

# SCHOOL AND COLLEGE LEGAL SERVICES of California

General Counsel  
Margaret M. Merchat

Attorneys  
Janna L. Lambert  
Nancy L. Klein  
Marko H. Fong  
Carl D. Corbin  
Patrick C. Wilson  
Loren W. Soukup  
Frank Zotter, Jr.

~~For the Record~~  
Susanne K. Reed  
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## LEGAL UPDATE

August 17, 2011

Reply to  
Santa Rosa Office  
5350 Skylane Blvd  
Santa Rosa, CA 95404  
(707) 524-2666  
Fax: (707) 578-0500  
[santarosa@sclscal.org](mailto:santarosa@sclscal.org)

Employer-Employee  
Relations Coordinator  
Robert S. Latcha

Of Counsel  
Robert J. Henry  
Virginia A. Riegel

**To:** Superintendents, Member School Districts (K-12)

**From:** Carl D. Corbin, Assistant General Counsel *cdc*

**Subject:** Update Regarding Educationally Related Mental Health Services for Special Education Students (Previously Referred to as AB 3632 Services)  
Memo No. 10-2011

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### AB 3632 CMH MANDATE REPEALED - LEAs NOW DIRECTLY RESPONSIBLE FOR PROVIDING EDUCATIONALLY RELATED MENTAL HEALTH SERVICES

Pursuant to AB 114<sup>1</sup>, the mandate for County Mental Health ("CMH") agencies to provide Educationally Related Mental Health Services ("ERMHS") to special education students, previously referred to as "AB 3632" services, has been repealed. With this change in law, Local Educational Agencies ("LEAs") are now directly responsible for the provision of ERMHS to special education students. The California Department of Education ("CDE") developed on August 1, 2011, a "Mental Health Services FAQ", which is currently available on the Internet at: <http://www.cde.ca.gov/sp/se/ac/mhsfaq.asp>.

This means that LEAs are responsible for ensuring all students receive ERMHS as described in the student's IEP, including the full cost of a residential placement (education, mental health, and "room and board"). Except for "medication management" services, which will be described in more detail below, any changes to the ERMHS on a student's IEP must be reached through written agreement with the student's parents (or legal guardian) either through an IEP meeting or an IEP amendment without a meeting.

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<sup>1</sup> Which was signed into law by Governor Brown on June 30, 2011.

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**ERMHS IS A SPECIAL EDUCATION “RELATED SERVICE”**

Like any other special education “related service”<sup>2</sup>, LEAs are responsible for assessing a student’s need for ERMHS, convening an Individualized Education Program (“IEP”) team meeting following assessment to determine if a student requires ERMHS and, if so, determining the type, frequency, duration, and location of the ERMHS. The Individuals with Disabilities Education Act (“IDEA”) and related California law, provides several examples of ERMHS such as: counseling services (individual, group, and family); parent counseling and training; and psychological services.<sup>3</sup>

**PRESCRIBING MEDICATION AND MEDICATION MANAGEMENT TO STUDENTS IS NOT A RELATED SERVICE UNDER THE IDEA**

The provision of medical treatment, which includes prescribing medication to students and “medication management”, is not a related service under the IDEA and should not be a service provided to special education students as part of the student’s IEP.<sup>4</sup> While medication management was provided to some special education students by CMH agencies as part of AB 3632 services, this service was repealed as part of AB 114. Therefore, we advise that LEAs provide parents of special education students, who currently have “medication management” as a service on their child’s IEP, with Prior Written Notice<sup>5</sup> that this service will be discontinued. Parents should be directed to consult their family doctor or local CMH agency if they wish for their child to continue to receive medical services (including the provision and/or monitoring of medication).

**LEGAL STANDARD THAT MUST BE MET TO RECEIVE ERMHS**

The question for the IEP team to consider in determining whether or not a special education student should receive ERMHS is not: “will the student benefit from ERMHS?” Rather, like any other special education related service, the IEP team should consider: “whether the student must receive ERMHS in order to receive meaningful educational benefit?”<sup>6</sup> ERMHS services can be provided by qualified school district personnel, by CMH (through an agreement as described below), or by a qualified vendor like any other special education service.

