

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

GOLDEN GATE REGIONAL CENTER,

Service Agency.

OAH No. 2013060391

DECISION

Administrative Law Judge Kirk E. Miller, Office of Administrative Hearings, State of California, heard this matter in San Francisco, California, on July 22, 2013.

Lisa Rosene, L.C.S.W., represented Golden Gate Regional Center (GGRC), the service agency.

Claimant was represented by her father.

The matter was submitted for decision on July 22, 2013.

ISSUES

Is GGRC required to pay for the educational component of the Pathways program?

FACTUAL FINDINGS

1. Claimant, a 19-year old female and a consumer of GGRC services, has been diagnosed with a condition similar to mental retardation. She lives with her parents in San Francisco. Claimant has been a special education student in the San Francisco Unified School District (SFUSD) since November 9, 2009. She received certificates of completion from Star Academy in June 2012 and from Access in May 2013.

2. Claimant did not feel sufficiently challenged academically while attending Access. She tried taking noncredit, remedial classes at San Francisco City College, but did not have the support system she needed to succeed there, and her disability prevented her from making friends and integrating well with other students. Claimant and her parents have not been able to identify a local program that fits her learning and living needs.

3. Claimant would like to continue to study and learn, as well as move out of the family home and live more independently. She has been accepted at a two-year program in Los Angeles called Pathways, which is a UCLA Extension program. Pathways has two components: one is academic, with a regular course curriculum, and the other is supported living. It is designed for students such as Claimant, to provide an independent environment, with a curriculum focused on the practical skills of daily living combined with career exploration.

4. The total annual cost of the Pathways program is \$51,620, of which \$33,400 is for the academic portion and \$18,200 is for supported living, which includes meals. GGRC stipulated at the hearing that Pathways is an appropriate education program for Claimant and it has agreed to pay for the supported living portion of the Pathways program.

5. Claimant is requesting GGRC to pay for the academic portion, as well as the supported living portion of the program. GGRC has denied this request. GGRC sent Claimant's parents a Notice of Proposed Action dated May 23, 2013, which stated in part: "GGRC will not fund the 'Pathway fees' requested by the parents/conservators. [Claimant] is 19 years old and continues to be eligible for state educational services." GGRC asserts that SFUSD or the Department of Rehabilitation (DOR) has an obligation to pay Claimant's education expenses.

6. Claimant's parents argue that because Claimant has received certificates of completion from two secondary schools, SFUSD no longer has an obligation to provide educational resources, and for this reason, there is no legal prohibition preventing GGRC from paying for educational services.

7. Services are provided to regional center consumers based on their needs as reflected in a Person-Centered Individual Program Plan (IPP), as contemplated by Welfare and Institutions Code section 4645.5, subdivisions (a)(6), and (b).¹ Claimant's last completed

¹ Welfare and Institutions Code section 4645.5, subdivision (a)(6), requires that the planning process for each consumer include periodic reviews to ascertain, among other things, that "consumers and families are satisfied with the individual program plan and its implementation." Welfare and Institutions Code section 4645.5, subdivision (b), provides that Individual Program Plan's (IPP's) shall be reviewed, as necessary, in response to a consumer's changing needs. It is the responsibility of the service coordinator to oversee and monitor each IPP. (Welf. & Inst. Code, § 4647, subdivision (b).)

IPP is dated September 3, 2010. At that time, Claimant was still enrolled in Star Academy. Claimant's parents and GGRC have attempted to develop an updated IPP, but during its preparation a dispute arose regarding its terms. The draft IPP is dated April 15, 2013, and does not provide for the funding of the Pathways program.

8. Claimant and the SFUSD developed an Individualized Education Program (IEP) which covers the period between March 9, 2012 and March 9, 2013. The IEP states that Claimant was last evaluated on October 2, 2012 and will next be evaluated on October 2, 2015. Based on the fact that the IEP calls for an evaluation in 2015, GGRC believes that Claimant is now and will continue to be eligible for services from the SFUSD until 2015. For the same reason, GGRC believes that payment for the academic portion of the Pathways program is SFUSD's responsibility, in which case the availability of this generic resource precludes GGRC from paying for the educational portion of the Pathways program. GGRC also asserts that the DOR may have an obligation to pay for the program. (Welf. & Inst. Code § 4646.4, subdivision (a) (2), and 4648 subdivision (a)(8).)

9. Neither Claimant's parents nor GGRC have made a request to SFUSD or to DOR to pay for the academic portion of Pathways. GGRC did not advise Claimant prior to the hearing of its position that SFUSD or DOR are responsible for payment of the Pathways program.

10. Claimant has cited as a basis for her position a decision issued by an administrative law judge in the San Diego Office of Administrative Hearings, which also involves regional center payment for the Pathways program. The decision has been considered, but does not create a legal precedent. Every case must be decided on its particular facts and applicable law.

