



TOBY DOUGLAS
DIRECTOR

State of California—Health and Human Services Agency
Department of Health Care Services



EDMUND G. BROWN JR.
GOVERNOR

Date: May 2, 2014

CCS Information Notice: 14-05

TO: ALL COUNTY CALIFORNIA CHILDREN'S SERVICES (CCS) PROGRAM
ADMINISTRATORS, MEDICAL CONSULTANTS, AND STATE SYSTEMS
OF CARE DIVISION (SCD) STAFF

SUBJECT: IMPACT OF SPECIAL EDUCATION DUE PROCESS HEARINGS ON
THE CCS PROGRAM AND THE MEDICAL THERAPY PROGRAM (MTP)

The intent of this letter is to provide guidance and direction to local county CCS/MTPs, and to reiterate that local CCS/MTPs are bound by the requirements of the applicable statutes and regulations.

This guidance is provided to assist local CCS/MTPs in light of recent administrative decisions that the Department of Health Care Services (DHCS) believes to be inconsistent with existing state and federal law requirements, and appear to alter the mandates applicable to CCS/MTP. In the last two years, the Calaveras, Santa Clara and Tuolumne CCS/MTPs were inappropriately made a party to special education due process hearings, required by the federal Individuals with Disabilities Education Act (IDEA). The administrative law judges (ALJs) presiding over those hearings issued orders directing the CCS/MTP to provide or pay for services in a manner that DHCS understands to be inconsistent with the applicable mandates.

Our goal is to respond to operational and policy concerns that have been identified by local programs that are directly and indirectly impacted by these decisions. This notice is not intended to be the complete list of requirements for the CCS/MTP, which are already set out in statute and regulations. The intent is to address specific issues that have been brought to our attention as a result of the administrative decisions, and to provide guidance, while DHCS pursues all avenues for relief through the courts and otherwise to resolve the conflicts created by these decisions. Accordingly, please be aware that the guidance/direction provided in this communication may be modified by cases currently in litigation.

The SCD will provide updated guidance and direction when the litigation is final. In the meantime, please continue to follow the requirements set forth in Chapter 26.5 of the Government Code (Section 7570 - 7587) and Title 2 of the California Code of Regulations, Division 9, Chapter 1, Article 1, sections 60000–60610. Please consult with your county counsel for more guidance.

GUIDANCE TO LOCAL CCS PROGRAMS

The SCD reminds county CCS/MTPs of the following:

The decisions in the education due process hearings obligate DHCS and each local CCS/MTP to reassert the policies and laws that govern the program. Local CCS programs are advised to consistently inform Local Education Agency (LEA) personnel, Individualized Education Plan (IEP) team members and families of the following:

- The MTP provides medically necessary Occupational Therapy/Physical Therapy (OT/PT) services that are prescribed by a CCS-approved physician and must be medically justified. The prescribed services are subject to review by the Medical Therapy Conference (MTC) physician if he/she is not the prescribing physician.
- Under no circumstance can OT/PT services be provided to an eligible child without a CCS-approved physician's prescription. Prescriptions from non-CCS physicians or private therapists cannot substitute for a CCS-approved physician's prescription (subject to review by the MTC physician).
- Changes in the level of OT/PT services may only occur if the CCS-approved physician (subject to review by the MTC physician) finds that a change (increase or decrease in type, frequency, or duration) is medically necessary/justified.
- The CCS Program's Medical Therapy Unit (MTU) staff will notify the LEA when a change in the level of service, approved by the CCS-approved physician (subject to review by the MTC physician), is medically indicated.
- Parents and the LEA will be provided a ten-day notice of an impending change in the CCS/MTP services if the change may necessitate a change in the IEP.
- Families may request the CCS/MTP expert opinion procedure if they do not agree with the MTC team's decision. The decision of the expert is binding.

