

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

**SONNIE L.**

Claimant,

vs.

**FRANK D. LANTERMAN REGIONAL  
CENTER,**

Service Agency.

OAH Case No. 2011110904

**DECISION**

Chris Ruiz, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter at the Frank D. Lanterman Regional Center (service agency or RC) in Los Angeles, California, on December 19, 2011.

Hector L. (Father) was present and represented Sonnie L. (Claimant).<sup>1</sup> Father is Claimant's foster parent, legal guardian, and uncle.

Pat Huth, Esq., represented the RC. Also present were Delmy Fernandez, Service Coordinator, and Sam Suzuki, RC Manager.

Oral and documentary evidence was received and argument made. The record was closed and the case was submitted for decision on December 19, 2011.

**ISSUE**

The parties stipulated that the following issue is to be decided by the ALJ:

Shall the RC be allowed to discontinue funding for speech therapy (ST) and occupational therapy (OT) for Claimant?

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<sup>1</sup> Claimant and his family are referred to by their initials or family titles to protect their privacy.

## FACTUAL FINDINGS

1. Claimant is a 7-year-old boy, born December 2, 2004, who is a consumer of the RC because of his diagnosis of autism.
2. On October 28, 2011, the RC sent Claimant a letter which stated that funding for OT and ST would be discontinued within 30 days. Claimant filed a Request for Fair Hearing dated November 7, 2011.
3. RC presently funds OT, ST, and Applied Behavior Analysis therapy (ABA) for Claimant. The funding of ABA is not at issue. RC presently funds two hours per week of both ST and OT, as well as 10 hours per week of ABA.
4. Claimant was eligible to enroll in the first grade as of September 2010. However, Claimant did not enter first grade until September 8, 2011. Prior to September 2011, Claimant was not enrolled in any school, such as kindergarten. Claimant is presently enrolled at a school within the Los Angeles Unified School District (LAUSD).
5. Claimant's Individualized Education Plan (IEP) for first grade has not yet been completed. In February 2011, Claimant requested that an IEP meeting be held. The record is unclear as to why an IEP meeting was not held until after Claimant was enrolled in first grade in September 2011, approximately seven months after Father made his request to LAUSD. However, there is a prior IEP agreed to between Father and LAUSD in December 2007. This agreement is more fully set forth in Factual Finding 12.
6. In June 2010, by way of a mediation agreement (agreement), in OAH case number 2010011233, the parties agreed that RC would fund ST and OT, both at a rate of two hours per week. This funding was to continue "until December of 2010 or when Claimant reaches a resolution regarding those services with the Los Angeles Unified School District, whichever occurs first." Father also agreed to accept a referral by RC to the Whittier Law School (WLS) special education clinic. Father agreed to "reasonably cooperate with their (WLS) efforts." RC expected that Claimant would be enrolled in school in September 2010, because Claimant was approximately five years and nine months of age. It was not established why Claimant was not enrolled at that time. Nor was it established that Father delayed enrolling Claimant in school in September 2010 in order to keep receiving services from the RC, rather than potentially transferring the provision of OT and ST from RC to LAUSD.
7. Father, at times, attempted to cooperate with WLS and RC regarding the objective of having LAUSD provide ST and OT to Claimant. WLS relies on law students who are only available as their schedule permits, and Father has had to deal with a number of students as those involved conclude their work at WLS. At other times, Father has not timely responded to phone calls from WLS. Thus, there has been limited communication between Father and WLS. Additionally, Father and RC have not had good communication. RC personnel generally call Father and leave a voicemail message for him. Father does not

always timely respond to phone calls from RC. And, at times, he returns RC's phone calls after five p.m., when RC personnel are unavailable. There have also been times when RC personnel have been unavailable due to work schedules and/or because of the necessity to provide services to other consumers.

8. After the agreement in June 2010, Father was referred to WLS by RC. In late 2010, WLS closed its file because Claimant was not enrolled in school in September 2010, as RC and WLS had expected. In January 2011, RC again referred Father to WLS, in anticipation of Claimant being enrolled in school in September 2011.

