

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

In the Matter of the Request for Services of:

CLAIMANT

and

SAN DIEGO REGIONAL CENTER, Service Agency

OAH No. 2020100436

DECISION

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter telephonically on November 25, 2020, because of the ongoing Covid-19 pandemic.

Ronald R. House, Attorney at Law, represented San Diego Regional Center (SDRC).

Claimant's parents/conservators represented claimant who was not present.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on November 25, 2020.

ISSUE

Is SDRC required to fund D'Vine Path, a day program, for claimant because his transition program at school is using an online and part-time in person format because of the Covid-19 pandemic?

SUMMARY

SDRC is not required to fund D'Vine Path for claimant because neither his school district nor SDRC have determined that his school district cannot meet his needs. Although Covid-19 has altered the way claimant's school is offering services, the laws applicable to individuals 18 to 22 years of age have not changed. School districts are still required to offer services until individuals reach age 22 and the law prohibits regional centers from funding services that should be funded by school districts. The law does allow SDRC to fund services for individuals ages 18 to 22 if it determines, through the Individual Program Plan (IPP) process, that the school district's services do not meet claimant's needs, but SDRC has made no such determination. As such, at this time, claimant's request is denied. This denial does not prohibit either the school district or SDRC from making such a determination in the future, but until such time, SDRC may not fund the D'Vine Path program.

FACTUAL FINDINGS

Background Facts and Jurisdictional Matters

1. Claimant is an 18-year-old consumer of services pursuant to the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and

Institutions Code, section 4500, et seq. Claimant is eligible for services based on his diagnosis of intellectual disability. In Spring 2020, claimant received a Certificate of Completion from his school district. He was enrolled to participate in his school district's transition program, but the format of the program changed to an online format due to Covid-19. Claimant was unable to participate in the new online format, encountering great difficulties logging in and struggling with the virtual platform. He suffered two psychiatric hospitalizations, in part, because he could not cope with the school changes, and his parents looked for an alternative. They eventually enrolled claimant in D'Vine Path, a day program, and requested SDRC fund claimant's tuition, which is \$800 per month.

2. On August 17, 2020, SDRC notified claimant that it was denying his request to fund the D'Vine Path day program because claimant "is eligible for special education services through the school district until age 22." SDRC cited to Welfare and Institutions Code section 4648.55 in support of its position.

3. On October 13, 2020, SDRC received claimant's Fair Hearing Request (there was no argument raised that the request was untimely). As the reason for his request, claimant stated in part: "SDRC said once the [school district] declined to pay for services they would pick up the bill. [Department of Rehabilitation] stated No as well, but then sent a letter stating its [*sic*] SDRC responsibility. This program is eligible as SDRC and [Department of Rehabilitation], clients attend." Claimant requested that SDRC pay his monthly D'Vine Path tuition.

4. The jurisdictional documents were filed at the Office of Administrative Hearings, and this matter was set for hearing.

D’Vine Path

5. D’Vine Path is a vocational and life skills program whose motto is “Learning, Growing, Empowering.” The Life Skills targeted are: build positive peer relationships, promote self advocacy [*sic*], discover social strengths, develop communication and social skills through collaboration, mentoring, and monthly socials. The Social Skills offered are: learn soft business skills, state approved curriculum, hands-on vineyard training, cultivating gardens/succulents, hands-on hospitality training, catering local events, culinary training in local restaurants, and monthly art workshops. D’Vine Path’s Agriculture, Hospitality and Art program provides “vocational and life skills training in agriculture, hospitality and art for people with mild/moderate disability ages 18 and over.”

6. D’Vine Path’s flyer advertised that it “is a dynamic and safe community that provides vocational and life skills training to people with disabilities in agriculture, hospitality and the arts.” There are five programs offered.

The “Agriculture/Vineyard Curriculum & Training” is a “state approved viticulture & Hospitality program” that “offers specialized viticulture, agriculture and hospitality training to mild/moderate adults with disabilities 18 and over in Fallbrook, California.” Further, “[g]iven the number of wineries, vineyards and hotels located in the Fallbrook area and neighboring North County San Diego and Riverside Counties, the program provides students with relevant LIFE SKILLS in viticulture, agriculture and hospitality/customer service from professional guest speakers who are experts in the field [illegible] trained staff.”

The “Creative Arts” program “in collaboration with the Fallbrook Art Association, offers monthly art workshops instructed by local professional artists. Students learn

various mediums and create pieces that can later be sold by the student at art venues and events."

