

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

M. D.

Claimant,

and

REGIONAL CENTER OF ORANGE
COUNTY,

Service Agency.

OAH No. L2005060414
L2005100076

DECISION

This matter came on regularly for hearing before Alan R. Alvord, Administrative Law Judge, Office of Administrative Hearings, State of California on November 15, 17, 29, December 1 and 19, 2005.

Cindy Staffelbach, Esq., Woodruff, Spradlin & Smart represented the service agency Regional Center of Orange County (service agency or RCOC).

Bonnie Z. Yates, Esq., Law Offices of Bonnie Z. Yates, Inc. represented claimant.

Witnesses were placed under oath or affirmation and gave testimony. Documentary evidence was offered and received. The parties requested and were granted the opportunity to submit written closing arguments. These were received and the matter was submitted for decision on January 19, 2006.

ISSUES

(a) Should RCOC be required to fund 30 hours of in-home behavioral services?; (b) Should RCOC be required to reimburse claimant for past privately acquired behavioral services?

FACTUAL FINDINGS

Preliminary Matters

1. The administrative record was opened on November 15, 2005. Documents were marked and received from all parties. Testimony at the hearing was given by Lori Burch, Patrick Ruppe, John Cone, Ph.D., Mary Dean, Amanda Whittaker-Davis, Kyle Pontius, Ph.D., Anahita Parsi-Renner, Jason Garner, Betty Bostani, Psy.D., Amy Williams, Servet D.

2. Claimant is four years old. He initially qualified for services from RCOG on June 10, 2004 under a qualifying condition of mild mental retardation.¹

Factual Background

3. In April, 2004, Saddleback Valley Unified School District (SVUSD) conducted a multi-disciplinary assessment of claimant. He was made eligible for special education services under a diagnosis of autism. Special education services for SVUSD are provided by South Orange County Special Education Local Program Agency. Claimant began receiving intensive behavior intervention (IBI) services through the school district April 26, 2004. He made rapid progress in that program.

4. On June 10, 2004 the service agency determined claimant was eligible for regional center services under a diagnosis of mild mental retardation. On June 18, 2004, claimant's mother called the service agency's family resource center with concerns about claimant's behavior at home. On June 23, 2004, representatives of the service agency visited the claimant's home for meeting and observation. They noted claimant's apparent behavior concerns. On June 30, 2004, claimant's mother and the service coordinator discussed the mother's concerns about claimant's behavior at home.

5. On July 2, 2004, claimant was diagnosed by Leslie Brody, M.D. a pediatric neurologist with Pervasive Developmental Disorder, Not Otherwise Specified.

6. On July 12, 2004, the service agency conducted another home visit. Representatives noted the mother's concern about claimant's behavior issues.

7. On July 20, 2004, the Center for Autism and Related Disorders (CARD) conducted an initial evaluation. The result of this evaluation was the recommendation that claimant receive 40 hours per week of direct 1:1 in-home applied behavioral analysis (ABA) services. The report indicates delays in self-help skills, several maladaptive behaviors,

¹ Claimant originally submitted two hearing requests which were consolidated. One of them included a request to alter claimant's qualifying diagnosis from mild mental retardation to autism. That issue was removed from dispute at the outset of this hearing. Notwithstanding any statements in this decision to the contrary, this decision makes no findings as to claimant's diagnosis.

including noncompliance, tantrums and aggression, self-stimulatory behaviors, delays in social behaviors, delays in expressive and receptive language.

8. On August 2, 2004, claimant's mother made a formal request for behavioral services from the service agency. Although there had been several discussions between claimant's mother and service agency personnel prior to this, RCOC acknowledges this as the date services were requested. The service agency sent a letter introducing behavioral services, along with a behavioral services questionnaire. The questionnaire was returned October 1, 2004. There is no evidence claimant gave the service agency a copy of CARD's evaluation from July 2004. There is also no evidence claimant's mother initially informed the service agency she was seeking behavioral services privately.

9. The same day it received the behavioral services questionnaire (October 1, 2004) the service agency approved an assessment for behavioral services. The service agency approved and completed a referral to the Institute for Applied Behavioral Analysis (IABA). On October 8, 2004, the RCOC service coordinator spoke with claimant's mother on the telephone. During this conversation, the mother stated she did not think behavioral services were needed any more. Based on this information, the service agency did not follow through with the referral for behavioral services.

