BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

Claimant

and

North Los Angeles County Regional Center, Service Agency

DDS No. CS0027017

OAH No. 2025051102

DECISION

Thomas Lucero, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter at the North Los Angeles County Regional Center, Lancaster, on June 4, 2026.

Cristina Aguirre, Due Process Officer, represented the North Los Angeles County Regional Center (NLACRC or Service Agency). Claimant was represented by her authorized representative, Foster Mother. Names are withheld for privacy.

This matter is governed by the Lanterman Developmental Disabilities Services Act, Welfare and Institutions Code sections 4500 through 4885 (Lanterman Act).

Documents and testimony were received in evidence. The record closed and the matter was submitted for decision on June 4, 2026.

STATEMENT OF THE CASE

Claimant, six years old, contends she is eligible for services and supports under the Lanterman Act because she has speech difficulties and is not well adapted to socializing, among other things. The Service Agency has evaluated her three times and acknowledges she has difficulties, but none that rise to the level of a condition recognized under the Lanterman Act as grounds for eligibility.

FINDINGS OF FACT

1. The Service Agency served a Notice of Action (NOA) on April 24, 2025 denying Claimant's eligibility for services and supports under the Lanterman Act. Claimant timely appealed and requested a hearing on May 20, 2025.

Records Review and Testimony of Dr. Fischer

2. Sandi J. Fischer, Ph.D., testified regarding the records written and testing conducted by other professionals and her conclusion, formulated with others at the Service Agency, that Claimant does not have a substantially disabling developmental disability that would make her eligible under the Lanterman Act. Dr. Fischer has worked as the Service Agency's intake manager since 2023 and is a member of its Multidisciplinary Eligibility Staffing Committee. Before employment at the Service Agency as a staff psychologist, Dr. Fischer was in private practice for a decade, ending in 2020. Psychology was her major course of study for her Batchelor of Arts from

Ithaca College in 1982. She received her Master's degree in Psychology in 1984 from the California School of Professional Psychology, now Alliant University, and her Ph.D. in Psychology in 1987 from the California School of Professional Psychology.

3. Dr. Fischer acknowledged that Claimant needs treatment or assistance for various reasons, primarily related to poor mental health. But she is firmly of the opinion that Claimant does not have a developmental disability within the meaning of the Lanterman Act and therefore does not qualify under any of the five categories of disability as listed in Welfare and Institutions Code section 4512, subdivision (a)(1):

> "Developmental disability" . . . shall include [1st] intellectual disability [(ID}], [2nd] cerebral palsy, [3rd] epilepsy, and [4th] autism. This term shall also include [a 5th category, namely] disabling conditions found to be closely related to [ID] or to require treatment similar to that required for individuals with . . . [ID], but shall not include other handicapping conditions that are solely physical in nature.

Dr. Fischer testified to her familiarity with the law and regulations, such as, perhaps most pertinent here, California Code of Regulations, title 17, section 54000:

> "Substantial disability" is defined as a disability that results in major impairment of cognitive and/or social functioning, as evidenced by impairment in three or more of the following areas of major life activity: self-care; receptive and expressive language; learning; mobility; self-direction; capacity for independent living; and economic self-sufficiency. (Welfare and Institutions Code, Section 4512[I]

and California Code of Regulations, Title 17, Section 54001.) Lastly, the disability must not be solely physical in nature, psychiatric, or the result of a learning disorder. (California Code of Regulations, Title 17, Section 54000).

4. In addition to pertinent laws and regulations, Dr. Fischer testified to her familiarity with and psychologists' use nationwide of the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revision (DSM-5-TR), as the definitive and authoritative treatise for diagnosing developmental disabilities. Generally the term, "autism," used in Welfare and Institutions Code section 4512, subdivision (a), quoted above, has been redesignated by psychologists and the DSM-5-TR "Autism Spectrum Disorder" (ASD).

