

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

In the Matter of:

CLAIMANT,

vs.

SAN GABRIEL/POMONA REGIONAL CENTER, Service Agency

OAH No. 2019110350

DECISION

Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on December 11, 2019, in Pomona, California.

Daniela Santana, Fair Hearing Manager, represented San Gabriel/Pomona Regional Center (SGPRC or Service Agency.) Claimant appeared and was present for part of the proceeding. His mother represented him throughout the proceeding.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on the hearing date.

On December 26, 2019, the ALJ issued an order to reopen the record so that he could give notice that he intended to take official notice of a standard text, the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, commonly known

as the DSM-5, and so that the parties could make objection, if they desired, to the ALJ taking official notice of the DSM-5. The parties were to make their objections known by January 6, 2020.

There were no objections, and the matter was again submitted on January 7, 2020.

ISSUE PRESENTED

The issue in this case is whether Claimant is eligible for services from the Service Agency.

FACTUAL FINDINGS

Jurisdictional Matters

1. Claimant is a 25-year-old man who seeks services from the Service Agency under the Lanterman Developmental Disabilities Services Act (Lanterman Act), California Welfare and Institutions Code, section 4500 et seq.¹ This proceeding arises from his second attempt to obtain services. As related below, he sought services in 2017 but eligibility was denied at that time.

¹ All statutory references are to the Welfare and Institutions Code, unless otherwise noted.

2. On September 24, 2019, SGPRC issued a Notice of Proposed Action and an accompanying letter, which informed Claimant that he was not deemed eligible for services under the Lanterman Act. SGPRC asserted that Claimant did not have an eligible disability that was substantially handicapping within the meaning of the Lanterman Act. (Ex. 1.) During the hearing, the thrust of SGPRC's case was that he had not displayed aspects of an eligible condition in his developmental years.

3. On or about October 15, 2019, Claimant filed a Fair Hearing Request, and this proceeding ensued. (Ex. 2.) All jurisdictional requirements have been met.

Claimant's General Background

4. Claimant was born in September 1994 after a full term pregnancy; he was his mother's first child. He weighed nine pounds, fourteen ounces at birth. In 2017, his mother told a Service Agency social worker that Claimant lifted his head at five months, sat alone at eight months, crawled at twelve months, and walked at seventeen months. However, Claimant's mother also reported that he was not toilet trained until four years old, and while he said single words at ten months, he did not string words together until he was five years old. He did not follow simple directions until age nine to ten years. (Ex. 5, p. 3.) Claimant's mother gave a similar history in 2019. (Ex. 10, p. 3.)

5. Claimant suffers from a heart rhythm problem known as Wolff-Parkinsons-White Syndrome, which occasionally results in an irregular heartbeat. He takes medication that, for the most part, manages the condition such that he has only an episode every few months. He also suffers from asthma. Aside from medication for his heart issue, he takes Albuterol for asthma, Flonase and Singular for allergies, and Adderall to help him focus. The aforementioned drugs were prescribed as of 2017; since then Risperdal and Bispar have been added. (Ex. 5, p. 4; ex. 10, p. 4.)

6. Claimant has gross and fine motor delays. While generally ambulatory, he rides a bike with training wheels and is not able to jump rope. In terms of fine motor skills, he is unable to cut using scissors, has trouble tying his shoes, and has trouble buttoning his clothing.

7. Claimant lives with his mother. He has three younger brothers, who assist his mother in caring for him. This is necessary for a number of reasons, including because Claimant's independent living skills are significantly delayed. At 25 years of age, he cannot safely use the microwave or conventional oven; he has burned up cup-of-noodle meals in the microwave (and damaged more than one microwave oven) by not adding water to the container and he has done this more than one time. (Ex. 10, p. 4.) He can distinguish different types of money but doesn't know their relative values. He can't tell time by an analog or digital clock. He needs constant supervision; if left alone in the house he will take the knobs off of the kitchen stove. If left alone in the community, he is not safe, because of low safety awareness, and because he is easily confused and has a poor sense of direction. Further, he is very gullible and suggestive, and thus subject to the pernicious influence of others, which has had him in trouble with the law in recent years. He is not employed, receiving SSI benefits that are paid to his mother because of his inability to manage money.