The "Thursday Social Club" is "a fee based membership group designed to help adults with disabilities build positive peer relationships, promote self advocacy [*sic*], discover social strengths and develop communication and social skills through collaboration. Members meet once a week for social outings and soft skills trainings with other members and neuro-typical peers. Best for those who desire to improve their social skills and social and friendly environment [*sic*]."

The "Hospitality Curriculum & Training" program "is designed to help individuals identify, develop and achieve their goals while exploring opportunities to advance their education, employment, life skills, health and well-being. The program is "powered by highly qualified trained staff and volunteers" and interested individuals should contact "your San Diego Regional Center or Department of Rehabilitation for funding. Private pay available."

The "Life Skills Training" program offers "[h]ealth, fitness and well-being workshops, Thursday Social Club, mentorship and quarterly dances open to the public to promote community relationships."

Letter from Claimant's School District

7. On July 27, 2020, Doyan Howard, Director of Student Support Services for claimant's school district, authored a letter to claimant's parents titled "Response to Request for Funding of Placement." The letter served as the district's response to claimant's request that the school district fund D'Vine Path. Mr. Howard wrote that the district received "your notice of unilateral placement of [claimant] into a placement outside of the [district] and your intent to seek reimbursement from the District." Mr.

Howard noted the district received an email on July 17, 2020, indicating that claimant "would start attending the D'Vine Program in Fallbrook as of July 22, 2020. This letter shall serve as the District's prior written notice response to your request." Mr. Howard wrote in part:

After reviewing the District's offer of placement, program, and services to [claimant], and after considering your input as shared throughout the IEP process, the District respectfully denies the request for reimbursement for unilateral placement at this time.

Although we have carefully considered your request in your input, the District is not in agreement that a change of placement is educationally necessary for [claimant] at this time. I appreciate the communication you have provided recently, and if you have additional information regarding [claimant's] current educational needs for consideration, please do not hesitate to share with me and his IEP team for review.

The District's decision is based on review and consideration of [claimant's] most recent IEP's, assessment reports, your input, and input from [claimant's] educators. The IEP team is awaiting the completion of an educationally related mental health assessment (ERMHS) and we will be meeting in the near future to review the results.

As we discussed today, the District does not resume school until August 20th; however, we will be sending a *Meeting Notice* with the proposed date for an IEP meeting of August 11th at 1:00. The purpose of the meeting is to review the ERMHS evaluation results and recommendations and make, if applicable, any necessary adjustments to [claimant's] IEP. In addition, we will also discuss your concerns and questions.

Accordingly, claimant's school district determined the D'Vine Path program did not meet claimant's educational needs or his IEP goals.

Claimant's IEPs

8. Claimant's Individualized Education Plan (IEP), dated December 4, 2019, noted claimant would receive 1,160 weekly minutes of Specialized Academic Instruction (SAI) in a separate classroom in a public integrated facility. Claimant would receive 600 minutes yearly of language and speech services; 60 minutes yearly of college awareness services; 60 minutes yearly of career awareness services; 60 minutes yearly of vocational assessment counselling, guidance, and career assessment services; 30 minutes weekly of counseling and guidance; and 100 minutes yearly of occupational therapy; all of which were to be provided by the school district. Claimant would also receive 120 minutes monthly of psychological services "provided individually and/or in group sessions through ERMHS." Under the heading "Extended School Year," the box marked "Yes" was checked and it was noted that claimant would receive 880 minutes weekly of SAI for the "duration of summer school session (about 1 month)" provided by the school district.

9. Claimant's IEP Team Meeting Notes, dated August 11, 2020, documented that the purpose of the meeting was to review the ERMHS assessment and discuss claimant's parents' concerns regarding claimant's behaviors due to his medication changes (the ERMHS assessment was not offered at the hearing). Currently claimant's medications were being managed and his behaviors had improved. Claimant's parents expressed their concerns that claimant may have difficulty with boundaries with friendships, knowing the differences between acquaintances and friends. There were concerns with his progression through high school. Claimant had "strength and perseverance, a good heart and enjoyed going to school" but there were concerns regarding his lack of progress due to the school closure because of Covid-19.

