



DEPARTMENT OF
FINANCE

RECEIVED
June 30, 2015
*Commission on
State Mandates*

EDMUND G. BROWN JR. • GOVERNOR

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June 30, 2015

Ms. Heather Halsey
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Ms. Halsey:

Pursuant to Government Code section 17570, the Department of Finance requests the Commission on State Mandates (Commission) adopt a new test claim decision and amend the parameters and guidelines for the Behavioral Intervention-Plans (CSM 4464) state-mandated program to reflect subsequent changes in law that amended the test claim statute and eliminated all of the state-mandated activities.

Chapter 48, Statutes of 2013, (AB 86) amended Education Code section 56523, to eliminate the statutory force and effect behind the regulations governing the use of behavioral interventions, and required the California Department of Education to repeal section 3052 and portions of section 3001 of Title 5 of the California Code of Regulations, which are no longer supported by statute. Section 3052 of the California Code of Regulations was repealed on October 16, 2013 and section 3001 subdivisions (d), (e), (f), (g), and (ab) on July 1, 2014.

The CSM form "Request to Adopt New Test Claim Decision" is attached with a detailed analysis, declarations and documentation.

Pursuant to section 1181.2 of the California Code of Regulations, "documents that are e-filed with the Commission need not be otherwise served on persons that have provided an e-mail address for the mailing list."

If you have any questions regarding this letter, please contact Lisa Mierczynski, Principal Program Budget Analyst at (916) 445-0328.

Sincerely,

THOMAS TODD
Assistant Program Budget Manager

Enclosure

1. TITLE OF REQUEST TO ADOPT A NEW TEST CLAIM DECISION

Behavioral Intervention Plans (CSM 4464)

2. REQUESTER INFORMATION

Name of Local Agency, School District, Statewide Association of Local Agencies or School Districts, or State Agency

California Department of Finance

Requester Contact

Lisa Mierczynski

Title

Principal Program Budget Analyst

Organization

915 L Street

Street Address

Sacramento, CA 95814

City, State, Zip Code

(916) 445-0328

Telephone Number

(916) 323-9530

Fax Number

lisa.mierczynski@dof.ca.gov

E-Mail Address

3. REPRESENTATIVE INFORMATION

If requester designates another person to act as its sole representative for this request, all correspondence and communications regarding this request shall be forwarded to this representative. Any change in representation must be authorized by the requester in writing, and sent to the Commission on State Mandates. Please complete information below if designating a representative.

Representative Name

Title

Organization

Street Address

City, State, Zip Code

Telephone Number

Fax Number

E-Mail Address

For CSM Use Only
Filing Date: RECEIVED June 30, 2015 Commission on State Mandates
REQUEST# 14-MR-05

4. IDENTIFYING INFORMATION

Please identify the name(s) of the programs, test claim number(s), and the date of adoption of the Statement of Decision, for which you are requesting a new test claim decision, and the subsequent change in law that allegedly changes the state's liability. Regarding the subsequent change in law, please identify all relevant code sections (include statutes, chapters, and bill numbers), regulations (include register number and effective date), executive orders (include effective date), cases, or ballot measures.

On September 28, 2000, the Commission on State Mandates (Commission) adopted the Statement of Decision for Behavioral Interventions Plans(BIPs) (CSM-4464) and approved reimbursement for specified activities mandated in regulations which implement Education Code section 56523. Pursuant to Government Code section 17570, the Department of Finance requests the Commission to adopt a new test claim decision and amend the parameters and guidelines for the BIPs mandated program to reflect the removal of the authority for the regulations imposing the mandate. Chapter 48, Statutes of 2013 (AB 86) eliminated the authority for section 3052 and portions of section 3001 of Title V of the California Code of Regulations effective July 1, 2013.

Sections 5, 6 and 7 are attached as follows:

5. Detailed Analysis: Pages 1 to 4.

6. Declarations: Pages 5 to 6.

7. Documentation: Pages 7 to 28.

Sections 5, 6, and 7 should be answered on separate sheets of plain 8-1/2 x 11 paper. Each sheet should include the name of the request, requestor, section number (i.e., 5, 6, or 7), and a heading at the top of each page.

5. DETAILED ANALYSIS

Under the heading "5. Detailed Analysis," please provide a detailed analysis of how and why the state's liability for mandate reimbursement has been modified pursuant to article XIII B, section 6(a) of the California Constitution based on a "subsequent change in law" as defined in Government Code section 17570. This analysis shall be more than a written narrative or simple statement of the facts at law. It requires the application of the law (Gov. Code, § 17570 (a) and (b)) to the facts (i.e., the alleged subsequent change in law) discussing, for each activity addressed in the prior test claim decision, how and why the state's liability for that activity has been modified. Specific references shall be made to chapters, articles, sections, or page numbers that are alleged to impose or not impose a reimbursable state-mandated program.

Also include all of the following elements:

The actual or estimated amount of the annual statewide changes in the state's liability for mandate reimbursement pursuant to Article XIII B, section 6 (subdivision (a)) on a subsequent change in the law.

- A. Identification of all of the following if relevant:
1. Dedicated state funds appropriated for the program.
 2. Dedicated federal funds appropriated for the program.
 3. Fee authority to offset the costs of the program.
 4. Federal law.
 5. Court decisions.
 6. State or local ballot measures and corresponding date of election.

6. DECLARATIONS

Under the heading "6. Declarations," support the detailed analysis with declarations that:

- A. Declare actual or estimated annual statewide costs that will or will not be incurred to implement the alleged mandate.
- B. Identify all local, state, or federal funds and fee authority that may or may not be used to offset the increased costs that will or will not be incurred by the claimants to implement the alleged mandate or result in a finding of no costs mandated by the state, pursuant to Government Code section 17556.
- C. Describe new activities performed to implement specified provisions of the statute or executive order alleged to impose a reimbursable state-mandated program.
- D. Make specific references to chapters, articles, sections, or page numbers alleged to impose or not impose a reimbursable state-mandated program.
- E. Are signed under penalty of perjury, based on the declarant's personal knowledge, information, or belief, by persons who are authorized and competent to do so.

7. DOCUMENTATION

Under heading "7. Documentation," support the detailed analysis with copies of all of the following:

- A. Statutes, and administrative or court decisions cited in the detailed analysis.

Statements of Decision and published court decisions from a state mandate determination by the Board of Control or the Commission are exempt from this requirement. When an omnibus bill is pled or cited, the requester shall file only the relevant pages of the statute, including the Legislative Counsel's Digest and the specific statutory changes at issue.

8. CERTIFICATION

*Read, sign, and date this section and insert at the end of the request for a new test claim decision.**

This request for a new test claim decision is true and complete to the best of my personal knowledge, information, or belief.

Lisa Mierczynski

Print or Type Name of Authorized Official

Principal Program Budget Analyst

Print or Type Title



Signature of Authorized Official

June 30, 2015

Date

*If declarant for this certification is different from the contact identified in section 2 of the form, please provide the declarant's address, telephone number, fax number and e-mail address.

Request to Adopt a New Test Claim Decision
Department of Finance
Behavioral Intervention Plans
Section 5: Detailed Analysis

Summary of Mandate

Education Code section 56523 required the Superintendent of Public Instruction and the State Board of Education to adopt regulations establishing behavioral intervention plans (BIPs), which: (1) include the types of behavioral interventions that can be used; (2) require that a pupil's individualized education plan include a description of behavior interventions that meet certain guidelines; and (3) specify standards and guidelines regarding the use of behavior interventions in emergency situations. In accordance with Education Code section 56523, the State Department of Education adopted sections 3001 and 3052 of Title 5 of the California Code of Regulations (CCR), which listed the local educational agencies' obligations concerning BIPs.

The Commission on State Mandates (Commission) found, in the test claim statement of decision (CSM-4464), that Education Code section 56523 only requires the Superintendent of Public Instruction and State Board of Education to adopt regulations governing BIPs, and does not impose any requirements upon school districts. However, the Commission concluded that the implementing regulations impose a reimbursable state-mandated program upon school districts within the meaning of Article XIII B, section 6 of the California Constitution and Government Code section 17514 for the following categories of reimbursable activities:

A. Scope of Mandate

Special Education Local Planning, County Offices of Education, and school districts shall be reimbursed for increased costs for the activities regarding BIPs in the following categories: (1) Special Education Local Plan Area (SELPA) plan requirements; (2) development and implementation of BIPs; (3) functional analysis assessments; (4) modifications and contingent BIPs; (5) development and implementation of emergency interventions; (6) prohibited behavioral interventions; and (7) due process hearings.

B. Reimbursable Activities/Costs

For each eligible claimant, the following cost items are reimbursable:

Special Education Local Plan Area Plan Requirements

1. Section 3052(j) provides for the adoption of SELPA plan requirements, which include systematic use of BIPs, training of behavioral intervention case managers and personnel involved in implementing BIPS, special training in emergency interventions, and identification of approved emergency procedures.
2. Training is required to be included in the SELPA plan pursuant to subdivision (j) of section 3052. Subdivision (j) provides that the qualification and training of personnel to be designated as behavioral intervention case managers and personnel involved in implementing behavioral intervention plans and using emergency behavioral interventions must be included in the SELPA plan.
3. Training is required to develop and implement BIPs pursuant to subdivision (a) of section 3052. Subdivision (a) provides that behavioral intervention plans shall only be implemented by, or be under the supervision of, staff with documented training in behavior analysis, including the use of positive behavioral interventions.

