

**Agreement Between  
Butte County Special Education Local Plan Area  
and  
Butte County, acting by and through its Department of Behavioral Health  
For Educationally-Based Mental Health Services for the 2011-2012 Fiscal Year**

This agreement ("Agreement") is entered into by and between the Butte County Special Education Local Plan Area ("SELPA") and the County of Butte, by and through its Department of Behavioral Health ("BCBH"). SELPA and BCBH shall collectively be referred to as the "Parties."

**RECITALS**

WHEREAS, in 2009, SELPA and BCBH entered into an Interagency Agreement for the 2009-2012 period in order to facilitate the provision of services required at that time to be provided by BCBH pursuant to Chapter 26.5 of Division 7 of Part 1 of the Government Code ("Chapter 26.5," sometimes also referred to "AB 3632," which added Chapter 26.5 to the Government Code), and to foster best collaborative practices.

WHEREAS, during the 2010-2011 fiscal year, the County of Butte, acting by and through BCBH, entered into an Agreement with the SELPA to address circumstances that arose as a result of the October 8, 2010 line item veto by the then-Governor of California, which eliminated from the 2010-2011 fiscal year State Budget funding for educationally-based mental health services provided by county mental health agencies pursuant to Chapter 26.5, and the assertion by BCBH that the mandate to provide such educationally-based mental health services under Chapter 26.5 has been suspended as of October 8, 2010.

WHEREAS, that agreement generally provided that for the period from October 9, 2010 until the end of the 2010-2011 fiscal year (i.e., June 30, 2011), BCBH would provide educationally-based mental health services mandated by the Individuals With Disabilities Education Improvement Act ("IDEA") for the local education agency ("LEA") members of the SELPA and the SELPA would, on behalf of the LEAs, reimburse BCBH on a cost recovery basis for the cost of educationally-based mental health services, deemed clinically appropriate by BCBH, provided by BCBH, and its contractors and authorized agents. That agreement also provided that BCBH would pay room and board expenses for students of LEAs within the SELPA requiring such services in order to benefit from IDEA-mandated mental health services and the SELPA would reimburse BCBH for such expenses paid by BCBH on behalf of LEA when all other available funding sources were exhausted.

WHEREAS, the Parties have met and conferred regarding the delivery and funding of educationally-based mental health services for the 2011-2012 fiscal year.

WHEREAS, in particular, the Parties understand that the State of California recently adopted Assembly Bill 100 (hereinafter, "AB 100"), which, among other things, amends section 5892 of the California Welfare and Institutions Code to provide that ninety-eight million five hundred eighty-six thousand dollars (\$98,586,000) from the Mental Health Services Fund (which was

established pursuant to Proposition 63 (the Mental Health Services Act) shall be distributed to counties to pay for mental health services for special education pupils. These funds to be provided under AB 100 are hereafter referred to in this Agreement as AB 100 Funds.

WHEREAS, the Parties also understand the current Governor proposes that AB 100 Funds would continue to be distributed on a one-time basis for the 2011-2012 fiscal year, that LEAs may contract with county mental health agencies during that fiscal year for educationally-based mental health services to be paid for with AB 100 Funds, and that LEAs would be responsible for the cost of educationally-based mental health services exceeding the amount distributed to the applicable county pursuant to AB 100.

WHEREAS, the Governor also proposes that, beginning in the 2012-2013 fiscal year, the responsibility to provide educationally-based mental health services would be realigned to LEAs.

WHEREAS, BCBH has informed the SELPA and its member LEAs that while the development of a formula for distribution of AB 100 Funds has yet to be finalized, it does not anticipate receiving funding under that formula to pay for the full cost of educationally-based mental health services.

WHEREAS, in light of the foregoing, BCBH is willing and intends to use its share of the AB 100 Funds received during the 2011-2012 fiscal year to cover the expenses associated with providing educationally-based mental health services for the students of the SELPA's member LEAs. However, to the extent that the cost of providing such educationally-based mental health services for the students of the SELPA's member LEAs exceeds BCBH's share of the above-referenced AB 100 Funds and such expenses are not otherwise offset by another payor source (e.g. Medi-Cal, Healthy Kids, Healthy Families), BCBH will provide such services only if it is able to recover from the SELPA and/or its member LEAs its fully weighted cost of providing such services.

