



California's protection & advocacy system
Toll-Free (800) 776-5746

Regional Center Hearing Packet

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These materials will help you prepare for your regional center hearing. This guide applies to regional center consumers who are 3 years old and older.

There is a different hearing process for Early Start consumers (age birth to three). The Early Start program provides early intervention services and supports for children younger than 3 years old. Children qualify for Early Start because of developmental delays in the areas of cognitive development, physical development, language and speech development, social or emotional development, or self-help skills. Please see our Fact Sheet on Early Start Services to learn your hearing rights in Early Start. For other information about Early Start and your rights, visit: <http://www.disabilityrightscalifornia.org/pubs/F05701.pdf> and read Chapter 12 of Disability Rights California's *Special Education: Rights and Responsibilities* manual.

Section One – Appealing a Regional Center Decision: a practical step-by-step guide to appealing regional center services denials, terminations or reductions.

Section Two – Appendices: charts, sample documents, and hearing decisions.

This manual addresses the person whose services are being denied, terminated, or reduced or the person representing him or her as “you.”

We hope that you find this information helpful. If you have questions or need more help, contact Disability Rights California (800) 776-5746 or your local Office of Clients' Rights Advocacy (800) 390-7032.

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Chapter 1 – Introduction

You have a right to appeal if:

1. You are a regional center client who asked for a new service and the regional center said “no”;
2. The regional center wants to reduce or take away a service you already get; or
3. The regional center says you are not eligible for services.

This manual gives you information about how to appeal and what to expect during the appeal. If you are appealing a denial of eligibility, number 3, please see our Regional Center Eligibility Hearing Packet, at <http://www.disabilityrightsca.org/pubs/557301.pdf>

You may want to ask for a hearing if you disagree with a reduction, change, or denial of a service that you think you need from the regional center. An administrative hearing is not the same as going to court, and it is nothing to be afraid of. An administrative hearing is sometimes called a “fair hearing.” These hearings are usually held inside a room in or near the regional center. The judge for the hearing is called an “administrative law judge.”

The section on hearings below explains how you can ask for a hearing and the hearing process.

Chapter 2 – The Hearing Process

Adequate Notice

If the regional center wants to deny, reduce, or end a service, the regional center should schedule an Individual Program Plan (IPP) meeting. You have a right to get a written notice of action (NOA) if the regional center says “no” to what you want. The regional center notice must tell you what it plans to do and which laws allow it to make its decision. This information helps you decide if you should appeal, and it helps you prepare for your hearing. The notice must say:

- What the regional center will do;
- Why the regional center is doing it;

- When the regional center is doing it;
- The law, rule, or policy that lets them do it;
- How and where to file an appeal;
- The deadlines for filing an appeal;
- Information about what happens in the appeal process;
- How to review your regional center records, and
- Where to get advocacy help.

Once you receive the NOA, you can file for hearing if you disagree. If the regional center denies, reduces or terminates a service without giving you notice, you can still appeal - you do not need a NOA in order to appeal. You just need to fill out a Fair Hearing Request Form, which can be found at <http://www.dds.ca.gov/Forms/FairHearing/DS1805.pdf>.

Filing for Hearing

To file for hearing, fill out and send in the Fair Hearing Request Form that the regional center sent with your NOA. Send your request for hearing request to your regional center. If you are not sure who to send it to, send it to both your regional center and the Office of Administrative Hearings at 2349 Gateway Oaks Drive, Suite 200, Sacramento, CA 95833 or fax it to (916) 376-6318.

Keeping your Services While you Appeal (“Aid Paid Pending”)

If the regional center tries to change the services you already get, you have the right to keep the services the same while you appeal. You must appeal within 10 days of the date you received your NOA to keep your services from changing. This is called “aid paid pending.” If you ask for a new service and the regional center says “no,” you do not have a right to aid paid pending.

Informal Meeting

When you file the Fair Hearing Request Form, you can ask for an informal meeting and/or a mediation before the hearing. The informal meeting is the first step in the hearing process. It is a meeting between you (and your representative, if you have one) and a regional center representative. The purpose is to resolve the issue or at least narrow down the issues for the hearing. This is your chance to meet with a regional center administrator and persuade him or her to give you the service you need. You do not have to have an informal meeting. If you ask for one, the regional center must provide one. A Fair Hearing Timeline Flow Chart is included in Appendix A.

Within 5 working days after an informal meeting, the regional center must send you a written decision. The written decision must list the issues discussed at the meeting. The decision must state the regional center's decision on each issue, the facts supporting each decision, and the laws, regulations and policies that the regional center used to make its decision. It must also tell you how you can appeal the decision.

If you agree with the regional center's decision after your informal meeting, you can withdraw your request for a hearing. Do this by filling out the "Notification of Resolution" form that the regional center provides. The decision will go into effect 10 days after the regional center receives the "Notification of Resolution" form.

