

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

**In the Matter of:**

**CLAIMANT**

**and**

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

**DDS No. CS0028302**

**OAH No. 2025070303**

**DECISION**

Administrative Law Judge Karen Reichmann, State of California, Office of Administrative Hearings, serving as the hearing officer, heard this matter on May 22, 2026, in San Jose, California.

Claimant was represented by her legal guardian. Claimant was not present.

Esmeralda Rivera represented the San Andreas Regional Center (SARC).

The record closed, and the matter was submitted for decision on May 22, 2026.

## **ISSUE**

Must SARC conduct an intake assessment of claimant to determine whether she is eligible for regional center services based on her diagnosis of Neurobehavioral Disorder Associated with Prenatal Alcohol Exposure?

## **FACTUAL FINDINGS**

### **Background**

1. Claimant is 10 years old. She was exposed to alcohol in utero and was diagnosed with bilateral club feet and amniotic band syndrome at birth. Claimant wears ankle-foot orthotic braces and is missing parts of some digits. She has been diagnosed with ADHD, anxiety, PTSD, and Neurobehavioral Disorder Associated with Prenatal Alcohol Exposure (ND-PAE).

2. She lives with her foster parents/legal guardians. Claimant's guardian contacted SARC in May 2025 to request an eligibility evaluation. Eligibility is sought under the "Fifth Category" (a condition similar to intellectual disability or requiring similar treatment to that required for individuals with intellectual disability).

3. On June 9, 2025, a SARC intake manager sent a letter to claimant's guardian denying the request to perform an intake assessment. A Notice of Action was sent to claimant's guardian that same day.

4. Claimant's guardian submitted a timely appeal request.

## **Claimant's Evidence**

5. Claimant's guardian reported that claimant's early development was delayed in all realms due to fetal alcohol exposure. Claimant received Early Start services from SARC which included occupational therapy. Claimant's guardian did not realize at the time that claimant aged out of the Early Start program that she could seek Lanterman Act eligibility for claimant. At the time, claimant was sometimes in the custody of her birth mother which was a complicating factor in her guardians' ability to seek supports. Claimant's guardians are now her permanent legal guardians until claimant reaches age 18.

6. Claimant attends a charter school in San Jose and is currently in the fourth grade. The school performed a psychoeducational evaluation of claimant in January 2023, when claimant was in first grade. As part of the evaluation, a Behavior Assessment System for Children, Third Edition, assessment form was completed by claimant's guardian and her two general education teachers. The ratings from claimant's guardian reflected clinically significant or at-risk scores in all domains; however, the two teachers' ratings reflected averages scores in all domains, other than one teacher reporting an at-risk rating for "Conduct Problems." The evaluator recommended that claimant receive special education services under the category Other Health Impairment with no secondary category.

7. Claimant's Individualized Education Program (IEP) from December 2024 notes that claimant had some strengths in reading but was not at grade level; tested at the 47th percentile in math; communication was not a concern; she was participating actively in physical education with her peers; and she had full independence in activities of daily living at school. Her IEP goals included gaining deeper meaning when reading texts and emotional regulation. Claimant was placed in a general

education classroom with 30 minutes per week of group specialized academic instruction. The IEP also provides for occupational therapy consultation and adapted physical education consultation for her medical condition.

8. At an IEP meeting in December 2025, claimant's case manager recommended ending the IEP and switching to a 504 plan (under section 504 of the Rehabilitation Act of 1973), believing that claimant no longer qualified for special education services. Testing of her cognitive ability showed average to low average scores, except for far below average scores in short-term memory. Her reading was at grade level. It was noted that claimant's behavior had improved, possibly as a result of changes to her medication. Claimant's guardian disagreed with the recommendation and ultimately the school decided to continue providing IEP services consisting of 30 minutes of specialized academic instruction per week and adapted physical education consultation yearly.

9. Claimant's guardian expressed some frustration with the school, explaining that she has had to "fight" for services. She reported that claimant will attend the same charter school for fifth grade in the upcoming school year, but that she is considering moving her to a non-charter public middle school the following year. Claimant's guardian believes a non-charter public school will be more willing to provide additional special education services.

10. Claimant's guardian disagrees with statements in claimant's IEP's and other school records, stating that they do not match the daily phone calls she receives from the school regarding claimant's behaviors.

11. Psychologist Kenneth Allen, Ph.D., conducted a developmental pediatric assessment of claimant in May 2025. Claimant's full-scale IQ tested at 94, with a "mild

relative weakness in her working memory.” Dr. Allen administered the Vineland Adaptive Behavior Scales, Third Edition based on his interview of claimant’s guardian. Claimant’s scores were in the fifth percentile or lower in all domains.

12. Dr. Allen wrote that claimant’s cognitive profile placed her in the average range, but that her adaptive functioning is well below what would be expected. He noted struggles with executive functioning, emotional regulation, and inattention. Dr. Allen diagnosed claimant with ND-PAE and no other diagnosis. Dr. Allen’s report included many recommendations for the home, school, and community environments, but these recommendations did not include seeking regional center services. Dr. Allen also wrote that “individuals with ND-PAE may also benefit from similar interventions as people with ADHD.”

13. In a follow-up letter dated July 24, 2025, written in support of claimant’s application for regional center services, Dr. Allen wrote:

ND-PAE is a serious neurodevelopmental disorder that results from prenatal alcohol exposure and can manifest in cognitive, behavioral, and adaptive functioning deficits. In her case, [claimant] presents with significant challenges in executive functioning, emotional regulation, attention, memory, and social functioning. These impairments are chronic and pervasive, substantially limiting her ability to function independently and appropriately for her age. Her adaptive functioning is also well below what is expected given the results of her cognitive testing.