WHEREAS, the Parties agree that arrangements should be made to ensure the uninterrupted delivery of educationally-based mental health services for students of the SELPA's member LEAs.

WHEREAS, having considered the foregoing, the Parties now desire to enter into an agreement to set forth that, during the 2011-2012 fiscal year, the SELPA and/or its member LEAs shall reimburse BCBH for the cost of educationally-based mental health services provided by BCBH and its contractors and authorized agents to the extent that the cost of providing such services exceeds BCBH's share of the above-referenced AB 100 Funds and such expenses are not otherwise offset by another payor source (e.g. Medi-Cal, Healthy Kids, Healthy Families), and further provided that it is not hereafter determined by a competent authority that the funding provided to BCBH pursuant to AB 100 results in the reimposition on California counties of the mandate to provide AB 3632 services during the 2011-2012 fiscal year.

NOW, THEREFORE, the Parties hereby agree as follows:

1. TERM. This Agreement will become effective on July 1, 2011 and remain in effect until June 30, 2012, at which time the Agreement shall expire, unless the term of this Agreement is changed through a written amendment by the Parties. Absent further amendment to this Agreement, BCBH shall not be entitled to reimbursement pursuant to this agreement for any educationally-based mental health services provided after June 30, 2012 (except for expenses attributable to BCBH administrative procedures and actions that take place after June 30, 2012 that are necessary to invoice the SELPA for educationally-based school based mental health services rendered from July 1, 2011 through June 30, 2012 and to collect from appropriate third party payors funds for educationally-based mental health services provided during this time period).
2. EDUCATIONALLY-BASED MENTAL HEALTH SERVICES. For purposes of this Agreement, "educationally-based mental health services" are those mental health services that are required to be provided in order for a student to receive a free appropriate public education ("FAPE") within the meaning of the IDEA, the California Education Code, their respective implementing regulations and controlling administrative and judicial decisions, and which are reflected in a student's Individual Education Program ("IEP"). Such educationally-based mental health services provided by BCBH and referred by the SELPA and/or its member LEAs are described in Exhibit A to this Agreement, which is incorporated herein by reference. BCBH agrees to provide periodic progress reports to the LEA regarding the impact of services, and assist with transition to less intensive services.
3. REIMBURSEMENT FOR MENTAL HEALTH SERVICES PROVIDED BY BCBH. During the term of this Agreement, the SELPA, on behalf of the LEAs, receiving educationally-based mental health services from BCBH on behalf of students of the LEA shall be obligated to reimburse BCBH for its fully-weighted cost of providing these services subject to Paragraph 5.c., below.
  - a. The Parties acknowledge and agree that BCBH provides educationally-based mental health services to students through BCBH employees, as well as through contractors upon approval of the SELPA Administrator. The Parties further agree that BCBH shall be entitled to recover both the fully-weighted costs of its unit costs for services, as well as its contract costs and administrative costs in providing educationally-based mental health services.
  - b. BCBH's fully-weighted cost of providing educationally-based mental health services (i.e., salary and benefits and/or costs of BCBH's contracts with third Parties who provide educationally-based mental health services for BCBH) is set forth, by unit cost, in Exhibit B to this Agreement, which is incorporated herein by reference.
  - c. The Parties acknowledge and agree that this Agreement in no way prohibits and/or limits the SELPA's and its member LEAs' ability to contract with other providers and/or agencies to provide educationally-based mental health services and/or mental health assessments to students with disabilities.