2020 Social Assessment

5. Consent by the Department of Children and Family Services (DCFS) for Claimant's first evaluation by the Service Agency was executed in October 2019, when Claimant was two years old. In December 2019 a court ordered that Claimant should be assessed and the referral followed one month later, in January 2020. Licensed Clinical Social Worker (LCSW) Edna D. Aftandelian completed the Service Agency's Social Assessment of Claimant. According to this dated February 20, 2020 Assessment, Claimant and two siblings, an older and a younger brother, were removed from their mother's care in consequence of severe neglect and placed with Foster Mother and her husband before Claimant turned three years old.

6. LCSW Aftandelian found that Claimant was able to use words to communicate, but she was not always easily understood. Claimant made consistent eye contact, but would not always respond when called, so that Foster Mother had to

repeat her name to get her attention. Claimant used her imagination in playing with toys and dolls. She could feed herself with utensils, with some spillage. She was not toilet trained. Claimant did not have aggressive or disruptive behaviors. She was generally in good health. The 2020 Assessment concluded with recommendations that the Service Agency secure medical and school records, schedule Claimant for medical and psychological evaluations as needed, and upon receipt of reports, determine eligibility for services and supports.

7. In February 2020, Margaret Swaine, M.D., a Service Agency clinician, reviewed Claimant's medical records and found no suggestion of a chronic medical condition or a substantially handicapping cerebral palsy or epilepsy. Dr. Swaine recommended continued primary medical care in the community and a psychological evaluation.

2020 Psychological Evaluation

8. Alan Golian, Psy.D., evaluated Claimant on May 28, 2020, when she was three years and three months old. He noted in his Psychological Evaluation, Exhibit 6, page A32: "Concerns surround [Claimant's] speech development, as she reportedly does not pronounce words clearly. There are no other concerns reported by [Foster Mother] at this time." Dr. Golian administered the Autism Diagnostic Interview-Revised (ADI-R), the Vineland Scales of Adaptive Functioning-III (Vineland-III), using Foster Mother as Rater, interviewed Foster Mother by telephone, observed Claimant, though he did so remotely because of the COVID-19 emergency, and he reviewed records, including Foster Mother's Behavioral Observations.

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9. Dr. Golian observed that Claimant shared with Foster Mother and a brother enjoyment and reciprocity while playing. He observed no stereotyped, repetitive, or sensory-related behaviors during play. He wrote, Exhibit 6, page A33:

> In terms of language, [Claimant] spoke in multiple-word phrases and complete sentences with no apparent articulation difficulties or speech abnormalities. There was no evidence of immediate echolalia or stereotyped/idiosyncratic language. [Claimant] was able to answer all questions that were presented to her. [Her] nonverbal behaviors, such as eye contact, facial expressions, and pointing, appeared to be within normal limits. At the end of the session, [Claimant] made eye contact and waved goodbye to the examiner.

Dr. Golian found, based on the Vineland-III, Claimant's overall communication skills fell within the average range.

10. Dr. Golian measured Claimant's adaptive functioning using the Vineland-III and found her overall Adaptive Behavior Composite and her Daily Living Skills were in the average range. Dr. Golian reported that Claimant did not appear to meet criteria for ASD. The ADI-R yielded scores below the ASD cutoff in the areas of communication, reciprocal social interaction, and restricted, repetitive, and stereotyped patterns of behavior. Dr. Golian concluded that the most appropriate diagnosis might be Phonological Disorder, or F80.0, the code for this disorder in the International Classification of Diseases, 10th Revision (ICD-10).

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June 2020 Determination on Eligibility

11. Dr. Fischer and two other members of the Interdisciplinary Eligibility Committee, Dr. Swaine, Supervisor of Medical Services, and Carlo DeAntonio, M.D., Director of Clinical Services, completed a Lanterman Act Eligibility Determination on June 15, 2020. It stated Claimant was not eligible and encouraged foster family to follow up with the school district regarding Claimant's Phonological Disorder.

March 2023 Referral

12. On March 24, 2023, a Children's Social Worder (CSW) at DCFS, Alejandra Guerrera-Magaña, referred Claimant to the Service Agency a second time, listing a number of concerns, including self-care, significant difficulty understanding and interpreting nonverbal communication such as gestures and facial expressions, and difficulty in reasoning.

