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COURT OF APPEAL NO. F071023

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES,
Appellant and Petitioner,

v.

DIRECTOR, CALIFORNIA OFFICE OF ADMINISTRATIVE HEARINGS,
Respondent,

PARENTS ON BEHALF OF STUDENT, SONORA ELEMENTARY SCHOOL DISTRICT, TUOLUMNE COUNTY OFFICE OF EDUCATION,
Real Parties in Interest.

Appeal from Superior Court of the State of California,
County of Tuolumne Court Case No. CV58418
The Honorable Kate Powell Segerstrom

BRIEF OF *AMICUS CURIAE* CALIFORNIA STATE ASSOCIATION OF COUNTIES IN SUPPORT OF APPELLANT-PETITIONER

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I.

INTRODUCTION

This is not a case about whether a student has received the full services and due process to which she is entitled under the Individuals with Disabilities Education Act (20 U.S.C. § 1400 *et seq*. ("IDEA")) and federal regulations implementing the IDEA (34 C.F.R. § 300.1 *et seq*.). Instead, this is a case about whether the parents of one child can rewrite the California legislature's carefully crafted framework for providing special education services. Under that framework, responsibility for meeting a child's physical and/or occupational therapy needs is allocated between California Children's Services ("CCS") and local education agencies ("LEAs") based on their respective areas of expertise and funding streams. CCS, a program largely funded through California's Medicaid program, provides *medically* necessary physical therapy ("PT") and occupational therapy ("OT") under a physician's prescription; LEAs provide *educationally* necessary services, including non-medically-necessary PT and OT, funded by federal special education dollars and other public monies. This framework was designed to ensure that all disabled children receive all of the medical and educational services that they need.

The parents in this case ("Parents") chose to ignore state law, which vests the LEAs with exclusive responsibility for non-medically necessary PT and OT to which students are entitled under the IDEA, and instead demanded that CCS provide non-medically necessary services. They ask this Court to overlook the state regulations that require a CCS-approved physician to prescribe any medically necessary services, and that establish the procedure for appealing a CCS physician's determination of medical necessity. And they ask this Court to order CCS to provide their child ("Student") with services that have *not* been deemed medically necessary

by a qualified physician, even though these non-medically necessary services could have been obtained from their child's LEA.

Allowing Parents to flout these regulations would significantly disrupt the framework carefully constructed by the California Legislature to provide medically and educationally necessary services to disabled children. In the decisions below, the Office of Administrative Hearings ("OAH") and superior court expressed clear dissatisfaction with the Tuolumne County CCS program and the briefing presented on its behalf, but the law establishes a very clear division of responsibilities and processes for the provision of OT and PT in the special education context. Failure to uphold this legal distinction would result in confusion and service disruption for all of the state agencies, counties, LEAs, parents, and children involved. CSAC therefore respectfully urges this Court to reverse the superior court's decision against the Petitioner-Appellant.

This conclusion was recently reached by the federal district court for the Northern District of California in a very similar case. The court held that the due process hearing guaranteed by the IDEA and California law implementing the IDEA is "not to reconsider CCS's determination of medical necessity" but to ensure that all special education and related services necessary for the child to benefit from his or her instructional program (i.e., all educationally necessary services) are included in the child's IEP. (*Douglas v. Cal. Off. of Admin. Hearings* (N.D. Cal. 2015) 78 F.Supp.3d 942, 949, app. pending.) The court reviewed the arguments and earlier decisions in this case and explicitly rejected the position urged by the Real Parties in Interest. (*Id.* at p. 949, fn. 4.) The court explained that "the ALJ's authority in the due process hearing is limited to determining whether services are educationally necessary" and "once the ALJ determines that services are educationally necessary, his discretion is limited to allocating provision of the services in accordance with

[Government Code] § 7575(a)." (*Id*. at p. 949.) We urge this Court to reach the same result.

II.

BACKGROUND

A. CCS Has a Long History of Providing Medical Services to Children with Disabilities in California, and the Program Predates the Individuals with Disabilities Education Act.

In addition to being older than the IDEA and the IDEA's predecessor—the Education for All Handicapped Children Act of 1975 (Pub. L. 94-142 (Nov. 29, 1975) 89 Stat. 773 ("EAHCA"))—CCS provides children with a broader array of medical services than are available under the IDEA. As one of the oldest public health programs in the State, CCS has provided free medical services to children with physical disabilities for nearly a century. (Stat. 1927, ch. 590, pp. 1021-1024 (establishing the Crippled Children Services program); Stat. 1978, ch. 857, pp. 2717-2720 (renaming the program as the California Children's Services program).) From the beginning, this groundbreaking program has mandated that the State and counties provide "necessary surgical, medical, hospital, physiotherapy, occupational therapy and other service, special treatment, materials, [and] appliances" for children with disabilities whose parents or guardians are unable to pay. (Stat. 1927, ch. 590, § 1, p. 1021.)

