COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

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J. TYLER McCAULEY
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RECEIVED
DEC 20 2002
COMMISSION ON
STATE MANDATES

December 18, 2002

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814

Dear Ms. Higashi:

**County of Los Angeles Proposed Revisions**
**Commission Staff's Parameters and Guidelines:**
**Sections 60000-60200, Title 2, California Code of Regulations,**
**Division 9, Chapter 1747, Statutes of 1984, Chapter 1274, Statutes of 1985**
**Handicapped and Disabled Students**

We submit the referenced parameters and guidelines.

Leonard Kaye of my staff is available at (213) 974-8564 to answer questions you may have concerning this submission.

Very truly yours,

For J. Tyler McCauley
Auditor-Controller

JTM:JN:LK
Enclosures

**County of Los Angeles Proposed Revisions**
**Commission Staff's Parameters and Guidelines:**
**Sections 60000-60200, Title 2, California Code of Regulations,**
**Division 9, Chapter 1747, Statutes of 1984, Chapter 1274, Statutes of 1985**
**Handicapped and Disabled Students**

On March 20, 2002, Commission on State Mandates [Commission] staff issued their version of the revised parameters and guidelines [Ps&Gs] for the Handicapped and Disabled Student Program, governing reimbursement of counties' costs of providing mental health assessment, treatment and residential board and care services required under federal and state law.

Staff propose that Commissioners reaffirm the original [August 22, 1991] Ps&Gs decision. For example, they again say [on pages 1-2 of their Ps&Gs] that:

> "The provisions of Welfare and Institutions Code section 5651, subdivision (g), result in a higher level of service within the county Short-Doyle program because the mental health services, pursuant to Gov. Code sections 7571 and 7576 and their implementing regulations, must be included in the county Short-Doyle annual plan. Such services include psychotherapy and other mental health services provided to "individuals with exceptional needs," including those designated as "seriously emotionally disturbed," and required in such individual's IEP.
>
> Such mental health services are subject to the current cost sharing formula of the Short-Doyle Act, through which the state provides ninety (90) percent of the total costs of the Short-Doyle program, and the county is required to provide the remaining ten (10) percent of the funds.
>
> Accordingly, only ten (10) percent of such program costs are reimbursable within the meaning of section 6, article XIIIB of the California Constitution as costs mandated by the state, because the Short-Doyle Act currently provides counties ninety (90) percent of the costs of furnishing those mental health services set forth in Gov. Code section 7571 and 7576 and their implementing regulations, and described in the county's Short-Doyle annual plan pursuant to Welfare and Institutions Code section 5651, subdivision (g)."

The County of Los Angeles [County] disagrees. At the time of Commission's original Ps&Gs decision [August 22, 1991] as well as during the time of staff's analysis [March 20, 2002] there was no "county Short-Doyle program". There was no "county Short-Doyle annual plan". There was no

"cost sharing formula of the Short-Doyle Act, through which the state provides ninety (90) percent of the total costs of the Short-Doyle program, and the county is required to provide the remaining ten (10) percent of the funds". There was no Short-Doyle funding at all. Counties were not receiving any of the promised "ninety (90) percent of the costs of furnishing those mental health services set forth in Gov. Code section 7571 and 7576 and their implementing regulations".

Legislative Fix

The Legislature, in passing Chapter 1167, Statutes of 2002, Assembly Bill 2781 [1], clearly indicates that Short-Doyle funding formulas are not to be used by claimants in preparing reimbursement claims and not to be used by the State Controller's Office in auditing such claims.

Regarding preparing reimbursement claims for psychotherapy and other mental health services required by Chapter 26.5, Section 38 of Chapter 1167, Statutes of 2002 [2] amended Section 5701.3 of the Welfare and Institutions Code to provide that:

> "Consistent with the annual Budget Act, this chapter shall not affect the responsibility of the state to fund psychotherapy and other mental health services required by Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code, and the state shall reimburse counties for all allowable costs incurred by counties in providing services pursuant to that chapter. The reimbursement provided pursuant to this section for purposes of Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code shall be provided by the state through an appropriation included in either the annual Budget Act or other statute. Counties shall continue to receive reimbursement from specifically appropriated funds for costs necessarily incurred in providing psychotherapy and other mental health services in accordance with this chapter. For reimbursement claims for services delivered in the 2001-02

1 A copy of Chapter 1167, Statutes of 2002 [AB 2871] was filed by the County of Stanislaus on October 30, 2002 with the Commission to be part of the administrative record in this matter.

2 Section 38 is found on page 39 of the Stanislaus County filing referenced above.

> fiscal year and thereafter, counties are not required to provide any share of those costs or to fund the cost of any part of these services with money received from the Local Revenue Fund established by Chapter 6 (commencing with Section 17600) of Part 5 of Division 9." [Emphasis added.]

Accordingly, counties are no longer required to use a fictitious 90/10% Short-Doyle funding formula in preparing reimbursement claims for services delivered in the 2001-02 fiscal year and thereafter. Rather, counties, as stated by the Legislature [above], "are not required to provide any share of those costs". Therefore, Counties are entitled to 100% reimbursement of their costs to provide psychotherapy and other mental health services required by Chapter 26.5.

Also, as stated by the Legislature [above], counties are not required "...to fund the cost of any part of these services with money received from the Local Revenue Fund established by Chapter 6 (commencing with Section 17600) of Part 5 of Division 9".

Accordingly, except for Chapter 26.5 psychotherapy and other mental health service costs funded under State categorical appropriations, counties are entitled to 100% reimbursement of their Chapter 26.5 service costs.

It should be noted that reimbursement rules set forth in Chapter 1167, Statutes of 2002 [above] have been in effect since July 1, 1991, when the Short-Doyle Act was repealed. The Legislature, then, did nothing really new in Chapter 1167, Statutes of 2002 regarding reimbursement for the subject program. They merely clarified the matter.