Developing and Evaluating Behavioral Intervention Plans

Request to Adopt a New Test Claim Decision
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Behavioral Intervention Plans
Section 5: Detailed Analysis

1. Participating in individualized educational program (IEP) team meetings in which behavioral intervention plans are developed, evaluated, or modified, or in which functional analysis assessment results are reviewed; preparing behavioral intervention plans; and developing contingency plans for altering the procedures or the frequency or duration of the procedures. Providing copies of SELPA procedures on behavioral interventions and behavioral emergency interventions to parents and staff.
2. IEP team meetings are provided for in subdivision (a) of section 3052, which provides that an IEP team "shall facilitate and supervise all assessment, intervention, and evaluation activities related to an individual's [BIP]."
3. Section 3052(c) provides for the development of BIPs at an IEP team meeting upon completion of a functional analysis assessment.
4. Section 3052(f) provides for evaluation of the effectiveness of BIPs, and provides that if the IEP team determines that changes are necessary to increase effectiveness, additional functional analysis assessments are conducted and changes proposed.
5. Section 3052(h) provides for contingency BIPs, in which procedures may be altered without reconvening the IEP team.
6. Section 3052(j) provides that the SELPA procedures "shall be available to all staff members and parents whenever a behavioral intervention plan is proposed."

Implementing Behavioral Intervention Plans

1. Implementing and supervising the implementation of behavioral intervention plans; measuring and documenting the frequency, duration, and intensity of targeted behavior and effectiveness of the behavioral intervention plan. Costs of employing personnel with documented training in behavioral analysis including positive behavioral interventions (whether such personnel are new staff or existing staff) to serve as behavioral intervention case managers is reimbursable under this component.
2. Section 3052(a) provides that BIPs "shall only be implementing by, or be under the supervision of, staff with documented training in behavior analysis, including the use of positive behavioral interventions." This section thereby requires BIPs to be implemented, and requires local educational agencies to maintain properly-trained staff to conduct such implementation.
3. Section 3052(f) provides for evaluating the effectiveness of BIPs, including measurement and documentation of the frequency, duration, and intensity of targeted behaviors.

Functional Analysis Assessments

1. Conducting functional analysis assessments is provided for in section 3052(b) and (c). Providing notice to and obtaining written consent from parents to conduct functional analysis assessments; conducting functional analysis assessments; preparing written reports of assessment results; providing copies of assessment reports to parents and the individualized education program (IEP) team; conducting IEP team meetings to review assessment results.

Modifications to Behavioral Intervention Plans

1. Providing notice to parents or parent representatives of the need to make minor modifications to the behavioral intervention plans, meeting with parents to review existing program evaluation data; and developing minor modifications to behavioral intervention plans with parents or parent representatives.
2. Section 3052(f) provides for changes to be made to BIPs on the basis of evaluations, which would require additional functional analysis assessments, which in turn require parental notice under subdivision (b).

Request to Adopt a New Test Claim Decision
Department of Finance
Behavioral Intervention Plans
Section 5: Detailed Analysis

3. Section 3052(g) provides for minor modifications without an IEP team meeting, which can be made by the behavioral intervention case manager and a parent or parent representative.
4. Section 3052(g) provides that parents are entitled to notice, and "shall be informed of their right to question any modification to the plan through the IEP procedures."

Development and Implementation of Emergency Interventions

1. Emergency interventions are provided for in subdivision (i) of section 3052 and include employing emergency interventions; notifying parents and residential care providers after an emergency intervention is used; preparing and maintaining a Behavioral Emergency Report following the use of an emergency intervention; administrative review of Behavioral Emergency Reports; scheduling and conducting an IEP Team meeting to review a Behavioral Emergency Report and the need for a functional analysis assessment, interim behavioral intervention plan, or modification to an existing behavioral intervention plan.
2. Section 3052 requires that Behavioral Emergency Report data "shall be collected by SELPAs which shall report annually the number of Behavioral Emergency Reports to the [CDE] and the Advisory Committee on Special Education.
3. Preparing reports on the number of Behavioral Emergency Reports to the California Department of Education and Advisory committee on Special Education.

Prohibited Behavioral Interventions

1. Prohibited interventions are addressed in section 3052(l), which provides that no public education agency, or nonpublic school or agency may authorize, order, consent to, or pay for any of the listed interventions, or any interventions similar to or like the listed interventions. The list is non-exhaustive, implying that some ongoing development of prohibited interventions is expected.
2. Training appropriate staff regarding the types of interventions that are prohibited.

Due Process Hearings

1. Due process hearings are provided for in subdivision (m) of section 3052 of the test claim regulations, which make reference to Education Code section 56501 et seq.

Request to Adopt a New Test Claim Decision
Department of Finance
Behavioral Intervention Plans
Section 5: Detailed Analysis

Pursuant to subdivision (c) of Government Code section 17570, the Department of Finance requests the Commission adopt a new test claim decision and amend the parameters and guidelines for the BIPs (CSM 4464) mandated program to reflect the subsequent changes in law enacted in Chapter 48, Statutes of 2013.

Effective July 1, 2013, Chapter 48, Statutes of 2013 (AB 86) amended Education Code section 56523 to eliminate the statutory force and effect of the regulations that imposed the reimbursable state-mandated activities and to require the Superintendent of Public Instruction to repeal the regulations that govern behavioral intervention for individuals with exceptional needs that are no longer supported by statute. The statute specifically requires that section 3052 and subdivisions (d), (e), (f), (g), and (ab) of section 3001 of Title 5 of the California Code of Regulations be repealed. Section 3052 was repealed effective October 16, 2013 and subdivisions (d), (e), (f), (g), and (ab) of section 3001 effective July 1, 2014.

Local educational agencies are no longer required to perform the state mandated activities required in the implementing regulations, and instead must comply with federal laws and regulations regarding behavioral interventions and supports.

As a result of the change in law, the following activities are no longer reimbursable:

- (1) Preparing for, attending, and documenting and informing appropriate staff concerning the results of any mediation or due process hearing related to functional analysis assessments or the development or implementation of BIPs Special Education Local Plan Area (SELPA) plan requirements. (Repealed Cal. Code of Regs., tit. 5, §§ 3001 and 3052, subd.(j).)
- (2) Development and implementation of BIPs. (Repealed Cal. Code of Regs., tit. 5, §§ 3001 and 3052, subds., (a), (c), (d), (e), and (f).)
- (3) Functional analysis assessments. (Repealed Cal. Code of Regs., tit. 5, §§ 3001 and 3052, subds., (b), (c), and (f).)
- (4) Modifications and contingent BIPs. (Repealed Cal. Code of Regs., tit. 5, §§ 3052, subds., (g) and (h).)
- (5) Development and implementation of emergency interventions. (Repealed Cal. Code of Regs., tit. 5, §§ 3001 and 3052, subd. (i).)
- (6) Prohibited behavioral interventions. (Repealed Cal. Code of Regs., tit. 5, §§ 3001 and 3052, subd. (l).)
- (7) Due process hearings. (Repealed Cal. Code of Regs., tit. 5, §§ 3052, subd. (m).)

Request to Adopt a New Test Claim Decision
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Section 6: Declarations

Enclosure

According to the Controller's April 30, 2015, "State Mandated Program Cost Report of Unpaid Claims and Deficiency Pursuant to Government Code Section 17562(b)(2)," school districts claimed \$105,983 in 2013-14 for activities applicable to BIPs.

The forgoing analysis provides substantiation that the reimbursable activities imposed by sections 3001 and 3052 of Title 5 of the California Code of Regulations and identified in the Behavioral Intervention Plans Program Statement of Decision cease to be eligible for reimbursements effective July 1, 2013. Therefore, based on the change in law, the State's liability for mandate reimbursement pursuant to Article XIII B, Section 6 of the California Constitution should be zero.

Request to Adopt a New Test Claim Decision
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Section 6: Declarations

Enclosure

DECLARATION OF LISA MIERCZYNSKI
DEPARTMENT OF FINANCE

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

June 30, 2015
at Sacramento, CA

Lisa Mierczynski

Request to Adopt a New Test Claim Decision
Department of Finance
Behavioral Intervention Plans
Section 7: Documentation

Attachments

New Statute: Chapter 48, Statutes of 2013 (AB 86)	A
Repealed Regulations: California Code of Regulations, Title V, § 3001	B
New Regulations: California Code of Regulations, Title V, § 3001	C
Repealed Regulations: California Code of Regulations, Title V, § 3052	D
New Regulations: California Code of Regulations, Title V, § 3052	E
State Controller's Office: Schedule B, Section 2	F

Assembly Bill No. 86

CHAPTER 48

[Approved by Governor July 01, 2013. Filed with Secretary of State July 01, 2013.]

SEC. 44.

Section 56523 of the Education Code is amended to read:

56523.

(a) The Superintendent shall repeal those regulations governing the use of behavioral interventions with individuals with exceptional needs receiving special education and related services that are no longer supported by statute, including Section 3052 and subdivisions (d), (e), (f), (g), and (ab) of Section 3001 of Title 5 of the California Code of Regulations, as those provisions existed on January 10, 2013.

(b) This chapter is necessary to implement the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) and associated federal regulations. This chapter is intended to provide the clarity, definition, and specificity necessary for local educational agencies to comply with the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) and shall be implemented by local educational agencies without the development by the Superintendent and adoption by the state board of any additional regulations.

(c) Pursuant to Section 1401(9) of Title 20 of the United States Code, special education and related services must meet the standards of the department.

(d) As a condition of receiving funding from the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), a local educational agency shall agree to adhere to this chapter and implementing federal regulations set forth in this chapter.