9. Without the RC's approval, Father arranged that the ST and OT services funded by RC be provided to Claimant at Claimant's school. Claimant offered exhibit 17 as evidence that he had RC's approval for such an arrangement. Exhibit 17 indicates Claimant's intention, but does not establish that RC approved said arrangement.

10. On September 20, 2011, Father was notified that LAUSD was going to hold an IEP. The IEP meeting was scheduled for October 10, 2011. Thereafter, Father called WLS regarding the IEP meeting date and Father requested WLS's assistance at that meeting. On October 7, 2011, a WLS student informed Father that he (the student) could not appear and assist Father at the October 10, 2011 IEP. The IEP meeting was conducted on October 10, 2011, and Father met with LAUSD personnel. Father testified that he was informed by LAUSD on that date that LAUSD "would look at it in January 2012" in reference to Claimant's special education needs. When questioned as to why he did not immediately contact WLS or the RC regarding LAUSD's delay after the October 10, 2011 IEP meeting, Father initially stated that he was "too busy" from October 10, 2011, through November 28, 2011, to contact WLS or RC. Thereafter, Father testified that he contacted Delmy Fernandez on November 7 and 28, 2011, concerning LAUSD's delay. However, Ms. Fernandez's "consumer transaction" notes, kept on her computer each time a consumer or their representative calls, established that Father did call on November 7, 2011, to request tickets to Disneyland. However, on that date, Father also informed Ms. Fernandez that an IEP meeting had not yet taken place, but that an IEP was scheduled for November 14 or 15, 2011. Both of Father's statements were factually incorrect. It was also established that Father did not contact RC on November 28, 2011. Father's misstatements established his desire to keep the status quo in place. That is, Father wants the RC to continue funding ST and OT for Claimant at Claimant's school. It was also established, based on Father's misstatements, that Father has not reasonably cooperated in attempting to transition the funding responsibility for OT and ST from RC to LAUSD.

11. Generally, a school district has 15 days from the date of a parent's request to do an assessment plan concerning the need, or lack thereof, for special education services, and 60 days to do an assessment(s) regarding said services.

12. The most recent IEP that was agreed to by Father and LAUSD occurred in December 2007. The IEP stated that Claimant eligible for services at age 3 and offered Claimant the following services: ST at a rate of between one hours and three hours per week;

OT at a rate of 30 minutes per week; and placement in a pre-school “mixed” class. Father could have insisted that LAUSD implement these services at or before the time Claimant entered first grade.

### LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. and Inst. Code, §§ 4500 et seq.)<sup>2</sup> A state level fair hearing to determine the rights and obligations of the parties, if any, is referred to as an appeal of the service agency's decision. Claimant properly and timely requested a fair hearing and therefore jurisdiction for this case was established. (Factual Findings 1-2.)

2. Where the service agency seeks to discontinue funding for a service previously agreed to by the service agency, the burden is on that service agency to demonstrate the service agency's decision is incorrect. In this case, RC had the burden of establishing that its proposed termination of funding for Claimant’s OT and ST is appropriate. RC carried its burden. (Factual Findings 1-12.)

3. Section 4501 requires the state, through the regional centers, to provide an array of services and supports which is sufficiently complete to meet the needs and choices of each person with developmental disabilities. These are services and supports that will allow them, “regardless of age or degree of disability, and at each stage of life” 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.” Persons with developmental disabilities have the right to treatment and habilitation services and supports which foster the individual’s developmental potential and are “directed toward the achievement of the most independent, productive and normal lives possible.” The regional centers will work with consumers and their families to secure “those services and supports that maximize opportunities and choices for living, working, learning and recreating in the community.” (§ 4502.)

4. Section 4646.5 defines the content of the planning process for the Individual Program Plan (IPP). It must include a statement of goals based on the consumer’s needs and time limited objectives for implementing the goals. The goals and objectives should maximize opportunities for the consumer to develop relationships, be part of community life and to develop competencies to help accomplish the goals. The IPP process must also include a schedule of the type and amount of services and supports to be purchased by the regional center or obtained from generic agencies or other resources in order to achieve the IPP goals and the identification of the providers of services.

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<sup>2</sup> All further statutory references are to the Welfare and Institutions Code.

