

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

ALIJAH G.,

Claimant,

OAH No. 2010071088

and

HARBOR REGIONAL CENTER,

Service Agency.

DECISION

Jennifer M. Russell, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on September 3, 2010, at the Harbor Regional Center in Torrance, California.

Carmen Carley, Special Education Advocate, represented Alijah G. (claimant). Claimant's mother, Margarita G., attended the hearing.¹

Gigi Thompson, Manager of Rights Assurance, represented Harbor Regional Center (HRC or service agency).

Testimonial and documentary evidence was received, the case argued and the matter submitted for decision on September 3, 2010. The Administrative Law Judge makes the following Factual Findings, Legal Conclusions and Order.

ISSUES

1. Whether the service agency is required to pay for the cost of 20 hours per week of Applied Behavioral Analysis (ABA) services provided to claimant in his home environment through the Lovaas Institute (Lovaas) during the summer of 2010.

2. The number of hours and type of in-home ABA services the service agency must fund to meet claimant's current needs.

¹ To preserve confidentiality, initials are used for the surnames of claimant and of claimant's representative.

FACTUAL FINDINGS

1. Claimant is a seven-year old boy diagnosed with Autistic Disorder. He resides with his mother, father, sibling, who is also a service agency client with a diagnosis of Autistic Disorder, and extended family members. He is enrolled in the Los Angeles Unified School District (LAUSD) where he attends a Special Day Class for children with autism during the academic year. Claimant is also a participant in Extended School Year/Intersession programming (ESY).²

2. During the 2009-2010 academic year, claimant received a total of 45.5 hours of ABA services each week from LAUSD, as set forth in Factual Findings 7, 8, 9, and 11. During the winter and spring breaks of the 2009-2010 academic year, the service agency funded 20 hours per week of ABA therapy for claimant through Lovaas in his home environment.

3. On June 8, 2010, the service agency advised claimant's mother that it would not fund 20 hours per week of ABA therapy for claimant during summer 2010. The service agency additionally advised claimant's mother that claimant's current needs are best met through 40 hours of a family-centered program concentrating on the principles of a Positive Behavior Support model over a period of four months.³ By letter dated June 14, 2010, the service agency explained its decision as follows:

² The LAUSD website provides the following information regarding its ESY programs:

California law mandates that school districts provide students with disabilities Extended School Year Intersession programming when the student requires special education and related services in excess of the regular academic school year and the Individualized Education Program (IEP) team has determined the need for ESY. The purpose of ESY/Intersession is to provide special education or related services when an interruption of the pupil's educational programming may cause regression, when coupled with limited recoupment capacity, rendering it impossible or unlikely that the pupil will attain the level of self-sufficiency and independence that would otherwise be expected in view of his or her handicapping condition. . . .

All Extended School Year Programs will be held during the period of July 07, 2010—August 3, 2010 (4—week program).

³ At some point in the parties' negotiations the service agency revised its offer of a 40-hour over four months ABA program to a 40-hour over two months ABA program. At hearing, the service agency formulated a "Issue" for determination which referenced a 40-hour over four months ABA program.

A Positive Behavior Support (PBS) model utilizing ABA principles is one in which environmental, antecedent, and support-oriented interventions/strategies would be put into place. PBS offers a holistic approach that considers all factors that impact a child and a child's behavior. A team is developed to the key individuals who are most involved in the child's life. This team works together to implement strategies to ensure the success of the child. Some strategies that would be used with [claimant] . . . would be the development and implementation of visual strategies (e.g., schedules and visual representations of everyday routines), tasks analysis, teaching new skills in the natural setting (e.g., by capitalizing on opportunities as they arise), priming, differential reinforcement, shaping and chaining. Consistent implementation of these strategies would address the [claimant's] . . . current needs This program will assist the family in building a structured day for [claimant] . . . so that he does not engage in maladaptive behaviors. A more structured environment and consistent implementation of strategies (e.g., a visual schedule) we believe would help [claimant] . . . to acquire skills successfully and increase independence. This type of program would assist the family in meeting the goals that were addressed in the Lovaas program implemented as a result of the 2009 OAH decision.

