

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

In the Matter of:

CLAIMANT

and

REGIONAL CENTER OF ORANGE COUNTY, Service Agency

DDS No. CS0023060

OAH No. 2024120758

DECISION

Irina Tentser, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on March 18, 2025.

Ublester Penaloza, Assistant Manager with the Fair Hearing and Mediation Department of Regional Center of Orange County (RCOC) appeared on behalf of RCOC.

Claimant's Father appeared on behalf of Claimant. (Claimant's parents are identified by their titles to protect privacy rights.)

Testimony and documentary evidence was received. The record was closed, and the matter was submitted for decision on March 18, 2025.

ISSUE

Should RCOC be required to fund Claimant's legal fees to address issues related to Claimant's educational services through the school district?

EVIDENCE RELIED UPON

RCOC: Exhibits 1-10; Testimony of Carmen Gonzalez, RCOC Area Manager.

Claimant: Testimony of Claimant's Father and Mother.

FACTUAL FINDINGS

1. Claimant is a 14-year-old child who is eligible for regional center services due to a diagnosis of Autism. Claimant resides in RCOC's catchment area with both his parents and his twin sister.

2. On October 23, 2024, a Planning Team Meeting (PTM) was held between RCOC and parents to address a request for RCOC to fund for an attorney to represent Claimant regarding his educational services through the school district.

3. On November 7, 2024, a notice of action (NOA) and denial letter were sent to Claimant by RCOC denying Claimant's request to fund for legal fees. The NOA stated in pertinent part:

While it is RCOC's responsibility to ensure that all services are arranged and implemented through the Individual Program Plan (IPP)/Planning Team meeting process

(Welfare and Institution Code 4646 (A)(D)); it is also RCOC's duty to provide a wide array of services to implement goals and objectives of the IPP that reflect the cost-effective use of public resources, including the use of natural supports when considering the purchase of supports and services (Welfare and Institution Code 4646 (a), 4647 (a) and 4648 (a)(2)(8). Regional Center does not fund for legal fees therefore, your request is denied.

(Exhibit 2, p. A7.)

4. On December 16, 2024, Claimant appealed the NOA. The basis for Claimant's appeal is:

[t]he requested legal services are essential for ensuring compliance with applicable laws and protecting the educational rights of [Claimant]. [RCOC's] denial fails to consider the necessity of these services in addressing legal issues that directly impacts [Claimant's] access to appropriate educational services under the IDEA [Individuals with Disabilities Education Act]. Additionally, the request for legal services aligns with [Claimant's] overall care plan and is critical for ensuring that his legal protections are upheld. We believe the denial was made without fully considering the need and specific circumstances and the importance of these legal representations which ensure [Claimant's] rights.

(Exhibit 1, p. A2.)

5. Claimant's most recent IPP meeting occurred on September 18, 2024. (Exhibit 3.) During the IPP, Mother reported Claimant requires a 1:1 aide at all times to prevent eloping and due to safety concerns, which parents were funding. (*Id.*, p. A17.) At the time of the IPP, Claimant attended a private school due to concerns with public school education services, as well as Claimant's safety due to elopement. Mother also reported during the IPP parents were suing Claimant's school district due to inadequate special education services provided. Mother informed RCOC during the IPP Claimant will be requesting RCOC to assist with legal fees in pursuing claims against the school district.

6. At hearing, Claimant argued that RCOC should fund for Claimant's legal fees because: other regional centers fund for consumer's legal fees on a case by case basis; the generic advocacy resources provided by RCOC were inadequate to address Claimant's specific needs; and the Lanterman Act (Welf & Inst. Code, §§ 4500-4846) does not, as RCOC asserts, preclude payment of a consumer's legal fees. (Testimonies of Father and Mother.) (All section references are to the Welfare and Institutions Code unless otherwise indicated.)

