

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

**In the Matter of:**

**CLAIMANT**

**and**

**SAN DIEGO REGIONAL CENTER, Service Agency.**

**OAH No. 2023040116**

**DECISION**

Jami A. Teagle-Burgos, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on April 24, 2023.

Neil Kramer, Fair Hearings Manager, Fair Hearings and Legal Affairs, represented San Diego Regional Center (SDRC).

Charlene Autolino, a non-attorney representative, represented claimant, who was not present.

Oral and documentary evidence was received. The record was closed, and the matter submitted for decision on April 24, 2023.

## **ISSUE**

Is SDRC required to fund claimant's request for educational/tutoring services?

## **FACTUAL FINDINGS**

1. The following factual findings are derived from documentary evidence submitted by SDRC and claimant, and the testimony of claimant's mother, claimant's father, an acquaintance of the parents of claimant, and Alexis Leyva, a program manager (PM) at SDRC.

2. Claimant is 12 years old and qualifies for regional center services based on a diagnosis of autism spectrum disorder. She also has chronic major medical conditions of a congenital malformation of the heart and other feeding disorders from infancy and early childhood.

3. An Individualized Education Program (IEP), dated February 14, 2017, indicated that claimant was six years old and attending kindergarten. She was receiving special education services due to meeting the criteria for autism under the Education Code. She was diagnosed, in utero, with Tetralogy of Fallot - a congenital heart defect - and Robertsonian translocation of chromosomes 14/15.

4. A psychoeducational team assessment report, dated February 14, 2017, was conducted by Andre Antenoracruz, a school psychologist at claimant's school district. Claimant was six years old and in kindergarten. On Beery Visual Motor Integration testing, claimant was in the lower extreme to below average scale. On Gilliam Autism Rating Scale – Third Edition (GARS-3), the autism parent and teacher indices showed "level two" that required "substantial support." Claimant was

determined to meet the criteria for speech or language impairment, autism, and other health impairment under the Education Code.

5. An educational psychological assessment was conducted by Jill Weckerly, Ph.D., on September 7, October 26, and November 3, 2017, when claimant was six years old and in first grade. On the Wechsler Intelligence Scale for Children – Fifth Edition (WISC-5), claimant’s verbal conceptualization skills, fluid reasoning abilities, and processing speed were all in the average range, and her working memory was in the mildly impaired range (twelfth percentile). However, claimant’s visual spatial skills were in the third percentile range.

6. IEP progress notes dated between May 2018 and January 2019 reported that claimant was able to maintain conversations with others by staying on topic and making topic transitions for two to four exchanges.

7. On January 7, 2020, Pedro Olvera, Ph.D., a licensed educational psychologist, prepared an independent psychoeducational assessment relating to his evaluation of claimant from October 2019 through January 2020, when she was eight years old and in third grade. Claimant was in the general education program with specialized academic instruction (SA) through a resource specialist program (RSP) teacher. She had a documented diagnosis of autism in clinical and educational settings. Her academic scores were well below average to below average (kindergarten to first grade), as she had significant difficulties across all academic areas. Her performance on the Test of Social Language Development – Elementary (SLDT-E) ranged from below average to average with difficulties in the area of multiple interpretations. On the Woodcock-Johnson IV Tests of Cognitive Abilities (WJ-IV-COG), her cognitive efficiency standard score was low average, but her perceptual speed and working memory efficiency was limited (52/90). On the Woodcock-Johnson IV Tests of

Oral Language (WJ-IV-OL), claimant had limited verbal ability, average ability to express verbal information, limited verbal working memory tasks, advanced quickness of word retrieval, and limited lexical knowledge. During the exam, she exhibited “several instances of socially inappropriate behaviors that resemble those of autism-like laughing at inappropriate times, atypical language, and difficulties with socialization.” She had difficulties with “social interpretations/flexible thinking.” Dr. Olvera indicated there was evidence of social reciprocity difficulties” in school and at home, and he recommended a focus on “developing social skills and appropriate social-emotional relationships.”