If you disagree with the regional center's decision after your informal meeting, you can continue with the scheduled mediation or a hearing. You do not have to accept the regional center's decision.

Mediation

If you disagree with the informal decision, the next step is mediation. You or the regional center may decide not to participate in mediation. Many regional centers do not participate. If you ask for a mediation and the regional center says "no," then the next step is a fair hearing.

A mediation is a meeting where an independent, trained mediator meets with you and a regional center representative. It takes place within 30 days of your request for hearing. The mediator tries to find common ground and new solutions. The mediator has no power to force an agreement. If you reach an agreement, you sign an agreement document and the appeal process stops. If you do not reach agreement, you go to fair hearing.

Everyone should consider using mediation. Mediation is often a good idea because it gives you and the regional center another chance to reach an agreement. However, it does take some time. The mediator is independent, and will try to help you reach an agreement. Even if mediation does not work for you, you will have more information about the regional center's case. That information can help you at your fair hearing. If you think there is no hope for an agreement, you can decide NOT to mediate. This is called "waiving mediation." But, many people who think there is no hope for an agreement end up reaching an agreement in mediation. If you or the regional center waive mediation, make sure you are ready for your hearing. Your hearing may be scheduled sooner than if you go to mediation.

Motions

A motion is a request to the administrative law judge to decide something before the hearing. Examples of motions include motions to dismiss based on applicable statutes of limitations or motions to void subpoenas. You can file motions. The regional center can also file motions.

The Administrative Procedure Act ("APA") does not apply to regional center hearings, but it might be a useful guide for responding to motions. The APA can be found at <http://www.dgs.ca.gov/oah/GeneralJurisdiction/APAHearings.aspx>.

Some regional centers have filed motions to dismiss a case. A motion to dismiss asks the judge not to allow the hearing because you do not have a right to a hearing. This kind of motion is rare. It is also contrary to the law, which guarantees your right to a hearing. The only exception is when there

is no factual issue at all, for example, if the law said that no one is ever eligible for a certain service anymore, regardless of their needs.

Fair Hearing

The last step in the appeal process is the fair hearing. It takes place within 50 days of your hearing request unless someone asks for a delay for good cause. You and the regional center must send each other your exhibits (evidence) and a list of witnesses 5 calendar days before your fair hearing. The hearing is held before an Administrative Law Judge (ALJ) from the Office of Administrative Hearings (OAH). At the hearing, the regional center has to present its case first. The ALJ will issue a written decision about 10 days after the hearing.

Continuance (Postponement)

Either you or the regional center may ask for the hearing or mediation date to be changed. To postpone the hearing date, you file a “Motion for Continuance of Hearing and Waiver of Time.” Here is the link to the motion form: http://www.documents.dgs.ca.gov/oah/forms/DDS_RFC_Form.pdf

The form has a space where you need to explain why you need to delay the hearing. OAH will grant a continuance if “good cause” is shown. You may also attach any documents that support your need for a continuance.

The form tells you to call the regional center representative and ask if he or she will agree to continue the hearing. In the space provided, you should write the name and phone number of the regional center person that you spoke with. Then, select whether the person has agreed to or opposed the continuance. You should ask the regional center person for a fax number or email address to send the completed form for him or her to sign.

You or your representative should sign the section entitled, “Waiver of the Time Set by Law for Lanterman Act Fair Hearing and Decision.” In order to be granted a continuance, you must agree to “waive” the hearing timelines. This means that you are agreeing for the hearing to happen later than 50 days after your fair hearing request.

Remember to fax or email the form to the regional center representative and ask him or her to sign. After the form is signed, you should fax it to OAH. Use the fax number for the area where the hearing will take place:

OAH Sacramento: 916-376-6318

OAH Los Angeles: 916-376-6395

OAH San Diego: 916-376-6325

OAH Oakland: 916-376-6323

If you do not have enough time to send a written motion, you may try calling OAH and asking for a continuance over the phone. After you file the motion to continue the hearing, you may check the OAH website to see whether the motion has been granted:

<http://www.dgs.ca.gov/oah/GeneralJurisdiction/Continuances.aspx>

You will need to enter your OAH case number in order to perform the search.

Consolidation

Consolidation is when two or more cases with issues or facts in common are heard at the same time by the same judge. You can ask for consolidation. OAH can also ask to consolidate two or more cases. If you do not feel comfortable agreeing to consolidation, you can say “no.” The judge will decide whether to consolidate the cases based on the Lanterman Act and the circumstances of the cases.

Interpreters

If you or a witness needs an interpreter, contact OAH right away. OAH will provide a certified interpreter at no cost.

Accessibility of the Hearing Location

Hearing locations must be accessible to persons with disabilities. You should check with OAH in advance to be sure the location is accessible. If a person with a disability needs a reasonable accommodation to attend the hearing, contact OAH as soon as possible so that OAH can make the arrangements.