10. On October 11, 2004, the SVUSD conducted an IEP and recommended moving claimant from the IBI class to a structured teaching class (STC). The parents agreed to this placement but did not agree that this placement fulfilled the school district's duty to offer claimant a free appropriate public education in the least restrictive environment. This was the beginning of claimant's dispute with the school district which was ongoing as of the date of the present hearing.

11. Claimant's parents independently contacted a private behavioral services provider, Autism Intervention Resources (AIR). The parents engaged AIR to evaluate claimant without requesting or receiving the consent and participation of the service agency or the school district. On October 29, 2004, AIR conducted an intake assessment and issued an Intake Assessment Report. AIR noted claimant had delays in language, self-help and social/emotional skills. AIR recommended 35 hours per week of direct one-to-one ABA treatment in the home, school and community settings.

ABA is a systematic behavioral training program designed to identify the antecedents and consequences for behavior, then modify certain target behaviors. It is used to reduce maladaptive behaviors such as tantrums, noncompliance, attention difficulties and aggression that inhibit a child from learning and social interaction. ABA is also used to teach pre-academic and academic, self-help, executive function, problem-solving and interpersonal skills to children with autistic characteristics. Early intervention with ABA has been shown to be very effective for children challenged by autistic spectrum disorders.

12. On November 9, 2004, claimant's parents notified SVUSD that they had placed claimant for services with AIR, were voluntarily and unilaterally removing claimant

from the school's program and would be asking the school district to reimburse the cost of the AIR program. The parents did not notify RCOC of this decision.

13. On November 19, 2004, SVUSD presented a new IEP document offering a mixture of 1:1 and 2:1 IBI for 11.75 hours per week, and 6 hours (2 three-hour afternoon sessions per week) in a typical preschool program called "preschool connect" with "shadow support" from an IBI aide. The parents rejected this offer from the school district.

14. The parents sought assessments from independent sources. On November 22, 2004, Betty B. Bostani, Psy.D., clinical psychologist, completed a Psychological Assessment Report. Dr. Bostani recommended 40 hours per week of 1:1 in-home ABA.

15. Claimant's attorney contacted RCOC on February 11, 2005, and requested RCOC funding for behavioral services and requested the service agency to conduct an IPP. This was the first time RCOC had information suggesting claimant had ongoing behavioral problems since October, 2004 when the mother notified RCOC that she no longer had behavioral concerns. This was also the first RCOC had learned that claimant's parents had unilaterally sought private behavioral intervention services. Claimant's counsel suggested the IPP meeting should take place after the SVUSD IEP meeting, which was scheduled for April, 2005.

16. On February 14 and 18, 2005, the service agency's Behavioral Services Resource Group met to discuss claimant's request for behavioral services. The service agency undertook to obtain documents from claimant, including the current IEP and the AIR report. The service agency requested consent for a home visit by a psychological consultant. At this same time, claimant's attorney sent requests for all documents and had withdrawn all consents given to the service agency.

17. On April 5, 2005, John D. Cone, Ph.D., consulting psychologist for RCOC, conducted a screening observation at claimant's home to determine what services would be appropriate. Dr. Cone observed claimant interacting with his ABA teacher and family members. Dr. Cone concluded claimant did not present significant behavioral challenges and recommended parental consulting in behavior management, but no direct services to claimant.

18. On April 22, 2005, the SVUSD conducted an IEP meeting at which claimant's parents requested 30 hours of in-home 1:1 ABA services. The school district denied this request in a letter dated May 25, 2005.

19. RCOC conducted an IPP meeting May 12, 2005. At this meeting it became apparent that RCOC did not have certain clinical evaluations that claimant had received privately. The IPP meeting was rescheduled to May 26, 2005. Claimant requested service agency funding for the existing ABA program, legal representation funded by the service agency at school district due process hearings and a change of claimant's diagnosis from mild mental retardation to autism. Following the meeting, the service agency declined to fund the current ABA services but agreed to fund a functional behavioral analysis. There

was a delay in completing the functional analysis. Although it was authorized on May 26, 2004, it did not happen until September, 2004. Shortly after the agreement to fund the functional analysis, the service agency sent a list of possible vendors to the parents. The parents' attorney accepted IABA as a vendor in a letter dated June 24, 2005 (almost a month after the IPP meeting). RCOC staff made the referral, but IABA indicated there would be some delay in scheduling. The parents were offered the opportunity to choose another vendor who could perform the functional analysis sooner, but instead chose to wait for IABA.

