

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

In the Matter of the:

CLAIMANT,

vs.

Regional Center of Orange County,

Service Agency.

DDS. No. CS0034136

OAH No. 2026020574

PROPOSED DECISION

Chrysanthy Kyin, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on May 1, 2026 in Los Angeles, California.

Claimant was represented by her mother (Mother), who also served as her authorized representative. The names of Claimant and his family members are omitted to protect their privacy.

Ublester Penalzoza, Manager of Fair Hearings and Mediations, represented Regional Center of Orange County (Service Agency).

The ALJ received testimony and documentary evidence. The record was closed and the matter was submitted for decision at the conclusion of the hearing.

ISSUE

Whether under the Lanterman Developmental Disabilities Services Act (Lanterman Act) Claimant may use previously approved personal assistance hours to support his participation in insurance-funded Applied Behavior Analysis (ABA) and Occupational Therapy (OT) during school hours.

EVIDENCE RELIED UPON

In reaching this decision, the ALJ relied upon Service Agency's Exhibits 1 through 10; Exhibit Z1; the testimony of Ana Penaloza, Service Agency Manager; Crystal Chavez, Service Agency Self-Determination Program (SDP) Coordinator; Claimant's Exhibits A through C; and the testimony of Mother.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Claimant is eight years old and lives with his mother, father, and sister. Claimant receives Services Agency services based on a diagnosis of moderate autism spectrum disorder (ASD).

2. Service agency is a regional center designated by the Department of Developmental Services to provide funding for services and supports to persons with

developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4500 et seq.)

3. On February 5, 2026, Service Agency sent Claimant a Notice of Action (NOA) stating “[Service Agency] is unable to fund personal assistance or respite services during the hours that Claimant is expected to be in school.” (Ex. 2, p. A11.)

4. On February 11, 2026, Claimant timely requested a hearing.

Background

SELF-DETERMINATION PROGRAM

5. Since March 1, 2026, Claimant has participated in the SDP. The SDP is a voluntary program for regional center consumers seeking increased freedom and flexibility in connection with their regional center services. As for regional center consumers using the traditional purchase-of-service model, an Individual Program Plan (IPP) sets forth an SDP participant’s goals and the services and supports required to meet those goals. The IPP team, consisting of both Claimant’s representatives and regional center personnel, determines the funds required to meet an SDP participant’s needs and IPP goals. The team then agrees upon an annual SDP budget and, separately, a spending plan.

INDIVIDUAL PROGRAM PLAN

6. On September 18, 2025, Mother and the Service Agency completed Claimant’s IPP. (Ex. 3.) On February 20, 2026, an amended IPP was finalized. (Ex. 4.)

7. In the IPP, Mother reported Claimant continues to have alarming behaviors such as, “engaging in inappropriate physical contact with adults and peers,

including unsolicited kisses” in addition to “biting, hitting, and spitting” and “throw[ing] a tantrum if he is told what to do.” (Ex. 3, p. A16.) The IPP notes that Claimant requires, “constant supervision during waking hours to prevent injury or harm in all setting[s] and “[h]e will throw items when he is feeling upset.” (Ex. 3, p. A17.) The IPP also identified the need for ABA services and noted Mother’s difficulties in seeking behavioral therapy services through their private health insurance because she encountered long waitlists.

SDP INDIVIDUAL BUDGET

8. Claimant’s Year 1 SDP budget dated February 11, 2026 is \$78,477.08 for the period March 1, 2026 through February 28, 2027. (Ex. 5, p. A30.) It allocates funds for respite, parent mentor services, academic chess, sky zone, Premier Aquatics, and 26.5 hours of personal assistance per week. (*Ibid.*) Personal assistance pay is calculated at \$36.74 per hour for a total of \$50,701.20.