(e) The Superintendent may monitor local educational agency compliance with this chapter and may take appropriate action, including fiscal repercussions, if either of the following is found:

(1) The local educational agency failed to comply with this chapter and failed to comply substantially with corrective action orders issued by the department resulting from monitoring findings or complaint investigations.

(2) The local educational agency failed to implement the decision of a due process hearing officer based on noncompliance with this part, provisions of the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), or the federal implementing regulations, wherein noncompliance resulted in the denial of, or impeded the delivery of, a free appropriate public education for an individual with exceptional needs.

(f) Commencing with the 2010–11 fiscal year, if any activities authorized pursuant to this chapter and implementing regulations are found to be a state reimbursable mandate pursuant to Section 6 of Article XIII B of the California Constitution, state funding provided for purposes of special education pursuant to Item 6110-161-0001 of Section 2.00 of the annual Budget Act shall first be used to directly offset any mandated costs.

(g) The Legislature hereby requests the Department of Finance on or before December 31, 2013, to exercise its authority pursuant to subdivision (d) of Section 17557 of the Government Code to file a request with the Commission on State Mandates for the purpose of amending the parameters and guidelines of CSM-4464 to delete any reimbursable activities that have been repealed by statute or executive order and to update offsetting revenues that apply to the mandated program.

SEC. 45.

Section 56525 of the Education Code is amended to read:

56525.

(a) A person recognized by the national Behavior Analyst Certification Board as a Board Certified Behavior Analyst may conduct behavior assessments and provide behavioral intervention services for individuals with exceptional needs.

(b) This section does not require a district, special education local plan area, or county office to use a Board Certified Behavior Analyst to conduct behavior assessments and provide behavioral intervention services for individuals with exceptional needs.

TITLE 5. EDUCATION

DIVISION 1. CALIFORNIA DEPARTMENT OF EDUCATION

CHAPTER 3. INDIVIDUALS WITH EXCEPTIONAL NEEDS

SUBCHAPTER 1. SPECIAL EDUCATION

ARTICLE 1. GENERAL PROVISIONS

§ 3001. Definitions.

In addition to those found in Education Code sections 56020 - 56033 56035, ~~Public Law 94-142 as amended (20 U.S.C. Sections 1401(1) to (35) et seq.), and 34 C.F.R. Title 34, Code of Federal Regulations, Part Sections 300.4 - 300.45 and 304~~, the following definitions are provided:

(a) "Access" means that the nonpublic, nonsectarian school shall provide State Board of Education (SBE)-adopted, standards-aligned core curriculum and instructional materials for kindergarten and grades 1 to 8 (K-8), inclusive; and provide standards-aligned core curriculum and instructional materials for grades 9 to 12 (9-12), inclusive, used by a local educational agency (LEA) that contracts with the nonpublic school.

...

~~(d) "Behavioral emergency" is the demonstration of a serious behavior problem:~~

~~(1) which has not previously been observed and for which a behavioral intervention plan has not been developed; or~~

~~(2) for which a previously designed behavioral intervention is not effective. Approved behavioral emergency procedures must be outlined in the special education local planning area (SELPA) local plan.~~

~~(e) "Behavioral intervention" means the systematic implementation of procedures that result in lasting positive changes in the individual's behavior. "Behavioral~~

~~intervention" means the design, implementation, and evaluation of individual or group instructional and environmental modifications, including programs of behavioral~~

~~instruction, to produce significant improvements in human behavior through skill~~

~~acquisition and the reduction of problematic behavior. "Behavioral interventions" are~~

~~designed to provide the individual with greater access to a variety of community~~

~~settings, social contacts and public events; and ensure the individual's right to~~

~~placement in the least restrictive educational environment as outlined in the individual's~~

1 IEP. ~~"Behavioral interventions" do not include procedures which cause pain or trauma.~~
2 ~~"Behavioral interventions" respect the individual's human dignity and personal privacy.~~
3 ~~Such interventions shall assure the individual's physical freedom, social interaction, and~~
4 ~~individual choice~~

5 (f) ~~"Behavioral intervention case manager" means a designated certificated~~
6 ~~school/district/county/nonpublic school or agency staff member(s) or other qualified~~
7 ~~personnel pursuant to subdivision (ac) contracted by the school district or county office~~
8 ~~or nonpublic school or agency who has been trained in behavior analysis with an~~
9 ~~emphasis on positive behavioral interventions. The "behavioral intervention case~~
10 ~~manager" is not intended to be a new staffing requirement and does not create any new~~
11 ~~credentialing or degree requirements. The duties of the "behavioral intervention case~~
12 ~~manager" may be performed by any existing staff member trained in behavioral analysis~~
13 ~~with an emphasis on positive behavioral interventions, including, but not limited to, a~~
14 ~~teacher, resource specialist, school psychologist, or program specialist.~~

15 (g) ~~"Behavioral intervention plan" is a written document which is developed when the~~
16 ~~individual exhibits a serious behavior problem that significantly interferes with the~~
17 ~~implementation of the goals and objectives of the individual's IEP. The "behavioral~~
18 ~~intervention plan" shall become part of the IEP. The plan shall describe the frequency of~~
19 ~~the consultation to be provided by the behavioral intervention case manager to the staff~~
20 ~~members and parents who are responsible for implementing the plan. A copy of the~~
21 ~~plan shall be provided to the person or agency responsible for implementation in~~
22 ~~noneducational settings. The plan shall include the following:~~

23 (1) ~~a summary of relevant and determinative information gathered from a functional~~
24 ~~analysis assessment;~~

25 (2) ~~an objective and measurable description of the targeted maladaptive behavior(s)~~
26 ~~and replacement positive behavior(s);~~

27 (3) ~~the individual's goals and objectives specific to the behavioral intervention plan;~~

28 (4) ~~a detailed description of the behavioral interventions to be used and the~~
29 ~~circumstances for their use;~~

30 (5) ~~specific schedules for recording the frequency of the use of the interventions and~~
31 ~~the frequency of the targeted and replacement behaviors; including specific criteria for~~

1 ~~discontinuing the use of the intervention for lack of effectiveness or replacing it with an~~
2 ~~identified and specified alternative;~~

3 ~~(6) criteria by which the procedure will be faded or phased-out, or less~~
4 ~~intense/frequent restrictive behavioral intervention schedules or techniques will be used;~~

5 ~~(7) these behavioral interventions which will be used in the home, residential facility,~~
6 ~~work site or other noneducational settings; and~~

7 ~~(8) specific dates for periodic review by the IEP team of the efficacy of the program.~~

8 ~~(h) "Board" means the California State Board of Education.~~

9 ~~(d)(i) "CDE" means the California Department of Education.~~

10 ~~(e)(j) "Certification" means authorization by the California State Superintendent of~~
11 ~~Public Instruction (SSPI) for a nonpublic school or nonpublic agency to service~~
12 ~~individuals with exceptional needs under a contract pursuant to the provisions of~~
13 ~~Education Code section 56366(d).~~

14 ~~(f)(k) "Contracting education agency," means school district, a SELPA, a charter~~
15 ~~school participating as a member of a special education local plan area SELPA, or~~
16 ~~county office of education.~~

17 ~~(g)(l) "Credential" means any valid credential, life diploma, or document in special~~
18 ~~education or Ppupil Personnel Services issued by, or under the jurisdiction of, the~~
19 ~~California SBE State Board of Education prior to 1970 or the California Commission on~~
20 ~~Teacher Credentialing (CTC), which entitles the holder thereof to perform services for~~
21 ~~which certification qualifications are required.~~

22 ~~(h)(m) "Department of Consumer Affairs" means the California Department of~~
23 ~~Consumer Affairs.~~

24 ~~(i)(n) "Dual enrollment" means the concurrent attendance of the individual in a public~~
25 ~~education agency and a nonpublic school and/or a nonpublic agency.~~

26 ~~(e) "Feasible" as used in Education Code section 56363(a) means the IEP team:~~

27 ~~(1) has determined the regular class teacher, special class teacher, and/or resource~~
28 ~~specialist possesses the necessary competencies and credentials/certificates to provide~~
29 ~~the designated instruction and service specified in the IEP, and~~

30 ~~(2) has considered the time and activities required to prepare for and provide the~~
31 ~~designated instruction and services and related services by the regular class teacher,~~

1 ~~special class teacher, and/or resource specialist.~~

2 ~~(p) "Free appropriate public education" means special education and related~~
3 ~~services that:~~

4 ~~(1) have been provided at public expense, under public supervision and direction~~
5 ~~and without charge;~~

6 ~~(2) meets any of the standards established by state or federal law;~~

7 ~~(3) include an appropriate preschool, elementary, or secondary school education in~~
8 ~~California; and~~

9 ~~(4) are provided in conformity with the IEP required under state and federal law.~~

10 ~~(j)(e) "Individual Services Agreement" means a document, prepared by the LEA, that~~
11 ~~specifies the length of time for which special education and designated instruction and~~
12 ~~services and related services are to be provided, by nonpublic schools and/or nonpublic~~
13 ~~agencies, to individuals with exceptional needs.~~

14 ~~(k)(r) "Instructional day" shall be the same period of time as constitutes the regular~~
15 ~~school day for that chronological peer group unless otherwise specified in the IEP.~~

16 ~~(l)(s) "License" means a valid nonexpired document issued by a licensing agency~~
17 ~~within the California Department of Consumer Affairs or other state licensing office~~
18 ~~authorized to grant licenses and authorizing the bearer of the document to provide~~
19 ~~certain professional services or refer to themselves using a specified professional title. If~~
20 ~~a license is not available through an appropriate state licensing agency, a certificate of~~
21 ~~registration with the appropriate professional organization at the national or state level,~~
22 ~~which has standards established for the certificate that are equivalent to a license, shall~~
23 ~~be deemed to be a license.~~

24 ~~(m)(t) "Linguistically appropriate goals, objectives, and programs" means:~~

25 ~~...~~

26 ~~(u) "Local educational agency" (LEA) means a school district, a county office of~~
27 ~~education, a charter school participating as a member of a special education local plan~~
28 ~~area, or a special education local plan area.~~

29 ~~(n)(v) "Local governing board," means either district or county board of education.~~

30 ~~(o)(w) "Master contract" means the legal document that binds the public education~~
31 ~~agency and the nonpublic school or nonpublic agency.~~

1 ~~(p)(*)~~ "Nonsectarian" means a private, nonpublic school or agency that is not owned,
2 operated, controlled by, or formally affiliated with a religious group or sect, whatever
3 might be the actual character of the education program or the primary purpose of the
4 facility and whose articles of incorporation and/or by-laws stipulate that the assets of
5 such agency or corporation will not inure to the benefit of a religious group.