8. Claimant is sometimes verbally aggressive, especially when he does not get his own way. In the past he would act out and damage property. He has twice been placed on 72-hour holds due to physical aggression.

9. Claimant has received mental health services off-and-on since he was a child. As described below, he received special education services when he was in school. The schools deemed him eligible for special education services due to a

learning disability. The mental health services have been provided due to a diagnosis of depression. He has been diagnosed with Attention Deficit Disorder.

Claimant's Education

10. Claimant briefly attended public school in the Service Agency's catchment area, first attending a Headstart program at an elementary school in 1998-99. (Ex. 23, p. 1.) He had to repeat kindergarten. In 2000, the school's principal requested that Claimant not be brought back to the school because of behavior problems, which the principal asserted posed a danger to staff and Claimant. (*Id.*) Thereafter, his school years were spent in non-public schools. He received special education services for Specific Learning Disorder and Language/Speech Disorder. Claimant completed special education, but it is not clear from the record that he obtained a diploma.

11. The school district conducted psycho-educational assessments at various times.² A report of such testing, from May 2002, when Claimant was seven and enrolled in second grade, was received in evidence as exhibit 23. At that time, it appears that he was receiving mental health services, to manage behaviors. The 2002 report notes that in May 2000, another school psychologist had deemed Claimant eligible for special education services based on discrepant reading, math, and written language skills due to deficient visual processing skills; the prior evaluator had stated that auditory/sensory processing skills were moderately delayed, and that significant concerns had surfaced regarding behavior. (Ex. 23, p. 2.)

² A test report from May 2000 (exhibit C) was received in evidence, but sheds no light on the issues in this case.

12. (A) A standard IQ test was not administered to Claimant, but the evaluator in 2002 utilized the Detroit Test of Learning Aptitude—4th Edition. On the five scales generated by that test, Claimant placed in the fifth to sixty-third percentile. On the Vineland Adaptive Behavior Scales, Claimant scored in the third percentile in the communication domain, the 18th percentile in the Daily Living Skills Domain, and the 10th percentile in socialization. In terms of academic achievement, Claimant's scores on the Woodcock-Johnson III Test of Achievement showed significant scatter. Some scores were in the first, or less than the first, percentile, including Letter Word Identification, Broad Written Language, and Written expression (0.2 percentile). Other scores were relatively high, such as story recall (85th percentile), Calculation (77th percentile), and Broad Math (69th percentile). (Ex.23, pp. 3-4.)

(B) In comments set out in the section of the report pertaining to the Woodcock-Johnson test, it was stated that Claimant "prints letters of alphabet upon dictation but no words. . . . Does not know monetary denominations Does not know concept of multiplication. . . . Does not know personal data such as DOB, address, telephone. . . . Written tasks are very labored to the point that he finds it too difficult to print his name more than once on paper." (Ex. 23, p. 4.) Notwithstanding these shortcomings, the report indicates that in terms of cognitive functioning, the "pattern of scores on measures of cognitive ability fall within the average range." (*Id.*, p. 7.)

13. (A) Another psycho-educational assessment was performed by the school district in March 2007, when Claimant was nearly 13. He was then in the seventh grade and enrolled in a non-public school. The school psychologist utilized the Woodcock-Johnson III Test of Cognitive Abilities to assess Claimant. Claimant was in the eighth percentile overall, placing him in the below average range. (Ex. A, pp. 3, 9.) There was

significant scatter on the various scales generated by the test, and some of the scores were quite low. For example, the scores for Long Term Retrieval and Processing Speed were in the second percentile; the Visual Matching score was in the first percentile. The scores for Cognitive Efficiency and Retrieval Fluency were both in the third percentile; Working Memory was in the sixth percentile. Several other scores were below the seventh percentile. (*Id.*, p. 3.)

(B) The Woodcock-Johnson III Tests of Achievement was again administered. Claimant scored in the first percentile on two of the 18 subtests or clusters, that is, in Writing Fluency and Passage Comprehension, and less than the first percentile in two other areas, Written Expression and Broad Written Language. The administrator could not score Claimant on Writing Samples. Other subtests were very low: in the second percentile for Spelling, Broad Reading, and Academic Applications; between the third and sixth percentiles for Letter Word Identification, Reading Fluency, Academic Skills, and Academic Fluency. The highest score was for Understanding Directions, in the 29th percentile. Academic Knowledge was in the ninth percentile. (Ex. A, pp. 8-9.)

