ITEM 11

REQUEST TO AMEND PARAMETERS AND GUIDELINES
FINAL STAFF ANALYSIS
AND PROPOSED STATEMENT OF DECISION

Government Code Sections 7570-7588
Statutes 1984, Chapter 1747 (AB 3632)
Statutes 1985, Chapter 1274 (AB 882)
Statutes 1994, Chapter 1128 (AB 1892)
Statutes 1996, Chapter 654 (AB 2726)

California Code of Regulations, Title 2, Sections 60000-60610
(Emergency regulations effective January 1, 1986 [Register 86, No. 1], and re-filed June 30, 1986, designated effective July 12, 1986 [Register 86, No. 28]; and Emergency regulations effective July 1, 1998 [Register 98, No. 26], final regulations effective August 9, 1999 [Register 99, No. 33])

Handicapped and Disabled Students (04-RL-4282-10);
Handicapped and Disabled Students II (02-TC-40/02-TC-49); *and*
Seriously Emotionally Disturbed (SED) Pupils:
Out-of-State Mental Health Services (97-TC-05)

11-PGA-06

Department of Finance, Requestor

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DEPARTMENT OF FINANCE

EDMUND G. BROWN JR. ▪ GOVERNOR
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Exhibit A

December 21, 2011

Ms. Nancy Patton
Acting Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Ms. Patton:

The Department of Finance requests that the parameters and guidelines for the following mandates be amended to reflect the ending of their reimbursement period:

- Handicapped & Disabled Students I (04-RL-4282-10); Handicapped & Disabled Students II (02-TC-40, 02-TC-49); Seriously Emotionally Disturbed Pupils: Out-of-State Mental Health Services (97-TC-05) (AB 3632)
    - Chapter 43, Statutes of 2011 (AB 114) transferred responsibility of these mandated programs to schools. Reimbursement for this mandate ended on June 30, 2011.
- Local Agency Formation Commissions (LAFCO) (02-TC-23)
    - Chapter 31, Statutes of 2011 (AB 119) revised the LAFCO mandated program to make it permissive. Reimbursement for this mandate ended on June 29, 2011.
- In-Home Supportive Services II (00-TC-23)
    - Chapter 8, Statutes of 2011 (SB 72) made the ongoing activity of establishing an advisory committee permissive. Reimbursement for those activities ended on March 24, 2011.

Pursuant to section 1181.2, subdivision (c)(1)(E) 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 Jeff Carosone, Principal Program Budget Analyst at (916) 445-8913.

Sincerely,

Nona Martinez

NONA MARTINEZ
Assistant Program Budget Manager

Enclosure

Received
December 21, 2011
Commission on
State Mandates

Enclosure A

DECLARATION OF JEFF CAROSONE
DEPARTMENT OF FINANCE
CLAIM NO. Various Mandates

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.

12-21-11
at Sacramento, CA

Jeff Carosone

Amended: July 29, 2010
Adopted: October 26, 2006

Exhibit B

AMENDMENT TO CONSOLIDATED PARAMETERS AND GUIDELINES

Government Code Sections 7570-7588
Statutes 1984, Chapter 1747 (Assem. Bill No. 3632)
Statutes 1985, Chapter 1274 (Assem. Bill No. 882)
Statutes 1994, Chapter 1128 (Assem. Bill No. 1892)
Statutes 1996, Chapter 654 (Assem. Bill No. 2726)

California Code of Regulations, Title 2, Sections 60000-60610
(Emergency regulations effective January 1, 1986 [Register 86, No. 1], and re-filed June 30, 1986, designated effective July 12, 1986 [Register 86, No. 28]; and Emergency regulations effective July 1, 1998 [Register 98, No. 26], final regulations effective August 9, 1999 [Register 99, No. 33])

Handicapped and Disabled Students (04-RL-4282-10);
Handicapped and Disabled Students II (02-TC-40/02-TC-49); and
Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services (97-TC-05)

Commencing with Fiscal Year 2008-2009

I. SUMMARY OF THE MANDATE

The *Handicapped and Disabled Students* program was enacted in 1984 and 1985 as the state's response to federal legislation (Individuals with Disabilities Education Act, or IDEA) that guaranteed to disabled pupils, including those with mental health needs, the right to receive a free and appropriate public education, including psychological and other mental health services, designed to meet the pupil's unique educational needs. The legislation shifted to counties the responsibility and funding of mental health services required by a pupil's individualized education plan (IEP).

The Commission on State Mandates (Commission) adopted amended parameters and guidelines for the *Handicapped and Disabled Students* program (CSM 4282) on January 26, 2006, ending the period of reimbursement for costs incurred through and including June 30, 2004. Costs incurred after this date are claimed under the parameters and guidelines for the Commission's decision on reconsideration, *Handicapped and Disabled Students* (04-RL-4282-10).

The Commission adopted its Statement of Decision on the reconsideration of *Handicapped and Disabled Students* (04-RL-4282-10) on May 26, 2005. The Commission found that the 1990 Statement of Decision in *Handicapped and Disabled Students* correctly concluded that the test claim legislation imposes a reimbursable state-mandated program on counties pursuant to article XIII B, section 6 of the California Constitution. The Commission determined, however, that the 1990 Statement of Decision does not fully identify all of the activities mandated by the statutes and regulations pled in the test claim or the offsetting revenue applicable to the claim. Thus, the Commission, on reconsideration, identified the activities expressly required by the test claim legislation and the offsetting revenue that must be identified and deducted from the costs

claimed. Parameters and guidelines were adopted on January 26, 2006, and corrected on July 21, 2006, with a period of reimbursement beginning July 1, 2004.

The Commission also adopted a Statement of Decision for the *Handicapped and Disabled Students II* program on May 26, 2005, addressing the statutory and regulatory amendments to the program. Parameters and guidelines were adopted on December 9, 2005, and corrected on July 21, 2006, with a period of reimbursement beginning July 1, 2001.

On May 25, 2000, the Commission adopted a Statement of Decision for the *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services* (97-TC-05) program, addressing the counties' responsibilities for out-of-state placement of seriously emotionally disturbed students. Parameters and guidelines were adopted on October 26, 2000, and corrected on July 21, 2006, with a period of reimbursement beginning January 1, 1997.

These parameters and guidelines consolidate the Commission's decisions on the Reconsideration of *Handicapped and Disabled Students* (04-RL-4282-10), *Handicapped and Disabled Students II* (02-TC-40/02-TC-49), and *SED Pupils: Out-of-State Mental Health Services* (97-TC-05) for reimbursement claims filed for costs incurred commencing with the 2006-2007 fiscal year.

II. ELIGIBLE CLAIMANTS

Any county, or city and county, that incurs increased costs as a result of this reimbursable state-mandated program is eligible to claim reimbursement of those costs.

III. PERIOD OF REIMBURSEMENT

The period of reimbursement for the activities in this consolidated parameters and guidelines begins on July 1, 2006.

Reimbursable actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to Government Code section 17561, subdivision (d)(1), all claims for reimbursement of initial years' costs shall be submitted within 120 days of the issuance of the State Controller's claiming instructions. If the total costs for a given fiscal year do not exceed $1,000, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any given fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, calendars, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure

section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise reported in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant, the following activities are eligible for reimbursement:

A. The one-time activity of revising the interagency agreement with each local educational agency to include the following eight procedures (Cal. Code Regs., tit. 2, § 60030):

1. Resolving interagency disputes at the local level, including procedures for the continued provision of appropriate services during the resolution of any interagency dispute, pursuant to Government Code section 7575, subdivision (f). For purposes of this subdivision only, the term "appropriate" means any service identified in the pupil's IEP, or any service the pupil actually was receiving at the time of the interagency dispute. (Cal. Code Regs, tit. 2, § 60030, subd. (c)(2).)
2. A host county to notify the community mental health service of the county of origin within two (2) working days when a pupil with a disability is placed within the host county by courts, regional centers or other agencies for other than educational reasons. (Cal. Code Regs, tit. 2, § 60030, subd. (c)(4).)
3. Development of a mental health assessment plan and its implementation. (Cal. Code Regs., tit. 2, § 60030, subd. (c)(5).)
4. At least ten (10) working days prior notice to the community mental health service of all IEP team meetings, including annual IEP reviews, when the participation of its staff is required. (Cal. Code Regs., tit. 2, § 60030, subd. (c)(7).)
5. The provision of mental health services as soon as possible following the development of the IEP pursuant to section 300.342 of Title 34 of the Code of Federal Regulations. (Cal. Code Regs., tit. 2, § 60030, subd. (c)(9).)
6. The provision of a system for monitoring contracts with nonpublic, nonsectarian schools to ensure that services on the IEP are provided. (Cal. Code Regs., tit. 2, § 60030, subd. (c)(14).)
7. The development of a resource list composed of qualified mental health professionals who conduct mental health assessments and provide mental health services. The community mental health service shall provide the LEA with a copy of this list and monitor these contracts to assure that services as specified on the IEP are provided. (Cal. Code Regs., tit. 2, § 60030, subd. (c)(15).)
8. Mutual staff development for education and mental health staff pursuant to Government Code section 7586.6, subdivision (a). (Cal. Code Regs., tit. 2, § 60030, subd. (c)(17).)

This activity is reimbursable only if it was not previously claimed under the parameters and guidelines for *Handicapped and Disabled Students II* (02-TC-40/02-TC-49).

B. Renew the interagency agreement with the local educational agency every three years and, if necessary, revise the agreement (Gov. Code, § 7571; Cal. Code Regs., tit. 2, §§ 60030, 60100)

1. Renew the interagency agreement every three years, and revise if necessary.
2. Define the process and procedures for coordinating local services to promote alternatives to out-of-home care of seriously emotionally disturbed pupils.

C. Referral and Mental Health Assessments (Gov. Code, §§ 7572, 7576; Cal. Code Regs., tit. 2, §§ 60040, 60045, 60200, subd. (c))

1. Work collaboratively with the local educational agency to ensure that assessments performed prior to referral are as useful as possible to the community mental health service in determining the need for mental health services and the level of services needed. (Gov. Code, § 7576, subd. (b)(1).)
2. A county that receives a referral for a pupil with a different county of origin shall forward the referral within one working day to the county of origin. (Gov. Code, § 7576, subd. (g); Cal. Code Regs., tit. 2, § 60040, subd. (g).)
3. If the county determines that a mental health assessment is not necessary, the county shall document the reasons and notify the parents and the local educational agency of the county determination within one day. (Cal Code Regs., tit. 2, § 60045, subd. (a)(1).)
4. If the county determines that the referral is incomplete, the county shall document the reasons, notify the local educational agency within one working day, and return the referral. (Cal. Code Regs., tit. 2, § 60045, subd. (a)(2).)
5. Notify the local educational agency when an assessment is determined necessary. (Cal. Code Regs., tit. 2, § 60045, subd. (b).)
6. If mental health assessments are deemed necessary by the county, develop a mental health assessment plan and obtain the parent's written informed consent for the assessment. (Cal. Code Regs., tit. 2, § 60045, subd. (b).)
7. Provide the assessment plan to the parent. (Cal. Code Regs., tit. 2, § 60045, subd. (b).)
8. Report back to the referring local educational agency or IEP team within 30 days from the date of the receipt of the referral if no parental consent for a mental health assessment has been obtained. (Cal. Code Regs., tit. 2, § 60045, subd. (c).)
9. Notify the local educational agency within one working day after receipt of the parent's written consent for the mental health assessment to establish the date of the IEP meeting. (Cal. Code Regs., tit. 2, § 60045, subd. (d).)
10. Review the following educational information of a pupil referred to the county by a local educational agency for an assessment: a copy of the assessment reports completed in accordance with Education Code section 56327, current and relevant behavior observations of the pupil in a variety of educational and natural settings, a report prepared by personnel that provided "specialized" counseling and guidance services to the pupil and, when appropriate, an explanation why such counseling and guidance will not meet the needs of the pupil. (Cal. Code Regs., tit. 2, § 60045, subd. (a).)

11. If necessary, observe the pupil in the school environment to determine if mental health assessments are needed.

12. If necessary, interview the pupil and family, and conduct collateral interviews.

13. Assess the pupil within the time required by Education Code section 56344. (Cal. Code Regs., tit. 2, § 60045, subd. (e).)

14. Prepare and provide to the IEP team, and the parent or guardian, a written assessment report in accordance with Education Code section 56327. The report shall include the following information: whether the pupil may need special education and related services; the basis for making the determination; the relevant behavior noted during the observation of the pupil in the appropriate setting; the relationship of that behavior to the pupil's academic and social functioning; the educationally relevant health and development, and medical findings, if any; for pupils with learning disabilities, whether there is such a discrepancy between achievement and ability that it cannot be corrected without special education and related services; a determination concerning the effects of environmental, cultural, or economic disadvantage, where appropriate; and the need for specialized services, materials, equipment for pupils with low incidence disabilities. (Cal. Code Regs., tit. 2, § 60045, subds. (f) and (g).)

15. Provide the parent with written notification that the parent may require the assessor to attend the IEP meeting to discuss the recommendation when the parent disagrees with the assessor's mental health service recommendation. (Cal. Code Regs., tit. 2, § 60045, subd. (f).)

16. Review and discuss the county recommendation with the parent and the appropriate members of the IEP team before the IEP team meeting. (Gov. Code, § 7572, subd. (d)(1); Cal. Code Regs., tit. 2, § 60045, subd. (f).)

17. In cases where the local education agency refers a pupil to the county for an assessment, attend the IEP meeting if requested by the parent. (Gov. Code, § 7572, subd. (d)(1); Cal. Code Regs., tit. 2, § 60045, subd. (f).)

18. Review independent assessments of a pupil obtained by the parent. (Gov. Code, § 7572, subd. (d)(2).)

19. Following review of the independent assessment, discuss the recommendation with the parent and with the IEP team before the meeting of the IEP team. (Gov. Code, § 7572, subd. (d)(2).)

20. In cases where the parent has obtained an independent assessment, attend the IEP team meeting if requested. (Gov. Code, § 7572, subd. (d)(2).)

21. The county of origin shall prepare yearly IEP reassessments to determine the needs of a pupil. (Cal. Code Regs., tit. 2, § 60045, subd. (h).)

D. Transfers and Interim Placements (Cal. Code Regs., tit. 2, § 60055)

1. Following a pupil's transfer to a new school district, the county shall provide interim mental health services, as specified in the existing IEP, for thirty days, unless the parent agrees otherwise.

2. Participate as a member of the IEP team of a transfer pupil to review the interim services and make a determination of services.

E. Participate as a member of the IEP team whenever the assessment of a pupil determines the pupil is seriously emotionally disturbed and in-state or out-of-state residential placement may be necessary (Gov. Code, §§ 7572.5, subds. (a) and (b), 7572.55; Cal. Code Regs., tit. 2, § 60100)

1. Participate as a member of the IEP team whenever the assessment of a pupil determines the pupil is seriously emotionally disturbed and residential placement may be necessary.

2. Re-assess the pupil in accordance with section 60400 of the regulations, if necessary.

3. When a recommendation is made that a child be placed in an out-of-state residential facility, the expanded IEP team, with the county as a participant, shall develop a plan for using less restrictive alternatives and in-state alternatives as soon as they become available, unless it is in the best educational interest of the child to remain in the out-of-state school. Residential placements for a pupil who is seriously emotionally disturbed may be made out of California only when no in-state facility can meet the pupil's needs and only when the requirements of Title 2, California Code of Regulations, section 60100, subdivisions (d) and (e), have been met. (Gov. Code, § 7572.55, subd. (c); Cal. Code Regs., tit. 2, § 60100, subd. (h).)

4. The expanded IEP team, with the county as a participant, shall document the alternatives to residential placement that were considered and the reasons why they were rejected. (Cal. Code Regs., tit. 2, § 60100, subd. (c).)

5. The expanded IEP team, with the county as a participant, shall ensure that placement is in accordance with the admission criteria of the facility. (Cal. Code Regs., tit. 2, § 60100, subd. (j).)

6. When the expanded IEP team determines that it is necessary to place a pupil who is seriously emotionally disturbed in either in-state or out-of-state residential care, counties shall ensure that: (1) the mental health services are specified in the IEP in accordance with federal law, and (2) the mental health services are provided by qualified mental health professionals. (Cal. Code Regs., tit. 2, § 60100, subd. (i).)

F. Designate the lead case manager if the IEP calls for in-state or out-of-state residential placement of a seriously emotionally disturbed pupil to perform the following activities (Gov. Code, § 7572.5, subd. (c)(1); Cal. Code Regs., tit. 2, §§ 60100, 60110)

1. Convene parents and representatives of public and private agencies in order to identify the appropriate residential facility. (Cal. Code Regs., tit. 2, §§ 60110, subd. (c)(1).)

2. Identify, in consultation with the IEP team's administrative designee, a mutually satisfactory placement that is acceptable to the parent and addresses the pupil's educational and mental health needs in a manner that is cost-effective for both public agencies, subject to the requirements of state and federal special education law, including the requirement that the placement be appropriate and in the least restrictive environment. (Cal. Code Regs, tit. 2, §§ 60100, subd. (e), 60110, subd. (c)(2).)

3. Document the determination that no nearby placement alternative that is able to implement the IEP can be identified and seek an appropriate placement that is as close to the parents' home as possible. (Cal. Code Regs., tit. 2, § 60100, subd. (f).)

4. Coordinate the residential placement plan of a pupil with a disability who is seriously emotionally disturbed as soon as possible after the decision has been made to place the pupil in residential placement. The residential placement plan shall include provisions, as determined in the pupil's IEP, for the care, supervision, mental health treatment, psychotropic medication monitoring, if required, and education of the pupil. (Cal. Code Regs., tit, 2, § 60110, subd, (b)(1).)

5. When the IEP team determines that it is necessary to place a pupil with a disability who is seriously emotionally disturbed in a community treatment facility, the lead case manager shall ensure that placement is in accordance with admission, continuing stay, and discharge criteria of the community treatment facility. (Cal. Code Regs., tit. 2, § 60110, subd. (b)(3).)

6. Complete the local mental health program payment authorization in order to initiate out of home care payments. (Cal. Code Regs., tit. 2, § 60110, subd. (c)(3).)

7. Coordinate the completion of the necessary County Welfare Department, local mental health program, and responsible local education agency financial paperwork or contracts. (Cal. Code Regs., tit. 2, § 60110, subd. (c)(4).)

8. Develop the plan for and assist the family and pupil in the pupil's social and emotional transition from home to the residential facility and the subsequent return to the home. (Cal. Code Regs., tit. 2, § 60110, subd. (c)(5).)

9. Facilitate the enrollment of the pupil in the residential facility. (Cal. Code Regs., tit. 2, § 60110, subd. (c)(6).)

10. Notify the local educational agency that the placement has been arranged and coordinate the transportation of the pupil to the facility if needed. (Cal. Code Regs, tit. 2, § 60110, subd. (c)(7).)

11. Conduct quarterly face-to-face contacts with the pupil at the residential facility to monitor the level of care and supervision and the implementation of the treatment services and the IEP. (Cal. Code Regs, tit. 2, § 60110, subd. (c)(8).)

12. Evaluate the continuing stay criteria, as defined in Welfare and Institutions Code section 4094, of a pupil placed in a community treatment facility every 90 days. (Cal. Code Regs, tit. 2, § 60110, subd. (c)(8).)

13. Notify the parent or legal guardian and the local education agency administrator or designee when there is a discrepancy in the level of care, supervision, provision of treatment services, and the requirements of the IEP. (Cal. Code Regs, tit. 2, § 60110, subd. (c)(9).)

14. Schedule and attend the next expanded IEP team meeting with the expanded IEP team's administrative designee within six months of the residential placement of a pupil with a disability who is seriously emotionally disturbed and every six months thereafter as the pupil remains in residential placement. (Cal. Code Regs, tit. 2, § 60110, subd. (c)(10).)

15. Facilitate placement authorization from the county's interagency placement committee pursuant to Welfare and Institutions Code section 4094.5, subdivision (e)(1), by presenting the case of a pupil with a disability who is seriously emotionally disturbed prior to placement in a community treatment facility. (Cal. Code Regs, tit. 2, § 60110, subd. (c)(11).)

G. Authorize payments to in-state or out-of-state residential care providers / Issue payments to providers of in-state or out-of-state residential care for the residential and non-educational costs of seriously emotionally disturbed pupils (Gov. Code, § 7581; Cal. Code Regs., tit. 2, § 60200, subd. (e))

1. Authorize payments to residential facilities based on rates established by the Department of Social Services in accordance with Welfare and Institutions Code sections 18350 and 18356. This activity requires counties to determine that the residential placement meets all the criteria established in Welfare and Institutions Code sections 18350 through 18356 before authorizing payment.

2. Issue payments to providers of out-of-home residential facilities for the residential and non-educational costs of seriously emotionally disturbed pupils. Payments are for the costs of food, clothing, shelter, daily supervision, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel to the child's home for visitation. Counties are eligible to be reimbursed for 60 percent of the total residential and non-educational costs of a seriously emotionally disturbed child placed in an out-of-home residential facility.

   Welfare and Institutions Code section 18355.5 applies to this program and prohibits a county from claiming reimbursement for its 60-percent share of the total residential and non-educational costs of a seriously emotionally disturbed child placed in an out-of-home residential facility if the county claims reimbursement for these costs from the Local Revenue Fund identified in Welfare and Institutions Code section 17600 and receives the funds.

3. Submit reports to the State Department of Social Services for reimbursement of payments issued to seriously emotionally disturbed pupils for 24-hour out-of-home care.

H. Provide Psychotherapy or Other Mental Health Treatment Services (Cal. Code Regs., tit. 2, §§ 60020, subd. (i), 60050, subd. (b), 60200, subd. (c)[1])

1. The host county shall make its provider network available and provide the county of origin a list of appropriate providers used by the host county's managed care plan who are currently available to take new referrals. (Cal. Code Regs., tit. 2, § 60200, subd. (c)(1).)

[1] Section 60200, subdivision (c), of the regulations defines the financial responsibilities of the counties and states that "the county of origin shall be responsible for the provision of assessments and mental health services included in an IEP in accordance with Sections 60045, 60050, and 60100 [pupils placed in residential facilities]. Mental health services shall be provided directly by the community mental health service [the county] or by contractors."

2. The county of origin shall negotiate with the host county to obtain access to limited resources, such as intensive day treatment and day rehabilitation. (Cal. Code Regs., tit. 2, § 60200, subd. (c)(1).)

3. Provide case management services to a pupil when required by the pupil's IEP. This service shall be provided directly or by contract at the discretion of the county of origin. (Cal. Code Regs., tit. 2, § 60020, subd. (i).)

4. Provide case management services and individual or group psychotherapy services, as defined in Business and Professions Code section 2903, when required by the pupil's IEP. This service shall be provided directly or by contract at the discretion of the county of origin. (Cal. Code Regs., tit. 2, § 60020, subd. (i).)

