

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

**In the Matter of:**

**CLAIMANT**

**vs.**

**SAN GABRIEL/POMONA REGIONAL CENTER,**

**Service Agency.**

**OAH No. 2021060790**

**DECISION**

Eileen Cohn, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on November 15, 2021, by video and telephonic conference.

Daniel Ibarra, Fair Hearing Specialist, represented the San Gabriel/Pomona Regional Center (Service Agency).

Claimant's Mother and Sister, authorized representatives, represented Claimant. (The names of the Claimant and Claimant's family remain confidential to protect the family's privacy.)

Oral and documentary evidence was received. At the conclusion of the hearing the record remained open until November 18, 2021 for the claimant to submit the most recent updated Individual Education Program (IEP) and Mother's educational certificates. The updated IEP was marked and admitted as Exhibit H (updated). (The original IEP has been marked and admitted as Exhibit H.) Mother's educational certificates were marked and admitted as Exhibit P.

Claimant requested a protective order for exhibits and the transcript which was unopposed. Claimant's request was granted and a protective order was issued for confidential exhibits and the transcript.

The record was closed, and the matter submitted on November 18, 2021.

## **SUMMARY**

Claimant requested funding for independent living services (ILS) and Customized Employment Services (CES) to prepare her for adulthood. At the time of the hearing, Claimant had been authorized to receive services from the school district which incorporated life skills as part of her curriculum in the home. She had also been authorized to receive services in the school setting, but those services had not commenced because the school district had not yet retained a one-on-one assistant necessary to provide the services. As for CES, at the time of the hearing, Claimant had not pursued services from the primary provider, the Department of Rehabilitation (DOR) for many years.

Service Agency denied Claimant's requests on the grounds the requested ILS is a service for which the school district is responsible, and during the time Claimant receives services from the school district, the Service Agency is not responsible for

supplementing these services. Service Agency denied CES services on a similar ground: DOR is the principal provider for these services and DOR's services have not been exhausted. As for both services, Claimant did not qualify for an exemption to the requirement that funding from other public agencies or generic resources must be exhausted to obtain similar services from the Service Agency.

Claimant failed to provide persuasive and convincing evidence the school district's or DOR's resources were exhausted. There is no dispute Claimant requires services to promote independent living and if possible, employment. Under the circumstances presented, Claimant is scheduled to receive transition services from the school district. The school district retains the primary responsibility for providing these services, and to a certain extent has provided services in the home, although not at the school site as promised. The school district's promised on-campus services which incorporate ILS have been delayed. However, as problematic as this is for the family, this is a matter Claimant's family needs to address with the school district under the applicable governing education law which allows for redress, including compensatory services, for services promised, but delayed. Likewise, access to DOR services to promote employment opportunities have been frustrating, but have not been pursued recently, and not exhausted. As such, access to the services by the principal public providers, the school district and DOR, have not been exhausted at this time.

Claimant's appeal is denied. Service Agency has a continuing obligation to review these services with the family and determine whether it has the principal obligation to provide them or supplement the services of other public agencies.

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## **ISSUES**

The parties stipulated to the issue at the outset of the hearing:

Is the Service Agency required to fund ILS services for Claimant?

Is the Service Agency required to fund Customized Employment Services?

## **EVIDENCE**

The Service Agency submitted Exhibits 1-7, and witness testimony, Casandra Fernandez, Service Coordinator, Giselle Salas, Manager, Transition Services. Claimant submitted Exhibits A-P<sup>1</sup> and witnesses, Mother, Gwennyth Palafax, Ph.D., psychologist, and Claimant's teacher, Alma V. Amado.

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<sup>1</sup> Claimant moved for a Protective Order to seal exhibits as a precaution against a Public Records Act request. (Gov. Code §§ 6250-6270.7.) Although a fair hearing is public, generally medical records and other records of a consumer of any regional center are confidential and are disclosed only to the Service Agency and as part of a fair hearing. The Service Agency stipulated to sealing the Exhibits, and as an assurance to the Claimant, the ALJ granted the motion, and issued a Protective Order sealing the transcript and all Exhibits except Exhibits 7, D, E, F, I, and K, which contained nonconfidential public information; i.e., either publicly available research, statutes or the Purchase of Service Guidelines.