8. According to claimant’s Individual Program Plan (IPP), dated February 9, 2023, claimant requires assistance to complete some activities of daily living and grooming. She is now attending a school that specializes on educating autistic children. Claimant has “some behavior issues especially with transitions . . . .” She receives support through Supplemental Security Income (SSI), Medi-Cal - insurance coverage, Blue Shield of California – private insurance coverage, and she is eligible for California Children Services (CCS). SDRC helps to fund “relationship development intervention” (RDI) services for claimant within SDRC’s purchase of services (POS) guidelines. Claimant’s mother requested “tutoring services” because the school tutoring services “concluded” and claimant continues to need tutoring because of dyslexia and “difficulty with some communication” and writing. Claimant’s SDRC service coordinator, Norma Flores-Gonzalez, informed claimant’s mother that SDRC does not fund tutoring services, but she would inquire with a PM.

9. A SDRC case note on February 9, 2023, indicates claimant’s service coordinator (SC) and claimant’s mother discussed “tutoring services.” An SDRC case note on February 17, 2023, indicates claimant’s SC consulted with a PM because

claimant's mother requested information on "tutoring services," and claimant's mother had "requested to the school" but "not received anything back."

10. On February 23, 2023, SDRC sent claimant a Notice of Proposed Action (NOA) that her request to fund "tutoring services" was denied and stated, "Families must access generic resources (school district). SDRC does not fund tutoring services and does not vendor for this service."

11. In February 2023, claimant's mother filed a fair hearing request on her behalf and wrote, "I am requesting educational services in the form of [an] autism disability program . . . I need tha [*sic*] R.C. support [claimant] paying for a program that will help with the connection between autism and learning."

12. An informal meeting was held on April 19, 2023, which was attended by claimant's mother; Charlene Autolino, claimant's non-attorney advocate; Neil Kramer, Fair Hearings Manager; Kathy Cattell, PM; Alexis Leyva, PM; and SC Flores-Gonzalez. After the meeting, SDRC issued a letter to claimant indicating her request for "tutoring/educational services" through the Family Guidance and Therapy Center (FGTC) was denied because: (1) although "educational services" under service code 107 were terminated in 2009 due to state budget cuts, this service has been reinstated but SDRC does not have any educational consultants under a vendor contract; (2) "tutoring services" are outside the scope of service code 107 for "educational services," SDRC does not provide vendor contracts for tutoring service agencies, and SDRC does not have any agencies contracted to provide this services; and (3) SDRC currently provides financial assistance to claimant by paying claimant's insurance deductible for RDI services that are provided by FGTC, and FGTC is not under contract with SDRC to provide "educational services"; and education is the responsibility of the school district, and if claimant requires additional educational supports, she should request an

additional IEP at her school. The letter also discussed the concerns of claimant's mother regarding claimant when she is "out in the community," and SDRC suggested an IPP meeting with SDRC's clinical services department to determine if there were additional behavioral supports available to claimant.

13. Alexis Leyva, PM at SDRC, testified at the hearing. The following is a summary of her testimony: She has worked at SDRC for 21 years, first as a SC until she promoted to a PM in June 2021. She is familiar with claimant's case as she is the PM for the children's unit. In an email on February 14, 2023, she and claimant's mother corresponded about claimant's request for tutoring services, and claimant's mother cited a publication by Disability Rights California that states "educational services" were reinstated as of July 2021. Ms. Leyva testified that each regional center is different, each is an independent contractor with DDS, and each regional center develops its own purchase of standards (POS) approved by DDS. Ms. Leyva contacted SDRC's community services department at SDRC who relayed that SDRC has no vendors under service code 107 for "educational services." To her knowledge, SDRC does not fund "tutoring services," and while "educational services" have been restored, they are related to an IEP and are covered by a generic resource such as the school district. She explained that claimant currently receives RDI services from FGTC, and SDRC pays the insurance deductible under service code 102. FGTC is vendored to provide RDI services. However, if FGTC wants to provide services other than RDI, such as social skills services and tutoring/educational services, FGTC must go through the vendorization process for such services.

After the informal meeting, Ms. Leyva believed the need that claimant's mother was describing was for "behavioral support" rather than tutoring/educational services, and she recommended an IPP meeting with the clinical team to explore what services

SDRC can offer. At the hearing, Ms. Leyva suggested a "social skills group" designed to help individuals with autism to learn social skills that may be lacking and how to apply them in life. She is unsure as to which service code is used for a "social skills group."

Upon cross-examination, Ms. Leyva was asked why "tutoring services" is listed on SDRC's website. She replied that service code 025 – tutoring services – is an "old vendorization" code from 13 years ago, which is no longer active. SDRC does not provide "tutoring services." She testified that SDRC does not offer all of the services related to the service codes on its website.