4. Claimant's mother objected to the service agency's decisions. In a June 16, 2010 letter, claimant's mother informed the service agency that she would self-fund claimant's ABA therapy for summer 2010 and seek reimbursement of the cost from the service agency.⁴ With respect to the service agency's offer of ABA services premised on a PBS model, claimant's mother's letter noted that "there is no published research on successful outcomes of this parent training service delivery" and that claimant "has steadily progressed in his current program consisting of mostly direct behavioral therapy which includes appropriate, proportionate parent training."

5. On June 17, 2010, claimant's mother filed a Fair Hearing Request. Thereafter these proceedings ensued.

6. Claimant's most recent revised Individual/Family Service Plan (IFSP), dated May 20, 2010, indicates that he exhibits aggressive, self-injurious and eloping behaviors. He requires supervision at all times. He requires assistance with his self-care needs. He engages in protest behaviors such as whining, crying, chin-hitting, head banging. He engages in stereotypic behaviors such as biting, gazing, placing objects in his mouth, making hand movements while visually attending to hands, repeatedly touching or covering his ears, and tapping surfaces. He uses Visual Communication System, a picture book, to communicate. He has a one to five minutes attention span when engaged in a preferred activity. He is able to follow one-step instructions.

⁴ At hearing, claimant's mother produced several unpaid Lovaas invoices totaling \$7,150.

Claimant's IFSP identifies numerous goals including, among other things, his safe interaction with his surrounding environment; decrease in his self-injurious and stereotypical behaviors; and, asserting his basic wants and needs through the use of words, signs or pictures. The IFSP also identifies parent/caregiver-related goals such as "parents will utilize pictures, words, or sign in order for [claimant] . . . to communicate . . ."; "parent/caregivers will implement the appropriate intervention for stereotypic behaviors . . ."; "parents will implement behavioral techniques in order for [claimant] . . . to participate appropriately in community outings . . ."; and, "parents will use behavioral techniques to teach [claimant] . . . to complete daily living skills appropriately . . .".

7. Since June 2006, claimant has been receiving ABA services through Lovaas. Claimant's current intensive behavior intervention (IBI) program includes approximately 8.5 hours per week of one-to-one instruction in his home environment to provide behavior support and to address language and communication, self-help and daily living skills. According to claimant's most recent Intensive Intervention Services Quarterly Report dated February 18, 2010, "[t]he in-home component emphasizes the use of positive reinforcement where tasks and concepts are simplified to maximize success and minimize failure." This quarterly report further explains the in-home component as follows:

This simplification is achieved through the use of discrete trial instruction characterized by (a) one-to-one interaction with the tutor, (b) short and clear instructions from the tutor, (c) carefully planned procedures for prompting behaviors that facilitate learning and following instructions and techniques designed to face such prompts and increase independence, and (d) immediate reinforcement for each correct response. [Claimant's] parents are also involved in the intervention. They attend the weekly clinic meetings on a regular basis. In addition, parent training is currently conducted during home sessions with trained instructors from the Lovaas Institute.

8. Claimant is accompanied in the school setting by an instructor from Lovaas to assist with language and socialization opportunities and to provide behavior support. The February 18, 2010 Intensive Intervention Services Quarterly Report explains the school component of claimant's IBI program provided by Lovaas as follows:

The classroom placement is based on the student's skills, behaviors and individual needs. Typically, small, structured, teacher-directed classes are effective in the school inclusion process. Initially, tutors from the In-Home 1:1 Intervention Component "shadow" the student in school in order to facilitate the transition to the classroom placement and encourage interaction with other students. The shadow aides must establish instructional control with the student in the In-Home 1:1 Intervention Component. This is considered essential in order to effectively generalize the skills and behaviors from the home environment to the school environment. The shadow aides should function as a classroom aide and should not allow the client to become overly dependent upon them. In order to reduce prompt dependency, it is

critical that the teacher establish instructional control with the student and that the shadow aide function as a classroom aide by helping and interaction with all of the students in the class. By doing so, the teacher will be free to interact with the client and [to] gain the instructional control necessary to further teach the student. As the student is able to successfully and independently function in the classroom environment, under the direction of the teacher and classroom staff, the shadow aide should be systematically faded out of the classroom. The 1:1 In-Home Intervention Component is usually continued in order to further strengthen academic skills, social skills, and abstract language concepts.