## **FACTUAL FINDINGS<sup>2</sup>**

### **Jurisdictional Matters and Background**

1. Claimant is a 19-year-old conserved adult, eligible for regional center services as an individual with Autism and Moderate to Severe Intellectual Disability (ID). She has been diagnosed with Atrial Septal Defect Chromosome Deletion (Deletion Syndrome). She has been diagnosed with a heart condition which required corrective surgery at two years of age. She has taken various medications that affect her mood, including Risperidone, a common medication for an individual with Autism. Claimant resides at home with her biological parents. She has two older adult sisters who participate in her care, who do not live in the home, but are co-conservators, and provide direct support to her when they visit. Her family is close and are all familiar with Claimant's needs.

2. Claimant has a range of challenges that limit her ability to participate independently in activities of daily living (ADL). Claimant has limited verbal communication skills. She can use words and simple sentences, but her articulation deficits make it difficult for her to be understood. Claimant's communication deficits have a negative impact on her behaviors.

3. Claimant's ADL deficits are compromised by her negative behaviors which include hitting herself, throwing herself on the ground or banging herself against the wall, temper tantrums and crying. Her behaviors became more pronounced

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<sup>2</sup> The findings rely on all the admitted and relevant evidence, whether are not specifically cited in this decision.

with her medication used to address her heart condition, including Risperidone. Her behaviors are also related to her Autism. Claimant does not have any personal friends. The Covid-19 pandemic has further limited her interaction with peers and the community.

4. Claimant must be constantly monitored by her family, teacher and caretakers. She requires close supervision to avoid elopement and cannot exercise judgment with people or when navigating the community. She is fully ambulatory but, in addition to her other challenges, she has balance issues and falls easily due to a foot condition.

5. Claimant's family have been in protracted negotiations with her school district to provide her a full range of services in a safe environment. Due to the Covid-19 pandemic and the Claimant's family's concerns about the adequacy of the school district's program for her, Claimant has been receiving special education and related services exclusively in the home since November 2019.

6. Claimant transitioned to the school district's Adult Transition Program (ATP) in fall 2021. She has not yet obtained a certificate of completion. (Ex. 3.) During the hearing it was disclosed that Claimant's family had reached an agreement with the school district for Claimant to be provided on-site ATP two days a week and continued home-based services during the remaining school week. However, at the time of the hearing, the school-based services had not yet commenced because the school district had not yet retained a one-on-one aide for Claimant which was required for her to participate in ATP.

7. In May 2021, Mother contacted the Service Agency to request ILS and CES. For the CES request she relied upon an educational evaluation by Dawn Palafax,

Ph.D., a psychologist had conducted an evaluation for the school district to prepare Claimant for ATP. Dr. Palafox recommended ILS and CES services start as soon as possible.

8. Service Agency denied Mother's request on the grounds the school district was the appropriate funding source for ILS and CES services until Claimant reached 22 years of age. Service Agency timely provided Claimant with a Notice of Proposed Action (NOPA) setting forth its reasoning and the supporting law and Service Agency policies for its decision. (Ex. 1.) Service Agency did not expressly refer to the Department of Rehabilitation (DOR) as another public agency source of funding but the parties referenced DOR in their communications and during the fair hearing.

9. Mother timely appealed the Service Agency's decision and disputed the factual and legal basis for its decision. Mother relied upon Dr. Palafox's assessment of Claimant's extremely low adaptive and living skills and her need for more practice, and opportunities to learn, than is typically provided in a school-based program but are needed to advance her skills as an adult. Mother disputed the school district's ATP can address home-based skills such as bathing and cooking. At the time of Mother's appeal, Claimant had not been placed in a school setting. At the time of the hearing, Claimant's ATP was set to begin two-days weekly in a school-setting but had not commenced because a one-to-one aide, which she required, had not yet been secured by the school district. As described below, however, some of these skills, have been incorporated into Claimant's home-based instruction by her special education teacher.

10. Mother also disputed whether Claimant had access to CES from other sources, particularly DOR. She had never received assistance from Service Agency, has had multiple Service Coordinators over time, without adequate coordination, and

never received assistance from Service Agency in requesting and securing services from DOR. She had applied to the DOR in 2018 and never received a response.

