

**BEFORE THE  
DEPARTMENT OF DEVELOPMENTAL SERVICES  
STATE OF CALIFORNIA**

**In the Matter of:**

**CLAIMANT**

**and**

**SAN DIEGO REGIONAL CENTER, Service Agency**

**DDS No. CS0011990**

**OAH No. 2024010594**

**PROPOSED DECISION**

Jami A. Teagle-Burgos, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 16, 2024, and May 7, 2024.

Bridgette Webster, Staff Attorney, represented San Diego Regional Center (SDRC).

Wendy Dumlao, Attorney at Law, represented Claimant, who was not present.

Oral and documentary evidence was received. The record was closed, and the matter submitted for decision on May 7, 2024.

## **ISSUE**

Shall SDRC be required to fund out-of-state services for Claimant, through her Self-Determination Program (SDP) budget and spending plan, at The King's Daughters' School (KDS) that is in the State of Tennessee?

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

1. Claimant is 23 years old and qualifies for regional center services based on her diagnoses of epilepsy and grand mal seizures. (Ex. 6; Ex. B) Claimant's mother testified that Claimant also has a developmental delay.

2. On or about December 4, 2023, Claimant's parents informed SDRC that Claimant was in out-of-state placement at The King's Daughters' School in Tennessee and requested to use her SDP budget and spending plan to fund her out-of-state placement at KDS in Tennessee. (Ex. 22, A500)

3. On December 15, 2023, SDRC sent claimant a Notice of Action (NOA) indicating Claimant's request to fund out-of-state placement was denied and stated:

A regional center shall not expend funds allocated to it by the department for purchases of any service outside of the state unless the Director of Developmental Services of the director's designee has received, reviewed, and approved for a plan for out-of-state services in the consumer's

individual program plan developed pursuant to Sections 4646 to 4648.

4. On January 5, 2024, Claimant filed a fair hearing request and stated:

[SDRC] denied [Claimant's] request to use her self determination funds on services outside of California without following the process outlined in section 4519. SDRC has a pattern of denying requests for out of state funding without following the 4519 process where the request should go to DDS for review. The law is clear there is a process that should be followed, so not only did SDRC deny the request they did not follow the process.

SDRC should be ordered to follow the 4519 process and send the request to DDS for review. As required by law. Even if [Claimant] started attending the program at Kings Daughters [s/c] prior to her request for funding, this does not absolve SDRC of its responsibility to comply with Welf. & Inst. Code (The Lanterman Act). It may, depending on facts, reduce payment or recovery, but it does not give SDRC a reason to then refuse to follow the 4519 process as required by law.

Claimant requests that SDRC follow the process outlined in 4519 and include Claimant and her legal representative in submission of this request to DDS. She also requests that payment be made by SDRC for her out of state services as

of the date of the request since SDRC delayed in following the process outlined by law. DDS has not been included in this conversation of funding, although the law requires it. This is a responsibility of SDRC when it receives requests for out of state services. **It is not optional.** (Errors and bold in original.)

5. As part of her fair hearing request, Claimant asked SDRC to fund, through her SDP budget and spending plan, out-of-state services at KDS in Tennessee from the date of her parent's request on December 4, 2023.

6. This hearing followed.

7. At the hearing, Claimant asked that SDRC be ordered to submit documentation in collaboration with her parents to the Department of Developmental Services (DDS or Department) for approval of funding, through her SDP budget and spending plan, of KDS in Tennessee from the date of her placement there on August 8, 2023. In the alternative, Claimant asked that SDRC be ordered to allow her to use her SDP funds at KDS in Tennessee until her transition back to California in August 2024.

## **Documentary Evidence and Testimony**

8. The factual findings are derived from the following documentary evidence submitted by SDRC: Claimant's Individual Program Plan (IPP); Claimant's Self Determination Program (SDP) Budget 2022; Claimant's SDP Spending Plan 2022; Claimant's SDP Budget 2023; Claimant's SDP Spending Plan 2023; Independent Facilitator Information; Claimant's SDP Expenditure Report 2022-2024; Social Recreation Service Approval; Home and Community Based Services (BCBS) Federal Requirements; DDS Directive March 2022; DDS Directive November 2022 – Remote

Services; DDS Directive November 2022 – Updated Goods and Services; DDS SDP Frequently Asked Questions Excerpt; Electronic Mail Correspondence; SDRC’s Title 19 (T19) Case Notes; Additional Documents; and SDRC’s Work Notes - List of Homes.

