

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE COUNTY OF SAN DIEGO HEALTH AND HUMAN SERVICES AGENCY
BEHAVIORAL HEALTH DIVISION AND
THE SAN DIEGO COUNTY SUPERINTENDENT OF SCHOOLS
FOR CHILDREN'S MENTAL HEALTH SERVICES**

This memorandum of understanding ("MOU") is made and entered into between County of San Diego Health and Human Services Agency Behavioral Health Division ("CMH") and the San Diego County Superintendent of Schools ("SDCOE"), together with CMH ("Parties").

WHEREAS, in previous fiscal years Government Code sections 7570 *et seq.* (also known as "AB 3632") shifted the state's obligation to counties and their county mental health agencies to provide an array of educationally-related mental health services ("ERMHS"), required by students with disabilities as determined by an individualized education program ("IEP") team;

WHEREAS, in previous fiscal years the State Legislature, in the Budget Act, provided federal Individuals with Disabilities Education Act ("IDEA") local assistance funding for the provision of ERMHS that are provided to students with disabilities as determined by an IEP team pursuant to AB 3632 by transmitting the funds to county offices of education;

WHEREAS, in previous fiscal years the Budget Act required each county office of education and county mental health agency to enter into a Memorandum of Understanding for the purpose of transferring these federal IDEA funds, subject to the fulfillment of the grant's terms and conditions, to the county mental health agency for ERMHS as set forth in AB 3632 that were provided to students with disabilities as determined by an IEP team;

WHEREAS, in previous fiscal years the state has also provided General Fund support directly to the counties to provide an array of ERMHS to students with disabilities pursuant to an IEP;

WHEREAS, on October 8, 2010, the Governor of the State of California vetoed all state funding for ERMHS provided pursuant to AB 3632 and unilaterally declared the mandate on county mental health agencies to provide these services suspended;

WHEREAS, the Governor's authority to suspend the mandate on county mental health agencies to provide AB 3632 services was disputed, but a California Court of Appeal held that the Governor's action, in vetoing funds that were appropriated for the AB 3632 mandate, effectively relieved county departments of mental health of their responsibility of providing services under AB 3632. The effect of the Governor's veto resulted in a zero appropriation of funds, which relieved these agencies from the duty to implement the AB 3632 mandate and provide mental health services;

WHEREAS, the Legislature through Assembly Bill 100 ("AB 100") and Senate Bill 87 ("SB 87," also known as the 2011-2012 Budget Act) appropriated \$98.586 million payable from the Mental Health Services Act Fund ("Proposition 63") to counties to provide handicapped and

disabled students, seriously emotionally disturbed students, and students in out-of-state mental health services facilities with ERMHS;

WHEREAS, the Legislature through SB 87 appropriated \$1.229 billion from the Federal Trust Fund ("IDEA funds") for special education programs for eligible students with special needs; of which \$69 million has been made available to, and will be allocated by, the Superintendent of Public Instruction to special education local plan areas ("SELPAs") for the purpose of providing ERMHS, including out-of-home residential services for emotionally disturbed students;

WHEREAS, the Legislature through Assembly Bill 114 ("AB 114") shifted the responsibility for providing ERMHS from county offices of mental health to local school districts, by amending and repealing various provisions in the Education, Government, Family and Welfare and Institutions Codes, thereby repealing AB 3632;

WHEREAS, as a result of AB 114, the Local Interagency Agreement among Health and Human Services Agency San Diego County, Public School Districts in San Diego County, and Superintendent of School San Diego County Office of Education dated December 2006 ("Interagency Agreement"), is no longer valid;

WHEREAS, the Legislature, through SB 87, authorizes a county mental health agency and local education agency to enter into a memorandum of understanding or contract to address interagency service responsibilities for the provision and transition of ERMHS identified on a student's individualized education plan during the 2011-2012 fiscal year in order for a local education agency to access AB 100 funds; and if a contract or memorandum of understanding is entered into, then a copy of same shall be provided by the local educational agency to the California Department of Education ("CDE"); and

WHEREAS, the Parties have collaborated and enter into this MOU in order to: (1) facilitate the access to AB 100 funds which shall be used exclusively for the purpose of providing ERMHS as more fully described herein, and for which expenses have been or will be incurred in fiscal year 2011-2012, as described in Sections A and B below; and (2) to ensure the continuity of the provision of ERMHS to students with disabilities, who are the responsibility of the 42 San Diego County school districts ("School Districts"), who are entitled to receive such services as part of their IEPs.