SDP SPENDING PLAN

9. Claimant’s plan allocates 2,184 hours of personal assistance per year (approximately 182 hours per month or 45.5 hours per week) at an average rate of \$33.69 per hours, totaling, \$71, 454.17, an amount which constitutes about 91 percent of the budget (Ex. 6, p. A32.) The plan identifies one IPP goal associated with his personal assistance hours as allowing “[Claimant] to remain safe in his home and be able to participate in the community.” (*Ibid.*) The plan also allocates funds for community integration supports totaling \$3,921 and a line-item total of \$3,101.60 for parent mentoring with the Illuminati Institute. (*Ibid.*)

///

CLAIMANT'S DAILY SCHEDULE

10. Claimant's academic session begins at 8:00 a.m. and concludes at 9:00 a.m. daily. From 9:00 a.m. to 2:00 p.m. Claimant works on various activities such as reading books, watching science videos, active building with Legos and Magna Tiles, and going to the library if someone is available to accompany him. On Thursdays, Claimant participates in an English Language Arts book club at 10:00 a.m. for thirty minutes. From 2:00 p.m. to 5:00 p.m., Claimant participates in activities at the Young Men's Christian Association (YMCA). At 5:00 p.m., Claimant has dinner with his family and prepares for bedtime.

Claimant's Request to Utilize Personal Assistance for ABA

11. Claimant requests authorization to use the 26.5 hours per week of personal assistance hours currently funded for him to support him during ABA services that would be conducted on weekdays sometime between 9:00 a.m. and 2:00 p.m., after academic instruction.

12. Mother testified at the hearing. Mother stated that Claimant has been approved for home-based ABA, a treatment Mother classifies as medically necessary because it is funded through her private employer-sponsored health insurance. Mother's insurance approved Claimant's ABA services in November 2025, however, he has been unable to begin because he does not have an adult to supervise him, as required by Acuity Behavior Solutions (Acuity), the ABA provider. Acuity requires a "parent, caregiver, guardian, or designated adult over the age of 18 in the home at all times during ABA therapy." (Ex. A, p. B26.)

13. Claimant was previously enrolled in an elementary school at the District. However, he encountered negative interactions and conditions that impeded a

constructive learning environment. Effective January 6, 2026, Claimant withdrew from school and began being homeschooled at E.D. School, a full-time private school within the District.

14. According to Mother, the District has denied Claimant ABA and previously, it denied a request for 1:1 personal aid to support virtual education. Claimant's Individualized Education Program (IEP) dated January 13, 2026 substantiates the accuracy of Mother testimony in that, neither ABA nor personal support is offered by the District. The IEP lists other services recommended and offered to Claimant such as Specialized Academic Instruction; Speech/Language; Special Circumstance Instructional Assistant (SCIA) Support; Individual Counseling, and Occupational Therapy all of which are set to expire on May 11, 2026. The January 2026 IEP meeting notes reference Claimant's withdrawal from the District; discussion of services, and the District "provid[ing] FAPE offer of Home Base," indicating the District's offer to provide Free and Appropriate Public Education (FAPE) to a student with a disability in their home setting. (Ex. 7, p. A58.) It is unclear what the District's offer of FAPE entailed.

15. Mother and Father both work full-time. Mother works for an international company, and her schedule is not regular. Mother travels for work and occasionally works for home. Father works out of the home apart from sporadic telework days or when he utilizes parental leave.

16. Mother did not request personal assistance to support Claimant's participation in insurance-funded ABA from the District or from Acuity. Mother stated Acuity required her to provide adult supervision during ABA.

///

17. Although the parties agreed the issue to be addressed in this proceeding also included whether Claimant's pre-allocated personal assistance hours could be used during Claimant's OT sessions, neither party presented any evidence regarding the need for personal assistance during OT. Therefore, this issue was not considered in this decision.

Service Agency's Denial of Funding Personal Assistance for ABA

18. At the hearing, Ms. Ana Penaloza, Service Agency Area Manager, and Ms. Crystal Chavez, Service Agency SDP Coordinator, testified. Ms. Penaloza maintained that Service Agency denied Claimant's request to use 26.5 hours per week of approved personal assistance hours as support to participate in weekday daytime ABA because "those hours fall within period in which the educational system bears the responsibility for meeting Claimant's needs." (Ex. Z1, p. Z2.) Ms. Penaloza maintained Claimant's IEP states he is eligible for special educational services and resources and therefore, Claimant must utilize the school district as a generic resource to obtain ABA support.