7. Claimant asserts RCOC is required under the Lanterman Act to help pay legal fees that will be incurred in by Claimant to obtain a safe and appropriate education from Claimant's school district. In making his arguments, Claimant appears to rely on sections 4648, subdivision (b)(1), and 4640.6, subdivision (h)(2). Section 4648, subdivision (b)(1), establishes advocacy for, and protection of, the civil, legal, and service rights of persons with developmental disabilities. Section 4640.6, subdivision (h)(2) states, "[c]ontracts between the department and regional center shall require the regional center to have, or contract for, all of the following areas . . . (2) Special

education expertise to assist the regional center in providing advocacy and support to families seeking appropriate educational services from a school district.”

8. Claimant also appears to rely on section 4648, subdivision (6), which provides Claimant or his representative is entitled to make personal choices about his care, which includes choosing providers for required services, such as, in this case, legal services.

9. Currently, Claimant is in the IEP (Individualized Educational Plan) assessment process with the school district, with two more assessments scheduled in April 2025 before the IEP is finalized. Claimant anticipates the school district’s final IEP will inadequately address Claimant’s needs and is seeking RCOC to fund for legal fees to pursue a potential IDEA claim on behalf of Claimant against the school district. Claimant’s belief that the current IEP process will lead to a negative outcome is based on the prior IEP process where the school district provided special education placement that parents disagreed with because it failed to account for Claimant’s educational and safety needs. Claimant is therefore prospectively seeking legal fee funding from the RCOC partially because RCOC denied Claimant’s request for retroactive reimbursement for legal fees when Claimant previously sued the school district. (Testimonies of Father and Mother).

10. Claimant did not provide specific information about the amount of legal fees sought to be funded by RCOC and/or the identity of the legal advocate(s) whom Claimant intends to retain to represent Claimant in his potential future IDEA claim against the school district.

11. RCOC’s decision denying Claimant’s request is based on its interpretation of sections 4512, subdivision (b), and 4648, subdivision (a)(1), which outline the scope

of services that regional centers are authorized to fund and are limited to providing services and supports that directly relate to managing or ameliorating the effects of a consumer's developmental disability. According to RCOC, legal services, especially those concerning educational disputes under IDEA, do not fall within the scope of services that RCOC is permitted to finance because they are not directly related to the consumer's developmental disability but rather to the educational entitlements and the provisions of Free Appropriate Public Education (FAPE) under federal law. (Exhibit 10.)

12. In addition, RCOC asserts that the design and intent of due process hearings under IDEA is structured to be accessible and family friendly, therefore intentionally eliminating the necessity of legal representation. Because IDEA's procedural framework is purposefully including, RCOC maintains families can navigate the hearing process with the school district without the need for legal counsel regardless of financial standing or access to legal resources. (Exhibit 10; Testimony of Carmen Gonzalez.)

13. RCOC is required to make cost-effective use of public funds (§ 4646, subd. (a)) and is a payor of last resort. RCOC notes that it provided Claimant with information on generic resources that offer advocacy and support to families at no cost, such as the Office of Clients Rights Advocacy (OCRA), which Claimant has opted not to utilize based on a preference for securing his choice of legal counsel. (Exhibit 10; Testimony of Carmen Gonzalez.)

14. Finally, RCOC cites California Code of Civil Procedure section 1021, which provides that, in the absence of some special agreement, statutory provision, or exceptional circumstances, attorney's fees are to be paid by the party employing the attorney. In Claimant's case, RCOC points out that there is a provision within IDEA,

particularly 34 Code of Federal Regulations (CFR) section 615, subdivision (i)(3), which directly addresses payment of attorneys' fees when parents file a due process complaint if they disagree with a school's identification, evaluation, or placement of their child with a disability. RCOC seems to be referring specifically to 34 CFR section 300.517, subdivision (1)(i), which states in pertinent part, "[in] any action or proceeding brought under section 615 of [IDEA], the court in its discretion, may award reasonable attorneys' fees as part of the costs to (i) the prevailing party who is the parent of a child with a disability."

