

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

In the Matter of:

M.R.

Petitioner,

vs.

**EASTERN LOS ANGELES
REGIONAL CENTER,**

Respondent.

OAH No. 2014051141
California Early Intervention Services
Act (Gov. Code, § 95000 et seq.)

DECISION

This matter was heard by Glynda B. Gomez, Administrative Law Judge, Office of Administrative Hearings, State of California, on June 24, 2014, in Alhambra, California.

Petitioner was represented by his mother and father. (Initials and titles are used to protect the privacy of Petitioner and his family.) Edith Hernandez represented the Eastern Los Angeles Regional Center (Respondent or ELARC).

The parties presented the testimonial and documentary evidence described below. The record was closed and the matter was submitted for decision on June 24, 2014.

ISSUE

Is Petitioner eligible for Early Start services¹ from Respondent?

¹ “Early Start” is another name for the California Early Intervention Services Act (Gov. Code, § 95000 et seq.), described more specifically in Legal Conclusions 1-3, below.

EVIDENCE RELIED UPON

Documents: Petitioner's exhibits A-C and Respondent's exhibits 1-6.

Testimony: Brittany Berg, ELARC Speech and Language Pathologist and Petitioner's mother and father.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Petitioner is a two and a half-year-old boy who seeks to be found eligible for services under the Early Start program, due to speech and language developmental delays.

2. By a letter dated May 13, 2014 (Ex. 2), ELARC notified Petitioner's parents of its determination that Petitioner was not eligible for Early Start services. Petitioner's mother and father submitted a written appeal. This hearing was the result of the appeal.

Facts Related to Petitioner's Service Request

3. Petitioner was referred to ELARC for evaluation of his eligibility for the Early Start program due to concerns about his delayed speech and language development.

4. On April 8, 2014, Mirella Benitez, intake Coordinator, prepared an Early Start Social Assessment. (Ex. 3) Of significance, Parents reported that Petitioner had frequent temper tantrums and is not able to communicate his needs, and had recently started biting other people.

5. A Speech and Language Evaluation was performed on April 12, 2014, by Brittany Berg, an ELARC speech and language pathologist. (Ex. 4.) Parents reported concerns that Petitioner is easily frustrated and has difficulties communicating his wants and needs, has unclear speech and a lisp. Petitioner was 28 months old at the time of the evaluation. Petitioner was evaluated using observation and administration of the Preschool Language Scale 5 (PLS-5) and Rosetti Infant-Toddler Language Scale Interaction and Attachment. The following results were obtained from the assessment data:

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<u>PLS-5</u>	Standard Score	Percentile	Age Equivalency
Auditory Comprehension	100	50%	2 yrs., 3 mos. (27 mos.)
Expressive Communication	87	19%	1 yr., 9 mos. (21 mos.)
Total Language	93	32%	2 yrs. (24 mos.)

Rossetti Infant-Toddler

Interactive-Attachment	Within Normal Limits
Pragmatics	Within Normal Limits

6. Berg also evaluated Petitioner’s Auditory Comprehension, play and social skills which she found to be within the normal range. She opined that Petitioner’s expressive language, articulation and phonology were impaired.

7. Berg found that Petitioner’s functional expressive language skills were “mild-moderately impaired secondary to his decreased speech intelligibility.” Petitioner was able to combine 1-2 word utterances and communications through word approximations, pointing, leading and gesturing. Petitioner had communicative intent, but lacked sufficient language to express himself. Petitioner’s lack of consonants and poor intelligibility impair his expressive language ability. Berg’s oral peripheral examination revealed that Petitioner’s tongue placement is far forward and his tongue protrudes at times. This placement effects his articulation.

8. In her summary, Berg opined as follows:

[Petitioner] demonstrates age appropriate receptive language development and mildly impaired expressive language development. His expressive vocabulary is delayed, as is his mean length of utterance. He has reduced speech intelligibility and would benefit from direct therapy. [Petitioner] does not appear to meet ELARC criteria for speech therapy but would benefit from direct services (through generic resources) to address decreased speech intelligibility.

9. Berg recommended that Petitioner seek speech therapy though his family medical insurance or the school district to assist him with articulation, vocabulary and mean-length of utterance.

10. The ELARC interdisciplinary team reviewed Petitioner’s assessment results and determined that he did not meet criteria for eligibility. Petitioner was rated at the 27 months level in Social/Emotional, 25 months in Cognitive, 23 months in Adaptive/Self Help, 27 months in Receptive Language, 21 months in Expressive

Language, 33 months in Gross Motor Skills, and 22 months in Fine Motor Skills.² Applying the legal criteria for eligibility, discussed in more detail in the Legal Conclusions below, the interdisciplinary team decided that Petitioner was not eligible for ELARC services. (Ex. 5.) A letter explaining the eligibility criteria and the ELARC decision was sent to the parents on May 13, 2014. (Ex. 2.)

