BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH CASE NO. 2011060589
v.	
CALIFORNIA CHILDREN'S SERVICES.	

DECISION

Charles Marson, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on February 7 and 8, and 2012, in San Andreas, California.

Christian M. Knox, Attorney at Law, represented Student. Student's Grandmother and Grandfather (Grandparents) were present throughout the hearing. Student was not present.

Gretchen E. Leach, Attorney at Law, represented California Children's Services (CCS). Colleen Tracy, the Health Services Agency Director of Calaveras County, was present throughout the hearing on behalf of CCS.

Student filed his request for due process hearing on August 12, 2011, naming CCS and the Calaveras Unified School District (District). The matter was continued on September 28, 2011. On February 6, 2012, the District was dismissed as a party as the result of settlement. At hearing, oral and documentary evidence were received. At the close of the hearing, the matter was continued to March 7, 2012, for the submission of closing briefs. On that day, the record was closed and the matter was submitted for decision.[1]

[1] For clarity of the record, Student's Closing Brief has been marked as Student's Exhibit 104. CCS's Post-Hearing Brief has been marked as CCS Exhibit 16s.

ISSUES

1. Did CCS deny Student a FAPE during the 2010-2011 school year (SY) by:

    A. Failing to provide him adequate physical therapy (PT) services;

    B. Failing to provide him adequate occupational therapy (OT) services; and

    C. Unilaterally reducing his OT and PT services outside of the individualized education program (IEP) team process?

2. Did the CCS fail to make any offer to Student of related services for the 2011-2012 SY?[2]

CONTENTIONS

Student argues that CCS is required by law to deliver to him the PT and OT services in his current IEP, and that any changes in those services must be made through the IEP process and in compliance with the stay put rule. Student further argues that from May 2010 to the present, CCS unilaterally reduced his PT and OT services without discussion at an IEP meeting, without the consent of Grandparents, and without complying with the stay put rule or any of the other requirements of the IEP process. Student contends that because of CCS's unilateral reductions, his education has been significantly damaged, and Grandparents' participatory rights violated.

CCS admits that it unilaterally reduced Student's PT and OT services outside of the IEP process, but argues that it may lawfully do so. It contends that it only provides medically necessary PT and OT; that the District is responsible for educationally necessary PT and OT; and that it observed all laws and regulations pertaining to CCS in the course of its reduction of services. It further argues that it is not a member of Student's IEP team, needs to do no more than keep the IEP team informed of changes in its services, and does not have to follow the IEP procedures set forth in federal and state law in reducing its services.

[2] Issues related to the District have been eliminated because it is no longer a party.

FACTUAL FINDINGS

Background and Jurisdiction

1. Student is an 11-year-old male who lives with his Grandparents, who are his caretakers and possess his educational rights, within the geographical boundaries of the District and Calaveras County. He is severely disabled by cerebral palsy and eosinophilic esophagitis, and is visually impaired. He requires extensive supports and services at home and school. He is eligible for, and has been receiving, special education and related services in the categories of orthopedic and vision impairment since he was three years old. He is an alert child who is engaged in his activities and therapies.

2. CCS is a state and county program administered by the California Department of Health Care Services. It provides medically necessary benefits to persons 21 years of age and younger who have physically disabling conditions and who meet its medical, financial and residential eligibility requirements. Its Medical Therapy Program (MTP) provides physical therapy, occupational therapy, and physician consultations to eligible students in schools. Pursuant to state law, MTP provides medically necessary OT and PT to special education students by reason of medical diagnosis and when those services are contained in the students' IEPs.

3. Student meets the requirements for CCS services in the areas of PT and OT, and CCS MTP has provided those services since he was five years old. Prior to January 2012, Student's IEPs included the delivery of PT and OT by CCS; his IEPs since then have not.

4. The dispute centers on a question of law addressed in the Legal Conclusions. The essential facts are not disputed.

Student's Condition and Educational Needs

5. On November 11, 2011, Grandparents took Student for an evaluation by Dr. Kristine Corn, a physical therapist with approximately 40 years of experience. Dr. Corn has a bachelor's degree in physical therapy from the University of Southern California, and a master's and doctor's degrees in physical therapy from the University of the Pacific. She has a certificate of clinical competence and is licensed by the state to practice physical therapy. She has worked as a staff therapist for CCS, the United Cerebral Palsy Association, and the Jerd Sullivan Rehabilitation Center. She has extensive experience as a teacher and clinical supervisor of physical therapy, and is at present in private practice, specializing in treating children with brain damage. She has completed more than 500 assessments of children.

6. In her evaluation, Dr. Corn reported that Student presents with fluctuating muscle tone, "a great deal of back pain," and an inability to control or grade his movements in smooth coordinated patterns. She also determined that Student's inhalation and exhalation are impeded because his head and trunk righting responses, which are basic to his posture,

are not well developed. He does not have equilibrium responses or adequate balance. His upper extremities move randomly and his balance is so poor that it is unsafe to leave him alone. He cannot stand independently. His gross and fine motor developments are severely delayed.

7. Dr. Corn, who started her career in OT, established that the services of PT and OT overlap to a great degree generally and in Student's treatment. She described the distinction between them as, roughly, PT involves treating Student from the waist down, while OT involves treating him from the waist up. But she emphasized that that distinction was frequently overlooked, particularly in pediatric cases.

8. Dr. Corn also established that, in Student's case, any meaningful distinction between medically and educationally necessary services is illusory. CCS's medically necessary therapy addresses range of motion and independent living skills, while his educational therapy addresses learning needs, but for Student those concerns are "very interrelated." For example, Student must be assisted in sitting upright and holding his head up to breathe properly, but he also must be assisted in sitting up and holding his head up so he can see and hear his teachers and his computer, and attend to his lessons. He must be able to participate physically in the school setting. Dr. Corn testified that medical and educational necessity "cross over, every which way you turn."

9. The evidence independently confirmed Dr. Corn's testimony that Student's medical and educational therapy needs are very interrelated. For example, he uses the toilet and eats both at school and at home. He needs general mobility to move about the school, as well as outside of the school. His back and leg pain can be addressed by medically necessary therapy, but if he is in constant pain he cannot focus on his lessons and is impaired in many functions of daily life.

