BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: EVANN C., Claimant, vs. EASTERN LOS ANGELES REGIONAL CENTER, Service Agency.	OAH Case No. 2013080741

DECISION

This matter, consolidated for hearing with OAH Case number 2013080742, involving the same parties, came on regularly for hearing before Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, on October 17, 2013, in Alhambra, California.

Margarita Duran, Supervisor, represented Service Agency.

Victoria Baca, Educational Consultant, represented Claimant Evann C.[1]

Oral and documentary evidence was received at the hearing. The record was left open for Claimant to submit the latest Individualized Education Program Plan (IEP) and for Service Agency to object to the receipt of the IEP. On October 25, 2013, Claimant submitted two documents, the latest IEP, prepared after a meeting on April 29, 2013, and worksheets associated with the IEP, which documents have been marked as Exhibit B. Service Agency did not object to the receipt of Exhibit B by the November 1, 2013 deadline, and the document has been received in evidence.

The matter was submitted for decision on November 1, 2013.

[1] Initials have been used in lieu of surnames to protect Claimant's and his family's confidentiality.

ISSUE

Should Service Agency fund speech and language services for Claimant when school is not in session?

FACTUAL FINDINGS

1. Claimant is a 16-year-old Service Agency consumer with a diagnosis of autism. He resides at home with his mother and his 19-year-old brother.

2. Claimant is able to use a few simple words, but his speech is difficult to understand. He uses a communication device to communicate. He requires prompting to perform most daily living activities, and requires supervision for his own safety. He engages in certain disruptive behaviors, including frequent screaming, touching the ears of others, and repetitive pacing. He is five-feet, five-inches tall and weighs 176 pounds, and his actions can be intimidating to those not familiar with him.

3. Claimant attends Elliott Institute (Institute), a certified nonpublic school in the Los Angeles Unified School District (District). Institute provides an integrated educational program for students with special needs from kindergarten through high school. Claimant is in the ninth grade and receives special education services, including language and behavior services.

4. On June 28, 2012, Claimant, who was also represented by Ms. Vaca, and Service Agency entered into an agreement to settle a then-pending fair hearing request regarding the funding of speech and language services when school was not in session, or, as it has also been referred, during the extended school year (ESY). The agreement provides, in its entirety, as follows:

"[Eastern Los Angeles Regional Center (ELARC)] and parent have come to an agreement on the matter of speech therapy. ELARC will fund for 6 weeks of speech therapy for summer 2012. Evann will attend 20 days of ESY. The 6 weeks of speech therapy funded by ELARC is to cover the 'gap' when Evann is not in school. ELARC agreed to fund speech therapy in summer 2012 upon parents agreement to: 1. call an IEP to request the school to fund for speech therapy during the 'gaps', 2. inform ELARC [service coordinator (SC)] of the date of the IEP and allow SC and/or another ELARC staff to attend the IEP in order to advocate for school funding during these 'gaps', 3. complete due process with the school if school denies the service. Additional details and procedures will be worked out between ELARC and parent internally." (Exh. 4, at p. 2.)

5. In accordance with the settlement agreement, Claimant's mother asked for an IEP meeting, which was held on April 29, 2013. As also required by the agreement, Service Agency staff, Education Specialist Mary Hosokawa and Service Coordinator Albert Barajas (Barajas), were present at the meeting and argued for District funding of speech therapy during the ESY. The District agreed to fund the services only during the portion of the summer that the Institute is open.

6. Summer school at the Institute concluded in June 2013, and the new school year started in August 2013. Claimant did not receive speech and language services from the Institute or from the Regional Center during the gap between the end of summer school and the start of the new school year. No clinical or persuasive evidence was presented regarding any regression or other adverse impact on Claimant's development because he did not receive the services during the summer of 2013.

7. On October 9, 2013, Claimant's mother filed an appeal of the District's denial of additional funding for speech and language services for periods the Institute is not in session.

8. Service Agency does not dispute Claimant's need for speech and language services but asserts that providing the services is the District's responsibility. On April 30, 2013, Service Agency issued a Notice of Proposed Action denying a request to fund speech and language therapy services during the ESY. It cited the settlement agreement regarding funding of this service and the lack of progress in pursuing funding from the District. Claimant's mother filed a fair hearing request on July 29, 2013.

LEGAL CONCLUSIONS

1. In enacting the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code section 4500 et seq., the Legislature accepted its responsibility to provide for the needs of developmentally disabled individuals and recognized that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (Welf. & Inst. Code, § 4501.) The Lanterman Act gives regional centers, such as Service Agency, a critical role in the coordination and delivery of services and supports for persons with disabilities. (Welf. & Inst. Code, § 4620 et seq.) Thus, regional centers are responsible for developing and implementing individual program plans, for taking into account consumer needs and preferences, and for ensuring service cost-effectiveness. (Welf. & Inst. Code, §§ 4646, 4646.5, 4647, and 4648.)

2. In this case, Claimant, through his authorized representatives, and Service Agency entered into a settlement agreement to resolve a pending dispute regarding funding of speech and language services. On June 28, 2012, Service Agency agreed to fund the services

for one year, subject to Claimant's mother's seeking funding from the District and completing a due process appeal if the District did not agree to the fund the services. Service Agency fulfilled its obligation under the agreement by funding the services during the 2012 summer. Service Agency also provided advocacy for District funding of the services. However, Claimant's mother did not appeal the District's denial of funding of the speech services for the 2013 summer until October 9, 2013, after the end of the period at issue and after start of the current school year. Service Agency fulfilled its end of the bargain, and cannot be required to fund the services for the summer of 2013 or, more properly since the summer has ended, to provide compensatory services for the missed services.

ORDER

Claimant's appeal is denied.

Dated: November 14, 2013

_____/s/_____
SAMUEL D. REYES
Administrative Law Judge
Office of Administrative Hearings

NOTICE

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