CCS' Medical Therapy Program ("MTP"), in particular, has provided medically necessary PT and OT to children with qualifying medical conditions at public schools long before these services were required to fulfill the State's special education responsibilities under state or federal law. Indeed, the California Legislature established CCS' MTP services as early as 1969. (*See* Stat. 1968, ch. 1317, § 2, p. 2490.) In contrast, it was not until 1975 that Congress passed the EAHCA, which required that states provide a free appropriate public education ("FAPE") to

children with disabilities, along with related services necessary to benefit from FAPE.

Since its creation, CCS has implemented a carefully crafted process for determining a child's medically necessity for therapy. As part of this process, parents have had the ability to contest their child's prescription for therapy by seeking a second opinion from one of three expert physicians offered by CCS. (Cal. Dept. of Health Services, CCS Manual of Procedures, "Chapter 4: The California Children Services Program for Children with Cerebral Palsy and Other Physical Handicaps in the Public Schools," § 4.4.2(H)(2) (taken from CCS Bulletin 80-16, issued September 15, 1980), <http://www.dhcs.ca.gov/services/ccs/Pages/ProviderStandards.aspx>.) This basic process for determining medical necessity under CCS, and for parents to challenge such a determination, has continued to the present day. (*See* Cal. Code Regs., tit. 22, § 42140.)

B. Following Adoption of the EAHCA and IDEA, CCS Has Remained Responsible Only for Medically Necessary PT and OT; Local Education Agencies Must Provide Any Other OT or PT Necessary for FAPE.

After Congress passed the EAHCA in 1975, the California Department of Health Services ("DHS") [1] and the California Department of Education ("CDE") coordinated their delivery of services to children with physical disabilities in the school setting. The departments agreed that CCS was responsible for providing any medically necessary therapy prescribed under CCS requirements, and that CDE was responsible for providing any

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[1] DHS is the predecessor to the State's Department of Health Care Services. In 2007, DHS was reorganized to create the California Department of Public Health and the California Department of Health Care Services ("DHCS"). Under this reorganization, DHCS retained responsibility for CCS.

other OT or PT needed to meet a child's educational needs. (Cal. Dept. of Health Services, *supra*, at § 4.7.1.)

When the California Legislature codified interagency responsibilities for implementation of the IDEA in 1984, it preserved the existing division of responsibilities between DHS and CDE, along with CCS' process for determining medical necessity. (Stat. 1984, ch. 1747, pp. 671-681, adding Chapter 26 (commencing with Section 7570) to Division 7 of Title 1 of the Government Code.) In doing so, the Legislature recognized that "a number of state and federal programs make funds available for the provision of education and related services to children with handicaps who are of school age" and declared its intent that "*existing services* rendered by state and local government agencies serving handicapped children be *maximized* and *coordinated*." (*Id*. at § 1, p. 673 (emphasis added).) Thus, the Legislature chose to incorporate CCS in the delivery of special education services only to the extent that CCS was already responsible for providing such services under its existing mandate.

The Government Code's delineation of agency responsibilities for PT and OT has remained essentially unchanged since 1984. The Superintendent of Public Instruction must:

> ensure that *local education agencies* provide special education and those *related services* and designated instruction and services contained in a child's individualized education program that are *necessary for the child to benefit educationally* from his or her instructional program.

(Gov. Code, § 7573; Cal. Code Regs., tit. 2, § 60010, subd. (k) (emphasis added) (defining "local education agency" as "a school district or county office of education which provides special education and related services").) These "related services" include any PT and OT required to assist a child with a disability to benefit from special education. (Gov. Code, § 7570.) However, to the extent such services are also *medically*

necessary based upon a physicians' diagnosis and assessment, CCS maintains responsibility for providing them in accordance with CCS-specific statutes and regulations:

> *Notwithstanding any other provision of law*, the State Department of Health Care Services, or any designated local agency administering the California Children's Services, shall be responsible or 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 plan.