2023 Social Assessment

13. Stacey L. Cole, M.D., Intake Service Coordinator, completed a Social Assessment of Claimant dated August 2, 2023, when Claimant was six and a half years old. Foster Mother was unable to keep a scheduled appointment and it was difficult to find an alternate time. As a result, Dr. Cole conducted the social update by telephone rather than direct observation.

14. In addition to referring to the 2020 Assessment, Dr. Cole noted that Foster Mother's concerns seemed primarily behavioral rather than cognitive. Foster Mother told Dr. Cole Claimant was smart and enrolled in a regular first grade class, not special education. Dr. Cole found no deficits in Claimant's motor skills. Regarding self-care, Dr. Cole wrote that Claimant was toilet-trained, though she did have some

daytime accidents, and Claimant did not need adult help with bathing or using soap. Foster Mother did not mention concern for Claimant's skills in communication, but she was concerned for her awareness of safety. Foster Mother stated Claimant needed close supervision because did not understand the need for caution with strangers and might even walk away with one.

15. Dr. Cole noted Foster Mother's concerns regarding Claimant's social and behavioral skills, saying, Exhibit 9, page A44, Claimant was "kind of a loner" whose struggles are exemplified by her calling other children "mean names." On the other hand, Claimant had bonded with Foster Mother, who stated, "she loves me." There were other concerns, however. Foster Mother told Dr. Cole Claimant had self-injurious behaviors such as picking at her skin. Claimant was about to receive mental health services to address, for instance, her saying periodically, "I'm going to kill myself." Claimant would also fight with other children and would scratch them at times. Foster Mother said that Claimant hoarded things and caused damage by "tearing things up."

16. Dr. Cole concluded her assessment with three recommendations: obtaining medical and school records; scheduling for medical and psychological evaluations as needed; and determining eligibility upon receipt of reports

September 2023 Psychological Evaluation

17. On September 13, 2023, Audrey Musni, Psy.D., completed a psychological evaluation. Dr. Musni reviewed the records described above and administered four tests: (i) the Wechsler Preschool and Primary Scale of Intelligence - Fourth Edition (WPPSI-IV); (ii) the Adaptive Behavior Assessment System, Third Edition (ABAS-3) Parent Form, with Foster Mother as Rater; (iii) the Autism Diagnostic Observation

Schedule (ADOS-2) - Module 3; and (iv) the Autism Spectrum Rating Scales (ASRS) Parent/Primary Caregiver Ratings.

18. Foster Mother told Dr. Musni, among other things, that Claimant will try to choke herself when upset and makes statements about burning down the house. By this time, however, Claimant had been receiving weekly therapy for a month. Dr. Musni noted that Claimant's speech could be difficult to understand, as Foster Mother reported Claimant did not pronounce some words clearly. A main concern Foster Mother expressed was that Claimant did not understand stranger danger, so that she had to be watched closely. On the other hand, as before, Claimant was reported to be doing well at school. Claimant did not mind some change in her routine. She sometimes had difficulties with transitions, at other times she did not. Generally she would talk about her feelings. At school she usually played alone, but played with others for short periods. She had recently started to get into fights.

19. Dr. Musni reported that Claimant was cooperative and easily engaged in testing activities, responding to Dr. Musni's use of humor, and she often smiled. She made eye contact. She engaged in some back and forth conversation. She sometimes used gestures to communicate like giving a thumbs up to answer yes or when she completed an activity. Claimant interacted with Dr. Musni using a range of facial expressions. Dr. Musni further reported speaking to Claimant's therapist, Brittany Gordon, of Sycamores, an organization offering programs to change behavior. Ms. Gordon advised she had not observed characteristics related to ASD, but Claimant had been diagnosed with Disruptive Mood Dysregulation Disorder (DMDD).

20. Regarding the cognitive testing she performed, specifically the WPPSI-IV, Dr. Musni reported that on the Verbal Comprehension Index, Claimant's scores fell in the average range and overall, her full-scale score also fell in the average range. Based

on the results of the Communication subtest of the ABAS-3 and Foster Mother's report, Dr. Musni found Claimant's communication skills fell in the below average range. Dr. Musni explained that Claimant always used sentences with a noun and verb, she sometimes discussed a topic for at least three minutes, and she sometimes nodded or smiled to encourage others during conversation. On the other hand, Claimant did not follow Foster Mother's verbal instructions, such as regarding a household chore or new game, and Claimant did not know her telephone number.

