



March 3, 2015

MEDICAL VS. EDUCATIONAL - DON'T EVER MIX THE TWO ON AN IEP

Since Occupational Therapy (OT) and Physical Therapy (PT) can be needed for both medical and educational reasons it is no wonder that these services can sometimes present a quandary for an IEP team presented with a child needing OT or PT due to medical and educational issues.

The State Department of Health Care Services through its California Children's Services (CCS) programs are responsible for providing medically necessary OT and PT (as determined by a medical diagnosis) when contained in a child's IEP; conversely, the LEA is responsible for providing any OT and PT services that the IEP team deems necessary for a child to access special education that is not deemed medically necessary and provided by CCS.¹

Best practice is to insure that the terms of the IEP are limited only to educationally related services that will be provided by the LEA. However, in the past, some LEAs have included the OT and PT services that were provided by CCS to address medical, not educational needs, as part of a student's IEP. This January two opposing court decisions have come out illustrating what can go wrong when medical services are included in an IEP.²

In 2012 both Sonora Elementary and Cupertino Union School Districts each had students who were receiving both medical OT provided by CCS and educational OT provided by the district. In both cases the amount and frequency of medical OT services provided by CCS were specifically listed in each student's IEP. In both cases, CCS eventually made the unilateral

¹ Cal. Government Code section 7575(a)(1) and(2).

² *California Department of Health Care Services, et al. v. Director, Office of Administrative Hearings*, Tuolumne County Superior Court Case No.: CV58418, decision issued January 2, 2015 and *Douglas v. Director, Office of Administrative Hearings*, NDCA Case No. 5:13-cv-05306-RMW, 2015 U.S. Dist. LEXIS 7504; decision issued January 21, 2015.

determination that the amount of medical OT should be reduced and started reducing services without going through the IEP process. Thereafter, in both cases, the parents filed for due process against CCS and the respective school districts.³ In both cases prior to the hearing, the school districts reached a settlement with the parents and did not have to appear at hearing.

During the summer of 2013 OAH issued decisions in two separate cases finding that it had jurisdiction over the CCS under the IDEA and in both cases ordered CCS to provide compensatory OT.⁴ Thereafter, the Department of Health Care Services appealed both OAH decisions by filing suit against the California Office of Administrative Hearings (OAH). Both school districts were brought back into the legal fray as real parties in interest.

The Sonora Elementary School District case was originally filed by CCS in the Superior Court for Tuolumne County and then removed to the District Court for the Eastern District of California.⁵ The Judge in the Eastern District of California found that the Sonora Elementary School District case was an interagency dispute regarding state law and not a case under the IDEA and remanded the case back to the Superior Court.⁶

On January 2, 2015, the Tuolumne County Superior Court found that CCS was subject to the jurisdiction of OAH, that OAH had the authority to make a determination regarding the Medical OT services in a student's IEP and CCS was ordered to provide the compensatory medical OT as originally ordered by OAH.⁷

Meanwhile, CCS filed its appeal of the Cupertino Union School District decision with the Federal Court and the Judge in the Northern District of California found that the Cupertino Union School District case was a case appropriately brought under the IDEA.⁸

On January 21, 2015, the U. S. District Court for the Northern District of California made the exact opposite determination from the Sonora case and found that OAH could not review CCS's determination regarding the medical necessity of the student's OT. Additionally, the Judge found that pursuant to Title 20 U.S.C. sections 1415(j) and 1412(a)(12)(B)(ii) the school, not

³ *Student v. Tuolumne County California Children's Services*, OAH Case No. 201200238 and *Student v. California Children's Services*, OAH Case No. 2012080386.

⁴ *Ibid.*

⁵ *California Department of Health Services v. Director Cal. Office of Administrative Hearings*, EDCA Case No: 1:13-cv-01858-LJO-SAB.

⁶ *Supra*, ECDA PACER Document No. 29, Remand Ordered by Magistrate Judge Stanly A. Boon dated February 20, 2014. (Ruling as adopted by *U. S. District v. Judy Lawrence O'Neill* on March 20, 2014. PACER Document No. 31).

⁷ *California Department of Health Care Services, et al. v. Director, Office of Administrative Hearings*, Tuolumne County Superior Court Case No.: CV58418, decision issued January 2, 2015.

⁸ *Douglas v. Director, Office of Administrative Hearings*, 2015 U.S. Dist. LEXIS 7504.

CCS, should have been responsible for providing the medically necessary OT while the case was pending as part of the child's stay put.⁹

Trapped in the middle of both of these cases were the respective school districts which incurred litigation expenses related to the denial of medical OT services they were not legally required to provide by a third-party entity they had no control over.

In order to avoid being potentially liable for the cost of medical OT or PT services, do not specify the service time and duration of OT or PT service provided by CCS or any third-party agency as part of the district's offer. In cases where a child may receive medically related OT or PT services from CCS, be sure to explain at the IEP team meeting that any OT or PT services provided by the district are limited to those services that are needed to assist a child to benefit from special education and that medical OT or PT services are designed to ameliorate or improve a child's medically diagnosed condition.

If a referral to CCS is discussed at the IEP team meeting, state in the notes the following:

"District provided parents with the information for a referral to CCS. The team explained that CCS may make a determination for medically necessary services it will provide under its own procedures and not as part of the IEP process."

Finally, never specify the frequency or duration of CCS services as part of a student's IEP.

If you have any questions concerning this or related issues, do not hesitate to contact our office.

— Darren J. Bogié

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⁹ *Douglas v. Director, Office of Administrative Hearings*, 2015 U.S. Dist. LEXIS 7504.