

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
LOS ANGELES COUNTY  
AND**

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**REGARDING  
FUNDING AND PROVISION OF EDUCATIONALLY-RELATED MENTAL HEALTH  
SERVICES TO STUDENTS ELIGIBLE UNDER THE INDIVIDUALS WITH DISABILITIES  
EDUCATION ACT**

THIS MEMORANDUM OF UNDERSTANDING (“MOU”), is made by and between the County of Los Angeles, including but not limited to, the Department of Mental Health (hereinafter referred to as “County”) and the \_\_\_\_\_ (“District”) with respect to the provision of educationally-related mental health services by the District under the Individuals with Disabilities Education Act (“IDEA”) as contained in paragraph (26) of section 1401 of Title 20 of the United States Code and section 56363 of the California Education Code ("educationally-related mental health services") to students who reside within the District boundaries, attend a school of the District, or are who are otherwise the responsibility of the District and funded through the District, and the provision of mental health services by the County under applicable California law (e.g. Bronzan-McCorquodale Act, Mental Health Services Act (“MHSA”), Mental Health Services Fund, and Children’s Mental Health Services Act) (collectively referred to herein as “State law”) to that same population.

**RECITALS**

WHEREAS, the District and the County each have obligations to provide specified mental health services to children residing within District and/or County, with the District’s obligation arising under the IDEA as contained in paragraph (26) of section 1401 of Title 20 of the United States Code and section 56363 of the California Education Code and the County’s obligation arising under State law;

WHEREAS, since 1986, County has been responsible to arrange and/or provide educationally-related mental health assessments and services to eligible special education students upon referrals by District pursuant to Section 26.5 of Division 7 of the California Government Code sections 7570-7590 and the implementing regulations (entitled “Interagency Responsibilities for Providing Services to Children with Disabilities” and commonly known as and referred to hereinafter collectively as “AB 3632”). AB 3632 defined educationally-related mental health services to include: individual or group psychotherapy, collateral services, medication monitoring, day treatment, day rehabilitation, case management, transportation, and residential placement.

WHEREAS, the IDEA requires local educational agencies (“LEAs”), including District, to provide a free, appropriate public education (“FAPE”) to eligible students with disabilities, which may include psychological services, social work services, and counseling services, as required to assist a student with a disability to benefit from special education;

WHEREAS, the process for the provision of educationally-related mental health assessment, services and/or placements to eligible students in the State of California was previously governed by AB 3632;

WHEREAS, on October 8, 2010, the California Governor (“Governor”) vetoed a fiscal year 2010-11 appropriation for educationally-related mental health services mandated by AB 3632 (“the veto”) and stated that “[t]his mandate is suspended”;

WHEREAS, at the time of the veto, AB 3632 remained codified and required counties and their mental health departments to conduct mental health assessments under the IDEA and to provide necessary educationally-related mental health services, including residential care-based treatment (i.e., placement including the provision of psychotherapy and other needed mental health services), day treatment, and outpatient counseling to students with disabilities, as identified within the student’s individualized education program (“IEP”), pursuant to Government Code sections 7570, 7572, and 7572.5, and imputed county departments of mental health’s recommendations for mental health services onto the IEP team which had referred the student to the counties for assessment;

WHEREAS, shortly after the veto, litigation ensued among, by, and/or against the State Department of Education, State Department of Mental Health, the Governor, LEAs, and counties, regarding the force and effect of the Governor’s veto on the AB 3632 mandate and the respective parties rights and responsibilities thereunder;

WHEREAS, pursuant to that litigation, the Superior Court in Sacramento and the California Court of Appeal held that the Governor’s October 8, 2010 veto suspended the AB 3632 mandate for the fiscal year 2010-11;

WHEREAS, on June 30, 2011, the Governor signed AB 114, which provides that AB 3632 is inoperative as of July 1, 2011 and repealed effective January 1, 2012, and at the time of this MOU, there is no pending legislation known to the Parties to amend the Education Code or otherwise enact state statutory law to otherwise govern the provision of educationally-related mental health services;

WHEREAS, under State law, the County is obligated to provide medically-necessary mental health services to eligible individuals, including seriously emotionally disturbed students in Los Angeles County, who have qualifying mental health needs; some of these services are the same services that the District may be obligated to provide under the IDEA as contained in paragraph (26) of section 1401 of Title 20 of the United States Code and section 56363 of the California Education Code and some of the same individuals who also qualify for educationally related mental health services from the District under the IDEA;