5. Provide mental health assessments, collateral services, intensive day treatment, and day rehabilitation services when required by the pupil's IEP. These services shall be provided directly or by contract at the discretion of the county of origin. (Cal. Code Regs., tit. 2, § 60020, subd. (i).)

6. Provide medication monitoring services when required by the pupil's IEP. "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, and monitoring of psychiatric medications or biologicals as necessary to alleviate the symptoms of mental illness. This service shall be provided directly or by contract at the discretion of the county of origin. (Cal. Code Regs., tit. 2, § 60020, subds. (f) and (i).)

7. Notify the parent and the local educational agency when the parent and the county mutually agree upon the completion or termination of a service, or when the pupil is no longer participating in treatment. ((Cal. Code Regs., tit. 2, § 60050, subd. (b).)

When providing psychotherapy or other mental health treatment services, the activities of crisis intervention, vocational services, and socialization services are not reimbursable.

I. Participate in due process hearings relating to mental health assessments or services (Gov. Code, § 7586; Cal. Code Regs., tit. 2, § 60550.) When there is a proposal or a refusal to initiate or change the identification, assessment, or educational placement of the child or the provision of a free, appropriate public education to the child relating to mental health assessments or services, the following activities are eligible for reimbursement:

1. Retaining county counsel to represent the county mental health agency in dispute resolution. The cost of retaining county counsel is reimbursable.

2. Preparation of witnesses and documentary evidence to be presented at hearings.

3. Preparation of correspondence and/or responses to motions for dismissal, continuance, and other procedural issues.

4. Attendance and participation in formal mediation conferences.

5. Attendance and participation in information resolution conferences.

6. Attendance and participation in pre-hearing status conferences convened by the Office of Administrative Hearings.

7. Attendance and participation in settlement conferences convened by the Office of Administrative Hearings.
8. Attendance and participation in Due Process hearings conducted by the Office of Administrative Hearings.
9. Paying for psychological and other mental health treatment services mandated by the test claim legislation (California Code of Regulations, title 2, sections 60020, subdivisions (f) and (i)), and the out-of-home residential care of a seriously emotionally disturbed pupil (Gov. Code, § 7581; Cal. Code Regs., tit. 2, § 60200, subd. (e)), that are required by an order of a hearing officer or a settlement agreement between the parties to be provided to a pupil following due process hearing procedures initiated by a parent or guardian.

Attorneys' fees when parents prevail in due process hearings and in negotiated settlement agreements are not reimbursable.

V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

There are two satisfactory methods of submitting claims for reimbursement of increased costs incurred to comply with the mandate: the direct cost reporting method and the cost report method.

Direct Cost Reporting Method

A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the

contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.

4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity.

B. Indirect Cost Rates

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the Office of Management and Budget (OMB) Circular A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB Circular A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

In calculating an ICRP, the claimant shall have the choice of one of the following methodologies:

1. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect

costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or

2. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

Cost Report Method

A. Cost Report Method

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

B. Indirect Cost Rates

To the extent that reimbursable indirect costs have not already been reimbursed, they may be claimed under this method.

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include (1) the overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the Office of Management and Budget (OMB) Circular A-87. Claimants have the option of using 10% of labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

In calculating an ICRP, the claimant shall have the choice of one of the following methodologies:

1. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and

(2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or

2. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter[2] is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings. All claims shall identify the number of pupils in out-of-state residential programs for the costs being claimed.

VII. OFFSETTING REVENUE AND REIMBURSEMENTS

Any offsets the claimant experiences in the same program as a 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 of the following sources shall be identified and deducted from this claim:

1. Funds received by a county pursuant to Government Code section 7576.5.
2. Any direct payments or categorical funding received from the state that is specifically allocated to any service provided under this program.
3. Funds received and applied to this program from appropriations made by the Legislature in future Budget Acts for disbursement by the State Controller's Office.
4. Private insurance proceeds obtained with the consent of a parent for purposes of this program.

[2] This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

5. Medi-Cal proceeds obtained from the state or federal government, exclusive of the county match, that pay for a portion of the county services provided to a pupil under the Handicapped and Disabled Students program in accordance with federal law.
6. Any other reimbursement received from the federal or state government, or other non-local source.

Except as expressly provided in section IV(G)(2) of these parameters and guidelines, Realignment funds received from the Local Revenue Fund that are used by a county for this program are not required to be deducted from the costs claimed. (Stats. 2004, ch. 493, § 6 (Sen. Bill No. 1895).)

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561, subdivision (d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. REMEDIES BEFORE THE COMMISSION

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557, subdivision (d), and California Code of Regulations, title 2, section 1183.2.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The Statements of Decision are legally binding on all parties and provide the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for these test claims. The administrative records, including the Statements of Decision, are on file with the Commission.

Hearing Date: July 27, 2012
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ITEM ____
DRAFT STAFF ANALYSIS
PROPOSED PARAMETERS AND GUIDELINES AMENDMENT

Government Code Sections 7570-7588
Statutes 1984, Chapter 1747 (AB 3632)
Statutes 1985, Chapter 1274 (AB 882)
Statutes 1994, Chapter 1128 (AB 1892)
Statutes 1996, Chapter 654 (AB 2726)

California Code of Regulations, Title 2, Sections 60000-60610
(Emergency regulations effective January 1, 1986 [Register 86, No. 1], and re-filed June 30, 1986, designated effective July 12, 1986 [Register 86, No. 28]; and Emergency regulations effective July 1, 1998 [Register 98, No. 26], final regulations effective August 9, 1999 [Register 99, No. 33])

Handicapped and Disabled Students (04-RL-4282-10);
Handicapped and Disabled Students II (02-TC-40/02-TC-49); and
Seriously Emotionally Disturbed (SED) Pupils:
Out-of-State Mental Health Services (97-TC-05)

11-PGA-06

Department of Finance, Requestor

EXECUTIVE SUMMARY

This is a request to amend the consolidated parameters and guidelines filed by the Department of Finance for *Handicapped and Disabled Students, Handicapped and Disabled Students II, and Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services* to end reimbursement for these programs beginning July 1, 2011, pursuant to Statutes 2011, chapter 43 (AB 114).

The Executive Summary will be provided with the proposed statement of decision.

STAFF ANALYSIS

Requestor

Department of Finance

Chronology

12/21/2011 Department of Finance filed a request to amend parameters and guidelines

01/18/2012 Commission staff issued a notice of complete filing and schedule for comments issued

06/14/2012 Draft staff analysis and proposed amendment to parameters and guidelines issued

I. Summary of the Mandate

The consolidated programs were enacted in 1984 and 1985 as the state's response to federal legislation (Individuals with Disabilities Education Act, or IDEA) that guarantees to disabled pupils, including those with mental health needs, the right to receive a free and appropriate public education, including psychological and other mental health services, designed to meet the pupil's unique educational needs. Under federal law, a state's educational agency is responsible for meeting the IDEA requirements. However, states have the option under federal law to assign responsibility for the provision of mental health or other related services to other local agencies.[1] Thus, the test claim statutes (codified in chapter 26.5 of the Government Code by AB 3632, beginning with section 7560) shifted to counties the responsibility and funding of the mental health services required by the IDEA and identified in a pupil's individualized education plan (IEP).

On October 26, 2006, the Commission consolidated the parameters and guidelines for the *Handicapped and Disabled Students, Handicapped and Disabled Students II, and Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services* programs for claiming costs beginning in fiscal year 2006-2007. The consolidated parameters and guidelines were last amended in July 2010 to correct language in Section VI of the parameters and guidelines, dealing with the record retention requirements unique to the *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services* program.[2]

On December 21, 2011, the Department of Finance requested that these parameters and guidelines be amended to reflect AB 114, a budget trailer bill enacted on June 30, 2011, to end reimbursement for the consolidated program on June 30, 2011.[3]

AB 114 (Stats. 2011, ch. 43)

AB 114 eliminates the test claim statutory requirements for counties, shifts the responsibilities of providing mental health services required by a pupil's IEP to school districts, and continues the

[1] 20 U.S.C. section 1412(a)(11) and (a)(12).

[2] Exhibit B.

[3] Exhibit A.

funding for educationally related mental health services to pupils.[4] AB 114 amended the test claim statutes as follows:

- Section 32 amended Government Code section 7572, by eliminating former subdivision (c), which stated the following: " Psychotherapy and other mental health assessments shall be conducted by qualified mental health professionals as specified in regulations developed by the State Department of Mental Health, in consultation with the State Department of Education, pursuant to this chapter." Section 32 also amended former subdivision (e) by eliminating the requirement for the local education agency to invite the county mental health professional to meet with the IEP team whenever mental health services are considered for inclusion in the IEP team.
- Sections 33-38, 41, 42, 43, 48, 49, and 51 added a subdivision to Government Code sections 7572.5, 7572.55, 7576, 7576.2, 7576.3, 7576.5, 7586.5, 7586.6, and 7586.7, and Welfare and Institutions Code sections 5701.3, 5701.6, and 18356.1 to state the following: "This section shall become inoperative on July 1, 2011, and, as of January 1, 2012, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2012, deletes or extends the dates on which it becomes inoperative and is repealed."
- Section 40 amended Government Code section 7585, which addresses an agency's failure to provide services required under an IEP. The bill eliminated references to mental health services provided by counties under Government Code section 7576.
- Section 44 repealed Government Code section 7588, which provided that "This chapter shall become operative on July 1, 1986, except Section 7583, which shall become operative on January 1, 1985."
- Section 47 amended Welfare and Institutions Code section 5651 to eliminate former subdivision (a)(2), which provided that the annual county mental health services performance contract shall include assurances "that the county shall provide the mental health services required by Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code and will comply with all requirements of that chapter."

[4] The floor analysis on AB 114, prepared by the Assembly on June 28, 2011, states the following:

> Amend and repeals various sections of the Education, Government, and Welfare and Institutions code to repeal the state AB 3632 mandate program, which mandated counties to provide mental health services to students with disabilities. This mandate was suspended due to the veto of funding for the AB 3632 mandate in the 2010-2011 budget by Governor Schwarzenegger. As a result of this elimination, responsibility for educationally related mental health services, as required by federal law for student[s] with disabilities, is permanently shifted to schools. Pursuant to federal law, local educational agencies are required to update the Individualized Education Plan of each child that will experience a change in services as a result of this shift of responsibility.

Section 55 of the bill also directs the Departments of Education and Mental Health to modify or repeal the joint regulations adopted to implement the program that are no longer supported by statute.[5] These regulations are located in Title 2, sections 60000 et seq., and are considered the "meat" of the program. The regulations are included in the consolidated parameters and guidelines for reimbursement. Section 60000 introduces the regulatory requirements by stating the following:

> The provisions of this chapter shall implement Chapter 26.5, commencing with Section 7570, of Division 7 of Title 1 of the Government Code relating to interagency responsibilities for providing services to pupils with disabilities. This chapter applies to the State Departments of Mental Health, Health Services, Social Services, and their designated local agencies, and the California Department of Education, school districts, county offices, and special education local plan areas.

Following the enactment of AB 114, working group meetings and webinars with school districts were conducted by the Department of Education to help transition the provision of psychological and other mental health services to school districts. The webinar documents state that the Title 2 regulations related to the test claim statutes are no longer supported by statute and will need to be

[5] AB 114, section 55 states the following:

> (a) It is the intent of the Legislature that the State Department of Education and the appropriate departments within the California Health and Human Services Agency modify or repeal regulations that are not longer supported by statute due to the amendments in Sections . . . 32 to 44, inclusive, Sections 47 to 49, inclusive, and Section 51 of this act.
>
> (b) The State Department of Education and the appropriate departments within the California Health and Human Services Agency shall review regulations to ensure the appropriate implementation of educationally related mental health services required by the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) and Sections . . . 32 to 44, inclusive, Sections 47 to 49, inclusive, and Section 51 of this act.
>
> (c) The State Department of Education and the appropriate departments within the California Health and Human Services Agency may adopt regulations to implement Sections . . . 32 to 44, inclusive, Sections 47 to 49, inclusive, and Section 51 of this act. The adoption, amendment, repeal, or readoption of a regulation authorized by this section is deemed to address an emergency, for purposes of Sections 11346.1 and 11349.6 of the Government Code, and the State Department of Education and the appropriate departments within the California Health and Human Services Agency are hereby exempted, for this purpose, from the requirements of subdivision (b) of Section 11346.1 of the Government Code, the 180-day period, as applicable to the effective period of an emergency regulatory action and submission of specified materials to the Office of Administrative Law, is hereby extended to one year.

readopted, amended and adopted, or repealed.[6] As of this date, however, the regulations still exist in the California Code of Regulations.

II. Procedural History

The Department of Finance requests that the consolidated parameters and guidelines be amended to end reimbursement for the program on June 30, 2011, pursuant to AB 114. No comments have been received on the request.

III. Staff Findings[7]

The request to amend the parameters and guidelines for this consolidated program raises a couple of legal issues. Although the enabling statutes for the program have been amended by the Legislature to become inoperative and, thus, no longer imposing a state-mandated program beginning July 1, 2011, the regulations that implement the program have not yet been amended or repealed and still exist in the California Code of Regulations. Thus, the issue is whether counties continue to be mandated by the state to comply with the regulations in Title 2, sections 60000 et seq. For the reasons below, staff finds that the activities required by sections 60000, et seq., and included in the consolidated parameters and guidelines, no longer impose a reimbursable state-mandated program pursuant to article XIII B, section 6.

Government Code sections 11340, et seq., governs the rulemaking process. Government Code section 11342.2 states that "no regulation adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute." Thus, state agencies do not have the discretion to promulgate a regulation that is inconsistent with the governing statute. Administrative regulations that alter or amend the statute or enlarge or impair its scope are void and not effective. [8]

AB 114 repealed and made inoperative the statutes that originally shifted the provision of psychotherapy and other mental health treatment services for pupils based on their IEPs to counties. Although the regulations in Title 2, sections 60000, et seq., were valid when promulgated by the Departments of Education and Mental Health, the regulatory requirements imposed on counties now conflict with the enabling statutes. Therefore, the requirements imposed on counties are not in effect pursuant to Government Code section 11342.2, and the test claim regulations no longer constitute a state-mandated program on counties.

Furthermore, AB 114 was intended to implement changes made in the Budget Act for fiscal year 2011-2012 and its plain language makes inoperative the test claim statutes beginning July 1, 2011. Therefore, staff finds that the consolidated mandated program ends on

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[6] Exhibit __.

[7] As of January 1, 2011, Commission hearings on the adoption of proposed amendments to parameters and guidelines are conducted under Article 7 of the Commission's regulations. Article 7 hearings are quasi-judicial hearings. The Commission is required to adopt a decision that is correct as a matter of law and is based on substantial evidence in the record. Oral or written testimony is offered under oath or affirmation. (Gov. Code, § 17559(b); Cal. Code Regs., tit. 2, § 1187.5.)

[8] *Ontario Community Foundation, Inc. v. State Bd. of Equalization* (1984) 35 Cal.3d 811, 816-817; *Woods v. Superior Court* (1981) 28 Cal.3d 668, 678.

June 30, 2011, and that counties are no longer eligible to claim reimbursement for these programs beginning July 1, 2011.

The proposed parameters and guidelines amendment adds language to the title, Section I Summary, and Section III Period of Reimbursement to clarify that effective July 1, 2011, the consolidated mandated program is no longer reimbursable.

IV. Staff Recommendation

Staff recommends the Commission adopt this analysis as its statement of decision and the attached proposed amendments to the parameters and guidelines.

Staff also recommends that the Commission authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

Proposed for Amendment: July 27, 2012
Amended: July 29, 2010 (09-PGA-03)
Adopted: October 26, 2006

PROPOSED AMENDMENT TO CONSOLIDATED PARAMETERS AND GUIDELINES

Government Code Sections 7570-7588
Statutes 1984, Chapter 1747 (Assem. Bill No. 3632)
Statutes 1985, Chapter 1274 (Assem. Bill No. 882)
Statutes 1994, Chapter 1128 (Assem. Bill No. 1892)
Statutes 1996, Chapter 654 (Assem. Bill No. 2726)

California Code of Regulations, Title 2, Sections 60000-60610
(Emergency regulations effective January 1, 1986 [Register 86, No. 1], and re-filed June 30, 1986, designated effective July 12, 1986 [Register 86, No. 28]; and Emergency regulations effective July 1, 1998 [Register 98, No. 26], final regulations effective August 9, 1999 [Register 99, No. 33])

Handicapped and Disabled Students (04-RL-4282-10);
Handicapped and Disabled Students II (02-TC-40/02-TC-49); and
Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services (97-TC-05)

11-PGA-06

~~Commencing with Fiscal Year 2008-2009~~

Reimbursement for these programs end on June 30, 2011

I. SUMMARY OF THE MANDATE

The *Handicapped and Disabled Students* program was enacted in 1984 and 1985 as the state's response to federal legislation (Individuals with Disabilities Education Act, or IDEA) that guaranteed to disabled pupils, including those with mental health needs, the right to receive a free and appropriate public education, including psychological and other mental health services, designed to meet the pupil's unique educational needs. The legislation shifted to counties the responsibility and funding of mental health services required by a pupil's individualized education plan (IEP).

The Commission on State Mandates (Commission) adopted amended parameters and guidelines for the *Handicapped and Disabled Students* program (CSM 4282) on January 26, 2006, ending the period of reimbursement for costs incurred through and including June 30, 2004. Costs incurred after this date are claimed under the parameters and guidelines for the Commission's decision on reconsideration, *Handicapped and Disabled Students* (04-RL-4282-10).

The Commission adopted its Statement of Decision on the reconsideration of *Handicapped and Disabled Students* (04-RL-4282-10) on May 26, 2005. The Commission found that the 1990 Statement of Decision in *Handicapped and Disabled Students* correctly concluded that the test claim legislation imposes a reimbursable state-mandated program on counties pursuant to article XIII B, section 6 of the California Constitution. The Commission determined, however, that the 1990 Statement of Decision does not fully identify all of the activities mandated by the

statutes and regulations pled in the test claim or the offsetting revenue applicable to the claim. Thus, the Commission, on reconsideration, identified the activities expressly required by the test claim legislation and the offsetting revenue that must be identified and deducted from the costs claimed. Parameters and guidelines were adopted on January 26, 2006, and corrected on July 21, 2006, with a period of reimbursement beginning July 1, 2004.

The Commission also adopted a Statement of Decision for the *Handicapped and Disabled Students II* program on May 26, 2005, addressing the statutory and regulatory amendments to the program. Parameters and guidelines were adopted on December 9, 2005, and corrected on July 21, 2006, with a period of reimbursement beginning July 1, 2001.

On May 25, 2000, the Commission adopted a Statement of Decision for the *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services* (97-TC-05) program, addressing the counties' responsibilities for out-of-state placement of seriously emotionally disturbed students. Parameters and guidelines were adopted on October 26, 2000, and corrected on July 21, 2006, with a period of reimbursement beginning January 1, 1997.

These parameters and guidelines consolidate the Commission's decisions on the Reconsideration of *Handicapped and Disabled Students* 04-RL-4282-10), *Handicapped and Disabled Students II* (02-TC-40/02-TC-49), and *SED Pupils: Out-of-State Mental Health Services* (97-TC-05) for reimbursement claims filed for costs incurred commencing with the 2006-2007 fiscal year.

Statutes 2011, chapter 43 (AB 114) eliminated the mandated programs for counties and transferred responsibility to school districts, effective July 1, 2011. Thus, beginning July 1, 2011, these programs no longer constitute reimbursable state-mandated programs for counties.

II. ELIGIBLE CLAIMANTS

Any county, or city and county, that incurs increased costs as a result of this reimbursable state-mandated program is eligible to claim reimbursement of those costs.

III. PERIOD OF REIMBURSEMENT

Beginning July 1, 2011, these programs are no longer eligible for reimbursement. Reimbursement for these programs end on June 30, 2011.

The period of reimbursement for the activities in this consolidated parameters and guidelines begins on July 1, 2006.

Reimbursable actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to Government Code section 17561, subdivision (d)(1), all claims for reimbursement of initial years' costs shall be submitted within 120 days of the issuance of the State Controller's claiming instructions. If the total costs for a given fiscal year do not exceed $1,000, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant, the following activities are eligible for reimbursement:

A. The one-time activity of revising the interagency agreement with each local educational agency to include the following eight procedures (Cal. Code Regs., tit. 2, § 60030):

   1. Resolving interagency disputes at the local level, including procedures for the continued provision of appropriate services during the resolution of any interagency dispute, pursuant to Government Code section 7575, subdivision (f). For purposes of this subdivision only, the term "appropriate" means any service identified in the pupil's IEP, or any service the pupil actually was receiving at the time of the interagency dispute. (Cal. Code Regs, tit. 2, § 60030, subd. (c)(2).)

   2. A host county to notify the community mental health service of the county of origin within two (2) working days when a pupil with a disability is placed within the host county by courts, regional centers or other agencies for other than educational reasons. (Cal. Code Regs, tit. 2, § 60030, subd. (c)(4).)

   3. Development of a mental health assessment plan and its implementation. (Cal. Code Regs., tit. 2, § 60030, subd. (c)(5).)

   4. At least ten (10) working days prior notice to the community mental health service of all IEP team meetings, including annual IEP reviews, when the participation of its staff is required. (Cal. Code Regs., tit. 2, § 60030, subd. (c)(7).)

   5. The provision of mental health services as soon as possible following the development of the IEP pursuant to section 300.342 of Title 34 of the Code of Federal Regulations. (Cal. Code Regs., tit. 2, § 60030, subd. (c)(9).)

6. The provision of a system for monitoring contracts with nonpublic, nonsectarian schools to ensure that services on the IEP are provided. (Cal. Code Regs., tit. 2, § 60030, subd. (c)(14).)
7. The development of a resource list composed of qualified mental health professionals who conduct mental health assessments and provide mental health services. The community mental health service shall provide the LEA with a copy of this list and monitor these contracts to assure that services as specified on the IEP are provided. (Cal. Code Regs., tit. 2, § 60030, subd. (c)(15).)
8. Mutual staff development for education and mental health staff pursuant to Government Code section 7586.6, subdivision (a). (Cal. Code Regs., tit. 2, § 60030, subd. (c)(17).)

This activity is reimbursable only if it was not previously claimed under the parameters and guidelines for *Handicapped and Disabled Students II* (02-TC-40/02-TC-49).

B. Renew the interagency agreement with the local educational agency every three years and, if necessary, revise the agreement (Gov. Code, § 7571; Cal. Code Regs., tit. 2, §§ 60030, 60100)
   1. Renew the interagency agreement every three years, and revise if necessary.
   2. Define the process and procedures for coordinating local services to promote alternatives to out-of-home care of seriously emotionally disturbed pupils.