(C) At the time this test was administered, Claimant's teacher reported that he was working with a sixth grade math book, and that his main problem was learning the sequences of the operations. Regarding language skills, Claimant was working with words on the third grade level.

14. (A) In March 2010, the school district conducted an assessment of Claimant's adaptive behavior, using the Scales of Independent Behavior—Revised. Claimant's mother was the respondent. Claimant was 15 years, six months old, and a student at a non-public school.

(B) The report that was issued paints a bleak picture. Overall, Claimant's functional independence was that of a child seven-years and five-months old; his score ranked in the 0.1 percentile. (Ex. 18, p. 1.) The report discussed other aspects of adaptive behavior, such as social interaction and communication skills, which were also comparable to a seven-year old child; the same type of score was given for personal living skills. (*Id.*, pp. 1-2.) The report also noted that Claimant engaged in maladaptive behaviors. The report summary stated that Claimant had limitations in 13 adaptive skill areas, including fine motor skills, social interaction, personal self-care, language, and home/and community orientation.

15. Appended to the report about Claimant's adaptive function (exhibit 18) is further reporting regarding psycho-educational assessments conducted in 2010. The Cognitive Assessment System (CAS) was used to evaluate his cognitive processing. Overall, he scored in the below average range, with a standard score of 75, although on two subparts he was rated as being in the average range.

Mental Health Services

16. Claimant has received mental health services from Tri-City Mental Health Services (Tri-City), a government funded organization. According to a letter report sent to the Service Agency in October 2017, Claimant received services from 1999 to 2012, when he withdrew. According to the letter, exhibit 17, Claimant had been diagnosed with Attention Deficit/Hyperactivity Disorder (ADHD), Predominant Hyperactive-Impulsive Type. That diagnosis was made at least from April 2009. (Ex. 16.)

17. In November 2015, the Los Angeles County Department of Mental Health made an assessment of Claimant. He and his mother were reporting symptoms of depression, and angry outbursts. He was diagnosed with Intermittent Explosive

Disorder, due to his overactive hostility to insignificant irritants, and other hostile behavior. He was further diagnosed with Major Depressive Disorder Recurrent, Mild. The assessor determined that Antisocial Personality Disorder should be ruled out. (Ex. 15, pp. 7-8.) It is noteworthy that the section of the report pertaining to mental status evaluation provides states that Claimant's intellectual functioning was "impaired." (*Id.*, p. 6.)

18. Another County Mental Health Department assessment was made in April 2016, by another professional. The diagnosis was rule out intermittent explosive disorder, rule out Bipolar disorder unspecified, and Cannabis dependence uncomplicated. (Ex. 14, p. 7.) Regarding his mental status evaluation, the assessor stated that Claimant's intellectual functioning was not impaired. (*Id.*, p. 6.)

Service Agency Assessments

19. (A) Claimant sought services from the Service Agency in 2017. The Service Agency referred him for a psychological assessment which was performed by Jennie M. Mathess, Psy.D. in October 2017.

(B) Dr. Mathess interviewed Claimant and his mother, and she administered the Vineland Adaptive Behavior Scales, 3rd Edition (Vineland), and the Wechsler Adult Intelligence Scale—4th Edition (Wechsler IV). These are standard normed tests, regularly relied upon by psychologists and other mental health professionals. Dr. Mathess reviewed a number of documents pertaining to his special education services, including the psycho-educational assessments discussed above, along with the mental health reports described herein.

(C) The results of the IQ test were rather low, with the full scale IQ score being 48. Dr. Mathess opined in her report that the score was inaccurate because of a

lack of effort on Claimant's part. As to the Vineland scores, they were also low, with the adaptive behavior composite score of 32. Scores for the various domains were as follows: communication, 21; daily living skills, 36; and socialization, 40. (Ex. 8, p. 9.)

(D) Dr. Mathess discussed diagnostic considerations in her report. She noted that earlier cognitive testing had estimated Claimant's intelligence to be in the average to low average range. The very poor IQ test results—three standard deviations below the mean—were attributed to poor motivation on Claimant's part. Dr. Mathess concluded that Claimant did not meet the diagnostic criteria for Intellectual Disability because of his performance on cognitive and academic achievement testing during the developmental years. (Ex. 8, p. 7.)