5. Section 4646 states:

(a) It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual . . . . It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program, reflect the preferences and choices of the consumer, *and reflect the cost-effective use of public resources. (Emphasis added.)*

(b) The individualized program plan is developed through a process of individualized needs determination . . . .

6. Section 4648 describes what the regional center must do in order to achieve the stated objectives of the IPP. In securing the needed services and supports for a consumer the regional center must find services that are flexible and individually tailored to the consumer. By vendorization or contract the service agency may purchase services from any individual or agency the regional center and consumer determines will best accomplish all or any part of the IPP.

7. Services provided must be cost-effective (§ 4512, subd. (b)), and the Lanterman Act requires the regional centers to control costs so far as possible, and to otherwise conserve resources that must be shared by many consumers. (*See, e.g.*, §§ 4640.7, subd. (b), 4651, subd. (a), 4659, and 4697.) However, section 4659 specifies that it shall not be construed to impose an additional liability on the claimants with developmental disabilities nor to restrict eligibility for or deny services to a consumer who is unable to pay. To be sure, the obligations to other consumers are not controlling in the decision-making process, but a fair reading of the law is that a regional center is not required to meet a claimant's every possible need or desire, in part because it is obligated to meet the needs of many claimants.

8. There is nothing in the Lanterman Act which gives consumers the right to choose that a RC provide services in lieu of an available generic service. In this case, LAUSD is the available generic service. (Factual Findings 1-12.)

9. Although regional centers are mandated to provide a wide range of services to facilitate implementation of the IPP, they must do so in a cost-effective manner (§§ 4640.7, subd. (b), § 4646, subd. (a)). A regional center is not required to provide all of the services which a client may require, but is required to “find innovative and economical methods of achieving the objectives” of the IPP (§ 4651). They are specifically directed not to fund duplicate services that are available through another publicly funded agency. This directive is often referred to as “supplanting generic resources.” Where a service is available elsewhere, the regional center is required to “identify and pursue all possible sources of

funding . . .” (§ 4659, subd. (a)). However, if a service specified in a client’s IPP is not provided by a generic agency, the regional center must fill the gap (i.e., fund the service) in order to meet the goals set forth in the IPP (§ 4648, subd. (a)(1); *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 390)). Generally, if a school district fails to provide necessary services, a consumer can ask a regional center to “fill the gap” until the school district agrees to, or is compelled, to provide said services. However, in this case, it was established that Claimant has had sufficient time to obtain OT and ST services from LAUSD. Father bears the majority of the responsibility for the delay. (Factual Findings 1-12.)

10. The overall evidence established that Father is a caring and concerned parent. However, while WLS has been unable at times to assist Father, it was also established that Father did not always timely respond to WLS’s or RC’s inquires to Father. Father had a responsibility to timely seek services from LAUSD. Father had at least from February 2011 until September 2011 to seek services from LAUSD. When WLS did not timely assist Father, he should have immediately notified RC of the issue with WLS. While it is understandable that Father is satisfied with the services presently being funded by RC, he knew, or should have known, that once Claimant entered LAUSD those services should have been provided by LAUSD. This is especially true given that the most recent IEP agreement found Claimant eligible for services in 2007. Instead, Father coordinated services funded by RC to be provided to Claimant at his school. While there has been a lack of direct communication between Father and WLS and RC, Father has had ample time to seek the services at issue from LAUSD. The mediation agreement of June 2010 clearly indicates an agreement between the parties to request the transfer of funding responsibilities, for OT and ST, from RC to LAUSD once Claimant entered school. Father has had over a year from the June 2010 mediation agreement to request and obtain said services from LAUSD. The RC is has made reasonable efforts to assist Father in dealing with LAUSD. Had Father consistently pursued LAUSD services and notified RC that WLS was ineffective, his contention that he had reasonable cooperated would have been viewed more favorably. (Factual Findings 1-12.)

### ORDER

Claimant Sonnie L.’s appeal of Frank D. Lanterman Regional Center’s determination that funding for speech therapy and occupational therapy should be terminated is denied.

IT IS SO ORDERED.

DATED: January \_\_\_, 2012.

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CHRIS RUIZ  
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 90 days.