19. Ms. Chavez cited Welfare and Institutions Code section 4648, subdivision (a)(8) and stated that when there is a generic resource available to provide the service, such as the school district, Service Agency may not duplicate or supplant the generic resource. Ms. Chavez maintained it is the District's responsibility to provide FAPE from the hours of 8:00 a.m. to 2:00 p.m. She classified FAPE as an educational benefit and asserted that FAPE is the generic resource that is responsible for providing Claimant ABA support during those hours. Ms. Chavez acknowledged ABA could be medically prescribed or offered as an educational service through an IEP. In this case, Ms. Chavez was unaware whether ABA services or supports are included in Claimant's IEP.

///

20. Ms. Penaloza stated that Service Agency might allow the use of personal assistance hours if Claimant's home-based ABA occurred after 5:00 p.m., during non-school hours.

21. Service Agency relied upon the following Welfare and Institutions Code sections in its denial based on a school hours restriction: 4646; 4648, subdivision (a)(8); 4646.4, subdivision (a)(1); 4512, subdivision, (b), and 4685.5. However, none of these statutes specifically prohibit Service Agency from funding a service based on the time of day it will be utilized.

LEGAL CONCLUSIONS

Statutory Framework

1. The Lanterman Act is a comprehensive statutory scheme providing 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.)

2. The Lanterman Act mandates that an "array of services and supports should be established . . . to meet the needs and choices of each person with developmental disabilities . . . and to support their integration into the mainstream life of the community." (Welf. & Inst. Code, § 4501.) The state pays for the "habilitation

services and supports” for persons with developmental disabilities to allow such persons to live in the least restrictive environment possible and toward the achievement and maintenance of independent, productive, normal life. (Welf. & Inst. Code, §§ 4501, 4502, subd. (a), 4512, subd. (b).)

3. Personal assistance is services under the Lanterman Act under Welfare and Institutions Code section 4512, subdivision (b). Personal assistants assist consumers who require support in a range of activities of daily living. These services must be designed to increase the individual’s control in life and ability to perform everyday activities. (Cal. Code Regs., tit. 9, § 7019.7.)

Burden and Standard of Proof

4. The law has “a built-in bias in favor of the status quo,” and the party seeking to change the status quo has the burden “to present evidence sufficient to overcome the state of affairs that would exist if the court did nothing”. (*In re Conservatorship of Hume* (2006) 140 Cal.App.4th 1385, 1388.) The applicable standard of proof is preponderance of the evidence. (Evid. Code, § 115.) A preponderance of the evidence means evidence that has more convincing force than that opposed to it. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

5. Claimant bears the burden to prove by a preponderance of the evidence that Service Agency shall reallocate the 26.5 hours per week of personal assistance to be used as support for Claimant’s home-based ABA during school hours.

IPP

6. Developing the IPP for a regional center consumer is the cornerstone of the Lanterman Act. An individual’s IPP states the consumer’s goals and objectives and

delineates the services and supports needed by the consumer. (Welf. & Inst. Code, §§ 4646, 4646.5, 4648.) In implementing an IPP, the regional center must first consider services and supports in the individual's natural community, home, work, and recreational settings. (Welf. & Inst. Code, § 4648, subd. (a)(2).) The services must be effective in meeting the plan's goals and reflect the consumer's preferences and choices, as well as the cost-effective use of public resources. (Welf. & Inst. Code, §§ 4646, subd. (a); *Harbor Regional Center v. Office of Admin. Hearings* (2012) 210 Cal.App.4th 293, 307.) The services and supports shall be flexible and individually tailored to the consumer and, if appropriate, the consumer's family. (Welf. & Inst. Code, § 4648, subd. (a)(2).)