21. Claimant's Social Composite score measured by the ABAS-3 fell in the low range, based on Foster Mother's report. Claimant did not have a stable set of friends, but she reportedly always has good relationships with caregivers and other adults, she will laugh in response to funny comments or jokes, and she sometimes expresses her feelings, whether happy, sad, scared, or angry.

22. Claimant's Adaptive Functioning as measured by the Practical Skills composite of the ABAS-3 fell in the extremely low range, although in the Community Use domain, she was found to look at times both ways before crossing a street or parking lot and in the Home Living domain, she sometimes wipes up spills at home. But she is not able to order her own meals when eating out and does not make her own bed. Dr. Musni commented, Exhibit 10, page A49: "Overall, most areas of practical, social, and conceptual skills fell in the low to below average range."

23. Regarding ASD, Dr. Musni, using Module 3, for those with fluent speech, of the ADOS-2, scored Claimant below the range for ASD. She wrote that ratings reflected minimal to no evidence of characteristics of ASD. Claimant spoke in sentences, asked questions, and made eye contact. There were no repetitive or restricted behaviors or interests. Dr. Musni used the Autism Spectrum Rating Scales (ASRS) with Foster Mother. Claimant's scale was in the average range, meaning there

are typical levels of concern for Claimant as there are for children in her age group. The DSM-5 Scale score was in the average range. Dr. Musni wrote, Exhibit 10, page A51:

> When the Total Score and DSM-5 Score are considered in combination with each other, the average scores on both scales indicates that [Claimant] has few behavioral characteristics that are similar to those exhibited by individuals diagnosed with [ASD]. With regards to the Treatment Scales, Peer Socialization fell in the elevated range. Adult Socialization, Social/Emotional Reciprocity, Atypical Language, Stereotypy, Behavioral Rigidity, Sensory Sensitivity, and Attention fell in the average range.

Dr. Musni stated this diagnosis: F34.81 Disruptive Mood Dysregulation Disorder (By History), and found Claimant did not meet criteria for ASD or ID. Dr. Musni noted that there are concerns about Claimant's peer interactions and other behaviors, but stated they did not appear to be related to ASD. Dr. Musni noted that Claimant would benefit from continued mental health services.

September 2023 Determination on Eligibility

24. Dr. Fischer, Dr. Swaine, and Dr. DeAntonio, as members of the Interdisciplinary Eligibility Committee, completed a Lanterman Act Eligibility Determination on September 21, 2023. It stated Claimant was not eligible and recommended the foster family's following up with mental health services for intensive treatment and a determination on whether Claimant would benefit from any supports at school, such as counseling.

Third Referral

25. On March 19, 2025, a CSW at DCFS, Alanis Nayeli, referred Claimant to the Service Agency a third time, listing concerns like those in the second referral in March 2023 that might indicate eligibility by reason of ASD or ID. The concerns included Claimant's emotional development, such as coping with fears, anxieties, or frustrations, and severe maladaptive behaviors like self-injurious behavior, head banging, and other self-destructive behavior. There was also concern for Claimant's personal judgment: difficulty in making appropriate choices, understanding consequences, and in maintaining daily schedules. Another concern was lack of safety awareness.

April 2025 Social Assessment

26. School Psychologist Jasmin Lopez, M.S., and Veronica Salinas, M.S., who works with the Service Agency regarding Limited English Proficiency (LEP) completed a Social Assessment on April 20, 2025. As they noted, Foster Mother reported that Claimant had frequent behavioral outbursts, showed aggression and defiance, would destroy property, would inflict self-injury, and had difficulty with social interactions and daily living skills.

27. Ms. Lopez and Ms. Salinas reviewed medical records and noted Claimant was in second grade. Claimant had no Individualized Education Plan (IEP) because, as Foster Mother stated, she is smart. Claimant had received some school-based counseling services in the past, but they were discontinued. She was demonstrating behavioral challenges such as elopement from the classroom and defiance. Foster Mother said that Claimant needed help with self-care. Claimant could communicate

her wants and needs, but was often unintelligible and had not received speech services.