[¶] . . . [¶]

ND-PAE is a lifelong condition that affects multiple domains of functioning, and individuals with this diagnosis often require extensive and coordinated support services.

Given the nature and extent of her neurodevelopmental disability, it is my professional opinion that [claimant] meets the criteria for developmental disability services under the Lanterman Act, specifically under Fifth Condition, and would benefit significantly from the supports and interventions available through SARC. These services would help her develop the skills necessary for greater independence and reduce the long-term burden on her family and public systems of care.

I strongly recommend that [claimant] be considered eligible for Regional Center services . . .

14. Claimant receives behavioral health services from Seneca, which includes weekly psychotherapy, weekly therapeutic behavioral therapy, and monthly appointments for medication management. Her treatment goals are to reduce maladaptive social behavior and to reduce physical and verbal aggression. In a recent letter, claimant's Seneca clinician wrote that claimant "has demonstrated meaningful engagement in interventions, increased utilization of skills in distressing moments, and a reduction in intensity of behaviors in various settings."

15. Claimant's guardian filed the appeal at the suggestion of claimant's social worker and with the support of Dr. Allen. Claimant's guardian acknowledged that claimant's problems might be largely behavioral. She testified that claimant needs

repetitive reminders, does not cope well with changes in routine, has difficulty expressing her emotions verbally, does not understand danger, has tantrums, and can “shut down” for several hours. She has been suspended from school and from summer programs due to her behavior. She has engaged in self-injurious behavior and threatens to engage in self-harm.

16. Claimant has had surgeries for her physical conditions and is scheduled to have another surgery this summer.

### **SARC’s Position**

17. SARC’s representative explained that all documents provided by claimant’s guardian were reviewed by a SARC intake team, including a psychologist. The information reviewed did not suggest that claimant has a condition similar to intellectual development or requiring treatment similar to treatment for intellectual disability.

18. Individuals with fetal alcohol exposure sometimes have cognitive impairments and might be eligible for regional center services under the Fifth Category. When assessing an individual for Fifth Category eligibility, SARC looks at cognitive testing. Extremely low scores on intellectual testing would indicate possible Fifth Category eligibility. The documents provided by claimant did not suggest intellectual impairment or need for similar treatment. Instead, the documents reflected that claimant’s challenges are primarily behavioral and she is receiving treatment to address these behaviors.

19. SARC’s representative further explained that not all individuals with an eligible condition meet the definition of developmental disability for purposes of regional center eligibility. Only individuals whose condition is substantially disabling

are eligible. Substantial disability is defined as significant functional limitations in three out of seven areas of major life activity. SARC concluded that claimant's documents do not suggest substantial disability as defined by law.

## LEGAL CONCLUSIONS

1. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act. (Lanterman Act, Welf. & Inst. Code, § 4500 et seq.) The purpose of the Lanterman Act is to rectify the problem of inadequate treatment and services for the developmentally disabled, and to enable developmentally disabled individuals to lead independent and productive lives in the least restrictive setting possible. (Welf. & Inst. Code, §§ 4501, 4502; *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384.) The Lanterman Act is a remedial statute; as such it must be interpreted broadly. (*California State Restaurant Association v. Whitlow* (1976) 58 Cal.App.3d 340, 347.)

2. A developmental disability is a "disability which originates before an individual attains age 18, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual." The term "developmental disability" includes intellectual disability, autism, epilepsy, cerebral palsy, and what is referred to as the "fifth category." (Welf. & Inst. Code, § 4512, subd. (a).) The fifth category refers to "disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability." (*Ibid.*) Disabling conditions that consist solely of psychiatric disorders, learning disabilities, or physical conditions do not qualify as developmental disabilities under the Lanterman Act. (Cal. Code Regs., tit. 17, § 54000, subd. (c).)

3. Pursuant to section 4512, subdivision (j), the term "substantial disability" is defined as "the existence of significant functional limitations in three or more of the following areas of major life activity, as determined by a regional center, and as appropriate to the age of the person: (1) Self-care. (2) Receptive and expressive language. (3) Learning. (4) Mobility. (5) Self-direction. (6) Capacity for independent living. (7) Economic self-sufficiency."

4. Regional center services are limited to individuals who meet the eligibility requirements established by law.

5. It is undisputed that claimant has been diagnosed with ADHD, PTSD, anxiety, and ND-PAE. ADHD, PTSD, and anxiety are psychiatric disorders and are not eligible conditions. ND-PAE, as it manifests in claimant, is not similar to intellectual disability. Psychological testing has shown that claimant has average cognitive ability, with only some mild deficits. In addition, claimant's conditions require behavioral therapies and do not require treatment similar to that required for individuals with intellectual disability.

6. The evidence established that claimant has challenges as the result of ND-PAE and her other conditions. The evidence did not establish that these challenges are due to a developmental disability within the meaning of the Lanterman Act.

7. SARC's determination that the information provided by claimant did not suggest the presence of a developmental disability warranting an intake assessment was reasonable. Claimant's appeal is denied.

8. Claimant may reapply for regional center services in the future, should there be new information suggesting eligibility such as a new diagnosis or new

evidence suggesting that her ND-PAE is substantially impairing her intellectual functioning.

## **ORDER**

Claimant's appeal is denied.

DATE:

KAREN REICHMANN

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.