**PUPIL PERSONNEL SERVICES CREDENTIAL HOLDERS CAN PROVIDE ERMHS TO STUDENTS**

Pursuant to the California Commission on Teacher Credentialing (“CCTC”), the Pupil Personnel Services Credential authorizes four specializations to provide various services to students: school counselor; school social worker; school psychologist; and school child welfare and attendance

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<sup>2</sup> Related services, as defined in 34 CFR 300.34, are also referred to as “Designated Instruction and Services” (“DIS”) in California pursuant to Education Code section 56363.

<sup>3</sup> 34 CFR 300.34; Education Code section 56363.

<sup>4</sup> 34 CFR 300.34(a).

<sup>5</sup> Also known as a “7-point letter” that satisfies the requirements of 34 CFR 300.503

<sup>6</sup> N.B. v. Hellgate Elem. Sch. Dist. (9th Cir. 2008) 541 F.3d 1202, 1212-1213.

worker.<sup>7</sup> As described below, various kinds of ERMHS may be provided to students, including special education students, by school counselors, school social workers, and school psychologists in accordance with the LEA's job descriptions and the experience of the individual provider. A student's IEP document should specify the title (and not the name) of the provider who will deliver the ERMHS identified on a student's IEP.

#### School Psychologist

- Provide services that enhance academic performance.
- Design strategies and programs to address problems of adjustment.
- Consult with other educators and parents on issues of social development and behavioral and academic difficulties.
- Conduct psycho-educational assessment for purposes of identifying special needs.
- Provide psychological counseling for individuals, groups, and families.
- Coordinate intervention strategies for management of individuals and schoolwide crises.

#### School Social Worker

- Assess home, school, personal, and community factors that may affect a student's learning.
- Identify and provide intervention strategies for children and their families, including counseling, case management, and crisis intervention.
- Consult with teachers, administrators, and other school staff regarding social and emotional needs of students.
- Coordinate family, school, and community resources on behalf of students.

#### School Counselor

- Develop, plan, implement, and evaluate a school counseling and guidance program that includes academic, career, personal, and social development.
- Advocate for the high academic achievement and social development of all students.
- Provide schoolwide prevention and intervention strategies and counseling services.
- Provide consultation, training, and staff development to teachers and parents regarding students' needs.
- Supervise a district-approved advisory program as described in California Education Code, Section 49600.

#### **CMH AGENCIES HAVE \$98.6 MILLION FOR ERMHS FOR 2011-2012**

On March 24, 2011, Governor Brown signed AB 100, which among other issues, allocated \$98.6 million for CMH agencies to provide AB 3632 services for the 2011-2012 school year. This funding, unlike other funding sources that are being provided directly to LEAs, was allocated to CMH agencies so that the agencies may continue to provide ERMHS to special education

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<sup>7</sup> See CL-606C 12/10, last viewed on Aug. 12, 2011, at: <http://www.etc.ca.gov/credentials/leaflets/cl606c.pdf>.

students for the 2011-2012 school year. At this point, it is anticipated that CMH agencies will not receive this funding for the 2012-2013 school year and instead the funding will go directly to the LEAs.

In order for LEAs to access services from CMH agencies paid for by AB 100, LEAs must work with their local Special Education Local Plan Area ("SELPA") to develop an agreement that will detail exactly how ERMHS will be provided by CMH agencies to special education students for the 2011-2012 school year. Your local SELPA director should be actively working with your local CMH agency to develop an agreement to access the AB 100 ERMHS. Our office is available to assist LEAs and SELPAs who would like further assistance with this issue.

LEAs and SELPAs are not required to enter into an agreement with their local CMH agency to provide ERMHS service, but failure to do so will most likely result in the forfeiting of the services that would have been paid for by AB 100 funds.

Our office will continue to keep our client districts advised as to any further significant updates regarding the implementation of ERMHS services. Please contact any of the attorneys in our offices if you have any questions regarding this or any other legal matter.