of the IEP on May 14, 2022. There is no indication from Claimant's January 27, 2023 IPP that there are any ongoing conflicts with respect to Claimant's IEP.

10. While section 4512 provides for "advocacy assistance," that does not imply a broad obligation on the part of a regional center to fund litigation for all of their consumers. Regional centers must purchase services after consideration of the cost-effectiveness of the service and its effectiveness in meeting Claimant's IPP goals.

11. Service Agency has no way to control a private attorney's fees to ensure cost-effectiveness of the advocacy assistance being provided by the attorney or ensure the effectiveness of the attorney's services in meeting Claimant's IPP goals. In this case, Service Agency authorized \$5,124 in attorney's fees. The fees, however, charged by the attorney were in excess of the original authorization and required Service Agency to pay an additional \$1,400 in attorney's fees. Further, there is no evidence the attorney has been an effective advocate for Claimant. Specifically, Mother stated she objected to Claimant's placement at SLDC. The evidence, however, indicates Claimant was placed at SLDC because of the attorney's advocacy efforts.

12. Mother asserts that Claimant needs the services of the educational attorney to facilitate appropriate placement in his current school district among his

mainstreamed peers in the least restrictive environment. Claimant, however, has failed to present any evidence to demonstrate that Compton Unified School District is unable or unwilling to provide Claimant with a FAPE that would include placement in a less restrictive environment than where he is currently placed.

ORDER

Claimant's appeal is denied.

DATE:

NANA CHIN

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision. Each party is bound by this decision. Either party may request a reconsideration pursuant to subdivision (b) of Welfare and Institutions Code section 4713 within 15 days of receiving the decision, or appeal the decision to a court of competent jurisdiction within 180 days of receiving the final decision.