9. The factual findings are derived from the following documentary evidence submitted by Claimant: 159A referral; Claimant’s IPP; KDS Program Information; KDS Incident Report; Casa Di Amici Pamphlet; UCLA Pathways Printout; Email Regarding Collateral Packet Sent to Beacons; Pride Industries Referral; Out-of-State Email; Email Regarding Beacons Waiting on SDRC Documents; Aide Needed at Beacons; Coastal Roots Email; Casa Di Amici Delaying Opening Email; Beacons Email; TERI Program Email; Beacons Explorer Application; December 2023 to January 2024 Emails with SDRC Regarding Programs; Emails Regarding Pangan Homes; Updated Homes Email; Email Regarding Other Homes; T19 Case Notes; and Facility Searches.

10. The factual findings are further derived from testimony from the following witnesses: Gabriella Ohmstede, SDRC Director of Client Services; Shelly Gonchoroff, SDRC Assistant Director of Residential Services; David Webb-Rex, SDRC Program Manager of SDP; Julie Ramirez, SDRC Service Coordinator (SC); Claimant’s Mother; and Claimant’s Father.

11. Claimant is a client at SDRC. She is in her second year of participating in SDP. Her father is her independent facilitator. She is not eligible for Medi-Cal or other programs with similar income/asset limits such as IHSS. She is in a conservatorship where her father, mother, and two adult sisters are her conservators. (Ex. 11)

12. In 2016, when Claimant was 16 years old and still attending a special educational program at Sierra Academy in San Diego, her parents began to explore summer camps to try to have her gain independence. They hired Kelly Corey, an

educational specialist, who suggested Claimant attend Lee Mar Summer Camp for special needs children in New Jersey. Claimant attended Lee Mar in the summer of 2016 for six weeks. However, Lee Mar would not allow her to return for the summer of 2017. In summer 2018, Claimant participated a three-day trial at River View Summer Camp in Boston for special needs children and adults. Her first night at the camp, Claimant had a grand mal seizure and bumped her head, the trial ended, and she was not able to attend for the summer camp. In summer 2019, Claimant started North Woods Summer Camp on the east coast. After two days, her parents received a call for them to come and get her.

13. In summer 2022, Claimant participated in Towards Maximum Independence (TMI), independent and supporting living services, where an aide took Claimant and three other special needs adults on outings to shop at Target. The aide was very nice and cared about Claimant, but there were no set times for pick-up and drop-off, and because of this unpredictable schedule, Claimant's mother was not able to work. In addition, Claimant's parents felt she was not learning to be any more independent than what she already knew.

14. Although Claimant aged out of Sierra Academy after the 2021-2022 school year, she was able to continue there for another academic year, 2022-2023, and for summer 2023 because of the pandemic and loss of learning.

15. There was a lot of movement amongst Claimant's parents as to what programs were available and best for Claimant. They were learning as they were going along. They initially searched for a day program because Claimant continued to live at home, but she no longer had Sierra Academy during the day or any other day program. It seems that her previous summer camps were trials for her to learn how to

be away from her parents for extended periods, although she had only successfully completed Lee Mar summer camp in 2016.

16. In summer 2023, Claimant's parents were hopeful when she became eligible for a five-month day program, four hours a day, at Beacons in Carlsbad. However, Beacons later realized that Claimant's IPP required her to be accompanied by an aide each day. Claimant's parents tried to no avail to secure an aide for her to attend Beacons. They reached out to their SC at the time, Kevin Patricio, who let them know that SDRC did not assist with locating aides whether a client was in an SDP or not. Claimant's parent searched on Care.com, again to no avail. They reached out to Arc of San Diego but were told that no aides were available. Claimant's first opportunity to attend Beacons day program in summer 2023 came and went, as did a second opportunity in fall 2023. She is currently on the wait list for spring 2024, which is from January to June 2024, and she will only be able to attend if she has an aide. Her parents still have not been able to find someone who is willing to be her aide for four hours a day at Beacons. This is concerning because it is apparent that Claimant is facing a challenge in participating in day programs because of her need for an aide. (Exs. C, M, Q, S)

17. Claimant's parents also tried placing her in these other day programs: Able Arts San Diego, a day program for adults, which had no openings; Farm to Market, a day program, which did not respond to their inquiry; and Goodwill Industries, a day program, which placed Claimant on a wait list. It is noted that even if Claimant is accepted to any of these day programs, she may need an aide. (Exs. J, O)

18. Claimant also tried the Casa Di Amici day program in summer 2023 that was suggested by Sierra Academy, but she was only able to attend for a week and a half when the program closed because it was searching for another building. (Exs. G, P)

19. During their search for day programs, Claimant's parents started to discover private residential programs. Something they began to consider because Claimant had been successful at the out-of-state summer camp in 2016, and they were hopeful that she could expand her independence beyond what she was getting with supportive services from TMI, i.e. more than shopping at Target.