NOW, THEREFORE, it is agreed as follows:

Section A – Provision of ERMHS

1. CMH agrees to provide ERMHS from July 1, 2011 through and including June 30, 2012. ERMHS for eligible students are limited to the following: IEP meeting attendance and participation, assessments, individual therapy, group therapy, collateral services, case management (which includes but is not limited to CMH locating residential treatment facilities on behalf of a School District, and conducting site visits), intensive day treatment, day rehabilitation, and mental health services in residential placements as more

fully described in "Attachment A." CMH agrees to provide the ERMHS, and cooperate with the SDCOE and the School Districts in doing so, pursuant to the IDEA, the California Education Code, and other applicable laws and regulations, which include but are not limited to:

- a. Complying with all legally mandated deadlines and timelines, including but not limited to, assessments and IEP team meetings (e.g., CMH is obligated to complete a mental health assessment within 60 days of the School District receiving a signed assessment plan);
- b. IEP meeting attendance; and
- c. IEP team participation. The CMH representative will be an equal member of the IEP team, but his/her recommendation shall not be binding on the School District members of the team.

Because the Interagency Agreement (which established the local guidelines and working procedures for providing ERMHS while AB 3632 was in effect) is no longer valid, the Parties, along with the SELPAs, have agreed to develop new guidelines with regard to the provision of ERMHS as it pertains to this MOU.

2. CMH agrees to utilize funding from Medi-Cal, Early and Periodic Screening, Diagnosis and Treatment ("EPSDT") and AB 100 funds, consistent with applicable laws. Such funding and/or reimbursements received by CMH, including AB 100 funds, for ERMHS shall offset any amount SDCOE is required to fund under this MOU ("Offset"). The accounting of expenditures to SDCOE and the School Districts as described in paragraph 8 below, shall reflect the costs of services, the amount and payment source of any Offsets and the net cost for the reimbursement.

Section B – Use of AB 100 Funds for ERMHS Until These Funds Are Exhausted

3. CMH shall apply its portion of the AB 100 funds (which is estimated to be \$6,090,900.00) towards the ERMHS it provides to the students of the School Districts and/or served by SDCOE between July 1, 2011 and up to and including June 30, 2012, or until the AB 100 funds are exhausted, whichever of these events occur first. To the extent the ERMHS described in paragraph 1.a. include medication management, this service will be paid entirely with AB 100 funds or to the extent a student is Medi-Cal eligible, then Medi-Cal funds will be used consistent with applicable laws.
4. CMH recognizes that SDCOE and/or the School Districts' position is that they are not obligated to reimburse CMH for any medication management services and that the SDCOE and School Districts do not waive their right to claim that local education agencies are not responsible for funding this type of service, consistent with applicable laws. CMH will provide a report to SDCOE and the School Districts as to when it projects the AB 100 funds will be exhausted. The Parties anticipate that CMH will distribute this report on or about March 1, 2012.

Section C – Reimbursement for ERMHS Once AB 100 Funds are Exhausted

5. SDCOE will reimburse CMH for the provision of ERMHS (but only as described in “Attachment A”) rendered from July 1, 2011 to June 30, 2012, that exceed the amount of AB 100 funds allocated and distributed to CMH, less the Offset. This amount shall be referred to as the “Additional Costs.”
 - a. SDCOE will reimburse CMH for the Additional Costs within 30 days of receipt of the accounting of expenditures (to be sent by CMH to SDCOE on March 1, 2012 and August 15, 2012, as more specifically set forth in paragraph 8 below), subject to verification by SDCOE and the School Districts.
 - b. The Additional Costs shall only be for ERMHS described in “Attachment A,” which is an exhaustive list.
 - c. The Additional Costs shall not exceed \$6.5 million. However, in the event the projected Medi-cal units are not realized for students already verified pursuant to paragraphs 3 and 8 by SDCOE and the School Districts, CMH will notify SDCOE and the School Districts in writing via a single invoice and report (itemized by each school district and SDCOE) as early as December 31, 2013, but by no later than June 30, 2015.
 - i. Subject to verification by SDCOE and the School Districts, SDCOE shall reimburse CMH for the Additional Costs that exceed \$6.5 million within 30 days of SDCOE’s receipt of the invoice and report described above provided that said documentation is received by close of business on 5:00 p.m. on June 30, 2015. In the event the documentation is received after 5:00 p.m. on June 30, 2015, SDCOE and/or the School Districts will have no obligation to reimburse CMH for any Additional Costs in excess of \$6.5 million.
 - ii. The Parties agree and understand that SDCOE and the School Districts shall not be responsible for any additional costs that exceed \$6.5 million for a student not previously verified by SDCOE and the School Districts pursuant to paragraphs 3 and 8.