C. Referral and Mental Health Assessments (Gov. Code, §§ 7572, 7576; Cal. Code Regs., tit. 2, §§ 60040, 60045, 60200, subd. (c))
   1. Work collaboratively with the local educational agency to ensure that assessments performed prior to referral are as useful as possible to the community mental health service in determining the need for mental health services and the level of services needed. (Gov. Code, § 7576, subd. (b)(1).)
   2. A county that receives a referral for a pupil with a different county of origin shall forward the referral within one working day to the county of origin. (Gov. Code, § 7576, subd. (g); Cal. Code Regs., tit. 2, § 60040, subd. (g).)
   3. If the county determines that a mental health assessment is not necessary, the county shall document the reasons and notify the parents and the local educational agency of the county determination within one day. (Cal Code Regs., tit. 2, § 60045, subd. (a)(1).)
   4. If the county determines that the referral is incomplete, the county shall document the reasons, notify the local educational agency within one working day, and return the referral. (Cal. Code Regs., tit. 2, § 60045, subd. (a)(2).)
   5. Notify the local educational agency when an assessment is determined necessary. (Cal. Code Regs., tit. 2, § 60045, subd. (b).)
   6. If mental health assessments are deemed necessary by the county, develop a mental health assessment plan and obtain the parent's written informed consent for the assessment. (Cal. Code Regs., tit. 2, § 60045, subd. (b).)
   7. Provide the assessment plan to the parent. (Cal. Code Regs., tit. 2, § 60045, subd. (b).)

8. Report back to the referring local educational agency or IEP team within 30 days from the date of the receipt of the referral if no parental consent for a mental health assessment has been obtained. (Cal. Code Regs., tit. 2, § 60045, subd. (c).)
9. Notify the local educational agency within one working day after receipt of the parent's written consent for the mental health assessment to establish the date of the IEP meeting. (Cal. Code Regs., tit. 2, § 60045, subd. (d).)
10. Review the following educational information of a pupil referred to the county by a local educational agency for an assessment: a copy of the assessment reports completed in accordance with Education Code section 56327, current and relevant behavior observations of the pupil in a variety of educational and natural settings, a report prepared by personnel that provided "specialized" counseling and guidance services to the pupil and, when appropriate, an explanation why such counseling and guidance will not meet the needs of the pupil. (Cal. Code Regs., tit. 2, § 60045, subd. (a).)
11. If necessary, observe the pupil in the school environment to determine if mental health assessments are needed.
12. If necessary, interview the pupil and family, and conduct collateral interviews.
13. Assess the pupil within the time required by Education Code section 56344. (Cal. Code Regs., tit. 2, § 60045, subd. (e).)
14. Prepare and provide to the IEP team, and the parent or guardian, a written assessment report in accordance with Education Code section 56327. The report shall include the following information: whether the pupil may need special education and related services; the basis for making the determination; the relevant behavior noted during the observation of the pupil in the appropriate setting; the relationship of that behavior to the pupil's academic and social functioning; the educationally relevant health and development, and medical findings, if any; for pupils with learning disabilities, whether there is such a discrepancy between achievement and ability that it cannot be corrected without special education and related services; a determination concerning the effects of environmental, cultural, or economic disadvantage, where appropriate; and the need for specialized services, materials, equipment for pupils with low incidence disabilities. (Cal. Code Regs., tit. 2, § 60045, subds. (f) and (g).)
15. Provide the parent with written notification that the parent may require the assessor to attend the IEP meeting to discuss the recommendation when the parent disagrees with the assessor's mental health service recommendation. (Cal. Code Regs., tit. 2, § 60045, subd. (f).)
16. Review and discuss the county recommendation with the parent and the appropriate members of the IEP team before the IEP team meeting. (Gov. Code, § 7572, subd. (d)(1); Cal. Code Regs., tit. 2, § 60045, subd. (f).)
17. In cases where the local education agency refers a pupil to the county for an assessment, attend the IEP meeting if requested by the parent. (Gov. Code, § 7572, subd. (d)(1); Cal. Code Regs., tit. 2, § 60045, subd. (f).)
18. Review independent assessments of a pupil obtained by the parent. (Gov. Code, § 7572, subd. (d)(2).)

19. Following review of the independent assessment, discuss the recommendation with the parent and with the IEP team before the meeting of the IEP team. (Gov. Code, § 7572, subd. (d)(2).)

20. In cases where the parent has obtained an independent assessment, attend the IEP team meeting if requested. (Gov. Code, § 7572, subd. (d)(2).)

21. The county of origin shall prepare yearly IEP reassessments to determine the needs of a pupil. (Cal. Code Regs., tit. 2, § 60045, subd. (h).)

D. Transfers and Interim Placements (Cal. Code Regs., tit. 2, § 60055)

1. Following a pupil's transfer to a new school district, the county shall provide interim mental health services, as specified in the existing IEP, for thirty days, unless the parent agrees otherwise.

2. Participate as a member of the IEP team of a transfer pupil to review the interim services and make a determination of services.

E. Participate as a member of the IEP team whenever the assessment of a pupil determines the pupil is seriously emotionally disturbed and in-state or out-of-state residential placement may be necessary (Gov. Code, §§ 7572.5, subds. (a) and (b), 7572.55; Cal. Code Regs., tit. 2, § 60100)

1. Participate as a member of the IEP team whenever the assessment of a pupil determines the pupil is seriously emotionally disturbed and residential placement may be necessary.

2. Re-assess the pupil in accordance with section 60400 of the regulations, if necessary.

3. When a recommendation is made that a child be placed in an out-of-state residential facility, the expanded IEP team, with the county as a participant, shall develop a plan for using less restrictive alternatives and in-state alternatives as soon as they become available, unless it is in the best educational interest of the child to remain in the out-of-state school. Residential placements for a pupil who is seriously emotionally disturbed may be made out of California only when no in-state facility can meet the pupil's needs and only when the requirements of Title 2, California Code of Regulations, section 60100, subdivisions (d) and (e), have been met. (Gov. Code, § 7572.55, subd. (c); Cal. Code Regs., tit. 2, § 60100, subd. (h).)

4. The expanded IEP team, with the county as a participant, shall document the alternatives to residential placement that were considered and the reasons why they were rejected. (Cal. Code Regs., tit. 2, § 60100, subd. (c).)

5. The expanded IEP team, with the county as a participant, shall ensure that placement is in accordance with the admission criteria of the facility. (Cal. Code Regs., tit. 2, § 60100, subd. (j).)

6. When the expanded IEP team determines that it is necessary to place a pupil who is seriously emotionally disturbed in either in-state or out-of-state residential care, counties shall ensure that: (1) the mental health services are specified in the IEP in accordance with federal law, and (2) the mental health services are provided by qualified mental health professionals. (Cal. Code Regs., tit. 2, § 60100, subd. (i).)

F. Designate the lead case manager if the IEP calls for in-state or out-of-state residential placement of a seriously emotionally disturbed pupil to perform the following activities (Gov. Code, § 7572.5, subd. (c)(1); Cal. Code Regs., tit. 2, §§ 60100, 60110)

1. Convene parents and representatives of public and private agencies in order to identify the appropriate residential facility. (Cal. Code Regs., tit. 2, §§ 60110, subd. (c)(1).)
2. Identify, in consultation with the IEP team's administrative designee, a mutually satisfactory placement that is acceptable to the parent and addresses the pupil's educational and mental health needs in a manner that is cost-effective for both public agencies, subject to the requirements of state and federal special education law, including the requirement that the placement be appropriate and in the least restrictive environment. (Cal. Code Regs, tit. 2, §§ 60100, subd. (e), 60110, subd. (c)(2).)
3. Document the determination that no nearby placement alternative that is able to implement the IEP can be identified and seek an appropriate placement that is as close to the parents' home as possible. (Cal. Code Regs., tit. 2, § 60100, subd. (f).)
4. Coordinate the residential placement plan of a pupil with a disability who is seriously emotionally disturbed as soon as possible after the decision has been made to place the pupil in residential placement. The residential placement plan shall include provisions, as determined in the pupil's IEP, for the care, supervision, mental health treatment, psychotropic medication monitoring, if required, and education of the pupil. (Cal. Code Regs., tit, 2, § 60110, subd, (b)(1).)
5. When the IEP team determines that it is necessary to place a pupil with a disability who is seriously emotionally disturbed in a community treatment facility, the lead case manager shall ensure that placement is in accordance with admission, continuing stay, and discharge criteria of the community treatment facility. (Cal. Code Regs., tit. 2, § 60110, subd. (b)(3).)
6. Complete the local mental health program payment authorization in order to initiate out of home care payments. (Cal. Code Regs., tit. 2, § 60110, subd. (c)(3).)
7. Coordinate the completion of the necessary County Welfare Department, local mental health program, and responsible local education agency financial paperwork or contracts. (Cal. Code Regs., tit. 2, § 60110, subd. (c)(4).)
8. Develop the plan for and assist the family and pupil in the pupil's social and emotional transition from home to the residential facility and the subsequent return to the home. (Cal. Code Regs., tit. 2, § 60110, subd. (c)(5).)
9. Facilitate the enrollment of the pupil in the residential facility. (Cal. Code Regs., tit. 2, § 60110, subd. (c)(6).)
10. Notify the local educational agency that the placement has been arranged and coordinate the transportation of the pupil to the facility if needed. (Cal. Code Regs, tit. 2, § 60110, subd. (c)(7).)
11. Conduct quarterly face-to-face contacts with the pupil at the residential facility to monitor the level of care and supervision and the implementation of the treatment services and the IEP. (Cal. Code Regs, tit. 2, § 60110, subd. (c)(8).)

12. Evaluate the continuing stay criteria, as defined in Welfare and Institutions Code section 4094, of a pupil placed in a community treatment facility every 90 days. (Cal. Code Regs, tit. 2, § 60110, subd. (c)(8).)
13. Notify the parent or legal guardian and the local education agency administrator or designee when there is a discrepancy in the level of care, supervision, provision of treatment services, and the requirements of the IEP. (Cal. Code Regs, tit. 2, § 60110, subd. (c)(9).)
14. Schedule and attend the next expanded IEP team meeting with the expanded IEP team's administrative designee within six months of the residential placement of a pupil with a disability who is seriously emotionally disturbed and every six months thereafter as the pupil remains in residential placement. (Cal. Code Regs, tit. 2, § 60110, subd. (c)(10).)
15. Facilitate placement authorization from the county's interagency placement committee pursuant to Welfare and Institutions Code section 4094.5, subdivision (e)(1), by presenting the case of a pupil with a disability who is seriously emotionally disturbed prior to placement in a community treatment facility. (Cal. Code Regs, tit. 2, § 60110, subd. (c)(11).)

G. Authorize payments to in-state or out-of-state residential care providers / Issue payments to providers of in-state or out-of-state residential care for the residential and non-educational costs of seriously emotionally disturbed pupils (Gov. Code, § 7581; Cal. Code Regs., tit. 2, § 60200, subd. (e))

1. Authorize payments to residential facilities based on rates established by the Department of Social Services in accordance with Welfare and Institutions Code sections 18350 and 18356. This activity requires counties to determine that the residential placement meets all the criteria established in Welfare and Institutions Code sections 18350 through 18356 before authorizing payment.
2. Issue payments to providers of out-of-home residential facilities for the residential and non-educational costs of seriously emotionally disturbed pupils. Payments are for the costs of food, clothing, shelter, daily supervision, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel to the child's home for visitation. Counties are eligible to be reimbursed for 60 percent of the total residential and non-educational costs of a seriously emotionally disturbed child placed in an out-of-home residential facility.

   Welfare and Institutions Code section 18355.5 applies to this program and prohibits a county from claiming reimbursement for its 60-percent share of the total residential and non-educational costs of a seriously emotionally disturbed child placed in an out-of-home residential facility if the county claims reimbursement for these costs from the Local Revenue Fund identified in Welfare and Institutions Code section 17600 and receives the funds.
3. Submit reports to the State Department of Social Services for reimbursement of payments issued to seriously emotionally disturbed pupils for 24-hour out-of-home care.

H. Provide Psychotherapy or Other Mental Health Treatment Services (Cal. Code Regs., tit. 2, §§ 60020, subd. (i), 60050, subd. (b), 60200, subd. (c)[1])

1. The host county shall make its provider network available and provide the county of origin a list of appropriate providers used by the host county's managed care plan who are currently available to take new referrals. (Cal. Code Regs., tit. 2, § 60200, subd. (c)(1).)

2. The county of origin shall negotiate with the host county to obtain access to limited resources, such as intensive day treatment and day rehabilitation. (Cal. Code Regs., tit. 2, § 60200, subd. (c)(1).)

3. Provide case management services to a pupil when required by the pupil's IEP. This service shall be provided directly or by contract at the discretion of the county of origin. (Cal. Code Regs., tit. 2, § 60020, subd. (i).)

4. Provide case management services and individual or group psychotherapy services, as defined in Business and Professions Code section 2903, when required by the pupil's IEP. This service shall be provided directly or by contract at the discretion of the county of origin. (Cal. Code Regs., tit. 2, § 60020, subd. (i).)

5. Provide mental health assessments, collateral services, intensive day treatment, and day rehabilitation services when required by the pupil's IEP. These services shall be provided directly or by contract at the discretion of the county of origin. (Cal. Code Regs., tit. 2, § 60020, subd. (i).)

6. Provide medication monitoring services when required by the pupil's IEP. "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, and monitoring of psychiatric medications or biologicals as necessary to alleviate the symptoms of mental illness. This service shall be provided directly or by contract at the discretion of the county of origin. (Cal. Code Regs., tit. 2, § 60020, subds. (f) and (i).)

7. Notify the parent and the local educational agency when the parent and the county mutually agree upon the completion or termination of a service, or when the pupil is no longer participating in treatment. ((Cal. Code Regs., tit. 2, § 60050, subd. (b).)

When providing psychotherapy or other mental health treatment services, the activities of crisis intervention, vocational services, and socialization services are not reimbursable.

I. Participate in due process hearings relating to mental health assessments or services (Gov. Code, § 7586; Cal. Code Regs., tit. 2, § 60550.) When there is a proposal or a refusal to initiate or change the identification, assessment, or educational placement of the child or

[1] Section 60200, subdivision (c), of the regulations defines the financial responsibilities of the counties and states that "the county of origin shall be responsible for the provision of assessments and mental health services included in an IEP in accordance with Sections 60045, 60050, and 60100 [pupils placed in residential facilities]. Mental health services shall be provided directly by the community mental health service [the county] or by contractors."

the provision of a free, appropriate public education to the child relating to mental health assessments or services, the following activities are eligible for reimbursement:

1. Retaining county counsel to represent the county mental health agency in dispute resolution. The cost of retaining county counsel is reimbursable.
2. Preparation of witnesses and documentary evidence to be presented at hearings.
3. Preparation of correspondence and/or responses to motions for dismissal, continuance, and other procedural issues.
4. Attendance and participation in formal mediation conferences.
5. Attendance and participation in information resolution conferences.
6. Attendance and participation in pre-hearing status conferences convened by the Office of Administrative Hearings.
7. Attendance and participation in settlement conferences convened by the Office of Administrative Hearings.
8. Attendance and participation in Due Process hearings conducted by the Office of Administrative Hearings.
9. Paying for psychological and other mental health treatment services mandated by the test claim legislation (California Code of Regulations, title 2, sections 60020, subdivisions (f) and (i)), and the out-of-home residential care of a seriously emotionally disturbed pupil (Gov. Code, § 7581; Cal. Code Regs., tit. 2, § 60200, subd. (e)), that are required by an order of a hearing officer or a settlement agreement between the parties to be provided to a pupil following due process hearing procedures initiated by a parent or guardian.

Attorneys' fees when parents prevail in due process hearings and in negotiated settlement agreements are not reimbursable.

V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

There are two satisfactory methods of submitting claims for reimbursement of increased costs incurred to comply with the mandate: the direct cost reporting method and the cost report method.

Direct Cost Reporting Method

A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by

productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.

4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity.

B. Indirect Cost Rates

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the Office of Management and Budget (OMB) Circular A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital

expenditures and unallowable costs (as defined and described in OMB Circular A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

In calculating an ICRP, the claimant shall have the choice of one of the following methodologies:

1. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or
2. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

Cost Report Method

A. Cost Report Method

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

B. Indirect Cost Rates

To the extent that reimbursable indirect costs have not already been reimbursed, they may be claimed under this method.

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include (1) the overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the Office of Management and Budget (OMB) Circular A-87. Claimants have the option of using 10% of labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

In calculating an ICRP, the claimant shall have the choice of one of the following methodologies:

1. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or

The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter[2] is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings. All claims shall identify the number of pupils in out-of-state residential programs for the costs being claimed.

[2] This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

VII. OFFSETTING REVENUES AND REIMBURSEMENTS

Any offsets the claimant experiences in the same program as a 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 of the following sources shall be identified and deducted from this claim:

1. Funds received by a county pursuant to Government Code section 7576.5.
2. Any direct payments or categorical funding received from the state that is specifically allocated to any service provided under this program.
3. Funds received and applied to this program from appropriations made by the Legislature in future Budget Acts for disbursement by the State Controller's Office.
4. Private insurance proceeds obtained with the consent of a parent for purposes of this program.
5. Medi-Cal proceeds obtained from the state or federal government, exclusive of the county match, that pay for a portion of the county services provided to a pupil under the Handicapped and Disabled Students program in accordance with federal law.
6. Any other reimbursement received from the federal or state government, or other non-local source.

Except as expressly provided in section IV(G)(2) of these parameters and guidelines, Realignment funds received from the Local Revenue Fund that are used by a county for this program are not required to be deducted from the costs claimed. (Stats. 2004, ch. 493, § 6 (Sen. Bill No. 1895).)

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561, subdivision (d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. REMEDIES BEFORE THE COMMISSION

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557, subdivision (d), and California Code of Regulations, title 2, section 1183.2.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

~~The Statements of Decision are legally binding on all parties and provide the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for these test claims. The administrative records, including the Statements of Decision, are on file with the Commission~~ The statements of decision adopted for the test claim and parameters and guidelines are legally binding on all parties and provide the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record. The administrative record is on file with the Commission.

Overview of Changes related to AB 114

Transition from AB 3632 to IDEA
Working Group Activities and Products
September 23, 2011

CALIFORNIA DEPARTMENT OF EDUCATION
Tom Torlakson, State Superintendent of Public Instruction

Exhibit D

Exhibit D

TOM TORLAKSON
State Superintendent
of Public Instruction

Webinar Purpose

- The purpose of the Webinar is to secure input from a broad group of interested stakeholders about issues and concerns related to the transition of the provision of mental health services by county mental health agencies under Chapter 26.5 of the Government Code to the provision of related services by local educational agencies under the Individuals with Disabilities Education Act.

TOM TORLAKSON
State Superintendent
of Public Instruction

2011-12 Budget Act and AB 114

- The 2011-12 Budget Act and AB 114 created a significant change in the way that services are delivered to students with emotional and behavioral needs.
- The 2011-12 Budget Act was signed June 30, 2011 and focused funds for services on SELPAs and LEAs
- AB 114 (a trailer bill to the 2011-12 Budget Act) was signed June 30, 2011 and eliminated the state statutory structure for mental health service delivery through CMH

Exhibit D

TOM TORLAKSON
State Superintendent
of Public Instruction

2011-12 Budget Act

- Provided funding for "educationally related mental health services"

Department of Education

- $31 million (Item 6110-161-0001 – Provision 18)
- $218.8 million (Item 6110-161-0001 – Provision 26)
- $69 million (Item 6110-161-0890 – Provision 9)

Department of Mental Health

- $98.5 million (Item 4440-295-3085)

TOM TORLAKSON
State Superintendent
of Public Instruction

AB 114

Made the technical changes to code to eliminate state required mental health services provided under Chapter 26.5 of the Government Code and to leave responsibility for special education and related services as it is required under the Individuals with Disabilities Education Act (IDEA)

CHAPTER 43

An act to amend Sections 1240, 1622, 2558.46, 8201, 8208, 8263.2, 8263.4, 8447, 8499, 42127, 42238.146, 44955.5, 56325, and 69432.7 of, to amend and renumber Section 60422.3 of, to amend and repeal Sections 56139 and 56331 of, to amend, repeal, and add Sections 8203.5, 41202, and 76300 of, to add Sections 41202.5, 41210, 41211, 42251, and 46201.3 to, and to repeal and add Section 42606 of, the Education Code, to amend Section 7911.1 of the Family Code, to amend Sections 7572, 7582, 7585, 12440.1, and 17581.5 of, to amend and repeal Sections 7572.5, 7572.55, 7576, 7576.2, 7576.3, 7576.5, 7586.5, 7586.6, and 7586.7 of, and to repeal Section 7588 of, the Government Code, and to amend Sections 5651 and 11323.2 of, to amend and repeal Sections 5701.3 and 5701.6 of, to add and repeal Section 18356.1 of, and to repeal Chapter 6 (commencing with Section 18350) of Part 6 of Division 9 of, the Welfare and Institutions Code, relating to education finance, and making an appropriation therefor, to take effect immediately, bill related to the budget.

[Approved by Governor June 30, 2011. Filed with Secretary of State June 30, 2011.]

Exhibit D

CODE CHANGES RELATED TO MENTAL HEALTH SERVICES					
Code	**Section**	**Amend**	**Repeal**	**Inoperative Date**	**Repeal Date**
Education Code	56139	X	X	1-Jul-11	1-Jan-12
Education Code	56325	X		N/A	N/A
Education Code	56331	X	X	1-Jul-11	1-Jan-12
Family Code	7911.1	X		N/A	N/A
Government Code	7572	X		N/A	N/A
Government Code	7572.5	X	X	1-Jul-11	1-Jan-12
Government Code	7572.55	X	X	1-Jul-11	1-Jan-12
Government Code	7576	X	X	1-Jul-11	1-Jan-12
Government Code	7576.2	X	X	1-Jul-11	1-Jan-12
Government Code	7576.3	X	X	1-Jul-11	1-Jan-12
Government Code	7576.5	X	X	1-Jul-11	1-Jan-12
Government Code	7582	X		N/A	N/A
Government Code	7585	X		N/A	N/A
Government Code	7586.5	X	X	1-Jul-11	1-Jan-12
Government Code	7586.6	X	X	1-Jul-11	1-Jan-12
Government Code	7586.7	X	X	1-Jul-11	1-Jan-12
Government Code	7588		X	30-Jun-11	30-Jun-11
Welfare and Institutions Code	5651	X		N/A	N/A
Welfare and Institutions Code	5701.3	X	X	1-Jul-11	1-Jan-12
Welfare and Institutions Code	5701.6	X	X	1-Jul-11	1-Jan-12
Welfare and Institutions Code	Chapter 6 of Part 6 of Division 9	X	X	1-Jul-11	1-Jan-12

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To help us understand the changes we prepared a handout that shows the changes to Chapter 26.5 of the Government Code

CHAPTER 26.5. INTERAGENCY RESPONSIBILITIES FOR PROVIDING SERVICES TO CHILDREN WITH DISABILITIES

- Joint Responsibility

7570. Ensuring maximum utilization of all state and federal resources available to provide a child with a disability, as defined in Section 1401(3) of Title 20 of the United States Code, with a free appropriate public education, the provision of related services, as defined in Section 1401(26) of Title 20 of the United States Code, and designated instruction and services, as defined in Section 56363 of the Education Code, to a child with a disability, shall be the joint responsibility of the Superintendent of Public Instruction and the Secretary of the Health and Human Services Agency. The Superintendent of Public Instruction shall ensure that this chapter is carried out through monitoring and supervision.