Prior Claims

Regarding auditing claims for costs incurred during 2000-01 and prior fiscal years, Section 41 of Chapter 1167, Statutes of 2002 [3] provides that:

> "Notwithstanding any other provision of law, with respect to the handicapped and disabled students state-mandated local program, county reimbursement claims submitted to the Controller for reimbursement for services associated with providing, pursuant to Chapter 26.5 (commencing with Section

3 Section 41 is found on page 40 of the Stanislaus County filing referenced above.

> 7570) of Division 7 of Title 1 of the Government Code, allowable mental health treatment services required by an individualized education program in fiscal years up to and including the 2000-01 fiscal year are not subject to dispute by the Controller's office regarding the percentage of reimbursement claimed by any county. A county that previously submitted a reimbursement claim for services delivered in the 2000-01 fiscal year or prior for less than 100 percent of the allowable mental health treatment services to special education pupils may not amend its claim for 100 percent or other percentage of those same allowable costs. This paragraph does not abridge the right of the Controller to otherwise dispute claims on the basis of allowable costs. With the exception of those costs claimed in excess of what is allowable, claims shall be fully paid at the percentage originally submitted." [Emphasis added.]

Here, the Legislature clearly requires the State Controller's Office [SCO] to exclude the long defunct Short-Doyle funding formulas in SCO's audits of claimants. In the Legislature's words [above], " reimbursement claims ... [for] program[s] in fiscal years up to and including the 2000-01 fiscal year are not subject to dispute by the Controller's office regarding the percentage of reimbursement claimed by any county".

Accordingly, the County's Ps&Gs, herein submitted, reflect the funding scheme in effect since the repeal of the Short-Doyle Act on July, 1 1991.

The County's Ps&Gs also provide some new descriptions of allowable mental health and residential services based on current State regulations implementing Chapter 26.5 of the Government Code.

To facilitate review of the County Ps&Gs, footnotes are provided to allow the reader to quickly compare and contrast this version with that of Commission staff. Also, footnotes are provided to indicate authorities relied upon.

**County of Los Angeles Proposed Revisions**
**Commission Staff's Parameters and Guidelines:**
**Sections 60000-60200, Title 2, California Code of Regulations,**
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## I. SUMMARY OF MANDATE

Chapter 1747 of the Statutes of 1984 added Chapter 26, commencing with section 7570, to Division 7 of Title 1 of the Government code (Gov. Code).

Chapter 1274 of the Statutes of 1985 amended sections 7572, 7572.5, 7575, 7576, 7579, 7582, and 7587 of, amended and repealed 7583 of, added section 7586.5 and 7586.7 to, and repealed 7574 of, the Gov. Code, and amended section 5651 of the Welfare and Institutions Code.

To the extent that Gov. Code section 7572 and section 60040, Title 2, Code of California Regulations, require county participation in the mental health assessment for "individuals with exceptional needs," such legislation and regulations impose a new program or higher level of service upon a county. Furthermore, any related county participation on the expanded "Individualized Education Program" (IEP) team and case management services for "individuals with exceptional needs" who are designated as "seriously emotionally disturbed," pursuant to subdivisions (a), (b), and (c) of Gov. Code section 7572.5 and their implementing regulations, impose a new program or higher level of service upon a county.

The aforementioned mandatory county participation in the IEP process was found to be not subject to the Short-Doyle Act, in effect at the time the Commission rendered its decision, and accordingly, such costs related thereto are costs mandated by the state and are fully reimbursable within the meaning of section 6, article XIIIB of the California Constitution.

The provisions of Welfare and Institutions Code section 5651, subdivision (g), resulted in a higher level of service within the county Short-Doyle program, in effect at the time the Commission adopted its Statement of Decision on April 26, 1990, because the mental health services, pursuant to Gov. Code sections 7571 and 7576 and their implementing regulations, was to have been included in the county Short-Doyle annual plan. Such services include psychotherapy and other mental health services provided to "individuals with exceptional needs," including those designated as "seriously emotionally disturbed," and required in such individual's IEP.

As the Short-Doyle Act was repealed on July 1, 1991, services mandated pursuant to Government Code sections 7571 and 7576 and their implementing regulations, cannot henceforth be included in a Short-Doyle annual plan or be subject to provisions of the Short-Doyle Act. Such service costs are one hundred (100) per cent reimbursable, except those costs funded under Section 5700(a)(2), are subject to the current cost sharing formula of Section 5712(a), through which the state provides ninety (90) percent of the net costs of Section 5712(a) funded services, and the county is required to provide the remaining ten (10) percent of Section 5712(a) funded services.

Accordingly, ten percent of the net cost of a county's funded Section 5712(a) program are reimbursable within the meaning of section 6, article XIIIB of the California Constitution.[1]

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1. This paragraph, and the two prior paragraphs, revise Commission staffs' three paragraphs, on page 25 of their March 20, 2002 draft, which provided that:

> "The provisions of Welfare and Institutions Code section 5651, subdivision (g), result in a higher level of service within the county Short-Doyle program because the mental health services, pursuant to Gov. Code sections 7571 and 7576 and their implementing regulations, must be included in the county Short-Doyle annual plan. Such services include psychotherapy and other mental health services provided to "individuals with exceptional needs," including those designated as "seriously emotionally disturbed," and required in such individual's IEP."

Continued ---

## II. COMMISSION ON STATE MANDATES' DECISION

The Commission on State Mandates, at its April 26, 1990 hearing, adopted a Statement of Decision that determined that County participation in the IEP process is a state mandated program and any costs related thereto are fully reimbursable. Furthermore, mental health treatment required by an IEP is subject to a cost sharing formula, if funded under the county's Short-Doyle or a State categorical allocation [currently Welfare and Institutions Code Section 5700(a)(2)], in which case the County's share (i.e., ten percent) of the mental health treatment costs will be reimbursed as costs mandated by the state. [2]

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"Such mental health services are subject to the current cost sharing formula of the Short-Doyle Act, through which the state provides ninety (90) percent of the total costs of the Short-Doyle program, and the county is required to provide the remaining ten (10) percent of the funds."

"Accordingly, only ten (10) percent of such program costs are reimbursable within the meaning of section 6, article XIIIB of the California Constitution as costs mandated by the state, because the Short-Doyle Act currently provides counties ninety (90) percent of the costs of furnishing those mental health services set forth in Gov. Code section 7571 and 7576 and their implementing regulations, and described in the county's Short-Doyle annual plan pursuant to Welfare and Institutions Code section 5651, subdivision (g)."

2. This paragraph is a revision of Commission staffs' paragraph, on page 25 of their March 20, 2002 draft, which provided that:

> "The Commission on State Mandates, at its April 26, 1990 hearing, adopted a Statement of Decision that determined that County participation in the IEP process is a state mandated program and any costs related thereto are fully reimbursable. Furthermore, any mental health treatment required by an IEP is subject to the Short-Doyle cost sharing formula. Consequently, only the county's Short-Doyle share (i.e., ten percent) of the mental health treatment costs will be reimbursed as costs mandated by the state."