9. Additionally, claimant receives three hours per week of clinical supervision consisting of weekly clinic meetings, phone consultations, home observations/staff training, report generation and programming reviews from Lovaas.

10. Claimant's most recent LAUSD Individualized Education Program (IEP), dated March 11, 2010, was prepared after most of the 2009-2010 academic year was completed. It states that claimant "will be attending Del Amo Elementary, non-resident school, for the 2009-2010 school year, ESY, and 2010-2011 school year." The IEP indicates that at the time it was prepared, there was insufficient basis to determine claimant's need for ABA services during school breaks to avoid regression of skills.

At this time, [claimant] . . . has not been in attendance at Del Amo Elementary School for a long enough period to determine the need for further Nonpublic Behavior Intervention services during school breaks to avoid regression of skills. The school [is] working with the Nonpublic Behavior Intervention Agency to . . . collect data over a period of time to determine what level of support may be needed for the future. The purpose of Behavior Intervention Therapy supported by a nonpublic Agency is for behavior support and not academic support. The team will evaluate, based on the data, the type of service needed by a nonpublic agency into consideration at a future IEP meeting to determine what [claimant] needs to avoid regression academically during school breaks.

11. The March 11, 2010 IEP specifies the services for claimant "for the remainder of the 2009-2010 and the 2010-2011 school year" as follows:

For the remainder of the 2009-2010 school year and the 2010-2011 school year, the IEP team has recommended a related service to support the educational program for [claimant] Based upon data collection as well as the availability of District staff, it has been determined that a Nonpublic Agency, (NPA) will be assigned to provide Behavior Intervention Therapy (BIT). . . .

He will be provided with 1800 minutes/ (30 hours) per week of Behavior Intervention Implementation by a Nonpublic Agency Additionally, [claimant] . . . will receive 480 minutes (8 hours) per month of Behavior Intervention Development to support him during his school day, also to be provided by a Nonpublic Agency [Claimant] . . . qualifies to attend the extended school year in a Special Day Class. During that time, [claimant] . . . will receive BII services during the school day for four hours each day, 1200 minutes per week, and 240 minutes per month (4 hours) of BID.⁵

12. In *Alijah G. vs Harbor Regional Center*, No. 2009070819 (October 5, 2009), the Administrative Law Judge ordered the service agency to fund ABA therapy for claimant during 2009-2010 school breaks. The Administrative Law Judge reached the following Legal Conclusion:

While LAUSD funds claimant's program for most of the school year, there exists a gap during school breaks. Claimant has established that he needs the program year-round. Claimant has shown that HRC's purchase of ABA therapy would not be a substitute for, or for the purpose of providing[,] school services. Given these circumstances, Claimant is entitled to funding for ABA therapy by the Lovaas Institute during 2009-2010 school breaks.

13. The service agency complied with the October 2009 Decision by funding 20 hours per week of ABA services for claimant and his family during the December 21, 2009 to January 9, 2010 winter break and the March 29, 2010 to April 2, 2010 spring break in the 2009-2010 academic year.

14. Claimant's four-week ESY program during the period July 7, 2010 to August 3, 2010 is not a part of the 2009-2010 academic year, which concluded on June 18, 2010. It is a part of the 2010-2011 academic year, which commenced on July 6, 2010.⁶

⁵ An Informal Dispute Resolution between claimant's parents and LAUSD, executed on May 20, 2010, contains the following provision:

Fund 40 hours per week of BII services, 30 hours to be used at home, and 3 hours per week of BID services to be provided by a non-public agency These services will be provided through the date of full execution of this Agreement and shall be completed by the next 3 year re-evaluation on or before March 11, 2011. The services will be provided either at student's school of attendance or at home The service provider will use the behavior goal(s) and objectives in student's 3/11/10 IEP.

⁶ LAUSD Master Instructional Calendars 2010-2011 provides for a Single Track Calendar with a start date of September 13, 2010; a Three-Track Calendar with multiple start dates on July 6 and August 30, 2010; a Four-Track Calendar with multiple start dates on July 6 and August 17, 2010; a Balanced Traditional Calendar with a start date of August 9, 2010; and

15. Rebecca Asdel, MA, BCBA, is a Behaviorist with the service agency who observed claimant at home and in the community during winter and spring breaks in the 2009-2010 academic year. Ms. Asdel made the following recommendation in connection with her December 21, 2009 to January 9, 2010 winter break observation:

. . . [claimant] would benefit from a break from continuous therapy. It is recommended that direct services for [claimant] . . . be decreased during school breaks. In order to help [claimant's] . . . parents learn to effectively manage his behavior both in and outside of the home, a parent education and consultation model of behavior services is recommended. These strategies could then be implemented throughout [claimant's] day by his parents, in lieu of receiving multiple hours of direct intervention. . . .