11. Mother maintains CES is necessary to provide Claimant with one-on-one job coaching. Claimant is organized with an eye for detail and should be learning basic vocational skills such as cleaning, stocking, stamping, dusting and taking out the garbage. Claimant's sisters have achieved professional careers and the plan is for Claimant to assist them within their workplaces. (Exs. 2 and O.)

12. All jurisdictional requirements have been met for this matter to proceed to fair hearing.

### **Claimant's Requests**

13. Parents, Claimant, Claimant's older sister, her teacher and others participated with the Service Agency in the Individual Program Plan (IPP) meeting on August 12, 2021 (Ex.3.)

14. The 2021 IPP confirmed Claimant's deficits, including her behaviors, and overall challenges with ADL. Claimant requires a consistent structured setting designed to work on her ADL through "practice and repetition" including "essential skills" such as hygiene (hand washing, tooth brushing. (Ex. 3.) The family emphasized Claimant's need to improve skills to obtain independence such as cooking, shopping, and maintaining and developing friendships. Claimant has many interests including baking and shopping with her sisters, crafts and exercise. (*Id.*)

15. Claimant's goals are to live independently but with her family, to have the full ability to navigate her hygiene, dress, feed with appropriate utensils, cook for herself, perform chores and increase her safety awareness which is now limited. Her



employment goal is to work in a controlled environment supported by a one-on-one coach as an office assistant or janitor at her sisters' law or medical practices. (Ex. 3.) Claimant's family members have been accurate reporters of her challenges, needs and goals, which have been reflected in the IPP, IEP and Dr. Palafax's assessment below. (Exs. A, N.)

16. During the IPP process Claimant's family, special education teachers and personal care assistant, also reviewed the development of a Person-Centered Plan, revised on October 12, 2021 (Ex. N.) Claimant's IPP is required to be reviewed yearly. (Ex. N.) Based upon the evidence, the IPP shall be reviewed and updated again in 2022.

17. Claimant has many challenges. She has communication challenges which limit her ability to verbalize her thoughts, emotions and ideas. She has no friends and would like to have meaningful friendships. She continues to exhibit dangerous and self-injurious behaviors which can manifest as hitting or kicking herself, hitting the walls, emotional outbursts (weekly) which require intervention, crying and screaming, throwing objects, elopement (monthly) in the community, which requires her to be accompanied in the community. (Ex. 3.)

18. Claimant's IPP identified goals consistent with her need to improve her ADL and services such as ABA techniques to achieve these goals. The IPP identified the school district as the source of interventions for some daily living skills, such as hand washing/sanitizing, and other skills, such as money management, community integration and "some" social skills. (Ex. 3.) Service Agency agreed to advocate for the family when requested and to support social skills training. Claimant's family did not invite Service Agency to Claimant's IEP team meeting.

19. Claimant had been receiving all her school services at home. Parents found problems with the school district program and reached an agreement with the school district on a "hybrid" program which involved two days at school for community-integration activities, and three days at home with instruction. Claimant's exclusively home-based services commenced after November 2019. Claimant has been assisted at home by a special education teacher and personal aides, in a one-to-one and sometimes a two-to-one ratio. At the time of the fair hearing, it was expected that Claimant would start receiving school-based services partially outside the home. (Claimant does receive other services from the Service Agency which are not disputed in this fair hearing.) Claimant acknowledged in the IPP meeting the school district does provide some safety training by assisting her in learning phone numbers, her address, pointing to her identification and other safety procedures in the community. Overall, the IPP acknowledged the IEP team will be responsible for developing goals, training and related services related to the school-district's obligations. The Service Agency agreed to monitor progress on an annual basis and to be involved with the IEP process if requested, on the condition it receives the IEP records and is provided notice in advance of meetings. (Ex. 3.)