6 ~~(q)(y)~~ "Primary language" means the language other than English, or other mode of
7 communication, the person first learned, or the language which is ~~spoken~~ used in the
8 person's home.

9 ~~(r)(z)~~ "Qualified" means that a person has met federal and state certification,
10 licensing, registration, or other comparable requirements which apply to the area in
11 which he or she is providing special education or related services, or, in the absence of
12 such requirements, the state-education-agency-approved or recognized requirements,
13 and adheres to the standards of professional practice established in federal and state
14 law or regulation, including the standards contained in the California Business and
15 Professions Code and the scope of practice as defined by the licensing or credentialing
16 body. Nothing in this definition shall be construed as restricting the activities in or
17 services of a graduate needing direct hours leading to licensure, or of a student teacher
18 or intern leading to a graduate degree at an accredited or approved college or
19 university, as authorized by state laws or regulations.

20 ~~(aa) "Related services" means transportation, and such developmental, corrective,~~
21 ~~and other supportive services (including speech pathology and audiology, psychological~~
22 ~~services, physical and occupational therapy, recreation, including therapeutic~~
23 ~~recreation, social work services, counseling services, including rehabilitation counseling,~~
24 ~~and medical services, except that such medical services shall be for diagnostic and~~
25 ~~evaluation purposes only) as required to assist an individual with exceptional needs to~~
26 ~~benefit from special education, and includes the early identification and assessment of~~
27 ~~disabling conditions in children. Related services include, but are not limited to,~~
28 ~~designated instruction and services. The list of related services is not exhaustive and~~
29 ~~may include other developmental, corrective, or supportive services if they are required~~
30 ~~to assist a child with a disability to benefit from special education. Each related service~~
31 ~~defined under this part may include appropriate administrative and supervisory activities~~

1 ~~that are necessary for program planning, management, and evaluation.~~

2 ~~(ab) "Serious behavior problems" means the individual's behaviors which are self-~~
3 ~~injurious, assaultive, or cause serious property damage and other severe behavior~~
4 ~~problems that are pervasive and maladaptive for which instructional/behavioral~~
5 ~~approaches specified in the student's IEP are found to be ineffective.~~

6 ~~(ac) "Special education" means specially designed instruction, at no cost to the~~
7 ~~parents, to meet the unique needs of individuals with exceptional needs whose~~
8 ~~educational needs cannot be met with modification of the regular instruction program,~~
9 ~~and related services, at no cost to the parent, that may be needed to assist these~~
10 ~~individuals to benefit from specially designed instruction.~~

11 ~~(s)(ad) "Specialized physical health care services" means those health services,~~
12 ~~including catheterization, gastric tube feeding, suctioning or other services prescribed~~
13 ~~by the individual's licensed physician and surgeon requiring medically related training~~
14 ~~for the individual who performs the services and which are necessary during the school~~
15 ~~day to enable the individual to attend school.~~

16 ~~(t)(ae) "Specified education placement" means that unique combination of facilities,~~
17 ~~personnel, location or equipment necessary to provide instructional services to an~~
18 ~~individual with exceptional needs, as specified in the IEP, in any one or a combination of~~
19 ~~public, private, home and hospital, or residential settings. The IEP team shall document~~
20 ~~its rationale for placement in other than the pupil's school and classroom in which the~~
21 ~~pupil would otherwise attend if the pupil were not disabled. The documentation shall~~
22 ~~indicate why the pupil's disability prevents his or her needs from being met in a less~~
23 ~~restrictive environment even with the use of supplementary aids and services.~~

24 ~~(u)(af) "SSPI" means the California State Superintendent of Public Instruction.~~

25 ~~(v)(ag) "Temporary physical disability" means a disability incurred while an individual~~
26 ~~was in a regular education class and which at the termination of the temporary physical~~
27 ~~disability, the individual can, without special intervention, reasonably be expected to~~
28 ~~return to his or her regular education class.~~

29 NOTE: Authority cited: Sections 56100 and ~~56523~~, Education Code. Reference:
30 Sections ~~33000, 33126, 33300, 49423.5, and 56026, 56026.3, 56034, 56320, 56364,~~
31 ~~56366, 56366.10, 56520 and 56523~~, Education Code; Section 2, Article IX, Constitution

1 of the State of California; 20 U.S.C. Section 1401; and 34 C.F.R. Sections 300.4
2 300.17, 300.28, 300.34, 300.39 and 300.320.

4 **ARTICLE 3. IDENTIFICATION, REFERRAL, AND ASSESSMENT**

5 **§ 3023. Assessment and Reassessment.**

6 (a) In addition to provisions of Education Code sections 56320 and 56381,
7 assessments and reassessments shall be administered by qualified personnel who are
8 competent in both the oral or sign language skills and written skills of the individual's
9 primary language or mode of communication and have a knowledge and understanding
10 of the cultural and ethnic background of the pupil. If it clearly is not feasible to do so, an
11 interpreter must be used, and the assessment report shall document this condition and
12 note that the validity of the assessment may have been affected.

13 (b) The normal process of second-language acquisition, as well as manifestations of
14 dialect and sociolinguistic variance shall not be diagnosed as a disabling condition.

15 NOTE: Authority cited: Section 56100, Education Code. Reference: Sections 56001,
16 56320, 56324, ~~and 56327,~~ and 56381, Education Code; and 34 C.F.R. Sections
17 300.304, 300.305 and 300.310.

19 **§ 3025. Assessment Option: Referral to State Schools for Further Assessment.**

20 (a) Prior to referring a pupil for further assessment to California Schools for the Deaf
21 or Blind or the Diagnostic Centers Schools, districts, ~~special education local plan areas~~
22 SELPAs, counties, or other agencies providing education services, shall first conduct
23 assessments at the local level within the capabilities of that agency. Results of local
24 assessments shall be provided to parent(s) and shall state the reasons for referral to the
25 State School. Results of local assessments shall accompany the referral request.

26 (b) The Schools for the Deaf and Blind and the Diagnostic Centers Schools shall
27 conduct assessments pursuant to the provisions of Education Code section 56320, et
28 seq.

29 (c) A representative of the district, SELPAs, or county IEP team shall participate in
30 the staffing meeting and shall receive the final report and recommendations.
31 Conference calls are acceptable forms of participation, provided that written reports and

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§ 3001. Definitions.

5 CA ADC § 3001

BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS

Barclays Official California Code of Regulations Currentness

Title 5. Education

Division 1. California Department of Education

Chapter 3. Individuals with Exceptional Needs

Subchapter 1. Special Education

Article 1. General Provisions

5 CCR § 3001

§ 3001. Definitions.

In addition to those found in Education Code sections 56020 - 56035, 20 U.S.C. Sections 1401(1) to (35), and 34 C.F.R. Sections 300.4 - 300.45, the following definitions are provided:

(a) "Access" means that the nonpublic, nonsectarian school shall provide State Board of Education (SBE)-adopted, standards-aligned core curriculum and instructional materials for kindergarten and grades 1 to 8 (K-8), inclusive; and provide standards-aligned core curriculum and instructional materials for grades 9 to 12 (9-12), inclusive, used by a local educational agency (LEA) that contracts with the nonpublic school.

(1) The nonpublic, nonsectarian school shall provide each student with a copy of textbooks and other instructional materials used to implement the SBE-adopted core curriculum (K-8) and standards-aligned core curriculum (9-12) in each subject area. As required through the individualized education program (IEP) for each pupil with hearing impairments, vision impairments, severe orthopedic impairments, or any combination thereof, SBE-adopted core curriculum (K-8) and standards-aligned core curriculum (9-12) may be in Braille, large print, recordings, and American Sign Language VideoBooks.

(2) Photocopies of portions of textbooks or instructional materials, or photocopies of entire textbooks or instructional materials to implement SBE-adopted core curriculum (K-8) and standards-aligned core curriculum (9-12) is not sufficient access.

(b) "Applicant" means an individual, firm, partnership, association, or corporation who has made application for certification as a nonpublic, nonsectarian school, or agency.

(c) "Assessment and development of the individualized education program" (IEP) means services described in Education Code sections 56320 et seq. and 56340 et seq.

(d) "CDE" means the California Department of Education.

(e) "Certification" means authorization by the California State Superintendent of Public Instruction (SSPI) for a nonpublic school or nonpublic agency to service individuals with exceptional needs under a contract pursuant to the provisions of Education Code section 56366(d).