10. CCS argues that Dr. Corn's testimony should be entirely disregarded because she did not administer standardized tests to Student as part of her evaluation. Dr. Corn credibly testified that her skills in physical therapy and her years of experience allowed her to determine Student's condition and needs whether she used standardized evaluations or not. CCS introduced no evidence undermining Ms. Corn's ability to evaluate Student without standardized testing. Stephanie Dilliner, CCS's physical therapist (who has substantially less experience than Dr. Corn), testified that she preferred standardized testing to reduce subjectivity in evaluation, and expressed the concern that Dr. Corn's decision not to use such testing made comparison with her own results more difficult. But she did not testify that Dr. Corn's methods are significantly inaccurate, and CCS introduced no evidence that Dr. Corn's evaluation of Student is wrong in any material respect.

11. CCS also argues that Ms. Corn's testimony should be entirely disregarded because she is engaged in a project involving "hippotherapy," which CCS derides in its brief as "horse therapy." However, CCS's argument is unpersuasive because it is not supported by any evidence concerning hippotherapy, or even a description of it, or by any explanation why

Ms. Corn's involvement in the project could justify disregarding her 40 years of experience as a physical therapist.

12. Most importantly, CCS did not introduce any substantial evidence that would show that any of Ms. Corn's conclusions and testimony were incorrect. The assessments in the record by Ms. Dilliner and CCS occupational therapist Susan Sirias do not substantially disagree with Ms. Corn's assessment of Student's condition.

CCS's Unilateral Reduction of Student's PT

13. Student's IEP of August 23, 2010, required CCS to deliver 60 minutes a week of PT, two times a week. Until May 2011, CCS complied with that requirement. On May 10, 2011, as part of a periodic review of Student's medically necessary services, Ms. Dilliner decided to recommend to CCS's participating physician a reduction in Student's PT services to one time a week for six weeks and then two times a month for four-and-one-half months. Grandmother objected to the reduction, but the CCS physician approved it and CCS implemented the reduction on or about May 12, 2011. CCS notified the District of the reduction.

14. In reducing Student's PT services in May 2011, CCS acted according only to its internal standards for medically necessary therapy, and did not consider Student's educational needs for PT. CCS informed the District of the change, but did not request an IEP meeting, did not consult the IEP team, and did not seek or obtain Grandparents' consent. CCS acted unilaterally and outside of the IEP process, and implemented its decision as soon as it was made.

CCS's Unilateral Reduction of Student's OT Services

15. Student's IEP of August 23, 2010, also required CCS to deliver 45 minutes a week of OT, once a week. Until May 2011, CCS complied with that requirement. On May 10, 2010, as part of a periodic review of Student's medically necessary services, Ms. Sirias decided to recommend to CCS's participating physician a reduction in Student's OT services to one time a month. Grandmother also objected to this reduction, but the CCS physician approved it and CCS implemented the reduction shortly thereafter. CCS notified the District of the reduction.

16. In reducing Student's OT services in May 2011, CCS acted according only to its internal standards for medically necessary therapy, and did not consider Student's educational needs for OT. CCS informed the District of the change, but did not request an IEP meeting, did not consult the IEP team, and did not seek or obtain Grandparents' consent. It acted unilaterally and outside the IEP process, and implemented its decision as soon as it was made.

Unilateral Reduction of Services as Substantive Violation of IDEA

17. The delivery of special education and related services in conformity with a student's IEP is an essential element of a FAPE. If a local education agency (LEA) or other responsible agency fails to do so and that failure is material, the agency has committed a substantive violation of the Individuals with Disabilities Education Act (IDEA). No separate showing of prejudice is required to demonstrate entitlement to relief.

18. CCS's unilateral reduction of Student's PT services in May 2011 was material and substantial. The initial 8-week reduction cut those services in half; the further reduction after 8 weeks left Student with one quarter of the services promised in his August 23, 2010 IEP. CCS's unilateral reduction of the PT services in Student's IEP was therefore a material failure to implement his IEP.

19. CCS's unilateral reduction of Student's OT services in May 2011 was also material and substantial. The reduction of services from twice a week to once a month left Student with one eighth of the services promised in his August 23, 2010 IEP. CCS's unilateral reduction of the OT services in Student's IEP was therefore also a material failure to implement his IEP.

20. Because they were material failures to conform to Student's IEP, CCS's unilateral reduction of Student's PT and OT services denied Student a FAPE.

Unilateral Reduction of Services as Procedural Violation of IDEA

21. Under the IDEA, the related services in a student's IEP may not be reduced or eliminated without compliance with numerous procedural requirements. These include convening an IEP meeting, discussing the proposed reductions with the IEP team, allowing parents a meaningful role in the decisions to be made, arriving at a revised IEP offer, and obtaining parents' consent to the offer or the order of a hearing officer that the offer may be implemented without their consent.

22. CCS's unilateral and immediate reduction of Student's PT and OT services outside of the IEP process violated all of the basic procedural requirements of the IDEA and related laws relating to modification and approval of IEPs, including but not limited to the basic procedures set forth immediately above.

Withdrawal from IEP Process as Procedural Violation of IDEA and State Law

23. State law requires that if CCS delivers PT and OT as related services pursuant to an IEP, it must participate in the IEP process. OT and PT may only be added to an IEP after an assessment is conducted by CCS's qualified medical personnel. The person who conducted the assessment must attend the IEP team meeting if requested. The LEA must invite the OT or PT assessor, who must attend in person, or by conference call, together with

written information. If the assessor cannot attend in that fashion, the LEA must ensure that a qualified substitute is available to explain and interpret the evaluation.

24. Starting weeks or months before Student's annual IEP meeting on January 31, 2012, CCS took the position that neither it nor its therapists were members of the IEP team, and that it satisfied its legal obligations to Student and the IEP team simply by notifying the District of its reduction of services. CCS then withdrew from the IEP process, declined to participate in offering Student any PT and OT as related services in his IEP, did not deliver PT and OT except as substantially reduced. At a review IEP meeting held after the January 31, 2012 meeting, Ms. Sirias requested that CCS's PT and OT services be removed entirely from Student's IEP.

25. CCS's withdrawal from the IEP process and removal of its services from Student's IEP violated CCS's state law duty to participate in Student's IEP process.

Prejudice from Procedural Violations of IDEA and Related State Laws

26. A procedural violation of the IDEA results in a denial of FAPE only if it impedes the child's right to a FAPE, significantly impedes the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the parents' child, or causes a deprivation of educational benefits.