Claimant had aggressive behaviors which led to his hospitalizations twice during the spring of 2020. There were concerns with his social skills regarding friendships/girlfriend interactions. During the ERMHS interview, claimant reported missing his friends and his school interactions. He was able to name several coping skills and expressed remorse for his aggressive behaviors. He reported having many friends. He would like group/individual counseling. The note documented that there would be a recommendation for educationally related mental health services: group and individual counseling would address adaptive coping strategies, regulation strategies, and appropriate social skills to improve upon social interactions. The therapies would consist of 120 minutes monthly via teletherapy until there was a return to in person school.

Claimant's father inquired as to the reasons behind the 120 minutes of services and for a further explanation on the social emotional goals to be addressed. The school district's director of student services and special education explained that the service level was based on the amount of time required to implement the goals and

that the goals/areas of need would be addressed during the counseling. Claimant's mother explained that she had unsuccessfully attempted to have claimant participate in teletherapy, even using a speakerphone, but he refused and his behaviors would impact his ability to participate in therapy. The team described using interactive forms of therapy, in addition to finding ways to motivate claimant to participate. The team discussed the transition program and schedules (distance-learning, hybrid model) and reviewed a possible schedule for distance learning.

Claimant's mother advised that claimant had not been able to log into the school's system and the director inquired if it was an issue involving the Internet or claimant's inability to login and advised that the district was working to ensure families had Internet access. Claimant's father stated that the many steps to connect to the district's online platform were challenging and time-consuming for claimant. The district's adult transition teacher advised that the district was trying to make it easier for students by accessing one format and one login.

Claimant's father inquired about hybrid programs offered by the district and how those pertained to claimant. September 25, 2020, was the date the district set to review whether it was permissible to return to campus based on local/state restrictions and IEP teams would be reviewing individual plans for recommendations, but the students would not fit into the two days per week on-campus program. Due to individual student needs, IEP teams would look at the level of services required and make recommendations (example more time on campus) which may be accomplished without the need for going through the IEP amendment process. The director advised that the transition program sample schedule was what claimant's transition program would look like, although tasks would be individualized to claimant's IEP goals.

Claimant's mother inquired about a day program for claimant to attend in the meantime during the Covid-19 school closure and the director advised that the district was offering an educational program to address claimant's needs as outlined in his IEP. The transition program was an appropriate program that could address his needs as identified in his IEP, and claimant's mother asked if SDRC would fund a group/day program. SDRC Caseworker, Sarah Fahlstrom, who was present at the meeting, indicated she would discuss this with her manager. Claimant's father asked if claimant would be provided a device because of distance learning, and the district ensured he would have a device. Claimant's parents stated that the transition schedule looked appropriate, but they continued to have concerns with the practicality of virtually working through it.

10. Claimant's August 11, 2020, IEP amendment documented that the changes to the December 4, 2019, IEP were: "ERMHS and district recommendation is for group and individual counseling. Therapies would address adaptive coping strategies, regulation strategies and appropriate social skills to improve upon social interactions. Therapies would consist of 120 minutes monthly vis teletherapy (until school/county closures due to COVID [*sic*]). Counseling goals added." The IEP amendment was not signed.

San Diego Regional Center Documents

2018 INDIVIDUAL PROGRAM PLAN

11. Claimant's Individual Program Plan (IPP), dated November 7, 2018, set forth information regarding claimant, his services, and their outcomes. Claimant was noted to be "a kindhearted respectful young man," and "polite." The IPP documented many of claimant's emerging skills, including conversation and making change for

purchases. The goal was to increase claimant's independence with self-care tasks and safety awareness as he tended to be gullible and, when crossing streets, he knew to wait, but often misjudged cars' distances.

In the section titled "Work/Career/Education," the IPP documented claimant was attending high school, took the bus to and from school daily with the pickup being right outside his home. He had extended time to complete exams, was given homework if disruptive in class, and sometimes had to eat lunch in the office to ensure that he ate "otherwise he may get distracted by wanting to talk to his peers." Claimant had friends at school, one in particular who helped guide him through school, and he played on his high school football and basketball teams. At that time, there was no request for change.

In the section titled "Personal and Emotional Growth," the IPP stated: "At times, it may be challenging for him to follow directions when requested to complete a non-preferred task. Once [claimant] is escalated it is hard for him to regulate his emotions. When [claimant] is escalated he may punch the wall with his fist or bang his head against the wall or make his self [*sic*] hyperventilate." Claimant "also struggles with time management and organizational planning." The desired change was to have claimant independently self-regulate his emotions once he escalated.