Getting a Different Judge

Not all judges are the same. You need to learn about your judge before the hearing. You may be able to get a different judge if the one assigned to you has a history of bias or prejudice. You do this by filing a motion to recuse the judge. A sample request to change judges is included in Appendix B.

To find information about the judge assigned to your case, log onto the website for OAH at

<http://www.dgs.ca.gov/oah/GeneralJurisdiction/Calendar.aspx> (general jurisdiction calendar) and enter your case number. The judge will be assigned close to the hearing date. Then, go to the link at

<http://www.dgs.ca.gov/oah/DDS Hearings/DDS Decisions.aspx> and enter the judge's name. You will see a list of the cases the judge has decided. Read some of the cases to see if this is a judge who you want to decide your case. If not, then file a motion to recuse the judge. Simply send or fax the motion to recuse to OAH. Provide your contact information. If you do not hear from OAH, then call OAH before the hearing to find out whether your request was granted. Normally, the request will be granted.

Chapter 3 – Preparing for Hearing

Determining Your Legal Argument

Your legal argument is the law you are relying on to show you qualify for the service you and the regional center disagree about, and the facts that support your claim. To prepare your legal argument:

- Review the law that supports your position.
- Search for and read previous Fair Hearing decisions at the following link: <http://www.dgs.ca.gov/oah/DDSHearings/DDSDecisions.aspx>.

Preparing Your Evidence

Evidence is the facts that support your claim. Evidence includes documents and testimony by witnesses. You should only use evidence that is relevant. Evidence is relevant if it helps to prove that you are eligible for the service the regional center denied, tried to reduce, or tried to take away.

Collecting Written Evidence (Documents)

You should gather any written evidence that supports your legal argument. Some examples of evidence include:

- A description of the service;
- Your IPP that describes the goals of the service;
- Psychological reports or assessments that show you need the service;
- Resumes of the staff with specialized training;
- Progress reports from the service provider; and
- Declarations from staff or other people about the service.

You can ask for records from schools, health providers, and government agencies that might have helpful information. Do not wait to request records. Gathering documents often takes longer than you think.

Other than the documents that already exist, you may need to get additional documentary evidence to support your case, such as an assessment report by an expert. You can ask people who know about you to write letters or declarations. A judge might give more weight to information from a person who is at the hearing as a witness than a person who writes a letter or declaration.

You have a right to see any records in your regional center file, including records the regional center got from outside agencies or individuals. The regional center must give you access to your records within three working days after you ask to see them. If you want, the regional center must also help you understand your records. If the regional center file contains documents that help to prove your case, you should include them in your evidence. Do not assume that the ALJ will have them because the regional center has them. The ALJ only sees the evidence that you and the regional center choose to provide.

You should look at the regional center Purchase of Service (POS) policies or guidelines. Many of these are posted on your regional center's website. If you cannot find the POS policies online, call the regional center and ask for a copy. If the definitions of the services are helpful to your case, include them in your evidence.

You may want to subpoena an agency to produce records for your hearing. A subpoena duces tecum compels an agency to bring records that they have and to verify to the court that the documents or records have not been altered. You can ask for the agency to do this either by declaration or by direct testimony. A subpoena form for regional center fair hearings can be found at the following link:

<http://www.documents.dgs.ca.gov/oah/forms/oah1-subpoena.pdf#search=subpoena%20Form&view=FitH&pagemode=none>.

Preparing Witnesses

The testimony of a witness is also a type of evidence. Sometimes witnesses need to be subpoenaed. A subpoena is a legal order compelling them to attend the hearing to testify. You should subpoena witnesses and ask witnesses to testify as soon as you get a hearing date so people will be available. A subpoena form can be found at the following link

<http://www.documents.dgs.ca.gov/oah/forms/oah1-subpoena.pdf#search=Subpoena%20Form&view=FitH&pagemode=none>.

You should write questions for your witnesses in advance. Go over these questions with the witnesses to make sure the witnesses understand what you are asking and that the answer is helpful to your case. If the witness' answer doesn't help you, then do not ask the question in the hearing. Changing the way the question is worded may help.

You should also prepare to testify, since you are the best witness for yourself or your child. Be prepared to talk about why you need the service. You might want to say why other services have been unsuccessful. These can be helpful examples of why you need the service you asked for.

Exchange of Witness List and Exhibits

At least 5 calendar days before the hearing, you and the regional center must exchange lists of possible witnesses and copies of the documents you may use as evidence at the hearing. That means you and the regional center must receive the documents and list 5 days before the hearing. The list of witnesses must include a short statement telling what each witness will testify about. A Sample Witness and Exhibit List is included in Appendix C. The ALJ can prevent you or the regional center from introducing documents and witnesses that were not given to each other 5 calendar days before the hearing.

Chapter 4 – During and After the Hearing

Arrive at the hearing with plenty of time to spare. The hearing can be a long process, so you may want to bring water and snacks. Bring a pen and paper to take notes during the hearing.