20. Claimant's parents learned about Meristem in Sacramento that they described as being an "all-inclusive" program where Claimant can grow in her independence and be involved in many activities coordinated by the program. It is a private facility that consists of a residential component that is nonvendored by any regional center. Ms. Ohmstede and Ms. Gonchoroff testified that Meristem also has a vendored day program and other nonvendored services that might be paid for with SDP funds. Meristem is in the jurisdiction of Alta Regional Center. Claimant's parents explained that she applied to Meristem but was not eligible because she is not yet independent with her medications. Meristem informed Claimant's parents that she requires a nurse on site, but there is no nurse at Meristem. Her parents offered to pay for a nurse to bring her medications to Meristem and administer them, but Meristem declined their offer.

21. Claimant's parents looked at Casa de Amma in San Juan Capistrano and Glennwood House in Laguna Beach, which are also private residential programs for adults but have 10-year wait lists. Claimant is on their wait lists. They also looked at the UCLA Pathways program, which is a residential program for adults that incorporates a college experience; however, Claimant's parents were told the program requires certain independent skills that Claimant does not have yet, but she is working on. (Ex. H)

22. The record reflects that as early as April 27, 2023, Claimant's parents discussed with Mr. Patricio about sending her out-of-state to Berkshire Academy in Massachusetts. There was no further discussion, and Claimant's parents did not request SDRC to fund that program. (Ex. 20, A273)

23. About a month later, on May 24, 2023, Mr. Patricio wrote a note about following up with Claimant's parents' inquiry about an out-of-state program, and what that would look like in an SDP. Claimant's parents asked about all-inclusive programs that were out-of-state. Mr. Patricio informed them that out-of-state funding could not be provided by regional center nor under an SDP. It does not appear that Mr. Patricio notified Claimant's parents about the process to search for residential placement locally, then regionally, and then throughout the state (known as the 4519 process), or if he asked Claimant's parents if they were interested in SDRC beginning to search for residential options, or if he discussed with Claimant's parents the process of completing a 159A referral, which is a form that is provided to potential vendored residential facilities. It also does not appear that Claimant's parents asked SDRC to fund an out-of-state program or to search for residential facilities in San Diego, the region, or the state. At this point, it appears Claimant's parents had only asked SDRC to confirm Claimant's SDP budgets and spending plans for 2022 and 2023, and they also asked SDRC for assistance to locate an aide to accompany Claimant to a day program, which was declined. (Ex. 20, A276)

24. On August 8, 2023, Claimant began a trial camp at KDS in Tennessee. This occurred in the midst of her parents' continued search for day programs in San Diego, them learning about private residential programs in California, and their discussions with Claimant's service coordinator about sending her to an out-of-state program. It certainly was not unusual for Claimant to attend an out-of-state camp

because she had done so in 2016, 2018, and 2019, although it does not appear that SDRC was aware of her past summer camp attempts that were out-of-state.

25. At Claimant's IPP meeting on September 12, 2023, her parents informed her new SC, Ms. Ramirez, that Claimant could not attend the meeting because she was at "camp." At the hearing, Claimant's parents were questioned as to why they did not let SDRC know the camp was KDS or that it was in Tennessee, and there was an inference they intentionally concealed that Claimant was out-of-state. However, it does not appear Claimant's parents meant to conceal any information, as this was not the first time Claimant had attended an out-of-state camp.

26. Ms. Ramirez's IPP notes reported that Claimant lived at home with her parents, who take turns to monitor her every night for seizure activity. This indicates that Ms. Ramirez was aware of Claimant's seizure activity, and her need for awake staff/nightly monitoring for this condition should she ever participate in a residential placement.

27. At the second IPP meeting on October 5, 2023, Claimant's parents requested additional funding for her SDP budget and spending plan. They testified that their goal was to keep searching for a day program and an aide for Claimant, and they requested other services like independent living services (ILS), personal assistance hours (PAS), community integration training program (CITP) through Community Interface Services (CIS), and in-home respite. They were trying to get the funding in place for these programs with hopes that when Claimant returned to California, she would have programs in place that were already funded. Claimant's SDP budget and spending plan were approved in October 2023. (Exs. 7, 8, 9, 10; Ex. 19, A189)

28. When asked why they did not inform Ms. Ramirez that Claimant's camp was in Tennessee, her parents credibly testified they were unsure if Claimant was going to succeed at KDS's trial camp because of her past failed attempts at out-of-state camps. They were delighted and proud of her when she did succeed at KDS and was invited to stay at its residential program. Claimant's parents testified they accepted KDS's offer for Claimant to remain after her successful trial camp because they had **"nothing"** for her in California. The exact date of her acceptance to remain at KDS is unknown. (Emphasis added.)