2020 CDER

12. The February 26, 2020, Department of Developmental Services, Client Development Evaluation Report (CDER) was introduced. CDER has a rating score of 1 to 5, with a 1 indicating a most dependent consumer and a score of 5 indicating a most independent consumer. A CDER evaluation is based largely upon the report of family members and observations of the Consumer Services Coordinator. Claimant

received scores of 5.00 for practical independence, 4.00 for personal/social skills, 3.17 for challenging behaviors, 3.17 for integration level, and 4.67 for well-being. Claimant's scores indicated a relatively independent consumer.

SDRC TITLE 19 NOTES

13. Internal SDRC case notes, commonly referred to as "Title 19's," documented communications with claimant's mother and SDRC representatives. Entries in May 2020 documented the following: claimant's mother requested a mental health evaluation (ERMS) as her son was home from the psychiatric hospital but would be attending the hospital's outpatient treatment clinic; Sarah Fahlstrom, claimant's service coordinator at SDRC attended an IEP planning team meeting at claimant's school via Zoom, noting the IEP team would complete the ERMS assessment.

14. A July 16, 2020, entry documented a telephone call from claimant's mother advising that she was interested in having claimant attend D'Vine Pathways and would reach out to his school to see if they can fund it. Claimant's mother would email information about the program to Ms. Fahlstrom who would follow up with her program manager after receiving details about the program. Claimant's ERMS was noted as having been completed the day before.

15. A July 21, 2020, entry noted that Ms. Fahlstrom discussed D'Vine Pathways with her program manager who noted that claimant should request that his school fund it as it is responsible for meeting his educational needs. Ms. Fahlstrom advised claimant's mother of this and also provided her with information about the Department of Rehabilitation (DOR) information, encouraging her to contact them for resources, and claimant's mother submitted a request for services to DOR.

16. On July 28, 2020, Ms. Fahlstrom was contacted by Mr. Howard at claimant's school district who advised that claimant's request to fund D'Vine Path was denied. Ms. Fahlstrom's noted:

The school has educational placement that can meet his needs during the year. Family chose not to send [claimant] to ESY [no explanation for this acronym was offered at hearing] do [s/c] to distance learning. When COVID-19 restrictions are lifted, [claimant] will work a few days a week, access [local community college], Fx living skills [this acronym was not explained], academic skills. Family is concerned with the distance learning and wants [claimant] in a program ASAP.

What is the goal/reason for wanting [claimant] to attend the D'Vine program? What skills are you wanting him to develop?

How is the school working on this?

Does [claimant] have a 1:1 aide at school?

It was unclear to whom these questions were posed and if these questions were answered.

17. Ms. Fahlstrom's July 30, 2020, entry documented her telephone call with claimant's mother in which she discussed the D'Vine program and encouraged claimant's mother to appeal the school district's denial because the school district should be covering all of claimant's educational needs. The August 5, 2020, entry

documented the telephone call with claimant's father to discuss the program and "most recent Bx in the family home" (no explanation for this acronym was offered at hearing). Claimant's father really liked the D'Vine program, thought it was a good fit and Ms. Fahlstrom encouraged him to contact his insurance and discuss the program at the IEP "in hopes they can fund."

18. On August 11, 2020, Ms. Fahlstrom documented that she had attended the IEP to discuss the ERMS assessment, recent challenges and parents' concerns. The family was requesting the school district fund the D'Vine program. The ERMS assessment recommended 1:1 and group classes, 120 minutes on monthly basis at 30 minutes a week for both 1:1 and group classes. The school would be performing telehealth services. Claimant's family expressed their concerns about distance learning and how much support claimant requires on a daily basis. The school discussed what the schedule would look like this coming year. The school was unable to fund the D'Vine program "due to not being an educational program." Claimant's mother advised that DOR would not fund the program and told her that SDRC should be able to fund it. Claimant's mother requested SDRC fund the program. Ms. Fahlstrom and her program manager discussed this and decided that Ms. Fahlstrom would discuss with claimant's mother a possible appeal of the school district's decision.

19. On August 12, 2020, Ms. Fahlstrom spoke with both claimant's parents, inquiring if they had signed the IEP and reminding them that they could appeal the district's decision. They advised that they did not sign the IEP, were planning to appeal the school district's denial, and requested that SDRC send a Notice of Action (NOA) regarding its refusal to fund the program. On August 14, 2020, Ms. Fahlstrom called claimant's parents to advise them her program manager would be calling to discuss

the NOA regarding the D'Vine program. Ms. Fahlstrom followed up with claimant's mother on August 17, 2020, to go over the appeal process with her.