Educational Loss

27. Student's Grandmother established that Student suffered substantial educational loss from CCS's procedural violations of IDEA. Grandmother devotes much of her time to Student's care, including going to school with him every day, and was more familiar with his needs and condition than any other witness. In her testimony, Grandmother was reasonable and careful, and did not exaggerate. Cross-examination did not expose significant weaknesses in her statements, and other evidence did not contradict her testimony on essential issues. Her testimony is given substantial weight here.

28. Witnesses for both parties generally agreed that a substantial part of CCS's therapies had been directed to ameliorating Student's pain in his hip, knee and back. Ms. Dilliner explained that, for Student, movement alleviated pain, and the less he moved, the more pain he suffered, which in turn further constricted his movement. Grandmother credibly testified that Student was in considerably more pain in his hip, knee and back after CCS reduced his therapies. At the suggestion of a neurologist, Grandparents took Student to an outside physical therapist for four sessions to treat the pain, and the therapy was effective, but only temporarily.

29. Grandmother also established that Student missed "lots" of school days as a result of that pain, sometimes as many as three to four days a week. In addition, his mobility degenerated. Before CCS's reductions in therapy, Student was able to walk to some degree, either with physical help or in a gait trainer. Student could walk around the hilly campus

where the MTP program is located "quite well," but after the reductions could not do so. He could not tolerate standing in his stander for more than 10 minutes at a time, twice a day, whereas before the reductions he "did much better" and could stand for up to 30 minutes at a time. After the reductions in service, Grandmother noticed regression in Student's speech production, which is partly a function of posture while breathing and speaking. His increased difficulty in breathing was audible. Ms. Dilliner noted in her log that Student was at "high risk for contractures." Grandmother and school staff noticed an increase in maladaptive behaviors by Student after CCS reduced its services, such as throwing fits.

30. Much of Grandmother's testimony was confirmed by Janine Schumann, a special education teacher for the District who has been Student's case manager since kindergarten. Ms. Schumann has worked extensively with CCS in its therapies for Student, and tracks Student's condition every day either personally or through reports from staff. She testified that having CCS at the school on a regular basis helping Student was "critical," and that after CCS reduced its services, Student's strength, stamina and general health rapidly degenerated. He had more difficulty with allergies. He had so much more trouble with back and knee pain that District staff had to watch him more closely and make modifications to his program to adjust to his pain. She confirmed that following CCS's reductions, Student missed "a lot" of school due to his increased pain, although some absences had other medical causes. She could not estimate how many days of school he missed because of increased pain, but described the number as "significant."

31. CCS's reduction in Student's PT and OT services degraded necessary communication between CCS therapists and the District personnel who support him. Before CCS reduced its services to Student, its therapists frequently visited Student at school and worked with District staff to coordinate his support. District staff looked to CCS therapists as experts, and received from them considerable advice and assistance, including use of the frequently malfunctioning CCS-supplied wheelchair and training in such matters as lifting Student out of his wheelchair safely when he needed to use the toilet.[3] After CCS reduced its services to Student, Ms. Dilliner and Ms. Sirias appeared at school much less frequently, leaving District with far less guidance from CCS.

32. Therapists Dilliner and Sirias were invited to Student's annual IEP meeting on January 31, 2012, but did not attend, partly because of scheduling difficulties. The District invited them, and communications about possible dates for the meeting were exchanged, but CCS and District staff were unsuccessful in finding a time in which all needed IEP team members could attend. Ms. Dilliner and Ms. Sirias work half-time and blame the District for not scheduling the meeting on days they worked. The District attempted to do so, but Student's IEP team is large, and scheduling its members for a meeting is difficult. Eventually the District proceeded on a day the CCS therapists could not attend.

[3] CCS resists the conclusion that it provided "training" but Ms. Dilliner admitted that she demonstrated various procedures for District staff and then supervised them in practicing those procedures.

33. The failure of Ms. Dillinger and Ms. Sirias to attend the January 2012 IEP team meeting was not just the product of scheduling difficulties. Ms. Dilliner testified that CCS therapists had been discouraged for budget reasons from attending IEP meetings in person. CCS also claimed that its therapists were not members of the IEP team and needed only to keep the IEP team informed. In addition, there was no evidence that Ms. Dillinger or Ms. Sirias considered appearing at the meeting by conference call. The agencies thus share responsibility for the failure of CCS's therapists to attend Student's annual IEP team meeting.

34. Because CCS therapists did not attend Student's January 31, 2012 IEP meeting, Grandmother and District team members were unable to ask them a number of important questions that had accumulated about Student's therapies. For example, Student spends nearly every school day in his CCS-supplied motorized wheelchair, which is operated by a joystick. The joystick also controls Student's computer and the device with which he communicates with school staff. The joystick was not functioning properly, and the District had struggled for weeks to find solutions to the problem, usually without result. That and other troubles with Student's wheelchair had become almost constant; one District staffer described it as "almost a lemon." After CCS substantially reduced Student's therapies, Ms. Dilliner and Ms. Sirias came to Student's school less frequently and were less available to District staff to address that and other problems. This led to the accumulation of questions about Student's support that Grandmother and the District hoped to resolve at the January 2012 IEP team meeting, but could not because CCS therapists did not attend.

35. CCS's withdrawal from Student's IEP process was in part responsible for the failure of the agencies to offer Student any PT and OT in his annual IEP of January 31, 2012. CCS did not make or participate in making any offer of PT and OT for inclusion in Student's annual IEP.

36. Student's educational loss, as shown by the evidence, confirmed the judgment of his IEP team that PT and OT, at the levels provided by CCS before May 2011, were essential to assisting him in benefiting from his education. Student's brief recovery while under private treatment, and subsequent relapse, also illustrated his need for a higher level of services than now provided by CCS.

Loss of Right of Parental Participation

37. CCS's withdrawal from the IEP process and refusal to comply with IDEA procedural guarantees significantly impeded Grandparents' right to participate in the IEP process regarding the delivery of a FAPE to Student. Grandparents were unable to discuss the impact of CCS's reductions in PT and OT services before the full IEP team; were unable to discuss the results of CCS's most recent assessments of Student with CCS therapists at the January 31, 2012, IEP team meeting; and were unable to exercise their right to consent, or refuse to consent, to the reduction of those services. Thus, CCS's failure to abide by IDEA procedural guarantees substantially deprived Grandparents of their procedural rights with respect to CCS's reduction in PT and OT services.

38. CCS did not introduce any evidence to contradict the above findings concerning Student's educational loss and Grandparents' participatory loss, and does not argue that those findings should not be made. CCS bases its case almost entirely on its legal argument.