29. In email exchanges on December 4 and 5, 2023, Claimant's parents informed SDRC that Claimant was "temporarily" out-of-state in Tennessee, as she was scheduled to "graduate" from her program at KDS and return to California in a few months. Although Claimant's parents indicated she could return to California earlier if SDRC could locate an "all-inclusive" program for her like Meristem or Casa di Amma. (Ex. 19, A201; Ex. 22, A498-A499; Exs. D, T)

30. In testimony, Ms. Gonchoroff spoke about SDRC learning that Claimant's parents had moved her out of California and to a program in Tennessee. She stated:

[We] didn't even get to the step of searching for local placement before (Claimant) moved to TN. Next step would have been neighboring counties – local and regional search, then [a] comprehensive assessment for needs to then open [the] search to the whole State of California. (Claimant) is in an SDP program and [she has] the option to use a residential vendor in San Diego and non-vendors, too.

31. While SDRC's concern is understandable, Claimant's parents were sincere in their testimony, and it does not appear they were trying to conceal any information. Rather, it was simply to their surprise and pride that Claimant had successfully completed KDS's trial camp, and that she was invited to stay at KDS. More importantly, this appears to be the first time Claimant's parents considered that Claimant might be able to live independently and not reside with them in their home in California. In other words, beginning in the fall or winter of 2023, Claimant's parents' thinking shifted from searching just for a day program to thinking that Claimant might be able to succeed in a residential program. Claimant's mother testified they planned for years that it would be "the three of us" living together forever in their house. Claimant's success at KDS clearly changed her parents' consideration of what options Claimant had for her future. They also testified that they began to worry about who would care for Claimant when they were "gone," and the burden would be too much for her siblings. Claimant's parents proceeded to ask Mr. Webb-Rex if Claimant's SDP funds can be used for her out-of-state placement, and he informed them that SDRC could not fund out-of-state placement. (Ex. 19, A191, A201; Ex. 22, A499-A500)

32. In the same email exchanges on December 4, and 5, 2023, Mr. Web-Rex asked Claimant's parents if they wanted SDRC to search for residential placement. He asked Claimant's parents what it would look like for Claimant "in-a-perfect-world." They forthrightly replied, "**A place where she can be independent and have her own life.**" (Emphasis added.) Claimant's parents, for the first time, asked SDRC to search for residential placement for Claimant. (Ex. 19, A201; Ex. 22, A498-A499)

33. SDRC began its search for residential facilities in San Diego, and on December 7, 2023, Ms. Ramirez completed a 159A referral for placement. The 159A referral listed Claimant's medications for epilepsy, ketogenic diet, and verbal

aggression. However, the 159A referral did not include Claimant's need for awake staff/overnight monitoring for her grand mal seizures nor did it include her need for rescue epilepsy medication, despite this information being noted in Claimant's September 2023 IPP. (Ex. 19, A191-192, A203-A205; Ex. 22, A498; Ex. B)

34. From January 24 through February 7, 2024, SDRC located and referred Claimant to six residential facilities in San Diego that were Level 3; however, these referrals did not have the correct information in the 159A referrals. Claimant's parents visited, communicated, and/or considered each of these six facilities but learned they did not have awake staff/overnight monitoring, nor did they have all of Claimant's medication information. As a result, these facilities were not appropriate placements. (Ex. 23)

35. At the hearing, Claimant's father was asked if he understood that under SDP, he had the "freedom to design" a residential placement where he would hire the overnight staff himself. He replied:

Those are private homes, owned by private people. I can't tell them that they have to hire somebody to be in their house only at nights. It took me three months to find somebody (TMI) to (be) . . . with my daughter. I can't imagine someone to be awake all night with my daughter, all night, 10 hours, and it would need to be a shift of two or three people (each night). I cannot image finding those people.

36. Eventually, SDRC began a search for higher-level residential placement that includes awake staff/ overnight monitoring. From February 9 through February 15,

2024, SDRC referred Claimant to four residential facilities in San Diego that were each Level 4i. These facilities did include awake staff/overnight monitoring. These facilities provided feedback to SDRC that Claimant's parents did not reply to their outreach and that placement did not seem urgent for them.