14. Claimant's father testified at the hearing and the following is a summary of his testimony. He is an occupational therapist at a local hospital. He understands there is a "fine line as to what services are under what codes," but he has a child who is in need. Claimant is 12 years old and wants to be more independent, more involved with her peers, express herself, go to a restaurant, be with her friends, and communicate. Claimant has trouble sending a text message and is embarrassed about it. He does not believe claimant needs behavioral services, but instead she needs social skills services and cognition services, which involve education and involvement. She has been a client of SDRC since she was about three or four years old.

15. Claimant's mother testified at the hearing and the following is a summary of her testimony. She spoke with claimant's SC and asked to include a tutoring request in claimant's IPP. Claimant's mother stated claimant has exhausted the generic resources of the school district, as she filed a lawsuit against the school district that resulted in a settlement. Claimant is the only child in the district who attends a non-public school. There is "no more for the district to give." The school offers strategies to provide educational curriculum and services, and supports a plan to comply with the curriculum. However, claimant "doesn't take this support to the community." She

would benefit from learning things like how to use her cell phone and how to order from a menu. Since claimant has exhausted the generic resources of the school district, she is turning to SDRC to assist with these needs. Fred Finch Youth and Family Services and Fred Finch Cares (Fred Finch) is a provider of "educational services – tutoring" and its website indicates it is a vendor of SDRC. Claimant's mother testified that she would like claimant to receive these services, regardless of how they are "titled."

16. On rebuttal, Ms. Leyva testified that Fred Finch is currently vendored at SDRC to provide behavior management, crisis evaluation and support, residential provider support in group homes, and community placement support. Although Fred Finch's website indicates it provides "tutoring/educational services," Fred Finch is not currently vendored at SDRC to provide such services. Fred Finch can ask to become a vendor at SDRC for "tutoring/educational services," and go through the vendorization process.

17. An acquaintance of claimant's family, testified at the hearing and the following is a summary of his testimony. He knows claimant's family because he was searching for services for his 12-year-old autistic son, and he discovered a non-profit organization run by claimant's older brother. The acquaintance and his son are residents of Los Angeles. His son is a client of Harbor Regional Center (HRC). He asked HRC for more services for his son, and his SC emailed him a list of recreational and tutoring services that his son could receive. His SC noted the activities and programs were not limited to those on the list, and if he identified a program that benefits his son, to please contact HRC to let them know. He understands that regional centers differ from one another, but this topic of educational and tutoring services had come up during his conversations with claimant's parents, and he passed on what he learned from HRC. His son is in the process of receiving "educational/tutoring services" from

HRC, and his understanding is that tutoring/education is not just academic but also about how to “be outside in the environment” and read a menu, order food, and ask for directions.

## **LEGAL CONCLUSIONS**

### **Burden and Standard of Proof**

1. In a proceeding to determine whether an individual is eligible for services, the burden of proof is on the claimant to establish by a preponderance of the evidence that a regional center should fund the requested service. (Evid. Code, §§ 115, 500; *McCoy v. Bd. of Retirement* (1986) 183 Cal.App.3d 1044, 1051-1052.)

### **The Lanterman Act**

2. The Legislature enacted a comprehensive statutory scheme known as the Lanterman Developmental Disabilities Services Act (Welf. & Inst. Code, § 4500 et seq.) 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. The purpose of the statutory scheme is twofold: to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community, and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community. (*Assn. for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 388.) Welfare and Institutions Code section 4501 outlines the state’s responsibility for persons with developmental disabilities and the state’s duty to establish services for those individuals.

3. Welfare and Institutions Code section 4512, subdivision (b), defines "services and supports" as:

[S]pecialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option . . . Nothing in this subdivision is intended to expand or authorize a new or different service or support for any consumer unless that service or support is contained in his or her individual program plan.

4. DDS is the public agency in California responsible for carrying out the laws related to the care, custody and treatment of individuals with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4416.) In order to comply

with its statutory mandate, DDS contracts with private non-profit community agencies, known as "regional centers," to provide the developmentally disabled with "access to the services and supports best suited to them throughout their lifetime." (Welf. & Inst. Code, § 4620.)