39. For the reasons above, CCS's procedural violations of the IDEA and related state law caused Student substantial educational loss, significantly impeded Grandparents' participatory rights, and denied Student a FAPE.

Appropriate Relief

40. For the hearing, Grandmother calculated the number of PT and OT sessions Student missed as the result of CCS's unilateral reduction of services. She credibly testified that by her calculation Student missed 54 hours of physical therapy and 24 hours of occupational therapy. CCS does not dispute this accounting, and the evidence showed that Student needs those levels of PT and OT to access his education.

41. Student's PT and OT must be restored to the levels set forth in his August 23, 2010 IEP. In addition, his regression as a result of CCS's violations must be addressed. As the result of her evaluation, Dr. Corn recommended that Student receive PT services at the rate of three hours a week. CCS does dispute the necessity for that level of service, but only on the ground that it is not medically necessary within the meaning of the statutes and regulations governing CCS. At hearing Ms. Dilliner, Ms. Sirias, and Ms. Tracy all disclaimed any expertise in determining the level of educationally necessary PT and OT that Student should receive. Since Student has regressed as the result of CCS's violations of IDEA, it is appropriate that his levels of PT and OT be maintained at the level recommended by Dr. Corn to allow him to make meaningful educational progress. In order to ameliorate his regression it is appropriate that Student receive one hour of PT three times a week for six months. Student does not seek OT services more frequently than in his August 23, 2010 IEP.

42. Coordinating Student's PT and OT services with the rest of his services, therapies and activities may be complicated, so Grandparents should have discretion to adjust the schedule of CCS's therapies by agreement with CCS.

43. For the reasons set forth above, the need for CCS's participation in Student's IEP process is apparent. CCS therapists are essential members of Student's IEP team and should participate as such in compliance with all laws, regulations, and interagency agreements set forth in the Legal Conclusions below. Student's related services are at present in such a state of confusion that it is also appropriate that CCS therapists personally attend IEP meetings for Student until the confusion is resolved, which will probably take at least one year.

44. CCS reviews its services to Student every six months, and produces medical plans that it follows for six month periods. It does not state in those medical plans the duration of each session of therapy. Student's IEP requires delivery of related services on an

annual basis and requires the duration of each session be specified. These and other differences between the ways in which CCS describes its services in its medical plans and how the District describes them in Student's IEPs have led to disagreements between the agencies that have been detrimental to the delivery of Student's services and to Grandparents' rights to understand the terms of IEP offers. It is not necessary here to alter the way CCS states its services for its own purposes. However, in granting Student appropriate relief it is necessary that CCS cooperate in a statement of its services in Student's IEPs that conform to the requirements of the IDEA.

LEGAL CONCLUSIONS

Burden of Proof

1. Student filed the request for due process hearing, and therefore has the burden of proving the essential elements of his claim. (*Schaffer v. Weast* (2005) 546 U.S. 49, 62 [163 L.Ed.2d 387].)

Requirements for a FAPE

2. Under the IDEA and state law, children with disabilities have the right to a FAPE. (20 U.S.C. § 1400(d); Ed. Code, § 56000.) A FAPE means special education and related services that are available to the child at no charge to the parent or guardian, meet state educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(a)(9).) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(a)(29).) Related services, called designated instruction and services in California, include, in pertinent part, developmental, corrective, and supportive services, such as PT and OT, as may be required to assist a child with a disability to benefit from special education. (20 U.S.C. §1401(a)(26); Ed. Code, § 56363.)

Failure to Provide Services as Substantive Violation of FAPE

3. By definition, provision of a FAPE requires delivery of special education and related services "in conformity with" a student's IEP. (20 U.S.C. § 1401(9)(D).) Any material failure to deliver services required by an IEP is a substantive violation of the IDEA. (*Van Duyn v. Baker School Dist. 5J* (9th Cir. 2007) 502 F.3d 811, 822.) A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP. (*Ibid.*) The student need not demonstrable educational harm in order to prevail. (*Ibid*.)

Importance of Procedural Safeguards

4. In *Board of Educ. v. Rowley* (1982) 458 U.S. 176 [73 L.Ed.2d 690] the Supreme Court placed great emphasis on the importance of the procedural protections of the IDEA, especially those that guarantee participation by parents:

> ... [W]e think that the importance Congress attached to these procedural safeguards cannot be gainsaid. It seems to us no exaggeration to say that Congress placed every bit as much emphasis upon compliance with procedures giving parents and guardians a large measure of participation at every stage of the administrative process ... as it did upon the measurement of the resulting IEP against a substantive standard.

(*Rowley, supra*, at pp. 205-206.)

Parents' Participatory Rights

5. Generally, parents must consent to an IEP before it can be implemented. (20 U.S.C. § 1414(a)(1)(D)(i)(II); 34 C.F.R. § 300.300(b) (2006)[4]; Ed. Code, § 56346, subd. (a).) Parents may consent to changes in an IEP either by agreeing to a new IEP or by executing an addendum to the existing IEP. (20 U.S.C. § 1414(d)(3)(D), (F); 34 C.F.R. § 300.324(a)(4)(i), (a)(6); Ed. Code, § 56380.1, subds. (a), (b).) But the only way an IEP can be imposed on a student without parental consent, or changed without parental consent, is by the order of a judge or hearing officer after a due process hearing sought by the district for the purpose of overriding the lack of parental consent. (Ed. Code, § 56346, subds. (e), (f).) "Among the central procedural safeguards in the IDEA and related California statutes is the right of parents to be involved in the development of their child's educational plan." (*Amanda J. v. Clark County Sch. Dist.* (9th Cir. 2001) 267 F.3d 877, 882.)

Prejudice from Procedural Violation of IDEA

6. A procedural violation of the IDEA results in a denial of FAPE only if it impedes the child's right to a FAPE, significantly impedes the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the parents' child, or causes a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii).)

CCS's Obligations under State Law to Provide Part of Student's FAPE

7. Before 1984, the responsibility to provide related services under IEPs was imposed on state and local educational agencies only. Under then-existing law, it was held that CCS was not properly joined as a party to a special education due process hearing because the federal statutory scheme (then the Education for All Handicapped Children Act,

[4] All subsequent references to the Code of Federal Regulations are to regulations promulgated in 2006.

the predecessor to the IDEA) placed responsibility for the delivery of special education and related services solely on public education agencies. (*Nevada County Office of Educ. v. Riles* (1983) 149 Cal.App.3d 767, 775-776.)