37. However, Claimant's parents credibly testified they communicated with the owners/managers of all the Level 3 and Level 4i referrals, but these residential options were not a fit for Claimant. (Exs. U, V, W, Y) Claimant's father candidly testified:

All of these houses, I asked them (about) after they come back from the day program. They chill. They have dinner then bed. What happens on Friday afternoon, Saturday, Sunday? They rest. Take them anywhere? Only one, Guiding Hands, said they go to the park. Another said Disneyland and Legoland once a year. They said, we chill. . . . I want her to be a part of the community and interact with everybody. Peers her own age. Go to the movies, Disneyland, go to work, study, to do something to give back. One time she was helping four to five Saturdays in a restaurant as a hostess, it was not paid. We wanted her to do something. At Sierra Academy, she was working a factory baking dog treats. That was cool. She worked at the bowling [*síć*] . . . cleaning lockers. . . . Another one was at a farm . . . All of those things, we were so proud she was doing something.

38. In an email exchange on January 12, 2024, Mr. Webb-Rex informed Claimant's parents that Ms. Ramirez would also search for vendored-day programs and vendored-tailored day programs, and he reminded Claimant's parents that they

could use funding for vendored-tailored day programs in Claimant's SDP budget to hire a program of their own choosing.

39. In an email on February 23, 2024, Claimant's mother provided the contact at KDS to Mr. Webb-Rex. She also reiterated that she and Claimant's father wanted Claimant to be in California, but they tried for so long on their own and could not find a residential placement with a day program for her despite their efforts. This is why they were working with SDRC to try to find placement for Claimant in California where she could be independent, as she has been at KDS. (Ex. 22, A508)

40. On March 1, 2024, SDRC received Claimant's record from KDS and learned, for the first time, that Claimant had been at KDS since August 8, 2023. Ms. Ohmstede testified that she reviewed the KDS records, and she was concerned about an incident on August 13, 2023, where Claimant had stolen bread and was disciplined for her conduct by being restrained and having her iPad taken away. She explained that even out-of-state residential facilities funded by SDRC must be aligned with California laws and compliant with federal requirements under Home and Community Based Services (HCBS) that address setting requirements such as inclusivity, choice, privacy, freedom to control scheduling and activities, and access to food at any time. On cross examination, Ms. Ohmstede conceded that SDRC needed to conduct a needs assessment for the services that Claimant is receiving at KDS. Ms. Ohmstede also testified that regional centers do not fund any "all-inclusive" programs such as Meristem and KDS, as the HCBS waiver had a goal to place claimants in the community rather than be only with similarly situated persons. However, Ms. Ohmstede did acknowledge that some components of these "all-inclusive" programs, such as the day program and other services at Meristem, can be covered by regional centers even under an SDP. (Exs. E, F; Exs. 14, 15, 16, 17, 18, 19)

41. It is noted, there also did not appear to be any subsequent serious incidents involving discipline of Claimant at KDS. In fact, Claimant's parents testified that she was "thriving" at KDS, and they were proud of her growth and independence that she managed to achieve since being there. Claimant's Individual Education Plan (IEP) at KDS on September 8, 2023, also highlighted that she was doing well with her goals for daily living, academic/learning, living skills, and independent skills. Her parents also testified that, most importantly, Claimant was at a residential facility where there is awake staff/overnight monitoring each night, and there is always a nurse on site. The described KDS as a "whole program." (Ex. D)

42. In emails on March 12 and 26, 2024, Mr. Webb-Rex asked Claimant's parents if they want SDRC to continue to search for vendored day programs and/or vendored residential homes. The record does not contain a reply from Claimant's parents. It does contain correspondence from the contact at KDS to Mr. Webb-Rex confirming that KDS is not a gated campus, and the students are able to participate in group outings or request other outings where transportation will be arranged (Ex. 22, A499, A512-A516, A521)

43. Finally, Claimant's parents testified they were hopeful for Claimant to return to California and for her to partake in a new residential program at TERI, Inc. (TERI) that is pending licensing. TERI is a nonprofit program that provides various vendored and nonvendored services for children and adults with special needs. They have been in contact with TERI and are working to get Claimant into its new residential program once it is licensed. Claimant's parents also explained TERI is also working on opening its new Campus of Life in San Marcos, which is in San Diego County. This is where they hope Claimant will attend TERI's vendored day program and other vendored and nonvendored programs. She already partakes in therapeutic horseback

riding, and she could continue that activity and others at TERI's new Campus of Life. Claimant's parents described TERI's new residential program coupled with TERI's vendored day program and other services as being more like the "all-inclusive" programs at Meristem, Casa di Amma, and KDS. They have spent many weeks following through with inquiries, eligibility requirements, and interviews for Claimant to be a part of TERI's new residential program once it is licensed, as well as TERI's day program and other services. (Ex. R)

44. At the date of the hearing, Claimant was in placement at KDS in Tennessee and scheduled to return on or before August 2024.