20. On May 26, 2005, the service agency sent a letter denying claimant's request for in-home behavioral services, but authorizing a behavioral functional assessment of the need for parental consulting about behavioral issues.

21. Claimant submitted a timely request for an appeal.

Lori Burch Testimony

22. Lori Burch is a senior service coordinator for RCOC. She is involved in intake and assessment. Claimant was first referred to RCOC in June 2004. RCOC did not do any assessments of claimant at the initial qualification stage. RCOC staff felt there was sufficient information from assessments that had been performed by the school district to determine claimant was qualified for services. Based on these assessments, claimant was given a qualifying diagnosis of mild mental retardation. Although the service agency was aware that claimant also exhibited autistic-like behaviors, the plan was to get him qualified under mild mental retardation to get services in place, then possibly conduct assessments to determine if autism was a factor at a later date. Ms. Burch noted in her intake work that claimant would probably benefit from in home behavioral management.

Patrick Ruppe Testimony

23. Patrick Ruppe is the training and standards coordinator for RCOC. The service agency had been aware that Dr. Brody had diagnosed claimant with PDD-NOS in July, 2004, but a copy of Dr. Brody's report was not given to the service agency until Mid-May, 2005. The service agency acknowledges initial concerns with behavioral issues for claimant. They offered parent training workshops in behavior management. Claimant's parents attended one training workshop. Although the mother had been requesting behavioral services, the records indicate that in October, 2004 she withdrew that request. As a result, RCOC did not follow through on the authorizations for behavioral services.

24. The RCOC records do not reflect that the family notified RCOC when they decided to change schools. There is also no indication the family notified RCOC that they had contracted privately for behavioral management services. The request to RCOC for funding of behavior services came in February, 2005 after the family had an attorney. RCOC began the process of assessing the need for behavioral services. After the attorney got involved the parents revoked their consents for information. RCOC's behavioral services resource group met and determined that Dr. Cone, RCOC's consulting psychologist, should

do a home visit to determine if behavioral services were indicated. Dr. Cone visited the home on April 5, 2005, and did not recommend in-home behavioral services, but recommended a functional analysis and parent consulting with a behavior service provider.

25. At the IPP meeting on May 12, 2005, RCOC learned that there were reports from Dr. Brody and Dr. Bostani. The service agency did not have copies of those reports and wanted to review them before making a decision about claimant's request for in-home behavioral services and a change in diagnosis. The IPP meeting was rescheduled for May 26, 2005. The service agency initiated its own process to do a trans-disciplinary assessment to determine the diagnosis, but denied the request for in-home behavioral services. Mr. Ruppe sent the denial letter to claimant.

26. The delay in conducting the IPP meeting from February 2005 to May 2005 was because the service agency was waiting, at the family's request, for the IEP with the school district, and was requesting information and scheduling the home visit. The family or the attorney did not object at the time to delaying the IPP meeting. Mr. Ruppe does not find this delay to be significant.

27. After the IPP meeting RCOC sent the family information about the vendors available for the functional assessment. The family accepted IABA for the functional assessment in the end of June, 2005. At that time there was a delay in scheduling the functional assessment.

John D. Cone, Ph.D. Testimony

28. John D. Cone is a licensed clinical psychologist and a board certified behavioral analyst. He is a consultant for RCOC, as well as other agencies. Dr. Cone performs various consulting services for RCOC including assessments and evaluation of behavioral services delivery. RCOC currently has 174 open contracts for behavioral services. Approximately 106 of those are for consultative services. This is where the service provider comes to the home and demonstrates behavior management techniques to the family and continues to work with the family to master the techniques. Approximately 13 of RCOC's current cases involve direct services to the consumer. In direct behavioral services, the service provider comes to the home and works directly with the child, usually without much parental involvement.

29. Dr. Cone observed claimant on April 5, 2005, in claimant's home. Dr. Cone was there during an ABA session by the private service provider, AIR. The purpose of this visit was a screening assessment to determine the need for behavioral services and the type of services. He observed claimant for 90 minutes. He did not do any formal assessments.