## III. ELIGIBLE CLAIMANTS

All counties

## IV. PERIOD OF REIMBURSEMENT

At the time the test claim was heard, section 17557 of the Gov. Code stated that a test claim must be submitted on or before December 31 following a given fiscal year to establish eligibility for that year. The test claim for this mandate was filed on August 17, 1987, therefore, all costs incurred on or after July 1, 1986, are reimbursable.

Actual costs for one fiscal year should be included in each claim, and estimated costs for the subsequent year may be included on the same claim, if applicable, pursuant to Government Code section 17561. If the total costs for a given fiscal year do not exceed $200, no reimbursement shall be allowed, except as otherwise allowed by Gov. Code section 17564.

## V. REIMBURSABLE COSTS

A. Costs Related to IEP Participation, Assessment, and Case Management:

1. The scope of the mandate is one hundred (100) percent reimbursement, except that: (1) for individuals billed to Medi-Cal only, the Federal Financing Participation portion (FFP) for these activities should be deducted from otherwise reimbursable costs and (2) for activities funded under the State categorical [Section 5700(a)(2)] allocation, only the County's share (i.e., ten percent) of IEP participation, assessment, and case management service costs will be reimbursed as costs mandated by the state. [3]

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3. This paragraph is a revision of Commission staffs' paragraph V.A.1., on page 26 of their March 20, 2002 draft, which provided that:

> "The scope of the mandate is one hundred (100) percent reimbursement, except that for individuals billed to Medi-Cal only, the Federal Financing Participation portion (FFP) for these activities should be deducted from reimbursable activities not subject to the Short-Doyle Act."

2. For each eligible claimant, the following costs are one hundred (100) percent reimbursable (Gov. Code, section 7572, subd. (d)(1)):

   a. Whenever an LEA refers an individual suspected of being an 'individual with exceptional needs' to the local mental health department, mental health assessment and recommendation by qualified mental health professionals in conformance with assessment procedures set forth in Article 2 (commencing with section 56320) of Chapter 4 of part 30 of Division 4 of the Education Code, and regulations developed by the State Department of Mental Health, in consultation with the State Department of Education, including but not limited to the following mandated services:

      i. interview with the child and family,
      ii. collateral interviews, as necessary,
      iii. review of the records,
      iv. observation of the child at school, and
      v. psychological testing and/or psychiatric assessment, as necessary

   b. Review and discussion of mental health assessment and recommendation with parent and appropriate IEP team members. (Government Code section 7572, subd. (d)(1)).

   c. Attendance by the mental health professional who conducted the assessment at IEP meetings, when requested. (Government Code section 7572, subd. (d)(1)).

   d. Review by claimant's mental health professional of any independent assessment(s) submitted by the IEP team. (Government Code section 7572, subd. (d)(2)).

   e. When the written mental health assessment report provided by the local mental health program determines that an 'individual with special needs' is 'seriously emotionally disturbed', and any member

of the IEP team recommends residential placement based upon relevant assessment information, inclusion of the claimant's mental health professional on that individual's expanded IEP team.

f. When the IEP prescribes residential placement for an 'individual with exceptional needs' who is 'seriously emotionally disturbed,' claimant's mental health personnel's identification of out-of-home placement, case management, six month review of an IEP, and expanded IEP responsibilities. (Government Code section 7572.5).

g. Required participation in due process procedures, including but not limited to due process hearings.

B. Costs related to Mental Health Treatment Services:

1. The scope of the mandate is one hundred (100) percent reimbursement, except that: (1) for individuals billed to Medi-Cal only, the Federal Financing Participation portion (FFP) for these activities should be deducted from otherwise reimbursable costs; (2) for activities funded under the State categorical [Section 5700(a)(2)] allocation [4], only the County's share (i.e., ten percent)

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4. The [State General Fund] categorical appropriation for Chapter 26.5 [of the Government Code] services is described by Irene K. Tamura, Chief Counsel for the California Health and Human Services Agency, in her October 23, 2001 memo to Paula Higashi, Commission's Executive Director, attached as Exhibit 1. On page 2, Ms. Tamura indicates that:

> "The Special Education Pupils (SEP) Program was first funded through [the] Department of Mental Health in fiscal year (FY) 1986/87. Under SEP, special education pupils may receive county mental health services such as assessment, treatment (i.e., outpatient and residential services, medication monitoring) and case management to enable them to benefit from special education.
>
> ----
>
> Pupils must be enrolled in special education to be eligible for mental health intervention through Government Code Chapter 26.5. ... [A] mental disorder must be preventing them from benefiting from their education. All services must be provided free of charge to eligible special education pupils

of mental health treatment service costs will be reimbursed as costs mandated by the state; and, (3) for the board and care portion of residential services in excess of the Department of Social Services (DSS) forty (40) percent share of DSS allowable room and board payment, only the sixty (60) percent local share is reimbursable. [5]

Direct administrative costs related to services required by a child's IEP is one hundred (100) per cent reimbursable except that only ten percent of the net cost of direct administrative costs related to services provided pursuant to a county's funded Section 5712(a) program is reimbursable.

2. For each eligible claimant [6], the "... following health services when delineated on an IEP in accordance with Section 7572(d) of the Government Code: psychotherapy as defined in Section 2903 of the Business and Professions Code provided to the pupil individually or in a group, collateral services, medication monitoring, intensive day treatment, day

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because of their federal entitlement to a "Free and Appropriate Public Education". "

5. Commission staff's [March 20, 2002] version of this paragraph states:

   "The scope of the mandate is ten (10) percent reimbursement".

6. Commission staff's [March 20, 2002] version [of sections V.B. 3., V.B. 4.] states:

   "For each eligible claimant, the following costs, for the provision of mental health services when required by a child's individualized education program, are ten (10) percent reimbursable (Government Code 7576):

   a. Individual therapy,

   b. Collateral therapy and contacts,

   c. Group therapy,

   d. Day treatment, and

   e. Mental health portion of residential treatment in excess of the State Department of Social Services payment for the residential placement."

rehabilitation, and case management" [7] are reimbursable (Government Code 7576). ""Medication monitoring" includes all medication support services with the exception of the medications or biologicals themselves and laboratory work. Medication support services include prescribing, administering, dispensing and monitoring of psychiatric medications or biologicals necessary to alleviate the symptoms of mental illness"[8].

