

CLIENT NEWS BRIEF

Ninth Circuit Holds that Medically Necessary Occupational Therapy Services Are "Related Services" Under the IDEA

In a recent decision, *Douglas v. California Office of Administrative Hearings* (9th Cir., May 13, 2016, No. 15-15261) __ Fed.Appx. __ [2016 U.S.App. LEXIS 8844], the Ninth Circuit Court of Appeals confirmed that occupational therapy services, whether educationally or medically necessary, are "related services" under the Individuals with Disabilities Education Act (IDEA) when they are included in a student's Individualized Education Plan (IEP).

The appellate court also held that California's Office of Administrative Hearings (OAH) has jurisdiction to decide disputes regarding California Children's Services' (CCS) determination of the medical necessity of occupational therapy services included in a student's IEP, and that OAH can award a student compensatory education, reimbursement for independently obtained assessments and prevailing party attorneys' fees.

The decision is important for school districts and county offices of education because it clarifies that "related services" may include medically necessary services like occupational and physical therapy if they are listed in a student's IEP. The decision also confirms that disputes regarding medically necessary "related services" provided through CCS are subject to due process review, pursuant to the IDEA.

Government Code section 7575(a) requires CCS to provide for medically necessary occupational and physical therapy services, by reason of a medical diagnosis, when included in a student's IEP.

Plaintiff California Department of Health Care Services (DHCS) argued that the law allows CCS to determine the level of therapy that is medically necessary for a student's condition and that review of this decision is limited to the appeal process within CCS. The district court agreed, finding that OAH's jurisdiction extends only to whether CCS failed to provide required occupational or physical therapy services; the court held that under the Health and Safety Code, the determination regarding whether services were medically necessary rests with CCS.

The appellate court disagreed, finding that the Government Code section 7585 specifically provides that disputes regarding occupational therapy recommendations by medical personnel and an IEP team may be resolved through due process proceedings before OAH. The appellate court reasoned that medically necessary occupational therapy services included in a student's IEP are "related services," so families who dispute them are entitled to procedural protections, including the right to due process review under the IDEA.

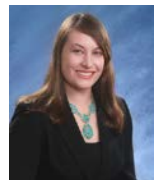
The appellate court also returned the case to the district court to make an award of compensatory occupational therapy services, reimbursement for privately obtained independent assessments and prevailing party attorneys' fees against CCS.

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The *Douglas* decision clarifies CCS's obligation to implement related services in an IEP in cases where CCS is designated as the provider of those services.

While this unpublished decision is not necessarily binding, it is likely that the lower California federal courts will follow the Ninth Circuit's interpretation of federal law, and its interplay with state law, as set forth in the *Douglas* decision. However, to the extent that this case also raises issues of interpretation of California law, California state courts may consider this decision as merely persuasive.

Lozano Smith is currently representing two local education agencies in a very similar dispute with DHCS that is now pending with a state appeals court. If you have a dispute regarding CCS services pursuant to an IEP, it may be prudent to consult with legal counsel.

If you have questions regarding this decision or other special education obligations, please contact 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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