If a parent education and consultation model were to be implemented, it is important that it focus on teaching [claimant's] . . . parents proactive and reactive strategies to address his behavior, as well as how to teach appropriate replacement behavior and develop new skills. As such [claimant's] . . . parents would be the recipients of the training, rather than [claimant]. [Claimant's] . . . parents would then implement the strategies they are learning with [claimant] . . . initially with assistance from the behavior services provider, then independently throughout the day. It is important that [claimant's] . . . parents be taught how to implement these strategies in the natural environment, instead of in a Discrete Trial Training format.

16. Ms. Asdel made the following recommendation in connection with her March 29, 2010 to April 2, 2010 spring break observation:

It is recommended that [claimant's] . . . parents receive more naturalistic parent training, rather than training about how to complete discrete trial drills. Instead, [claimant's] . . . parents should learn techniques to manage his behavior in the natural setting, such as in the community and at home. In addition, they should be taught how to teach [claimant] . . . to use new skills by capitalizing on opportunities that naturally arise throughout the day, rather than in the discrete trial format. This will lead to better generalization of those behaviors. It is also important that [claimant's] . . . parents learn to take data on his behavior both during and outside of session, in order for them to measure the effectiveness of the interventions that they are utilizing. Similarly, it is important that [claimant's] . . . parents learn how to structure his environment in order to set him up for success. This can include the

an Early Start Calendar with a August 16, 2010 start date. Neither party provided evidence as to which track applies to claimant. Based on the September 13, 2010 beginning date identified in the Treatment Recommendation set forth in Factual Finding 23, it is reasonable to infer that a Single Track Calendar applies to claimant.

implementation of visual strategies, such as schedules and visual representations of everyday routines, such as toileting. It is crucial that [claimant's] . . . parents learn to develop and implement task analyses, the principals of prompting hierarchy, printing, reinforcement, including differential reinforcement, extinction, shaping, and chaining.

17. Ms. Asdel also conducted a Functional Behavioral Assessment (FBA) of claimant on May 24 and 25 and June 4, 2010. The July 29, 2010 FBA report she prepared indicates that claimant exhibits excessive problem behaviors, such as tantrums, self-injurious behavior, climbing, and elopement. His cognitive, daily living skills and socialization skills are “extremely low.” His motor skills are “low average.” The report recommends claimant’s parents to receive specialized training for managing claimant’s behaviors:

It is recommended that [claimant's] . . . parents receive parent education in Applied Behavior Analysis in order to provide them with the knowledge, tools, and skills necessary to address [claimant's] . . . excessive behaviors, including tantruming, self-injurious behavior, climbing, and elopement. In addition it is important that they learn how to teach [claimant] . . . relevant replacement behaviors for [claimant] . . . to engage in, instead of the undesired behaviors. Parent training should focus on teaching [claimant's] . . . parents basic behavioral principles such as reinforcement, extinction, priming, prompting, shaping, and the development and implementation of task analysis. Parent training should be naturalistic, meaning [claimant's] . . . parents should learn how to implement these strategies in a way that integrated with daily family life, rather than in a more artificial discrete trial or table-top manner. This will ensure that the parents acquire skills in a meaningful way that integrates with their family routines and will also help promote generalization. Services should take place both in the family home, as well as in the community, as it is important for [claimant's] . . . parents to learn to apply their skills in both environments.

18. At hearing, Betty Tanius, a program manager with the service agency who supervises claimant’s case worker, testified that the service agency recommends, and is willing to fund, a four-month, 40-hour PBS program for claimant because the service agency’s interdisciplinary team observed an overall downward trend in claimant’s maladaptive behaviors which warrants a focus on skill implementation instead of on skill acquisition. She testified that “drilling was not natural” and that the service agency wants to phase out what it considers to be an intrusive program for claimant.