20. Mother requested Claimant receive ILS and CES concurrently from the Service Agency and the school district and maintained she was entitled to simultaneous services based upon her discussions with the school district. (Ex. 5.) Service Agency communicated with the school district in late May 2021 about the scope of the ATP program and the school district confirmed that it provided vocational, independent living and community-based instruction. (Ex. 5.) Service Agency explained to the school district at the time Claimant turns 22 and the school district program ends, an exit IEP is developed so that the Service Agency can plan the next steps and "explore" with the Claimant enrollment in a day, vocational program,

ILS or other vocational support. Service Agency informed the school district it was the school district's obligation to fund ILS and vocational skills until age 22 through ATP which "does not focus on academics but on ILS, community integration and vocational services." (*Ibid.*) The school district confirmed its ATP program is a "community-based instruction program and "also supports our students with community and vocational training." (*Id.*)

21. Claimant's IEP was updated and completed prior to the fair hearing and provided a wide range of goals to address her stated disabilities, identified under the governing special education law, as intellectual disability and Autism. During the IEP team meeting, the school psychologist identified Claimant's educational home program as based on Discrete Trial Training with a focus on ADL in a one-on-one setting which includes repetitive trials of tasks being broken down into small and manageable parts with intensity and energy. Claimant labels pictures with names and functions and categories in this framework because she cannot read. (Ex. H (updated).) Claimant has no understanding of money management; she inconsistently identifies the names of coins and needs supports to make a transaction in a store, cannot use a calculator, and cannot accomplish basic money management tasks such as using a checking or savings account, updating a check register, etc. The school psychologist reports Claimant demonstrates perseverative language and struggles with receptive and expressive communication. Although Claimant has made great progress and uses a combination of words, sounds, gestures and pictures to communicate she lacks the speaking and listening skills needed post-high school. (Ex. H (updated).)

22. In other areas pertinent to the fair hearing, Claimant demonstrates severe deficits. In the area identified as "vocational" Claimant demonstrates elevated problems in the area of executive functioning which encompasses planning and

organization. Claimant was rated in the extremely low range in practical functioning, which includes using community resources, at-home tasks such as cleaning, food preparation, and performing chores, and self-care activities such as eating dressing and personal hygiene. She performed in the low range for protecting herself, including following safety rules. She does not know the functions of police, ambulance or the fire department and cannot protect herself in case of an emergency such as a fire or gas leak, or the proper storage of cleaning materials. Claimant also needs full support in the community, including accessing business to purchase items, government programs to receive benefits and navigating public transportation. Her transportation skills are not yet basic. In other areas where Claimant required full assistance including learning and using specific job skills, interacting with co-workers, supervisors, completing tasks at an acceptable speed and quality and seeking information. Claimant's parents rated her overall adaptive functioning as low. Overall, Claimant's life skills, and educational planning skills are not yet basic. (Ex. H (updated).)

23. Mother presented plans for Claimant's post-high school future, which encompassed a day program for social interaction with peers, vocational training/experience to build daily living skills and to be integrated within the community. Mother presented to the IEP team her observation that Claimant would require one-on-one support for tasks and safety, to apply problem solving skills and to participate in a day program. Claimant will require full support to learn job skills and she is unable to secure housing for herself. Mother plans for Claimant to live with her family in the family home or with her older siblings for the rest of her life. (Ex. H (updated).)

24. The IEP team agreed Claimant would be participating in the ATP "with a focus on community-based instruction, adaptive living, vocational training and

independent skills.” (Ex. H (updated) p. 46 of 53.) Claimant’s IEP contained several transitional skills goals for employment and/or independent living including: task completion (employment, with an educational specialist); executive function using step-by-step instructions (employment, with OT and teaching staff); dressing (independent living with education specialist); cleaning (employment and independent living with education specialist); filling up cups of water (independent living with education specialist); setting the table (independent living with education specialist); safety (education, employment and independent living with education specialist); two dressing goals (independent living with education specialist); matching items (independent living with education specialist); and behavior (employment with education specialist). (Ex. H (updated).)

25. Claimant’s educational placement includes two days a week of ATP in a school setting (or 660 minutes weekly); home instruction for 1080 minutes weekly (or three days), with daily intensive individual services by a behavioral aide in a school or community setting. The IEP provided for the behavior aide to work in the school and home setting until Claimant transitioned back to a school setting full-time. (Ex. H (updated).)