20. On September 22, 2020, Ms. Fahlstrom documented her telephone call with the school district wherein they inquired whether SDRC would fund the D'Vine program since DOR would not. Ms. Fahlstrom informed the district that SDRC would not fund the program because claimant was "under the umbrella of the school district." The following day Ms. Fahlstrom again spoke with the school district to discuss DOR services. Claimant would be applying for vocational rehabilitation services through DOR and Ms. Fahlstrom sent job fair information to the planning team.

21. On October 30, 2020, Ms. Fahlstrom spoke with claimant's mother who reported that the school was expected to reopen in person on November 9, 2020, for two days a week, distance learning on the other days. Mother reported that she may keep claimant out of school since changes in routines are difficult for him and she was gathering documents for the upcoming fair hearing.

22. On November 13, 2020, Ms. Fahlstrom contacted claimant's school district case manager, requesting signed copies of his most recent IEP amendments dated May 19, 2020, and August 11, 2020. The case manager advised that he would need to request them from claimant's previous case manager as he could not find them on file. He also informed Ms. Fahlstrom that claimant's school would reopen for two days a week of in person instruction and three days of virtual instruction. The two days claimant would attend would depend upon the cohort in which he was placed. Claimant's parents had informed the school district that they would like to keep claimant at D'Vine instead of having him return to school.

SDRC Witness Testimony

23. Rebecca McDonald, SDRC Program Manager, testified that SDRC denied claimant's request to fund D'Vine Path because claimant is still eligible for special education services through his school district until age 22. SDRC may not fund services funded by generic resources and school districts are generic resources.

Claimant's Parents' Letters and Testimony

24. Claimant's mother testified and introduced a letter that was consistent with her testimony. She described the "redirecting" she has been getting from SDRC, DOR, and the school district, with each agency telling her that the other agency is required to fund the D'Vine program. She described the "difficulties adjusting" that her son had before COVID-19, and the struggles he has had since his school went virtual because of the pandemic. She explained the numerous attempts she made to get assistance from her school, her son's refusal to speak with the counselor on the phone, running outside because he did not want to use the telephone, even when she tried using the speakerphone. Video learning was unsuccessful as her son had great difficulty logging in to school when he attempted to do so. Claimant's mother explained this to the school, but was told that the transition program was online only and "there would be no outing to [the community college] or learning to utilize the public bus, nothing." The school advised her that it would be "online only," there was no "clear start date" and no information about the transition program. Claimant's mother reached out to SDRC, explaining claimant's issues and requesting assistance with services.

Claimant's mother explained that since Covid-19, claimant has been hospitalized twice at inpatient psychiatric facilities, once in May and another time in

July 2020. He had never been hospitalized before. Since he was 18 years old, he was placed with adult men in the locked-down psychiatric units. Claimant's mother wrote:

The sudden change of his world, as well as ours with Covid-19 has been difficult for everyone, even without developmental delays or intellectual disabilities. Everything [claimant] has known was gone in a flash. [Claimant] has remained with the same school district [name] from developmental preschool – 12th grade. I also explored all other resources available to [claimant]. [Claimant] is a recipient of Social Security income. I have tried to work with the Department of Rehabilitation (DOR) as well, with [DOR counselor].

Claimant's mother explained that all she is seeking is to have his day program paid for and she has been paying the monthly tuition. She noted that D'Vine Path is an official vendor for both SDRC and DOR. Clients of those two agencies attend the program and those agencies fund the tuition.

25. Claimant's father described the deterioration in claimant's mental state because of Covid-19. It is been more than they expected and the school district's online learning format has been extremely difficult for claimant who has been "not very cooperative" using the online format. He has engaged in self-destructive behaviors, his routines have been altered, and he has suffered greatly because of Covid-19. They have appealed the school district's denial to fund D'Vine Path and that process is currently underway.

LEGAL CONCLUSIONS

Purpose of the Lanterman Act

1. The purpose of the Lanterman Act is 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." (Welfare and Institutions Code section 4501; *Association of Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

Burden of Proof

2. In a proceeding to determine whether a claimant is eligible for services, the burden of proof is on the claimant to establish he or she meets the eligibility criteria. The standard of proof is a preponderance of the evidence. (Evid. Code, § 115.)