3. For each eligible claimant, residential services are reimbursable, when delineated in an IEP, in accordance with California Administrative Code, Title 2, Section 60100, including the 'board and care' or 'care and supervision' portion of residential services, in excess of the Department of Social Services (DSS) forty (40) percent share of DSS allowable room and board payments. As noted in California Administrative Code, Title 2, Section 60025, entitled "Social Services Definitions", subsection (a) states: ""Care and supervision" as defined in Welfare and Institutions Code Section 11460, includes food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel to the child's home for visitation" [9].

3. Direct administrative costs related to services required by a child's IEP is one hundred (100) per cent reimbursable except that only ten percent of the net cost of direct administrative costs related to services provided pursuant to a county's funded Section 5712(a) program is reimbursable.

## VI. CLAIM PREPARATION

There are two satisfactory methods of submitting claims for reimbursement of increased costs incurred to comply with the mandate:

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7. As stated in Cal. Admin. Code tit. 2, s 60020 (i), attached as Exhibit 2.

8. As stated in Cal. Admin. Code tit. 2, s 60020 (f), attached as Exhibit 2.

9. As stated in Cal. Admin. Code tit. 2, s 60025 (a), attached as Exhibit 3.

A. Actual Increased Costs Method. To claim under the Actual Increased Costs Method, report actual increased costs incurred for each of the following expense categories in the format specified by the State Controller's claiming instructions. Attach supporting schedules as necessary:

1. Employee Salaries and Benefits: Show the classification of the employees involved, mandated functions performed, number of hours devoted to the function, and hourly rates and benefits.

2. Services and supplies: Include only expenditures which can be identified as a direct cost resulting from the mandate. List cost of materials acquired which have been consumed or expended specifically for the purpose of this mandate.

3. Direct Administrative Costs:

a. One hundred (100) percent of any direct administrative costs related to IEP Participation, Assessment, and Case Management.

b. Direct administrative costs related to services required by a child's IEP is one hundred (100) per cent reimbursable except that only ten percent of the net cost of direct administrative costs related to services provided pursuant to a county's funded Section 5712(a) program is reimbursable. [10]

4. Indirect Administrative and Overhead Costs: Compensation for indirect costs is eligible for reimbursement. Indirect costs are those that have been incurred for common or joint purposes. These cost benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those

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10. Commission staff's [March 20, 2002] version of this paragraph is:

> "Ten (10) percent of any direct administrative costs related to mental health treatment rendered under the Short-Doyle Act."

remaining to be allocated to benefited cost objectives. A cost may not be allocated as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been claimed as a direct cost.

Indirect costs include (a) the indirect costs originating in each department or agency of the governmental unit carrying out state mandated programs and (b) the costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

To the extent that reimbursable indirect costs have not already been reimbursed by DMH from categorical funding sources, they may be claimed under this method in either of the two following ways prescribed in the State Controller's claiming instructions. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) pursuant to OMB A-87. Irrespective of whether a 10% default rate is used or a prepared ICRP is used, indirect costs may not result in a total combined reimbursement from DMH and SCO for program indirect costs which exceed the rate claimed.

B. Cost Report Method. Under this claiming method, the mandate reimbursement claim is still submitted on the State Controller's claiming forms in accordance with the claiming instructions. A complete copy of the annual cost report including all supporting schedules attached to the cost report as filed with DMH must also be filed with the claim forms submitted to the State Controller.

To the extent that reimbursable indirect costs have not already been reimbursed by DMH from categorical funding sources, they may be claimed as follows under this method.

Compensation for indirect costs is eligible for reimbursement. Indirect costs are those that have been incurred for common or joint purposes. These cost benefit more than one cost objective and cannot be readily

identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been claimed as a direct cost.

Indirect costs include (a) the indirect costs originating in each department or agency of the governmental unit carrying out state mandated programs and (b) the costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) pursuant to OMB A-87. Whether the 10% default rate of the ICRP is prepared, indirect costs may not result in a total combined reimbursement from DMH and SCO for program indirect costs which exceed the rate claimed.

## VII. SUPPORTING DATA

For auditing purposes, all costs claimed must be traceable to source documents and/or worksheets that show evidence of the validity of such costs. Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district is subject to audit by the State Controller no later than two years after the end of the calendar year in which the reimbursement claim is filed or last amended. However, if no funds are appropriated for the program for the fiscal year for which the claim is made, the time for the State Controller to initiate an audit shall commence to run from the date of initial payment of the claim.

## VIII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENTS [11]

A. Any offsetting savings the claimant experiences in the same program as result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed.

In addition, reimbursement specifically for this mandate, received from any source, including but not limited to, Federal Financing Participation and the state portion of Medi-Cal (State General Fund matching portion), private pay insurance, State categorical funding (e.g., Item 4440-131-0001 of the Budget Act), Healthy Families Program, and federal funding (e.g., Individuals with Disabilities Education Act [IDEA] , Part B grants provided to backfill loss of State funding for Chapter 26.5 mandated services [12]) shall be identified and deducted from this claim.

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11. This section, in Commission staff's March 20, 2002 analysis, states:

> "Any offsetting savings the claimant experiences in the same program as result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, including but not limited to, Federal Financing Participation and the state portion of Medi-Cal (State General Fund matching portion), private pay insurance, categorical funding (e.g., Item 4440-131-0001 of the Budget Act), Healthy Families Program, and other federal and state funds shall be identified and deducted from this claim."

12. Federal grant funds are available to backfill the loss of State revenues, in order to provide services required under Chapter 26.5 of the Government Code, as delineated in Section 19 "Maintenance of State Financial Support" of the California State Department Educations' 2002 IDEA, Part B, Policies and Procedures, attached in pertinent part as Exhibit 4.

However, reimbursement for this mandate shall not be requested of parents of children receiving mandated services necessary for a free appropriate public education. Neither shall third party reimbursement be obtained for this mandate where parents face a realistic threat of financial loss, including:

> "(a) A decrease in available lifetime coverage or any other benefit under an insurance policy;
>
> (b) An increase in premiums or the discontinuation of the policy;
>
> (c) An out-of-pocket expense such as a deductible amount."[13]

## IX. REQUIRED CERTIFICATION

An authorized representative of the claimant will be required to provide a certification of claim, as specified in the State Controller's claiming instructions, for those costs mandated by the state contained herein.