- The medically necessary OT/PT services provided by the MTP may concurrently address some or all of the educationally necessary (school related) therapy services identified in a child's IEP. According to state and federal law, the LEA is ultimately responsible for providing or paying for educationally necessary services identified in an IEP, including OT and PT services. The MTP may cover some or all of these only while they are medically necessary/justified. The portion of the total school/educationally-related need for therapy services covered by the MTP depends on the overlap of the approved CCS medical therapy plan with the LEA's assessment/findings of the need for educationally necessary OT/PT services.
- The MTP may change the level (type, frequency, and duration) of services at any time with medical justification independent of the IEP process. The CCS/MTP is given exclusive authority to determine medical necessity (based on appropriate medical assessments).
- The IEP team has no jurisdiction to change the approved medical therapy plan.
- The CCS/MTP staff cannot agree to inclusion of information from the CCS approved therapy plan in the IEP unless the LEA will agree to accept responsibility for the delivery of these services should CCS determine they are no longer medically necessary. Agreement by the LEA to accept responsibility for these services must be based upon an appropriate school-related assessment of the student's needs.
- The LEA cannot change the level of an educationally necessary service unless it is changed through the IEP process. If the CCS/MTP changes the level of service in an approved therapy plan that the LEA has included as part of the IEP, the LEA is responsible for maintaining the services at the level specified in the IEP.
- The IEP team is responsible for establishing and implementing a plan for assessing the school-related need for OT/PT services and for providing educationally necessary OT/PT services, including the timely and efficient continuation of OT/PT services included in the IEP that the CCS Program no longer deems medically necessary. The LEA may contract with OT/PT providers or use qualified staff therapists (according to current professional requirements), if available, to ensure the educationally necessary level of services are maintained without interruption.

- Every IEP that provides for educationally necessary OT/PT services and that includes medically necessary services from the approved therapy plan should include a specific plan or procedure that establishes how the LEA will ensure the educationally necessary OT/PT services will continue without disruption if the CCS/MTC team/approved physician prescribes a change in the level of medically necessary services.
- The MTP is a public benefit program that is provided for in State law and that has existed in California since the 1940's. With few exceptions, MTUs are Approved Outpatient Rehabilitation Centers under Medi-Cal/Medicaid, which permits federal claiming under Title XIX for OT/PT services delivered to children who are Medi-Cal/Medicaid beneficiaries. As specified in federal law (34 CFR Section 300.154 (h)), the requirements applicable to the MTP, including those related to eligibility and services, may not be altered by the requirements that apply to the delivery of services under Part B of IDEA.
- During the period of time a special education due process hearing is pending, the CCS/MTP does not provide "continuation" services that are not medically necessary.

The CCS/MTP management and staff are advised to diligently adhere to the statutory and regulatory requirements regarding participation in IEP team meetings and are strongly encouraged to closely document appropriate attendance at IEP team meetings. The MTP has a very limited role at an IEP meeting. Accordingly, a MTP liaison (or designated party) attending an IEP meeting is advised to sign in as an "attendee" and not as a participant. A MTP liaison's role at the meeting is only to report on evaluation findings and medically necessary services to be rendered according to the approved MTP therapy plan and not to negotiate or change that plan.

The DHCS believes the law is well-defined regarding the division of responsibility between the CCS/MTP and LEA/Special Education Local Planning Area (SELPA), and that neither DHCS nor local CCS programs may be compelled to fund or provide OT/PT services for which a legal mandate or funding source (state or federal) does not exist. The DHCS also believes the law requires costs for educationally necessary therapy services that are not also medically necessary must be borne by the LEA/SELPA. Until the conflicts resulting from these hearings are fully resolved by the courts, DHCS is unable to reimburse any LEA/SELPA or county CCS Program for the cost of therapy services when the services are not medically necessary/justified. We urge county CCS programs to confer with county counsel before providing or paying for therapy services under an ALJ order when a legally valid prescription written by a CCS-approved

physician cannot be issued. Local CCS/MTPs must not ask a CCS-approved physician to write a prescription for the purpose of complying with an ALJ's order unless it can be demonstrated the services are medically necessary/justified based on an appropriate and documented medical assessment of the client (as determined by the CCS Program).

The above information should be reviewed with your staff and communicated in correspondence, handouts, and in verbal communications with the affected parties as appropriate. A key goal of this communication is to ensure that all affected parties are consistently/uniformly made aware of the limits of the role of the CCS/MTP and that these limits are prescribed in statute, regulation, and policy. This guidance is not meant to create an adversarial relationship with LEA/SELPA staff, but to clearly state the limits of the MTP responsibility and to improve cooperation and collaboration through understanding. We anticipate providing you with specific guidance documents under separate cover in the future to support your efforts in this regard.

