

# CLIENT NEWS BRIEF

## Court of Appeal Weighs In On Non-Educational State Agency's Role in Providing Related Services

In its recent decision in *Department of Health Care Services v. Office of Administrative Hearings* (Nov. 29, 2016, F071023) — Cal.App.4th — <<http://www.courts.ca.gov/opinions/documents/F071023.PDF>>, the Fifth Circuit Court of Appeal held that during a dispute between a local education agency (LEA) and a non-educational state agency over the provision of services included in an Individualized Education Program (IEP), the department or agency that provided the services before the dispute arose must continue to provide them until the dispute is resolved.

The case involved a student who was eligible for special education services from the Sonora Elementary School District (Sonora) and occupational therapy (OT) and physical therapy (PT) services from the Department of Health Care Services (Department), California Children's Services Program (CCS). The student's OT and PT services were included in her IEP as related services. Over the course of two school years, CCS made changes to the amount of time, frequency and delivery of its services, ultimately reducing the level of OT and PT services it provided to the student and changing them from direct therapy to monitoring sessions only. CCS made these changes unilaterally, outside the IEP process, and implemented them without parental consent.

The student filed a special education due process complaint against CCS before the Office of Administrative Hearings (OAH), alleging that CCS denied her a free and appropriate public education (FAPE) during the two school years in question. CCS moved to dismiss the case on the grounds that the OAH lacked jurisdiction over the matter; alternatively, it sought to limit the claims asserted against CCS by bringing Sonora and the Tuolumne County Office of Education (collectively referred to as "educational agencies") into the case. The OAH denied CCS's motion to dismiss, but ordered the educational agencies to be included as defendants in the action. The student agreed to waive all claims and resolve all disputes related to the educational agencies' provision of FAPE and services, thereby dismissing the educational agencies as parties from the action. The hearing proceeded with only the student and CCS.

The administrative law judge (ALJ) hearing the matter for OAH ruled in favor of the student, determining that CCS was required to utilize the IEP development process and due process hearing procedures set forth by the IDEA in order to make changes to its recommended services. The ALJ ordered CCS to provide compensatory services and to restore the student's OT and PT services to the levels provided for in her last agreed-upon IEP. The Department elevated the matter to the trial court, which affirmed the order of the ALJ.

The Department then petitioned the Court of Appeal for review of the trial court's decision; Lozano Smith represented Sonora and the Tuolumne County

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Marcy Gutierrez  
Senior Counsel  
Sacramento Office  
[mgutierrez@lozanosmith.com](mailto:mgutierrez@lozanosmith.com)



Joanne J. Kim  
Associate  
Los Angeles Office  
[ikim@lozanosmith.com](mailto:ikim@lozanosmith.com)



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Office of Education when they rejoined the case as real parties in interest. The court evaluated the Department's claim that OAH lacked jurisdiction to determine whether OT and PT services are medically necessary, and consequently, whether the ALJ had the authority to award compensatory services and restoration of services. The court recognized that services contained a student's IEP – whether medically or educationally necessary – are related services; and as such, any dispute concerning the provision of those services may be resolved in special education due process hearings.

Guided by federal and state law, the court resolved that during a dispute between an LEA and a non-educational state agency over the responsibility for the provision of services, the department or agency that provided the services before the dispute is required to continue providing the services until the dispute is settled. Based on this, the court affirmed the decision of the ALJ, as CCS's unilateral decision to reduce or terminate OT and PT services included in the student's IEP constituted a violation of the IDEA and state regulations.

The Department has initiated similar litigation against school districts throughout the state, seeking to shift its legal obligation to provide medically necessary services onto LEAs. This decision reaffirms the notion that non-educational agencies and LEAs are jointly responsible for the provision of related services included in a student's IEP, and that non-educational agencies are not outside the purview of the IDEA with respect to those services.

For more information about the decision or the provision of related services in general, please contact the authors of this Client News Brief or an attorney at one of our [nine offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#) or download our [Client News Brief App](#).

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