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13. As stated in Section 7.4 [1] "Charges to Parents" in the Special Education Law and Litigation Treatise by Mark C. Weber, Supplement 8, December 2000, LRP Publications, attached in pertinent part, as Exhibit 5.

# COUNTY OF LOS ANGELES
## DEPARTMENT OF AUDITOR-CONTROLLER

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J. TYLER McCAULEY
AUDITOR-CONTROLLER


**County of Los Angeles Proposed Revisions**
**Commission Staff's Parameters and Guidelines:**
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**Handicapped and Disabled Students**

**Declaration of Leonard Kaye**

Leonard Kaye makes the following declaration and statement under oath:

I, Leonard Kaye, SB90 Coordinator, in and for the County of Los Angeles, am responsible for filing test claims, reviews of State agency comments, Commission staff analyses, and for proposing parameters and guidelines (Ps&Gs) and amendments thereto, all for the complete and timely recovery of costs mandated by the State. Specifically, I have prepared the subject revisions to Commission staff's Ps&Gs, attached hereto.

Specifically, I declare that I have examined the County's State mandated duties and resulting costs, in implementing the subject law, and find that such costs as set forth in the subject revisions, attached hereto, are, in my opinion, reimbursable "costs mandated by the State", as defined in Government Code section 17514:

> " ' Costs mandated by the State' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

I am personally conversant with the foregoing facts and if so required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to the matters which are therein stated as information or belief, and as to those matters I believe them to be true.

12/18/02, Los Angeles, CA
Date and Place

Signature

CALIFORNIA HEALTH AND HUMAN SERVICES AGENCY
1600 9th Street, Room 460
Sacramento, CA 95814

# FAX TRANSMITTAL

| | | FROM |
|---|---|---|
| NAME | Paula Higashi<br>Executive Directive | Irene K. Tamura<br>Chief Counsel |
| LOCATION | Commission on State Mandates | CHHS<br>1600 Ninth Street, Room 460<br>Sacramento, CA 95814 |
| PHONE | 323-3562 | 651-8061 |
| FAX | 445-0278 | 654-7465 |

**DATE:** **October 23, 2001**

SUBJECT: Handicapped & Disabled Students;

Asst Secretary Rob Schladale requested this information from DMH. Please let me know if you need further information.

***NUMBER OF PAGES 3***

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COMMISSION ON STATE MANDATES

# CALIFORNIA DEPARTMENT OF MENTAL HEALTH
## Special Education Pupils Program

The Special Education Pupils (SEP) Program was first funded through Department of Mental Health in fiscal year (FY)1986/87. Under SEP, special education pupils may receive county mental health services such as assessment, treatment (i.e., outpatient and residential services, medication monitoring) and case management to enable them to benefit from special education. The program is meant to encourage collaboration between education, mental health and other public agencies in order to maximize and coordinate services delivered to special education pupils.

**Target Population:** Pupils must be enrolled in special education to be eligible for mental health intervention through Government Code Chapter 26.5. Children may receive special education services through the age of 21 or until they graduate from high school, whichever comes first. Special education pupils must also have an educational need for mental health treatment to be eligible for Chapter 26.5 county mental health services. In other words, a mental disorder must be preventing them from benefiting from their education. All services must be provided free of charge to eligible special education pupils because of their federal entitlement to a "Free and Appropriate Public Education."

**Funding:** The State General Fund (SGF) appropriation to DMH for this program is currently $12.334 million. The allocation methodology was determined in consultation with representatives of the Local Mental Health Directors. This methodology took into consideration the special education enrollment and historical mental health spending for special education pupils. A minimum level of $15,000 was initially established for every county, but was reduced to the current minimum of $12,883 in 1992/93 after a series of funding reductions. The allocation amounts by county have remained unchanged since FY 1992/93 (see next page for details).

DEPARTMENT OF MENTAL HEALTH
Allocations for Special Education Programs
Government Code Chapter 26.5

| | |
|---|---|
| STATEWIDE TOTAL | $12,334,000 |
| ALAMEDA | 383,940 |
| ALPINE | 12,883 |
| AMADOR | 12,883 |
| BUTTE | 79,063 |
| CALAVERAS | 24,028 |
| COLUSA | 12,883 |
| CONTRA COSTA | 477,362 |
| DEL NORTE | 12,883 |
| EL DORADO | 20,919 |
| FRESNO | 386,963 |
| GLENN | 12,883 |
| HUMBOLDT | 46,674 |
| IMPERIAL | 62,851 |
| INYO | 12,883 |
| KERN | 215,804 |
| KINGS | 39,550 |
| LAKE | 17,078 |
| LASSEN | 12,883 |
| LOS ANGELES | 2,778,722 |
| MADERA | 31,144 |
| MARIN | 151,052 |
| MARIPOSA | 12,883 |
| MENDOCINO | 36,987 |
| MERCED | 83,545 |
| MODOC | 12,883 |
| MONO | 12,883 |
| MONTEREY | 138,195 |
| NAPA | 81,685 |
| NEVADA | 27,537 |
| ORANGE | 699,001 |
| PLACER | 92,966 |
| PLUMAS | 15,054 |
| RIVERSIDE | 496,344 |
| SACRAMENTO | 339,791 |
| SAN BENITO | 31,710 |
| SAN BERNARDINO | 721,698 |
| SAN DIEGO | 813,276 |
| SAN FRANCISCO | 387,233 |
| SAN JOAQUIN | 280,685 |
| SAN LUIS OBISPO | 96,368 |
| SAN MATEO | 568,934 |
| SANTA BARBARA | 154,961 |
| SANTA CLARA | 959,599 |
| SANTA CRUZ | 284,054 |
| SHASTA | 60,015 |
| SIERRA | 13,841 |
| SISKIYOU | 18,594 |
| SOLANO | 119,582 |
| SONOMA | 212,920 |
| STANISLAUS | 208,244 |
| SUTTER-YUBA | 66,312 |
| TEHAMA | 17,858 |
| TRINITY | 12,883 |
| TULARE | 121,178 |
| TUOLUMNE | 14,017 |
| VENTURA | 236,184 |
| YOLO | 96,797 |

TITLE 2. ADMINISTRATION
DIVISION 9. JOINT REGULATIONS FOR PUPILS WITH DISABILITIES
CHAPTER 1. INTERAGENCY RESPONSIBILITIES FOR PROVIDING SERVICES TO PUPILS WITH DISABILITIES
ARTICLE 1. GENERAL PROVISIONS

This database is current through 11/29/2002, Register 2002, No. 48.

s 60020. Mental Health Definitions.