(Gov. Code, § 7575, subd. (a)(1) (emphasis added); *see also id*. § 7575, subd. (b) (reiterating that DHCS shall determine whether a child needs medically necessary PT and OT), and Health & Saf. Code, § 123929, subd. (a)(3) (requiring prior authorization for CCS services to be provided and that such services be medically necessary).)[2] The Government Code goes on to reinforce this division of responsibility:

> *Related services* or designated instruction and services *not deemed to be medically necessary* by the State Department of Health Care 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* by qualified personnel . . . .

(Gov. Code, § 7575, subd. (a)(2) (emphasis added).)

A child's medical need for PT and OT is assessed during the CCS Medical Therapy Conference, when the child, his or her parent, a physician, and an occupational therapist and/or physical therapist meet to review and approve the child's therapy plan. (Cal. Code Regs., tit. 2, §§ 60300,

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[2] Indeed, CCS is responsible for providing any and all medically necessary PT and OT that a child with a qualifying condition requires, irrespective of whether the services are educationally necessary. (Health & Saf. Code, § 123875.)

subd. (h), 60323, subd. (a), (b).) Consistent with the requirement that the therapy be "medically necessary," California regulations require that the physician—who must be CCS-approved and of a specialty appropriate for treating the patient's eligible condition—issue a medical prescription for any therapy determined to be medically necessary. (*Id*. at § 60323, subd. (c), (d).) This determination depends on the physician's evaluation of the patient's physical and functional status. (*Id*. at § 60323, subd. (d).)

The determination of medical necessity, however, does not end with the CCS Medical Therapy Conference. California regulations establish a CCS-specific process for parents or guardians to contest the frequency of therapy prescribed by CCS, similar in nature to the CCS appeal process that existed before the Legislature codified interagency responsibilities for children with disabilities. Specifically, any parent or guardian who disagrees with a CCS physician's decision "shall be provided with the names of three *expert physicians* from whom the client will choose one, who will evaluate the child at CCS expense," and provide a final opinion. (Cal. Code Regs., tit. 22, § 42140, subd. (a) (emphasis added).) An "expert physician" is one who is certified as a specialist by the American Board of Medical Specialists *and* has a faculty appointment at an accredited medical school. (Cal. Code Regs., tit 22, § 41427.5.)

When CCS determines that an initiation or change in therapy is medically appropriate, changes may be necessary in the Student's IEP, such as an increase or decrease in the provision of therapy that is not medically necessary but nevertheless educationally necessary. (*See* 2 Cal. Code Regs., § 60310, subd. (c)(5).) If CCS decides to increase, decrease, change the type of intervention, or discontinue OT or PT for a student, it notifies the IEP team and parent within 5 days of the decision, and the LEA is responsible for convening an IEP team meeting. (2 Cal. Code Regs., § 60325, subd. (c).) The LEA is also responsible for convening an IEP team

meeting when requested by a parent or other authorized person. (*Ibid*.) CCS participates in meetings of the IEP team when services are going to be included, increased, decreased, changed or discontinued. (*Id*. at § 60325, subd. (b)-(e); Gov. Code, § 7572, subd. (d).) But contrary to the decision and order issued by the Administrative Law Judge in this case ("ALJ"), the IEP team has no role in approving or disapproving of CCS' medical necessity determinations. (Compare *Parents on Behalf of Student v. Tuolumne County Cal. Children's Services* (July 15, 2013), Off. of Admin. Hearings, OAH Case No. 2012100238, <http://www.documents.dgs.ca.gov/oah/seho_decisions/2012100238.pdf>, at p. 37 [hereinafter "OAH Decision"], with Gov. Code, § 7572 and 2 Cal. Code Regs., § 60325.) The IEP team's role is limited to determining what designated instruction and services or related services are necessary to enable the student to benefit from the special education program. (*See* 2 Cal. Code Regs., § 60325, subd. (e).)

To the extent a child would derive educational benefit from PT or OT that is not deemed, or beyond those deemed, medically necessary by CCS, a child is entitled to receive those services from his or her LEA. The LEA maintains responsibility for assessments of whether a child requires PT or OT that is educationally necessary but not medically necessary. (*See* Cal. Code Regs., tit. 2, § 60320, subd. (a), (b).) These determinations of *educational* necessity may be challenged by means of an independent assessment. (*See* Gov. Code, § 7572, subd. (c)(2), (d); Ed. Code, § 56320 *et seq*.) These independent assessments apply exclusively to disputes about the provision of services that are educationally necessary but not medically necessary: CCS's responsibility is limited to providing medically necessary OT and PT as specified in CCS-specific statutes and regulations, "[n]otwithstanding any other provision of law." (Gov. Code, § 7575, subd. (a)(1).)