28. Foster Mother reported Claimant had frequent emotional outbursts and often made self-harm statements. She had difficulty in relationships with peers and adults and did not understand personal boundaries. She also needed constant supervision. She would attempt to choke herself. She was highly oppositional, not responding well to redirection or behavioral consequences. She would often withdraw from social interactions, preferring to play alone. She was also manipulative and often lies. Claimant could follow one step directions, but required frequent redirection. Claimant was receiving in-home therapy services one to two times per week. Foster Mother could and did at times call the therapist when Claimant's behavior was out of control. The assessment concluded with recommendations to obtain medical and records to prepare for an eligibility determination.

April 2025 Eligibility Determination

29. Dr. Fischer and four other members of the Interdisciplinary Eligibility Committee, Dr. Swaine, Dr. DeAntonio, Heike Ballmaier, PsyD, BCBA; Senior Clinical Psychologist, and Nichole Cecil, Psy.D., Supervisor, Psychological Services, completed a Lanterman Act Eligibility Determination on April 23, 2025. It stated Claimant was not eligible and recommended that Claimant continue intensive mental health services for mental health conditions.

Foster Mother's Testimony

30. Foster Mother is employed by the Los Angeles County Metropolitan Transit Authority (MTA) and has custody of both Claimant and a brother who receives supports and services from the Service Agency. Foster Mother believes the siblings

have similar deficits and developmental disabilities. She strongly believes that the Service Agency, or some public agency, should help Claimant with her issues and problems, whereas none does, though Foster Mother has been pursuing assistance for some two years.

31. Foster Mother emphasized Claimant's tendency to withdraw from social interactions, saying she has worked with children since 1978 and so has experience that gives her good perspective on why Claimant should have services and supports. Foster Mother acknowledged that Claimant is "smart" and her schooling is adequate, but Claimant also "flaps her arms and looks at you crazy," signs that she is not well. She needs assistance with bathing, will not follow directions, and needs an advocate, perhaps legal counsel, to obtain the assistance she needs.

Eligibility Criteria

32. Dr. Fischer explained that for Claimant to be eligible by reason of ASD, the criteria of the DSM-5-TR she would meet include, as set out in Exhibit 16, pages A69 to A70:

> A. Persistent deficits in social communication and social interaction across multiple contexts, as manifested by all of the following . . . (examples are illustrative, not exhaustive; see text):
>
> 1. Deficits in social-emotional reciprocity, ranging, for example, from abnormal social approach and failure of normal back-and-forth conversation; to reduced sharing of interests, emotions, or affect; to failure to initiate or respond to social interactions.

2. Deficits in nonverbal communicative behaviors used for social interaction . . . .

3. Deficits in developing, maintaining, and understanding relationships . . . .

B. Restricted, repetitive patterns of behavior, interests, or activities, as manifested by at least two of the following . . . :

1. Stereotyped or repetitive motor movements, use of objects, or speech (e.g., simple motor stereotypes, lining up toys or flipping objects, echolalia, idiosyncratic phrases).

2. Insistence on sameness, inflexible adherence to routines, or ritualized patterns of verbal or nonverbal behavior . . . .

3. Highly restricted, fixated interests that are abnormal in intensity or focus . . . .

4. Hyper- or hyporeactivity to sensory input or unusual interest in sensory aspects of the environment . . . .

The DSM-5-TR also notes that the symptoms above must be present in the person's early developmental period, must cause clinically significant impairment in social or other important areas of functioning, and are not better explained by ID.

33. As explained by Dr. Fischer and set out in the DSM-5-TR, the criteria for ID are, Exhibit 17, page A85 to A:

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> [ID] . . . includes both intellectual and adaptive functioning deficits in conceptual, social, and practical domains. The following three criteria must be met:
>
> A. Deficits in intellectual functions, such as reasoning, problem solving, planning, abstract thinking, judgment, academic learning, and learning from experience, confirmed by both clinical assessment and individualized, standardized intelligence testing.
>
> B. Deficits in adaptive functioning that result in failure to meet developmental and socio-cultural standards for personal independence and social responsibility. Without ongoing support, the adaptive deficits limit functioning in one or more activities of daily life, such as communication, social participation, and independent living, across multiple environments, such as home, school, . . . and community.

