

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

W.C.

Claimant,

vs.

SAN GABRIEL/ POMONA REGIONAL  
CENTER,

Service Agency.

OAH No. 2017021050

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DECISION

This matter was heard by Nana Chin, Administrative Law Judge, Office of Administrative Hearings, on March 28, 2017, in Pomona, California.

Claimant<sup>1</sup> was represented by his parents. Claimant did not attend the hearing

Daniela Santana, Fair Hearing Manager, represented San Gabriel/Pomona Regional Center (SG/PRC or Service Agency).

The record was held open until April 28, 2017, for Claimant to submit an updated 2017 Individualized Education Program (IEP) which was scheduled to be completed after the hearing, and an updated assessment by Claremont McKenna

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<sup>1</sup> Claimant and his family members are not identified by name to protect their privacy.

College. Claimant timely submitted the additional documents, which were marked for identification as Exhibits E, F and G, and admitted into evidence.

The matter was closed and the matter was submitted for decision on April 28, 2017.

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## ISSUE

Should the Service Agency fund social skills training offered by Claremont McKenna College (Claremont)?

## EVIDENCE RELIED UPON

Documentary: Exhibits 1-8 and A-G

Testimonial: Daniela Santana, Fair Hearing Coordinator, and Claimant's parents

## FACTUAL FINDINGS

### PARTIES AND JURISDICTION

1. Claimant is a 6-year-old boy who lives with his parents and two younger siblings. Claimant is eligible for Lanterman Developmental Disabilities Services Act services (Lanterman Act) (Welf. & Inst. Code, § 4500 et seq.) based upon a qualifying diagnosis of autism.
2. In a letter to the Service Agency dated January 12, 2017, Claremont requested funding for Claimant to begin receiving social skills training at the Claremont Autism Center which runs from January 24, 2017, until June 15, 2017.
3. The Service Agency issued a Notice of Proposed Action (NOPA) dated January 30, 2017, denying funding for the social skills training on the basis that Claimant would "benefit from additional time in his current behavioral health

treatment program to develop his skills and prepare him for readiness in the social skills setting.” (Exhibit 1.)

4. Claimant’s father filed a fair hearing request on his son’s behalf on February 13, 2017, to appeal the Service Agency's decision and this hearing ensued. All jurisdictional requirements have been met.

## BACKGROUND

### 2016 Individual Program Plan (IPP)

5a. The Service Agency submitted Claimant’s March 30, 2016 Individual Program Plan (IPP) into evidence. According to the IPP, Claimant is ambulatory and healthy. Claimant is able to use words to express his wants and needs, but occasionally requires verbal prompts to clarify what he wants in an appropriate way. In social interactions, Claimant greets very familiar people by saying “hi” or waving his hands, but requires verbal prompts to initiate interaction. Claimant also requires verbal and physical prompts to engage or maintain interaction appropriately because he has problems with sharing, waiting his turn and respecting others’ personal space.

5b. Claimant’s IPP goals include his ability “to engage and to maintain interaction appropriately.” (Exhibit 3.)

### 2016 School District Assessment and IEP

6. The Service Agency submitted Claimant’s 2016 IEP into evidence.

7. Claimant attends special education classes in a public day school. Claimant is eligible for special education services due to autistic-like behaviors/speech. At the time of his 2016 IEP, Claimant took part in a speech and language assessment through the school district. During the evaluation, Claimant’s answers ranged from acceptable to inadequate. Claimant’s father

noted that the standardized assessment did not completely capture Claimant's abilities, but agreed that the dynamic assessment did capture his son's abilities. The evaluator also observed Claimant exhibiting greater ability when in the classroom, than during the standardized assessment.

#### Claremont Assessment

8. On January 12, 2017, Claremont requested funding from the Service Agency for Claimant to begin services at the Claremont Autism Center. The program would entail Claimant attending the clinic once a week for a two-hour social skills group session, while Claimant's parents would receive direct parent training on behavioral procedures, such as modeling, reinforcement and other behavioral intervention techniques. The funding request included a December 6, 2016 assessment of Claimant which indicated that Claimant had regressed in a number of areas. The assessment suggested that Claimant rarely made social initiations, avoided eye contact with peers and therapists, and did not speak in complete sentences.

#### SERVICE AGENCY'S DECISION TO DENY FUNDING FOR SOCIAL SKILLS TRAINING

9. Daniela Santana testified regarding the Service Agency's review process for behavioral service requests. Typically, when a behavioral service is requested, a Claimant's Service Coordinator will present the request, outlining the parents' issues and concerns to the SG/PRC's Instructional Services Committee (ISC) for approval of the service. The ISC will discuss the request and make a determination.