19. Scott Cross, Ph.D, BCBA-D, is the Clinical Director at Lovaas. Dr. Cross has first-hand knowledge of claimant. By way of background, Dr. Cross testified that skill acquisition is a dynamic process with many influences. It is difficult to isolate one single causal factor such as a child’s ability after multiple attempts or a parent/caregiver’s ability to teach. It is not uncommon “to see new things when addressing negative or maladaptive behaviors.” Self-stimulating, trantuming, and self-help behaviors affect academic learning if

they occur in school. The environment in which a particular type of maladaptive behavior occurs is a function of where that behavior is reinforced or punished. Dr. Cross testified that in providing ABA services it is not unusual to move from teaching the child to teaching the parent. Generally, when a child achieves 80% skill acquisition, the focus can shift to the parent for generalization. Outcomes are child-specific.

Dr. Cross testified that claimant has profound needs and that claimant is not a rapid learner. Consequently, claimant's skill acquisition requires a lot of deliberate effort. Dr. Cross testified that "a high degree of consistency is critical for a child like [claimant]." Dr. Cross was reluctant to specify a length of time for the duration of claimant's current IBI program because of the unavailability of long-term data to support the imposition of a rigid time frame. He testified, however, that long-duration, intensive treatment programs (i.e., over 30 hours each week of 1:1) generate major and long-lasting increases in intellectual, educational, social and emotional behaviors. According to Dr. Cross's testimony, a four-month, 40 hour program is of insufficient intensity to address claimant's maladaptive behaviors identified in his IFSP of May 20, 2010. The service agency's evidence did not rebut Dr. Cross' testimony.

20. Dr. Cross testified that the recommendations in the FBA report set forth in Factual Finding¹⁷ are currently being implemented. Claimant's parents and grandparents are learning necessary skills and pro-active strategies. Claimant's parents are involved in claimant's treatment program, which requires a minimum of five hours per week of parent/caregiver participation. Claimant's parents and extended family members are engaged more than 5 hours each week with claimant's IBI program. Dr. Cross testified that a lot of claimant's improvement is due to his parents. They have improved in their implementation of interventions.

21. Amanda Huish, M.Ed., is the Assistant Clinical Director at Lovaas. She has known claimant for four years. She supervises claimant's current IBI program, which is structured so that there is systematic teaching of skills in isolation, then random rotation where a learned skill is practiced with other skills, then receptive instruction and play, and then generalization in the community or natural environment. This program of systematic teaching "is more effective for children with autism who do not learn from their natural environment. Autistic children have difficulty with discrimination and this method helps with discrimination." Ms. Huish testified that a child's learning history determines the appropriate instructional phase for that child.

22. Ms. Huish testified that the recommendations in the FBA report are currently incorporated into claimant's IBI program. Ms. Huish testified that some of claimant's skills are at the isolation phase and others are at the natural environment phase. Claimant is engaged in both table top and natural setting instruction. Claimant participates in outings into the community, including going to the park, shopping mall, and grocery store. She testified that claimant's parents are involved in the program: "they meet one hour weekly with the team; they let the program know about difficulties/about which areas there are needs; they make sure the program has all the information it needs." Ms. Huish testified that

a four-month, 40 hour program is insufficient for claimant because of his severe learning deficits and high frequency and intensity behavioral concerns.

23. Based on claimant’s treatment history, Lovaas recommends 292 hours of ABA parent training services across the home and community for one year, beginning September 13, 2010 and ending September 13, 2011.⁷ A Treatment Recommendation dated August 26, 2010 states:

[Claimant] . . . is a child with profound levels of developmental delays. Due to [claimant’s] . . . level of self-injurious behaviors, his multiple topographies of protest behavior, a lack of safety awareness, eating of non-food items, and attempts to leave his home it is recommended that [claimant] . . . receive a bulk of 292 hours of ABA parent education to be provided from 9/13/2010 to 9/13/2011, across the home and community to address IPP goals and objectives. These parent training services are intended to be delivered to address [claimant’s] . . . needs throughout the year with intensified periods of service during breaks from school. Parent/caregiver participation with ABA parent education is required.