- Secretary May Designate Department to Assume Responsibilities

7571. The Secretary of the Health and Human Services Agency may designate a department of state government to assume the responsibilities described in Section 7570. The secretary, or his or her designee, also shall designate a single agency in each county to coordinate the service responsibilities described in Section 7572.

- Child Assessed in All Areas Related to Suspected Disability

7572. (a) A child shall be assessed in all areas related to the suspected disability by those qualified to make a determination of the child's need for the service before any action is taken with respect to the provision of related services or designated instruction and services to a child, including, but not limited to, services in the areas of, occupational therapy, physical therapy, ~~psychotherapy, and other mental health assessments.~~ All assessments required or conducted pursuant to this section shall be governed by the assessment procedures contained in Article 2 (commencing with Section 56320) of Chapter 4 of Part 30 of the Education Code.

- Occupational Therapy and Physical Therapy (OT/PT) Assessments

(b) ~~Occupational therapy and physical therapy assessments~~ shall be conducted by qualified medical personnel as specified in regulations developed by the State Department of Health Services in consultation with the State Department of Education.

- Psychotherapy Assessment

~~(c) Psychotherapy and other mental health assessments shall be conducted by qualified mental health professionals as specified in regulations developed by the State Department of Mental Health, in consultation with the State Department of Education, pursuant to this chapter.~~

Exhibit D

Exhibit D

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We also made a handout that shows the changes that were made to Education Code, Family Code and Welfare and Institutions Code

AB 114:
Changes to the CA Education Code, CA Welfare and Institutions Code, and CA Family Code

California Education Code - Part 30

~~56139.~~ (a) The Superintendent is responsible for monitoring local educational agencies to ensure compliance with the requirement to provide mental health services to individuals with exceptional needs pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code and to ensure that funds provided for this purpose are appropriately utilized.

(b) The Superintendent shall submit a report to the Legislature by April 1, 2005, that includes all of the following:

(1) A description of the data that is currently collected by the department related to pupils served and services provided pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code.

(2) A description of the existing monitoring processes used by the department to ensure that local educational agencies are complying with Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code, including the monitoring performed to ensure the appropriate use of funds for programs identified in Section 64000.

(3) Recommendations on the manner in which to strengthen and improve monitoring by the department of the compliance by a local educational agency with the requirements of Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code, on the manner in which to strengthen and improve collaboration and coordination with the State Department of Mental Health in monitoring and data collection activities, and on the additional data needed related to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code.

(c) The Superintendent shall collaborate with the Director of Mental Health in preparing the report required pursuant to subdivision (b) and shall convene at least one meeting of appropriate stakeholders and organizations, including a representative from the State Department of Mental Health and mental health directors, to obtain input on existing data collection and monitoring processes, and on ways to strengthen and improve the data collected and monitoring performed.

(d) This section shall become inoperative on July 1, 2011, and, as of January 1, 2012, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2012, deletes or extends the dates on which it becomes inoperative and is repealed.

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Essentially, all references to responsibilities of county mental health agencies and requirements for mental health services for students with IEPs have been eliminated from state law. (only references to state hospitals and surrogate parents remain)

576. (a) The State Department of Mental Health, or a community
health service, as described in Section 5602 of the Welfare
titutions Code, designated by the State Department of Mental
is responsible for the provision of mental health services,
ed in regulations by the State Department of Mental Health,
ed in consultation with the State Department of Education, if
d in the individualized education program of a pupil. A local
onal agency is not required to place a pupil in a more
tive educational environment in order for the pupil to receive
tal health services specified in his or her individualized
on program if the mental health services can be appropriately
d in a less restrictive setting. It is the intent of the
ture that the local educational agency and the community
health service vigorously attempt to develop a mutually
ctory placement that is acceptable to the parent and addresses
cational and mental health treatment needs of the pupil in a
that is cost effective for both public agencies, subject to
uirements of state and federal special education law,
ng the requirement that the placement be appropriate and in
st restrictive environment. For purposes of this section,
" is as defined in Section 56028 of the Education Code.
A local educational agency, individualized education program
r parent may initiate a referral for assessment of the social
tional status of a pupil, pursuant to Section 56320 of the
on Code. Based on the results of assessments completed
t to Section 56320 of the Education Code, an individualized
on program team may refer a pupil who has been determined to
ndividual with exceptional needs, as defined in Section 56026
Education Code, and who is suspected of needing mental health
s to a community mental health service if the pupil meets all
criteria in paragraphs (1) to (5), inclusive. Referral
s shall include all documentation required in subdivision (c),
ll be provided immediately to the community mental health
.
The pupil has been assessed by school personnel in accordance
title 2 (commencing with Section 56320) of Chapter 4 of Part
vision 4 of Title 2 of the Education Code. Local educational
s and community mental health services shall work
ratively to ensure that assessments performed prior to
l are as useful as possible to the community mental health
service in determining the need for mental health services and the
level of services needed.

Exhibit D

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Title 2 regulations related to Chapter 26.5 are no longer supported by statute and will need to be readopted, amended and adopted or repealed.

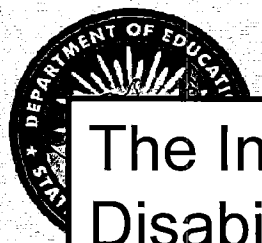
Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) shall be exclusively available for these services only for the 2011–12 and 2012–13 fiscal years.

SEC. 55. (a) It is the intent of the Legislature that the State Department of Education and the appropriate departments within the California Health and Human Services Agency modify or repeal regulations that are no longer supported by statute due to the amendments in Sections 24 to 26, inclusive, Section 32 to 44, inclusive, Sections 47 to 49, inclusive, and Section 51 of this act.

(b) The State Department of Education and the appropriate departments alifornia Health and Human Services Agency shall review ensure the appropriate implementation of educationally related services required by the federal Individuals with Disabilities t (20 U.S.C. Sec. 1400 et seq.) and Sections 24 to 26, inclusive, 44, inclusive, Sections 47 to 49, inclusive, and Section 51 of

ate Department of Education and the appropriate departments alifornia Health and Human Services Agency may adopt implement Sections 24 to 26, inclusive, Section 32 to 44, ctions 47 to 49, inclusive, and Section 51 of this act. The endment, repeal, or readoption of a regulation authorized by s deemed to address an emergency, for purposes of Sections 11349.6 of the Government Code, and the State Department and the appropriate departments within the California Health ervices Agency are hereby exempted, for this purpose, from nts of subdivision (b) of Section 11346.1 of the Government Code. For purposes of subdivision (e) of Section 11346.1 of the Government Code, the 180-day period, as applicable to the effective period of an emergency regulatory action and submission of specified materials to the Office of Administrative Law, is hereby extended to one year.

SEC. 56. If the Commission on State Mandates determines that this act



The Individuals with Disabilities Education Act (IDEA) regulations do not include or define mental health services in the related services sections of the regulations. Though it should be noted that the list of related services is not considered to be "exhaustive."

(Authority: 20 U.S.C. 1401(20))

§ 300.30 Parent.

(a) *Parent* means—

(1) A biological or adoptive parent of

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(Authority: 20 U.S.C. 1401(23))

(Authority: 20 U.S.C. 1415(a))

§ 300.33 Public agency.

Public agency includes the SEA, LEAs, ESAs, nonprofit public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and any other political subdivisions of the State that are responsible for providing education to children with disabilities.

(Authority: 20 U.S.C. 1412(a)(11))

§ 300.34 Related services.

(a) *General. Related services* means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training.

(b) *Exception; services that apply to children with surgically implanted devices, including cochlear implants.*

(1) Related services do not include a medical device that is surgically implanted, the optimization of that device's functioning (e.g., mapping), maintenance of that device, or the replacement of that device.

(2) Nothing in paragraph (b)(1) of this section—

(i) Limits the right of a child with a surgically implanted device (e.g.,

(1) *Audiology* includes—

(i) Identification of children with hearing loss;

(ii) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;

(iii) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation;

(iv) Creation and administration of programs for prevention of hearing loss;

(v) Counseling and guidance of children, parents, and teachers regarding hearing loss; and

(vi) Determination of children's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

(2) *Counseling services* means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

(3) *Early identification and assessment of disabilities in children* means the implementation of a formal plan for identifying a disability as early as possible in a child's life.

(4) *Interpreting services* includes—

(i) The following, when used with respect to children who are deaf or hard of hearing: Oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and transcription services, such as communication access real-time translation (CART), C-Print, and TypeWell; and

(ii) Special interpreting services for children who are deaf-blind.

(5) *Medical services* means services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related

Exhibit D

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Other parts of the regulations provide no guidance either. There are only three references to mental health. The first is in a comment related to interagency agreements.

required in § 300.153(b)(4)(v), in order to have the State investigate a complaint.

Discussion: Section 300.153(b)(4)(v) requires the complainant to propose a resolution to the complaint only to the extent known and available to the complainant at the time the complaint is filed. We believe this proposed resolution is necessary because it gives the complainant an opportunity to state what he or she believes to be the problem and how the complainant believes it can be resolved. This is important because it gives the complainant an opportunity to tell the public agency what is wrong and what it would take to fix the problem from the complainant's point of view. It also will give the LEA an opportunity to choose either to do as the complainant

[illegible]

about whether a State complaint decision may be appealed because we believe States are in the best position to determine what, if any, appeals process is necessary to meet each State's needs, consistent with State law.

If a State chooses, however, to adopt a process for appealing a State complaint decision, such process may

that the subject of the State complaint involves an issue about which a due process hearing can be filed and the two-year statute of limitations for due process hearings (or other time limit imposed by State law) has not expired.

Changes: None.

Method of Ensuring Services (§ 300.154)

Establishing Responsibility for Services (§ 300.154(a))

Comment: One commenter suggested posting interagency agreements on SEA Web sites and in public buildings, and making them available upon request.

Discussion: There is nothing in the Act or these regulations that would prohibit an SEA from posting interagency agreements on Web sites, in public buildings, or making them available upon request. However, we believe that it would be unnecessarily burdensome to require SEAs to do so and any decision regarding posting interagency agreements is best left to the States' discretion.

Changes: None.

Comment: One commenter stated that interagency agreements are important because agencies other than SEAs (*e.g.*, mental health agencies that place children in residential facilities) are responsible for providing special educational services. The commenter requested that the regulations specify that residential facilities be allowed reimbursement for providing educational services and that children in these facilities are entitled to FAPE.

Discussion: We do not believe it is necessary to further clarify in the regulations that children with disabilities who are placed in residential facilities by public agencies are entitled to FAPE because § 300.146, consistent with section 612(a)(10)(B) of the Act, provides that SEAs must ensure that children with disabilities receive FAPE when they are placed in or referred to private schools or facilities by public agencies. Whether residential

Discussion: We do not believe it is necessary to further clarify that the LEA is ultimately responsible for providing services because § 300.154(b)(2) sufficiently requires that if a public agency other than an educational agency fails to provide or pay for the special education and related services in § 300.154(b)(1), the LEA or State agency responsible for developing the child's IEP must provide or pay for these services to the child in a timely manner. Disagreements about the interagency agreements should not stop or delay the receipt of the services described in the child's IEP. Section 300.103(c) also addresses timely services and clarifies that, consistent with § 300.323(c), the State must ensure there is no delay in implementing a child's IEP, including any situation in which the source for providing or paying for the special education or related services to a child is being determined. Section 612(a)(12)(A)(i) of the Act provides that the financial responsibility of public agencies (other than an educational agency), including Medicaid and other public insurers obligated under Federal or State law or assigned responsibility under State policy, must precede financial responsibility of the LEA.

Changes: None.

Children With Disabilities Who Are Covered by Public Benefits or Insurance (§ 300.154(d))

Comment: One commenter expressed concern regarding the use of a parent's public benefits or insurance to pay for services required under Part B of the Act because co-payments and other out-of-pocket expenses would be a hardship to low-income families. A few commenters stated that services paid for by public benefits or insurance would count against a child's lifetime cap.

Discussion: The commenters' concerns are addressed in § 300.154(d)(2)(ii) and (d)(2)(iii). Section 300.154(d)(2)(ii) states that a public agency may not require parents to incur

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The second is the applicability of the IDEA to other agencies that are involved in the education of children with disabilities.

51

emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living;

(b) To ensure that the rights of children with disabilities and their parents are protected;

(c) To assist States, localities, educational service agencies, and Federal agencies to provide for the education of all children with disabilities; and

(d) To assess and ensure the effectiveness of efforts to educate children with disabilities.

(Authority: 20 U.S.C. 1400(d))

§ 300.2 Applicability of this part to State and local agencies.

(a) *States.* This part applies to each State that receives payments under Part B of the Act, as defined in § 300.4.

(b) *Public agencies within the State.* The provisions of this part—

(1) Apply to all political subdivisions of the State that are involved in the education of children with disabilities, including:

(i) The State educational agency (SEA).

(ii) Local educational agencies (LEAs), educational service agencies (ESAs), and public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA.

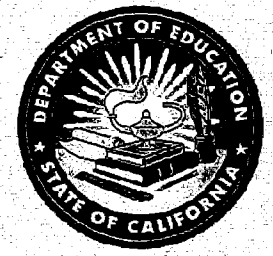
(iii) Other State agencies and schools (such as Departments of Mental Health and Welfare and State schools for children with deafness or children with blindness).

(iv) State and local juvenile and adult correctional facilities; and

(2) Are binding on each public agency in the State that provides special education and related services to children with disabilities, regardless of whether that agency is receiving funds

Exhibit D

Exhibit D



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States may reserve a portion of their allocations for other State-level activities. The maximum amount that a State may reserve for other State-level activities is as follows:

(i) If the amount that the State sets aside for State administration under paragraph (a) of this section is greater than $850,000 and the State opts to finance a high cost fund under paragraph (c) of this section:

(A) For fiscal years 2005 and 2006, 10 percent of the State's allocation under § 300.703.

(B) For fiscal year 2007 and subsequent fiscal years, an amount equal to 10 percent of the State's allocation for fiscal year 2006 under

The third reference is to an allowable use of IDEA funds for state-level activities.

equal to nine percent of the State's allocation for fiscal year 2006 adjusted cumulatively for inflation.

(iii) If the amount that the State sets aside for State administration under paragraph (a) of this section is less than or equal to $850,000 and the State opts to finance a high cost fund under paragraph (c) of this section:

(A) For fiscal years 2005 and 2006, 10.5 percent of the State's allocation under § 300.703.

(B) For fiscal year 2007 and subsequent fiscal years, an amount equal to 10.5 percent of the State's allocation for fiscal year 2006 under § 300.703 adjusted cumulatively for inflation.

published by the Bureau of Labor Statistics of the Department of Labor.

(3) Some portion of the funds reserved under paragraph (b)(1) of this section must be used to carry out the following activities:

(i) For monitoring, enforcement, and complaint investigation; and

(ii) To establish and implement the mediation process required by section 615(e) of the Act, including providing for the costs of mediators and support personnel;

(4) Funds reserved under paragraph (b)(1) of this section also may be used to carry out the following activities:

(i) For support and direct services, including technical assistance, personnel preparation, and professional development and training;

(ii) To support paperwork reduction activities, including expanding the use of technology in the IEP process;

(iii) To assist LEAs in providing positive behavioral interventions and supports and mental health services for children with disabilities;

(iv) To improve the use of technology in the classroom by children with disabilities to enhance learning;

(v) To support the use of technology, including technology with universal design principles and assistive technology devices, to maximize accessibility to the general education curriculum for children with disabilities;

(vi) Development and implementation of transition programs, including coordination of services with agencies involved in supporting the transition of students with disabilities to postsecondary activities;

(vii) To assist LEAs in meeting personnel shortages;

(viii) To support capacity building activities and improve the delivery of services by LEAs to improve results for children with disabilities;

services as defined in section 1116(e) of the ESEA to children with disabilities, in schools or LEAs identified for improvement under section 1116 of the ESEA on the sole basis of the assessment results of the disaggregated subgroup of children with disabilities, including providing professional development to special and regular education teachers, who teach children with disabilities, based on scientifically based research to improve educational instruction, in order to improve academic achievement to meet or exceed the objectives established by the State under section 1111(b)(2)(G) of the ESEA.

(c) *Local educational agency high cost fund.* (1) In general—

(i) For the purpose of assisting LEAs (including a charter school that is an LEA or a consortium of LEAs) in addressing the needs of high need children with disabilities, each State has the option to reserve for each fiscal year 10 percent of the amount of funds the State reserves for other State-level activities under paragraph (b)(1) of this section—

(A) To finance and make disbursements from the high cost fund to LEAs in accordance with paragraph (c) of this section during the first and succeeding fiscal years of the high cost fund; and

(B) To support innovative and effective ways of cost sharing by the State, by an LEA, or among a consortium of LEAs, as determined by the State in coordination with representatives from LEAs, subject to paragraph (c)(2)(ii) of this section.

(ii) For purposes of paragraph (c) of this section, *local educational agency* includes a charter school that is an LEA, or a consortium of LEAs.

(2)(i) A State must not use any of the funds the State reserves pursuant to paragraph (c)(1)(i) of this section, which

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One of the Elephants in the Room…

- Educationally Related Mental Health Services – What are they?
  - Coined in the 2011-12 Budget Act
  - Provided pursuant to IDEA and as described in 30 EC 56363
  - 30 EC 56363 defines "designated instruction and services" as "related services" as that term is defined in
    - Section 1401(26) of Title 20 of the United States Code and
    - Section 300.34 of Title 34 of the Code of Federal Regulations
  - As a result, for the purposes of this project, we will be using terms from the IDEA which is the legal source driving the provision of these special education and related services.
  - We will not be coining or defining new terms.

Exhibit D

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Realignment to the IDEA

Evaluation and Assessment

Required Services

Procedures

Participants

Administrative Requirements

Funding Mechanisms

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Transition Planning Process

- Baseline Practices and Implementation Targets
- Accountability and CASEMIS Audit
- Working Groups
  - Legislative Requirements/Funding Working Group
  - Procedures Working Group
  - Service Delivery Models Working Group
- Workgroup Products and Delivery Schedule
- Stakeholder Input

Exhibit D

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Overall Purpose

The overall purpose of this working group is to assist the CDE to provide oversight and technical assistance to local educational agencies as services to students with emotional and behavioral needs transition from mental health services under AB 3632 to related services under the Individuals with Disabilities Education Act (IDEA).

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Outcomes

- LEAs will:
  - minimize disruption and maintain quality of services for students previously served under AB 3632;
  - develop internal capacity for overseeing, contracting for, and providing quality related services; and
  - implement effective models for service delivery.
- CDE will:
  - identify options for controlling costs and accessing Medi-Cal and other local, state, and federal funds;
  - strengthen linkages between mental health and education services;
  - improve accountability for effective services and positive pupil outcomes.

Exhibit D

Delivery Schedule

Due Date	Initial Recommendations/Product
09/15/11	Baseline Practices and Implementation Target Survey
09/15/11	IDEA Requirements for Providing Services for Students with Disabilities
09/15/11	Funding Streams and Allocations
10/15/11	Fiscal Reporting Requirements
10/15/11	Monitoring, Data Collection and Accountability
11/1/11	Compilation of Service Delivery Models in California
11/1/11	IEP Planning for Students Who Need MHS
11/1/11	Identification and Assessment of Students to Determine MHS Needs
11/15/11	Interagency Collaboration in the Provision of Services
12/1/11	Provision of Services Options for Students Who Need MHS
12/1/11	Hiring and Contracting for Qualified Personnel
2/15/12	Access to Medi-Cal Funds and Services

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Products Completed

- Initial survey
- Guidance Documents
  - Related Services
  - Medication Management
  - Funding Streams
  - Related Service Personnel
  - Nonpublic Agency Certification
  - Residential Services
  - Use of Insurance for Related Services
- Working Group Presentations
  - Medi-Cal Overview
  - Residential Care Assessment
  - Contracts and Memoranda of Understanding

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Under Development

- Medi-Cal Guidance
  - LEA billing option
  - SMHSW
- Upcoming presentations
  - Assessment and Service Determinations
  - Local Service Delivery Models

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Meeting Schedule

Month	Dates
August 2011	17–18
September 2011	14–15
October 2011	19–20
November 2011	16–17
December 2011	7–8
January 2012	18–19
February 2012	15–16
March 2012	14–15
April 2012	18–19
May 2012	16–17

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Who are we talking about?

Students Reported as 26.5 Eligible by Disability		
Disability	**Number**	**Percent**
Emotional Disturbance	11,752	54.81%
Specific Learning Disability	3,901	18.19%
Other Health Impairment	2,699	12.59%
Autism	1,442	6.72%
Speech and Language Impairment	690	3.22%
Mental Retardation/Intellectual Disability	556	2.59%
Orthopedic Impairment	94	0.44%
Multiple Disabilities	91	0.42%
Hard of Hearing	82	0.38%
Deaf	53	0.25%
Visual Impairment	41	0.19%
Traumatic Brain Injury	41	0.19%
Deaf-Blind	1	0.00%
Total	21,443	100.00%

June 2011 CASEMIS

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Students Reported as 26.5 Eligible by Ethnicity		
Ethnicity	**Number**	**Percent**
White	9,158	42.71%
Hispanic	6,516	30.39%
African American	3,769	17.58%
Asian	913	4.26%
Multiple Ethnicities	727	3.39%
Native American	248	1.16%
Pacific Islander	112	0.52%
Total	21,443	100.00%

June 2011 CASEMIS

Exhibit D

Exhibit D

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Students Reported as 26.5 Eligible by Grade		
Grade	**Number**	**Percent**
K	157	0.73%
1	318	1.48%
2	528	2.46%
3	796	3.71%
4	1,055	4.92%
5	1,263	5.89%
6	1,399	6.52%
7	1,681	7.84%
8	2,092	9.76%
9	2,684	12.52%
10	2,880	13.43%
11	2,869	13.38%
12	2,920	13.62%
12+	597	2.78%
Ungraded	204	0.95%
Total	21,443	100.00%

June 2011 CASEMIS

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Services Provided by CMH to Students Reported as 26.5 Eligible	
Service (CASEMIS Code)	**Number of Students**
Individual Counseling (510)	9,597
Counseling and Guidance (515)	5,776
Parent Counseling (520)	1,264
Social Work Services (525)	1,730
Psychological Services (530)	2,302
Behavioral Intervention Services (535)	2,085
Day Treatment Services (540)	1,469
Residential Treatment Services (545)	1,040

June 2011 CASEMIS (Students may receive more than one service)

Exhibit D

Exhibit D

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State Superintendent
of Public Instruction

Annual IEPs by Month		
Month	**IEPs Due**	**Percent of Total**
July	78	0.63%
August	263	2.13%
September	1,474	11.93%
October	1,963	15.88%
November	1,762	14.26%
December	179	1.45%
January	823	6.66%
February	1,036	8.38%
March	1,308	10.58%
April	1,135	9.18%
May	1,590	12.86%
June	749	6.06%

December 2010 CASEMIS

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State Superintendent
of Public Instruction

Other Interesting Info

- 3,680 of 17,139 students eligible for 26.5 had no MHS language reported in their IEPs.