26. Claimant provided the expert testimony of Gwennyth Palafax, Ph.D., a psychologist and expert on Autism as it impacts teens and adults. Dr. Palafax prepared a comprehensive assessment report dated April 21, 2021 for the school district to evaluate Claimant’s “adult-readiness skills” (Ex. C), status for transition services and recommend placement. (Ex. C.) Dr. Palafax’s assessment of Claimant’s functional status was incorporated into the IEP. She recommended the IEP team start slowly with activities meaningful to Claimant and to conduct these activities one-on-one. The IEP team’s decision to have Claimant attend the ATP two days weekly, back-to-back, and

to continue home instruction three days a week, one-on-one in both environments until Claimant is fully back in a school setting, is consistent with Dr. Palafax's recommendations. (Ex. H (updated).)

27. Dr. Palafax provided credible testimony supported by her comprehensive assessment of Claimant's need for repetition of skills to progress. However, her testimony and assessment did not support an exception to the governing law or Service Agency Guidelines for making an exception to the general principle that the Service Agency remains the provider of last resort for ILS during Claimant's school years or should stand in the place of the DOR or co-fund with DOR at this point in Claimant's development.

28. In her assessment, Dr. Palafax provided many recommendations: For Claimant's "intensive and unique learning needs," she recommended home placement with a one-on-one credentialed teacher continued to be appropriate to learn functional skills, vocational training and communication. She recommended Claimant's educational program focus on ADL, vocational training and functional communication. She recommended "selected" school and community activities with a one-on-one aide to allow for socialization with the objective of preparing Claimant for participation in an adult day program which requires Claimant to practice functioning in community environments with distractions. She questioned the ongoing high level of prompting required to keep Claimant on task and recommended the level of prompting be evaluated since it discourages independence. She recommended Mother consult with the Service Agency on ILS because these services "solely focus on functional daily living skills that all adults need." (Ex. C.)

29. Dr. Palafax made specific "suggestions" for Claimant's functional-based education program to allow for Claimant to obtain regular practice of daily living

skills”: making her breakfast, lunch, and dinner daily; dressing herself daily; grocery shopping with a picture list, weekly; finding personal items in a store and putting them in a shopping cart weekly; making a transaction with a debit card, weekly; two household chores, weekly; having input on her daily schedule; using the laundry and dryer machines, weekly; folding and handing clean laundry; putting her clothes in designated areas; and visiting a community setting, weekly.

30. In her assessment, Dr. Palafax also recommended Mother “explore” with the Service Agency CES, explaining “[c]lerical jobs are readily available in the customized employment space and [Claimant] could expand her work outside her family’s businesses.” (Ex. C, p. 33 of 38.) Dr. Palafax’s recommendation did not support the actual provision of CES at this time because based upon her own assessment Claimant had not acquired the basic skills needed to participate in employment opportunities.

31. During her testimony Dr. Palafax rationalized additional Service Agency ILS support was required because the school district could not execute its services effectively despite its best intentions and Claimant required a very high level of repetition and “intensity” to acquire and retain functional skills. With more intensive functional skill instruction accomplished through both school district instruction and Service Agency ILS and CES, Dr. Palafax maintains Claimant’s maladaptive behaviors will be less pronounced. Even with her recommendations of more intensive instruction, Dr. Palafax understood Claimant’s program needed to be monitored to “watch the load” because Claimant is a “vulnerable learner” especially in a more social environment where there is increased and multiple sensory stimulation. (Palafax testimony.)

32. There is insufficient evidence that more services from the Service Agency are justified at this time either in the areas of ILS or CES under the present circumstances. Although in-school services have been delayed, and Mother represented IEP goals have not been met, after Claimant began to be schooled only at-home after November 2019 she improved her hygiene skills, including teeth-brushing, hand washing and toileting. Due to her absence from the school setting, Claimant has not been able to work on her socialization skills with peers, although her family and aides continue to take her out in the community. Based upon the testimony of Alma Amado, Claimant's teacher, who has been providing one-on-one instruction in the home for a year-and-a-half, Claimant has been receiving approximately 30 hours of instruction with her and other teachers or aides, excepting summer breaks, focused on Claimant's functional and basic academic skills. Ms. Amado works with Claimant on skills included in Dr. Palafax's list, including everyday hygiene, folding laundry, setting the table, skills required by the IEP and other skills Mother recommends.