10. No one from the ISC who had been present at the meeting in which Claimant's behavioral service request was discussed testified at the hearing. Ms.

Santana, who is a member of the ISC but had not been present at the meeting, explained the ISC's rationale based on her discussions with ISC members and a review of the records. According to Ms. Santana, the ISC was concerned about the assessment that had been included in Claremont's funding request. Specifically, the goals outlined in the request included a decrease in tantrums and stereotypy and an increase in eye contact and spontaneous speech. The goals raised a "red flag" for the ISC. In order to be able to effectively participate in social skills training, individuals need to have certain prerequisite skills, such as the ability to not have tantrums and to sustain eye contact.

11. Ms. Santana acknowledged that both Claimant's 2016 IPP and 2016 IEP suggest Claimant is operating at a much higher level than indicated in the Claremont assessment. Specifically, the IEP notes Claimant's ability to get along with other children and sustain eye contact, and the IPP does not show a concern regarding Claimant exhibiting aggressive behaviors. The Claremont assessment, however, was conducted by behavioral therapists and is the most recent assessment of Claimant's behavior to date.

12. Ms. Santana testified that had Claimant been functioning at the same level he had been functioning at the time of the 2016 IEP and 2016 IPP, the Service Agency would have approved the request. The decline in Claimant's behavior raised concerns that placing Claimant in a new environment at this time may be counterproductive and may, in fact, increase his negative behaviors.

#### PARENTS' CONTENTIONS

13. Claimant's father acknowledged that Claimant did not perform in a manner reflective of his abilities during the Claremont assessment. Claimant's father had no explanation for Claimant's behavior other than to suggest that his

son's behavior, like that of any other child, fluctuates from time to time and in different environments.

14. Claimant's father testified that Claimant has made drastic improvements over the last year, which is reflected in his school behavior cards, daily reports and comments from his teachers. Claimant is now reading, makes more eye contact, and is not afraid of people or of joining a group.

15. Claimant currently receives 55 hours per month of in-home Applied Behavior Analysis (ABA) which is funded through LA Care. Claimant's parents do not believe ABA services are sufficient to meet Claimant's needs for behavioral health treatment. ABA services are one-on-one therapy and the services Claimant receives at school are focused on Claimant's academics. Claimant's parents found the Claremont program because of their concerns about Claimant's behavior in social situations. Though Claimant has been progressing in other arenas, Claimant needs to learn how to behave in a group environment. Claremont's program can teach Claimant how to conduct himself in such an environment.

16. Claimant's parents submitted a graph charting Claimant's behavior and conduct from October 2016 until January 2017. These graphs were created based on the Daily Report Progress Summary provided to them by the school. Though the graphs do show intermittent worsening of Claimant's behavior, they still reflect a high level of functioning. Claimant's father further testified that Claimant's behavior has stabilized since January 2017.

17. Claremont has accepted Claimant into its program and has permitted Claimant to attend the social skills training during the appeal process. An assessment of his progress is submitted following the hearing and is more fully addressed in Factual Finding 20 below.

## SERVICE AGENCY'S PURCHASE OF SERVICE POLICY

18. Service Agency developed and approved a Purchase of Service Policy (POS) in December 2009. (Exhibit 8.) The POS was approved by the California Department of Developmental Services in July 2010. The POS states that "social skills training" is provided to children to develop appropriate social interaction skills to facilitate participation at home and in the community. Services address significant needs a consumer may have in one or more of the following areas: Engagement and awareness of others; social interaction; verbal and non-verbal social communication; and play skills. Social skills training involves a detailed curriculum with meaningful and measurable outcomes and parent participation. It should address specific goals and objectives identified by the IPP team and prepare the child to transition to inclusive environments to practice the skills learned and continue to build new ones. (Exhibit 8.)

## ASSESSMENTS FOLLOWING HEARING

### School District Assessment and IEP

19a. Following the hearing, Claimant had his annual IEP meeting on April 19, 2017. Though the complete IEP was not submitted by the time the record closed, Claimant's parents submitted into evidence an updated Annual Goals and Objective Progress Report (Progress Report) and the Annual Goals and Objectives (2017 Goals).

19b. By March 28, 2017, the Progress Report indicates that Claimant had met or made significant progress in meeting his educational goals and has made "great strides" in going up to a peer to and properly initiating play. (Exhibit E.)