(a) "Community mental health service" means a mental health program established by a county in accordance with the Bronzan-McCorquodale Act, Part 2 (commencing with Section 5600) of Division 5 of the Welfare and Institutions Code.

(b) "County of origin" for mental health services is the county in which the parent of a pupil with a disability resides. If the pupil is a ward or dependent of the court, an adoptee receiving adoption assistance, or a conservatee, the county of origin is the county where this status currently exists. For the purposes of this program the county of origin shall not change for pupils who are between the ages of 18 and 22.

(c) "Expanded IEP team" means an IEP team constituted in accordance with Section 7572.5 of the Government Code. This team shall include a representative of the community mental health service authorized to make placement decisions.

(d) "Host county" means the county where the pupil with a disability is living when the pupil is not living in the county of origin.

(e) "Local mental health director" means the officer appointed by the governing body of a county to manage a community mental health service.

(f) "Medication monitoring" includes all medication support services with the exception of the medications or biologicals themselves and laboratory work. Medication support services include prescribing, administering, dispensing and monitoring of psychiatric medications or biologicals necessary to alleviate the symptoms of mental illness.

(g) "Mental health assessment" is a service designed to provide formal, documented evaluation or analysis of the nature of the pupil's emotional or behavioral disorder. It is conducted in accordance with California Code of Regulations, Title 9, Section 543(b), and Sections 56320 through 56329 of the Education Code by qualified mental health professionals employed by or under contract with the community mental health service.

(h) "Mental health assessment plan" means a written statement developed for the individual evaluation of a pupil with a disability who has been referred to a community mental health service to determine the need for mental health services in accordance with Section 56321 of the Education Code.

(i) "Mental health services" means mental health assessments and the following services when delineated on an IEP in accordance with Section 7572(d) of the Government Code: psychotherapy as defined in Section 2903 of the Business and Professions Code provided to the pupil individually or in a group, collateral services, medication monitoring, intensive day treatment, day rehabilitation, and case management. These services shall be provided directly or by contract at the discretion of the community mental health service of the county of origin.

(j) "Qualified mental health professional" includes the following licensed practitioners of the healing arts: a psychiatrist; psychologist; clinical social worker; marriage, family and child counselor; registered nurse, mental health rehabilitation specialist, and others who have been waivered under Section 5751.2 of the Welfare and Institutions Code. Such individuals may provide mental health services, consistent with their scope of practice.

Note: Authority cited: Section 7587, Government Code. Reference: Section 56320, Education Code; and Sections 542 and 543, Title 9, California Code of Regulations.

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HISTORY

1. New section refiled 5-1-87 as an emergency; designated effective 5-1-87 (Register 87, No. 30). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8-31-87.

2. Division 9 (Chapter 1, Articles 1-9, Sections 60000-60610, not consecutive) shall not be subject to automatic repeal until the final regulations take effect on or before June 30, 1988 pursuant to Item 4440-131-001(b)(2), Chapter 135, Statutes of 1987 (Register 87, No. 46).

3. Division 9 (Chapter 1, Articles 1-9, Sections 60000-60610, not consecutive) shall not be subject to automatic repeal until the final regulations take effect on or before June 30, 1997, pursuant to Government Code section 7587, as amended by Stats. 1996, c. 654 (A.B. 2726, s4.) (Register 98, No. 26).

4. Division 9 (Chapter 1, Articles 1-9, Sections 60000-60610, not consecutive) repealed June 30, 1997, by operation of Government Code section 7587, as amended by Stats. 1996, c. 654 (A.B. 2726, s4.) (Register 98, No. 26).

5. New section filed 6-26-98 as an emergency; operative 7-1-98 (Register 98, No. 26). A Certificate of Compliance must be transmitted to OAL by 10-29-98 or emergency language will be repealed by operation of law on the following day.

6. Editorial correction restoring prior Histories 1-2, adding new Histories 3-4, and renumbering and amending existing History 1 to new History 5 (Register 98, No. 44).

7. New section refiled 10-26-98 as an emergency; operative 10-29-98 (Register 98, No. 44). A Certificate of Compliance must be transmitted to OAL by 2-26-99 or emergency language will be repealed by operation of law on the following day.

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8. New section refiled 2-25-99 as an emergency; operative 2-26-99 (Register 99, No. 9). A Certificate of Compliance must be transmitted to OAL by 6-28-99 or emergency language will be repealed by operation of law on the following day.

9. Certificate of Compliance as to 2-25-99 order, including amendment of subsections (b), (c) and (j), transmitted to OAL 6-25-99 and filed 8-9-99 (Register 99, No. 33).

2 CA ADC s 60020
END OF DOCUMENT

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**BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS**
**TITLE 2. ADMINISTRATION**
**DIVISION 9. JOINT REGULATIONS FOR PUPILS WITH DISABILITIES**
**CHAPTER 1. INTERAGENCY RESPONSIBILITIES FOR PROVIDING SERVICES TO PUPILS WITH DISABILITIES**
**ARTICLE 1. GENERAL PROVISIONS**

This database is current through 11/29/2002, Register 2002, No. 48.

s 60025. Social Services Definitions.

(a) "Care and supervision" as defined in Welfare and Institutions Code Section 11460, includes food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel to the child's home for visitation.

(b) "Certified family home" as defined in Welfare and Institutions Code Section 11400(c), means a family residence certified by a foster family agency licensed by the California Department of Social Services and issued a certificate of approval by that agency as meeting licensing standards, and is used only by that foster family agency for placements.

(c) "Certified, license-pending home" as described in Welfare and Institutions Code Sections 361.2(h), 727(b), and 16507.5(b), is a home that is pending application for licensure as a foster family home, has been certified by the county as meeting the minimum standards for foster family homes, and is lacking any deficiencies which would threaten the physical health, mental health, safety or welfare of the pupil.

(d) "Community care facility" is a facility licensed by the California Department of Social Services as defined in Health and Safety Code Section 1502(a). For the purposes of this chapter, a community care facility means those facilities listed and defined in this article that provide 24-hour residential care to children.