30. Dr. Cone testified claimant was very compliant with the AIR trainer that was there, but he did exhibit some aggression toward his mother and grandmother. Dr. Cone does not believe this aggression is unusual for a child of claimant's age in either frequency or duration. Claimant also showed some distractibility, but this was also within the normal range for his age. Dr. Cone does not believe claimant needs direct ABA services because his

level of function is too high and he does not exhibit the type of behavioral challenges that require direct intervention. Claimant has made remarkable progress in the school IBI program and is ready to be placed in a group setting where he can model typical children. Dr. Cone testified that parent consultation with an ABA provider is sufficient to help claimant's parents with his behaviors at home. He says the efficacy of a parent consulting model is supported by research.

School District Personnel Testimony

31. Two school district employees gave testimony at the hearing: Mary Dean and Amanda Whittaker-Davis. Ms. Dean is a school psychologist who was employed by SVUSD. She was involved in IEP meetings for claimant in November 2004 and April 2005. In the November 2004 meeting the team noted claimant's remarkable and rapid progress in the IBI program at school. The school personnel wanted to transition claimant from the more intensive IBI program to a less restrictive group setting. The parents objected to that placement and in November, 2004 notified the school district that they had removed claimant from the school program and unilaterally placed him in a typical preschool. Ms. Whittaker-Davis was an intern with SVUSD who was involved in some of IEPs. She testified that the parents continued to express concerns about claimant's behavior at home while he was making remarkable progress at school. Although the parents expressed concerns, they did not request in-home behavioral services. At one point, one of the teachers went to the home to consult with the parents about behavior. RCOC was not invited to the early IEP meetings where the parents' concerns about behavior at home were discussed. Ms. Whittaker-Davis testified that the school district has noted several areas of concern for claimant, including difficulty understanding and reacting to facial gestures and nonverbal communication. This is a common problem for children with autistic characteristics and these skills are addressed in later stages of the IBI program.

Kyle Pontius, Ph.D. Testimony

32. Dr. Pontius is a clinical psychologist who works for RCOC. He conducted a trans-disciplinary assessment of claimant on September 7, 2005, together with a consulting pediatric neurologist. The purpose of the assessment was to determine if claimant's diagnosis should be changed. Dr. Pontius also reviewed reports from other experts and provided his assessment of claimant's needs. Dr. Pontius disagrees with Dr. Bostani's conclusions about claimant. Dr. Pontius (and the neurologist, who did not testify at the hearing) both agree that claimant has challenges common to children with autistic spectrum disorders, but that claimant does not have autistic disorder and is not substantially disabled by his condition.

Anahita Parsi-Renner Testimony

33. Ms. Renner is the founder and clinical director of AIR. She is a board certified behavioral analyst. She supervised the AIR's work with claimant from October 2004 through July 2005, when his parents terminated services. AIR's service included one-to-one direct service in the home and an aide for claimant at his new preschool. She agrees

with the other witnesses that claimant made great progress in the program. She also agrees that he has great potential to have a life similar to a non-disabled individual. She recommended a typical preschool for claimant rather than the program the school district was offering, which included typical and special education children. She believes the program offered by the school district was very similar to an eclectic program that was found in research to be ineffective for autistic children. Ms. Renner does not recommend a consultative program for claimant because it is not intensive enough for his needs. She recommends 1:1 ABA services for at least 25-30 hours per week. A program of only 11 hours per week is inadequate to meet claimant's needs. She was present the day Dr. Cone observed claimant. She notes that claimant's behavior that day showed fewer problems than the AIR trainers normally saw in training sessions. At one point during the session, claimant became extremely distracted by a truck that was outside and went to the window to look at the truck. The AIR trainer had a difficult time redirecting claimant back to the lesson. This was typical behavior for claimant. At the time he was pulled from the AIR program, claimant was at a critical juncture. He was not ready to terminate completely. He had learned how to learn from the environment, but still needed help with his behaviors inhibiting his learning. He needed to learn to generalize his skills to new environments.