Opening Statement

You should give an opening statement. An opening statement is not required, but it helps explain to the ALJ what the hearing is about. Your opening statement should describe the service you are asking for and why. It should include the law that supports your request. Be sure to describe yourself or your child so the ALJ understands what you or your child needs. Your opening statement should be a brief summary of your case. The regional center will give its opening statement first. Then you will give yours.

Questioning Witnesses

Regional Center Witnesses

The regional center will present its witnesses first. You can ask the regional center witness questions after the regional center is done asking questions. This is called “cross-examination.” Your questions should help to show that the witness does not understand something or does not remember facts. You may also ask questions that show that a witness is taking sides, changing what he or she said earlier, or might not be telling the truth.

Pay close attention while the regional center’s witness testifies. You might notice a weakness to bring up later during your cross-examination. Otherwise, you should stick to asking the cross-examination questions that you wrote before the hearing. It is not a good idea to ask a question if you do not already know the answer, unless you think that the likely answer will help your argument greatly.

Your Own Witnesses

Next, you will ask your own witnesses questions. This is called “direct-examination.” Witnesses should only talk about things that they have done or seen or heard themselves. You should ask short, simple, clear questions.

In addition to presenting your main argument, you can ask your witnesses questions to disprove things that the regional center witnesses might have said. Otherwise, you should stick to asking the questions that you prepared before the hearing. You can ask follow-up questions if your witness’ answer is not clear.

The regional center will have the chance to cross-examine your witnesses. The ALJ can also ask witnesses questions. After the regional center has cross-examined your witness, you will have a chance to ask your witness more questions. This is called re-direct examination. At this point, you can have your witness clarify or rephrase anything negative that might have come up during cross-examination.

Closing Statements/Written Closing Brief

As you go through the hearing, you may realize that the judge does not have all the information to make a good decision. If so, you can ask the judge to “keep the record open.” The judge can say “yes” or “no” to this. If the judge agrees to keep the record open, it will allow both sides to give the judge more documents and information after the hearing.

The ALJ will usually ask for a closing statement at the end of the hearing to sum up the evidence. This is a good chance to recap what you presented at the hearing and restate your position that you are entitled to the service. Sometimes, both sides agree to do a written closing brief instead of an oral closing statement. This option allows you to think about all the testimony before you sum up your argument. A written closing brief should provide the information and facts that you have presented and set out the law that supports your case. If the ALJ kept the record open after the hearing and allowed more evidence, you can include it in your closing brief. A Sample Closing Brief is included in Appendix D.

After the Hearing

After your hearing, the ALJ has 10 days to write a decision. The decision must be made no more than 80 days after you requested your appeal. A sample hearing decision is included in Appendix E. The ALJ's decision must:

- Be written in simple, everyday language;
- Include a summary of the facts;
- Include a statement about the evidence the ALJ used to make the decision;
- Include a decision on every issue or question that was in the hearing request and presented during the hearing; and
- State the laws, regulations and policies that support the ALJ's decision.

If you disagree with the hearing decision, you have a right to appeal to Superior Court. You must appeal within 90 days after you receive the hearing decision. For more information about this process, see Rights Under the Lanterman Act, Chapter 12:

<http://www.disabilityrightsca.org/pubs/506301Ch12.pdf>

SECTION 2: Appendices

Appendix A: Fair Hearing Flow Chart

Request a Fair Hearing if: (1) the regional center decides, without your agreement, to cut, reduce, or change a service or support in your IPP; (2) you request a service or support and the regional center denies your request; (3) you are notified that you are not eligible or are no longer eligible for regional center services.

Question 1: Are you currently receiving a service or support that the regional center wants to cut, reduce, or change?

YES > File your request for hearing within 10 days of the date you received the notice and your service or support will continue until there is a final administrative decision. GO TO Question 2

NO > You must file your request for hearing within 30 days of being notified by the regional center. GO TO Question 2

Question 2: Do you want to have an optional informal meeting?

YES > An informal meeting must be held within 10 days of regional center's receipt of your request for a hearing, unless you agree to longer time.

You must receive a written decision from the regional center within 5 days of the informal meeting. GO TO Question 3

NO > GO TO Question 4 regarding optional mediation.

Question 3: Are you satisfied with the regional center's decision?

YES > Tell the regional center that you withdraw your request for Fair Hearing. Services agreed to in your informal meeting decision will begin within 10 days of receiving your withdrawal. GO NO FURTHER.

NO > GO TO Question 4 regarding optional mediation.

Question 4: Do you want to have the optional mediation?

YES > Does the regional center accept mediation? They must accept mediation within 5 days.

If regional center accepts, mediation will be held within 30 days of the regional center's receipt of your request for a hearing, unless you agree to longer time. GO TO Question 5

If regional center does NOT accept mediation within 5 days, your case proceeds to Fair Hearing. GO TO Question 6

NO > You may proceed to a Fair Hearing. GO TO Question 6

Question 5: Did you reach an agreement in mediation?