7. The IPP process must ensure conformance with the regional center's purchase of service policies and utilization of generic services and supports when appropriate. (Welf. & Inst. Code, § 4646.4, subds. (a)(1) & (2).) Regional center must identify and pursue all possible sources of funding, including school districts. (Welf. & Inst. Code, §§ 4646.4, subd. (a)(3)(A), 4659, subd. (a)(1).) 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 those services. (Welf. & Inst. Code, §4648, subdivision (a)(8).)

SDP

8. Through the SDP, the Lanterman Act provides an alternative model for funding services and supports. Welfare and Institutions Code section 4685.8 governs how regional centers deliver services and supports to consumers (also referred to as "participants") and their families participating in the SDP. The purpose of the SDP is to provide consumers and their families within an individual annual budget, increased flexibility and choice, and greater control over decisions, resources, and needed and

desired services and supports to implement their IPPs. (Welf. & Inst. Code, § 4685.8, subd. (a).)

9. "Self-determination" means "a voluntary delivery system consisting of a defined and comprehensive mix of services and supports, selected and directed by a participant through person-centered planning, in order to meet the objectives in their IPP." (Welf. & Inst. Code, § 4685.8, subd. (c)(6).) Self-determination is designed to give the participant greater control over which services and supports best meet their IPP needs, goals, and objectives. (Welf. & Inst. Code, § 4685.8, subd. (b)(2)(B).)

10. The participant shall utilize the services and supports available within SDP only when generic services and supports are not available, preventing a duplication of services. (Welf. & Inst. Code, § 4685.8, subd. (d)(3)(B).) The SDP spending plan must be verified to ensure goods and services eligible for federal financial participation are not used to fund goods or services available through generic resources. (Welf. & Inst. Code, § 4685.8, subd. (r)(6).)

Disposition

11. Claimant's IPP identified considerable challenges related to his conduct and self-regulation and further determined that ABA services were an appropriate intervention to address those needs. Claimant's ABA services were available to him in November 2025, however, he has yet to begin services because of a lack of adult supervision, a necessary and missing component. Mother advanced a compelling and ultimately persuasive argument that there are no generic resources available to Claimant to support his insurance-funded ABA services.

12. Claimant's ABA services are funded through Mother's private employer-sponsored health insurance, which classifies the services as medically necessary. The

District denied Claimant ABA and neither ABA nor related behavioral support services were included in his IEP. These absences in Claimant's IEP underscore the fact that his insurance-funded ABA and any related support are not educational services. Testimony from Service Agency's representatives acknowledged that ABA may be provided as a medically prescribed treatment.

13. Service Agency justified its denial by applying a standard traditional school-hour restriction to Claimant who has elected a non-traditional educational program and schedule. Under these circumstances, Service Agency's position that the District is legally responsible for providing ABA support solely because the services would occur during traditional school hours is misplaced and not grounded in any statute, regulation, or policy identified in the record.

14. Denying the use of personal assistance to support Claimant's ABA during non-academic instruction hours impedes the type of flexibility homeschooling, IPP, and the Lanterman Act contemplates. Accordingly, reallocating Claimant's personal assistance hours would neither supplant or duplicate the District because under these circumstances, it is not the District's responsibility to provide ABA support for a medical treatment occurring at home during non-academic instructional hours.

15. It is undisputed that Service Agency has already agreed to fund 26.5 hours of personal assistance per week. In doing so, Service Agency has identified that Claimant had a need for personal assistance and met the need, specifically, his IPP goal to remain safe in his home and participate in the community. Allowing Claimant to use personal assistance to facilitate his participation in ABA continues to meet his IPP goal of remaining safe in his home and meets an additional IPP goal of seeking necessary therapy to address significant behavioral challenges. As such, Claimant has

proven by a preponderance of the evidence that he is entitled to use personal assistance hours for ABA support.

ORDER

Claimant's request to use the already-funded 26.5 hours a week of personal assistance as support in his insurance-funded ABA services is granted.

DATE:

CHRYSANTHY KYIN
Administrative Law Judge
Office of Administrative Hearings