15. RCOC has not had any direct contact with Claimant's school district regarding Claimant's issues with the school district reported by parents. Claimant's parents have not had Claimant's RCOC Service Coordinator (SC) present at any of Claimant's IEP meetings. Claimant's parents have previously chosen to pay for a private educational consultant to attend IEP meetings because they do not believe Claimant's SC can be as effective and is knowledgeable about the IEP process. RCOC noted that if Claimant's SC was allowed to be present at Claimant's IEP meetings, the SC could then provide information regarding the particular issues of Claimant at the school district to RCOC's education consultant, who could then potentially assist Claimant by working with parents to access available advocacy resources.

16. In response to RCOC's position, Claimant argues that based on parents' past experience with the school district, the IDEA process is not family friendly and inclusive but is antagonistic with the school district represented by counsel at meetings. In order to be effective in fighting for Claimant's educational rights, Claimant maintains funding for legal representation is necessary and required to be funded by RCOC. (Testimony of Mother.) Based on unspecified conversations with generic advocacy resources, Claimant asserts the generic advocacy resources provided

by RCOC either do not provide or will be ineffective in Claimant's possible future IDEA claim against the school district. Further, Claimant believes the IDEA provision for reimbursement of attorneys' fees if parents prevail in a due process claim against the school district is not a reliable option for Claimant's parents to recoup legal fees. (Testimony of Father.)

LEGAL CONCLUSIONS

1. The Lanterman Act is implemented by the Department of Developmental Services (DDS). The DDS contracts with regional centers to provide developmentally disabled individuals with access to the services and supports best suited to them and pays for the majority of their "treatment and habilitation services and supports" to ensure such persons live in the least restrictive environment. (§§ 4502, subd. (a), 4620.)

2. Regional centers conduct a planning process with consumers and their representative(s) that results in an IPP. (§ 4646.) The IPP, among other things, sets forth goals and objectives for the consumer, contains provisions for the acquisitions of services based on the consumer's needs, and reflects the consumer's specific preferences. (§§ 4646, 4646.5, subds. (a)(1) & (a)(2).) Advocacy assistance is a service and support available to persons with developmental disabilities. (§ 4512, subd. (b).) The definition of assistance includes advocacy to assist persons in securing educational services and other benefits to which the consumer is entitled. (§ 4685, subd. (c)(1).)

3. While an IPP must reflect the goals and preferences of a consumer, a regional center is not mandated to provide all the services a consumer may require. A regional center has discretion in deciding which services it should purchase to effect a consumer's IPP. (§ 4648.) Further, the regional center is required to procure services for

consumers which “reflect the cost-effective use of public resources.” (§ 4646, subd. (a).) Available generic resources (services from other agencies serving the general public) must be used before regional center funds are used for similar services. (§§ 4659 and 4648, subd. (g).)

4. Claimant contends RCOC has a duty to advocate for consumers including the duty to provide legal representation by a private attorney in IDEA proceedings against a school district. (Factual Findings 6-8.) Claimant’s contention is unpersuasive under these circumstances. A generic advocacy resource exists to address Claimant’s legal needs. Claimant’s parents were advised and rejected the resource based on their personal preference for private legal representation to represent Claimant in a possible future IDEA claim against the school district. Because a generic resource is available to provide legal assistance in proceedings against the school district which has not been shown to be ineffective, it would not be a cost effective use of public resources for RCOC to fund private legal services for Claimant.

5. Claimant has not cited any provision of the Lanterman Act that would require an expansion of the definition of advocacy assistance, whose plain meaning refers to support or argue in favor of a cause, to include for the payment of private legal representation. Notably, RCOC is willing to advocate on Claimant’s behalf in proceedings with the school district but has not been included in IEP meetings. Requiring RCOC to prospectively fund for a course of action in which it has not been included by Claimant would be inequitable.

6. Based on the foregoing, Claimant has failed to establish that the Lanterman Act imposes a duty on RCOC to fund legal fees for the retention of an attorney to represent Claimant in a potential future IDEA claim against the school district.

ORDER

Claimant's appeal is denied. The regional center's denial of Claimant's request to fund Claimant's legal fees to address issues related to Claimant's educational services through the school district is affirmed.

DATE:

IRINA TENTSER

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 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.