YES > Tell the regional center that you withdraw your request for Fair Hearing. Services agreed to in your written resolution will begin within 10 days of receiving your withdrawal. GO NO FURTHER

NO > You may proceed to a Fair Hearing. GO TO Question 6

Question 6: Do you want to proceed with a Fair Hearing?

YES > A Fair Hearing will be held within 50 days of the regional center's receipt of your request for a hearing, unless a judge grants longer time for good cause.

A Fair Hearing decision must be issued within 10 working days of the last day of the hearing and no later than 80 days after your initial request for hearing unless you waived the timeline by asking for a continuance (postponement)

If the service is funded by the Medi-Cal Home and Community Based Waiver then the decision is reviewed by DHCS within 90 days of the hearing request. The decision may be adopted, overturned, or written differently. GO TO Question 7

NO > You may withdraw from the Fair Hearing by contacting OAH.

Question 7: Are you satisfied with the Fair Hearing decision?

YES > Services and supports will be provided as decided in the Fair Hearing decision.

NO > You have 90 days to file a Writ of Administrative Mandamus in superior court. You can contact Disability Rights California or a private attorney for help.

NOTE: The regional center can proceed with a cut or a reduction in services within 10 days unless your attorney gets a court order to continue the services while the court decides on your appeal.

Appendix B: Sample Request to Change Judges

VIA FACSIMILE (213) 555-5555

September 23, 2015

Susan Formaker

Presiding Administrative Law Judge

Office of Administrative Hearings

320 W. Fourth Street, Suite 630

Los Angeles, CA 90013

Re: Peremptory Challenge

John Doe v Regional Center

OAH No. 201511100000

Hearing Date: September 28, 2015

Dear Judge Formaker:

I am writing on behalf of John Doe to request that a different Judge be assigned to hear his case on September 28, 2015. The currently assigned Judge is Sarah Smith. We ask that this change be made pursuant to Title 1 of the California Code of Regulations, Section 1034 and Government Code section 11425.40. Enclosed is the prescribed declaration required under that section.

Thank you for your consideration. Please feel free to contact me at (213) 555-5555 if necessary.

Sincerely,

Jane Doe

Enclosure

Declaration of Jane Doe

Mother of John Doe

I, Jane Doe, declare that:

- 1) I am the parent for a party to the pending matter.
- 2) The Judge assigned to the Hearing is prejudiced against the interest of the party so that the declarant believes that her son cannot have a fair and impartial Hearing before the Judge, Sarah Smith.

This Declaration is under penalty of perjury under the laws of the state of California and is signed September 23, 2015, at Los Angeles, California.

Sincerely,

Jane Doe

Appendix C: Sample Claimant's Witnesses and Evidence List

Your Name

Your Street Address

Your City, State, and Zip Code

Your Telephone Number

Authorized Representative for [Name of Regional Center Client]

OFFICE OF ADMINISTRATIVE HEARINGS

STATE OF CALIFORNIA

In the Matter of:

Claimants Name,

Claimant,

and

REGIONAL CENTER,

Service Agency

Case No.:

Hearing Date:

Hearing Time:

Hearing Place:

Administrative Law Judge:

CLAIMANT'S WITNESS AND EVIDENCE LIST

WITNESS LIST

- 1) Witness First Name Last Name will testify as to [describe what they will testify about.]
- 2) Witness First Name Last Name is being subpoenaed to testify as to [describe what they will testify about.]
- 3) Example First Name Last Name: Mr. Last Name will testify about Claimant's developmental disability, goals, and service needs.

EVIDENCE LIST

- 1) Opening Brief
- 2) Hearing Documentation
 - a. Request for Service dated [Insert Date]
 - b. Denial Letter dated [Insert Date]
 - c. Hearing Request dated [Insert Date]
 - d. Notification of Hearing
- 3) Information about Program
- 4) Resumes of Program Staff
- 5) Progress Report from [Insert name of program] dated [Insert Date]
- 6) Progress Report from [Insert name of program] dated [Insert Date]
- 7) Psychological Evaluation by [Insert Name of Assessor] dated [Insert Date]
- 8) IPP dated [Insert Date]
- 9) Declaration of [Insert Name] dated [Insert Date]
- 10) Sections of the Lanterman Act for judicial notice

Appendix D: Sample Claimant's Closing Brief

Bill X

Street Address

City, State, Zip Code

Phone Number

Bill X, Father, on behalf of Claimant, a minor child

**OFFICE OF ADMINISTRATIVE HEARINGS
OF THE STATE OF CALIFORNIA**

In the Matter of:

CASE # 2015000000

SALLY X,

Claimant's Hearing Brief

Claimant

vs.

REGIONAL CENTER,

Service Agency

DATE: 9/12/2015

TIME: 10:00 AM

PLACE: Regional Center, 5555 Road St., City, CA 90000

I. Issue

Whether Regional Center must continue to fund educational consultant services to assist Sally X in receiving appropriate educational services through the school system.