Jason Garner Testimony

34. Mr. Garner is a supervisor for CARD, the current provider of behavioral services to claimant. CARD currently works with claimant on his socialization, theory of mind and play skills. CARD is currently providing 10 hours of behavioral services per week: 4 hours at school and 6 hours at home per week. CARD originally was providing 20 hours per week: 4 hours at school and 16 hours at home. The hours were reduced due to the family's financial concerns. The CARD recommendation is for 30 hours per week of direct ABA services: 15 hours at school and 15 hours at home. Claimant currently struggles with conversational language and has difficulty engaging in meaningful play activities. He does not understand social cues and has difficulty with group interaction. Ideally, a child reaches a point where behavioral challenges no longer become a concern and the focus of ABA is on training more complex skills such as social interaction and problem-solving. Claimant has not reached the point where his behavior is no longer a concern. His maladaptive behavior is still an impediment to his learning. Mr. Garner anticipates claimant will need approximately 1½ years of continued ABA training at a minimum of 30 hours per week.

Betty Bostani, Psy.D. Testimony

35. Dr. Bostani was hired by claimant's parents to provide an individual assessment. She is a clinical psychologist who has worked with Dr. O. Ivar Lovaas, recognized as a founder of the ABA approach to teaching children with autistic spectrum disorders. Dr. Bostani spent about 30 hours assessing claimant in November 2004 and April 2005. She observed claimant at home, at the school IBI program and at his preschool. Dr. Bostani diagnoses claimant with autistic disorder. She recommends 40 hours per week of direct ABA, along with 8 hours per month of supervision and 8 hours per month of clinic time. Claimant has the potential to learn to live independently but it is imperative that he receive the appropriate interventions now. While the cost is greater in the short term, the

cost of not intervening appropriately is greater in the long run. Dr. Bostani supports the parents' decision to start ABA for claimant without waiting for the school district or the service agency to approve because services needed to be started as soon as possible. Claimant should be placed in a typical school setting rather than a special education setting. Dr. Bostani believes there is significant evidence that claimant regresses during normal school holidays more than a typical student and therefore should have services in place 52 weeks per year.

Dr. Bostani disagrees with Dr. Cone's opinion of the appropriateness of a parent consultation model for treating children with autistic spectrum disorders. Claimant's behavior issues at home are not due to lack of parental discipline. Dr. Bostani states that the research Dr. Cone relies upon for his opinion in this area does not support the conclusion he reaches. The research suggests that an eclectic program (such as the one offered by the school district) is less effective than an ABA model program. Dr. Bostani believes the AIR and CARD programs are appropriate for claimant.

Claimant's Mother's Testimony

36. Mrs. D. and her husband speak Turkish as their primary language. They speak Turkish and English to claimant at home. Claimant is their only child. He lives with them in a one-bedroom apartment. Claimant shares the bedroom with his parents. Claimant made progress when he was first assigned to the school district IBI program. His parents began to be concerned about the appropriateness of the group class for their son, and began to question school personnel. When the school district offered placement in a special day class in October, 2004, they were concerned that this was not an appropriate placement. The district then offered a structured teaching class as an alternative. The parents observed this class and found the children to be lower functioning than claimant. Several of the people they consulted, including Dr. Bostani and Ms. Renner, recommended placing claimant in a typical class where he could model the higher-functioning behaviors of the typical children. The parents were concerned that in the structured teaching class claimant would imitate the behavior of the lower-functioning children.

They started private ABA services in the home through AIR in November, 2004. AIR initially started with 35 hours per week, which included a school shadow aide. In April, 2005 the parents decreased to 30 hours per week and transferred more hours to school aide time. The parents were having trouble continuing to pay for the behavioral services. The parents ended with AIR on July 25, 2005, and began working with CARD. They started with CARD because its curriculum is more widely recognized to be successful. He started in CARD's therapy program with 20 hours per week. Because of financial concerns, the family has reduced the therapy to 10 hours per week.

She admits that in October, 2004 she withdrew her request for behavioral services from RCOC, but she states she did that because the service coordinator convinced her it would take a long time to get the services established. Based on that information she decided was not worth pursuing behavioral services because her son's behavior seemed to be improving.

At the end of November, 2004, the parents removed claimant from the school district program and placed claimant in a typical preschool. The parents did not tell RCOC that they had moved claimant out of the school program and placed him with a private ABA provider until February, 2005, four months after AIR had started working with claimant. The parents did not see the connection between what was going on at school and services offered by the regional center. After they hired an attorney to help them, the attorney recommended contacting the regional center about paying for the ABA services.

Claimant's parents have attempted to get school district funding for his behavioral services. The school district has denied the funding and the parents have requested a due process hearing. The school due process hearing has not taken place as of the date of the present hearing.