(f) "Contracting education agency," means school district, a SELPA, a charter school participating as a member of a SELPA, or county office of education.

(g) "Credential" means any valid credential, life diploma, or document in special education or Pupil Personnel Services issued by, or under the jurisdiction of, the California SBE prior to 1970 or the California Commission on Teacher Credentialing (CTC), which entitles the holder thereof to perform services for which certification qualifications are required.

(h) "Department of Consumer Affairs" means the California Department of Consumer Affairs.

(i) "Dual enrollment" means the concurrent attendance of the individual in a public education agency and a nonpublic school and/or a nonpublic agency.

(j) "Individual Services Agreement" means a document, prepared by the LEA, that specifies the length of time for which special education and related services are to be provided, by nonpublic schools and/or nonpublic agencies, to individuals with exceptional needs.

(k) "Instructional day" shall be the same period of time as constitutes the regular school day for that chronological peer group unless otherwise specified in the IEP.

(l) "License" means a valid nonexpired document issued by a licensing agency within the California Department of Consumer Affairs or other state licensing office authorized to grant licenses and authorizing the bearer of the document to provide certain professional services or refer to themselves using a specified professional title. If a license is not available through an appropriate state licensing agency, a certificate of registration with the appropriate professional organization at the national or state level which has standards established for the certificate that are equivalent to a license, shall be deemed to be a license.

(m) "Linguistically appropriate goals, objectives, and programs" means:

(1)(A) those activities which lead to the development of English language proficiency; and

(B) those instructional systems either at the elementary or secondary level which meet the language development needs of the English language learner.

(2) For individuals whose primary language is other than English, and whose potential for learning a second language, as determined by the IEP team, is severely limited, nothing in this section shall preclude the IEP team from determining that instruction may be provided through an alternative program pursuant to a waiver under Education Code section 311 provided that the IEP team periodically, but not less than annually, reconsiders the individual's ability to receive instruction in the English language.

(n) "Local governing board," means either district or county board of education.

(o) "Master contract" means the legal document that binds the public education agency and the nonpublic school or nonpublic agency.

(p) "Nonsectarian" means a private, nonpublic school or agency that is not owned, operated, controlled by, or formally affiliated with a religious group or sect, whatever might be the actual character of the education program or the primary purpose of the facility and whose articles of incorporation and/or by-laws stipulate that the assets of such agency or corporation will not inure to the benefit of a religious group.

(q) "Primary language" means the language other than English, or other mode of communication, the person first learned, or the language which is used in the person's home.

(r) "Qualified" means that a person has met federal and state certification, licensing, registration, or other comparable requirements which apply to the area in which he or she is providing special education or related services, or, in the absence of such requirements, the state-education-agency-approved or recognized requirements, and adheres to the standards of professional practice established in federal and state law or regulation, including the standards contained in the California Business and Professions Code and the scope of practice as defined by the licensing or credentialing body. Nothing in this definition shall be construed as restricting the activities or services of a graduate needing direct hours leading to licensure, or of a student teacher or intern leading to a graduate degree at an accredited or approved college or university, as authorized by state laws or regulations.

(s) "Specialized physical health care services" means those health services, including catheterization, gastric tube feeding, suctioning or other services prescribed by the individual's licensed physician and surgeon requiring medically related training for the individual who performs the services and which are necessary during the school day to enable the individual to attend school.

(t) "Specified education placement" means that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to an individual with exceptional needs, as specified in the IEP, in any one or a combination of public, private, home and hospital, or residential settings. The IEP team shall document its rationale for placement in other than the pupil's school and classroom in which the pupil would otherwise attend if the pupil were not disabled. The documentation shall indicate why the pupil's disability prevents his or her needs from being met in a less restrictive environment even with the use of supplementary aids and services.

(u) "SSPI" means the California State Superintendent of Public Instruction.

(v) "Temporary physical disability" means a disability incurred while an individual was in a regular education class and which at the termination of the temporary physical disability, the individual can, without special intervention, reasonably be expected to return to his or her regular education class.

Note: Authority cited: Section 56100, Education Code. Reference: Sections 33300, 49423.5 and 56320, Education Code; and 34 C.F.R. Sections 300.17, 300.28, 300.34, 300.39 and 300.320.

HISTORY

1. Amendment filed 3-21-88; operative 4-20-88 (Register 88, No. 15).
2. New subsections (c)-(f)(8) and (y) and subsection relettering, amendment of newly designated subsections (j), (k), (p)(1)(B)-(p)(3), (r), (s), (v), (z) and (aa), and amendment of opening paragraph and Note filed 4-20-93; operative 5-20-93 (Register 93, No. 17).
3. Editorial correction of subsection (b) (Register 96, No. 8).
4. Amendment of subsections (f), (f)(7), (j) and (y) filed 2-23-96 as an emergency; operative 2-23-96 (Register 96, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-22-96 or emergency language will be repealed by operation of law on the following day.
5. Editorial correction of subsection (j) (Register 96, No. 32).

6. Certificate of Compliance as to 2-23-96 order transmitted to OAL 6-21-96 and filed 8-5-96 (Register 96, No. 32).
7. Amendment of section and Note filed 7-18-97 as an emergency; operative 7-18-97 (Register 97, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-17-97 or emergency amendments will be repealed by operation of law on the following day.
8. Amendment of section and Note refiled 11-14-97 as an emergency; operative 11-14-97 (Register 97, No. 46). A Certificate of Compliance must be transmitted to OAL by 3-16-98 or emergency language will be repealed by operation of law on the following day.
9. Reinstatement of section and Note as they existed prior to 7-18-97 emergency amendment by operation of Government Code section 11346.1(f) (Register 98, No. 16).
10. Amendment of section and Note filed 4-16-98 as an emergency; operative 4-16-98 (Register 98, No. 16). A Certificate of Compliance must be transmitted to OAL by 8-14-98 or emergency language will be repealed by operation of law on the following day.
11. Reinstatement of section and Note as they existed prior to 4-16-98 emergency amendment by operation of Government Code section 11346.1(f) (Register 98, No. 34).
12. Amendment of first paragraph, new subsections (c), (d), (n), (v), (w), (z), (aa), (ae), (ag) and (a)(k), subsection relettering, amendment of newly designated subsections (f), (g), (i), (o), (q), (r), (s)(2), (x), (y), (ab), (ac) and (ad), and amendment of Note filed 8-19-98 as an emergency; operative 8-19-98 (Register 98, No. 34). A Certificate of Compliance must be transmitted to OAL by 12-17-98 or emergency language will be repealed by operation of law on the following day.
13. Reinstatement of section and Note as they existed prior to 8-19-98 emergency amendment by operation of Government Code section 11346.1(f) (Register 98, No. 52).
14. Amendment of first paragraph, new subsections (c), (d), (n), (v), (w), (z), (aa), (ae), (ag) and (ak), subsection relettering, amendment of newly designated subsections (f), (g), (i), (o), (q), (r) and (s)(1)(A)-(B), repealer of subsection (s)(2), subsection renumbering, amendment of newly designated subsections (s)(2), (x), (y), (ab), (ac), (ad) and amendment of Note filed 12-21-98 as an emergency; operative 12-21-98 (Register 98, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-20-99 or emergency language will be repealed by operation of law on the following day.
15. Repealer and new section filed 3-25-99 as an emergency; operative 3-25-99 (Register 99, No. 13). A Certificate of Compliance must be transmitted to OAL by 7-23-99 or emergency language will be repealed by operation of law on the following day.
16. Certificate of Compliance as to 3-25-99 order, including amendment of section and Note, transmitted to OAL 7-23-99 and filed 9-1-99 (Register 99, No. 36).
17. Amendment of section and Note filed 3-27-2009; operative 4-26-2009 (Register 2009, No. 13).
18. Amendment of section and Note filed 5-5-2014; operative 7-1-2014 (Register 2014, No. 19).

This database is current through 6/12/15 Register 2015, No. 24

5 CCR § 3001, 5 CA ADC § 3001

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5 CA ADC § 3052

5 CCR s 3052

Cal. Admin. Code tit. 5, s 3052

BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS
TITLE 5. EDUCATION
DIVISION 1. CALIFORNIA DEPARTMENT OF EDUCATION
CHAPTER 3. HANDICAPPED CHILDREN
SUBCHAPTER 1. SPECIAL EDUCATION
ARTICLE 5. IMPLEMENTATION (PROGRAM COMPONENTS)

This database is current through 01/05/07, Register 2007, No. 1.
s 3052. Designated Positive Behavioral Interventions.

(a) General Provisions.

(1) An IEP team shall facilitate and supervise all assessment, intervention, and evaluation activities related to a individual's behavioral intervention plan. When the behavioral intervention plan is being developed, the IEP team shall be expanded to include the behavioral intervention case manager with documented training in behavior analysis including positive behavioral intervention(s), qualified personnel knowledgeable of the student's health needs, and others as described in Education Code Section 56341(c)(2). The behavioral intervention case manager is not intended to be a new staff person and may be an existing staff member trained in behavior analysis with an emphasis on positive behavioral interventions.

(2) Behavioral intervention plans shall only be implemented by, or be under the supervision of, staff with documented training in behavior analysis, including the use of positive behavioral interventions. Such interventions shall only be used to replace specified maladaptive behavior(s) with alternative acceptable behavior(s) and shall never be used solely to eliminate maladaptive behavior(s).

(3) Behavioral intervention plans shall be based upon a functional analysis assessment, shall be specified in the individualized education program, and shall be used only in a systematic manner in accordance with the provisions of this section.