4. COLLABORATION IN TRANSITIONING PAYMENT FOR RESIDENTIAL PLACEMENTS. As of July 1, 2011, Butte SELPA will be responsible to pay the board and care costs for students who have been residentially placed by the LEA and BCBH in connection with the receipt of educationally-based mental health services. SELPA will be responsible for all residential costs for all facilities. BCBH agrees to identify and recommend residential facilities for placements. SELPA agrees to contract directly with any residential facilities that provide a bundled service (facility unable to split cost by mental health service and residential cost), or for any non-MediCal youth; while BCBH agrees to contract, and be reimbursed by SELPA, with any residential facilities that have the ability to split the rate between mental health services and residential costs and provide a year end Cost Report, for full-scope MediCal youth receiving Educationally Related Mental Health services. SELPA will work with BCBH and other relevant agencies to insure a smooth transition of the contract arrangements for these residential services.

5. INVOICING FOR BCBH SERVICES.

- a. On a quarterly basis, BCBH shall send the SELPA Administrator a separate invoice reflecting the services covered by this Agreement that have been provided to students for whom the SELPA's LEA member are mandated under the IDEA to provide school based mental health services for whom the SELPA's LEA member has referred to BCBH for assessments for educationally-based mental health services and/or educationally-based mental health services during the preceding quarter. The Parties agree that BCBH shall forward its first invoice to the SELPA Administrator within 30 days of the last day of each quarter. The first quarter will begin on July 1, 2011 and end on September 30, 2011.
- b. Each invoice will identify each student served, the LEA responsible for providing special education services to the student, the specific services provided and expenses incurred on behalf of the student and the number of units of each service provided the student. BCBH invoices will also include the status of third-party billing for services if providers other than BCBH served the student.
- c. Prior to sending such invoices to the SELPA Administrator for educationally-based mental health services, BCBH will use appropriate efforts to invoice other possible payor sources, including, for example, Medi-Cal, Healthy Kids, Healthy Families, etc. Any amounts received by BCBH as a result of such invoicing efforts shall be retained by BCBH and shall offset any amounts that shall be required to be paid to BCBH for educationally-based mental health services provided by BCBH pursuant to this Agreement. Moreover, any AB 100 Funds received by BCBH shall also offset any amounts that shall be required to be paid to BCBH for educationally-based mental health services provided by BCBH pursuant to this Agreement. The Parties agree that they will cooperate in good faith to share information regarding AB 100 Funds received by BCBH.
- d. The SELPA Administrator shall insure each approved charges are paid promptly and within sixty (60) days of receipt. The Parties understand and agree that

coordination with and billing of other payor sources may take significant time and that, even after initial action by such payors, further adjustments may take place. The Parties agree to work together in good faith to address any reconciliations that are necessary after payments have been made. If, after the SELPA Administrator has caused to be paid an invoice, BCBH subsequently receives payment from another payor source for services paid for by the SELPA Administrator, BCBH shall reimburse the SELPA Administrator within sixty (60) days to the extent of payment received from the other payor source. No payment shall be made for services provided more than 360 days prior to the date of the invoice.

- e. If there is a disagreement or inquiry regarding any portion of an invoice, the SELPA Administrator will promptly pay the undisputed portion of the invoice, and the SELPA and BCBH will consult in good faith in an attempt to resolve any disputes or inquiries prior to pursuing other dispute resolution methods.
6. LEAs RESPONSIBLE TO DETERMINE APPROPRIATE MENTAL HEALTH SERVICES. The Parties agree that IEP teams will be ultimately responsible for determining eligibility and which mental health services, if any, are required for a student to receive a FAPE under the law. BCBH shall provide such mental health assessments and other educationally-based mental health services as specified in each student's IEP and for whom the SELPA and/or its member LEA has referred for mental health assessments and/or educationally-based mental health services. BCBH agrees to complete the assessment process within the timeline specified in Chapter 26.5 and its implementing regulations. To the extent applicable, BCBH will work in close collaboration with LEAs to ensure that LEA staff members are fully informed of BCBH's recommendations with respect to appropriate services, including providing assessments, input and/or participating in IEP meetings when requested by LEA. Eligibility, goals and services agreed to in IEP meetings will be recorded in the IEP.
7. MEDICATION SUPPORT, REHABILITATIVE SERVICES AND CRISIS SERVICES. The Parties acknowledge that the SELPA's view is that medication support, rehabilitation services and crisis are not related services within the meaning of the IDEA but that LEAs shall reimburse BCBH for these services when BCBH deems them clinically appropriate as they pertain to the student's educational success.
8. LAWS AND VENUE. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a statue court situated in the County of Butte, State of California, unless otherwise specifically provided for under California law.
9. INDEMNIFICATION. The County of Butte shall indemnify and hold harmless the SELPA and/or each LEA member of the SELPA and their respective officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description, brought for, or on account of: (A) injuries to or death of any person or (B) damage to any property of any kind whatsoever and to whomsoever belonging,