Claimant's parents have spent over \$72,600 through September, 2005 with additional expenses of \$3,400 per month for October and November, 2005.

Evaluation of Need for Direct Behavioral Services

37. Claimant continues to have significant difficulties including aggression, elopement, repetitive mannerisms, perseveration and deficits in social interaction, play skills and learning skills. These skill deficits and behaviors continue to be impediments to claimant's ability to learn and engage in social, community and family interactions. He has significant functional limitations in self-care, expressive and receptive language, learning, self-direction and capacity for independent living.

The experts disagree about where claimant falls on the autistic spectrum.² Whatever the diagnosis, claimant is clearly a child who needs, and benefits from, behavioral services due to the characteristics of his autistic spectrum disorder. He has the potential to be a productive member of society. The evidence in this case establishes that direct ABA has the best potential to help claimant overcome the challenges of his condition and lead a life very close to that of a typical person. There is insufficient evidence to support the conclusion that parental consulting through an ABA provider without direct ABA services has the same or better potential to help claimant.

38. The RCOC experts, Dr. Cone and Dr. Pontius, were not persuasive in their assertion that parental consulting without direct ABA services is "good enough" for claimant. They clearly have a different assessment of claimant's level of function. Dr. Cone describes his assessment as a "screening evaluation" in which he spent approximately 90 minutes with claimant, observed his behavior, interacted with him and did not administer any formal instruments. The result of Dr. Cone's evaluation was to recommend a functional analysis, but that seemed destined only to result in an offer of parental consultation services. Dr. Pontius' evaluation seemed focused on whether claimant should be diagnosed as autistic

² Neither claimant nor RCOC presented any evidence or argument that they consider the current diagnosis of mild mental retardation to be accurate. Instead, the controversy is about where claimant falls on the autistic spectrum.

and did not critically analyze the level of services to be offered. IABA's functional analysis identifies deficits and a need for behavior services, but limits those services to parental consulting. The IABA report's findings do not support its recommendations. RCOC's decision to offer only parental consulting seems driven more by blind adherence to a policy than by consideration for claimant's unique needs.

On the other hand, Dr. Bostani's opinion of claimant's level of function and the need for behavioral services is persuasive. Her assessment was detailed and extensive. Her opinion regarding the number of hours of direct ABA services claimant needs is supported by her evaluation and by her expertise and experience. Anahita Parsi-Renner and Jason Garner both have worked with claimant extensively and their opinions regarding his needs are supported by their expertise and experience.

39. Claimant met his burden of proving that the program offered by Saddleback Valley Unified School District is not adequate to meet his needs, and that he needs 30 hours of direct in-home ABA therapy which may include shadow or other support by the ABA provider during school hours in the educational placement.³ These services should be provided by CARD or, if CARD is unavailable or unable to continue services, by another qualified ABA provider. In addition, the services should include 8 hours per month of supervision and 8 hours per month of clinic time.

Evaluation of Request for Reimbursement

40. RCOC was justified in relying upon claimant's mother's withdrawal of her request for behavioral services in October, 2004. The parents unilaterally placed claimant with a private behavioral service provider in November, 2004. They did not request these services from the school district or RCOC at that time. The first request to RCOC was in February, 2005, after the parents hired a lawyer. All parties agreed at that time it was prudent to wait until after the school district considered claimant's request. In April, 2005 it became clear the school district was going to deny the request. The IPP meeting took place in May, one month later. This delay is not unreasonable under the circumstances.

41. RCOC should have begun funding behavioral services in May, 2005. From May, 2005 through November, 2005, claimant has incurred \$36,503.10 in ABA services that should have been provided by RCOC. These services were less than optimal for claimant because the family could not afford services at the level recommended by the providers. It is manifestly unfair to require the parents to carry the cost of these services. It is therefore appropriate to award additional compensation to claimant for the substandard level of services and the time value of the money the parents have had to pay. This additional amount is covered by the expenses the parents incurred for February through April, 2005 (\$19,608.75). RCOC owes claimant's parents \$56,111.85.

³ Claimant's educational placement is in dispute through a separate administrative hearing process. This Decision is intended to require ABA support in whatever educational placement claimant attends (including private preschool) the extent it is necessary to meet claimant's unique needs.