(4) Behavioral emergency interventions shall not be used as a substitute for behavioral intervention plans.

(5) The elimination of any maladaptive behavior does not require the use of intrusive behavioral interventions that cause pain or trauma.

(6) To the extent possible, behavioral intervention plans shall be developed and implemented in a consistent manner appropriate to each of the individual's life settings.

(b) **Functional Analysis Assessments.** A functional analysis assessment must be conducted by, or be under the supervision of a person who has documented training in behavior analysis with an emphasis on positive behavioral interventions. A functional analysis assessment shall occur after the individualized education program team finds that instructional/behavioral approaches specified in the student's IEP have been ineffective. Nothing in this section shall preclude a parent or legal guardian from requesting a functional analysis assessment pursuant to the provisions of Education Code sections 56320 et seq.

Functional analysis assessment personnel shall gather information from three sources: direct observation, interviews with significant others, and review of available data such as assessment reports prepared by other professionals and other individual records. Prior to conducting the assessment, parent notice and consent shall be given and obtained pursuant to Education Code Section 56321.

(1) A functional analysis assessment procedure shall include all of the following:

(A) Systematic observation of the occurrence of the targeted behavior for an accurate definition and description of the frequency, duration, and intensity;

(B) Systematic observation of the immediate antecedent events associated with each instance of the display of the targeted inappropriate behavior;

(C) Systematic observation and analysis of the consequences following the display of the behavior to determine the function the behavior serves for the individual, i.e., to identify the specific environmental or physiological outcomes produced by the behavior. The communicative intent of the behavior is identified in terms of what the individual is either requesting or protesting through the display of the behavior;

(D) Ecological analysis of the settings in which the behavior occurs most frequently. Factors to consider should include the physical setting, the social setting, the activities and the nature of instruction, scheduling, the quality of communication between the individual and staff and other students, the degree of independence, the degree of participation, the amount and quality of social interaction, the degree of choice, and the variety of activities;

(E) Review of records for health and medical factors which may influence behaviors (e.g. medication levels, sleep cycles, health, diet); and

(F) Review of the history of the behavior to include the effectiveness of previously used behavioral interventions.

(2) Functional Analysis Assessment Reports. Following the assessment, a written report of the assessment results shall be prepared and a copy shall be provided to the parent. The report shall include all of the following:

(A) A description of the nature and severity of the targeted behavior(s) in objective and measurable terms;

(B) A description of the targeted behavior(s) that includes baseline data and an analysis of the antecedents and consequences that maintain the targeted behavior, and a functional analysis of the behavior across all appropriate settings in which it occurs;

(C) A description of the rate of alternative behaviors, their antecedents and consequences; and

(D) Recommendations for consideration by the IEP team which may include a proposed plan as specified in Section 3001(f).

(c) IEP Team Meeting. Upon completion of the functional analysis assessment, an IEP team meeting shall be held to review results and, if necessary, to develop a behavioral intervention plan, as defined in Article 1, Section 3001(f) of these regulations. The IEP team shall include the behavioral intervention case manager. The behavioral intervention plan shall become a part of the IEP and shall be written with sufficient detail so as to direct the implementation of the plan.

(d) Intervention. Based upon the results of the functional analysis assessment, positive programming for behavioral intervention may include the following:

(1) Altering the identified antecedent event to prevent the occurrence of the behavior (e.g., providing choice, changing the setting, offering variety and a meaningful curriculum, removing environmental pollutants such as excessive noise or crowding, establishing a predictable routine for the individual);

(2) Teaching the individual alternative behaviors that produce the same consequences as the inappropriate behavior (e.g., teaching the individual to make requests or protests using socially acceptable behaviors, teaching the individual to participate with alternative communication modes as a substitute for socially unacceptable attention-getting behaviors, providing the individual with activities that are physically stimulating as alternatives for stereotypic, self-stimulatory behaviors);

(3) Teaching the individual adaptive behaviors (e.g., choice-making, self-management, relaxation techniques, and general skill development) which ameliorate negative conditions that promote the display of inappropriate behaviors; and

(4) Manipulating the consequences for the display of targeted inappropriate behaviors and alternative, acceptable behaviors so that it is the alternative behaviors that more effectively

produce desired outcomes (i.e., positively reinforcing alternative and other acceptable behaviors and ignoring or redirecting unacceptable behaviors).

(e) **Acceptable Responses.** When the targeted behavior(s) occurs, positive response options shall include, but are not limited to one or more of the following:

- (1) the behavior is ignored, but not the individual;
- (2) the individual is verbally or verbally and physically redirected to an activity;
- (3) the individual is provided with feedback (e.g., "You are talking too loudly");
- (4) the message of the behavior is acknowledged (e.g., "You are having a hard time with your work"); or
- (5) a brief, physical prompt is provided to interrupt or prevent aggression, self-abuse, or property destruction.

(f) **Evaluation of the Behavioral Intervention Plan Effectiveness.** Evaluation of the effectiveness of the behavioral intervention plan shall be determined through the following procedures:

- (1) Baseline measure of the frequency, duration, and intensity of the targeted behavior, taken during the functional analysis assessment. Baseline data shall be taken across activities, settings, people, and times of the day. The baseline data shall be used as a standard against which to evaluate intervention effectiveness;
- (2) Measures of the frequency, duration, and intensity of the targeted behavior shall be taken after the behavioral intervention plan is implemented at scheduled intervals determined by the IEP team. These measures shall also be taken across activities, settings, people, and times of the day, and may record the data in terms of time spent acting appropriately rather than time spent engaging in the inappropriate behavior;
- (3) Documentation of program implementation as specified in the behavioral intervention plan (e.g., written instructional programs and data, descriptions of environmental changes); and
- (4) Measures of program effectiveness will be reviewed by the teacher, the behavioral intervention case manager, parent or care provider, and others as appropriate at scheduled intervals determined by the IEP team. This review may be conducted in meetings, by telephone conference, or by other means, as agreed upon by the IEP team.
- (5) If the IEP team determines that changes are necessary to increase program

effectiveness, the teacher and behavioral intervention case manager shall conduct additional functional analysis assessments and, based on the outcomes, shall propose changes to the behavioral intervention plan.

(g) Modifications without IEP Team Meeting. Minor modifications to the behavioral intervention plan can be made by the behavioral intervention case manager and the parent or parent representative. If the case manager is unavailable, a qualified designee who meets the training requirements of subsection (a)(1) shall participate in such modifications. Each modification or change shall be addressed in the behavioral intervention plan provided that the parent, or parent representative, is notified of the need and is able to review the existing program evaluation data prior to implementing the modification or change. Parents shall be informed of their right to question any modification to the plan through the IEP procedures.

(h) Contingency Behavioral Intervention Plans. Nothing in this section is intended to preclude the IEP team from initially developing the behavioral intervention plan in sufficient detail to include schedules for altering specified procedures, or the frequency or duration of the procedures, without the necessity for reconvening the IEP team. Where the intervention is to be used in multiple settings, such as the classroom, home and job sites, those personnel responsible for implementation in the other sites must also be notified and consulted prior to the change.

(i) Emergency Interventions. Emergency interventions may only be used to control unpredictable, spontaneous behavior which poses clear and present danger of serious physical harm to the individual or others and which cannot be immediately prevented by a response less restrictive than the temporary application of a technique used to contain the behavior.

(1) Emergency interventions shall not be used as a substitute for the systematic behavioral intervention plan that is designed to change, replace, modify, or eliminate a targeted behavior.

(2) Whenever a behavioral emergency occurs, only behavioral emergency interventions approved by the special education local planning area (SELPA) may be used.

(3) No emergency intervention shall be employed for longer than is necessary to contain the behavior. Any situation which requires prolonged use of an emergency intervention shall require staff to seek assistance of the school site administrator or law enforcement agency, as applicable to the situation.

(4) Emergency interventions may not include:

(A) Locked seclusion, unless it is in a facility otherwise licensed or permitted by state law to use a locked room;

(B) Employment of a device or material or objects which simultaneously immobilize all four extremities, except that techniques such as prone containment may be used as an

emergency intervention by staff trained in such procedures; and

(C) An amount of force that exceeds that which is reasonable and necessary under the circumstances.

(5) To prevent emergency interventions from being used in lieu of planned, systematic behavioral interventions, the parent and residential care provider, if appropriate, shall be notified within one school day whenever an emergency intervention is used or serious property damage occurs. A "Behavioral Emergency Report" shall immediately be completed and maintained in the individual's file. The report shall include all of the following:

(A) The name and age of the individual;

(B) The setting and location of the incident;

(C) The name of the staff or other persons involved;

(D) A description of the incident and the emergency intervention used, and whether the individual is currently engaged in any systematic behavioral intervention plan; and

(E) Details of any injuries sustained by the individual or others, including staff, as a result of the incident.

(6) All "Behavioral Emergency Reports" shall immediately be forwarded to, and reviewed by, a designated responsible administrator.

(7) Anytime a "Behavioral Emergency Report" is written regarding an individual who does not have a behavioral intervention plan, the designated responsible administrator shall, within two days, schedule an IEP team meeting to review the emergency report, to determine the necessity for a functional analysis assessment, and to determine the necessity for an interim behavioral intervention plan. The IEP team shall document the reasons for not conducting an **assessment** and/or not developing an interim plan.

(8) Anytime a "Behavioral Emergency Report" is written regarding an individual who has a behavioral intervention plan, any incident involving a previously unseen serious behavior problem or where a previously designed intervention is not effective should be referred to the IEP team to review and determine if the incident constitutes a need to modify the plan.