(E) The Service Agency's eligibility team determined he was not eligible. They noted that after two years, re-evaluation might be considered if concerns persisted after mental health treatment and medication. (Ex. 9, p. 2.) That possibility was communicated to Claimant in a letter denying eligibility, dated November 8, 2017. (Ex. 6.)

20. (A) Claimant was again assessed by a psychologist on June 25, 2019. The psychologist was Edward G. Frey, Ph.D., a Service Agency vendor. He issued a written report. Dr. Frey was asked to assess Claimant for Intellectual Disability. (Ex. 12, p. 1.)

(B) Dr. Frey administered the Wechsler IV, as did Dr. Mathess. On this occasion, the score for the full scale IQ had dropped, to 42. The subtest scores were all 50, except for the working memory score, which was 53. (Ex. 12, p. 4.) (Claimant had scored a 60 on that subtest when tested by Dr. Mathess; see ex. 8, p. 9.) As to the Vineland test, the overall adaptive behavior composite was 59, showing that Claimant was in less than the first percentile. The various domain scores were communication,

45; daily living skills, 47, and socialization, 73. (Ex. 12, p. 5.) As low as these scores are, they were significantly higher than the Vineland scores generated by Dr. Mathess, i.e., a composite score by Dr. Frey's testing of 59 compared to 32 obtained by Dr. Mathess. (Factual Finding 19(C).

(C) Dr. Frey believed that Claimant was not making his best effort in the testing, simply claiming not to know things, such as his address or what day of the week it was. Dr. Frey concluded that Claimant's intellectual abilities were higher than indicated by the scores on the Wechsler. He did note that the 2010 psycho-educational assessment found cognitive scores ranged from average to borderline. (Ex. 12, p. 2.) Dr. Frey determined that Claimant does not have an intellectual disability.

21. The Service Agency's eligibility team determined that Claimant was not eligible for services. After that determination was communicated, Claimant made the appeal that sparked this proceeding.

Diagnostic Criteria

22. (A) The DSM-5 defines intellectual disability as "a disorder with onset during the developmental period that includes both intellectual and adaptive functioning deficits in conceptual, social, and practical domains." (DSM-5, p. 33.) The following three criteria must be met to establish that a person suffers from intellectual disability:

A. Deficits in intellectual functions, such as reasoning, problem solving, planning, abstract thinking, judgment, academic learning, and learning from experience, confirmed by both clinical assessment and individualized, standardized intelligence testing.

B. Deficits in adaptive functioning that result in failure to meet developmental and socio-cultural standards for personal independence and social responsibility. Without ongoing support, the adaptive deficits limit functioning in one or more activities of daily life, such as communication, social participation, and independent living, across multiple environments, such as home, school, work, and community.

C. Onset of intellectual and adaptive deficits during the developmental period.

(B) Thus, the definitive characteristics of intellectual disability include deficits in general mental abilities (Criterion A) and impairment in everyday adaptive functioning, in comparison to an individual's age, gender, and socio-culturally matched peers (Criterion B). To meet the diagnostic criteria for intellectual disability, the deficits in adaptive functioning must be directly related to the intellectual impairments described in Criterion A. Onset is during the developmental period (Criterion C). A diagnosis of intellectual disability should not be assumed because of a particular genetic or medical condition. Any genetic or medical diagnosis is a concurrent diagnosis when Intellectual Disability is present. (DSM-5, pp. 39-40.)

23. The authors of the DSM-5 have indicated that "[i]ntellectual functioning is typically measured with individually administered and psychometrically valid, comprehensive, culturally appropriate, psychometrically sound tests of intelligence. Individuals with intellectual disability have scores of approximately two standard deviations or more below the general population mean, including a margin for measurement error (generally +5 points). On tests with a standard deviation of 15 and a mean of 100, this involves a score of 65-75 (70 ± 5)."