(e) "Community treatment facility" as defined in Health and Safety Code Section 1502(a)(8), means any residential facility that provides mental health treatment services to children in a group setting which has the capacity to provide secure containment. The facility's program components shall be subject to program standards developed and enforced by the State Department of Mental Health pursuant to Section 4094 of the Welfare and Institutions Code.

(f) "Foster family agency" as defined in Welfare and Institutions Code Section 11400(g) and Health and Safety Code Section 1502(a)(4), means any individual or organization engaged in the recruiting, certifying, and training of, and providing professional support to, foster parents, or in finding homes or other places for placement of children for temporary or permanent care who require that level of care as an alternative to a group home. Private agencies shall be organized and operated on a nonprofit basis.

(g) "Foster family home" as defined in Health and Safety Code Section 1502(a)(5) means any residential facility providing 24-hour care for six or fewer foster children that is owned, leased, or rented and is the residence of the foster parent or parents, including their family, in whose care the foster children have been placed. It also means a foster family home described in Health and Safety Code Section 1505.2. For the purpose of this Chapter a foster family home includes a small family home pursuant to Education Code Section 56155.5(b), or the approved home of a relative.

(h) "Group home" as defined in title 22 of the California Code of Regulations, Section 80001(g)(1) means any facility of any capacity, that provides 24-hour care and supervision to children in a structured environment with such services provided at least in part by staff employed by the licensee. The care and supervision provided by a group home shall be nonmedical except as permitted by Welfare and Institutions Code, Section 17736(b). For the purposes of this Chapter, a group home is a nondetention facility that is organized and operated on a nonprofit basis in accordance with Welfare and Institutions Section 11400(h).

(i) "Licensed children's institution" as defined in Education Code Section 56155.5(a), for the purposes of this Chapter, means the following community care facilities licensed by the California Department of

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Social Services: a group home, foster family agency, and community treatment facility.

(j) "Small family home" as defined in Health and Safety Code Section 1502(a)(6), means any residential facility, in the licensee's family residence, that provides 24-hour care for six or fewer foster children who have mental disorders or developmental or physical disabilities and who require special care and supervision as a result of their disabilities. A small family home may accept children with special health care needs, pursuant to subdivision (a) of Section 17710 of the Welfare and Institutions Code.

Note: Authority cited: Section 7587, Government Code; and Sections 10553, 10554, 11462(i) and (j) and 11466.1, Welfare and Institutions Code. Reference: Sections 361.2(h), 727(b), 4094, 11400(c), 11400(g), 11400(h), 11402(a), 16507.5(b), 17710, 17736(b) and 18350, Welfare and Institutions Code; Section 1502(a), Health and Safety Code; Section 56155.5, Education Code; and Section 80001(g)(1), Title 22, California Code of Regulations.

HISTORY

1. New section refiled 5-1-87 as an emergency; designated effective 5-1-87 (Register 87, No. 30). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8-31-87.

2. Division 9 (Chapter 1, Articles 1-9, Sections 60000-60610, not consecutive) shall not be subject to automatic repeal until the final regulations take effect on or before June 30, 1988 pursuant to Item 4440-131-001(b)(2), Chapter 135, Statutes of 1987 (Register 87, No. 46).

3. Division 9 (Chapter 1, Articles 1-9, Sections 60000-60610, not consecutive)

shall not be subject to automatic repeal until the final regulations take effect on or before June 30, 1997, pursuant to Government Code section 7587, as amended by Stats. 1996, c. 654 (A.B. 2726, s4.) (Register 98, No. 26).

4. Division 9 (Chapter 1, Articles 1-9, Sections 60000-60610, not consecutive) repealed June 30, 1997, by operation of Government Code section 7587, as amended by Stats. 1996, c. 654 (A.B. 2726, s4.) (Register 98, No. 26).

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8. New section refiled 2-25-99 as an emergency; operative 2-26-99 (Register 99, No. 9). A Certificate of Compliance must be transmitted to OAL by 6-28-99 or emergency language will be repealed by operation of law on the following day.

9. Certificate of Compliance as to 2-25-99 order transmitted to OAL 6-25-99 and filed 8-9-99 (Register 99, No. 33).

2 CA ADC s 60025
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State Of California
Department Of Education

# 2002
# Policies and Procedures

## For The Education Of Individuals With Disabilities Under Parts B and C of the Individuals With Disabilities Education Act

California Department of Education
Delaine Eastin
State Superintendent of Public Instruction
Special Education Division
428 J Street, Suite 500
Sacramento, CA 95814

## SECTION 19
## MAINTENANCE OF STATE FINANCIAL SUPPORT

20 USC 1412 (a)(19) Maintenance of state financial support.–

"(A) IN GENERAL.--

The State does not reduce the amount of State financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year.

(B) REDUCTION OF FUNDS FOR FAILURE TO MAINTAIN SUPPORT.–

The Secretary shall reduce the allocation of funds under section 611 for any fiscal year following the fiscal year in which the State fails to comply with the requirement of subparagraph (A) by the same amount by which the State fails to meet the requirement.

(C) WAIVERS FOR EXCEPTIONAL OR UNCONTROLLABLE CIRCUMSTANCES.–

The Secretary may waive the requirement of subparagraph (A) for a State, for one fiscal year at a time, if the Secretary determines that –

(i) granting a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State; or

(ii) the State meets the standard in paragraph (18)(C) of this section for a waiver of the requirement to supplement, and not to supplant, funds received under this part.

(D) SUBSEQUENT YEARS.--

If, for any year, a State fails to meet the requirement of subparagraph (A), including any year for which the State is granted a waiver under subparagraph (C), the financial support required of the State in future years under subparagraph (A) shall be the amount that would have been required in the absence of that failure and not the reduced level of the State's support.

(E) REGULATIONS.–

(i) The Secretary shall, by regulation, establish procedures (including objective criteria and consideration of the results of compliance reviews of the State conducted by the Secretary) for determining whether to grant a waiver under subparagraph (C)(ii).

(ii) The Secretary shall publish proposed regulations under clause (i) not later than 6 months after the date of the enactment of the Individuals with Disabilities Education Act Amendments of 1997, and shall issue final regulations under clause (i) not later than 1 year after such date of enactment."