Section D – Miscellaneous

6. Within 10 (ten) business days of this MOU becoming effective as described in the condition precedent paragraph 7 below, each School District and SDCOE shall submit a copy of this MOU to CDE.
7. Condition precedent. Section C of this MOU shall not be effective unless and until all of the Parties execute this MOU and their respective Governing Boards approve or ratify this MOU and the Governing Boards of all of the School Districts approve or ratify the “Reimbursement MOU” wherein the School Districts agree to reimburse SDCOE for the Additional Costs as described in Section C above. In the event a School District elects to

use CMH to provide ERMHS to its eligible students through this MOU, its Governing Board must approve or ratify the Reimbursement Agreement by no later than November 18, 2011.

8. Records. CMH will provide SDCOE and School Districts with an accounting of expenditures incurred pursuant to this MOU two times for the fiscal year. The first accounting of expenditures will cover the period of July 1, 2011 through December 31, 2011, and will be provided on or before March 1, 2012. The second accounting of expenditures will cover the period of January 1, 2012 through June 30, 2012, and will be provided on or before August 15, 2012.

The accounting records will include for each student the following data: the school district of residence, as provided most recently in writing by a School District; the Service Function Code ("SFC") for the ERMHS; the units of service; and the cost per unit. The student's name, date of birth, provider name, date of service, unit/minutes/mode, estimated cost per unit, and SFC in sufficient detail to enable SDCOE to establish a link between the services claimed and the individual student's IEP. CMH shall also provide SDCOE and School Districts with invoices that reconcile with the figures on the accounting records, at the same time the accounting of expenditures is provided to SDCOE as described above. CMH is responsible for maintaining all required documentation in accordance with current practice for audit purposes.

9. Audit. SDCOE auditors will have access to CMH records supportive of claims filed pursuant to this MOU if required for audit purposes as allowed by state and federal law. CMH will be responsible for any audit exceptions and/or disallowed claims filed pursuant to this MOU for fiscal year 2011-2012 which are the responsibility of the CMH. SDCOE will be responsible for any audit exceptions and/or disallowed claims filed pursuant to this MOU for fiscal year 2011-2012 which are the responsibility of SDCOE. In the event of the need for an audit appeal, CMH and SDCOE will mutually agree upon the most expedient process for resolution. This audit provision shall survive the term of this MOU.
10. Privacy. CMH and SDCOE 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. 14-109, students' records under the Family Educational Rights and Privacy Act, section 1232g of Title 20 of the United States Code; and under provisions of state law relating to privacy. CMH and SDCOE shall ensure that all activities undertaken under this MOU will conform to the requirements of these laws.
11. Indemnity. CMH and SDCOE shall each defend, hold harmless and indemnify the other party, its governing board, officers, administrators, agents, employees, independent contractors, subcontractors, consultants, and other representatives from and against any and all liabilities, claims, demands, costs, losses, damages, or expenses, including reasonable attorneys' fees and costs, and including but not limited to consequential damages, loss of use, extra expense, cost of facilities, death, sickness, or injury to any

person(s) or damage to any property, from any cause whatsoever arising from or connected with its service hereunder, that arise out of or result from, in whole or in part, the negligent, wrongful or willful acts or omissions of the indemnifying party, its employees, agents, subcontractors, independent contractors, consultants, or other representatives.

This indemnity provision shall survive the term of this MOU and is in addition to any other rights or remedies that CMH or SDCOE may have under law and/or the MOU.

12. **Integration.** This MOU represents the entire understanding of SDCOE and CMH 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 signed by both parties hereto. This is an integrated MOU.
13. **Laws and Venue.** 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 situated in the County of San Diego, State of California, unless otherwise specifically provided for under California law.
14. **Third Party Rights.** Nothing in this MOU shall be construed to give any rights or benefits to anyone other than SDCOE, CMH, School Districts and SELPAs.
15. **Severability.** The unenforceability, invalidity or illegality of any provision(s) of this MOU shall not render the other provisions unenforceable, invalid, or illegal.
16. **Term.** Except as otherwise provided for herein, this MOU shall cover the period of July 1, 2011 through and including June 30, 2012. This MOU shall terminate as of the close of business on June 30, 2012.
17. **Renewal.** By March 1, 2012 SDCOE shall inform CMH in writing whether or not it intends to renew this MOU for the 2012-2013 fiscal year. This written notice shall include a list of the School Districts which intend to utilize CMH as a provider of ERMHS for their eligible students.
18. **General Assurances.** As required by applicable laws, CMH will comply with the General Assurances and Federal Funds Conditions.
19. **Dispute Resolution.** CMH and SDCOE agree that the following process will be used to address disputes on the implementation of the MOU only after collaborative efforts have been attempted at the lowest possible level.

By July 1 of 2011, and for any extension of this MOU beyond June 30, 2012, CMH and SDCOE will name a mutually agreed upon administrator of a county department or agency to assist to resolve disputes using a process of facilitated communication through non-binding CMH and SDCOE mediation. 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 agency initiating the dispute to the non-initiating party.
- If the issue is not resolved within five (5) business days, the agency initiating the dispute shall request that the outside party be contacted to schedule a meeting between the agencies.
- No later than sixty (60) calendar days from the date mediator is contacted, a resolution plan between the two agencies will be developed.
- The responsible CMH and SDCOE personnel services shall be responsible for assuring the agreements included in the resolution plan are implemented.
- The costs for this service shall be shared equally between CMH and SDCOE.