(C) any sanctions, penalties, or claims of damages resulting from BCBH's failure to comply with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, or (D) any other loss or cost resulting from the performance of any work performed by BCBH pursuant to this Agreement, provided that this shall not apply to injuries or damage to the extent that the SELPA and/or the LEA in question has been found in a court of competent jurisdiction to be liable by reason of its own negligence or willful misconduct. Each LEA member of the SELPA shall indemnify and save harmless the County of Butte and its supervisors, officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description, brought for, or on account of: (A) injuries to or death of any person or (B) damage to any property of any kind whatsoever and to whomsoever belonging, (C) any sanctions, penalties, or claims of damages resulting from Contractor's failure to comply with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, or (D) any other loss or cost resulting from the performance of the LEA pursuant to this Agreement, provided that this shall not apply to injuries or damage to the extent that the County has been found in a court of competent jurisdiction to be liable by reason of its own negligence or willful misconduct.

10. THIRD PARTY RIGHTS. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than BCBH, SELPA, and SELPA's member LEAs.
11. SEVERABILITY. The unenforceability, invalidity or illegality of any provision(s) of this Agreement shall not render the other provisions unenforceable, invalid, or illegal.
12. BCBH will not be a party to nor participate in Fair Hearings or other litigation related to BCOE, District, or SELPA's responsibilities under FAPE. BCBH will provide documentation related to services provided under terms of this MOU to the extent permitted by law with appropriate written permissions from parents/guardians.
13. PARTIES acknowledge that the management of this program has costs associated with it. Parties agree that BCBH will charge a standard 15% administrative overhead on all invoices provided to SELPA for educationally-related mental health services.
14. PARTIES TO CONFER IN GOOD FAITH IN THE EVENT OF CHANGED CIRCUMSTANCES. The Parties acknowledge and agree that this Agreement is premised on the assumption that the State Budget ultimately adopted for the 2011-2012 fiscal year will substantially incorporate the various proposals set forth in the Governor's May Revise as they relate to funding for educationally-based mental health services. Therefore, the Parties agree that they will confer in good faith with respect to amendments to this Agreement in the event that the State Budget, as adopted, materially differs from the proposals in the May Revise with respect to funding for educationally-based mental health services.
15. SIGNATURE AUTHORITY. This Agreement entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2011, is approved and ratified by and between the undersigned agencies for the period of July 1 2001 through June 30 2012.

*Roy L. Applegate*

Roy L. Applegate, SELPA Director  
Butte County SELPA

*8-11-11*

Date

*Roger Bylund*

Roger Bylund, Chairperson  
Butte County SELPA Governing Board

*8/9/11*

Date

*Anne Robin*

Anne Robin, Director  
Butte County Behavioral Health

*8/15/11*

Date

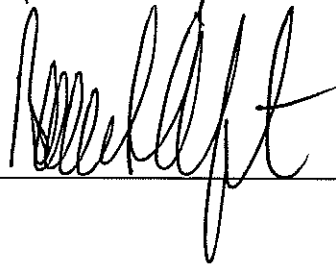
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COUNTY OF BUTTE

  
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Nancy Weston, Contracts Manager  
Butte County General Services

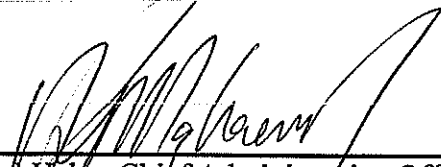
9/25/2011  
Date

Approved for fiscal control, subject to  
Budget appropriation. Auditors Office: Robert J. Sulus