11. Parents submitted a report from Kaiser Permanente Speech and Language Pathologist Ivonne Molina indicating that Petitioner's speech has been delayed, he has a vocabulary of approximately 30 words, and does not consistently combine two words. Molina administered the Receptive Expressive Emergent Language Test-Third Edition (REEL-3) to Petitioner. Molina opined in her report that Petitioner performed at the age equivalency of 32 months in Receptive Language and 17 months in expressive language. Petitioner was 29 months old at the time of the assessment. She opined that he "presents with a severe expressive language delay characterized by limited vocal play, limited spontaneous speech and limited expressive vocabulary." (Ex. A.) Petitioner was approved by Kaiser for speech and language therapy once per week for five hours per month. (Ex. C.)

12. Petitioner's mother testified that Petitioner recently failed a hearing screening test and will be scheduled for a full audiological examination in the near future.

13. Parents both testified about their concerns about petitioner's behavior, frustration and communication delays. Petitioner's weaknesses in expressive communication are shown when for example, he cannot reciprocate with peers or engage in play that includes using many words. They have witnessed his frustration when he cannot express himself and are very concerned about it. Petitioner's family ensures that he has opportunities to socialize and interact with same aged peers in sports and in the community.

LEGAL CONCLUSIONS AND DISCUSSION

1. Jurisdiction for this case is governed by the Individuals with Disabilities Education Act (IDEA), which is federal law (20 U.S.C. § 1431 et seq.), and the California Early Intervention Services Act (CEISA) (Gov. Code, § 95000 et seq.), which is state law that supplements the IDEA. Each act is accompanied by pertinent regulations. Thus, both federal and state laws apply to this case. In conformity with these laws, Petitioner presented a hearing request, and therefore jurisdiction for this case was established. (Factual Findings 1 and 2.)


² The Statement of Eligibility indicates that Petitioner was also evaluated using the Bayley Scales of Infant Development II (BID) and the Developmental Assessment of Young Children (DAYC), however there were no reports or other evidence of these assessments offered in evidence.

2. When a person seeks to establish that he is entitled to government benefits or services, the burden of proof is on him. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 [disability benefits]; see also, 34 C.F.R. § 303.425(b) (1999).) Petitioner’s parents therefore bear the burden of proof in this case, since they are requesting eligibility for services, which ELARC has denied. (Factual Findings 1 and 2.)

3. Pursuant to Government Code section 95014, subdivision (a)(1), as well as California Code of Regulations, title 17 (Regulation), section 52022, subdivision (a), an infant or toddler under the age of three is eligible for services under the Early Start program if he or she has a developmental delay in one or more of the following areas: cognitive development; physical and motor development, including vision and hearing; communication development; social or emotional development; or adaptive development. Under Government Code section 95014, subdivision (a)(1), the developmental delay must represent a “significant difference between the expected level of development for their age and their current level of functioning,” and such “significant difference is defined as a 33-percent delay in one developmental area before 24 months of age, or, at 24 months of age or older, either a delay of 50 percent in one developmental area or a 33-percent delay in two or more developmental areas.” Therefore, as Petitioner is older than 24 months, to be eligible there must be either a delay of 50 percent in one developmental area or a 33-percent delay in two or more developmental areas

4. Regulation section 52082, subdivision (e), further clarifies that when the infant’s eligibility for services is evaluated by standardized, normed or criterion referenced instruments, a significant delay “shall be established when an infant’s or toddler’s age equivalent score falls one third below age expectation.”

5. The types of assessments and evaluations required to be performed by the regional centers are described in Government Code section 95016 as “timely, comprehensive, multidisciplinary evaluation of his or her needs and level of functioning in order to determine eligibility.” These assessments and evaluations are more specifically described in Regulation 52084, subdivision (c), to include “(2) Developmental observations by qualified personnel and the parent; (3) Other procedures used by qualified personnel to determine the presence of a developmental delay, established risk condition, or high risk for a developmental disability; and (4) Standardized tests or instruments.”

6. An infant may also be found eligible for Early Start services if he or she has an “established risk,” as defined in 20 U.S.C. § 1432(1), Government Code section 95014, subdivision (a)(2), and Regulation section 52022, subdivision (b). There was no claim or evidence that Petitioner was eligible under the criteria for having an established risk. 

7. In reaching the conclusion that Petitioner is not eligible for services, the testimony and evidence presented by Petitioner's parents and ELARC have been considered. In this case, it was not established by sufficient evidence that Petitioner has a significant delay, as defined by statute, in any of the five areas of development. Examining the branch of eligibility requiring two areas of development with at least a 33-percent delay, none of the Petitioner's areas of development score that low. (Factual Findings 3-13.)

8. The other branch of eligibility requires one area of development with at least a 50 percent delay. Again, none of the Petitioner's areas of development score that low. (Factual Findings 3-13.)

9. Petitioner has not submitted sufficient evidence to establish eligibility for Early Start services. (Factual Findings 3-13.)

10. Parents are right to be concerned about the nature of their son's abilities and their effect on him. However, his present delays, as demonstrated in ELARC and Kaiser assessments, are not so extreme as to qualify for Early Start services.

ORDER

Petitioner is not eligible for services from the Eastern Los Angeles Regional Center under the California Early Intervention Services Act. Petitioner's appeal is denied.

DATED: July 2, 2014.

GLYNDA B. GOMEZ
Administrative Law Judge
Office of Administrative Hearings