## **LEGAL CONCLUSIONS**

### **Jurisdiction and Burden of Proof**

1. The Lanterman Act governs this case. Code § 4500 et seq.)<sup>3</sup> An administrative "fair hearing" to determine the respective rights and obligations of the consumer and the regional center is available under the Lanterman Act. (Code §§ 4700-4716.) Claimant requested a fair hearing to appeal the Service Agency's NOPA.

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<sup>3</sup> Further statutory references are to the Welfare and Institutions Code.



2. Because Claimant seeks benefits or services, Claimant bears the burden of proving she is entitled to the services requested. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9; *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) Claimant must prove her case by a preponderance of the evidence. (Evid. Code, § 115.) Claimant failed to meet her burden of proof.

## **The Lanterman Act**

3. The Lanterman Act acknowledges the state's responsibility to provide services and supports for developmentally disabled individuals and their families. (§ 4501.) The state agency charged with implementing the Lanterman Act, the Department of Developmental Services (DDS), is authorized to contract with regional centers to provide developmentally disabled individuals with access to the services and supports best suited to them throughout their lifetime. (§ 4520.)

4. Regional centers are responsible for conducting a planning process that results in an IPP. Among other things, the IPP must set forth goals and objectives for the client, contain provisions for the acquisition of services based upon the client's developmental needs and the effectiveness of the services selected to assist the consumer in achieving the agreed-upon goals, contain a statement of time-limited objectives for improving the client's situation, and reflect the client's particular desires and preferences. (§§ 4646, subd. (a)(1), (2), and (4), 4646.5, subd. (a), 4512, subd. (b), 4648, subd. (a)(6)(E).)

5. Section 4646.4, subdivision (a) provides: Regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's IPP developed pursuant to sections 4646 and 4646.5, or of an individualized family service

plan pursuant to section 95020 of the Government Code, the establishment of an internal process. This internal process shall ensure adherence with federal and state law and regulation, and when purchasing services and supports, shall ensure all of the following: (1) Conformance with the regional center's purchase of service policies, as approved by the department pursuant to subdivision (d) of section 4434; (2) Utilization of generic services and supports when appropriate; (3) Utilization of other services and sources of funding as contained in section 4659.

6. Although regional centers are mandated to provide a wide range of services to facilitate implementation of the IPP, they must do so in a cost-effective manner. (§§ 4640.7, subd. (b), 4646, subd. (a).) A regional center is not required to provide all the services that a client may require but is required to "find innovative and economical methods of achieving the objectives" of the IPP. (Code § 4651.)

7. Regional centers are specifically directed not to fund duplicate services that are available through another publicly funded agency. Section 4659 subdivision (a) states "Except as otherwise provided in subdivision (b) or (c), the regional center shall identify and pursue all possible sources of funding for consumers receiving regional center services. Also, Code section 4648 subdivision (a)(8) states: "Regional center funds shall not be used to supplant the budget of any agency that has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services."

8. Section 4648.55 provides "a regional center shall not purchase a day program, vocational education, work services, independent living program, or mobility training and related transportation services for a consumer who is 18-22 years of age, inclusive, if that consumer is eligible for special education and related services and has not received a diploma or certificate of completion unless the IPP planning team

determines that the consumer's need cannot be met in the educational system or grants an exemption pursuant to subdivision (d)." Subdivision (d) provides for exemptions for extraordinary circumstances where the generic service is not appropriate to meet the consumer's needs.

9. If a service specified in a client's IPP is not provided by a generic agency, the regional center must fund the service to meet the goals set forth in the IPP. (Code § 4648, subd. (a)(1); see also, e.g., § 4659.)

10. Code section 4688.05 provides: "Regional centers shall provide independent living skills services to an adult consumer, consistent with his or her individual program plan, that provide the consumer with functional skills training that enables him or her to acquire or maintain skills to live independently in his or her own home, or to achieve greater independence while living in the home of a parent, family member, or other person."

11. DDS has enacted regulations to govern provision of ILS services. As defined in California Code of Regulations (CCR), title 17, section 54302, subdivision (a)(35): "'Independent Living Program' means a community-based day program that provides to adult consumers the functional skills training necessary to secure a self-sustaining, independent living situation in the community and/or may provide the support necessary to maintain those skills. Independent living programs focus on functional skills training for adult consumers who generally have acquired basic self-help skills and who, because of their physical disabilities, do not possess basic self-help skills, but who employ and supervise aides to assist them in meeting their personal needs."