Approved as to Form, County Counsel by: 

  
\_\_\_\_\_  
Steve Lambert, Chair  
Butte County Board of Supervisors

9-13-11  
Date

  
\_\_\_\_\_  
Paul Hahn, Chief Administrative Officer  
By Clerk of the Board of Supervisors

9/13/11  
Date

## EXHIBIT A - SERVICES

### DESCRIPTION OF SERVICES TO BE PERFORMED

#### I. Outpatient Services

##### A. Assessment

1. Initial assessment services: This includes clinical analysis of the history and current status of the student's mental, emotional or behavioral condition.
2. Annual assessment: This consists of reassessments required to reassess a student to determine eligibility for mental health services under the IDEA and/or to determine the appropriate composition of such services.

##### B. Medication Support Services

Medication Support Services shall be provided by a licensed psychiatrist for each student authorized for Medication Support Services pursuant to the student's IEP. These services are subject to the parties' understanding as described in Paragraph 8 of the Agreement. Medication Support Services include:

1. Prescribing, administering, dispensing and monitoring of psychiatric medications or biologicals, necessary to alleviate the symptoms of mental illness;
2. Evaluation of the need for medication, prescribing and/or dispensing;
3. Evaluation of clinical effectiveness and side effects of medication;
4. Obtaining informed consent for medication(s); and
5. Medication education (including discussing risks, benefits and alternatives with the consumer or significant support persons).

##### C. Mental Health Services

Mental Health Services shall include:

1. Individual Therapy: Individual Therapy includes those therapeutic interventions consistent with the student's IEP mental health goals that focus primarily on symptom reduction as a means to improve functional impairments. Individual Therapy is usually delivered to an individual but may include family therapy when the individual is present.
2. Group Therapy: Group Therapy includes those therapeutic interventions for more than one student that focuses primarily on addressing the student's mental health goals and symptom reduction as a means to improve functional

impairments. It may include group family therapy (when families of two or more students are present).

3. Collateral Services: Collateral Services consists of contact with one or more significant support persons in the life of the student which are determined by student's IEP team to be necessary to address the student's IEP mental health goals and which may include consultation and training to assist in better utilization of services and understanding mental illness. Collateral services include, but are not limited to, helping significant support persons to understand and accept the student's condition and involving them in service planning and implementation of service plan(s). Family counseling or therapy which is provided on behalf of the student is considered collateral.
4. Family Therapy: Family Therapy consists of contact with the student and one or more family members and/or significant support persons that address a student's IEP mental health goals. Services shall focus on the care and management of the student's mental health conditions within the family system.
5. Rehabilitation Services: Rehabilitative Services include any or all of the following that address a student's IEP mental health goals: Assistance in improving, restoring or maintaining a client's functional skills, daily living skills, social skills, leisure skills, grooming and personal hygiene skills, medication compliance, and access to support resources.
6. Plan Development: Plan Development consist of the following that address a student's mental health goals:
  - a. When staff develop Client Plans (as such term is described in Paragraph I.A.3.i. of this Exhibit A), approve Client Plans, and/or monitor a client's progress. Such activities may take place with the client to develop a Client Plan or discuss the overall or program goals, with a client or family member and/or significant support persons to obtain signatures on the Client Plan, and, if needed, have the Client Plan reviewed and signed by a licensed/waivered/registered clinician.
  - b. When staff meet to discuss the student's clinical response to the Client Plan or to consider alternative interventions.
  - c. When staff communicates with other professionals to elicit and evaluate their impressions (e.g. probation officer, teachers, social workers) of the student's clinical progress toward achieving their Client Plan goals, their response to interventions, or improving or maintaining client's functioning.