WHEREAS, in March 2011, the Legislature passed and the Governor signed AB 100, amending the MHSA and Children’s Mental Health Services Act, among others, to provide MHSA funding to counties for mental health services for special education students and requiring the Controller to distribute to counties ninety-eight million five hundred eighty-six thousand dollars (\$98,586,000) from the Mental Health Services Fund for mental health services for special education students, based on a formula determined by the State in consultation with the California Mental Health Directors Association and that LEAs are responsible for the costs of services exceeding the amount distributed to the applicable county pursuant to AB 100;

WHEREAS, AB 100 provides MHSA funding for mental health services to special education students in the 2011-2012 school year but does not address the rights and/or obligations of LEAs and/or counties to provide mental health services to special education students, or otherwise codify a division or coordination of responsibility between the LEAs and counties in the provision of mental health services

to special education students, and further does not refer to reinstating the AB 3632 legislation, division of responsibility, or obligations;

WHEREAS, by this MOU the Parties intend to ensure that AB 100 funds are utilized so that special education students residing in the District continue to be identified, assessed and provided with educationally-related mental health services required by the IDEA as contained in paragraph (26) of section 1401 of Title 20 of the United States Code and section 56363 of the California Education Code and to identify the rights and obligations of the Parties in conformity with AB 100 and after AB 3632 becomes inoperative and/or repealed; and,

WHEREAS, the Parties intend to reserve all rights each may have at the time this MOU is executed, and agree that nothing in this MOU shall waive or limit either party's rights, including any right to seek reimbursement from the other party for all costs incurred in providing educationally-related mental health services under the IDEA to eligible students.

#### OPERATIVE PRINCIPLES

Accordingly, and in light of the foregoing recitals, the Parties agree that this MOU is to be implemented, interpreted and viewed in light of the following Operative Principles:

- District is responsible under the IDEA for the provision of FAPE to eligible students, including the provision of educationally-related mental health services as contained in paragraph (26) of section 1401 of Title 20 of the United States Code and section 56363 of the California Education Code, and County is obligated under State law, subject to funding and eligibility, to provide mental health services to children in Los Angeles County.
- There is no federal IDEA obligation or state law obligation on County to provide FAPE, and there is no federal or state law obligation for District to provide mental health services that are not educationally-related, and this MOU is not intended to create any such obligations. This MOU is not intended to make County a "public agency" within the meaning of IDEA and/or subject to the IDEA's dispute resolution provisions
- Absent reinstatement of and appropriation of funding by the State for AB 3632 services, there is no statutory mandate on County to provide AB 3632 services or on the District to refer students to the County for mental health assessments and services under AB 3632.
- The provision of funds to County pursuant to AB 100 for mental health services for special education students does not create a statutory obligation on County to provide FAPE, and County is not otherwise required to provide educationally-related mental health services, except to the extent non-special education-related State law provides for the provision of the same or similar mental health services to the same or similar students.
- The Parties anticipate that County will be transitioning the provision of educationally-related mental health services to school districts within the County, including the District, and that County intends the transition to be completed by December 31, 2011, and in no event, later than June 30, 2012 unless AB 100 funds are depleted prior to that date. The parties intend to not disrupt the provision of services to students and to make a good faith effort to ensure a smooth and seamless transition of the provision of educationally-related mental health services from the County to the District.

NOW, THEREFORE, based on such recitals, operative principles, and other mutual considerations and promises herein, the Parties agree as follows:

**1. Referrals and assessment reports:** District may refer students with suspected educationally-related mental health needs arising from a qualifying or suspected IDEA disability to County for mental health assessment, and County will process and complete that assessment in accordance with Exhibit 1 attached hereto, except that County may only recommend educationally-related mental health services and such determinations will only be advisory to, and not otherwise binding upon, the District. Referrals will be made through a District assessment plan; County will no longer use its own assessment plan. The County agrees that it does not have the right to refuse any referrals made by District and must conduct the assessment within the District's 60-day timeline as required by the IDEA unless County assessments have been terminated pursuant to the terms of this MOU.