LOCAL INTERAGENCY AGREEMENTS WITH LEA/SELPA

The DHCS was contacted by local CCS/MTP representatives requesting guidance regarding the amendment/revision of local interagency agreements proposed by the LEA or SELPA. Some amendments proposed by the LEA/SELPA are directly related to the findings and orders in the special education due process hearing cases referenced above. It appears some LEA/SELPA representatives are under the mistaken impression that the hearing findings and orders establish legal precedent and modify existing law. Local CCS/MTPs are advised to not amend or renew local interagency agreements (IAA) until DHCS receives legal clarification on various issues stemming from the due process hearings that may impact the IAA. Additionally, issues identified during the course of the due process hearings highlighted the need for clarifying IAA language in various areas of concern to DHCS, e.g., the obligation of the LEA to conduct an OT/PT assessment that addresses the educational needs of the child and that does not simply rely on the assessment conducted by the CCS/MTP. Therefore, we will propose amendments to the IAA language when the major legal questions are resolved.

IDEA COMPLAINT PROCEDURE FOR NON-COMPLIANCE WITH FEDERAL LAW

The IDEA requires that the State Education Agency investigate and resolve any complaints found to have merit regarding the action or inaction of LEAs and other public agencies. DHCS may elect to utilize the complaint procedures provided for by IDEA.

Therefore, DHCS requests that you notify the SCD when an LEA fails to comply with state and federal statute, regulation, and policy with respect to educationally necessary therapy services. Of particular concern are circumstances when the LEA fails to:

- Perform and document a school-related assessment of the therapy needs of the child to determine the educationally necessary therapy services that will permit the student to receive a free and appropriate public education.
- Convene a timely IEP team meeting after a change in the level of service is appropriately reported by the CCS Program's MTU staff to the LEA.
- Provide the educationally necessary therapy services documented in the IEP after the CCS Program's MTC team (or approved designee) determines and reports to the LEA that a change in the level of service is medically indicated and will occur.
- Invite the appropriate CCS Program's MTU staff to an IEP team meeting that will address the therapy needs of the child or to a due process preliminary conference meeting after a family has filed a request for a special education due process hearing naming the CCS Program as a party to the hearing.

The purpose of the State Education Agency complaint procedure is to document, report, and resolve patterns of recurring failures to comply with the provisions of IDEA. Any agency may file a complaint. A decision by DHCS to file a complaint based on information reported by a local agency does not preclude the independent filing of a complaint by a county CCS/MTP. Information from the California Department of Education regarding the complaint procedure is attached for your reference.

CONCLUSION

We recognize that many local CCS programs have a long history of working collaboratively with the education agencies in their communities and in most communities the issues addressed in this letter have not been a concern. We encourage local CCS programs to continue to work constructively with their education counterparts but also strongly encourage local programs to incorporate the policies and guidance outlined in this letter into your operational routines.

CCS Information Notice: 14-05
Page 7
May 2, 2014

If you have questions regarding this communication or wish to report IDEA compliance failures by an LEA or SELPA, please contact V. David Banda, Health Program Specialist/Consultant, at (916) 327-2999 or via e-mail at v.david.banda@dhcs.ca.gov or Jeff Powers, Therapy Consultant, at (916) 327-3037 or via e-mail at jeff.powers@dhcs.ca.gov.

Sincerely,

ORIGINAL SIGNED BY LOUIS R. RICO

Louis R. Rico, Chief
Systems of Care Division

Attachment

Attachment

California Department of Education (<http://www.cde.ca.gov/sp/se/qa/cmplntproc.asp>)
Complaint Process

The special education complaint process with federal and state law resource links.

The California Department of Education (CDE) resolves special education complaints.

Who may file a complaint?

Anyone, including parents, students, teachers, and agency representatives, may file complaints. The person filing a complaint is the complainant. The complaint must meet requirements as explained in this document.

Why file a complaint?

A complaint is a formal request to the CDE to investigate allegations of noncompliance with special education laws, federal or state. CDE ensures public agencies meet the educational needs of students with disabilities.

What is a complaint?

A complaint is a written document, including:

1. Statements that the school district or public agency violated special education law within one year prior to the complaint being filed
2. Facts on which such statements are based
3. Signature and contact information for the complainant
4. Child's name, address, and school if alleging violations that are child specific
5. Proposed resolutions

The complainant may use the [model complaint form](#) (DOC) or write a letter to file the complaint.