## **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. 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.)

4. A regional center's responsibilities to its consumers are set forth in Welfare and Institutions Code sections 4640-4659.

5. 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.

6. Welfare and Institutions Code section 4512, subdivision (j), states:

"Planning team" means the individual with developmental disabilities, the parents or legally appointed guardian of a minor consumer or the legally appointed conservator of an adult consumer, the authorized representative, including those appointed pursuant to subdivision (a) of Section 4541, one or more regional center representatives, including the designated regional center service coordinator pursuant to subdivision (b) of Section 4640.7, any individual, including a service provider, invited by the consumer, the parents or legally appointed guardian of a minor consumer or the legally appointed conservator of an

adult consumer, or the authorized representative, including those appointed pursuant to subdivision (a) of Section 4541, and including a minor's, dependent's, or ward's court-appointed developmental services decisionmaker appointed pursuant to Section 319, 361, or 726.

7. Welfare and Institutions Code section 4519 provides:

(a) The department shall not expend funds, and a regional center shall not expend funds allocated to it by the department, for the purchase of any service outside the state unless the Director of Developmental Services or the director's designee has received, reviewed, and approved a plan for out-of-state service in the consumer's individual program plan developed pursuant to Sections 4646 to 4648, inclusive. Prior to submitting a request for out-of-state services, the regional center shall conduct a comprehensive assessment and convene an individual program plan meeting to determine the services and supports needed for the consumer to receive services in California and shall request assistance from the department's statewide specialized resource service in identifying options to serve the consumer in California. The request shall include details regarding all options considered and an explanation of why these options cannot meet the consumer's needs. The department shall authorize for no more than six months the purchase of out-of-state services when the director

determines the proposed service or an appropriate alternative, as determined by the director, is not available from resources and facilities within the state. Any extension beyond six months shall be based on a new and complete comprehensive assessment of the consumer's needs, review of available options, and determination that the consumer's needs cannot be met in California. An extension shall not exceed six months. For the purposes of this section, the department shall be considered a service agency under Chapter 7 (commencing with Section 4700).

(b) Funds shall not be expended for the cost of interstate travel or transportation by regional center staff in connection with the purchase of any service outside the state unless authorized by the director or the director's designee.

(c) If a regional center places a consumer out of state pursuant to subdivision (a), it shall prepare a report for inclusion in the consumer's individual program plan. This report shall summarize the regional center's efforts to locate, develop, or adapt an appropriate program for the consumer within the state. This report shall be reviewed and updated every three months, and a copy shall be sent to the director. Each comprehensive assessment and report shall include identification of the services and supports needed and the timeline for identifying or developing those

services needed to transition the consumer back to California.

(d) Notwithstanding subdivisions (a), (b), and (c), the State Department of Developmental Services or a regional center may expend funds allocated to it for the purchase of services for residents of this state and administrative costs incurred in providing services in the border areas of a state adjacent to California when the purchase is approved by the regional center director.

(e) Each regional center shall submit to the department by December 31, 2012, a transition plan for all consumers residing out of state as of June 30, 2012, for whom the regional center is purchasing services.

(f) This section shall become operative January 1, 2022.

8. 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).)

9. 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.)

10. 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**

11. Before considering residential services for Claimant, her parents were feeling hopeless after years of efforts to find a solution for Claimant after her impending aging-out at Sierra Academy. They were hopeful she could be more independent and learn to be without them for periods of time. They sent Claimant to out-of-state camp in summer 2016 that she successfully completed but was not invited to return to in summer 2017. They sent her to out-of-state camp in summer 2018, but on the first night she had a grand mal seizure and was asked to leave. They sent her to out-of-state camp in summer 2019, but her parents were asked to retrieve her after two days. After Claimant aged-out at Sierra Academy, she was able to stay another year because of the pandemic and loss of learning. However, after summer 2023, Claimant had “nothing” as her parents testified.

12. What can be easily recognized is Claimant’s parents’ frustration with trying to find a day program for Claimant and unsuccessfully trying to find an aide to accompany Claimant to a day program. From summer 2022 through summer 2024, Claimant’s parents tried but failed to get Claimant into day programs at Beacons, Able Arts San Diego, Farm to Market, Goodwill Industries, and Casa Di Amici. The reasons varied as to why Claimant could not participate, but the primary reason was that Claimant needs an aide to accompany her to these programs or there is a wait list. Claimant’s parents searched extensively for an aide to accompany Claimant to a day program, but they could not find anyone who would take the four-hour a day job. The only program that was remotely successful was TMI, but it is not a day program and only provides independent and supported living services that entailed group outings

such as shopping at Target. They want more for Claimant and long for her to be a bigger part of the community and learn to be independent beyond Target shopping.