12. Regional Centers are also required to rely on their Purchase of Service Guidelines (Guidelines), as approved by DDS pursuant to Code Section 4434, subdivision (d). (Code, §4646.4, subd. (a) (1).) The Guidelines explain the overall purpose of ILS to “help individuals learn, acquire and maintain skills to enable them to do things as independently as possible and be full participants in community life.” (Ex. 7, p. 119 (bate-stamped number).) ILS as a “curriculum-based training service designed to provide instruction to develop and/or maintain functional skills necessary to increase independence in the family home and/or community. Service participants receive training and support in a natural setting to acquire the necessary skills to achieve greater independence. ILS can provide training to individuals who do not have legal and financial control over their residence.” (*Ibid.*) Service participants must be at least 18 years of age and pursuant to section 56742, subdivision (b)(3) can be provided training in cooking, cleaning, shopping in natural environments, menu and meal preparation, money management, public transportation, personal hygiene and health, self-advocacy, independent recreation and participation, independent access to medical and dental services community awareness such as police, fire, or emergency, and home and community safety. (*Id.*) The Guidelines reference section 4648, subdivision (a)(8) and bar funding where the services will replace or supplant other any other “generic resource legally responsible to provide services to the general public.” (*Id.*, p. 120.) The Guidelines allow the Service Agency to make exceptions.

13. The Guidelines also provide guidance for employment training and emphasize the importance for the services for “all” adults. (Ex. 7, p. 115.) The Guidelines emphasize the primary role of DOR “to fund supported work services until the adult is stabilized in a specific job.” (*Id.*, p. 116.) Under the Guidelines, the Service Agency is not required to purchase supported work services until it is notified by the DOR the adult consumer has stabilized. The Guidelines also provide the Service

Agency “may” purchase employment training under three criteria: the adult consumer is willing to participate in employment training and support services; the adult consumer is ineligible for an appropriate school-funded program; and the adult consumer is ineligible for funding from DOR. (*Id.*)

## **Disposition**

14. This fair hearing presents unique circumstances. Claimant presents a complex profile of deficits that are inclusive of developmental disabilities, Autism and Intellectual Disability, for which she was granted eligibility under the Lanterman Act, and those which independent of her eligibility categories, would not.

15. Claimant requires considerable interventions to promote her independence as much as possible. However, at this time, Claimant has not exhausted other public agency services. She is receiving or has been promised services from the school district, and although the on-site services have been delayed due to staffing issues, Claimant may request compensatory education services from the school district once staffing is available. (See *Parents of Student W. v. Puyallup School District No. 3* (9<sup>th</sup> Cir. 1994) 31 F.3d 1489, 1496.) Although the Service Agency will be eventually responsible for providing ILS, under the circumstances of this case, they are not required to supplant or supplement school district services.

16. Claimant has not provided sufficient evidence to support her request for CES. CES is a form of service provided by DOR. Parents have not received a response from DOR but that was a few years ago and there is no evidence an attempt has been made since that time. Although there are concerns from the evidence as to whether Claimant has sufficient skills at this time to benefit from CES, the decision does not reach this issue. Service Agency will have the opportunity to work with Claimant’s

family to assist them with their application to DOR and before her next birthday shall assess her need for CES.

17. Accordingly, by reason of the factual findings and legal conclusions extraordinary circumstances do not exist to provide an exemption for the Service Agency to provide ILS and CES services required of other public agencies at the present time. Because Claimant has not previously received ILS or CES services from the Service Agency, a review of the availability of other resources, and her continued level of support from the school district and potentially other public agencies should be conducted no later than 30 days prior to Claimant's next birthday.

## **ORDER**

1. Claimant's appeal is denied. Service Agency is not required to fund ILS or CES services at this time.

2. Service Agency will work with Claimant's family to assess her need for ILS funding no later than 30 days prior to her next birthday.

3. Service Agency shall advise Claimant's family about her application to DOR and will work with Claimant's family to assess her need for CES no later than 30 days prior to her next birthday.

DATE:

EILEEN COHN

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.