II. Introduction

Sally X is a 14-year-old consumer of Regional Center and a special education student. Sally has cerebral palsy and had spinal fusion surgery in August of 2015. She has had many problems receiving the services she needs from her school district. Because of these difficulties, Sally and her family have benefited greatly from the services of an educational consultant.

In January 2010, ALJ Donald Cole determined after a hearing that Sally needed educational consultant services to assist her family in fighting for appropriate educational services. Sally continues to need the assistance of an educational consultant funded by Regional Center (RC) to represent Sally at IEP meetings, monitor the implementation of her school district IEP, and advise her family, if she is to receive the speech therapy she needs and continue to receive the physical care she needs to be safe at school.

III. Argument

A. REGIONAL CENTER MUST PROVIDE EDUCATIONAL CONSULTANT SERVICES TO SALLY TO ADDRESS THE NEEDS IDENTIFIED IN HER IPP.

The regional centers are required to develop an Individual Program Plan (IPP) for every regional center consumer. The plan must take into account the needs of the individual consumer and her family. WIC section 4646. In order to achieve the objectives of the IPP, the regional center is obligated to secure needed services and supports. WIC section 4648(a). The services and supports that may be provided pursuant to the IPP include "advocacy assistance." WIC section 4512(b).

Sally X's most recent regional center IPP, dated August 27, 2015, acknowledges her needs in the areas her family wishes to have her school district address. According to Sally's IPP, she is non-ambulatory, has limited functional movement of her arms, needs physical assistance with all self-care, and has health challenges including constipation, respiratory difficulties, and a history of seizures. Sally's IPP acknowledges the

importance of school in meeting Sally's needs. The IPP relies on speech therapy and adapted physical education provided by her school to address communication challenges and to improve her ability to control her body and use her hands to feed herself. Because school is central to meeting Sally's individual needs, as acknowledged by RC in her IPP, and because Sally's family needs the assistance of an educational consultant to obtain appropriate school services, RC is obligated to provide an educational consultant as an IPP service for Sally.

B.REGIONAL CENTER HAS A RESPONSIBILITY TO HELP SALLY ACCESS GENERIC RESOURCES, INCLUDING SERVICES PROVIDED BY HER SCHOOL DISTRICT.

Regional centers "shall identify and pursue all possible sources of funding for consumers receiving regional center services," including school districts. WIC section 4659(a)(1).

RC has an obligation to pursue funding from generic sources for services Sally needs. Sally's family is currently fighting to keep an appropriate amount of speech therapy in Sally's IEP. Sally's spinal fusion surgery substantially changed her posture in her wheelchair, and since the surgery, she has developed significant problems with breath control when speaking, since she now sits more upright. In spite of this, her current school district claims that her speech has improved and seeks to reduce or eliminate her speech therapy services. Sally's educational consultant is in the process of helping her family fight to keep her speech therapy. If Sally is not able to receive these services through school, she may have to seek them from the regional center as payer of last resort. RC, therefore, has an obligation to help Sally pursue the generic resource of speech therapy funded by her school through continued services from her educational consultant.

Furthermore, because of Sally's fragile health and inability to physically care for herself, her school district program requires constant monitoring to be sure that she is getting the care she needs at school. Without that care, she would be physically unable to attend school and would miss out on the main source of services for a school-aged regional center consumer. Her school district has repeatedly failed to meet her physical needs, putting her

health in danger. The ongoing help of her educational consultant is needed to ensure that the correct services are written into her IEP and that her IEP is followed.

C.REGIONAL CENTER MAY FUND EDUCATIONAL CONSULTANT SERVICES TO ASSIST SALLY IN OBTAINING SERVICES FROM HER SCHOOL DISTRICT.

Regional centers generally may not purchase “[e]ducational services for children three to 17, inclusive, years of age” but may do so if “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.” WIC section 4648.5(a)(3) and (c).

RC has refused to fund Sally’s educational consultant services based on WIC section 4648.5. However, section 4648.5 does not prevent RC from funding educational consultant services because: 1) The services requested are not “educational services” for a child age 3-17, in the conventional sense; and 2) Even if the requested service qualifies as an “educational” service for a child age 3-17, Sally qualifies for an exemption.

1. THE SERVICES SALLY NEEDS ARE NOT EDUCATIONAL SERVICES FOR CHILDREN AGE 3 TO 17, AND THEREFORE MAY BE FUNDED BY SDRC.

The services Sally’s family requests are not “educational services” in the conventional sense, but rather consultant or advocacy services to help Sally access appropriate educational services through a generic source. WIC section 4648.5, enacted in response to California’s fiscal crisis, is a specific application of the general rule that regional centers should not pay for services that are available to consumers through generic sources. It prohibits regional centers from paying for consumers’ education when consumers should be receiving education from their local school districts instead. Sally’s family requests not that RC pay someone else to do the school district’s job, but rather requests educational consultant services to

help Sally compel her school district to educate her properly. The service requested will serve the purposes of section 4648.5 by ensuring that Sally continues to get suitable services from the correct generic source.