Where is a complaint filed?

Send complaints by fax or mail to:

California Department of Education
Special Education Division
Procedural Safeguards Referral Service (PSRS)
1430 N Street, Suite 2401
Sacramento, CA 95814-5901
Fax: 916-327-3704

How long is a complaint investigation?

Several timelines apply to the complaint investigation process:

1. Complaints must be filed within one year of the alleged violation
2. Complaint investigations are completed within 60 days of receipt in PSRS
3. The 60-day time limit may be extended under certain circumstances

What is a complaint investigation?

An investigator contacts the complainant and the school district or other public agency in the complaint. The investigator gathers facts about the allegations through:

1. Interviews
2. Reviews service logs and schedules
3. Reviews assessments
4. Reviews individualized education programs (IEPs)
5. Reviews IEP team meeting minutes
6. Reviews prior written notices
7. On-site investigations, as needed

What is in a complaint investigation report?

Based on documentation, the investigator prepares a complaint investigation report. The report contains:

1. Allegation summary
2. General investigation procedures
3. Applicable law and regulation
4. Findings of facts
5. Report conclusions (compliance or noncompliance)
6. Corrective actions and timelines, if applicable

The CDE sends copies of the investigation report to the complainant, the public agency, and the parent if different from the complainant.

What if there is noncompliance?

If the report includes corrective actions, the CDE may require the school district or public agency to:

1. Convene a new IEP meeting
2. Conduct further assessments
3. Submit plans outlining proposals to correct violations and prevent future ones
4. Initiate personnel training in the areas of violations
5. Provide compensatory education or reimbursement
6. Review and revise procedures and practices
7. Participate in monitoring and reporting activities

What if there is a disagreement with the report?

As explained at the end of each report, any party to the complaint may request reconsideration. The appeal process steps are:

1. Submit the reconsideration request no later than 35 calendar days after receiving the investigation report
2. Send a written request to the address found at the end of the investigation report
3. Identify the finding(s), conclusion(s), or corrective action(s) about which there is disagreement
4. Provide appropriate documentation or other information not previously considered
5. Identify the findings of fact that are incorrect and/or the law that is misapplied

Within 35 calendar days of the receipt of that request, the CDE will:

1. Review the investigator's report
2. Review the evidence presented at the investigation
3. If necessary, gather and/or review additional information
4. Review the decision
5. Issue a final written investigation report

What happens if corrective actions are not completed?

The CDE ensures compliance by applying sanctions.

How do school districts or public agencies respond to a complaint?

1. Cooperate with the investigator and provide documentation as requested in a timely manner
2. Submit all documentation regarding the complaint

Failure to respond may result in a finding and remedy in favor of the complainant.

What are the responsibilities of the investigator?

1. Reviews the submitted complaint request
2. Interviews the complainant
 - Confirms allegations
 - Keeps accurate notes
3. Contacts the school district or public agency
 - Requests required materials for investigation
 - Arranges interviews with school staff, if necessary
 - Schedules dates and times for on-site visits, if necessary
4. Reviews pertinent documents
5. Conducts telephone, face-to-face, and/or on-site interviews with school staff, as necessary
6. Prepares an investigation report that addresses each alleged violation

What are the CDE's responsibilities in the complaint process?

1. Reviews the complaint and determines if all the required components are addressed, including contacting and interviewing the public agency and complainant
2. Adheres to timelines
3. Sends investigation report copies as appropriate
4. Provides technical assistance to school districts and public agencies for corrective actions
5. Reconsiders investigation reports
6. Retains all documents

Law and regulation governing the complaint investigation process include:

Required State Complaint Procedures: Title 34, *Code of Federal Regulations (CFR)* Section [300.151](#)

Minimum State Complaint Procedures: 34 *CFR* Section [300.152](#)

Filing a Complaint: 34 *CFR* Section [300.153](#)

State Complaint Timelines and Procedures: California *Education Code* sections [56043\(p\)](#), and [56500.2](#)

State Investigation procedures: Title 5, *California Code of Regulations* sections [4660-4670](#)

Questions: Procedural Safeguards Referral Service | speceducation@cde.ca.gov | 800-926-0648

Last Reviewed: Wednesday, November 13, 2013