LEGAL CONCLUSIONS

1. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act (Act). (Welf. & Inst. Code, § 4500, et seq.)² The purpose of the 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.)

2. The Act directs regional centers to develop and implement an IPP for each individual who is eligible for regional center services. (Welf. & Inst. Code § 4646.) The IPP states the consumer's goals and objectives and delineates the services and supports needed by the consumer to implement her goals and objectives. (Welf. & Inst. Code §§ 4646, 4646.5,

² All citations are to the Welfare and Institutions Code unless otherwise indicated.

4512, subd. (b).) Each consumer is assigned a service coordinator, who is charged with the task of implementing, and monitoring each IPP. (Welf. & Inst. Code § 4647.)

3. While regional centers have a duty to provide a wide array of services to consumers, they are also directed by the Legislature to provide the services in a cost-effective manner. (Welf. & Inst. Code § 4640.7, subd. (b).) Accordingly, regional centers may not fund duplicate services that are available through another public agency. The prohibition often referred to as “supplanting generic resources,” is contained in section 4648, subdivision (a), which states:

Regional center funds shall not be used to supplant the budget of any agency which has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services.

Towards this end, regional centers must identify and pursue all possible sources of public funding for services, including funding that may be available from school districts.³ (Welf. & Inst. Code § 4659, subd. (a)(1).)

4. In this case, the SFUSD is a generic resource which may have an obligation to provide appropriate education to Claimant until she reaches the age of 21. Education Code section 56026 describes the obligation a school district has to provide appropriate education to students with intellectual disabilities as follows:

“Individuals with exceptional needs” means those persons who satisfy all the following:

- (a) Identified by an individualized education program team as a child with a disability, as that phrase is defined in Section 1401(3)(A) of Title 20 of the United States Code.
- (b) Their impairment, as described by subdivision (a), requires instruction and services which cannot be provided with modification of the regular school program in order to ensure that the individual is provided a free appropriate public education pursuant to Section 1401(9) of Title 20 of the United States Code.
- (c) Come within one of the following age categories:
 - (4) Between the ages of 19 and 21 years, inclusive; enrolled in or eligible for a program under this part or other special education program prior to his or her 19th birthday; and has not yet completed

³ Generic services may include educational services if they are provided by a governmental entity or program that is required to pay the cost of such services, such as a school district. (Welf. & Inst. Code § 4659, subd. (a).)

his or her prescribed course of study or who has not met proficiency standards or has not graduated from high school with a regular high school diploma.

5. With respect to such students, the school district is required to prepare an IEP for each covered student.⁴ Claimant's IEP is dated October 2, 2012 and was due to be updated on March 9, 2013. Claimant and her parents are not satisfied with the October 2, 2012 IEP.

6. Among the activities a regional center is required to conduct is, "advocacy for, and protection of, the civil, legal, and service rights of persons with developmental disabilities..." (Welf. & Inst. Code, § 4648, subd. (b).) A regional center is to provide each consumer with a designated service coordinator who is responsible for providing services or for ensuring that needed services are available. (Welf. & Inst. Code, § 4640, subd. (b).) The work of the service coordinator shall include securing services and supports. Generic agencies are among the sources from which a service coordinator is to secure services and supports. (Welf. & Inst. Code, § 4648, subd. (a)(8).) The regional center has an affirmative obligation to assist Claimant in determining what education services SFUSD, DOR or any other source identified will purchase, and assist her in obtaining these services.

7. GGRC does not presently have a statutory obligation to pay for the academic portion of Pathways, because other generic resources have been identified. Nonetheless, GGRC continues to have an obligation to advocate for and assist Claimant to seek from SFUSD or DOR the educational services she requires. If it is determined that the neither SFUSD, DOR or any other source are legally mandated to pay for the academic portion of the Pathways program, then Claimant may renew her request to include this benefit in her IPP, by requesting an IPP review.

8. Any contentions raised by the parties and not discussed above have been found to be without merit and are hereby rejected.

⁴ Education Code section 56340 provides: "A local educational agency shall initiate and conduct meetings for the purposes of developing, reviewing, and revising the individualized education program of each individual with exceptional needs in accordance with Section 300.323(c) of Title 34 of the Code of Federal Regulations."

ORDER

Claimant's appeal requesting GGRC to pay for the academic portion of the Pathways program is denied. GGRC shall assist Claimant to obtain payment for appropriate educational services from SFUSD, DOR, or any other resource identified.

DATED: August 1, 2013

KIRK E. MILLER
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision; both parties are bound by the decision. Either party may appeal the decision to a court of competent jurisdiction within 90 days.