  20% of students transitioning from 3632 to IDEA may have received services but had no services listed in their IEP.

- Roughly 35% of the students reported as eligible for 26.5 were new to the program in December 2010 and December 2009.

  In addition to transitioning students and their families from one system to the next, LEAs need to have procedures and services in place for new students as well.

December 2010 CASEMIS

Exhibit D

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State Superintendent
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California will provide a world-class education for all students, from early childhood to adulthood. The Department of Education serves our state by innovating and collaborating with educators, schools, parents, and community partners. Together, as a team, we prepare students to live, work, and thrive in a highly connected world.

Superintendent
Tom Torlakson

Highlights

What's New

BreakfastFirst Campaign
Posted 21-Sep-2011

Work Experience Education and Work Permits
Posted 21-Sep-2011

California Helps Write New Science Standards
Posted 20-Sep-2011

Local Control Returned to Emery Unified School District
Posted 15-Sep-2011

RSS more What's New

AB114 Website

http://www.cde.ca.gov/sp/se/

Innovate Collaborate
Serve Learn

Mobile RSS Twitter Facebook

Reports on the impact of California's budget crisis on education.

Pertussis (Whooping Cough) Vaccine Requirement
Information on the pertussis vaccine booster (Tdap) requirement, resources for districts and parents, and a video message from Tom Torlakson.

- Multilingual Documents
- Publications
- School Directory
- Staff Directory

more Resources

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Special Education

Information and resources to serve the unique needs of persons with disabilities so that each person will meet or exceed high standards of achievement in academic and nonacademic skills.

Administration & Support
Activities of special education advisory groups and other related information.

Announcements & Current Issues
Current and upcoming events, time-sensitive issues, and hot topics.

Data Collection & Reporting
Searchable databases and software for reporting and retrieving special education related information.

Family Involvement & Partnerships
Resources and support for parents, guardians, and families of children with disabilities.

Laws, Regulations, & Policies
Federal and state legislation, laws, regulations, policies, legal advisories, and guidance.

Quality Assurance Process
Resources to improve educational outcomes for students with disabilities while ensuring compliance with state and federal laws and regulations.

Services & Resources
Programs and services available to students with disabilities, publications, training and technical assistance opportunities, and recruitment resources and materials.

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Announcements & Current Issues

Current and upcoming events, time-sensitive issues, and hot topics.

Transition of Special Education and Related Services Formerly Provided by County Mental Health Agencies (Posted 12-Sep-2011)
(Assembly Bill 114, Chapter 43, Statutes of 2011)

Update to the March 2009 Letter from the State Superintendent of Public Instruction on Service Delivery for Students with Disabilities (Posted 02-May-2011)

Frequently Asked Questions About Services Previously Provided Through County Mental Health Agencies for Students with Individualized Education Programs (Posted 01-Aug-2011)

2011 Application (Posted 01-Feb-2010)
Annual State Application under Part B of IDEA is to be submitted by May 10, 2011.

Update: LEAs' Responsibilities for Ensuring the Continuous Delivery of Mental Health Services to Students with Disabilities (Posted 27-Dec-2010)

Special Education Budget Items for 2011-12 (Posted 28-Jul-2011; DOC; 137KB; 11pp.)
Senate Bill 87 (Chapter 33, Statutes of 2011), approved by the Governor on June 30, 2011.

Section 1511 Certifications (Updated 08-Sep-2010; DOC; 48KB; 3pp.)
Listing of the local education agencies (LEAs) with certified infrastructure projects pursuant to Section 1511 of the American Recovery and Reinvestment Act of 2009.

Employment Opportunity (Posted 12-Aug-2009)
Professional Team Opportunity: Join In

Questions: Special Education Division | specedinfoshare@cde.ca.gov | 916-445-4613
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State Superintendent
of Public Instruction

AB 114 Special Education Transition

Transition of Special Education and Related Services Formerly Provided by County Mental Health Agencies (Assembly Bill 114, Chapter 43, Statutes of 2011).

Background

On June 30, 2011, Assembly Bill 114, Chapter 43, Statutes of 2011 (AB 114) (PDF; Outside Source) was signed into law. Under AB 114, several sections of Chapter 26.5 of the California *Government Code* (*GC*) were amended or rendered inoperative, thereby ending the state mandate on county mental health agencies to provide mental health services to students with disabilities. With the passage of AB 114, it is clear that school districts are now solely responsible for ensuring that students with disabilities receive special education and related services, including some services previously arranged for or provided by county mental health agencies.

Recent Guidance from the California Department of Education

Assembly Bill 114: Local Educational Agencies' Responsibility for Providing Related Services to Students with Disabilities (Posted 12-Sep-2011)

Frequently Asked Questions About Services Previously Provided Through County Mental Health Agencies for Students with Individualized Education Programs (Posted 02-May-2011)

AB 114 Transition Working Group

As a part of the Budget Act of 2011-12 (PDF; Outside Source), the California Department of Education (CDE) was given funds to support the transition of services from county mental health agencies to local educational agencies in conjunction with a working group of parents, advocates, local educational agency staff, mental health experts, and legislative personnel.

The CDE convened the AB 114 Transition Working Group on July 27, 2011, to address changes created by the passage of AB 114. The group's goals are as follows:

- To clarify requirements for the provision of services to students eligible for special education as established in federal and state law
- To identify available funding sources, the means for accessing funds, and the parameters for use of funds
- To develop appropriate procedures for: (a) identifying and assessing students; (b) creating and amending Individualized Education Programs; and (c) monitoring the progress of students, the provision of services, and the use of funds
- To describe appropriate service delivery models and best practices for ensuring the provision of related services to students

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AB 114 Transition Working Group

As a part of the Budget Act of 2011-12 (PDF; Outside Source), the California Department of Education (CDE) was given funds to support the transition of services from county mental health agencies to local educational agencies in conjunction with a working group of parents, advocates, local educational agency staff, mental health experts, and legislative personnel.

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- To describe appropriate service delivery models and best practices for ensuring the provision of related services to students

Mental Health Transition Plan (Posted 12-Sep-2011; DOC; 102KB; 4pp.)

AB 114 Transition Working Group

July 27, 2011

- July 27, 2011, Agenda (Posted 12-Sep-2011; DOC; 44KB; 1p.)

August 17-18, 2011

- August 17, 2011, Agenda (Posted 12-Sep-2011; DOC; 32KB; 1p.)
- August 18, 2011, Agenda (Posted 12-Sep-2011; DOC; 33KB; 1p.)

Funding Information

2011-12 Funding Results Mental Health Services funding results for fiscal year 2011-12.

Mental Health Services Apportionment Special Education - Mental Health Services apportionment letter(s) and schedule(s) detailing state funding information for fiscal year 2010-11.

Questions: Policy & Program Services | AB114TWG@cde.ca.gov |916-323-2409

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State Superintendent
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Guidance Documents

Exhibit D

Exhibit D

Related Services Under the IDEA

TOM TORLAKSON
State Superintendent
of Public Instruction

- This document outlines the requirements for service provision under the federal IDEA and defines certain related services terms.
- The document clarifies that eligibility is not contingent on a specific disability or mental health diagnosis.

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TOM TORLAKSON
STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

September 13, 2011

Dear County and District Superintendents, Special Education Local Plan Area Directors, Special Education Administrators at County Offices of Education, Charter School Administrators, Principals, and Nonpublic School Directors:

ASSEMBLY BILL 114: RELATED SERVICES UNDER THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT

With the changes to state statute outlined in Assembly Bill 114 (Chapter 43, Statutes of 2011), which relieved county mental health agencies of the responsibility to provide mental health services to students with disabilities, local educational agencies (LEAs) must rely on the Individuals with Disabilities Education Act (IDEA) for guidance on the requirements for providing related services, including those that may have previously been provided by county mental health agencies (CMHAs). Related services under IDEA are defined in Section 300.34 of Title 34 of the *Code of Federal Regulations* (*CFR*).

34 *CFR* 300.34(a)

Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training.

Section 300.34 of Title 34 of the *CFR* further defines individual related services terms. The following list represents some of the services that may be appropriate when addressing the emotional and behavioral needs of students with disabilities (refer to 34 *CFR* Section 300.34 for the complete list of individual related services terms):

Medication Monitoring

TOM TORLAKSON
State Superintendent
of Public Instruction

- This document discusses "medication monitoring" as previously defined in Title 2 of the California Code of Regulations under AB 3632.
- The document is intended to assist LEAs in facilitating the transition of services authorized under prior state law to services authorized by the IDEA.

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TOM TORLAKSON
STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

September 13, 2011

Dear County and District Superintendents, Special Education Local Plan Area Directors, Special Education Administrators at County Offices of Education, Charter School Administrators, Principals, and Nonpublic School Directors:

ASSEMBLY BILL 114: MEDICATION MONITORING

Assembly Bill 114 made significant changes to Chapter 26.5 of the California *Government Code* (*GC*) regarding the provision of mental health services to students with disabilities. As a result of AB 114, local educational agencies (LEAs) are responsible for ensuring the provision of related services, including some services previously provided by county mental health agencies (CMHAs) under Chapter 26.5 of the *GC*. As LEAs implement this transition, and as a result of changes in state statute stemming from AB 114, the Individuals with Disabilities Education Act (IDEA) serves as the statutory framework for the provision of related services.

This document is intended to assist LEAs in facilitating the transition of certain services formerly provided by (CMHAs) under state law prior to AB 114, to the LEAs providing services authorized by the IDEA and complying with the requirements therein. To the extent that service provision requirements under the IDEA differ from those formerly specified in Chapter 26.5 of the *GC* prior to AB 114, this document is meant to assist in making that distinction. However, it must be emphasized that a blanket restriction on any particular service would be contradictory to the IDEA. The individualized education program (IEP) team should develop the IEP based on the child's unique needs and include supportive services that are necessary to assist the child in benefitting from special education. Therefore, the IEP team decision about a specific child's eligibility for services under the IDEA must remain the most critical factor.

The changes to Chapter 26.5 of the *GC*, as outlined in AB 114, resulted in the removal of statutory authority for many of the implementing regulations found in Division 9 of Title 2 of the *California Code of Regulations* (*CCR*). "Medication Monitoring" was a service previously provided by (CMHAs) and authorized by Section 60020(f) of Division 9 of Title 2 of the CCR, prior to AB 114:

Exhibit D

Funding Sources

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State Superintendent
of Public Instruction

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STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

September 9, 2011

Dear County and District Superintendents, Special Education Local Plan Area Directors, Special Education Administrators at County Offices, Charter School Administrators, Principals, and Nonpublic School Directors:

This guidance describes funding sources available in 2011-12 to support the provision of related services to students with disabilities.

Assembly Bill 114: Available Funding Sources and Spending Parameter

On June 30, 2011, Assembly Bill 114, Chapter 43, Statutes of 2011 (AB 114) was signed into law. Under AB 114, several sections of Chapter 26.5 of the California *Government Code* (*GC*) were amended or rendered inoperative, thereby ending th state mandate on county mental health agencies to provide mental health services students with disabilities. With the passage of AB 114, it is clear that local educati agencies (LEAs) are now solely responsible for ensuring that students with disabil receive special education and related services, including some services previously arranged for or provided by county mental health agencies. The Budget Act of 201 established four specific funding sources to support the provision of mental health related services. This guidance provides information on each of these fund source well as the purpose, parameters, reporting requirements, and distribution details concerning each source.

The CDE is drafting guidance regarding services that may be paid for with this federal funding.

1. Federal Special Education Local Assistance Funding (Provision 9 of Budget Item Number 6110-161-0890)

The state is distributing $69 million in federal Individuals with Disabilities Education Act (IDEA) funding only for the purpose of providing mental health related services, including out-of-home residential services for emotionally disturbed pupils, required by an IEP pursuant to the IDEA and described by *EC* §56363. The California Department of Education (CDE) is distributing these funds to Special Education Local Plan Areas (SELPAs) on a weighted basis using data available from the California Special Education Management Information System (CASEMIS) as of December 1, 2010

TOM TORLAKSON
State Superintendent
of Public Instruction

Funding Sources

Each SELPA re[illegible] the grant amount and the specific resource codes to use to account for these funds. After CDE receives signed a grant assurance document from the SELPA, the SELPA receives an initial payment equal to 50 percent of the grant award. Subsequent payments to SELPAs shall be made on the basis of documentation that must provide sufficient detail to enable the grantee to establish a link between the services claimed and the student's individualized education program. The grant period for this funding is July 1, 2011 through September 30, 2013. Grant awards were distributed to SELPAs on July 15, 2011.

2. State – Proposition 98 Special Education Local Assistance Funding (Provisions 18 and 26 of Budget Item Number 6110-161-0001)

The state is distributing $249,786,000 in Proposition 98 funding for the purpose of providing mental health related services, including out-of-home residential services for emotionally disturbed pupils, required by the federal IDEA and as described in Section 56363 of the Education Code. The California Department of Education (CDE) is distributing these funds to Special Education Local Plan Areas (SELPAs) on an equal amount per Average Daily Attendance (ADA) reported for the 2011-12 second principal apportionment (P-2).

Note that while this funding is identified as two separate sources in the state budget, it is being distributed to SELPAs as a single apportionment.

These funds are allocated to SELPAs through an apportionment process. CDE anticipates the distribution of these funds by October 1, 2011. SELPAs will receive an initial apportionment of 50% of the appropriated funds on the basis of the 2010-11 P-2 statewide SELPA ADA of 5,942,644.82. An adjustment will be made for the Los Angeles Juvenile Court and Community School SELPA. (The initial rates will be approximately $0.39 per ADA for the Los Angeles Juvenile Court and Community School SELPA and $41.90 per ADA for all other SELPAs.) A second apportionment of 25% of the appropriated funds, also based off of 2010-11 ADA, will be made in spring 2012. In summer 2012, adjustments will be made to reflect the ADA reported for the 2011-12 P-2 and the remaining funds will be apportioned.

The CDE will assign a restricted resource code for these funds. Regular reporting requirements will apply concerning the use of these funds.

3. State – Proposition 98 Special Education Local Assistance Funding for Necessary Small SELPA Extraordinary Cost Pool (Provision 27 of Budget Item Number 6110-161-0001)

The state is distributing $3 million in Proposition 98 funding to administer an extraordinary cost pool associated with providing mental health related services, including out-of-home residential services for emotionally disturbed pupils. These funds are being distributed through the CDE to necessarily small SELPAs (as defined in *EC* §56212). The allocation method of these funds is pending a formal agreement with Department of Finance and Legislative Analyst's Office.

Exhibit D

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State Superintendent
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Proposition 63 funds may be accessed only by mental health agencies. LEAs seeking to serve students through this funding must develop an agreement with their county mental health agency. County mental health agencies not using this funding are required to return it to the state for redistribution to other counties.

Funding Sources

This fund source may work in a similar manner to the NPS extraordinary cost pool for single payment; the necessary small SELPAs would submit an application for additional funds to the CDE and the funds are allocated as reimbursement on the basis of an approved application. This funding is limited to eligible SELPAs and based on actual costs. Specific cost claims would be submitted to the CDE as part of the application for funding. The application submission date is still to be determined.

4. County Mental Health Service Funding– Proposition 63 (Budget Item 4440-295-3085)

The state is allocating $98,586,000 in Proposition 63 funding to provide "Handicapped and Disabled Students I and II, and Seriously Emotionally Disturbed Pupils: Out of State Mental Health Services (AB 3632) to special education students." The budget item language stipulates that these funds shall be used exclusively for the purpose of funding IDEA-related mental health services within a special education pupil's individualized education program during the 2011-12 fiscal year. These funds have been distributed through the California Department of Mental Health to county mental health agencies based on a funding formula determined by the state in consultation with the California Mental Health Directors Association.

The specific allocation formula is based on each county's most recent actual expenditures as reported on the FY 09/10 Medi-Cal Specialty Mental Health Cost Report MH1912 and SB 90 claim for costs incurred in providing mental health service to Special Education Pupils clients, minus Medi-Cal reimbursements.

Pursuant to the budget language, an LEA may develop a Memorandum of Understanding (MOU) or contract with its county mental health agency to access this funding to address the provision of mental health services in pupils' IEPs. In such cases, the LEA shall provide a copy of the MOU or contract to the CDE. The budget language requires that counties shall use the funds for the purpose stated above or, "shall return the funding to the state for reallocation to other counties."

County mental health agencies should have received these funds. If not, check with your county treasurer.

Use of Insurance for Related Services

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State Superintendent
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- Out of pocket expenses, i.e. deductible or copayment amounts (although the LEA may pay the amount the parent would otherwise have to pay, see number 4 below)
- Decrease in lifetime benefits coverage
- Decrease in any other policy benefit
- Increase in premiums
- Cancellation or non-renewal of coverage
- Risk of loss of eligibility for home and community-based waive 300.154[d][2][iii])

3. If an LEA is unable to obtain parental consent for the use of a parent's private insurance when the parents would incur a cost for a specified required to ensure FAPE, the LEA may pay for the service (34 *CFR* 3

4. To avoid financial costs to parents who otherwise would consent to us private insurance, if the parents incur a cost, the LEA may pay the co parent would otherwise have to pay to use their benefits or insurance deductible or co-pay amounts [34 *CFR* 300.154[f][2]]).

Case law has confirmed that private health insurance carriers can reduce, el exclude coverage of services that the Individualized Education Program Tea are required to provide FAPE. *See Chester County Interm. Unit v. Pennsylva Shield,* 896 F.2d 808, 812-814 (3d Cir. 1990). In the Chester County case, a received physical therapy from the LEA as a related service per his IEP. The health insurance through Blue Shield. However, the insurance policy specific payment for "services which the subscriber is entitled to obtain without cost u or state) law." The court found that Blue Shield was entitled, based on the te policy, to decline payment for the physical therapy.

If you have any general questions regarding this subject, please contact the Program Services unit of the Special Education Division by phone at 916-32

Sincerely,

Fred Balcom, Director
Special Education Division

Case law shows that private insurance carriers can exclude coverage for services that are determined by an IEP team as a necessary component for FAPE (Chester County v. Pennsylvania Blue Shield).

Potential changes:

•Senate Bill 946 Steinberg, if passed would require health insurance plans to cover treatment for autism starting on July 1, 2012.

•The U.S. Department of Education released a notice of proposed rulemaking on 9/6/11 seeking to amend IDEA Part B regulations on parental consent to public insurance.

•If these changes are enacted, there would be no need to obtain separate consent prior to seeking to bill/access public insurance benefits.

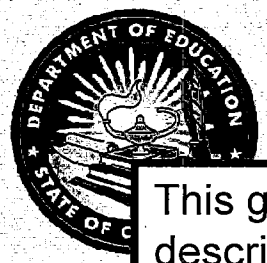
Exhibit D

Exhibit D

TOM TORLAKSON
State Superintendent
of Public Instruction

Questions and Suggestions

- Clarification Questions
- Suggestions for additional guidance that may be needed



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of Public

September 13, 2011

This guidance describes requirements for employing and supervising individuals who provide related services in California public schools.

Not all individuals employed by LEAs to provide related services are included in CTC assignment monitoring.

Dear County and District Superintendents, Mental Health Agency Administrators, and Other Entities Providing Related Services to Special Education Students:

REQUIREMENTS FOR SECURING THE SERVICES OF MENTAL HEALTH PROFESSIONALS TO PROVIDE RELATED SERVICES TO SPECIAL EDUCATION STUDENTS

On June 30, 2011, Assembly Bill 114, Chapter 43, Statutes of 2011 was signe
Under AB 114, several sections of Chapter 26.5 of the California *Government*
(*GC*) were amended or rendered inoperative, thereby, ending the state manda
county mental health agencies to provide mental health services to students w
disabilities. With the passage of AB 114, it is clear that local educational agenc
(LEAs) are now solely responsible for ensuring that students with disabilities re
special education and related services, including some services previously arra
or provided by county mental health agencies. The following information is pro
guide LEAs in employing or contracting for the provision of related services. Th
information has been reviewed by both the California Department of Education
and the California Commission on Teacher Credentialing (CTC) to ensure that
both agencies' interpretation of applicable federal and state law.

All individuals who provide related services must be appropriately licensed or certified per Sec. 3051, Title 5, CCR.

1. **For LEAs directly employing mental health professionals to provid services**

   Many mental health professionals, such as clinical psychologists and m
   and family therapists, are employed to provide services that are not authorized by credentials or other certifications issued by the CTC, and instead are generally licensed by other state agencies such as the Office of Consumer Affairs. In such cases, these individuals would not be included in assignment monitoring conducted by county offices of education (COE) and the CTC. However, LEAs must ensure that such employees possess required licensure or training as established in state law. All individuals employed to provide related

Exhibit D

TOM TORLAKSON
State Superintendent
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Personnel

specific assignments, pleas ignment unit at (916) 322-5038, or by e-mail at cawassignments@ctc.ca.gov.

Supervision

Individuals possessing an Administrative Services Credential are authorized to supervise and evaluate these personnel. Given the specialized nature of the work of mental health professionals, an administrator who has a background in providing related services, such as a person dually-certified in Pupil Personnel Services and Administrative Services, may be particularly well-suited to supervise these personnel, but any holder of an Administrative Services Credential is authorized to supervise mental health professionals employed by an LEA.

In addition, *Education Code* Section 44270.2 allows the holder of a pupil personnel services credential to supervise a pupil personnel service program.

"Any person who administers a pupil personnel program shall hold a services credential with a pupil personnel or administrative specialization."

Employers should note that pupil personnel services credentials do not authorize the holder to evaluate staff. Caution should be used when determining who will supervise and evaluate staff.

LEAs have supervisory responsibilities for all personnel providing related services, including community-based personnel.