California has maintained or increased the amount of state financial support for special education and related services for children with disabilities every year since the beginning of federal EHA support in 1975. The state has experienced increasing enrollments every year and projects continued enrollment growth for a number of years to come, and has increased state financial support for this growth both for total education support and special education and related services support. See pages J-1-8 of *A Composite of Laws* for the current state budget for special education. California Education Code section 56841 references the federal laws (20 USC 1411 and 1419) in specifying the appropriate use of federal funds. California's Standardized Account Code Structure (SACS) now provides for budgets and audits that keep separate federal funds and other income such as Medicare and other insurance.

California recognizes the requirement to maintain its financial support for special education or have its federal support under 20 U.S.C. 1411 reduced accordingly as required by 20 U.S.C. 1412(a)(19)(B) unless the state were granted a waiver by the Secretary under the provisions of subsection (C). The state also recognizes the provisions of 34 CFR 300.589 with regard to waivers for supplementing and not supplanting with Part B funds and in particular the requirements for FAPE and the necessity to be in compliance with the complaint procedures and hearing procedures of 34 CFR Part 300.

## FINANCIAL SUPPORT - LEGAL REFERENCES

**Federal Requirements:**

| | |
|---|---|
| 20 USC 1411(d) | Allocations to the states. |
| 20 USC 1412(a)(19) | Maintenance of State Financial Support. |
| 20 USC 141 2(a)(19)(C) | Waiver conditions. |
| 34 CFR 74-86. | EDGAR. |
| 34 CFR 76. | EDGAR, State Administered Programs. |
| 34 CFR 300.154 | Maintenance of state financial support. |
| 34 CFR 300.589 | Waiver standards for supplanting. |

**California's Policies and Procedures:**

| | |
|---|---|
| EC 41200 | Minimum level of education funding. |
| EC 56205(a)(19) | Local plan and maintenance of financial effort. |
| EC 56205(b)(1) | The annual budget plan and contents. |
| EC 56836-842* | Special education funding. |
| EC 56836.04 | Exclusive use of special education funds. |
| EC 56836.15(a) | Mitigation of declining enrollments. |
| EC 56841 | Appropriate use of federal funds. |

Section 8, Article XVI of the California Constitution, (Proposition 98).

See also *A Composite of Laws*, pages J 1-8 for the 2002 state budget for special education.

* Indicates statutes that require amendment which have been introduced in the 2002 legislative session to align the State law with federal law and regulations.

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# Special Education Law and Litigation Treatise

Mark C. Weber

LRP Publications
Horsham, Pennsylvania

(Sup. 8-12/00)

handicapping conditions such as a temporary illness or a need for surgery.[40] But the analogy of the seriously emotionally disturbed child in a psychiatric hospital to the seriously emotionally disturbed child in the residential school (whose placement is plainly covered by the Act) seems closer than that of the seriously emotionally disturbed student in the psychiatric hospital to the student who receives ear surgery in a general hospital.[41] The analogy would suggest that at least those psychiatric hospital placements similar to residential school placements should be covered, subject to the exclusion of coverage for nondiagnostic services provided by physicians.[42]

## 7.4 Insurance and Other Third Party Reimbursement

In some circumstances, IDEA permits school districts and state agencies to seek reimbursement for services from Medicaid, private insurance and other third parties.[43] In *Bowen v. Massachusetts*, the Supreme Court upheld an action in which a state presented claims for federal reimbursement for special educational services that were available under the Medicaid program.[44] That court case, a 1986 statutory modification,[45] increased financial needs of some school districts,[46] and the creation of private billing services[47] have led more public agencies to seek third party reimbursement. Although the law permits collection of third party funds, the circumstances under which the collection may take place are limited by a number of considerations.[48]

1. *Charges to Parents.* A free appropriate public education must be a free, appropriate public education.[49] States and school systems cannot collect proceeds of insurance when parents will face a realistic threat of financial loss. Financial losses include:

(a) A decrease in available lifetime coverage or any other benefit under an insurance policy;

(b) An increase in premiums or the discontinuation of the policy;

(c) An out-of-pocket expense such as a deductible amount.[50]

Courts have enforced these restrictions. The Third Circuit Court of Appeals has ruled that a woman with developmental disabilities could sue to recover over $64,000 for the depletion of lifetime insurance benefits that were used to pay for a private residential placement that she argued should have been offered at the expense of the school district.[51] A federal district court decision from Tennessee required reimbursement from a school district to offset a $99.70 decrease in a child's lifetime insurance benefits that paid for an evaluation for special education.[52] Other courts have prevented public agencies from obtaining money from a tort judgment received by the child or the child's estate.[53]

These same principles are also enforceable under Section 504 of the Rehabilitation Act of 1973.[54] In a series of rulings, the Office for Civil Rights of the United

States Department of Education has determined that the practices of the leading third party billing agency violated Section 504's guarantee that children with disabilities receive a free public education. The determinations found a realistic threat of financial loss to parents and children because of a likelihood of depletion of available lifetime coverage, depletion of annual or service coverage, difficulties with future insurability, and increases in premiums or cancellation of coverage.[55]

2. *Confidentiality.* States and school districts may disclose identifiable information about special education students only with the consent of the parent.[56] None of the various exceptions to this principle permits the disclosure of information to a state Medicaid agency for the purpose of obtaining third party reimbursement.[57] The same rule could be expected to apply to private insurance. The parent's consent to disclosure must satisfy the following requirements:

(a) Specifying the records that may be disclosed;

(b) Stating the purpose of the disclosure;

(c) Identifying the party or class of parties to whom the disclosure may be made; and

(d) Carrying the parent's signature and the date.[58]

School districts may expose themselves to monetary liability for violations of these rules.[59]

3. *Informed Consent.* It is unlawful for a state or a school district to withhold needed services for children when the children's parents refuse to consent to billing of their insurance or Medicaid coverage. No services may be made contingent on the filing of an insurance claim.[60]

4. *Fractional Recovery.* Insurance rarely pays the full cost of any covered service. Medicaid-covered expenditures billed through state Medicaid agencies require a match by those agencies from 50 percent to 17 percent of the approved amount.[61] The net received will be diminished by the administrative costs of submitting claims.

5. *Insurer Reaction.* As third party billing becomes more widespread, insurers are likely to write new insurance policies to eliminate coverage for the services for which they might be billed. IDEA does not require insurers to provide reimbursement if their policies exclude coverage.[62]

6. *Conflicts of Interest.* A school district or agency employee must not have a financial interest in or receive payments from an entity that processes claims for reimbursement.[63] The employee's only loyalty must be to the governmental entity that employs that person.[64]