**2. Array of services:** Upon request from the District, and pursuant to IEPs developed and reviewed by the District, County agrees to provide educationally-related mental health services to District students during the term of this MOU pursuant to this MOU, which may include: mental health services consultation; assessment and re-assessment; preparation of reports; IEP team meeting attendance, participation, and acknowledgement of attendance and/or participation; monitoring, case management, placement in, and contracting with residential facilities; contracting with mental health service providers, as needed, including for day treatment and outpatient counseling; and, participation in due process hearing proceedings and compliance complaints which may arise from the provision of educationally-related mental health services. The array of services will be provided for a student with a disability, as defined under the IDEA, in paragraph (3) of Section 1401 of Title 20 of the United States Code, and shall include necessary related services as defined in paragraph (26) of Section 1401 of Title 20 of the United States Code, and designated instruction and services, as defined in Section 56363 of the California Education Code.

**3. Anticipation of Transition of Educationally-Related Mental Health Services to District:** It is understood and agreed that as part of the anticipated transition of the provision of educationally-related mental health services to District, and in anticipation of the State no longer providing funding to counties to provide educationally-related mental health services to special education students, the County may reduce the amounts and/or types of educationally-related mental health services it offers accordingly subject to the limitations set forth herein. Under no circumstances will County terminate an educationally-related mental health service without at least 20 business days' notice to the District nor may County terminate services such that the District does not receive the full benefit of AB 100 funds earmarked for educationally-related mental health services for eligible special education students. County understands that in some circumstances the District may need to convene an IEP team meeting to effect a change in service previously provided by County and County will not terminate those services pending the IEP team meeting unless otherwise agreed to by parent/guardian or, if applicable, student. Upon the request of, and at the cost to, the District, the County will provide consultation and/or training services to the District to aid in the transition of the provision of the educationally-related mental health services to District. To the extent legally permissible, County may use AB 100 funding to pay for these services. These consultations may range in format from individual district training to multiple district group forums. The County will endeavor to schedule a group forum for a date prior to September 6, 2011, at no cost to District.

**4. Records:** County and District will collaborate on an ongoing basis to ensure the transfer of records from County to District employees with the transition of services to the District and to record implementation and cost data for educationally-related mental health services provided to District students by the County through their IEPs and pursuant to this MOU. County agrees to provide data in a mutually agreeable electronic format.

**5. District's Provision of FAPE:** It is understood and agreed that the District has the right and obligation under IDEA to determine which educationally-related mental health services as contained in paragraph (26) of section 1401 of Title 20 of the United States Code and section 56363 of the California Education Code are needed for an eligible student to receive FAPE and that County will provide services requested by the District in conformity with the IEP, pursuant to this MOU only. District may use County to provide educationally-related mental health services or may independently, or through a third party vendor, provide for educationally-related mental health services. Once AB 100 funds are exhausted, District shall bear the costs of, and pay County for, the provision of educationally-related services provided in accordance with this MOU to District students; County shall reimburse or not charge District to the extent that any such services are paid for by other State or federal funding sources (e.g., Medi-Cal, other MHSA funds, EPSTD).

**6. Individual Services Agreement Execution:** Attached hereto as Exhibit 2 is an Individual Services Agreement ("ISA") template which shall be used to develop an ISA for each eligible student for whom County is to provide any of the educationally-related mental health services set forth in paragraph 2 above. Attached hereto as Exhibit 3 is a rate sheet of estimated costs, including administrative fees for County, for the educationally-related mental health services set forth in paragraph 2 above to assist with the completion of the ISA. Within ten (10) business days of County's receipt of ISA for eligible student(s), County shall verify or, if necessary, provide the required information to the District to complete and execute the ISA. County agrees to provide information and/or records to demonstrate the implementation of the ISA educationally-related mental health services.

**7. Individual Services Agreement Expenditures:** Attached hereto as Exhibit 3 is a rate sheet of estimated costs for the educationally-related mental health services set forth in paragraph 2. Every two months during the term of this MOU, County shall provide a statement/invoice identifying the funds expended based on the estimated rate sheet on District students, the potential source(s) of the funding for the services provided, and an estimate of the total remaining funds available under the County's AB 100 allocation.