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 IPP and provision of services and supports be centered on the individual and take into account the needs and preferences of the individual and family. Further, the provision of services must be effective in meeting the IPP goals, reflect the preferences and choices of the consumer, and be a cost-effective use of public resources.

7. 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 and to secure services and supports that meet the needs of the consumer, as determined by the IPP. This section also requires regional centers to be fiscally responsible.

8. In implementing IPPs, regional centers are required to first consider services and supports in natural community, home, work, and recreational settings. (Welf. & Inst. Code, § 4648, subd. (a)(2).) Services and supports shall be flexible and individually tailored to the consumer and, where appropriate, his or her family. (*Ibid.*)

9. A regional center is authorized to purchase services and supports for a consumer pursuant to vendorization or a contract in order to best accomplish all or any part of the IPP. (Welf. & Inst. Code, § 4648, subd. (a)(3); Cal. Code Regs., tit. 17, § 50612, subd. (a).)

10. Welfare and Institutions Code section 4646.4, subdivision (a), requires regional centers to establish an internal process that ensures adherence with federal and state law and regulation, and when purchasing services and supports, ensures conformance with the regional center's purchase of service policies.

11. The regional center is required to consider all the following when selecting a provider of consumer services and supports: a provider's ability to deliver quality services or supports to accomplish all or part of the consumer's individual program plan; provider's success in achieving the objectives set forth in the individual program plan; the existence of licensing, accreditation, or professional certification; cost of providing services or supports of comparable quality by different providers; and the consumers, or, where appropriate, the parents, legal guardian, or conservative of a consumer's choice of providers. (Welf. & Inst. Code, § 4648, subd. (a)(6).)

12. Regional center funds shall not be used to supplant the budget of an agency that has a legal responsibility to serve all members of the general public and is receiving public funds for providing these services. (Welf. & Inst. Code, § 4648, subd. (a)(8).)

13. The regional center must consider generic resources and the family's responsibility for providing services and supports when considering the purchase of regional center supports and services for its consumers. (Welf. & Inst. Code, § 4646.4.)

14. Welfare and Institutions Code section 4659, subdivisions (a) and (c), require that regional centers shall pursue all possible resources of funding for clients, describes school districts as a source of funding for regional center clients, and prohibits regional centers from purchasing services available from generic resources.

## Evaluation

15. The evidence established that claimant is in need of services to address her independent living skills and social skills when out in the community and among her peers. She is 12 years old and in middle school. She wants to learn to do things that tweens and teens routinely do, such as texting with their friends and ordering food at a restaurant. She is embarrassed as she is not sure if she is doing these things correctly and appropriately. These social tasks are important, and quite stressful for adolescents in this age group. A preponderance of the evidence established that claimant needs services to help her with these types of tasks, skills, and activities, irrespective of what service code is at issue.

16. SDRC does not currently have any vendors for "educational services" or "tutoring services." However, the services claimant needs – such as independent living skills and socialization training – are typical services provided by regional centers. As such, given that claimant established she has a need for these services to help alleviate the effects of her disability and help her function more independently, SDRC is obligated to assess claimant for services accordingly. In that respect, SDRC's suggestion that it evaluate claimant for additional services is notable because there is a service code for "socialization training" – 028. This service code describes that a vendor provides "socialization opportunities for school age developmentally disabled persons," and at a minimum provides adaptive recreation/socialization programs, integration opportunities through independent living skills activities, access to public recreation and leisure facilities, and activities that will enhance and develop meaningful interpersonal relationships.

17. Accordingly, SDRC shall evaluate claimant to determine what additional services claimant needs to assist her with being able to appropriately interact and

engage with her peers through activities such as texting and ordering food at a restaurant, and other similar tasks and skills that she hopes to master. Once the additional services are determined, SDRC shall identify vendors who can provide such services to claimant.

## **ORDER**

Claimant's appeal from San Diego Regional Center's determination that it will not fund educational/tutoring services, is granted, in part, as follows:

1. San Diego Regional Center shall conduct an IPP meeting to evaluate what skills claimant is seeking to acquire (i.e. socialization, independent living skills), determine what services San Diego Regional Center can offer to address those skills, and amend claimant's IPP accordingly.
2. San Diego Regional Center shall thereafter identify vendors that offer those services.

DATE: May 3, 2023

JAMI A. TEAGLE-BURGOS  
Administrative Law Judge  
Office of Administrative Hearings

## **NOTICE**

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