(9) "Behavioral Emergency Report" data shall be collected by SELPAs which shall report annually the number of Behavioral Emergency Reports to the California Department of Education and the Advisory Committee on Special Education.

(j) SELPA Plan. The local plan of each SELPA shall include procedures governing the systematic use of behavioral interventions and emergency interventions. These procedures shall be part of the SELPA local plan.

(1) Upon adoption, these procedures shall be available to all staff members and parents whenever a behavioral intervention plan is proposed.

(2) At a minimum, the plan shall include:

(A) The qualifications and training of personnel to be designated as behavioral intervention case managers, which shall include training in behavior analysis with an emphasis on positive behavioral interventions, who will coordinate and assist in conducting the functional analysis assessments and the development of the behavioral intervention plans;

(B) The qualifications and training required of personnel who will participate in the implementation of the behavioral intervention plans; which shall include training in positive behavioral interventions;

(C) Special training that will be required for the use of emergency behavioral interventions and the types of interventions requiring such training; and

(D) Approved behavioral emergency procedures.

(k) Nonpublic School Policy. Nonpublic schools and agencies, serving individuals pursuant to Education Code Section 56365 et seq., shall develop policies consistent with those specified in subsection (i) of this section.

(l) Prohibitions. No public education agency, or nonpublic school or agency serving individuals pursuant to Education Code Section 56365 et seq., may authorize, order, consent to, or pay for any of the following interventions, or any other interventions similar to or like the following:

(1) Any intervention that is designed to, or likely to, cause physical pain;

(2) Releasing noxious, toxic or otherwise unpleasant sprays, mists, or substances in proximity to the individual's face;

(3) Any intervention which denies adequate sleep, food, water, shelter, bedding, physical comfort, or access to bathroom facilities;

(4) Any intervention which is designed to subject, used to subject, or likely to subject the individual to verbal abuse, ridicule or humiliation, or which can be expected to cause excessive emotional trauma;

(5) Restrictive interventions which employ a device or material or objects that simultaneously immobilize all four extremities, including the procedure known as prone containment, except that prone containment or similar techniques may be used by trained personnel as a limited emergency intervention pursuant to subsection (l);

(6) Locked seclusion, except pursuant to subsection (l)(4)(A);

(7) Any intervention that precludes adequate supervision of the individual; and

(8) Any intervention which deprives the individual of one or more of his or her senses.

(m) Due Process Hearings. The provisions of this chapter related to functional analysis assessments and the development and implementation of behavioral intervention plans are subject to the due process hearing procedures specified in Education Code Section 56501 et seq. No hearing officer may order the implementation of a behavioral intervention that is otherwise prohibited by this section, by SELPA policy, or by any other applicable statute or regulation.

Note: Authority cited: Section 56523(a), Education Code. Reference: Sections 56520 and 56523, Education Code.

HISTORY

1. New section filed 4-20-93; operative 5-20-93 (Register 93, No. 17).
2. Amendment of subsections (b), (b)(2)(D), (c), (i), (i)(5) and (i)(7) filed 2-23-96 as an emergency; operative 2-23-96 (Register 96, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-22-96 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 2-23-96 order including further amendment of subsection (b) transmitted to OAL 6-21-96 and filed 8-5-96 (Register 96, No. 32).

5 CCR s 3052, 5 CA ADC s 3052
1CAC

5 CA ADC s 3052

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ATTACHMENT E

WestlawNext **California Code of Regulations**

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§ 3052. Designated Positive Behavioral Interventions. [Repealed]
5 CA ADC § 3052

BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS

Barclays Official California Code of Regulations Currentness

Title 5. Education

Division 1. California Department of Education

Chapter 3. Individuals with Exceptional Needs

Subchapter 1. Special Education

Article 5. Implementation (Program Components)

5 CCR § 3052

§ 3052. Designated Positive Behavioral Interventions. [Repealed]

Note: Authority cited: Section 56100, Education Code. Reference: Sections 56520, 56521 and 56523, Education Code.

HISTORY

1. New section filed 4-20-93; operative 5-20-93 (Register 93, No. 17).
2. Amendment of subsections (b), (b)(2)(D), (c), (i), (i)(5) and (i)(7) filed 2-23-96 as an emergency; operative 2-23-96 (Register 96, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-22-96 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 2-23-96 order including further amendment of subsection (b) transmitted to OAL 6-21-96 and filed 8-5-96 (Register 96, No. 32).
4. Change without regulatory effect amending subsections (a)(1), (a)(3), (b), (b)(2)(D), (c), (g), (i)(2), (i)(9), (k)-(l), (l)(5)-(6) and (m) and amending Note filed 9-27-2012 pursuant to section 100, title 1, California Code of Regulations (Register 2012, No. 39).
5. Change without regulatory effect repealing section filed 10-16-2013 pursuant to section 100, title 1, California Code of Regulations (Register 2013, No. 42).

This database is current through 6/12/15 Register 2015, No. 24

5 CCR § 3052, 5 CA ADC § 3052

END OF DOCUMENT

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State Controller's Office
 Division of Accounting and Reporting
 Schedule B, Section 2: Net Deficiencies and Surpluses for the Unfunded Mandates by Program
 As of April 1, 2015

Fiscal Year	Program Name	Legal Reference	Program Number	Program Costs	Program Payments	Established Receivables	Payable Balance	Receivable Balance	Net Balance
Behavioral Intervention Plans (07/01/1993 to 06/30/2012) Total									
2013-14	Behavioral Intervention Plans (On or after 07/01/2012)	Title 5	349	\$ 732,601,704	\$ -	\$ -	\$ 732,601,704	\$ -	\$ 732,601,704
2012-13	Behavioral Intervention Plans (On or after 07/01/2012)	Title 5	349	\$ 105,983	\$ -	\$ -	\$ 105,983	\$ -	\$ 105,983
Behavioral Intervention Plans (On or after 07/01/2012) Total									
2013-14	California Public Records Act	Ch. 463/92	354	\$ 114,536	\$ -	\$ -	\$ 114,536	\$ -	\$ 114,536
2012-13	California Public Records Act	Ch. 463/92	354	\$ 138,826	\$ -	\$ -	\$ 138,826	\$ -	\$ 138,826
2011-12	California Public Records Act	Ch. 463/92	354	\$ 119,930	\$ -	\$ -	\$ 119,930	\$ -	\$ 119,930
2010-11	California Public Records Act	Ch. 463/92	354	\$ 86,685	\$ -	\$ -	\$ 86,685	\$ -	\$ 86,685
2009-10	California Public Records Act	Ch. 463/92	354	\$ 49,027	\$ -	\$ -	\$ 49,027	\$ -	\$ 49,027
2008-09	California Public Records Act	Ch. 463/92	354	\$ 34,650	\$ -	\$ -	\$ 34,650	\$ -	\$ 34,650
2007-08	California Public Records Act	Ch. 463/92	354	\$ 9,928	\$ -	\$ -	\$ 9,928	\$ -	\$ 9,928
2006-07	California Public Records Act	Ch. 463/92	354	\$ 45,752	\$ -	\$ -	\$ 45,752	\$ -	\$ 45,752
2005-06	California Public Records Act	Ch. 463/92	354	\$ 19,255	\$ -	\$ -	\$ 19,255	\$ -	\$ 19,255
2004-05	California Public Records Act	Ch. 463/92	354	\$ 3,432	\$ -	\$ -	\$ 3,432	\$ -	\$ 3,432
2003-04	California Public Records Act	Ch. 463/92	354	\$ 3,454	\$ -	\$ -	\$ 3,454	\$ -	\$ 3,454
2002-03	California Public Records Act	Ch. 463/92	354	\$ 3,363	\$ -	\$ -	\$ 3,363	\$ -	\$ 3,363
2001-02	California Public Records Act	Ch. 463/92	354	\$ 1,464	\$ -	\$ -	\$ 1,464	\$ -	\$ 1,464
California Public Records Act Total				\$ 630,302	\$ -	\$ -	\$ 630,302	\$ -	\$ 630,302
2006-07	Charter Schools III	Ch. 34/98	277	\$ 84,983	\$ -	\$ -	\$ 84,983	\$ -	\$ 84,983
2005-06	Charter Schools III	Ch. 34/98	277	\$ 9,521	\$ -	\$ -	\$ 9,521	\$ -	\$ 9,521
2004-05	Charter Schools III	Ch. 34/98	277	\$ 1,932	\$ -	\$ -	\$ 1,932	\$ -	\$ 1,932
2003-04	Charter Schools III	Ch. 34/98	277	\$ 1,295	\$ -	\$ -	\$ 1,295	\$ -	\$ 1,295
2002-03	Charter Schools III	Ch. 34/98	277	\$ 1,180	\$ -	\$ -	\$ 1,180	\$ -	\$ 1,180
2001-02	Charter Schools III	Ch. 34/98	277	\$ 1,100	\$ -	\$ -	\$ 1,100	\$ -	\$ 1,100
2000-01	Charter Schools III	Ch. 34/98	277	\$ 1,225	\$ -	\$ -	\$ 1,225	\$ -	\$ 1,225
1999-00	Charter Schools III	Ch. 34/98	277	\$ 1,005	\$ -	\$ -	\$ 1,005	\$ -	\$ 1,005
Charter Schools III Total				\$ 102,241	\$ -	\$ -	\$ 102,241	\$ -	\$ 102,241
2008-09	Comprehensive School Safety Plans II: Discrimination and Harassment Policy, and Hate Crime Reporting Procedures	Ch. 890/01	311	\$ 3,616	\$ -	\$ -	\$ 3,616	\$ -	\$ 3,616
2007-08	Comprehensive School Safety Plans II: Discrimination and Harassment Policy, and Hate Crime Reporting Procedures	Ch. 890/01	311	\$ 3,730	\$ -	\$ -	\$ 3,730	\$ -	\$ 3,730
2004-05	Comprehensive School Safety Plans II: Discrimination and Harassment Policy, and Hate Crime Reporting Procedures	Ch. 890/01	311	\$ 1,029	\$ -	\$ -	\$ 1,029	\$ -	\$ 1,029

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On July 10, 2015, I served the:

New Filing; and Notice of Complete Filing and Schedule for Comments

Mandate Redetermination Request, 14-MR-05

Behavioral Intervention Plans (CSM-4464)

California Code of Regulations, Title 5, Sections 3001 and 3052,

as added or amended by Register 93, No. 17; Register 96, No. 8;

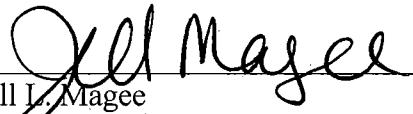
Register 96, No. 32

As Alleged to be Modified by Statutes 2013, Chapter 48 (AB 86)

California Department of Finance, Requester

By making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on July 10, 2015 at Sacramento, California.