Therefore, WIC section 4648.5 does not prohibit the purchase of educational consultant services for Sally, and RC should purchase those services in order to pursue generic sources of funding for the services Sally needs.

2. EVEN IF THE SERVICES SALLY NEEDS ARE EDUCATIONAL SERVICES FOR A CHILD AGE 3-17, SALLY QUALIFIES FOR AN EXEMPTION.

Even if the services of an educational consultant are “educational services” for a child age 3-17, Sally qualifies for an exemption from the suspension on purchasing authority because the service she requests is necessary to allow her to access her education, and therefore crucial to ameliorating the effects of her disability. Furthermore, no alternative service is available to meet Sally’s need.

For a regional center consumer who is eligible for special education, school is the main source of services to ameliorate the effects of her disability. Sally’s most recent IPP acknowledges that she has various health problems. It also relies heavily on her school program to meet her needs. For example, it discusses her speech challenges but does not include an “outcome” for speech because she is getting speech therapy at school, and it includes an outcome that requires her to participate in exercises at school to build her strength so that she can learn to feed herself with a fork.

Sally’s battles with her school district in the past have demonstrated that someone must participate vigorously and vigilantly in her IEP process to ensure that she is even able to be at school and be safe. Her school initially refused to modify a bathroom at school so it would be accessible to her, and the problem was resolved only with the involvement of her educational consultant. Sally had a bowel obstruction during her sixth grade year, which her mother believes occurred because the school was not taking her out of her wheelchair often enough (using the excuse that it

did not have enough staff to do so). This problem also had to be addressed by the educational consultant.

Sally needs, at the very least, to be able to attend school safely so that school services can ameliorate her disability, and her educational consultant's services continue to be instrumental in ensuring that the school district, which has shown itself unreliable in meeting her physical needs, keeps her safe and healthy at school. She also has ever-evolving needs for services through the school district, such as speech therapy and adapted physical education, to ameliorate the effects of her cerebral palsy. The X family has had to fight with the district for each service she needs, and has only been effective in doing so with the help of an educational consultant. Educational consultant services are therefore critical to ameliorating the effects of Sally's disability.

Finally, no alternative source is available to meet Sally's need for educational consulting services. The generic or "alternative" source for services to a consumer most clearly anticipated by WIC section 4648.5 is the consumer's school district. Sally's school district has repeatedly failed to provide her with appropriate services. The purpose of her educational consultant is to persuade or compel the district to give Sally what she needs.

While other agencies that advocate for students in special education matters exist in the community, other sources of assistance are not available to Sally. Sally and her family have a long working relationship with her current educational consultant, who the family uses because she is the RC vendor who was assigned to them by RC. If Sally had to begin working with someone else now, the new person would have to invest a great deal of time in learning her background. This would be inefficient, and it is likely that the new person would never understand her needs as fully as her current consultant. A new advocate would not understand the history of Sally's battle with the school district or be able to benefit from her current consultant's working relationship with the district.

Sally's next IEP meeting is scheduled for September 21, 2015; she needs the assistance of an advocate who is already intimately familiar with her needs at that IEP meeting and in any follow-up after that meeting. It is particularly important that her current educational consultant have the opportunity to follow through with the resolution of her dispute with the school district over speech therapy as she has already started to work on that issue.

It is clear from ALJ Donald Cole's 2010 decision that Sally's situation is unusual and has required the consistent, ongoing involvement of an educational consultant to ensure that her needs are met. At this time, Sally's needs can only be met through the continued services of her long-time educational consultant.

IV. CONCLUSION

Sally X needs the services of her regional center-funded educational consultant to help her access an important generic resource - special education through her school district. RC is legally obligated to pursue this generic resource for her. RC is not prevented from doing so because Sally's educational consultant services are not "educational services" for a child age 3-17. Furthermore, even if the service she needs is considered an educational service, Sally qualifies for an exemption from the limitation on the purchase of educational services because this service is essential to ameliorating the effects of her disability and is not available from any alternate source. RC must, therefore, fund educational consultant services for Sally X.

Respectfully submitted by:

Bill X

Father of Sally X

Date:

Appendix E: Administrative Hearing Decision

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of An Exemption for an
OAH No. 2015000000 Educational Consultant for:
SALLY X.
Claimant,
and
REGIONAL CENTER,
Service Agency.

DECISION

Mary Smith, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California, on September 12, 2011.

Bill X., claimant's father, represented claimant who was not present for the fair hearing.

Ryan M., Esq., represented the service agency, Regional Center (RC).

Oral and documentary evidence was received and the matter was submitted on September 12, 2011.

ISSUE

1. Does an exemption exist under Welfare and Institutions Code section 4648.5 that authorizes the service agency to fund claimant's educational consultant?