8. Chapter 26.5 of the Government Code, added by AB 3632 in 1984, rendered *Nevada County Office of Educ. v. Riles, supra,* obsolete. The new statutory scheme imposed on CCS and other noneducational state agencies obligations to deliver related services under IEPs. The first section of Chapter 26.5 provides that, in order to ensure "maximum utilization" of resources available to disabled children to provide them a FAPE, "the provision of related services, as defined in [the IDEA], and designated instruction and services, as defined in [the Education Code], shall be the joint responsibility of the Superintendent of Public Instruction and the Secretary of the Health and Human Services Agency." (Gov. Code, § 7570.) As a subdivision of the Department of Health Care Services, the successor to the Health and Human Services Agency, CCS now has "responsibility" for "related services" as required by Chapter 26.5. (Gov. Code, § 7570.) In enacting section 7570, the Legislature intended that "specific state and local interagency responsibilities be clarified by this act in order to better serve the educational needs of the state's handicapped children." (Stats.1984, c. 1747, § 1.)[5]

9. Pursuant to that purpose, the Legislature imposed on CCS, in Section 7575, subdivision (a)(1) of Chapter 26.5, the duty of providing "medically necessary" OT and PT to special education students "by reason of medical diagnosis and when those services are contained in the child's individualized education program." The meaning of that statute is discussed in more detail below.

OAH's Jurisdiction over CCS in Special Education Due Process Disputes

10. CCS argues that OAH has no jurisdiction over it in this dispute. It claims it has nothing to do with the delivery of a FAPE to Student or any other special education student. It reasons that it is only responsible for the provision of medically necessary services for students; that OAH has no jurisdiction to determine what constitutes medically necessary services; that the adequacy of Student's IEP, including the adequacy of PT and OT services, is the sole responsibility of the District; and that there is another administrative forum in which any disputes pertaining to CCS' medical necessity determinations are properly litigated. These contentions are unsupported by any authority other than *Nevada County Office of Educ. v. Riles, supra,* which was decided before Chapter 26.5 of the Government Code was enacted.

[5] The delivery of mental health services under Chapter 26.5 underwent major revision in 2011 (see *California School Boards Ass'n v. Brown* (2011) 192 Cal.App.4th 1507), but the revision did not affect the obligations of CCS to provide PT and OT, or OAH's jurisdiction over disputes.

11. CCS's jurisdictional argument fails at its first premise: that it is only responsible for providing medically necessary services to Student. It is also responsible for providing some of the related services in Student's IEP, which means it is responsible for providing part of Student's FAPE. Chapter 26.5 makes it clear that, in discharging its functions under that Chapter, CCS delivers related services as that term is used in special education law. The responsibility imposed by section 7570 on CCS is "the provision of related services, as defined in Section 1401(26) of Title 20 of the United States Code, and designated instruction and services, as defined in Section 56363 of the Education Code, to a child with a disability ... ."

12. Related services, in turn, are an essential component of a FAPE. A FAPE is defined by the IDEA as "special education and related services" that meet four criteria. (20 U.S.C. § 1401(9).)[6] CCS's insistence that it has nothing to do with the provision of a FAPE cannot be reconciled with these statutes.

13. Chapter 26.5 of the Government Code requires that disputes concerning CCS's provision of related services be resolved in special education due process hearings. Section 7586, subdivision (a), provides that "[a]ll state departments, and their designated local agencies, shall be governed by the procedural safeguards required in Section 1415 of Title 20 of the United States Code." That is a reference to the IDEA's requirements for special education due process hearings. Remarkably, this Government Code provision is nowhere mentioned in CCS's extensive briefing.

14. Chapter 26.5 further provides, in section 7586, subdivision (a), that:

> A due process hearing arising over a related service or designated instruction and service shall be filed with the Superintendent of Public Instruction. Resolution of all issues shall be through the due process hearing process established in Chapter 5 (commencing with Section 56500) of Part 30 of Division 4 of the Education Code. The decision issued in the due process hearing shall be binding on the department having responsibility for the services in issue as prescribed by this chapter.

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[6] Section 1401(9) provides that "[t]he term "free appropriate public education" means special education and related services that--

> (A) have been provided at public expense, under public supervision and direction, and without charge;
> (B) meet the standards of the State educational agency;
> (C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and
> (D) are provided in conformity with the individualized education program required under section 1414(d) of this title."

The referenced Education Code sections define the scope of special education due process hearings. Education Code section 56501, subdivision (a), provides that special education due process hearing procedures extend to the parent or guardian, to the student in certain circumstances, and to "the public agency involved in any decisions regarding a pupil." (Ed. Code, § 56501, subd. (a).) A "public agency" is defined as "a school district, county office of education, special education local plan area . . . or any other public agency . . . providing special education or related services to individuals with exceptional needs." (Ed. Code, § 56028.5.) That latter definition includes CCS, which is involved in decisions regarding Student and provides related services to him. Thus, the same statutory scheme that obliges CCS to deliver related services to Student grants jurisdiction to OAH to resolve disputes over those services in special education due process hearings.[7]

15. OAH's jurisdiction over CCS in this dispute is also confirmed by various provisions of the state and local interagency agreements that describe the relative duties of CCS and LEAs in providing related services required by IEPs. (State Interagency Cooperative Agreement between the California Department of Education and the California Department of Health Services, Children's Medical Services Branch, California Children Services Medical Therapy Program (State IA)(2005)(CCS Exh. 8); Interagency Agreement Between Calaveras County Public Health Department, California Children Service Program, and Calaveras County Office of Education (Local IA)(2009)(CCS Exh. 7.) Both IAs, for example, refer in identical language to the obligations of CCS "during the pendency of a special education due process hearing in which county CCS programs have been joined" and to "the pendency of a due process hearing decision." (State IA, p. 16; Local IA, p. 16.)

16. CCS has its own internal procedures for resolving disputes over medically necessary services, and it offered those procedures to Student. (See Cal. Code Regs., tit. 22, § 42140 et seq.) However, nothing in those procedures addresses disputes about related services in IEPs; the remedy exists only to resolve disputes over determinations of medical necessity. CCS is correct that OAH has no jurisdiction to rule on whether OT and PT are medically necessary under CCS standards, and no such ruling is made or intended here. But CCS also argues, without authority, that the mere existence of this remedy demonstrates that OAH has no jurisdiction over it in this matter. CCS's remedial procedures do not purport to divest OAH of jurisdiction over the educational aspects of CCS decision-making, and in any event a statutory grant of jurisdiction cannot be repealed by agency regulation.