**8. Reconciliation:** In providing educationally-related mental health services under this MOU or charging the District for any cost incurred related thereto, to the extent legally permissible, County shall identify and use any and all alternative funding sources under the Bronzan-McCorquodale Act, Mental Health Services Fund, MHSA, AB100, Medi-Cal, Medicare, Early and Periodic Screening, Diagnosis, and Treatment ("EPSDT"), and/or any other State and/or federal funding sources designated for the provision of the mental health services to the District student who may also qualify for such services under the IDEA. A final accounting shall be completed by County when Medi-Cal approvals are finalized and the State has issued its Cost Report Reconciliation and Settlement to the County but, in no event later than January 31, 2013. This final accounting shall be based upon and include a break out of the following: the actual cost of educationally-related mental health services provided to District students pursuant to the ISA(s); a County administrative fee which shall not exceed 5% of the actual cost of service(s) provided pursuant to the ISA(s); and, an offset for payments received by County from any and all alternate funding sources under the Bronzan-McCorquodale Act, Mental Health Services

Fund, MESA, AB100, Medi-Cal, Medicare, EPSDT, and/or any other State and/or federal funding sources for the provision of the same mental health services provided to District students pursuant to the ISA(s). Within sixty (60) calendar days of the final reconciliation, unless otherwise prohibited by law, any AB 100 funds or other funds available for the provision of educationally-related mental health services to District students but not fully utilized by County shall be paid to District; any amount overpaid by District to County based upon the estimated statements/invoices received during the term of the MOU shall be paid by County to District; and, any funds owed by District to County shall be paid by District to County.

**9. Cooperation in Administrative Proceedings:** Although County will not be named by the District as a party to due process proceedings regarding issues arising on or after July 1, 2011 under the IDEA's procedural safeguards, County agrees to fully cooperate with the District with regard to all administrative and/or other legal proceedings involving special education students receiving services from County pursuant to this MOU.

**10. Privacy:** County and District acknowledge the protections afforded to student health information under regulations adopted pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Pub. L. No. 104-191, students records under the Family Educational Rights and Privacy Act (FERPA), 20 USC Section 1232g; and under provisions of California law relating to privacy of student information. County and District shall ensure that all activities and communications undertaken under this MOU will conform to the requirements of these laws to the extent that they are applicable.

**11. Modification:** This MOU shall not be modified or amended without the mutual written consent of the Parties. If any actual or physical deletions or changes appear on the face of the MOU, such deletions or changes shall only be effective only if the initials of both contracting Parties, along with the date of initialization, appear beside such deletion or change.

**12. Integration:** This MOU represents the entire understanding of District and County as to those matters contained herein, and supersedes and cancels any prior oral or written understanding, promises or representations with respect to those matters covered hereunder. This MOU may not be modified or altered except in writing and signed by both Parties hereto. This is an integrated MOU. Nevertheless, the Parties reserve all rights each may have under prior MOUs and/or state and federal laws. The Parties intend to reserve all rights each may have at the time this MOU is executed, and agree that nothing in this MOU shall waive or limit either party's rights, including any right to seek reimbursement from the other party for all costs incurred in providing educationally-related mental health services under the IDEA to eligible students.

**13. Laws and Venue:** This MOU contains the complete and final understanding of the Parties' rights, duties and obligations with respect to the transaction discussed in this MOU and supersedes all prior MOUs, contracts, understandings and commitments whether oral or written with respect to the subject matter of this MOU. This MOU shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this MOU, the action shall be brought in a state or federal court with jurisdiction over agencies in Los Angeles County, State of California, and damages may flow from any failure to provide mental health services as provided in this MOU. The Parties agree that this MOU may be enforced by writ of mandate.

**14. Third Party Rights:** Nothing in this MOU shall be construed to confer any rights or benefits to anyone other than the Parties hereto nor shall any of the provisions be construed as an admission by

either the District or the County of a duty or obligations to anyone other than the Parties hereto. This document shall not be an exhibit to any proceeding other than between the Parties hereto.

**15. Severability/Waiver:** The unenforceability, invalidity or illegality of any provision(s) of this MOU shall not render the other provisions unenforceable, invalid, or illegal. No waiver of any provision of this MOU shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision. No waiver shall be binding unless executed in writing by the party making the waiver.

**16. Term:** The term of this Agreement shall commence on July 1, 2011, and shall continue from month to month until terminated by either party, however in no event shall this MOU extend beyond June 30, 2012. At that time it is expected that District shall be capable of and shall provide the educationally-related services provided by County under this MOU. This MOU may be extended by the Parties' mutual written consent.

**17. Termination:** This MOU may be terminated at any time upon the mutual agreement of the Parties or by either party upon 20 business days' advanced written notice to the other party. Unless otherwise prohibited by law, should any AB 100 funds or other allocation of funds to which the District is entitled remain with the County at the time of termination of the MOU, such funds shall be transferred to the District within sixty (60) calendar days after reconciliation in accordance with paragraph 8 above.