As confirmed by a federal district court in a very similar case, the due process hearing guaranteed by the IDEA and California law implementing the IDEA is "not to reconsider CCS's determination of medical necessity" but to ensure that all special education and related services necessary for the child to benefit from his or her instructional program (i.e., all educationally necessary services) are included in the child's IEP. (*Douglas v. Cal. Off. of Admin. Hearings* (N.D. Cal. 2015) 78 F.Supp.3d 942, 949.) The court reviewed the arguments and earlier decisions in this case and explicitly rejected the position urged by the Real Parties in Interest. (*Id*. at p. 949, fn. 4.) The court explained that "the ALJ's authority in the due process hearing is limited to determining whether services are educationally necessary" and "once the ALJ determines that services are educationally necessary, his discretion is limited to allocating provision of the services in accordance with [Government Code] § 7575(a)." (*Id*. at p. 949.)

C. CCS' Process for Determining Medical Necessity Is Wholly Consistent with the IDEA and California Law Implementing the IDEA.

The CCS process for determining medical necessity comports with state and federal law governing the education of children with disabilities. Pursuant to the portion of the Government Code governing interagency responsibilities for service provision to children with disabilities, "[o]ccupational therapy and physical therapy assessments shall be conducted by *qualified medical personnel as specified in regulations developed by the State Department of Health [Care] Services*." (Gov. Code, § 7572, subd. (b) (emphasis added).) Subdivisions (a) and (c) of Government Code section 7572 go on to provide that all PT and OT assessments are governed by Education Code section 56329, subdivision (b), which recognizes that:

> [a] parent or guardian has the right to obtain, at public expense, an independent educational assessment of the pupil from qualified specialists . . . if the parent or guardian disagrees with an assessment . . . , in accordance with Section 300.502 of Title 34 of the Code of Federal Regulations.

The due process safeguards in these federal regulations require that "the criteria under which the [independent] evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same criteria that the public agency uses when it initiates an evaluation." (34 C.F.R. § 300.502(b), (e).) Thus, the Education Code and federal regulations both require that any independent evaluation of CCS' medical necessity determination meet CCS' requirements for evaluation, including use of a CCS-approved physician to determine and prescribe necessary services. (Cal. Code Regs., tit. 2, § 60323, subd. (c), (d); Cal. Code Regs., tit. 22, § 42140, subd. (a).)

Consistent with Government Code section 7572's assessment requirements, Government Code section 7575, subdivision (a)(1), makes CCS responsible for providing PT and OT "as specified" by the portion of the Health and Safety Code establishing CCS. Health and Safety Code section 123950 specifies that "[t]he designated county agency shall administer the medical-therapy program in local public schools for physically handicapped children" and that DHCS "may adopt regulations to implement this section . . . ." The regulations concerning interagency responsibility for disabled students also provide that "medical therapy services must be provided by or under the supervision of a registered occupational therapist or licensed physical therapist *in accordance with CCS regulations and requirements*." (Cal. Code Regs., tit. 2, § 60323, subd. (f) (emphasis added).) Those regulations include the appeal process whereby a parent may obtain an independent evaluation and final opinion

by selecting one of three expert physicians offered by CCS. (Cal. Code Regs., tit. 22, § 42140.)

The interagency agreement between DHCS and CDE confirms the application of CCS policies, procedures, and requirements for disputes concerning medical necessity determinations. The agreement states that the State CCS program shall "[p]rovide technical assistance to county CCS programs to assure that CCS offers dispute resolution *through an expert physician* when the parent is in disagreement with the medical therapy conference decision." (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 (2005), at p. 13, <http://www.dhcs.ca.gov/services/ccs/Documents/ccsin0701.pdf> (emphasis added).) The agreement further requires that the State CCS program "[m]aintain and monitor standards for medically necessary physical therapy and occupational therapy for MTP eligible children according to CCS policies and procedures." (*Id*. at p. 14.)

III.

ARGUMENT

A. Reversal of the Superior Court's Decision Would Disrupt the Long-Standing Division of Responsibilities and Funding Streams for Agencies Serving Children with Disabilities.