FACTUAL FINDINGS

Jurisdictional Matters

1. On July 5, 2011, RC served claimant with a notice of proposed action denying funding for an educational consultant for claimant. On July 25, 2011, RC received claimant's request for a fair hearing objecting to RC's decision and this appeal followed.

Claimant's Eligibility and Services Currently Provided

2. Claimant is a 14-year-old female diagnosed with severe cerebral palsy and mental retardation. Pursuant to a January 7, 2010, Order which resulted from a previous administrative hearing, RC currently funds 16 hours per month of educational consultant services to assist claimant with her Individual Education Plan (IEP).

The Lanterman Act and Regional Centers

3. The Lanterman Developmental Disabilities Services Act (the Lanterman Act) is found at Welfare and Institutions Code section 4500 et seq.

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, section 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, section 4620.)

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

2009 Amendments to the Lanterman Act

6. California is in the midst of an unprecedented budget shortfall. Every area of state government has been impacted by this fiscal crisis, including the DDS. Assembly Bill 9 (AB 9) was passed which amended the Lanterman Act in an effort to meet the economic predicament. Section 4648.5 was added to Welfare and Institutions Code which provides:

"(a) Notwithstanding any other provision of law or regulations to the contrary, effective July 1, 2009, a regional center's authority to purchase the following services shall be suspended pending implementation of the Individual Choice Budget and certification by the Director of Developmental Services that the Individual Choice Budget has been implemented and will result in state budget savings sufficient to offset the costs of providing the following services:

- (1) Camping services and associated travel expenses.
- (2) Social recreation activities, except for those activities vendored as community-based day programs.
- (3) Educational services for children three to 17, inclusive, years of age.
- (4) Nonmedical therapies, including, but not limited to, specialized recreation, art, dance, and music.

(b) For regional center consumers receiving services described in subdivision (a) as part of their individual program plan (IPP) or individualized family service plan (IFSP), the prohibition in subdivision (a) shall take effect on August 1, 2009.

(c) An exemption may be granted on an individual basis in extraordinary circumstances to permit purchase of a service identified in subdivision (a) 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."

The new code section did not define "extraordinary circumstances," nor did it indicate what would constitute "primary or critical means for ameliorating" the consumer's developmental disability so as to allow a consumer to continue receiving these services, presumably leaving this determination to each regional center and the trier of fact on a case by case basis.

Evidence Introduced at Hearing

7. Warren W., RC Program manager, testified that claimant has had a "change in circumstance" in that she recently began attending a different middle school resulting in her no longer needing an educational consultant since her issues were with her former school. He also testified that although claimant's current educational consultant, Deborah P., is an RC vendor, she has failed to provide timely progress reports such that RC no longer wishes to utilize her services. However, he did concede that RC continued to fund her services during the time she failed to provide reports.

8. Claimants' parents provided credible and convincing testimony about the constant struggles they have had with claimant's school district and getting that school district to provide services required by law and as outlined in the IEP. They also explained that Deborah P. is intimately familiar with claimant's circumstances, has been instrumental in obtaining needed services, and is an essential component of claimant's IEP process. Although attending a new school, all required services outlined in the IEP have yet to be implemented. Moreover, claimant and the school district are currently in disagreement regarding her speech services. As such, the transition to a new school has not been smooth.

Evaluation

9. A preponderance of the evidence established that claimant qualified for an exemption under Welfare and Institutions Code section 4648.5, subdivision (c). Insufficient evidence was presented to establish that claimant no longer required the services of an educational consultant. For whatever reason, claimant's school district appears to have been an obstreperous partner in her education and it is only through the actions of

Deborah P. that the district has cooperated. Terminating her services now would be extremely detrimental to claimant and her family. RC failed to establish a sufficient change in circumstances to warrant overturning this court's prior order establishing an exemption for educational services. Any issues between RC and Deborah P. regarding her failure to timely provide progress reports is more appropriately handled as an internal vendor matter, possibly with RC withholding reimbursement of her billings until progress reports are received, but not by punishing claimant by removing her from her case.

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.) RC had the burden of establishing that an exemption for educational services no longer existed.

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.) It is important to note that none of claimant's requested services seemed unreasonable or unrelated to his condition. In fact, many services were to be provided per

the IEP and then, for reasons that remain unclear, the school district refused to implement those services.

3. Relevant provisions of the Lanterman Developmental Disabilities Services Act are included in the Factual Findings.

Cause Exists to Grant the Request for an Exemption for an Educational Consultant

4. A preponderance of the evidence established that RC should continue to fund educational consultant services for claimant. Claimant continued to present sufficient evidence to warrant an exemption for this service.

ORDER

Claimant's request for an exemption pursuant to Welfare and Institutions Code section 4648.5, subdivision (c), is granted. RC shall continue to fund claimant's request for educational consultant services.

DATED: September 23, 2011

MARY SMITH

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.

Disability Rights California is funded by a variety of sources, for a complete list of funders, go to <http://www.disabilityrightsca.org/Documents/ListofGrantsAndContracts.html>.