13. Claimant's parents certainly have learned along the way and shifted from only considering day programs to considering residential services after Claimant, to their surprise, delight, and pride, successfully completed a trial camp at KDS in Tennessee and was accepted to stay at its residential program for a period of time. Claimant's parents had no intent to conceal Claimant's whereabouts being out-of-state in Tennessee. Their emails and testimony notably delineate the chaos of their situation of trying to find day programs, trying to find aids, sending Claimant to a trial camp in Tennessee, and being elated that she was invited to stay for longer after her many past failed attempts at summer camps and having "nothing" for her at moment here in California.

14. In addition, in April and May 2023, Claimant's parents mentioned to Mr. Patricio about an out-of-state program in Massachusetts. Their discussions did not result in much more than Claimant's parents being told that SDRC does not fund out-of-state services even through an SDP. While Mr. Patricio did not explain the 4519 process that outlines the limited circumstances for such funding, Claimant's parents did not question any further about out-of-state services nor did they ask SDRC to assist in searching for vendored residential services. There was no more discussion about Claimant participating in an out-of-state program until September 2023, when Claimant did not attend her IPP meeting, and her parents told Ms. Ramirez that she was at camp. Again, Claimant was at a trial camp that happened to be out-of-state, and her parents had no idea if she would succeed at the trial camp or even if she would be able to stay for longer.

15. To the surprise of Claimant's parents, when she was invited to stay at KDS for a residential program, their thinking started to shift. They started to look on their own into residential services that were local, regional, and in Northern California. Unfortunately, none of these programs had openings for Claimant, or she is not quite ready for their programs, but she is working on becoming ready. Claimant's experience and success at KDS made Claimant's parents realize that she could do residential placement that includes day program, which would allow Claimant to be in an "all-inclusive" program where she can be a part of and give back to the community. Now realizing Claimant's options, on December 4, 2023, Claimant's parents let SDRC know that Claimant had succeeded in her trial program at KDS and will remain there until she finishes in a few months.

16. Because of Claimant's parents' desire for her to return to California, they requested SDRC to search for residential placement. They were referred to six local residential facilities that they considered but turned out to be inappropriate because Claimant's 159A referral did not include awake staff/overnight monitoring nor her rescue epilepsy medication. After two months, SDRC began to search for higher level facilities and referred Claimant's parents to four local residential facilities with awake staff/overnight monitoring; however, Claimant still had no day program or an aide in place for Claimant to attend a day program.

17. Claimant's parents poignantly stated they want Claimant to have "a place where she can be independent and have her own life." They are looking at programs like Meristem in Sacramento that has a nonvendored residential component but includes a vendored day program. There are other programs like Casa de Amma and Glennwood House in Orange County that also have nonvendored residential programs and vendored day programs but have long wait lists. There is also the UCLA Pathways

program in Los Angeles, which Claimant is not quite ready for. Claimant's parents are also hopeful for TERI's day program at their new Campus of Life and their upcoming residential program that is awaiting licensing.

18. In consideration of all the above, the law lays out a process, under Welfare and Institutions Code section 4519, to be followed for a regional center to fund out-of-state placement at a facility such as KDS. It is not evident that SDRC failed to conduct its search for residential options for Claimant because there has been so much movement on the part of Claimant's parents in their own efforts and shifting to find a day program, aide for a day program, and sending Claimant to a trial camp at KDS, where she ended up staying for a longer residential program.

19. SDRC needs to be afforded an opportunity to follow the process outlined in Welfare and Institutions Code section 4519.

20. At this point in time, SDRC has no authority to fund, through Claimant's SDP budget and spending plan, out-of-state services at KDS because SDRC has not been given the full opportunity to conduct a comprehensive assessment of Claimant's residential placement needs; request assistance from the Department's state-wide specialized resource service unit; resume its search for residential placement locally, regionally, and statewide; and prepare a report to be included in Claimant's IPP that addresses residential placement options locally, regionally, statewide, or out-of-state, and provide a copy of the report to the Director.

