

OAH Decision Addresses When California Children's Services Is Required to Participate In IEP Process

A recent decision from the Office of Administrative Hearings (OAH) highlights that where California Children's Services (CCS) is providing services required by a student's individualized educational program (IEP), CCS staff must consult with the school district and participate in the IEP process prior to making changes to the services it provides to the student.

CCS is a state and county program administered by the state Department of Health Care Services that provides medically-necessary benefits to certain eligible children. In *California Children's Services* (2012) OAH Case No. 2011060589, CCS provided occupational therapy (OT) and physical therapy (PT) services to a severely-disabled student with cerebral palsy, as required by his IEP. The student needed OT and PT services for both educational and medical reasons. For example, he required assistance in sitting upright and holding his head up to enable him to breathe properly, but also to allow him to see and hear his teachers and to use a computer at school. Moreover, there was substantial overlap in his need for assistance for his mobility, toileting, and feeding needs. Finally, the OT and PT helped alleviate constant leg and back pain, which impaired the student's ability to focus in class, caused him to miss school, and prevented him from doing many functions of daily life.

After conducting a review of the student's medically-necessary services, CCS unilaterally reduced the student's OT and PT services to just a fraction of the amount that student's IEP team determined he should receive in his IEP. Although CCS notified the school district about the reduction, it did not consult with the school district or parents beforehand.

The student argued that CCS's actions denied him the free appropriate education (FAPE) to which he was entitled under the Individuals with Disabilities Education Act (IDEA). CCS argued that because it was providing only medically-necessary services, it was not obligated to follow the laws related to IEPs and was in no way responsible for the student's education. In finding in favor of the student, OAH made important clarifications regarding the role of CCS as part of a student's IEP team and its duty to provide the services required by the student's IEP.

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Under the IDEA, special education students must receive a FAPE, which consists of special education and related services (known as “designated instruction and services” in California). (20 U.S.C. § 1401(a)(9); Ed. Code § 56363(a).) Related services include a variety of services that assist a child with a disability in benefiting from their education, such as OT and PT. (20 U.S.C. § 1401(a)(26); Ed. Code § 56363.)

Under state law, both school districts and other local agencies, like CCS, may be responsible for providing related services to students. (See Gov. Code § 7570.) Specifically, CCS must provide eligible students with “medically necessary occupational therapy and physical therapy, . . . by reason of medical diagnosis and when contained in the child’s individualized education program.” (Gov. Code § 7575(a)(1).) In California, a state agency that provides related services as part of a student’s IEP must participate in the IEP process. (See Gov. Code § 7572(b), (c)(1), (d).) CCS specifically is required to participate in the IEP team and develop the student’s IEP. (Cal. Code Regs., tit. 2, § 60325(b).)

In *California Children’s Services*, CCS argued that it was not responsible for providing the student with OT or PT services once it had decided that the student no longer needed the services for medical reasons. However, OAH ruled that when related services are a part of the student’s educational program, including medically-necessary services, CCS is not permitted to make unilateral changes to the student’s services. In highlighting the importance for CCS to take part in the IEP meeting process prior to changing the level of CCS-offered services, OAH agreed with evidence introduced at hearing that the terminated services led to physical problems that further impacted student’s access to his educational program.

Furthermore, OAH ruled in *California Children’s Services* that when a dispute arises about the services included in a student’s IEP, CCS along with the school district must fulfill its “stay put” responsibilities. This means that if there is a disagreement about the amount of services a student should receive, the school district and local agency must continue to provide the student with the same level of services that he or she received before the disagreement arose, while the parties attempt to resolve the dispute. (20 U.S.C. § 1412(a)(12)(B), 1415(j).)

Because OAH found that CCS was responsible to provide the OT and PT services listed on the student’s IEP, CCS was also responsible for providing a part of the student’s educational program. OAH found that CCS violated special education laws by failing to have CCS therapists attend the student’s IEP meeting and participate in the IEP process. CCS’s decision to reduce services, failure to seek and obtain the parents’ consent for reducing services, failure to participate in the IEP process, and failure to comply with the law denied the student his free appropriate public education. Due to the reduction in services, the student suffered a material educational loss in the form of missed days at school and the inability to focus or to maneuver while at school due to his pain. As a result, CCS was ordered to comply with procedural laws relating to IEPs, immediately participate in the IEP process and have its therapists attend IEP meetings, restore the student’s services, provide compensatory education for the regression suffered by student, and otherwise cooperate with the IEP team.

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In this instance, the school district was not involved in the hearing because it had previously entered into a settlement agreement with the student. However, the judge indicated that school districts are ultimately responsible to ensure that students continue to receive the services they need, regardless of which agency is providing them. Thus, school districts must be aware of their responsibilities in regards to services provided by CCS, to ensure that CCS is involved in the IEP process, and ensure that CCS services continue to be provided in the event of a dispute.

If you have any questions regarding this decision, or its legal implications, please feel free to contact one of our [eight offices](#) located statewide. You can also visit our [website](#) or follow Lozano Smith on [Facebook](#).

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