17. In light of the unambiguous provisions of the statutes and IAs set forth above, OAH has jurisdiction over CCS in this dispute, and its unsupported argument to the contrary, made without any mention of section 7586, subdivision (a) of the Government Code, is not far from frivolous.

[7] OAH conducts special education due process hearings by virtue of an interagency agreement with the California Department of Education as required by Education Code section 56504.5, subdivision (a).

CCS's Obligation to Adhere to the Stay Put Rule and Continue Services During a Dispute

18. The proper interpretation of Section 7575 in Chapter 26.5 of the Government Code, entitled "Occupational therapy and physical therapy," is at the heart of the parties' dispute. Subdivision (a)(1) of that statute describes CCS's obligation:

> Notwithstanding any other provision of law, the State Department of Health Services, or any designated local agency administering the California Children's Services, shall be responsible for the provision of medically necessary occupational therapy and physical therapy, as specified by Article 5 (commencing with Section 123800) of Chapter 3 of Part 2 of Division 106 of the Health and Safety Code, by reason of medical diagnosis and when contained in the child's individualized education program.

19. Subdivision (b) of Section 7575 provides that "[t]he department shall determine whether a California Children's Services eligible pupil, or a pupil with a private medical referral needs medically necessary occupational therapy or physical therapy."

20. Starting with the undisputed proposition that deciding whether OT and AT are medically necessary is up to CCS alone, the agency then bases its argument on subdivision (a)(2) of the statute, which provides:

> Related services or designated instruction and services not deemed to be medically necessary by the State Department of Health Services, that the individualized education program team determines are necessary in order to assist a child to benefit from special education, shall be provided by the local education agency ...

CCS's interpretation of the phrase "shall be provided by the local education agency" is that the LEA must provide those services immediately. CCS argues that the provision means it may reduce or terminate its PT and OT services whenever it unilaterally decides that the services are no longer medically necessary; the LEA must promptly provide any educationally necessary OT and PT; and any cessation in the delivery of these services to the student is entirely the responsibility of the LEA. CCS claims this provision is so unambiguous that no other interpretation is possible, and that, since the statute has a plain meaning, no interpretation is required or permitted.

21. Subdivision (a)(2) of section 7575 is not as clear as CCS claims. It does not address the timing of the transfer of responsibilities for services from one agency to another when CCS's reduction or cessation of services is disputed. An equally possible interpretation is that subsection (a)(2) addresses the ultimate financial responsibilities of the parties, not the timing of the transfer of responsibilities during a dispute. The latter interpretation recognizes that Chapter 26.5 is in substantial part a statute governing the financial responsibility of state agencies, and it contains a reimbursement provision allowing one agency to obtain reimbursement for providing services for which another agency is

ultimately held responsible. (Gov. Code § 7585.) This provides a mechanism for CCS to recover its costs if a due process decision ultimately places responsibility for disputed services on the LEA.

22. CCS interprets subdivision (a)(2) in isolation and does not attempt to relate it to the other provisions of Chapter 26.5. But a statute must be interpreted in light of other provisions in the same statutory scheme, and harmonized with them in order to give all of them effect. (*Voices of the Wetlands v. State Water Resources Control Bd.* (2011) 52 Cal.4th 499, 519.) The Legislature had no need in subdivision (a)(2) of section 7575 to address the procedures to be followed during a dispute over CCS's reduction or termination of services, because it addressed them in the first sentence of subdivision (a) of section 7586: "All state departments, and their designated local agencies, shall be governed by the procedural safeguards required in Section 1415 of Title 20 of the United States Code."

23. Section 1415 of Title 20 contains the IDEA's stay put requirement:

> ... during the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then-current educational placement of the child ...

(20 U.S.C. § 1415(j).) A student's "then-current educational placement" is generally the last agreed-upon and implemented IEP. (*L.M. v. Capistrano Unified School Dist.* (9th Cir. 2009) 556 F.3d 900, 902.) The primary purposes of the stay put provision are to maintain the stability of the student's educational program during a due process dispute, and to prevent unilateral changes in that program by a school district. (*K.D. v. Department of Educ.* (9th Cir. 2011) 665 F.3d 1110, 1120; see 34 C.F.R § 300.518(a).) Related services in an IEP are part of a disabled student's placement. (See 5 Cal.Code Regs., § 3042, subd. (a).) Related services may not be changed in violation of the stay put rule. (*Joshua A. v. Rocklin Unified School Dist.* (9th Cir. 2009) 559 F.3d 1036 [in-home services]; *Robert M. v. State of Hawaii* (D. Hawaii, Dec. 19, 2008 (No. 07-00432 HG)) 51 IDELR 211, 108 LRP 71222 [mental health services]; *M.K. v Roselle Park Board of Educ.* (D.N.J., Oct. 31, 2006 (No. 06-4499)) 46 IDELR 253, 106 LRP 64765 [nursing services]; see *Spilsbury v District of Columbia* (D.D.C. 2004) 307 F.Supp.2d 22, 26-27 [academic tutoring and mental health care].)

24. The state and local IAs to which CCS is a party confirm that CCS must comply with the stay put rule. The state IA imposes on CCS the obligation:

> ... to assure OT/PT services that have been included on the IEP and are provided by the County CCS MTP are continued during the pendency of a special education due process hearing decision in which county CCS programs have been joined.

(State IA, p. 16.) The local IA then sets forth CCS's duty during a due process dispute in detail:

> The MTP must continue to provide the same level of CCS medically necessary OT/PT services that the child was receiving prior to the parent's request for a fair hearing and until the hearing officer makes a decision. (Education Code 56505).

(Local IA, p. 16.) It then describes the reimbursement process if CCS prevails in the hearing:

> When the fair hearing decision is in support of the CCS position, the State CCS Program in coordination with the local CCS program will make arrangements with the SELPA/LEA to pay for the continuation of *therapy services that were provided beyond what was considered medically necessary and provided by the MTP during the pendency of the fair hearing decision.*

(*Id.*, p. 17 [italics added].) If the parties cannot agree on reimbursement, their dispute may then be resolved under Government Code section 7585.

25. Thus CCS's interpretation of Government Code section 7575, subdivision (b), is erroneous because it is inconsistent with the related statutory requirement that CCS comply with the stay put rule.