2. **For LEAs contracting with community-based mental health professionals to provide related services**

Community-based mental health professionals are broadly defined as any individuals licensed and assigned to provide mental health services that may be self-employed, employed by a private agency, or employed by a public agency such as a county mental health agency. Individuals and entities that are employees, contractors or vendors of these public agencies have been authorized to provide the specific services to which they have been assigned, and that authorization qualifies them to contract directly with LEAs to provide those same services. When contracting with such individuals and entities, LEAs should ensure that they are currently contractors or vendors of the public agencies for the same related services for which the LEA is contracting. Individuals and entities that are not current contractors or vendors of the public agencies described above must hold Nonpublic School (NPS) or Nonpublic Agency (NPA) certification in order to be eligible to provide related services (see below).

Nonpublic Agency Certification

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State Superintendent
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STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

September 13, 2011

This guidance document clarifies when entities providing related services must be certified as nonpublic agencies or schools, and when they do not.

Dear County and District Superintendents, Special Education Local Plan Area Directors, Special Education Administrators at County Offices of Education, Charter School Administrators, Principals, and Nonpublic School Directors:

ASSEMBLY BILL 114: NONPUBLIC AGENCY CERTIFICATION

On June 30, 2011, Assembly Bill 114, Chapter 43, Statutes of 2011, was signed into law. Under AB 114, several sections of Chapter 26.5 of the California *Government Code* (*GC*) were amended or rendered inoperative, thereby ending the state mandate on county mental health agencies to provide mental health services to students with disabilities. With the passage of AB 114, it is clear that local educational agencies (LEAs) are now solely responsible for ensuring that students with disabilities receive special education and related services, including some services previously arranged for or provided by county mental health agencies. As LEAs arrange for the provision of related services, clarification has been requested concerning the

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State Superintendent
of Public Instruction

Nonpublic Agency Certification

arrange for the ... concerning the circumstances under which related service providers must obtain certification as Nonpublic Agencies (NPAs) or Nonpublic Schools (NPSs).

Title 5, Section 3051(a)(4) of the *California Code of Regulations* (*CCR*) establishes that individuals and entities providing related services may be any one of the following:

A. Employees of the school district or county office of education

B. Employed under (NPA or NPS) contract pursuant to California *Education Code* (*EC*) sections 56365–56366

C. Employees, vendors, or contractors of the State Departments of Health Services or Mental Health, or any designated local public health or mental (health) agency

Entities that provide related services must meet one of three criteria.

In the following bullets, options A, B, and C explore whether NPA or NPS certification is required in each of the three scenarios:

- **Option A–Employees of a School District or County Office of Education**

  LEAs may directly employ individuals to provide related services. LEAs must ensure that those individuals hold the appropriate license or credential for their assignments, but such individuals are not required to obtain NPA or NPS certification.

Nonpublic Agency Certification

- **Option B–Nonpublic Schools or Nonpublic Agencies**

  An LEA may contract directly with an entity or individual that is certified as an NPA or NPS to provide related services.

- **Option C–Employees, Vendors, or Contractors of the Department of Mental Health or Designated Local Public Mental Health Agencies**

  An LEA may secure the provision of related services directly from a state or local public mental health agency through a provider that is a direct employee, contractor, or vendor of that agency. NPA or NPS certification is not required. Alternatively, an LEA may secure the provision of related services directly from a contractor or vendor of a state or local public mental health agency. NPA or NPS certification is not required. When conducting its monitoring process, the California Department of Education (CDE) will verify that the LEA has documentation that such contractors or vendors are contractors or vendors of a state or local public mental health agency in the current fiscal year. In addition, LEAs are responsible for ensuring and maintaining documentation that the entities providing related services are qualified pursuant to Sections 3060–30 5 of the *CCR*.

Information on obtaining NPA or NPS Certification is available on the CDE NPS/A C Applications Web page at http://www.cde.ca.gov/sp/se/ds/npsacrtapp.asp, or you ma the Interagency Nonpublic Schools and Agencies Unit, Special Education Division, b 916-327-0141 or by e-mail at npsa@cde.ca.gov.

Relevant portions of Section 3065 of Title 5, *CCR*, describing the staff qualification re for related services, are enclosed with this correspondence.

Please note that LEAs are r, pursuant to Section the *EC*, for any scenario th f this notice.

If you have any general qu e contact the Policy and Program Services Unit of the Speci 6-323-2409, or the Interagency Nonpublic Schools and Ag Division by phone at 916-327-0141.

Sincerely,

Original signed by Fred Balcom. Hard copy of the signed document is available by contacting the Special Education Division's Director's Office at 916-445-4602.

Fred Balcom, Director
Special Education Division

TOM TOR
State Sup
of Public

State law does not require entities that currently contract with a state or local public mental health agency to obtain NPA or NPS certification.

Employers contracting with CMH contractors must secure and maintain specific documentation.

NPA certification is available to private entities with qualified Staff.

Exhibit D

Residential Care for Students with Disabilities

TOM TORLAKSON
State Superintendent
of Public Instruction

- This document outlines LEA responsibilities when contracting for residential care.
- Residential placements that exist as of the date of this letter may be maintained.
- LEAs do not need to seek a waiver before adding residential services to a Master Contract with a California-certified NPS.

CALIFORNIA
DEPARTMENT OF
EDUCATION

TOM TORLAKSON
STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

September 13, 2011

Dear County and District Superintendents, Special Education Local Plan Area Directors, Special Education Administrators at County Offices of Education, Charter School Administrators, Principals, and Nonpublic School Directors:

ASSEMBLY BILL 114: RESIDENTIAL CARE FOR STUDENTS WITH DISABILITIES

On June 30, 2011, Assembly Bill 114, Chapter 43, Sta
Under AB 114, several sections of Chapter 26.5 of th
(*GC*) were amended or rendered inoperative, thereby
county mental health agencies to provide mental hea
disabilities. With the passage of AB 114, it is clear tha
(LEAs) are now solely responsible for ensuring that s
special education and related services, including son
or provided by county mental health agencies. This m
the individualized education program (IEP) team dete
necessary for the student to benefit from his or her ed

The Individuals with Disabilities Education Act (IDEA)
students with disabilities in Section 300.104 of Title 3
Regulations (*CFR*):

> If placement in a public or private residential p
> provide special education and related services
> the program, including non-medical care and r
> no cost to the parents of the child.

For all residential placements of students with disabili
pursuant to an IEP, exist as of the date of this letter, t
necessary contractual agreements to maintain those
the costs associated with the residential care facility i
California-certified nonpublic, nonsectarian school (N
Agreement (ISA), if applicable, or the LEA may also c
care facility. A residential care facility that is currently
to an IEP, who was placed in that facility prior to the d
seek additional certification from the California Department of Education (CDE) at this

- Moving forward, and as of July 1, 2012, LEAs must ensure they contract with residential care providers that are either:
  1. Affiliated with a California-certified NPS
  2. Certified as a NPA <u>or</u>
  3. A Contractor or vendor of mental health.

TOM TORLAKSON
State Superintendent
of Public Instruction

Questions and Suggestions

- Clarification Questions
- Suggestions for additional guidance that may be needed

Exhibit D

TOM TORLAKSON
State Superintendent
of Public Instruction

Next Steps

- To provide input send email to AB114TWG@cde.ca.gov
- Webinar recording and copy of power point presentation will be available at the AB 114 Website: http://www.cde.ca.gov/sp/se/ac/ab114twg.asp

Exhibit D

Mental Health Services FAQ

Frequently asked questions about services previously provided through County Mental Health Agencies for students with Individualized Education Programs

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In 1984 Assembly Bill (AB) 3632 statutorily required a partnership between school districts and county mental health agencies to deliver mental health services to students with individualized education programs (IEPs). In 2011, the California Legislature passed Assembly Bill (AB) 114, which repeals the state mandate on special education and county mental health agencies and eliminates related references to mental health services in California statute. As a result of this new legislation, school districts are solely responsible for ensuring that students with disabilities receive special education and related services to meet their needs according to the Individuals with Disabilities Education Act (IDEA) of 2004.

Given this recent change to state laws, the Frequently Asked Questions (FAQs) below are offered to provide students, parents, educators, and other stakeholders with information about services for students with disabilities that were formerly provided by county mental health agencies.

1. My student's current IEP lists mental health services ("AB 3632" services). Do these services end on July 1, 2011?

No. School districts are responsible for ensuring that students continue to receive their services as documented in their IEPs. The provision of any service does not end until an IEP team determines that the student no longer requires the service. The IEP must then be amended with the consent of the parent, guardian, or other holder of the student's educational rights.

2. My student does not currently have mental health services in his/her IEP, but he/she needs such services. What do I do?

According to state and federal laws and regulations, students must be assessed in all areas related to their suspected disabilities. You may therefore request that your school district assess your student to determine the services that your child may require. Be sure to put this request in writing and save a copy. The school district must respond to your request in 15 days. For more information, contact the Special Education Office in your school district.

3. May services be denied, changed, or limited due to changes in funding?

No. Federal law says that districts must provide a free appropriate public education (FAPE) to students with disabilities identified according to the IDEA. The services noted in your student's IEP must be provided without regard to changes in funding.

4. Does the county mental health agency have a role in providing any of the services listed in my student's IEP? What is the role of the school district in determining this role?

The school district is ultimately responsible for ensuring that all students receive the services noted in their IEPs. Some school districts may contract with county mental health agencies for the provision of some services. Districts may also hire their own professionals, contract with organizations or professionals in the community, or use a combination of approaches to ensure services continue.

5. I have a compliance complaint that was opened in fiscal year 10/11 but that is not yet completed. What is the status of my complaint?

California Department of Education (CDE) Special Education Division (SED) staff will continue to investigate complaints remaining open from the prior fiscal year. According to federal law, the investigator has 60 days to complete an investigation. A report of the investigation findings will be mailed to the complainant and the district.

6. I have a complaint in due process that was opened in fiscal year 10/11, but a decision has not yet been rendered. What is the status of my due process hearing?

If you have a complaint in due process, you should contact the Office of Administrative Hearings (OAH). Please see telephone number and Web site links at the end of this document.

7. What if I have a new complaint related to the mental health services that my student receives?

Contact the special education office of your local school district to discuss the issues. You may also need to convene your student's IEP team and discuss your concerns during an IEP team meeting. If your complaints are not resolved, you may file a request for investigation through the CDE SED Procedural Safeguards Referral Service (PSRS) unit. If you and the school district disagree about the services your student receives, you may also

Exhibit D

request mediation or due process hearings through OAH (again, see telephone numbers and Web site links below).

8. My student has been placed in a residential facility. What will happen with this placement in the new fiscal year?

Your student's IEP team should meet to discuss the appropriate placement or changes in placement, if needed.

9. Should mental health services be included in the IEP and not in a separate document?

Yes. As with all services, the services that were formerly provided by county mental health agencies should be included within the IEP.

10. If I disagree with the results of an assessment obtained by my school district, what should I do?

A parent has the right to an independent educational evaluation (IEE) at public expense if the parent disagrees with an evaluation obtained by the school district. If a parent requests an IEE at public expense, the school district must ensure that it is completed without unnecessary delay. The district may also file a due process complaint to request a hearing to determine the appropriateness of the original evaluation.

11. Which offices do I contact for additional assistance and information?

Start by calling your district special education office and your Special Education Local Plan Area (SELPA). You may also contact the following offices:

- CDE SED, PSRS help line and/or mailbox: 800-926-0648; speceducation@cde.ca.gov
- Office of Administrative Hearings, Special Education Division (Outside Source), phone 916-263-0880
- One of the local California Parent Organizations

For additional information as to California special education, please visit our Web site, and follow the links to special education.

Questions: Special Education Division | specedinfoshare@cde.ca.gov | 916-445-4613

California Department of Education
1430 N Street
Sacramento, CA 95814

Last Reviewed: Monday, August 01, 2011

ONTARIO COMMUNITY FOUNDATION, INC., et al., Plaintiffs and Respondents,
v.
STATE BOARD OF EQUALIZATION, Defendant and Appellant

L.A. No. 31710.

Supreme Court of California
Apr 19, 1984.

SUMMARY

In an action for refunds of sales taxes, the trial court ordered the Board of Equalization to refund to two corporations which had sold their hospitals the sales taxes assessed as to hospital equipment used in rendering medical and nursing services, included in the sales, with interest. Although both hospitals had engaged in certain activities for which they were required to hold seller's permits, the equipment at issue was never used in the course of such activities. The board had relied on Cal. Admin. Code, tit. 18, reg. 1595, subd. (a)(3), which it had promulgated to enunciate the 'unitary business' concept to determine whether a sales is subject to sales tax. (Superior Court of Los Angeles County, Nos. C 334041, C 350447, Jerry Pacht, Judge.)

The Supreme Court affirmed. It held that the sales of the equipment were 'occasional sales' under Rev. & Tax. Code, § 6006.5, subd. (a), and were therefore exempt from sales tax pursuant to Rev. & Tax. Code, § 6367. It held that Rev. & Tax. Code, § 6006.5, was designed expressly to exempt from the sales tax a one-time sale of tangible personal property which is not held or used by a seller in the course of activities for which it is required to hold a seller's permit, and that the liquidation sale of each hospital was such a sale. Further, it held that the administrative regulation relied on by the board abridged the statutory right to a tax exemption for an 'occasional sale,' and was therefore invalid. (Opinion by Richardson, J., [FN*] expressing the unanimous view of the court.)

FN* Retired Associate Justice of the Supreme Court sitting under assignment by the Chairperson of the Judicial Council.

HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b, 1c) Sales and Use Taxes § 16--Sales Tax--Transactions Subject to Tax--Exemptions and Exclusions--Occasional and Liquidation Sales--Sale of Hospital Equipment--Validity of 'Unitary Business' Concept Embodied in Regulation of State Board of Equalization.

The sales of hospital equipment used in rendering medical and nursing services, included in the sales of the entire assets of two hospitals, were 'occasional sales' under Rev. & Tax. Code, § 6006.5, subd. (a), and were therefore exempt from sales tax pursuant to Rev. & Tax. Code, § 6367. Although both hospitals had engaged in certain activities for which they were required to hold seller's permits (Rev. & Tax. Code, § 6066), the hospital equipment at issue was not used in the course of such activities. Nor was the single sale by each hospital of the equipment one of a series of sales which independently might require a permit. Cal. Admin. Code, tit. 18, reg. 1595, subd. (a)(3), which was promulgated by the Board of Equalization to enunciate the 'unitary business' concept in determining whether a sale is subject to sales tax, abridged the statutory right to a tax exemption for an 'occasional sale,' and was therefore invalid.

[See **Cal.Jur.3d,** Sales and Use Taxes, § 6; **Am.Jur.2d,** Sales and Use Taxes, §§ 122, 123.]

(2a, 2b) Sales and Use Taxes § 30--Collection and Enforcement of Sales and Use Taxes--Review of Board of Equalization--Administrative Regulation--Judicial Review.

In an action by taxpayers seeking a refund of a sales tax determined by the Board of Equalization to be due under a regulation promulgated by the board, the standard of review of the regulation was that so long as the board exercised its discretion within the scope of the statute pursuant to which it promulgated the regulation, the reviewing court would not disturb its administrative judgment.

(3) Sales and Use Taxes § 25--Collection and Enforcement of Sales and Use Taxes--Legislative Delegation of Enforcement Duty to Board of Equalization.

The legislative delegation to the Board of Equalization of the duty of enforcing the sales tax law and

of the authority to prescribe and adopt rules and regulations (Rev. & Tax. Code, §§ 7051, 7052) was a proper delegation even though it conferred some degree of discretion on the board.

(4) Administrative Law § 115--Judicial Review--Scope and Extent-- Presumptions; Regularity; Validity of Rules and Regulations.

In determining the proper interpretation of a statute and the validity of an administrative regulation, the administrative agency's construction is entitled to great weight, and if there appears to be a reasonable basis for it, a court will not substitute its judgment for that of the administrative body.

(5a, 5b) Administrative Law § 30--Administrative Actions--Legislation or Rulemaking--Effects and Validity of Rules and Regulations--Necessity for Compliance With Enabling Statute.

Where a statute empowers an administrative agency to adopt regulations, such regulations must be consistent, not in conflict with the statute, and reasonably necessary to effectuate its purpose. The task of a reviewing court in such a case is to decide whether the agency reasonably interpreted the legislative mandate. There is no agency discretion to promulgate a regulation which is inconsistent with the governing statute. It is the obligation of courts to strike down administrative regulations that alter or amend a statute or enlarge or impair its scope.

(6) Administrative Law § 114--Judicial Review--Scope and Extent--Limited Nature--Validity of Administrative Regulations.

In considering a challenge to the validity of administrative regulations, a reviewing court's function is to inquire into the legality of the regulations, not their wisdom.

(7) Sales and Use Taxes § 16--Sales Tax--Transactions Subject to Tax-- Exemptions and Exclusions--Occasional and Liquidation Sales.

Rev. & Tax. Code, § 6006.5, was designed expressly to exempt from the sales tax a one-time sale of tangible personal property which is not held or used by a seller in the course of activities for which it is required to hold a seller's permit.

COUNSEL

George Deukmejian and John K. Van de Kamp, Attorneys General, Edmond B. Mamer and Richard E. Nielsen, Deputy Attorneys General, for Defendant and Appellant.

Ervin, Cohen & Jessup and Horace N. Freedman for Plaintiffs and Respondents.

RICHARDSON, J. [FN*]

FN* Retired Associate Justice of the Supreme Court sitting under assignment by the Chairperson of the Judicial Council.

Defendant, State Board of Equalization (Board), appeals from a judgment in a consolidated action in favor of plaintiffs, Ontario ***814** Community Foundation, Inc. (Ontario) and National Medical Convalescent Hospital of San Diego, Inc. (NMCH). The judgment awards a refund of sales tax assessed on the transfer of hospital furnishings and equipment made as part of the sale of the total assets of hospitals operated by plaintiffs. We agree that such transfers were 'occasional sales' which were exempt from sales tax and affirm the judgment.

The facts are stipulated. Ontario and NMCH respectively operated 99-bed and 39-bed general hospitals in Ontario and Turlock, California. Each plaintiff had a seller's permit issued by the defendant and required by law (Rev. & Tax. Code, § 6066; all further statutory references are to this code) because it (a) operated a food service facility which sold meals to patients and nonpatients, such as hospital visitors and employees, (b) sold miscellaneous personal items from its supply unit, and (c) operated a pharmacy. The food service facility, supply department and pharmacy were all operated at the same location as the hospitals.

During the three years prior to the sale of the hospitals, annual retail sales attributable to the three above mentioned services averaged about 10 percent of the hospitals' annual gross receipts. Of these retail sales, however, the vast majority were pharmacy sales exempt from taxation. (See Cal. Admin. Code, tit. 18, reg. 1591, subd. (a)(1).) Taxable sales amounted to little over 1 percent of each hospital's gross receipts.

The entire assets of Ontario, including the real property on which the hospital was located and the furnishings, machinery and equipment of the hospital,

were sold in 1977 for over $1.7 million, of which $292,051 was for tangible personal property. Of the latter amount, $19,120 was allocable to kitchen and dietary equipment.

The sale of the tangible personal property was not reported as a taxable transaction. The Board, however, determined a sales and use tax deficiency of $17,827 on the transaction. Ontario conceded the $1,147 tax levied upon the kitchen and dietary equipment, but challenged the remaining $16,680 by seeking a refund after paying the tax. (See § 6933.) It later conceded another $229.

NMCH sold the entire assets of its hospital in 1977 for over $1.5 million, of which $264,230 was for tangible personal property. Approximately $4,405 of that amount was for kitchen and dietary equipment. Like Ontario, NMCH did not report the sale as a taxable transaction, and the Board determined a $15,854 tax deficiency. NMCH conceded a $264 tax liability, ***815** attributable to the kitchen and dietary equipment, but has challenged assessment of the balance of the tax.

In each instance the plaintiffs paid the taxes under protest and plaintiffs' actions to recover them were consolidated and heard by the court without a jury. The court found that the sales in question were exempt from tax as 'occasional sales' (see §§ 6006.5, 6367), and entered judgment for plaintiffs for the disputed sums plus interest.

The California sales tax is imposed upon 'retailers' for the privilege of making 'retail sales,' and the tax is measured by the gross receipts from 'retail sales.' (§ 6051.) In 1947 the Legislature expressly exempted from such tax an 'occasional sale' (§ 6367), which it defined as including: 'A sale of property not held or used by a seller in the course of activities for which he is required to hold a seller's permit or permits ..., provided such sale is not one of a series of sales sufficient in number, scope and character to constitute an activity for which he is required to hold a seller's permit ....' (§ 6006.5, subd. (a).)

(1a)The hospital equipment and furnishings sold by plaintiff hospitals were used in rendering medical and nursing services. At no time was such personalty directly or indirectly used by the hospitals in the course of activities for which they were required to hold a seller's permit. Nor was the single sale by each hospital of its equipment and furnishings, in connection with the sale of its entire business and the real property upon which it was located, 'one of a series' of such sales which independently might require a permit under the statute. Accordingly, each hospital sale at issue here clearly would appear to fall within the statutory definition of a tax-exempt 'occasional sale.'

In arguing that the sales tax exemption is inapplicable, however, the Board relies upon its regulation withholding the exemption for an otherwise concededly tax-exempt 'occasional sale' if the seller is a 'unitary business' also engaged in *other* sales which are *not* tax-exempt. (See Cal. Admin. Code, tit. 18, reg. 1595, subd. (a)(3).) The Board seeks to apply the 'unitary business' concept to the hospitals here to tax their otherwise tax-exempt sales because such hospitals also were involved minimally in other activities requiring a seller's permit, namely, cafeteria sales to nonpatients and a small, nonexempt portion of their pharmacy and hospital supply sales, representing in the aggregate a minute fraction of the gross income of each hospital. By reason of its regulation, the Board contends that the one-time sale by each institution of all of its hospital equipment and furnishings does not qualify for the statutory tax exemption applicable thereto. It would thus ***816** read the regulation as being contrary to the apparent import of section 6006.5, thereby depriving each plaintiff of a sales tax exemption for an 'occasional sale,' to wit: a sale of personalty *not* held in the course of activities for which a seller's permit was required, and *not* one of a series of similar sales which independently might require such a permit.

(2a)The standard of our review of the Board's 'unitary business' regulation is clear. (3)The Legislature has delegated to the Board the duty of enforcing the sales tax law and the authority to prescribe and adopt rules and regulations. (*Action Trailer Sales, Inc. v. State Bd. of Equalization* (1975) 54 Cal.App.3d 125, 132 [126 Cal.Rptr. 339]; §§ 7051, 7052.) This delegation is proper even though it confers some degree of discretion on the Board. (2b)So long as this discretion is exercised within the scope of the controlling statute, the administrative judgment will not be disturbed by the courts. (*Action Trailer Sales, supra*, 54 Cal.App.3d at p. 132.) (4)In determining the proper interpretation of a statute and the validity of an administrative regulation, the administrative agency's

construction is entitled to great weight, and if there appears to be a reasonable basis for it, a court will not substitute its judgment for that of the administrative body. (*Id.*, at p. 133; see *Culligan Water Conditioning v. State Bd. of Equalization* (1976) 17 Cal.3d 86, 93 [130 Cal.Rptr. 321, 550 P.2d 593].)