## **ORDER**

Claimant's request that San Diego Regional Center be ordered to submit documentation to the Department requesting approval of funding of her out-of-state

placement at The King's Daughters' School in Tennessee, is granted, in part, and denied, in part, as follows; and Claimant's appeal from San Diego Regional Center's determination that it will not fund, through Claimant's Self Determination Program budget and spending plan, out-of-state services at The King's Daughters' School in Tennessee is denied, as follows:

1. San Diego Regional Center, within 60 days of the effective date of this Proposed Decision, with an extension as appropriate and with good cause, shall conduct an IPP meeting with the parties for Claimant to request residential services and supports, consistent with Welfare and Institutions Code section 4519.

2. San Diego Regional Center, within 60 days of the effective date of this Proposed Decision, with an extension as appropriate and with good cause, shall conduct a comprehensive assessment to determine Claimant's services and supports needed for Claimant to receive services in California and/or out-of-state, consistent with Welfare and Institutions Code section 4519.

3. San Diego Regional Center, within 60 days of the effective date of this Proposed Decision, with an extension as appropriate and with good cause, shall resume its search for local and/or in-state placement for Claimant with a goal for Claimant to return to California with placement at an appropriate-level of care facility in California, and work with Claimant's family as a team in this process, consistent with Welfare and Institutions Code section 4519.

4. San Diego Regional Center, within 60 days of the effective date of this Proposed Decision, with an extension as appropriate and with good cause, shall request assistance from the Department's state-wide specialized resource service unit

in identifying options to serve Claimant in California, consistent with Welfare and Institutions Code section 4519.

5. San Diego Regional Center, within 90 days of the effective date of this Proposed Decision, with an extension as appropriate and with good cause, shall prepare a report for inclusion in claimant's IPP that will summarize San Diego Regional Center's efforts to locate, develop, or adapt an appropriate program for Claimant within the state, of which the report will be updated every three months, and provide a copy of the report to the Department's Director, consistent with Welfare and Institutions Code section 4519.

6. Claimant's request for San Diego Regional Center to fund out-of-state services at The King's Daughters' School in Tennessee is denied without prejudice, wherein if local, regional, and/or state placement is not established and funded by San Diego Regional Center, through Claimant's SDP budget and spending plan, Claimant through San Diego Regional Center may submit a request to the Director or the director's designee to review and approve Claimant's plan for out-of-state services in Claimant's IPP, consistent with Welfare and Institutions Code section 4519.

DATE: May 17, 2024

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

BEFORE THE  
DEPARTMENT OF DEVELOPMENTAL SERVICES  
STATE OF CALIFORNIA

In the Matter of:

Claimant

OAH Case No. 2024010594

Vs.

**DECISION BY THE DIRECTOR**

Inland Regional Center,

Respondent.

ORDER OF DECISION

On May 17, 2024, an Administrative Law Judge (ALJ) at the Office of Administrative Hearings (OAH) issued a Proposed Decision in this matter. The Department of Developmental Services (DDS) received the Proposed Decision pursuant to Welfare & Institutions Code section 4712, subdivision (e)(2), on June 18, 2024.

The Department of Developmental Services (DDS) takes the following action on the attached Proposed Decision of the ALJ:

The Proposed Decision is adopted except as modified as follows:

The effective date referenced on pages 27 and 28 of the Proposed Decision shall begin on the effective date that the Order of Decision is signed by DDS' Director, not on the effective date of the Proposed Decision.

The Order of Decision, together with the Proposed Decision, constitute the Decision in this matter.

This is the final administrative Decision. Each party is bound by this Decision. Either party may request a reconsideration pursuant to Welfare and Institutions Code section 4713, subdivision (b), 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.

Attached is a fact sheet with information about what to do and expect after you receive this decision, and where to get help.

IT IS SO ORDERED on this day July 17, 2024.

*Original signed by:*

Nancy Bargmann, Director

BEFORE THE  
DEPARTMENT OF DEVELOPMENTAL SERVICES  
STATE OF CALIFORNIA

In the Matter of:

Claimant

OAH Case No. 2024010594

Vs.

**DECISION BY THE DIRECTOR**

San Diego Regional Center,

Respondent.

AMENDED ORDER OF DECISION

On May 17, 2024, an Administrative Law Judge (ALJ) at the Office of Administrative Hearings (OAH) issued a Proposed Decision in this matter. The Department of Developmental Services (DDS) received the Proposed Decision pursuant to Welfare & Institutions Code section 4712, subdivision (e)(2), on June 18, 2024.

The Department of Developmental Services (DDS) takes the following action on the attached Proposed Decision of the ALJ:

The Proposed Decision is adopted except as modified as follows:

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Attached is a fact sheet with information about what to do and expect after you receive this decision, and where to get help.

IT IS SO ORDERED on this day July 18, 2024.

*Original signed by:*

Nancy Bargmann, Director