LEGAL CONCLUSIONS

1. Under the Lanterman Act, California has accepted responsibility to assist the developmentally disabled by providing coordinated services and supports designed to meet the needs and choices of such disabled persons. The services and supports are to foster as much as possible the integration of the developmentally disabled into the mainstream life of the community, and to assist them in approximating the pattern of everyday living available to those who are not disabled. (Welf. & Inst. Code § 4501.)⁴ At the same time, maintenance of the disabled in the family home is made a priority. (§ 4648, subd. (a)(1).)

2. Section 4512, subdivision (b) of the Lanterman Act states in part:

‘Services and supports for person with developmental disabilities’ means specialized service and supports or special adaptations of generic services and support 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 . . . 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’s family, and shall include consideration of . . . the effectiveness of each option of meeting the goals stated in the individual program plan, and the cost-effectiveness of each option. *Services and supports listed in the individual program plan may include, but are not limited to, diagnosis, evaluation, treatment, . . . physical, occupational, and speech therapy, training, education, . . . behavior training and behavior modification programs, . . .* (Emphasis added.)

3. The services to be provided to any consumer must be individually suited to meet the unique needs of the individual client in question, and within the bounds of the law each client’s particular needs must be met. (See, e.g., §§ 4500.5, subd. (d), 4501, 4502, 4502.1, 4640.7, subd. (a), 4646, subd. (a), 4646, subd. (b), 4648, subd. (a)(1) & (a)(2).) Otherwise, no Individual Program Plan would have to be undertaken. It should be noted that a priority is assigned to maximizing the client’s participation in the community. (§ 4646.5, subd. (2); §4648, subd. (a)(1) & (a)(2).)

4. The service agency asserts, in part, that behavioral services are to be provided by the school district as a generic resource and that it is not responsible for providing these services. This is not correct. Special education law is mainly concerned with providing educational services and supports. (See, 34 CFR § 300.26 and Ed. Code § 56031). School districts are required to provide sufficient support services to give the child a basic floor of opportunity. (*Hendrick Hudson Dist. Bd. of Ed. v. Rowley* (1982) 458 U.S. 176). The

⁴ All statutory references are to the California Welfare and Institutions Code unless otherwise indicated.

Lanterman Act requires more. Consumers have the right to services that foster developmental potential, directed toward achievement “of the most independent, productive, and normal lives possible.” (§ 4502, subd. (a).) The regional centers must provide services and supports that allow the consumer to integrate “into the mainstream life of the community” and to “approximate the pattern of everyday living available to people without disabilities of the same age.” (§ 4501. *See also*, § 4648, subd. (a)(1).) There is, then, an area of overlap between school district services and regional center services. Here, claimant’s unique needs require behavioral intervention services to provide him with an educational benefit, but also to allow him to integrate into the mainstream of life through family, social and community interactions. Providing this support to claimant requires more than just behavioral services at school and parent consultation. It requires direct ABA services in the home.

5. The evidence established that to meet claimant’s unique special developmental needs, the service agency is required to fund a minimum of 30 hours of direct in-home ABA services. These hours may include appropriate support services in claimant’s educational setting. Direct ABA services should continue uninterrupted (including during school holidays) for a minimum of six months, after which there can be an evaluation to determine the necessity of continuing the services. This determination is based on Factual Findings 1 through 41 and Legal Conclusions 1 through 5.

6. The evidence established that claimant’s parents have incurred expenses of \$56,111.85 since February, 2005 to provide services to claimant that the service agency should have funded. Claimant’s parents are entitled to reimbursement of this amount. This determination is based on Factual Findings 1 through 41 and Legal Conclusions 1 through 5.

DETERMINATION OF ISSUES

1. The service agency is required to fund 30 hours per week of direct, in-home ABA services from CARD or, if CARD is not available, another qualified ABA provider. These services may include appropriate support services in claimant’s educational setting and shall continue for a minimum of six months.

Claimant’s parents are entitled to reimbursement from the service agency of \$56,111.85.

ORDER

The appeal of claimant M. D. is granted. Regional Center of Orange County shall reimburse claimants parents \$56,111.85.

NOTICE

This is a final administrative decision pursuant to Welfare and Institutions Code section 4712.5, subdivision (b)(2). Both parties are bound hereby. Either party may appeal this decision to a court of competent jurisdiction within 90 days.

DATED: _____

ALAN R. ALVORD
Administrative Law Judge
Office of Administrative Hearings