During the 2011 summer breaks (i.e., period between RSY and ESY and between ESY and RSY) it is recommended [claimant’s] time be structured by participating in meaningful community integration opportunities with specialized personnel trained to work with children with special needs. The specialized personnel may be provided by the community program or from a separate agency. Additionally, this would be a time in which the bulk hours would be used more intensively to assist the parents and caregivers in structuring [claimant’s] home and community integration opportunities. (Emphasis in original)

⁷ At hearing Ms. Huish explained that these recommended hours are based on providing claimant with 20 hours of ABA services per week in his home environment during the following periods:

Thanksgiving Break	1 week
Winter Break	3 weeks
Spring Break	1 week
Break between regular school year and ESY	2 weeks
Break between school years	6 weeks

Plus, six hours of ongoing parent/caregiver training and supervision.

LEGAL CONCLUSIONS

1. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act. (Welf. & Inst. Code § 4500, et seq.) The Lanterman Act mandates that an “array of services and supports should be established . . . to meet the needs and choices of each person with developmental disabilities . . . and to support their integration into the mainstream of life in the community.” (Welf. & Inst. Code § 4501.) Regional centers play a critical role in the coordination and delivery of services and supports for persons with disabilities. (Welf. & Inst. Code § 4620 et seq.) Regional centers are responsible for developing and implementing IPPs for consumers, for taking into account individual consumer needs and preferences, and for ensuring service cost effectiveness. (Welf. & Inst. Code § § 4646, 4646.5, 4647, and 4648.)

2. The services and supports to be funded for a consumer is determined the IPP process, which involves collaboration with the consumer and service agency representatives. Services and supports for persons with developmental disabilities are defined as “specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic rehabilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives.” Services and supports can include those providing behavior training and behavior modification programs. (Welf. & Inst. Code § 4512, subd. (b).)

3. Welfare and Institutions Code section 4686.2, which regulates the provision of ABA services, states the following:

(a) Effective July 1, 2009, notwithstanding any other provision of law or regulation to the contrary, any vendor who provides applied behavioral analysis (ABA) services, or intensive behavioral intervention services or both, as defined in subdivision (d) shall:

(1) Conduct a behavioral assessment of each consumer to whom the vendor provides these services.

(2) Design an intervention plan that shall include the service type, number or hours and parent participation needed to achieve the consumer’s goals and objectives, as set forth in the consumer’s individual program plan (IPP) or individualized family service plan (IFSP). The intervention plan shall also set forth the frequency at which the consumer’s progress shall be evaluated and reported.

(3) Provide a copy of the intervention plan to the regional center for review and consideration by the planning team members.

(b) Effective July 1, 2009, notwithstanding any other provision of law or regulation to the contrary, regional centers shall:

(1) Only purchase ABA or intensive behavioral intervention services that reflect evidence-based practices, promote positive social behaviors, and ameliorate behaviors that interfere with learning and social interactions.

(2) Only purchase ABA or intensive behavioral intervention services when the parent or parents of minor consumers receiving services participate in the intervention plan for the consumers, given the critical nature of parent participation to the success of the intervention plan.

(3) Not purchase either ABA or intensive behavioral intervention services for purposes of providing respite, day care, or school services.

(4) Discontinue purchasing ABA or intensive behavioral intervention services for a consumer when the consumer's treatment goals and objectives, as described under subdivision (a) are achieved. ABA or intensive behavioral intervention services shall not be discontinued until the goals and objectives are reviewed and updated as required in paragraph (5) and shall be discontinued only if those updated treatment goals and objectives do not require ABA or intensive behavioral intervention services.

(5) For each consumer, evaluate the vendor's intervention plan and number of service hours for ABA or intensive behavioral intervention no less than every six months, consistent with evidence-based practices. If necessary, the intervention plan's treatment goals and objectives shall be updated and revised.

(6) Not reimburse a parent for participating in a behavioral services treatment program.

(c) For consumers receiving ABA or behavioral intervention services on July 1, 2009, as part of their IPP or IFSP, subdivision (B) shall apply on August 1, 2009.

(d) For purposes of this section the following definitions shall apply;

(1) "Applied behavioral analysis" means the design, implementation, and evaluation of systematic instructional and environmental modifications to promote positive social behaviors and reduce or ameliorate behaviors which interfere with learning and social interaction.