(DSM-5, p. 37.) At the same

time, the authors of the DSM-5 recognize that "IQ test scores are approximations of conceptual functioning but may be insufficient to assess reasoning in real-life situations and mastery of practical tasks." Thus, "a person with an IQ score above 70 may have such severe adaptive behavior problems in social judgment, social understanding, and other areas of adaptive functioning that the person's actual functioning is comparable to that of individuals with a lower IQ score." (*Id.*)

24. According to the DSM-5, "[a]daptive functioning is assessed using both clinical evaluation and individualized, culturally appropriate, psychometrically sound measures. Standardized measures are used with knowledgeable informants (e.g., parent or other family member; teacher; counselor; care provider) and the individual to the extent possible. Additional sources of information include educational, developmental, medical, and mental health evaluations." (*Id.*) Whether it is intellectual functioning or adaptive functioning, clinical training and judgment are required to interpret standardized measures, test results and assessments, and interview sources.

25. Although not a DSM-5 diagnostic criteria, the Lanterman Act recognizes eligibility for people who have a condition similar to Intellectual Disability, or who can be treated in a manner similar to how a person with Intellectual Disability is treated, assuming the other legal eligibility criteria are met, i.e., the condition is substantially disabling, etc. (See Legal Conclusions 2 through 4.) This eligibility category is often referred to as the fifth category.

Other Matters

26. No expert testimony was provided by either party. Thus, this decision is driven by documentary evidence, and testimony from Claimant's mother, and Richard Hopkins, who works for Tri-City and with Claimant. The SGPRC witness, Ms. Tafoya,

stated that Dr. Langenbacher, a staff psychologist, opined that Claimant is not eligible as Intellectually Disabled, or fifth category because he did not appear to be eligible when he was younger.

27. Mr. Hopkins did not testify about a diagnosis of Claimant. He did testify that as a mental health specialist with Tri-City he works with Claimant on behaviors, to avoid outbursts and elopement. While they have not performed IQ testing, Hopkins and other staff have perceived cognitive problems, including with Claimant's memory. In that regard Hopkins testified that the "shelf life of [Claimant's] memory is one day." Tri-City is taking steps to perform a neurocognitive exam. Hopkins also testified that progress with Claimant has stalled.

28. Claimant's mother testified about Claimant's deficits. She testified that he can't be alone due to safety issues, such as his inability to microwave ramen noodles safely. She described how he wanted some milk one night at 3:00 a.m., and he went to the store to get it. He was mugged and needed stitches in the emergency room, which he wouldn't consent to without her. At 25 years of age, he watches Power Rangers, and plays with seven-year-old children. In terms of his inability to answer questions put to him by Dr. Frey, she confirmed that he doesn't know her first name, or his address.

LEGAL CONCLUSIONS

Jurisdiction

1. Jurisdiction exists to conduct a fair hearing in the above-captioned matter, pursuant to section 4710 et seq., based on Factual Findings 1 through 3.

Legal Conclusions Pertaining to Eligibility Generally

2. The Lanterman Act, at section 4512, subdivision (a), defines developmental disabilities as follows:

“Developmental disability” means a disability which originates before an individual attains age 18 years, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual. . . . this term shall include Intellectual Disability, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to Intellectual Disability or to require treatment similar to that required for individuals with an Intellectual Disability, but shall not include other handicapping conditions that are solely physical in nature.

This latter category is commonly known as “the fifth category.”

3. (A) Regulations developed by the Department of Developmental Services, pertinent to this case, are found in title 17 of the California Code of Regulations (CCR).³ At CCR section 54000 a further definition of “developmental disability” is found which mirrors section 4512, subdivision (a).

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³ All references to the CCR are to title 17.

(B) Under CCR section 54000, subdivision (c), some conditions are excluded. The excluded conditions are:

(1) Solely psychiatric disorders where there is impaired intellectual or social functioning which originated as a result of the psychiatric disorder or treatment given for such a disorder. Such psychiatric disorders include psycho-social deprivation and/or psychosis, severe neurosis or personality disorders even where social and intellectual functioning have become seriously impaired as an integral manifestation of the disorder.

(2) Solely learning disabilities. A learning disability is a condition which manifests as a significant discrepancy between estimated cognitive potential and actual level of educational performance and which is not a result of generalized mental retardation, educational or psycho-social deprivation, psychiatric disorder, or sensory loss.

(3) Solely physical in nature. These conditions include congenital anomalies or conditions acquired through disease, accident, or faulty development which are not associated with a neurological impairment that results in a need for treatment similar to that required for intellectual disability.