Federal Law Requirements

26. Even if state law were less clear, CCS's interpretation of its duties would be impermissible in light of controlling federal law. In case of conflict, federal law would prevail over state law. (U.S. Const., Art. VI, cl. 2.) However, federal and state special education law are not in conflict, because in crafting California's special education statutes the Legislature intended to give disabled students all the rights to which they are entitled under the IDEA. (Ed. Code, § 56000, subds. (d), (e).)

27. A state may only receive federal funding under the IDEA if it has in effect policies and procedures that ensure, among other things, that a FAPE is available to every eligible child. (20 U.S.C. § 1412(a)(1); 34 C.F.R. § 300.101(a).) Two conditions of that funding are that a state must ensure an IEP is "developed, reviewed, and revised" according to the procedures of section 1414(d) (20 U.S.C. § 1412(a)(4); 34 C.F.R. § 300.112); and that eligible children and their parents are afforded the procedural safeguards of section 1415. (§ 1412(a)(6); 34 C.F.R. § 300.500.)

28. Under the IDEA, a state educational agency (SEA) must be responsible for the general supervision of the state's special education programs. (20 U.S.C. § 1412(a)(11)(A).) Otherwise, states are free to assign responsibilities for carrying out the IDEA to "any public agency in the State . . ." ((20 U.S.C. § 1412(a)(11)(B).) The term "public agency" includes several specific state agencies "and any other political subdivisions of the State that are responsible for providing education to children with disabilities." (34 C.F.R. § 300.33.)

29. The IDEA anticipates that states may delegate some IDEA responsibilities to noneducational agencies, and provides that a state may do so by law, regulation, or interagency agreement. (20 U.S.C. § 1412(a)(12)(A); 34 C.F.R. § 300.154(c)(1), (2).) It also anticipates that disputes may arise between state agencies about their responsibilities, and provides a mechanism for ensuring the continuation of IEP services while such a dispute is resolved. A state making such a delegation must have in effect "an interagency agreement or other mechanism for interagency coordination" between the noneducational state agency and the SEA, "in order to ensure that all services ... that are needed to ensure FAPE are provided, including the provision of such services during the pendency of any dispute under clause (iii)." (20 U.S.C. § 1412(a)(12)(A).) Clause (iii) requires that the state have in place a procedure for resolving interagency disputes that makes reimbursement available for services rendered. (20 U.S.C. § 1412(a)(12)(A)(iii).)

30. The IDEA also anticipates the situation here: that state agencies will dispute which is responsible for the provision of IDEA services and that one or both might refuse to provide those services during the dispute. To prevent that, the IDEA places the responsibility for the continued delivery of services on *both* agencies. In a subsection of section 1412 entitled "[o]bligations related to and methods of ensuring services," the Act imposes this obligation on the noneducational agency:

> If any public agency other than an educational agency is ... obligated under ... State law, or assigned responsibility under State policy pursuant to subparagraph (A)[interagency agreement], to provide or pay for any services that are also considered special education or related services (such as, but not limited to, services described in ... 1401(26) relating to related services ...) that are necessary for ensuring a free appropriate public education to children with disabilities within the State, *such public agency shall fulfill that obligation or responsibility ...* .

(20 U.S.C. § 1412(a)(12)(B)(i)[italics added].) If the noneducational agency fails to discharge that obligation, the LEA is required to intervene to assure that services are not interrupted:

> If a public agency other than an educational agency fails to provide or pay for the special education and related services described in clause (i), *the local educational agency ... shall provide or pay for such services to the child*.

(20 U.S.C. § 1412(a)(12)(B)(ii)[italics added].)[8] The LEA is then authorized to claim reimbursement for the services from the public agency that failed to provide or pay for them according to the procedures established in the applicable interagency agreement. (*Ibid.*)

[8] The District's liability under this and related provisions of law is not addressed here because it is no longer a party.

31. The plain purpose of these IDEA provisions is to ensure that, during a dispute between an LEA and a noneducational state agency about the responsibility for the provision of services, the services are continued for the student's protection and the agency providing them may later obtain reimbursement for them if appropriate. Section 1412(a)(12) of Title 20 is implemented by section 300.514 of Title 34 of the Code of Federal Regulations, which tracks the statutory language. In interpreting that regulation, the United States Department of Education has made it clear that these statutory and regulatory requirements apply during a dispute between state agencies:

> Disagreements about the interagency agreements should not stop or delay the receipt of the services described in the child's IEP .... [T]he State must ensure there is no delay in implementing a child's IEP, including any situation in which the source for providing or paying for the special education or related services to a child is being determined.

(Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, 71 Fed.Reg. 46540, 46607 (Aug. 14, 2006) [Comments on 2006 Regulations].)

32. The above provisions of federal law, Chapter 26.5 of the Government Code, and the IAs, considered together, require the rejection of CCS's assertion that it may unilaterally terminate IEP services. CCS must observe the stay put rule, and it may not unilaterally reduce or terminate PT or OT services it is delivering if they are in an IEP. Instead, it must continue to provide them until the dispute is resolved. Then, if CCS prevails, it may obtain reimbursement from the LEA. Only this interpretation harmonizes the related provisions of federal law, Chapter 26.5 and the IAs. CCS's interpretation cannot be reconciled with any of those requirements.

CCS's Mandatory Participation in the IEP Team

33. The IDEA sets forth the required members of an IEP team, which must include "at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate... ." (20 U.S.C. § 1414(d)(1)(B)(vi); 34 C.F.R. § 300.321(a)(6); Ed. Code, § 56341(b)(6).) Federal and state law refer to these invited individuals as members of the IEP team: "The determination of the knowledge or special expertise of any individual described in paragraph (a)(6) of this section must be made by the party (parents or public agency) who invited the individual to be a member of the IEP Team." (34 C.F.R. § 300.321(c); Ed. Code, § 56341(b)(6).) Thus, contrary to CCS's argument, there is nothing inconsistent about being an invitee and also an IEP team member.

34. The Office of Special Education Programs has opined that it is "critically important to the provision of FAPE" that an invited related service provider attend an IEP meeting unless properly excused under the excusal provisions of the Act. (*Letter to Rangel-Diaz* (OSEP 2011) 58 IDELR 78, 111 LRP 74150.)