According to the Superior Court, the ALJ decision merely affirmed determinations of medical necessity to CCS and the IEP team (Order After Hearing, filed Jan. 5, 2015, at 10:9-14), but the decision fundamentally undermines the State's carefully considered scheme for delivering services to children with disabilities. It requires CCS to either provide services without a CCS-approved physician's prescription or to make CCS' medical necessity determinations subject to the IEP team's approval or a due

process hearing. (*See* OAH Decision, at pp. 36-37.) But nowhere does the Government Code provide that CCS' therapy recommendations are adopted "to the extent that the IEP team adopts those recommendations as medically necessary." (Compare OAH Decision at p. 37 with Gov. Code, § 7572, subd. (c)(2).) The decision opens the door for IEP team members, administrative law judges, and courts to determine medical necessity and to order CCS to provide non-medically necessary services (i.e., services without a physician's prescription). But it fails to consider how such decisions will be made and how it affects the existing division of responsibilities between CCS and the LEAs.

Under the long-standing legislative scheme, CCS—which has provided medical services to disabled children for almost a century—provides only medically necessary PT and OT, and the LEAs—which has long provided children with educational services—provide any other educationally necessary PT and OT. Because these agencies have developed standards, procedures, and funding streams unique to their area of expertise, the division of responsibilities between these agencies cannot be altered without seriously disrupting the services provided by state and local agencies.

Among other things, this would result in a substantial increase in operational costs for CCS; an enormous, unfunded liability for DHCS and the counties operating CCS; and potential cuts in other public services provided by DHCS and the counties. Whereas LEAs pay for IEP-required services through a mix of federal IDEA funds, designated state funds, and their own general funds, the vast majority of CCS patients are covered by California's Medicaid program, Medi-Cal, which only reimburses CCS for the cost of medically necessary services, as determined by an accredited physician, provided to covered patients. (*See* Legislative Analyst's Office, *Overview of Special Education in California* (2013),

<http://www.lao.ca.gov/reports/2013/edu/special-ed-primer/special-ed-primer-010313.aspx>; DHCS, CCS, Program Overview (Jul. 22, 2015, 1:31 PM), <http://www.dhcs.ca.gov/services/ccs/Pages/ProgramOverview.aspx>.) The cost of all other CCS services is covered by a mix of federal, State, and county funds. DHCS, *supra*. CCS does *not* receive funds under the IDEA to cover PT or OT provided to disabled children, and if CCS were required to provide these services without a CCS-approved physician's prescription, it is uncertain whether any funds currently provided to the LEAs could or would be made available to CCS for such services. Unable to rely on Medi-Cal funding for the services, DHCS and the counties would have to divert funds earmarked for other essential services, such as medical care and general assistance for the indigent, social services for abused and neglected children and the elderly, services for the severely mentally ill and disabled, law enforcement, jail operations, code enforcement, parks, and road maintenance.

Forcing CCS to cover services that have not been deemed medically necessary by a physician, much less a CCS-approved physician, would also place DHCS and the counties in a role that they are neither accustomed nor qualified to handle. DHCS and the counties oversee the provision of medical services; they do not oversee the provision of educational services. Needless to say, neither DHCS nor the counties have the experience and expertise needed to recommend and provide educational services that are not medically necessary.

Indeed, affirmance of the superior court's decision places judges in the position of evaluating the assessments of private therapists—who themselves are unqualified to determine medical necessity—to determine whether CCS services are appropriate. Under this process, DHCS, the

counties, and the LEAs would be unable to predict when and to what extent they will be responsible for providing services.

Thus, any alteration to the current system for delivering services to children with disabilities would have far-reaching, deleterious consequences for the operations of state and local government agencies, for the financing of these services, and ultimately, for the families and the larger communities served by these agencies.

B. A Decision in Parents' Favor Would Create a Patchwork of Appeal Processes that Would Be Impossible for CCS to Administer and for CCS Families to Navigate.

For almost a century, CCS has provided far more than just medical services that are educationally necessary. To ensure that disabled children – including those children who have not yet reached school age – receive *all* medically necessary services, CCS has established a carefully crafted process for providing these services, including an appeals process that ensures that covered children can get second opinions from qualified physicians.

When the California Legislature integrated CCS into the State's delivery of FAPE, the Legislature emphasized its desire that existing programs for children with disabilities be "maximized and coordinated." (Stat. 1984, ch. 1747, § 1, p. 673.) "[T]o better serve the educational needs of the state's handicapped children," *id.*, the Legislature recognized the importance of CCS and the medical services it provides and preserved CCS' process for appealing medical necessity determinations for medical therapies provided to disabled children in the school setting. Having a single process for appealing all medical necessity determinations minimizes confusion, promotes uniformity of expectations and standards for all CCS patients, parents, and staff, and reduces administrative costs.