**18. Dispute Resolution:** County and District agree that, upon the mutual consent of the Parties, the following process will be used to address disputes pertaining to the implementation of the MOU. It is understood that these dispute resolution procedure shall not preclude or otherwise interfere with the right to bring an action as conferred in paragraphs 12 and 13 and does not pertain to special education due process hearing complaints.

County and District shall name a mutually agreed upon neutral party (hereinafter "Outside Party") to assist in resolving disputes using a process of facilitated communication through non-binding mediation between County and District. The Parties will use the following process:

- A written notice of the request for dispute resolution, including a description of the concerns to be addressed, shall be forwarded by the aggrieved party initiating the dispute to the non-initiating party;
- If the issue is not resolved within ten (10) business days of the date of the written notice of the request for dispute resolution, the aggrieved agency initiating the dispute shall request that the Outside Party be contacted to schedule a meeting between the agencies;
- No later than thirty (30) calendar days from the date Outside Party is contacted, a resolution plan between the Parties will be developed with the assistance of the Outside Party. The signatories of this MOU or their designees shall be responsible for assuring the agreements included in the resolution plan are implemented;
- Each party shall bear its own costs related to the use of this dispute resolution process except that those costs related to retention of the Outside Party shall be shared equally between the District and County.

**19. Indemnification:**

To the fullest extent permitted by law, District shall defend, indemnify, and hold harmless County, its agents, representatives, officers, consultants, employees, trustees, and volunteers from any and all losses, liabilities, claims, suits, and actions of any kind, nature, and description, including, but not limited to, attorneys' fees and costs, that arise out of or result from the exclusive negligent, wrongful or willful acts or omissions of the District, its employees, agents, subcontractors, independent contractors, consultants, or other representatives; and, in the event any action or proceeding in any forum is brought against the County for any such acts or omissions of the District, District shall defend the same at District's expense, including retaining counsel.

To the fullest extent permitted by law, County shall defend, indemnify, and hold harmless District, its agents, representatives, officers, consultants, employees, trustees, and volunteers from any and all losses, liabilities, claims, suits, and actions of any kind, nature, and description, including, but not limited to, attorneys' fees and costs, that arise out of or result from the exclusive negligent, wrongful or willful acts or omissions of the County, its employees, agents, subcontractors, independent contractors, consultants, or other representatives; and, in the event any action or proceeding in any forum is brought against the District for any such acts or omissions of the County, County shall defend the same at County's expense, including retaining counsel acceptable to District.

**20. Force Majeure:** Neither party shall be deemed to be in default of the terms of this MOU if either party is prevented from performing the terms of this MOU by causes beyond its control, including without being limited to: acts of God; any laws and/or regulations of State or Federal government; or any catastrophe resulting from flood, fire, explosion, or other causes beyond the control of the defaulting party. If any of the stated contingencies occur, the party delayed by force majeure shall immediately give the other Parties written notice of the cause for delay. The party delayed by force majeure shall use reasonable diligence to correct the cause of the delay, if correctable, and if the condition that caused the delay is corrected, the party delayed shall immediately give the other party written notice thereof and shall resume performance of the terms of this MOU. Neither party shall be liable for any excess costs if the failure to perform the MOU arises from any of the contingencies listed above.

**21. Notices:** All notices provided for by this MOU shall be in writing. Notices shall be mailed, electronically delivered or delivered by hand and shall be effective as of the date of receipt by addressee.

All notices related to this MOU shall be mailed to District and shall be addressed to:

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All notices related to this MOU shall be mailed to County and shall be addressed to:

**Paul L. McIver**  
**Los Angeles County Department of Mental Health**  
**600 S. Commonwealth Avenue**  
**Los Angeles, CA 90005**  
**Telephone: (213) 739-2334**  
**Fax: (213) 738-6521**

**22. Representation on Authority of Parties/Signatories:** Each person signing this MOU represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this MOU. Each party represents and warrants to the other that the execution and delivery of the MOU and the performance of such party's obligations hereunder have been duly authorized and that the MOU is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

**23. Incorporation of Recitals:** The Parties understand and agree that the recitals set forth above are terms of this MOU and are incorporated herein by this reference.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the dates of their signatures.

\_\_\_\_\_ DISTRICT

By: \_\_\_\_\_ (Date)

Title: \_\_\_\_\_

COUNTY OF LOS ANGELES

By: \_\_\_\_\_ (Date)

Marvin J. Southard, DSW  
Director, Department of Mental Health