Jill L. Magee

Commission on State Mandates

980 Ninth Street, Suite 300

Sacramento, CA 95814

(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 7/8/15

Claim Number: 14-MR-05

Matter: Behavioral Intervention Plans (CSM-4464)

Requester: Department of Finance

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

Amber Alexander, *Department of Finance*

915 L Street, Sacramento, Ca

Phone: (916) 445-0328

Amber.Alexander@dof.ca.gov

Socorro Aquino, *State Controller's Office*

Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 322-7522

SAquino@sco.ca.gov

Harmeet Barkschat, *Mandate Resource Services, LLC*

5325 Elkhorn Blvd. #307, Sacramento, CA 95842

Phone: (916) 727-1350

harmeet@calsdrc.com

Lacey Baysinger, *State Controller's Office*

Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 324-0254

lbaysinger@sco.ca.gov

Mike Brown, *School Innovations & Advocacy*

5200 Golden Foothill Parkway, El Dorado Hills, CA 95762

Phone: (916) 669-5116

mikeb@sia-us.com

J. Bradley Burgess, *MGT of America*

895 La Sierra Drive, Sacramento, CA 95864

Phone: (916) 595-2646

Bburgess@mgtamer.com

Gwendolyn Carlos, *State Controller's Office*

Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 323-0706

gcarlos@sco.ca.gov

David Cichella, *California School Management Group*

3130-C Inland Empire Blvd., Ontario, CA 91764

Phone: (209) 834-0556

dcichella@csmcentral.com

Joshua Daniels, *Attorney, California School Boards Association*

3251 Beacon Blvd, West Sacramento, CA 95691

Phone: (916) 669-3266

jdaniels@csba.org

Marieta Delfin, *State Controller's Office*

Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 322-4320

mdelfin@sco.ca.gov

Andra Donovan, *San Diego Unified School District*

Legal Services Office, 4100 Normal Street, Room 2148, , San Diego, CA 92103

Phone: (619) 725-5630

adonovan@sandi.net

Donna Ferebee, *Department of Finance*

915 L Street, Suite 1280, Sacramento, CA 95814

Phone: (916) 445-3274

donna.ferebee@dof.ca.gov

Chris Ferguson, *Department of Finance*

Education Systems Unit, 915 L Street, 7th Floor, 915 L Street, 7th Floor, Sacramento, CA 95814

Phone: (916) 445-3274

Chris.Ferguson@dof.ca.gov

Susan Geanacou, *Department of Finance*

915 L Street, Suite 1280, Sacramento, CA 95814

Phone: (916) 445-3274

susan.geanacou@dof.ca.gov

Paul Golaszewski, *Legislative Analyst's Office*

925 L Street, Suite 1000, Sacramento, CA 95814

Phone: (916) 319-8341

Paul.Golaszewski@lao.ca.gov

Ed Hanson, *Department of Finance*

Education Systems Unit, 915 L Street, 7th Floor, Sacramento, CA 95814

Phone: (916) 445-0328

ed.hanson@dof.ca.gov

Mark Ibele, *Senate Budget & Fiscal Review Committee*

California State Senate, State Capitol Room 5019, Sacramento, CA 95814

Phone: (916) 651-4103
Mark.Ibele@sen.ca.gov

Cheryl Ide, Associate Finance Budget Analyst, *Department of Finance*
Education Systems Unit, 915 L Street, Sacramento, CA 95814
Phone: (916) 445-0328
Cheryl.ide@dof.ca.gov

Jill Kanemasu, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 322-9891
jkanemasu@sco.ca.gov

Jennifer Kuhn, Deputy, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8332
Jennifer.kuhn@lao.ca.gov

Jay Lal, *State Controller's Office (B-08)*
Division of Accounting & Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-0256
JLal@sco.ca.gov

George Landon, Deputy Superintendent, Admin. Fiscal Support, *Lake Elsinore Unified School District*
545 Chaney Street, Lake Elsinore, CA 92530
Phone: (951) 253-7095
George.Landon@leusd.k12.ca.us

Michelle Mendoza, *MAXIMUS*
17310 Red Hill Avenue, Suite 340, Irvine, CA 95403
Phone: (949) 440-0845
michellemendoza@maximus.com

Yazmin Meza, *Department of Finance*
915 L Street, Sacramento, CA 95814
Phone: (916) 445-0328
Yazmin.meza@dof.ca.gov

Lisa Mierczynski, *Department of Finance (A-15)*
Requester Representative
915 L Street, 12th Floor, Sacramento, CA 95814
Phone: (916) 445-0328
lisa.mierczynski@dof.ca.gov

Meredith Miller, Director of SB90 Services, *MAXIMUS*
3130 Kilgore Road, Suite 400, Rancho Cordova, CA 95670
Phone: (972) 490-9990
meredithcmiller@maximus.com

Robert Miyashiro, *Education Mandated Cost Network*
1121 L Street, Suite 1060, Sacramento, CA 95814
Phone: (916) 446-7517
robertm@sscal.com

Jameel Naqvi, Analyst, *Legislative Analyst's Office*
Education Section, 925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8331
Jameel.naqvi@lao.ca.gov

Keith Nezaam, *Department of Finance*
915 L Street, 8th Floor, Sacramento, CA 95814
Phone: (916) 445-8913
Keith.Nezaam@dof.ca.gov

Andy Nichols, *Nichols Consulting*
1857 44th Street, Sacramento, CA 95819
Phone: (916) 455-3939
andy@nichols-consulting.com

Christian Osmena, *Department of Finance*
915 L Street, Sacramento, CA 95814
Phone: (916) 445-0328
christian.osmena@dof.ca.gov

Arthur Palkowitz, *Stutz Artiano Shinoff & Holtz*
2488 Historic Decatur Road, Suite 200, San Diego, CA 92106
Phone: (619) 232-3122
apalkowitz@sashlaw.com

Keith Petersen, *SixTen & Associates*
P.O. Box 340430, Sacramento, CA 95834-0430
Phone: (916) 419-7093
kpbsixten@aol.com

Mark Rewolinski, *MAXIMUS*
625 Coolidge Drive, Suite 100, Folsom, CA 95630
Phone: (949) 440-0845
markrewolinski@maximus.com

Sandra Reynolds, *Reynolds Consulting Group, Inc.*
P.O. Box 894059, Temecula, CA 92589
Phone: (951) 303-3034
sandrareynolds_30@msn.com

David Scribner, *Max8550*
2200 Sunrise Boulevard, Suite 240, Gold River, CA 95670
Phone: (916) 852-8970
dscribner@max8550.com

Steve Shields, *Shields Consulting Group, Inc.*
1536 36th Street, Sacramento, CA 95816
Phone: (916) 454-7310
steve@shieldscg.com

Jim Spano, Chief, Mandated Cost Audits Bureau, *State Controller's Office*
Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 323-5849
jspano@sco.ca.gov

Dennis Speciale, *State Controller's Office*

Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 324-0254

DSpeciale@sco.ca.gov

Meg Svoboda, *Senate Office of Research*

1020 N Street, Suite 200, Sacramento, CA

Phone: (916) 651-1500

meg.svoboda@sen.ca.gov

Amy Tang-Paterno, Educational Fiscal Services Consultant, *California Department of Education*

Government Affairs, 1430 N Street, Suite 5602, Sacramento, CA 95814

Phone: (916) 322-6630

ATangPaterno@cde.ca.gov

Thomas Todd, Assistant Program Budget Manager, *Department of Finance*

Education Systems Unit, 915 L Street, 7th Floor, Sacramento, CA 95814

Phone: (916) 445-0328

Thomas.Todd@dof.ca.gov

Jolene Tollenaar, *MGT of America*

2251 Harvard Street, Suite 134, Sacramento, CA 95815

Phone: (916) 443-411

jolene_tollenaar@mgtamer.com

Brian Uhler, *Legislative Analyst's Office*

925 L Street, Suite 1000, Sacramento, CA 95814

Phone: (916) 319-8328

brian.uhler@lao.ca.gov

Marichi Valle, *San Jose Unified School District*

855 Lenzen Avenue, San Jose, CA 95126

Phone: (408) 535-6141

mvalle@sjusd.org