(5a)On the other hand, we have said that 'Where a statute empowers an administrative agency to adopt regulations, such regulations 'must be consistent, not in conflict with the statute, and reasonably necessary to effectuate its purpose.' (*Mooney v. Pickett* (1971) 4 Cal.3d 669, 679 ...; Gov. Code, § 11342.2.) The task of the reviewing court in such a case "is to decide whether the [agency] reasonably interpreted the legislative mandate.' [Citation.]' (*Credit Ins. Gen. Agents Assn.* v. *Payne* (1976) 16 Cal.3d 651, 657 ....) Such a limited scope of review constitutes no judicial interference with the administrative discretion in that aspect of the rulemaking function which requires a high degree of technical skill and expertise. [Citation.] Correspondingly, *there is no agency discretion to promulgate a regulation which is inconsistent with the governing statute.* [¶] We repeat our admonition expressed in *Morris v. Williams* (1967) 67 Cal.2d 733, 737 ...: (6)'Our function is to inquire into the legality of the regulations, not their wisdom .... (5b)Administrative regulations that violate acts of the Legislature are void and no protestations that they are merely an exercise of administrative discretion can sanctify them.' Acknowledging that the interpretation of a statute by one charged with its administration was entitled to great weight, we nonetheless affirmed: "Whatever the force of administrative construction ... final responsibility for the interpretation of the law rests with the courts.' [Citations.] *Administrative* ***817** *regulations that alter or amend the statute* or enlarge *or impair its scope are void and courts not only may, but it is their obligation to* [,] *strike down such regulations.*' (*Id.*, at p. 748.)' (*Woods* v. *Superior Court* (1981) 28 Cal.3d 668, 679 [170 Cal.Rptr. 484, 620 P.2d 1032], italics added.)

(1b)In defining a tax-exempt 'occasional sale,' section 6006.5 does *not* require that such a sale be made by a seller who *otherwise* never has made a taxable sale. The sole focus of the statute is on the nature of the sale under consideration for exemption; while it cannot be one of a series of similar sales, the nonexistence of other, unrelated taxable sales simply is not a condition of exemption from tax under this statute. Rather, the 'unitary business' concept of regulation 1595 - which purports to *add* this condition for tax exemption - is a creation of the Board, adopted almost 30 years after the enactment of the statutory occasional sale exemption and apparently inspired by an opinion of the Court of Appeal rendered shortly before promulgation of that regulation. (See *Hotel Del Coronado Corp. v. State Board of Equalization* (1971) 15 Cal.App.3d 612 [92 Cal.Rptr. 456].) As indicated hereafter (*post*, pp. 820-821), however, that opinion provides no substantial support for the regulation.

Most important, the regulatory restriction imposes upon the availability of a statutory tax exemption conditions which not only are omitted from, but also are at variance with, the statute. Such a regulation must be deemed to 'alter or amend the statute' and 'impair its scope' (see *Woods, supra*, 28 Cal.3d at p. 679), and is void.

Relying on judicial and administrative interpretation of the sales tax law, the Board purports to find consistency between the regulation and the statute. However, most of these interpretations *preceded* the Legislature's adoption of the statutory exemption *and are based on that factor*, and none of them provides any reasonable support for the regulation.

Thus, in *Bigsby v. Johnson* (1941) 18 Cal.2d 860 [118 P.2d 289], we denied a sales tax exemption for an 'incidental and casual' sale by a printer of a piece of printing equipment. We noted that plaintiff was a retailer, that he held and sold the equipment as part of his business operations, and that the plain language of the taxing act made the transaction taxable, even though the sale of used printing equipment was not the 'kind' of sale ordinarily made by him. (*Id.*, at p. 863.) Most significantly, we observed: '*Our statute creates no exemption covering the situation*, and however forceful may be plaintiff's contention that this type of sale should be exempted from the operation of the statute, such arguments must be directed to the legislature rather than to the courts.' (*Ibid.*, italics added.) Several ***818** years later, sections 6006.5 and 6367 were adopted, providing the very statutory exemption lacking in *Bigsby*.

It appears obvious that a case denying a tax exemption because of a lack of statutory authority has little precedential value once the Legislature has explicitly provided such an exemption. Neither can

Bigsby be used to legitimize the Board's still later adoption of a regulation which continues denial of the exemption.

N. W. Pac. R. R. v. St. Bd. of Equalization (Northwestern) (1943) 21 Cal.2d 524 [133 P.2d 400], also relied upon by the Board, is inapposite both for the same and for another reason. Relying on *Bigsby* there, we denied a railroad company an exemption from sales tax for its sale of rolling stock. We noted that the taxpayer sold tangible personal property at retail and had a permit therefor, and that there was no basis *under the existing law* for distinguishing the occasional sale of its equipment from its normal retail sales simply because the former sales were made through a separate department of the company. (*Id.*, at pp. 528-529.) In *Northwestern*, no statute exempted 'occasional sales' from the sales tax. Also relevant to our decision that the sales of rolling stock were taxable were the 'number, scope and character of the transfers' of such stock. There were at least five transfers. We observed: 'Such transfers, and others of a similar nature to follow, may not be regarded as casual or isolated sales.' (*Id.*, at p. 529.) In short, we denied a tax exemption in *Northwestern* primarily because the pertinent statutes provided none. That underlying fact is not obscured by the further circumstance that tax exemption also would have been denied there under the statute *subsequently* enacted because of the *number* of such sales made by the taxpayer. The situation before us differs in both particulars. Here we have both a statutory exemption and a solitary sale. *Northwestern* provides no support for the claim that the Board's regulation - which purports to deny that statutory exemption for one-time sales - is somehow consistent with the statute.

Neither does *Market St. Ry. Co. v. Cal. St. Bd. Equal.* (1955) 137 Cal.App.2d 87 [290 P.2d 20], demonstrate the current validity of *Northwestern's* denial of tax exemption for 'occasional sales,' as argued by the Board here. The implication of that assertion is that because *Market St.* was decided *after* sections 6006.5 and 6367 were enacted in 1947, its denial of tax exemption to the sales involved there is somehow consistent with those statutes. Yet all 900 sales under consideration in *Market St.* occurred in 1944, *before* the enactment of the statutory exemptions. Not only did the *Market St.* court expressly find that the subsequent exemption statutes were *not* applicable to the sales in question (*id.*, at p. 98), but it also declared ***819** that the statutory exemption represented a clear change in our sales tax law, thus implying that a different result would have obtained if the exemption had been in existence at the time of the sales there involved. (*Ibid.*)

Acknowledging that in the interpretation of the tax statutes 'all reasonable doubts must be resolved in favor of the taxpayer [citations],' the *Market St.* court nonetheless observed that 'there is no real doubt' about taxability of the transactions in question under the then applicable law. (137 Cal.App.2d at p. 92.) Commencing its analysis with the fundamental principle that 'Exemptions from taxation must be found in the statute,' the court noted that 'as it read in 1944' the taxing statute imposed a tax on all retailers for the privilege of selling tangible personal property at retail; that taxpayer was a 'retailer'; and that the ultimate, liquidation sale in September 1944 was a "retail sale.' This being so, it follows with almost syllogistic infallibility that this sale was taxable.' (*Id.*, at pp. 96-97.) The court particularly noted that 'in 1944 the California act had no exemption of casual and occasional sales. In 1947 section 6367 was amended so as to exempt occasional sales of tangible personal property from the tax. Market contends that this was a mere codification of existing law. *This is not so.*' (*Id.*, at p. 98, italics added.)

We thus view *Market St.* as clearly acknowledging that the 1947 statute *changed* the law, creating an exemption where there was none before. The case provides no support for the notion that the Board can adopt a regulation which contravenes the statutory change.

Nor is *Sutter Packing Co. v. State Bd. of Equal.* (1956) 139 Cal.App.2d 889 [294 P.2d 1083], more helpful to the Board's position. *Sutter* is the first case we discuss which actually *construed* section 6006.5 to reach its holding. There the taxpayer, a cannery, had a seller's permit for selling used equipment and supplies at retail prior to March 31, 1949. Preparatory to going out of business, the cannery cancelled its retailer's tax permit in April 1949. In June of that year it then sold all of its assets, including furniture, fixtures, machinery and other equipment. In finding the ultimate sale taxable, the *Sutter* court relied on *Market St.*: 'The Market Street Railway case declared that an exemption from taxation must be found in the statute itself, and that if the statute applies to all sales of tangible

personal property by a retailer, the courts cannot say that 'the statute does not apply to this sale by a retailer because of some undisclosed general 'intent.'' (*Id.*, at p. 894.)

The taxability finding in *Sutter* was based on the status of the liquidation sale as "one of a series of sales sufficient in number, scope and character ***820** to constitute an activity requiring the holding of a seller's permit.'' (139 Cal.App.2d at p. 895.) Indeed, the court observed that 'it may be said that Sutter was conducting a side line of selling used equipment and certain other supplies requiring such permit,' and the fact that the last of such sales eliminated the possibility of future similar sales did not change that fact. (*Ibid.*) Taxability of a sale in such a series is a foregone conclusion under section 6006.5. It is noteworthy that the *Sutter* court clearly implied that the sale *would have been* tax exempt under the first portion of section 6006.5, subdivision (a), because the personalty sold was not held in the course of activities requiring a seller's permit, if not disqualified under the 'one of a series' language. (*Ibid.*) *Sutter* provides no basis for the 'unitary business' concept of the Board's subsequent regulation which eliminates the exemption for sales which would qualify under *both* portions of the 'occasional sale' statute.

The Board's effort to construct from earlier cases a foundation for its adoption of the 'unitary business' concept in regulation 1595 culminates in its reliance upon *Hotel Del Coronado Corp. v. State Board of Equalization, supra,* 15 Cal.App.3d 612. There, taxpayer had acquired a hotel business in 1960 and, in connection with a major remodeling project, commenced a series of sales of fixtures, furniture and equipment from a 'salvage department' which it had established for that purpose, first acquiring the necessary seller's permit. In 1963, taxpayer sold the entire business, including all the tangible personal property used therein. In contesting taxpayer's claim to an exemption from sales tax for the liquidation sale, the Board relied upon the clear language of section 6006.5 denying exempt status *both* to a sale of tangible personal property 'used in the course of an activity requiring the holding of a seller's permit' *and* to any sale which was 'one of a series of sales' independently requiring such a permit. (*Id.*, at p. 619.)

In denying the exemption the court concentrated on the latter ground. It first cited precedent holding: 'the fact alone that the last sale made was made in liquidation of a business is not such a distinction in the nature of the sale as to warrant an exemption if it would otherwise have been considered part of a series of sales sufficient in number, scope and character to constitute an activity requiring a seller's permit and subjecting it to the tax. [Citations.]' (*Ibid.*) Continuing to focus on the serial nature of the taxpayer's sales, the court also observed: 'It is not required that the principal business activity of the taxpayer shall involve making retail sales of tangible personal property, if, in fact, the retail sales of tangible personal property made by the taxpayer are sufficient in number, scope and character to make ***821** the taxpayer a retailer under the provisions of the Revenue and Taxation Code. [Citations.]' (*Id.*, at pp. 619-620.)

The court concluded: 'In the case at bench, Hotel was engaged in the activity of making numerous sales at retail, and was, therefore, required to hold a retailer's permit. The property which was sold was held in an activity which required the holding of a seller's permit. Since section 6006.5 requires, in order to qualify for an exemption as an occasional sale, that the property sold not be held in an activity which required a seller's permit, the sale here under consideration was not exempt from taxation. Furthermore, the record discloses that the items of capital assets which were sold during the months prior to the sale here under consideration were of the same type of capital assets which were sold in the questioned sale. The prior sales exceeded two in number (§ 6019) which resulted in Hotel being deemed a retailer, thus requiring it to hold a seller's permit. The occasional [sale] exemption is not available if the sale in question was *one of a series of sales* sufficient in number (here, 12 salvage sales ...), scope and character to require the holding of a seller's permit. Therefore, the occasional sale exemption was not available to Hotel, and the sale in question was properly taxed.' (*Id.*, at p. 620, italics added.)

While not without ambiguity, *Hotel Del Coronado* suggests that the operative fact which rendered the occasional sale tax exemption unavailable to the taxpayer there was the serial nature of the 12 salvage sales in which it had been engaged prior to the final liquidation sale. The court's analysis concentrated on that factor; indeed, its statement: - 'The property which was sold was held in an activity which required the holding of a seller's permit' (15 Cal.App.3d at p. 620) - may be interpreted as meaning only that en-

gaging in the series of salvage sales itself, culminating in the liquidation sale, was the 'activity' which required the permit and rendered the last sale taxable. (See *id.*, at p. 618.) Interpreting that allusion instead as an attempt to tie the final liquidation sale to the taxpayer's unrelated but concededly taxable bar and restaurant sales - and thus to serve as support for the subsequently promulgated 'unitary business' concept as an alternative basis for justifying taxability - is unwarranted. The latter interpretation has no basis in the statutory tax exemption and would tend to undermine rather than implement its goal. In addition, of course, such supposed alternative ground was unnecessary to the court's finding of taxability in view of the number, scope and character of salvage sales of which the liquidation sale was the last.

As read by the Board, regulation 1595, subdivision (a)(3), clearly conflicts with section 6006.5, subdivision (a), because the former disqualifies ***822** from tax exemption sales which would otherwise be exempt under the latter any time the seller is a so-called 'unitary business' also engaged in some nonexempt sales. For that reason alone, the regulation is invalid and cannot be used to deny plaintiffs their tax exemption.

In addition, however, we discern that a subsequent portion of the same regulation *also* would exempt the sales at issue from sales tax. For even if it is assumed, arguendo, that each hospital's sale here would properly be denied the exemption under subdivision (a)(3) of regulation 1595, it would also seem quite clear that subdivision (d) of the regulation *excepts* such sale from that denial. The latter provision declares, in relevant part: 'A person engaged in a service enterprise is not liable for sales tax measured by his receipts from a retail sale of equipment used in the conduct of the service enterprise' even if the sale follows a series of trade-ins, and provided the sale is not preceded by two or more substantial similar sales within a one-year period. It is clear that each hospital here *was* 'engaged in a service enterprise' and that the equipment sold *was* 'used in the conduct of the service enterprise,' so that the sales are not taxable under the express exception language of subdivision (d). (See Cal. Admin. Code, tit. 18, regs. 1501, 1503, subd. (a)(1).) Thus, even if regulation 1595 is found to be consistent with section 6006.5 and therefore valid - contrary to our conclusion - plaintiffs' sales still would be tax-exempt under subdivision (d) of the regulation.

A consideration of but one of the consequences of the Board's interpretation of the sales tax laws in this context demonstrates the unsound and arbitrary nature of that interpretation. Apparently, under the Board's view, a hospital could sell all of its equipment and furnishings *without* incurring the sales tax imposed here if it simply eliminated the sale of cafeteria meals and of nonprescription medicines and supplies to *nonpatients*. (See Cal. Admin. Code, tit. 18, regs. 1503, subd. (a), 1591, subds. (a)(1), (a)(3), 1603, subd. (1).) Because, instead, the hospitals here accommodated nonpatients by making a small number of taxable sales to them, it is asserted that they must therefore pay not only the few hundred dollars sales tax attributable to the sale of equipment used in those sales - which hospitals concede - but also in excess of $15,000 each in tax on the *otherwise exempt* hospital equipment. Such a statutory construction has the tail wagging the dog.

The Board's attempt to reconcile regulation 1595 with section 6006.5 is unpersuasive. (7)The statute was designed expressly to exempt from the sales tax a one-time sale of tangible personal property which is not held or used by a seller in the course of activities for which it is required to hold a ***823** seller's permit. (1c)The liquidation sale of each hospital here was such a sale. Because it abridges the taxpayer's statutory right to a tax exemption for an 'occasional sale,' the regulation is invalid.

The judgment is affirmed.

Bird, C. J., Mosk, J., Kaus, J., Broussard, J., Reynoso, J., and Grodin, J., concurred.

Appellant's petition for a rehearing was denied June 13, 1984. ***824**

Cal.
Ontario Community Foundations, Inc. v. State Bd. of Equalization
35 Cal.3d 811, 678 P.2d 378, 201 Cal.Rptr. 165

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H

MARION J. WOODS, as Director, etc., Petitioner,
v.
THE SUPERIOR COURT OF BUTTE COUNTY, Respondent; JULIA SEIBERT et al., Real Parties in Interest

S.F. No. 24152.

Supreme Court of California
Jan 8, 1981.

SUMMARY

In an administrative mandamus proceeding by public social service applicants who sought review of a decision of the Director of the Department of Social Services denying them relocation assistance, the trial court overruled the director's demurrer. The applicants had been denied assistance by a county department of social welfare, and, after a fair hearing requested by the applicants, the director had denied their claims on the ground that departmental regulations covering "nonrecurring special needs" do not authorize expenditure of housing relocation funds.

The Supreme Court denied the petition of the director for a writ of mandate and/or prohibition by which he sought to restrain further trial court proceedings. The court held that the fact that one of the issues in the "fair hearing" involved an attack on the validity of administrative regulations did not transform the essentially adjudicatory determination into a "quasi-legislative" one so as to preclude judicial review by administrative mandamus. The proceeding was adjudicatory in nature, the court held, because it involved a determination by the agency of what the facts were in relation to specific rights or interests. The court further held that interested persons who are not entitled to "fair hearings" because they are neither applicants for, nor recipients of, public social service benefits, and who otherwise have standing to complain, may challenge invalid regulations by mandamus pursuant to Code Civ. Proc., § 1085, or by action for declaratory relief pursuant to Code Civ. Proc., § 1060. (Opinion by Richardson, J., with Bird, C. J., Tobriner, Mosk, Clark and Newman, JJ., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1) Mandamus and Prohibition § 60--Mandamus--Petition or Affidavit--Form.

If a proper basis for issuance of mandamus is alleged, it is unimportant that the plaintiff's pleading is not in form a petition for mandamus.

(2) Administrative Law § 99--Judicial Review and Relief--Methods-- Administrative Mandamus--Relationship to Traditional Mandamus.

Mandamus pursuant to Code Civ. Proc., § 1094.5, commonly denominated "administrative" mandamus, is mandamus still. It is not possessed of a separate and distinctive legal personality. It is not a remedy removed from the general law of mandamus or exempted from its established principles, requirements and limitations. The full panoply of rules applicable to "ordinary" mandamus applies to "administrative" mandamus proceedings except where modified by statute.

(3) Administrative Law § 100--Judicial Review and Relief--Methods-- Administrative Mandamus--Availability of Remedy--When Validity of Administrative Regulation Is Challenged--Welfare Regulations.

In an administrative mandamus proceeding pursuant to Code Civ. Proc., § 1094.5, by persons evicted from apartments declared unfit for habitation by a city, who sought review of a decision of the Director of the Department of Social Services denying them relocation assistance on the basis of an assertedly invalid administrative regulation, the trial court properly overruled the director's demurrer to the petition, where the petitioners had, on denial of their application by the county department of social welfare, sought and obtained a "fair hearing" pursuant to Welf. & Inst. Code, §§ 10950-10965, and on receipt of the director's final decision rejecting their applications, had timely filed their petition for administrative mandamus, as directed by Welf. & Inst. Code, § 10962. The fact that one of the issues in the "fair hearing" involved an attack on the validity of administrative regulations did not transform the essentially adjudicatory determination into a "quasi-legislative" one so as to preclude review by administrative mandamus. The hearing was "a proceeding in which by law a hearing is required to

be given, evidence is required to be taken and discretion in the determination of facts is vested in the inferior tribunal," within the meaning of Code Civ. Proc., § 1094.5, subd. (a).
[See **Cal.Jur.3d,** Public Aid and Welfare, § 42; **Am.Jur.2d,** Welfare Laws, § 109.]
(4) Administrative Law § 100--Judicial Review and Relief--Methods-- Administrative Mandamus--Availability of Remedy--When Validity of Administrative Regulation Is Challenged--Welfare Regulations.

An unsuccessful applicant for welfare benefits may contest the validity of a regulation which mandates the denial of his application both in the "fair hearing" provided by Welf. & Inst. Code, § 10950, and in the subsequent judicial review under Code Civ. Proc., § 1094.5. (Disapproving language in *Rosas v. Montgomery* (1970) 10 Cal.App.3d 77, 86 [88 Cal.Rptr. 907] to the extent it may be interpreted as approval of Code Civ. Proc., § 1094.5, review of regulations which have not been applied to applicants within specific factual settings.)

(5) Administrative Law § 100--Judicial Review and Relief--Methods-- Administrative Mandamus--Availability of Remedy--When Validity of Administrative Regulation Is Challenged.

The validity of an administrative regulation, in whole or in part, as applied to a petitioner in an administrative mandamus proceeding, may be challenged therein by that petitioner where the basis of the challenge is that the regulation or some portion thereof is not a reasonable interpretation of the statute and is therefore void. "Abuse of discretion" within the meaning of Code Civ. Proc., § 1094.5, is established if the administrative agency has not proceeded in the manner required by law. Proceeding pursuant to an invalid regulation is not proceeding in the manner required by law.

(6) Administrative Law § 115--Judicial Review--Scope and Extent-- Presumptions; Regularity; Validity of Rules and Regulations.

Where a statute empowers an administrative agency to adopt regulations, such regulations must be consistent, not in conflict with the statute, and reasonably necessary to effectuate its purpose. The task of a reviewing court in such a case is to decide whether the agency reasonably interpreted the legislative mandate. Such a limited scope of review constitutes no judicial interference with the administrative discretion in that aspect of the rule-making function which requires a high degree of technical skill and expertise. There is no agency discretion to promulgate a regulation which is inconsistent with the governing statute.

(7) Administrative Law § 100--Judicial Review and Relief--Methods-- Administrative Mandamus--Availability of Remedy--When Validity of Administrative Regulation Is Challenged--Welfare Regulations.

Invalid regulations promulgated by the Department of Social Services need not be applied or enforced in statutory "fair hearings," and if they are, judicial review may be invoked by "administrative" mandamus pursuant to Code Civ. Proc., § 1094.5 (Welf. & Inst. Code, § 10962). Furthermore, interested persons who are not entitled to such "fair hearings" because they are neither applicants for, nor recipients of, public social service benefits, and who otherwise have standing to complain, still may challenge invalid regulations by mandamus pursuant to Code Civ. Proc., § 1085, or by action for declaratory relief pursuant to Code Civ. Proc., § 1060 (Gov. Code, § 11350).

COUNSEL

George Deukmejian, Attorney General, Thomas E. Warriner, N. Eugene Hill and Richard M. Skinner, Deputy Attorneys General, for Petitioner.

No appearance for Respondent.