Applicable Statutes

3. The Lanterman Act is set forth at Welfare and Institutions Code section 4500 et seq.

4. Welfare and Institutions Code section 4501 states:

The State of California accepts a responsibility for persons with developmental disabilities and an obligation to them which it must discharge. Affecting hundreds of thousands of children and adults directly, and having an important impact on the lives of their families, neighbors and whole communities, developmental disabilities present social,

medical, economic, and legal problems of extreme importance . . .

[¶] . . . [¶]

An array of services and supports should be established which is sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, and at each stage of life and to support their integration into the mainstream life of the community. To the maximum extent feasible, services and supports should be available throughout the state to prevent the dislocation of persons with developmental disabilities from their home communities.

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 (IPP) 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. 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 4646.4 requires regional centers to establish an internal process to ensure adherence to applicable laws and regulations when purchasing services and supports. Regional centers must utilize generic services and supports when appropriate and utilize other services and sources of funding as

provided in Welfare and Institutions Code section 4659. Regional centers must also consider the family's responsibility for providing similar services and supports.

8. Welfare and Institutions Code section 4646.5 sets forth the IPP development process which must include a statement of goals and the sources of the funded services.

9. 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. Regional centers must secure services and supports that meet the needs of the consumer, as determined by the IPP. Regional centers must be fiscally responsible and may purchase services or supports through vendorization or contracting. Subdivision (a)(8) prohibits the regional center from using its funds "to supplant the budget of an agency that has responsibility to serve all members of the general public and is receiving public funds for providing those services."

10. Welfare and Institutions Code section 4648.55 states in part:

(a) Except as provided in subdivision (d), a regional center shall not purchase day program, vocational education, work services, independent living program, or mobility training and related transportation services for a consumer who is 18 to 22 years of age, inclusive, if that consumer is eligible for special education and related education services and has not received a diploma or certificate of completion, unless the individual program plan (IPP) planning team determines that the consumer's needs cannot be met in the

educational system or grants an exemption pursuant to subdivision (d). If the planning team determines that generic services can meet the consumer's day, vocational education, work services, independent living, or mobility training and related transportation needs, the regional center shall assist the consumer in accessing those services. To ensure that consumers receive appropriate educational services and an effective transition from services provided by educational agencies to services provided by regional centers, the regional center service coordinator, at the request of the consumer or, where appropriate, the consumer's parent, legal guardian, or conservator, may attend the individualized education program (IEP) planning team meeting.

(b) For consumers who are 18 to 22 years of age, inclusive, who have left the public school system, and who are receiving regional center purchased services identified in subdivision (a) on or before the effective date of this section, a determination shall be made through the IPP as to whether the return to the educational system can be achieved while meeting the consumer's needs. If the planning team determines that the consumer's needs cannot be met in the educational system, the regional center may continue to purchase the services identified in subdivision (a). If the planning team determines that generic services can meet the consumer's day, vocational

education, work services, independent living, or mobility training and related transportation needs, the regional center shall assist the consumer in accessing those services.

[¶] . . . [¶]

(d) An exemption to the provisions of this section may be granted in either of the following circumstances:

[¶] . . . [¶]

(2) On an individual basis in extraordinary circumstances to permit purchase of a service identified in subdivision (a). An exemption shall be granted through the IPP process and shall be based on a determination that the generic service is not appropriate to meet the consumer's need. The consumer shall be informed of the exemption and the process for obtaining an exemption.

(e) A school district may contract with regional center vendors to meet the needs of consumers pursuant to this section.

11. Welfare and Institutions Code section 4659, subdivision (a), requires regional centers to "identify and pursue all possible sources of funding for consumers receiving regional center services." Subdivision (a)(1) states that those sources include, but are not limited to, school districts and governmental agencies.

Evaluation and Disposition

12. Claimant's parents clearly want what is best for their son and he is having extreme difficulties learning virtually. However, claimant failed to prove by a preponderance of the evidence that SDRC is required to fund the D'Vine Path program. Claimant remains enrolled in the school district. Claimant's school district has not determined it cannot meet claimant's educational needs as set forth in his IEP. Claimant's school district determined that the D'Vine Path program was not appropriate for claimant. SDRC, through the IPP process, has not determined that claimant's school district cannot meet his needs or that the D'Vine Path program is suitable for claimant. Until such time as those determinations are made, claimant's school district is required to provide services and SDRC may not fund services the school district must provide.

ORDER

Claimant's appeal from San Diego Regional Center's determination that it will not fund D'Vine Path is denied. San Diego Regional Center shall not fund that program at this point in time.

DATE: December 8, 2020

MARY AGNES MATYSZEWSKI
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.