4. Section 4512, subdivision (l), provides:

“substantial disability” means the existence of significant functional limitations in three or more of the following areas of major life activity, as determined by a regional center, and as appropriate to the age of the person:

- (1) Self-care.
- (2) Receptive and expressive language.
- (3) Learning.
- (4) Mobility.
- (5) Self-direction.
- (6) Capacity for independent living.
- (7) Economic self-sufficiency.

5. To establish eligibility, Claimant must prove, by a preponderance of the evidence, that he suffers from an eligible condition, i.e., Autism, Intellectual Disability, Cerebral Palsy, Epilepsy, or disabling conditions found to be closely related to Intellectual Disability or to require treatment similar to that required for individuals with an Intellectual Disability. This Conclusion is based on section 4512, subdivision (a) and Evidence Code section 500. He must also prove that he has a substantial disability as a result of his eligible condition, within the meaning of section 4512, subdivision (l).

6. (A) There is no evidence that Claimant suffers from Cerebral Palsy, Epilepsy, or Autism. The issue in the case is whether he suffers from Intellectual Disability, or if he is eligible under the fifth category.

(B) Two experts, Dr.'s Mathess and Frey, determined that Claimant is not intellectually disabled, despite IQ scores that would otherwise indicate Intellectual Disability. That analysis is credited, in part because the Wechsler scores represent a substantial departure from the scores derived by different school psychologists over a period of years. That is, Claimant's scores would have dropped 25 or more points, without any explanation. IQ is usually perceived as stable absent an intervening event. Neither the schools or county mental health diagnosed Claimant as mentally retarded or intellectually disabled.⁴

7. (A) During the developmental years Claimant did show impaired adaptive function, in several areas. This is illustrated by the 2010 Report of Adaptive Behavior Testing, exhibit 18, discussed in Factual Finding 14. That report showed Claimant's "Broad Independence" score was a percentile rank of .1. The scores for social/communication, personal living skills, and community living also placed Claimant in percentile ranks less than 1. He remains substantially impaired in adaptive function at this time.

(B) During the developmental years Respondent's cognitive abilities were scored with standard scores in the 70s, and Dr. Frey noted 2010 scores in the borderline range. In 2007, Claimant was placed in the eighth percentile overall in cognitive ability, but many of the subtests or subscales placed him in the first percentile. (Factual Finding 13.) While the school staff found that he had a learning disability, a difference between ability and academic achievement, his academic

⁴ The DSM-5 replaced the diagnosis of mental retardation with intellectual disability.

achievements were not exactly outstanding. Again, in 2007, Claimant scored in the low single digits in percentile rank.

8. As noted by the DSM-5, where an IQ is above 70, and where the subject has significantly impaired adaptive function, that person may function as an intellectually disabled person. (Factual Finding 23.) Here, Claimant has, for a period of years, functioned very much like an intellectually disabled person because of his significantly impaired adaptive function. If that does not quite make him Intellectually Disabled, he has a condition very much like intellectual disability. At 25, he can't safely microwave an instant noodle meal, he lacks safety awareness. (See Factual Finding 7.) There is other evidence of significantly impaired adaptive function.

9. Claimant is plainly substantially disabled within the meaning of the Lanterman Act and its attendant regulations. He lacks self-direction, economic self-sufficiency, the ability to learn, and self-care skills.

10. While Claimant has been diagnosed with mental health issues, and with a learning disorder, his condition is not solely the result of either, and thus the strictures of CCR section 54000, subdivision (c), do not bar eligibility.

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11. Based on all the foregoing, the evidence establishes that Claimant is eligible for services because he has a condition similar to Intellectual Disability.

ORDER

Claimant's appeal is granted, and he shall be eligible for services under the Lanterman Act because he has a condition similar to Intellectual Disability.

DATE:

JOSEPH D. MONTOYA
Administrative Law Judge
Office of Administrative Hearings

NOTICE

THIS IS THE FINAL ADMINISTRATIVE DECISION IN THIS MATTER, AND BOTH PARTIES ARE BOUND BY IT. EITHER PARTY MAY APPEAL THIS DECISION TO A COURT OF COMPETENT JURISDICTION WITHIN NINETY (90) DAYS OF THIS DECISION.