Daniel L. Siegel, Michael R. Bush and Alan Lieberman for Real Parties in Interest

Andrea Saltzman, William Marlin, Phyllis E. Andelin and Thomas W. Pulliam, Jr., as Amici Curiae on behalf of Real Parties in Interest.

Victoria J. De Goff as Amicus Curiae.

RICHARDSON, J.

We have concluded that a decision of the Director (petitioner) of the Department of Social Services denying benefits to ***672** real parties in interest below (applicants) pursuant to an assertedly invalid regulation may be reviewed by administrative mandamus. (Code Civ. Proc., § 1094.5; unless otherwise indicated subsequent statutory references are to this code.)

Accordingly, petitioner's demurrer to applicants' petition for such writ was properly overruled, and his petition for mandate and/or prohibition to restrain further trial court proceedings will be denied.

In reviewing this matter we reaffirm our traditional reluctance to interpose prerogative writ review of rulings on pleadings. (*State of California v. Superior Court* (1974) 12 Cal.3d 237, 243, fn. 3 [115 Cal.Rptr. 497, 524 P.2d 1281]; *Babb v. Superior Court* (1971) 3 Cal.3d 841, 851 [92 Cal.Rptr. 179, 479 P.2d 379].) We are persuaded, however, that the procedural validity herein presented is an important and continuing issue in California administrative practice fully meriting our attention.

Procedural Posture

According to factual allegations in the petition, applicants were required to vacate apartment dwellings occupied by them as tenants after the City of Oroville declared them to be dangerous and unfit for human habitation. Applicants thereupon unsuccessfully applied to the Butte County Department of Social Welfare (county) for funds to relocate. Thereafter, pursuant to Welfare and Institutions Code section 10950, applicants requested and received a "fair hearing" before an appropriate officer of that department for the purpose of challenging county's action. Following the hearing, during which applicants presented testimony and arguments, petitioner denied their claims on the ground that departmental regulations covering "non-recurring special needs" do not authorize expenditure of housing relocation funds.

Seeking to compel petitioner to set aside his decision and to afford them relief, applicants petitioned the Superior Court of Butte County for a writ of mandamus pursuant to section 1094.5, claiming that the departmental regulations violated federal and state law. (See 42 U.S.C. § 606(e); Welf. & Inst. Code, § 11450, subd. (d).)

Petitioner demurred to applicants' petition, contending that the appropriate method of challenging the validity of a departmental regulation was either by petition for "ordinary" mandamus under *673section 1085 or by an action for declaratory relief pursuant to section 1060. Following the overruling of his demurrer petitioner here seeks an extraordinary writ to annul the ruling.

Judicial Interpretation of the Applicable Statutes

Initially, we note that a demurrer must be overruled if the moving party has alleged facts entitling him to some form of relief. (1) More specifically, we have said that if a proper basis for issuance of mandamus is alleged, "it is unimportant that plaintiff's pleading was not in form a petition for mandamus. ..." (*Boren v. State Personnel Board* (1951) 37 Cal.2d 634, 638 [234 P.2d 981]; see also, *Anton* v. *San Antonio Community Hosp.* (1977) 19 Cal.3d 802, 813-814 [140 Cal.Rptr. 442, 567 P.2d 1162] [proceeding brought pursuant to § 1085 properly treated as one brought pursuant to § 1094.5].) Here, petitioner apparently conceding that applicants' factual allegations would state a cause of action for issuance of a writ of mandamus pursuant to section 1085 (rather than § 1094.5), the propriety of the trial court's order overruling petitioner's demurrer becomes even clearer.

Section 1094.5, subdivision (a), provides as follows: "Where the writ is issued for the purpose of inquiring into the validity of any final administrative order or decision made as the result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken and discretion in the determination of facts is vested in the inferior tribunal, corporation, board or officer, the case shall be heard by the court sitting without a jury. All or part of the record of the proceedings before the inferior tribunal, corporation, board or officer may be filed with the petition, may be filed with respondent's points and authorities or may be ordered to be filed by the court. If the expense of preparing all or any part of the record has been borne by the prevailing party, such expense shall be taxable as costs." When the three elements of hearing, evidence, and discretion are found to be present, "by the very terms of the statute [§ 1094.5, subd. (a)], the procedure there set forth is to be utilized in all cases in which review of a final adjudicatory order is sought by mandate. ..." (*Anton v. San Antonio Community Hosp., supra*, at p. 814, fns. omitted.)

(2) Of course, mandamus pursuant to section 1094.5, commonly denominated "administrative" mandamus, is mandamus still. It is not possessed of "a separate and distinctive legal personality. It is not a *674 remedy removed from the general law of mandamus or exempted from the latter's established principles, requirements and limitations." (*Grant v. Board of Medical Examiners* (1965) 232 Cal.App.2d 820, 826 [43 Cal.Rptr. 270]; see *Anton v. San Antonio*

Community Hosp., supra, 19 Cal.3d at p. 814.) The full panoply of rules applicable to "ordinary" mandamus applies to "administrative" mandamus proceedings, except where modified by statute. (See 5 Witkin, Cal. Procedure (2d ed. 1971) Extraordinary Writs, § 213, p. 3970; Cal. Administrative Mandamus (Cont.Ed.Bar 1966) § 1.5, p. 7.) (3) Because applicants are conceded to have stated a cause of action for some form of extraordinary relief, petitioner's demurrer properly was overruled.

More fundamentally, however, the specific extraordinary relief sought by applicants here - a writ of mandamus pursuant to section 1094.5 - is the proper means for review of an adjudicatory decision of the Department of Social Services which is alleged to be invalid because it is based upon an invalid regulation. The propriety of such procedure is grounded upon two statutory footings - sections 10950-10965 of the Welfare and Institutions Code, containing the manner for assertion of entitlement to public social service benefits, and section 1094.5 itself.

Several sections of the Welfare and Institutions Code are pertinent. Section 10950 provides in relevant part: "If any applicant for ... public social services is dissatisfied with any action of the county department relating to his application ... he shall, ... upon filing a request with the State Department of Social Services ..., be accorded an opportunity for a fair hearing." The "fair hearing," by virtue of section 10953 of the code, is to be conducted by the director of the department, by the department's administrative adviser, by a referee employed by the department or, in certain cases, by a representative of the Office of Administrative Hearings, each acting with all the powers and authority conferred upon the head of the department. (*Id.*, § 10954.) Other sections of this code provide for the procedural details of the hearing. (*Id.*, §§ 10955-10960.) The statutes impose no limitation, factual or legal, upon the issues which may be raised in the "fair hearing."

Section 10962 of the Welfare and Institutions Code explicitly provides for judicial review of the director's final decision in the following manner: "The applicant ..., within one year after receiving notice of the director's final decision, may file a petition with the superior court, under the provisions of Section 1094.5 of the Code of Civil Procedure, ***675** praying for a review of the entire proceedings in the matter, upon questions of law involved in the case. Such review, if granted, shall be the exclusive remedy available to the applicant ... for review of the director's decision. [¶] ... The applicant ... shall be entitled to reasonable attorney's fees and costs, if he obtains a decision in his favor." Significantly, the judicial review contemplated is "of the entire proceedings," including, of course, "questions of law."

Applicants have fully complied with the requirements of this statutory scheme in asserting their claims for social service benefits: They applied to the county for such benefits; upon denial of their applications, they sought and obtained a "fair hearing"; and upon receipt of the director's final decision rejecting their applications, they timely filed in the superior court a petition for section 1094.5 mandamus, as directed by Welfare and Institutions Code section 10962.

Quite apart from the specific authorization of Welfare and Institutions Code section 10962, we have declared as a general principle: "Since the enactment of section 1094.5 of the Code of Civil Procedure, it is no longer open to question that in this state the writ of mandamus is appropriate 'for the purpose of inquiring into the validity of any final administrative order or decision made as the result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken and discretion in the determination of facts is vested in the inferior tribunal ....'" (*Boren v. State Personnel Board, supra*, 37 Cal.2d at p. 637.) The scope of the proceeding is contemplated by section 1094.5, subdivision (b): "The inquiry in such a case shall extend to the questions whether the [administrative agency] has proceeded without, or in excess of jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion. Abuse of discretion is established if the [agency] has not proceeded in the manner required by law, ..."

The Contentions and the Decisional Law

Petitioner argues, initially, that although routinely it may be proper to review adjudicatory decisions by a section 1094.5 proceeding, the absence of any substantial factual dispute renders such a proceeding inappropriate in the present matter. Petitioner notes that the parties agree that the regulations in question preclude the relief sought by applicants on the facts of their respective cases. Rather, it is the asserted ***676**

invalidity of the regulations themselves which is the essential basis for applicants' claims. Because the *promulgation* of that regulation was a "quasi-legislative" as opposed to "quasi-judicial" (or adjudicatory) function, petitioner urges that a review by administrative mandamus is inappropriate, and that applicants' remedy is limited to "ordinary" mandamus or declaratory relief.

In so contending, however, petitioner ignores the fact that applicants' claims were denied in an adjudicatory hearing. Nor does the fact that one of the issues involved an attack on the validity of administrative regulations transform an essentially adjudicatory determination into a "quasi-legislative" one. The "fair hearing" in which applicants' request for assistance was denied was, manifestly, "a proceeding in which by law a hearing is required to be given, evidence is required to be taken and discretion in the determination of facts is vested in the inferior tribunal, ..." (Code Civ. Proc., § 1094.5, subd. (a).) The proceeding was adjudicatory in nature because it involved "a determination by the agency of what the facts are in relation to specific private rights or interests." (Cal. Administrative Mandamus, *supra*, § 2.2, p. 10; see *Wulzen v. Board of Supervisors* (1894) 101 Cal. 15, 24 [35 P. 353].) It is readily apparent that applicants' claims are predicated upon the existence of facts which are peculiar to them: notice to quit specific dangerous and unfit rental housing, request for relocation assistance, and denial of assistance by the county. The assertion of such claims places in issue the validity of the regulations pursuant to which relief was denied them. This does not immunize their case from the clear statutory direction which gives them section 1094.5 review of that denial as their "exclusive remedy." (Welf. & Inst. Code, § 10962.)

Petitioner emphasizes the well established "critical distinction involved in judicial review of quasi-legislative and quasi-adjudicative administrative acts," and relies upon our analysis in *Strumsky v. San Diego County Employees Retirement Assn.* (1974) 11 Cal.3d 28, 34-35, footnote 2 [112 Cal.Rptr. 805, 520 P.2d 29], wherein we said: "Generally speaking, a legislative action is the formulation of a rule to be applied to all future cases, while an adjudicatory act involves the actual application of such a rule to a specific set of existing facts." (See also *Wulzen v. Board of Supervisors, supra*, 101 Cal. at p. 24; Cal. Administrative Mandamus, *supra*, § 2.8, p. 17.) Our review of the record convinces us that the case involves the latter category within the *Strumsky* formulation. Accordingly, contrary to petitioner's assertions, *677 neither *Pitts v. Perluss* (1962) 58 Cal.2d 824 [27 Cal.Rptr. 19, 377 P.2d 83], nor *Brock v. Superior Court* (1952) 109 Cal.App.2d 594 [241 P.2d 283] constitute useful precedent. Each of these cases involved "quasi-legislative" determinations for which section 1094.5 review was disallowed.

(4) From the foregoing we conclude that an unsuccessful applicant for welfare benefits may contest the validity of a regulation which mandates the denial of his application both in the "fair hearing" provided by section 10950 and in the subsequent judicial review under section 1094.5. (Welf. & Inst. Code, § 10962; *Verdugo Hills Hospital, Inc. v. Department of Health* (1979) 88 Cal.App.3d 957 [152 Cal.Rptr. 263]; *Ross Gen. Hosp., Inc. v. Lackner* (1978) 83 Cal.App.3d 346 [147 Cal.Rptr. 801]; *Rosas v. Montgomery* (1970) 10 Cal.App.3d 77 [88 Cal.Rptr. 907, 43 A.L.R.3d 537]; see also *Repko v. Carleson* (1975) 48 Cal.App.3d 249 [122 Cal.Rptr. 29]; 5 Witkin, Cal. Procedure, *supra*, Extraordinary Writs, § 215, p. 3972; Cal. Administrative Mandamus, *supra*, § 2.9, p. 19.)

In *Rosas, supra*, 10 Cal.App.3d 77, a welfare applicant who was denied public assistance pursuant to a departmental regulation which excluded alcoholism as an "impairment" qualifying a person for such benefits sought to invalidate the regulation on the ground that it was an unreasonable interpretation of the governing statute. Having failed to obtain relief in the administrative "fair hearing," applicant "was entitled to [seek]" section 1094.5 relief. (10 Cal.App.3d at p. 86.) The *Rosas* court invalidated the regulation in part and concluded that the director's application of the invalid regulation was not proceeding "in the manner required by law." (Code Civ. Proc., § 1094.5, subd. (b).) (To the extent language in *Rosas* may be interpreted as approval of § 1094.5 review of regulations which have *not* been applied to applicants within specific factual settings (see 10 Cal.App.3d at p. 86), such language is disapproved.)

The *Rosas* reasoning and result were applied in *Ross, supra*, 83 Cal.App.3d 346, in which an applicant for exemption from new Health and Safety Code requirements was denied relief under a departmental regulation. Applicant sought and was granted section 1094.5 review of the administrative determination in

the superior court. Upon appeal, the court cited *Rosas* for its holding that "the validity of [the] regulations as applied to the situation of the case at bench was placed in issue by ***678** [applicant's] petition for administrative mandate." (*Id.*, at p. 351.) It thereupon proceeded to find the regulation invalid because, "as applied to the fact situation here presented the regulation is contrary to the statute. ..." (*Ibid.*)

The reasoning of this line of cases was recently summarized in *Verdugo Hills, supra*, 88 Cal.App.3d 957: (5) "The validity of an administrative regulation, in whole or in part, as applied to a petitioner in an administrative mandamus proceeding, may be challenged therein by that petitioner where the basis of the challenge is that the regulation or some portion thereof is not a reasonable interpretation of the statute ... and is therefore void." (*Id.*, at pp. 962-963.) *Verdugo Hills* noted that "abuse of discretion" under section 1094.5 is established if "the administrative agency has not proceeded in the manner required by law. Proceeding pursuant to an invalid regulation is not proceeding in the manner required by law." (*Id.*, at p. 963.)

The *Verdugo Hills* rationale is squarely applicable to the facts before us. Applicants may seek review of petitioner's decision denying them benefits while simultaneously challenging the validity of the regulations in question. If the trial court should find that the regulations are invalid as applied to applicants, it may grant them relief for petitioner's "abuse of discretion" in applying invalid regulations. Neither law nor logic should compel any different result.

We are unpersuaded by the force of the related objections to section 1094.5 review advanced by petitioner, namely, that (1) the "wrong" standard of review necessarily will be applied to the administrative promulgation of the regulation, and (2) an inadequate "record" is generated in the "fair hearing" required by section 10950 of the Welfare and Institutions Code.

It is true that the judicial review of an administrator's "quasi-legislative" conduct traditionally has been limited to a determination of whether such action has been "arbitrary, capricious, or entirely lacking in evidentiary support, or whether he has failed to follow the procedure and give the notices required by law." (*Brock v. Superior Court, supra*, 109 Cal.App.2d at p. 605.) Petitioner asserts that this contrasts sharply with section 1094.5, subdivision (c) which requires entirely different standards of review - "weight of the evidence" and "substantial evidence" - in determining whether an "abuse of discretion" exists. However, ***679** subdivision (c) specifically relates only to cases in which abuse of discretion is claimed to result from the fact that the administrator's "findings are not supported by the evidence. ..." It does not purport to allude to situations, such as that before us, in which the abuse of discretion is claimed to result from an administrator's failure to proceed "in the manner required by law." (*Id.*, subd. (b).) Nor should it.

The proper scope of a court's review is determined by the task before it. (6) Where a statute empowers an administrative agency to adopt regulations, such regulations "must be consistent, not in conflict with the statute, and reasonably necessary to effectuate its purpose." (*Mooney v. Pickett* (1971) 4 Cal.3d 669, 679 [94 Cal.Rptr. 279, 483 P.2d 1231]; Gov. Code, § 11342.2.) The task of the reviewing court in such a case "'is to decide whether the [agency] reasonably interpreted the legislative mandate.' [Citation.]" (*Credit Ins. Gen. Agents Assn. v. Payne* (1976) 16 Cal.3d 651, 657 [128 Cal.Rptr. 881, 547 P.2d 993].) Such a limited scope of review constitutes no judicial interference with the administrative discretion in that aspect of the rulemaking function which requires a high degree of technical skill and expertise. (See *Ray v. Parker* (1940) 15 Cal.2d 275, 310-311 [101 P.2d 665].) Correspondingly, there is no agency discretion to promulgate a regulation which is inconsistent with the governing statute.

We repeat our admonition expressed in *Morris v. Williams* (1967) 67 Cal.2d 733, 737 [63 Cal.Rptr. 689, 433 P.2d 697]: "Our function is to inquire into the legality of the regulations, not their wisdom. ... Administrative regulations that violate acts of the Legislature are void and no protestations that they are merely an exercise of administrative discretion can sanctify them." Acknowledging that the interpretation of a statute by one charged with its administration was entitled to great weight, we nonetheless affirmed: "'Whatever the force of administrative construction ... final responsibility for the interpretation of the law rests with the courts.' [Citations.] Administrative regulations that alter or amend the statute or enlarge or impair its scope are void and courts not only may, but it is their obligation to [,] strike down such regulations." (*Id.*, at p. 748.)

Similarly, the limited challenge herein presented does not involve the adequacy of the administrative record. (See *Transcentury Properties, Inc. v. State of California* (1974) 41 Cal.App.3d 835, 842 [116 Cal.Rptr. 487]; cf., ***680***State of California v. Superior Court, supra*, 12 Cal.3d at p. 256.) We do not suggest, of course, that augmentation of an administrative record would not be available under the Code of Civil Procedure in a case requiring it. (See Cal. Administrative Mandamus, *supra*, § 13.20, pp. 230-231; 5 Witkin, Cal. Procedure, *supra*, Extraordinary Writs, § 213, p. 3969.) But ours is not such a case. Neither the state of the record nor the statutory scope of review is a legitimate issue.

Petitioner contends that because an administrative agency is compelled to enforce its own regulations, an attack on the validity of those regulations in a statutory "fair hearing" necessarily encourages a "useless act." But, on principle, an *invalid* regulation *should* be vulnerable to attack at the administrative level. This is consistent both with precedent and common sense. The legislative acceptance of this principle is clear. Government Code section 11342.2 declares: "Whenever by the express or implied terms of any statute a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, no regulation adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute." Repeatedly, we have held that administrative regulations which exceed the scope of the enabling statute are invalid and have no force or life. (See *Bright v. Los Angeles Unified Sch. Dist.* (1976) 18 Cal.3d 450, 459-464 [134 Cal.Rptr. 639, 556 P.2d 1090]; *Cooper v. Swoap* (1974) 11 Cal.3d 856, 864-865 [115 Cal.Rptr. 1, 524 P.2d 97]; *California Welfare Rights Organization v. Brian* (1974) 11 Cal.3d 237, 239, 242-243 [113 Cal.Rptr. 154, 520 P.2d 970]; *In re Jordan* (1972) 7 Cal.3d 930, 939 [103 Cal.Rptr. 849, 500 P.2d 873]; *Mooney v. Pickett, supra*, 4 Cal.3d 669, 675-676, 681.)

The practical effect of prohibiting an administrator from nullifying an invalid regulation of his own making would be to require the invocation of a judicial remedy in all such cases. Such conceptual rigidity is ill-advised. The general principle that courts should not be burdened with matters which can be adequately resolved in administrative fori, frequently expressed in the rule requiring exhaustion of administrative remedies (see *Temescal Water Co. v. Dept. Public Works* (1955) 44 Cal.2d 90, 106 [280 P.2d 1]; *Abelleira v. District Court of Appeal* (1941) 17 Cal.2d 280, 292 [109 P.2d 942, 132 A.L.R. 715], and cases there cited), is founded at least in part on the wisdom of the efficient use of governmental resources. (See, e.g., ***681***In re Serna* (1978) 76 Cal. App.3d 1010, 1016 [143 Cal.Rptr. 350].) Such use serves the twin goals of avoiding delay and unnecessary expense in vindication of legal rights. Permitting administrators an opportunity to construe challenged regulations in a manner to avoid their invalidation is preferable to requiring a court challenge. Moreover, in those cases in which the validity of such a regulation must be judicially resolved, the task of a reviewing court is simplified by a narrowing and clarification of the issues in an administrative hearing.

Finally, petitioner objects to applicants' procedural route in this case because of the prospect that attorney's fees will be awarded if they are successful (see Welf. & Inst. Code, § 10962). Presumably more applicants will be encouraged thereby to seek section 1094.5 relief, rather than to pursue "regular" mandamus or declaratory remedy.

Such a contention is not persuasive. Attorney's fees are not necessarily denied to litigants in applicants' position who pursue another procedural course. Such fees may well be available to successful litigants in "ordinary" mandamus and declaratory relief proceedings. (See Gov. Code, § 800 [fees recoverable against public entity where its action is "arbitrary or capricious"]; and Code Civ. Proc., § 1021.5 [similarly against public entity where "important" public interest right is vindicated].) Also, it would appear illogical to deny attorney's fees in cases involving an *invalid* regulation applied wrongfully, thereby preventing appropriate benefits to a litigant, but to award them when a *valid* regulation is wrongfully applied, causing the same adverse consequences to the litigant.

Most significantly, of course, Welfare and Institutions Code section 10962 specifically provides for an award of appropriate counsel fees in a case such as this one. We have previously described the purpose of section 10962 as ensuring that aggrieved parties have access to the judicial system to establish their statutory rights. (*Tripp v. Swoap* (1976) 17 Cal.3d 671,

680-681 [131 Cal.Rptr. 789, 552 P.2d 749].) The statutory elimination of filing fees and bond requirements, the preference in setting hearing dates, and the authorization of attorney's fees and costs encourage such access. Because petitioner's arguments run counter to both the spirit and letter of this legislative purpose, such contentions should receive legislative not judicial attention. ***682**

Conclusion

The practical result of our disposition herein is reasonable. Invalid regulations need not be applied or enforced in statutory "fair hearings," and if they are, judicial review may be invoked by "administrative" mandamus pursuant to section 1094.5. (Welf. & Inst. Code, § 10962.) Furthermore, interested persons who are not entitled to such "fair hearings" because they are neither applicants for, nor recipients of, public social service benefits, and who otherwise have standing to complain, still may challenge invalid regulations by mandamus pursuant to section 1085 or by action for declaratory relief pursuant to section 1060. (Gov. Code, § 11350.)

For the reasons given, the alternative writ is discharged and the peremptory writ is denied.

Bird, C. J., Tobriner, J., Mosk, J., and Clark, J., and Newman, J., concurred. ***683**

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