The DSM-5-TR notes that, like ASD, ID must arise in the person's early developmental period.

34. ARCA, the Association of Regional Center Agencies, has published Recommendations for Determining "5th Category" Eligibility for the California Regional Centers, recommendations endorsed by the Department of Developmental Services (DDS), the agency that oversees the Service Agency and all the other regional centers in the state. Among ARCA's recommendations is, Exhibit 18, page A97:

> A DSM-5-TR identified condition of <u>borderline intellectual functioning</u> (ICD-10 code R41.83) can be considered when

> an individual's general cognitive functioning is in the subaverage range of intelligence but slightly above that which would be considered for intellectual disability. Individuals with borderline intellectual functioning may be considered to have a condition closely related to intellectual disability. However, having borderline intellectual functioning does not, in and of itself, establish eligibility under 5th category, as additional eligibility components must also be present to meet the definition of developmental disability. (Emphasis in original.)

LEGAL CONCLUSIONS

1. Under Evidence Code sections 115 and 500, the standard of proof in this matter is proof by a preponderance of the evidence. Claimant has the burden of proof. because Claimant is the party asserting a claim and seeking a change in the status quo. (See, e.g., *Hughes v. Bd. of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.)

2. Most pertinent here are these provisions of the Lanterman Act regarding what constitutes a developmental disability, as set out in Welfare and Institutions Code section 4512, subdivision (a)(1):

> "Developmental disability" means a disability that originates before an individual attains 18 years of age, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual. As defined by the

> Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include [ID], cerebral palsy, epilepsy, and [ASD]. This term shall also include [a fifth category,] disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability, but shall not include other handicapping conditions that are solely physical in nature.

ANALYSIS

3. Claimant, at six years of age, has been thoroughly and repeatedly tested. She does not have epilepsy or cerebral palsy, two of the categories of disability that would make her eligible for services and supports under the Lanterman Act. Testing has concentrated on possible ASD, ID, or a fifth category condition. A focus of such testing has been Claimant's language, because her pronunciation of some words is not clear, making her difficult at times to understand. More recently Claimant has shown other difficulties, such as in social life, as she is sometimes aggressive toward peers and defiant of authority both at home and at school.

4. Psychological testing has accounted for some of Claimant's difficulties. Thus in 2023 she was diagnosed with Disruptive Mood Dysregulation Disorder. She has also been diagnosed with Phonological Disorder. She has not been diagnosed with ASD, a disability in a category that the Lanterman Act states could make her eligible if the ASD disability were found to be substantial. That Claimant has not been diagnosed with ASD makes sense. She does not display the characteristics of a person with ASD as listed in the DSM-5-TR. She does not show unduly repetitive or stereotyped behaviors, for instance. Also, she makes eye contact and responds during

conversations. She has trouble in socializing at times, but not to the extent the autistic do, as described in the DSM-5-TR. Claimant is not eligible under the Lanterman Act on the basis of ASD.

5. No testing has shown that Claimant has ID. She has no diagnosis of ID. This makes sense in light of various factors. Foster Mother describes her as "smart," and she does well in school. There are things she fails to understand, perhaps of most concern is her lack of safety awareness. Claimant does not understand that she must be wary of strangers. But in many other ways she is able to comprehend ideas and facts. The descriptions of Claimant formulated by the social workers and psychologists who have seen her, talked to her, and tested her, do not fit the description of a person with ID as described in the DSM-5-TR. Claimant appears to have a level of intellectual functioning appropriate to her age. Claimant is not eligible under the Lanterman Act on the basis of ID.

6. Claimant has not been found to have borderline intellectual functioning. She has not been found to have a condition closely related to ID. No medical professional has found she needs treatment similar to that required for individuals with an ID, Claimant is not eligible under the fifth category in Welfare and Institutions Code section 4512, subdivision (a). She is not eligible under the Lanterman Act.

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ORDER

Claimant's appeal is denied.

DATE:

THOMAS LUCERO
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.