### C. Case Management

Case Management Services are activities that are provided by staff to access medical, educational, social, prevocational, vocational, rehabilitative, or other needed

educationally-based services for eligible students. Services may include the following:

1. Linkage and Coordination - the identification and pursuit of resources needed for provision of a free appropriate public education to a student, including, but not limited to, the following:
  - a. Inter- and intra-agency communication, coordination, and referral, including reports to Child Protective Services
  - b. Monitoring service delivery to ensure an individual's access
  - c. Linkage, brokerage services focused on transportation, housing, or finances
2. Placement Services Supportive assistance to the individual in the assessment, determination of need, and securing of adequate and appropriate living arrangements that are needed for the student to receive a free appropriate public education, including, but not limited to, the following:
  - a. Locating and securing an appropriate living environment
  - b. Locating and securing funding
  - c. Pre-placement visit(s)
  - d. Negotiation of housing or placement contracts
  - e. Placement and placement follow-up
  - f. Accessing services necessary to secure placement

## II. Day Treatment Services

### A. General description of services

1. Day Treatment Services (Day Treatment Intensive / Day Rehabilitation) (Full and Half-day) shall collectively be referred to herein as "Day Treatment Services."
2. Day Treatment Intensive Services provide a structured multi-disciplinary treatment program for seriously emotionally disturbed children and adolescents. Day Treatment Intensive Services provide a range of services to assist the child/adolescent to gain the social and functional skills necessary for appropriate development and social integration. Interventions are intended to prevent hospitalization, placement in a more restrictive facility, out-of-home placement, and/or to maintain the client in a community setting.

3. Day Rehabilitation is a structured program of rehabilitation and therapy – to improve, maintain or restore personal independence and functioning. For seriously emotionally disturbed children and adolescents. Day Rehabilitation Services focus on maintaining individuals in their community and school settings, consistent with their requirements for learning and development and enhanced self-sufficiency.  
These services emphasize delayed personal growth and development. Day Rehabilitation Services may be provided for those clients for whom those services are clinically appropriate and who do not require the level of services provided through Day Treatment Intensive Services.
4. Butte County clients authorized for Day Treatment Intensive Services who subsequently are authorized for Day Rehabilitation Services may continue to receive services in Contractor's Day Treatment Intensive Services program. Services provided for such clients shall be reimbursed at the Day Rehabilitation Services rates set forth in Exhibit B.
5. Day Treatment Services may be integrated with an education program as long as it meets all Day Treatment Services requirements. A key component of these services is contact with the families of clients.
6. Full-day Day Treatment Services must be available more than four (4) hours and less than twenty-four (24) hours each program day to qualify as a full-day program. Half-day Day Treatment Services must be available at least three (3) hours each day the program is open to qualify as a half-day program. The client must be present each day (half day or full day as appropriate) Day Treatment Services are claimed. On an exceptional occasion when a client is unavailable for the entire program day, the client must be present a minimum of fifty percent (50%) of the program day for that day's services to be claimed.
7. There shall be developed and maintained a Day Treatment Services program description of services and groups, along with a detailed weekly schedule, and shall be available upon request.
8. County reserves the right and authority to set additional higher or more specific standards necessary to manage the delivery of Day Treatment Services than those set by the State of California.
9. Day Treatment Services are not reimbursable on days when Inpatient Services in an acute hospital or Psychiatric Health Facility Services are reimbursed, except for the day of admission to those services.

## EXHIBIT B – RATES & PAYMENT

### I. Rates

#### A. Outpatient Services

1. Assessment Services	\$3.90 per minute
2. Medication Support Services	\$6.78 per minute
3. Individual Therapy	\$3.27 per minute
4. Group Therapy	\$3.57 per minute
5. Collateral Services	\$3.82 per minute
6. Family Therapy	\$3.55 per minute
7. Rehabilitation Services	\$3.08 per minute
8. Plan Development	\$3.66 per minute
9. Case Management	\$2.75 per minute

#### B. Day Treatment Services

1. Day Treatment Intensive Full Day	\$228.94 per day
2. Day Treatment Rehabilitative Full Day	\$172.25 per day
3. Day Treatment Rehabilitative Half Day	\$ 99.37 per day

C. Rates were derived from the FY 08-09 cost report. Actual unit rates for each service were adjusted for inflation rate of 2.83% for FY 09-10 and the BCBH administration of 13.96%.