35. CCS's participation in IEP team meetings concerning its assessments is mandatory under state law. Chapter 26.5 of the Government Code requires that OT and PT be added to an IEP only after an assessment is conducted by qualified medical personnel as specified in regulations developed by the Department of Health Services. (Gov. Code, § 7572, subd. (b).) "The person who conducted the assessment shall attend the [IEP] team meeting if requested." (*Id.*, subd. (c)(1).) The LEA "shall invite" the OT or PT assessor to the meeting to determine the need for services and participate in developing the IEP. (*Id.*, subd. (d).) The assessor shall attend in person, or by conference call together with written information; and if the assessor cannot attend in that fashion, the LEA must "ensure that a qualified substitute is available to explain and interpret the evaluation." (*Ibid*.) In requiring that any disputes resulting from the meeting must be resolved in due process, the Legislature referred to the noneducational agency representative as a member of the IEP team:

> Any disputes between the parent and *team members representing the public agencies* regarding a recommendation made in accordance with paragraphs (1) and (2) shall be resolved pursuant to Chapter 5 (commencing with Section 56500) of Part 30 of Division 4 of Title 2 of the Education Code.

(Gov. Code, § 7572, subd. (c)(3)[italics added].) The Department of Health Service regulations require that "CCS shall participate in the IEP team as set forth in Government Code Section 7572(e)." (Cal. Code Regs., tit. 2, § 60325, subd. (b).)[9] The interagency agreements to which CCS is a signator also oblige CCS to participate in the IEP process in numerous ways.

36. The provisions above require the conclusion that when CCS is delivering related services under an IEP, it (meaning one or more representatives) is a member of the IEP team.

Issue No. 1: Did CCS deny Student a FAPE during the 2010-2011 SY by failing to provide him adequate PT and OT services and unilaterally reducing those services outside of the IEP team process?

37. Based on Factual Findings 1-3 and 5-39 and Legal Conclusions 1-32, CCS denied Student a FAPE during the 2010-2011 SY by failing to provide him adequate PT and OT services and by unilaterally reducing those services outside of the IEP process. Relying on its mistaken interpretation of section 7575 of the Government Code, CCS unilaterally reduced Student's PT and OT services from levels that were required to assist him to obtain educational benefit to much lower levels. It is undisputed that CCS reduced Student's services without making any judgment on his educational needs, without involving his IEP team, and without obtaining the consent of Grandparents. The unilateral reductions were significantly harmful to Student's education and to Grandparents' right to participate in the process of decision-making concerning the provision of a FAPE to Student.

[9] There is no subdivision (e) in Government Code section 7572, but in context the regulation was likely referring to subdivision (d).

Issue No. 2: Did the CCS fail to make any offer to Student of related services for the 2011-2012 SY?

38. Based on Factual Findings 1-3 and 5-39. and Legal Conclusions 1-36, CCS failed to fulfill its obligation to participate in offering an IEP that provided Student a FAPE for the 2011-2012 SY. Its failure to attend Student's annual IEP meeting, its withdrawal from the IEP process, and its insistence on the removal of its services from his IEPs resulted in an offer to him on January 31, 2012, of an IEP containing no PT or OT services, although those services were and are essential to assist him in accessing his education. In doing so, it participated in denying Student a FAPE for the 2011-2012 SY.

Compensatory Education

39. School districts may be ordered to provide compensatory education or additional services to a student who has been denied a FAPE. (*Parents of Student W. v. Puyallup School Dist., No. 3* (9th Cir. 1994) 31 F.3d 1489, 1496 (*Puyallup*).) The authority to order such relief extends to hearing officers. (*Forest Grove School Dist. v. T.A.* (2009) 557 U.S. 203, ___, fn. 11 [129 S.Ct. 2484, 2494, fn. 11].)

40. Compensatory education is an equitable remedy and must rely on a fact-specific and individualized assessment of a student's current needs. (*Puyallup, supra*, 31 F.3d at p. 1496; *Reid v. District of Columbia* (D.C.Cir. 2005) 401 F.3d 516, 524 (*Reid*); *Shaun M. v. Hamamoto* (D. Hawai'i, Oct. 22, 2009 (Civ. No. 09-00075)) 2009 WL 3415308, pp. 8-9 [current needs]; *B.T. v. Department of Educ.* (D. Hawaii 2009) 676 F.Supp.2d 982, 989-990 [same].) The award must be "reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." (*Reid*, *supra*, 401 F.3d at p. 524.)

41. Once a significant denial of a FAPE has been established, it is a rare case in which an award of compensatory education is not appropriate. (*Puyallup, supra*, 31 F.3d at p. 1497.)

42. Based on Factual Findings 40-44 and Legal Conclusions 39-41, Student established that because of CCS's violations Student missed 54 hours of PT and 24 hours of OT, and that Dr. Corn's estimate that he needs PT three times a week to address his present needs is reasonable. Based on Factual Findings 23-25 and 31-39, and Legal Conclusions 36-39, Student established that CCS's withdrawal from his IEP process degraded communication with the District's staff concerning his services, and has left the state of his OT and PT services in disarray. These are appropriate subjects of compensatory relief.

ORDER

1. In delivering PT and OT to Student, CCS shall comply with the procedural guarantees of section 1415 of Title 20 of the United States Code and all other related special education laws and agreements.

2. CCS shall immediately restore Student's PT services to 60 minutes a week, two times a week, and restore Student's OT services to 45 minutes a week, one session a week, with the following exception: in order to address Student's regression, CCS shall ensure that for the first six months from the date of this decision, Student receives PT at least three times a week for one hour a session.

3. CCS and Grandparents may agree on modifications of the above schedule of services, but Grandparents must agree before any modifications are made.

4. CCS shall immediately resume participation in Student's IEP process according to all applicable laws, regulations, and interagency agreements, and shall in addition make its therapists available for personal attendance at any IEP meetings to which they are invited during the next 12 months.

5. CCS shall cooperate with Student's IEP team in accurately describing its PT and OT services in any IEP offer made to Student in compliance with the requirements of the IDEA.

6. The actions required by this Order may be modified by a writing signed and agreed to by Grandparents, including but not limited to an IEP.

PREVAILING PARTY

Education Code section 56507, subdivision (d), requires this decision to indicate the extent to which each party prevailed on each issue heard and decided. Student prevailed on all issues.

RIGHT TO APPEAL THIS DECISION

The parties to this case have the right to appeal this Decision to a court of competent jurisdiction. If an appeal is made, it must be made within 90 days of receipt of this decision. (Ed. Code, § 56505, subd. (k).)

Dated: April 19, 2012

_____/s/_____
CHARLES MARSON
Administrative Law Judge
Office of Administrative Hearings