

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of the Request for Educational  
Consultant Services for:

OAH No. 2011091095

MICHAEL V.

Claimant,

and

SAN DIEGO REGIONAL CENTER,

Service Agency.

**DECISION**

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Diego, California, on January 11, 2012.

Regina V., claimant's mother, represented claimant who was present for part of the fair hearing.

Ron House, Esq., represented the service agency, San Diego Regional Center (SDRC).

Oral and documentary evidence was received and the matter was submitted on January 11, 2012.

**ISSUE**

Should the agency fund claimant's request for educational consultant services?

**FACTUAL FINDINGS**

*Jurisdictional Matters*

1. On September 23, 2011, SDRC served claimant with a notice of proposed action denying funding for an educational consultant for claimant. On September 28, 2011,

SDRC received claimant's request for a fair hearing objecting to SDRC's decision and this appeal followed.

*Evidence Introduced at Hearing*

2. Claimant is a 16-year-old male diagnosed with autism. He testified that he wishes to attend classes and believes he can do well at the Academy.

3. Leanne Downing, claimant's SDRC service coordinator (CSC), testified that she works extensively with transitioning students and is very familiar with claimant's school district. Downing's testimony established that she was well aware of the issues related to claimant's Individualized Education Plan (IEP) and very knowledgeable regarding the IEP process. Moreover, she stands ready, willing and able to participate in claimant's IEPs, has attended them<sup>1</sup> and spoken to claimant's school officials. The evidence did not establish that Downing could not effectively advocate on claimant's behalf to his school district. No evidence was introduced that demonstrated that Downing lacked the skill, training, experience, resources or education to provide educational consultant services to claimant.

4. Claimant's mother testified at length about claimant's educational history and issues that she has had to deal with in the school district. However, while that testimony provided an historical framework, it failed to establish a present need for the requested service, especially in light of Downing's willingness to attend claimant's IEPs and her familiarity with his educational issues and his school district. Additionally, although the evidence established that the Area Board 13 representative was unfamiliar with the issues at a recent IEP meeting and had to leave that IEP early, this fact was insufficient to create an exemption for this service. Furthermore, the school district's alleged failures to comply with claimant's IEP, claimant's mother's requests, and follow through on its promises to provide information or documents to claimant or Downing also did not establish an exemption. In short, claimant failed to demonstrate how an educational consultant at this juncture would be any more successful than Downing and failed to establish that an exemption currently existed. While claimant was most distressed by the school district's purported failures to comply with Education Code requirements, and rightfully so, this was insufficient to establish that an exemption for education consultant services presently existed and claimant has other recourses against the school district for those alleged failures, SDRC's funding an educational consultant based upon the evidence presented here is not one of them.

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<sup>1</sup> Downing attended one IEP in the fall of 2011 and went to the one that had been scheduled in December which was cancelled although no one advised her it had been cancelled. Claimant attended a rescheduled IEP in January but admitted she never let SDRC know about it.

## LEGAL CONCLUSIONS

### *Burden of Proof*

1. In administrative proceedings, as in ordinary civil actions, the party asserting the affirmative generally has the burden of proof, including the burden of persuasion by a preponderance of the evidence. (*McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051-1052.) Claimant had the burden of establishing that SDRC should fund his request for an education consultant.

### *The Lanterman Act*

2. The Legislature enacted a comprehensive statutory scheme known as the Lanterman Developmental Disabilities Services Act to provide 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. (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

3. The Lanterman Act provides 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. (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

4. The State Department of Developmental Services (the DDS) is the public agency in California responsible for carrying out the laws related to the care, custody and treatment of individuals with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4416.) In order to comply with its statutory mandate, the DDS contracts with private non-profit community agencies, known as “regional centers,” to provide the developmentally disabled with “access to the services and supports best suited to them throughout their lifetime.” (Welf. & Inst. Code, § 4620.)

5. A regional center’s responsibilities to its consumers are set forth in Welfare and Institutions Code sections 4640-4659.

6. Welfare and Institutions Code section 4648 not only provides that regional centers obtain programs and services that assist the individual consumer, but also imposes fiscal responsibility on regional centers.

7. Welfare and Institutions Code section 4648.5 provides:

“(a)...effective July 1, 2009, a regional center’s authority to purchase the following services shall be suspended...

...

(3) Educational services for children three to 17, inclusive, years of age.

...

(c) An exemption may be granted on an individual basis in extraordinary circumstances ...when the regional center determines that the service is a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of the consumer’s developmental disability, or the service is necessary to enable the consumer to remain in his or her home and no alternative service is available to meet the consumer’s needs.

*Cause Exists to Deny the Request for Educational Consultant Services*

8. A preponderance of the evidence did not establish that SDRC should fund educational consultant services for claimant as an exemption to fund that service was not established. SDRC correctly determined that claimant is not eligible for educational consultant services at this time.

ORDER

Claimant’s request that SDRC fund educational consultant services is denied. SDRC shall not fund claimant’s request for educational consultant services.

DATED: January 24, 2012

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MARY AGNES MATYSZEWSKI  
Administrative Law Judge  
Office of Administrative Hearings

NOTICE

This is the final administrative decision. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within ninety days.