However, under the dual appeal process urged by Parents, MTP patients—alone among CCS patients—could contest medical necessity determinations through a separate appeals process without the benefit of any other physician's medical opinion. Under the scheme advanced by Parents, a medical necessity determination involving a child who has not yet reached school age (i.e., a non-MTP patient) could only be appealed according to CCS' process, but once that child reached school age and arguably had an educational need for these medical services, the child could opt for a different appeal process. This dual process would also allow a family to follow one appeal process to contest medical necessity determinations from CCS' MTP but require the family to follow an entirely different appeal process to challenge medical necessity determinations for any other services provided by CCS for that family. Finally, this dual process would allow that administrative law judges and federal courts decide whether services are medically necessary based on the opinions of non-physicians. Besides defying logic, this scheme would be an administrative nightmare for DHCS and the counties to administer. It is also unduly complex, risks inconsistent decisions, and creates unnecessary confusion for families already confronting difficult and stressful circumstances.

Given that the appeal process urged by Parents would fail to improve the consistency or quality of medical necessity determinations, and would instead create needless confusion among CCS patients, parents and staff, this Court should reject Parents' position.

C. Parents Should Not Be Allowed to Cherry Pick the Process by Which They Contest a Medical Necessity Determination or the Agency that will Provide Services for Their Child.

The present lawsuit is nothing more than an attempt by Parents to force CCS to provide services beyond the scope of its mandate. Parents

initially filed a claim against both CCS and their child's LEAs under the IDEA's special education hearing process, but Parents inexplicably settled with the LEAs and chose to go after CCS alone for additional PT and OT. Parents had the right to make these strategic decisions. But they do not have the right to disregard the process carefully crafted by the California Legislature to meet the medical and educational needs of *all* disabled children. Neither federal nor state law gives Parents the power to cherry pick the process for appealing the scope of services provided by CCS.

In addition to refusing to follow the appropriate process for challenging the medical necessity determination, Parents chose to relieve the governmental entity required by law to provide any additional, non-medically necessary therapy. Under California law, the LEAs were responsible for any additional therapy educationally necessary for Student. (*See* Gov. Code, §§ 7573, 7575, subd. (a)(2).) Yet, Parents chose to settle with the LEAs and release them from any additional responsibility for Student's PT and OT. Having agreed to forego any additional therapy from the LEAs, Parents should not be rewarded for circumventing state laws. Like every other parent with a child in CCS, Parents must follow the rules and procedures laid out by the California Legislature to ensure that the medical and educational needs of *all* disabled children can be met.

IV.

CONCLUSION

To provide disabled children with the services they need, the California Legislature has carefully crafted a statutory framework that maximizes and coordinates existing programs and services. Under this framework, CCS provides all medically necessary services, while the LEAs provide all other educationally necessary services. And as part of this framework, California has created *separate* procedures for challenging decisions made by CCS and the LEAs. The Parents knew about the

procedure for appealing CCS' determination but chose to disregard it. The Parents also knew that the LEAs were responsible for providing all educationally necessary services that are not medically necessary but chose to relieve the LEAs of that responsibility through a settlement. Having made these strategic choices, the Parents cannot force CCS to employ their chosen procedure to force CCS to provide services that they are not legally obligated to provide.

A contrary conclusion would have serious repercussions on the provision of services to children with disabilities in California. It would open the floodgates to demands for CCS to provide non-medically necessary PT and OT services. It would allow parents to ignore the requirement that a CCS-certified physician provide a second evaluation of a child whenever they are dissatisfied with the initial CCS determination. It would place the Office of Administrative Hearings and, thereafter, the federal courts in the position of resolving disputes about a child's *medical* need for therapy. And it would upend the State Legislature's long-standing division of agency responsibilities for children with disabilities by forcing CCS to provide services that are not medically necessary. Given CCS' limited resources and the costly nature of these services, the program's ability to serve truly needy children and to provide other vital public services would be compromised.

For the reasons set forth above, and those in the brief of Petitioner-Appellant, the superior court's judgment against Petitioner-Appellant should be reversed.

Dated: January 13, 2016 Respectfully submitted,

By: _____/s/_____
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CERTIFICATE OF COMPLIANCE

The undersigned certifies that, according to the word count provided by Microsoft Word 2010, the body of the foregoing brief contains 4,770 words. The text of the brief is in 13-point Times New Roman.

By: _____*/s/*_____

JENNIFER B. HENNING
Attorney for *Amicus Curiae*