## Claremont McKenna College Assessments

20. An updated assessment by Claremont dated April 10, 2017, was submitted following the hearing. Claimant has been attending the social skills weekly training since January 24, 2017. Though it is unclear whether Claremont conducted a standardized assessment or a dynamic assessment, the assessment indicates a marked improvement in all areas of treatment.

## LEGAL CONCLUSIONS

### JURISDICTION

1. Pursuant to Welfare and Institutions Code<sup>2</sup> Section 4710.5, subdivision (a), "Any ... authorized representative of the applicant or recipient, 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."

### STANDARD OF PROOF

2. The party seeking government benefits or services bears the burden of proof. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161. 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, 500.) As the party seeking funding for a previously unfunded service, the burden of proof in this matter is on the Claimant.

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<sup>2</sup> All further statutory references are to the Welfare and Institutions Code unless noted otherwise.



## APPLICABLE LAW

3. In enacting the Lanterman Act, section 4500 et seq., 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 consumer's needs are determined through the IPP process. (§ 4646.) The process "is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments." (§ 4646, subd. (a).) Section 4685, subdivision (c)(1), similarly provides that in order to provide opportunities for children to live with their families, regional centers shall give a very high priority to services and supports designed to assist families to care for their children, including "behavior modification programs" and "special adaptive equipment such as wheelchairs, hospital beds, communication devices, and other necessary appliances and supplies . . . ."

5. The IPP must set forth goals and objectives for the consumer, contain provisions for the acquisition of services (which must be provided based upon the consumer's developmental needs), and reflect the consumer's particular desires and preferences. (§§ 4646, 4646.5, subds. (a)(1), (a)(2), and (a) (4), 4512, subd. (b), and 4648, subd. (a)(6)(E).)

6. Although an IPP must reflect the needs and preferences of the consumer, a regional center is not mandated to provide all the services a consumer may request. A regional center's provision of services to consumers and their families must "reflect the cost-effective use of public resources." (§

4646, subd. (a).) A regional center also has discretion in determining which services it should purchase to best accomplish all or any part of a consumer's IPP. (§ 4648.) This entails a review of a consumer's needs, progress and circumstances, as well as consideration of a regional center's service policies, resources and professional judgment as to how the IPP can best be implemented. (§§ 4646, 4648, 4624, 4630, subd. (b), and 4651; *Williams v. Macomber* (1990) 226 Cal.App.3d 225, 233.)

#### REQUEST FOR FUNDING OF SOCIAL SKILLS TRAINING

7. One of Claimant's goals in his 2016 IPP, as set forth in Factual Finding 5, is to engage and maintain social interactions. There is no question that the Claremont program is, in fact, "social skills training" that is designed to improve Claimant's ability to engage and maintain social interactions.

8. The Service Agency, however, has denied funding for social skills training for Claimant on the grounds that Claremont's assessment, which had been conducted by behavioral therapists, suggests that Claimant is not currently ready for social skills training and therefore, funding for the training is unwarranted. The Service Agency further suggested that had Claimant been at the level of functioning indicated in his 2016 IPP and 2016 IEP, social skills training may have been appropriate.

9. Claremont, however, accepted Claimant into its program based on its own assessment that Claimant would benefit from its program. In addition, the Claremont assessment took place in an artificial setting and the evidence that was submitted into evidence indicates Claimant does not perform well in such a setting. While acknowledging that Claimant did not do well during the assessment and had experienced upticks in "bad" behavior, Claimant's father also described the progress Claimant has made since 2016. This testimony is

corroborated by the 2017 IEP Progress Report, 2017 Annual Goals and the updated Claremont assessment.

10. The Service Agency's POS states that the Service Agency may purchase social skills training if the following criteria are met: (1) the child exhibits a significant need; (2) an assessment conducted by a qualified professional provides evidence that the individual's social skills will improve; and (3) the parents agree to assume a major role in implementing training strategies between sessions.

11. In the present instance, all three of the criteria have been met. Claimant has exhibited a significant need for services, which was documented in his 2016 IPP; Claremont conducted an assessment, making the determination that the Claimant's social skills would improve with training and submitted evidence the Claimant's behavior had, in fact, improved; and the program provided by Claimant assumes significant parental participation in implementing strategies for Claimant.

## ORDER

Claimant's appeal is granted. The Service Agency is ordered to fund social skills training offered by Claremont McKenna College until June 15, 2017.

DATED:

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NANA CHIN

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.