(2) "Intensive behavioral intervention" means any form of applied behavioral analysis that is comprehensive, designed to address all domains of functioning,

and provided in multiple settings for no more than 40 hours per week, across all settings, depending on the individual's needs and progress. Interventions can be delivered in a one-to-one ratio or small group format, as appropriate.

(3) "Evidence-based practice" means a decision making process that integrates the best available scientifically rigorous research, clinical expertise, and individual's characteristics. Evidence-based practice is an approach to treatment rather than a specific treatment. Evidence-based practice promotes the collection, interpretation, integration, and continuous evaluation of valid, important, and applicable individual- or family-reported, clinically-observed, and research-supported evidence. The best available evidence, matched to consumer circumstances and preferences, is applied to ensure the quality of clinical judgments and facilitates the most cost-effective care.

(4) "Parent participation" shall include, but shall not be limited to, the following meanings:

(A) Completion of group instruction on the basics of behavior intervention.

(B) Implementation of intervention strategies, according to the intervention plan.

(C) If needed collection of data on behavioral strategies and submission of that data to the provider for incorporation into progress reports.

(D) Participation in any needed clinical meetings.

(E) Purchase of suggested behavior modification materials or community involvement if a reward system is used.

4. Cause exists to grant claimant 20 hours per week of service agency-funded ABA services in his home environment through Lovaas when he is not in school during the period commencing June 21, 2010 and ending September 13, 2011. The service agency's recommendation of a four-month, 40-hour ABA program is unsupported with reliable data and expert interpretation. The service agency's experts contradicted themselves and each other. (Factual Findings 15, 16, 17, and 18) While, for example, one service agency expert opined that claimant needed a break from continuous therapy, another noted claimant's downward spiral.

There was no evidence of abatement in claimant's needs. Nor was there evidence that claimant has achieved the treatment goals and objectives set forth in his IFSP. To the contrary, the evidence establishes that claimant has on-going, excessive maladaptive behaviors or deficits warranting, without interruption, continuing intensive behavioral intervention. (Factual Findings 6 through 11, inclusive and 17 through 22, inclusive) At all relevant times the service agency was aware of and knowledgeable about claimant's deficits

and need for uninterrupted services and support. As set forth in Factual Findings 19 through 23, inclusive, the evidence establishes that claimant requires a 20-hour per week ABA regimen at home during the various periods he is not in school in order to prevent regression.

5. Cause exists for the service agency to fund the 20-hour per week ABA services Lovaas provided claimant during the summer periods when claimant's special day classes were not in session, i.e., June 21, 2010 to July 6, 2010 and August 4, 2010 to September 10, 2010. As set forth in Legal Conclusion 2, the services and supports to be funded claimant must be determined in a collaborative IPP process involving the claimant's and service agency's representatives. There was disagreement about the appropriate program to meet claimant's ongoing needs. Claimant's parents timely notified the service agency of their intention to fund privately claimant's ABA services and to seek reimbursement. (Factual Findings 3 and 4) The service agency was aware of claimant's profound needs, and knew that the goals and objectives set forth in his IFSP were unmet. The inability of the parties to reach any accord on the service type or number of service hours did not excuse the service agency's obligation to continue to fund ABA services for claimant in his home and community environments until administrative resolution of the matter.

ORDER

WHEREFORE THE FOLLOWING ORDER is hereby made:

1. Harbor Regional Center shall fund the cost of providing claimant with a 20-hour per week ABA program in his home environment through Lovaas during the following periods: the 2010 Thanksgiving recess; the 2010-2011 winter break; the 2011 spring break; the break between the end of the 2010-2011 academic year and the beginning of ESY for the 2011-2012 academic year; the break between the 2010-2011 academic year and the 2011-2012 academic year.

2. Harbor Regional Center shall pay the cost of ABA services provided to claimant in his home environment through Lovaas during the period June 21, 2010 to July 6, 2010 and August 4, 2010 to September 10, 2010 upon presentation to it of the invoices for services rendered.

Dated: September 30, 2010

_____/s/_____

JENNIFR M. RUSSELL
Administrative Law Judge
Office of Administrative Hearings

THIS IS THE FINAL ADMINISTRATIVE DECISION. THIS DECISION BINDS BOTH PARTIES. EITHER PARTY MAY APPEAL THIS DECISION TO A COURT OF COMPETENT JURISDICTION WITHIN 90 DAYS.