20. The signatories of this MOU or their designee shall be responsible for assuring the agreements included in the resolution plan are implemented.

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 parties written notice thereof and shall resume performance of the terms of this MOU.

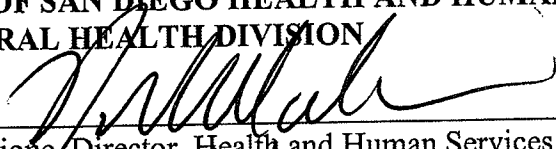
Neither party shall be liable for any excess costs if the failure to perform the MOU arises from any of the contingencies listed above.

21. The Parties agree to continue to collaborate and cooperate regarding the transition of providing ERMHS by CMH to other providers. In the event either Party intends to correspond with third parties, such as parents of students who receive or may receive ERMHS, or the general public, regarding the provision and/or transition of ERMHS from CMH to school districts as a result of AB 114 and/or related case law, they agree to collaborate and cooperate in terms of developing such correspondence where practicable. This provision, however, does not preclude either Party from directly and unilaterally communicating with the parent and/or student who receives or may receive ERMHS from CMH related to the student's individual IEP or from CMH communicating unilaterally with its mental health service providers.

IN WITNESS WHEREOF, the Parties have caused this MOU to be executed by their duly authorized officers in the County of San Diego, California.

This MOU is entered into this 12th day of October 2011, by and between the undersigned parties.

**COUNTY OF SAN DIEGO HEALTH AND HUMAN SERVICES AGENCY
BEHAVIORAL HEALTH DIVISION**

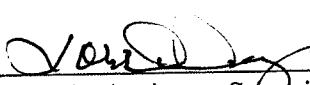


Nick Macchione, Director, Health and Human Services Agency

10/7/11

Date

SAN DIEGO COUNTY OFFICE OF EDUCATION



Lora L. Duzyk, Assistant Superintendent for Business Services on behalf of
Randolph E. Ward, County Superintendent, San Diego County Office of Education

10-12-11

Date

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APPROVED AS TO FORM AND LEGALITY
COUNTY COUNSEL.

BY 

SENIOR DEPUTY

Attachment A- MENTAL HEALTH SERVICE CODES

<u>Anasazi ID</u>	<u>Anasazi Description</u>	<u>Mode</u>	<u>Service Function</u>
9	Assessment Psychosoc Interactive	15	30
10	Assessment - Psychosocial	15	30
11	Medication Evaluation	15	60
13	Plan Development	15	30
14	Eval of Records for Assessment	15	30
15	External Report Preparation	15	40
20	Med Services Comprehensive	15	60
22	Meds - Pharmacological Mgmt	15	60
23	Med Check MD Brief	15	60
30	Psychotherapy-Individual	15	40
31	Psychotherapy - Group	15	50
32	Psychotherapy - Family	15	50
33	Collateral	15	10
38	Psychotherapy Interactive-Ind	15	40
39	Psychotherapy Interactive-Grp	15	50
40	Collateral Group	15	50
50	Case Management / Brokerage	15	01
60	Other Support non-billable	■	■
95	Day Treatment		
	Day Intensive Half	10	84
	Day Intensive Full	10	85
	Day Rehab Half	10	91
	Day Rehab Full	10	96

ATTACHMENT B

California Department of Education (<http://www.cde.ca.gov/fg/fo/fm/genassur.asp>)
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General Assurances

California Department of Education General Assurances required for grants supported by state and federal funds.

Note: By signing the grant application and including a copy of this document with it, the authorized official agrees to the assurances presented here. No signature should be placed on this page.

Discrimination

As the duly authorized representative of the applicant, I certify that the applicant will comply with all federal statutes relating to nondiscrimination, including (a) Title VI of the Civil Rights Act of 1964 (45 *United States Code [USC]* sections 2000d through 2000d-4) prohibiting discrimination on the basis of race, color, or national origin; Title IX of the Education Amendments of 1972 (20 *USC* sections 1681-1683) prohibiting discrimination on the basis of sex; Section 504 of the Rehabilitation Act of 1973 (29 *USC* Section 794) prohibiting discrimination on the basis of handicap; and The Age Discrimination Act (42 *USC* Section 6101, *et seq.*) prohibiting discrimination on the basis of age.

Costs

As the duly authorized representative of the applicant, I certify that the applicant will comply with the general cost principles set forth in federal regulations, 34 *Code of Federal Regulations (CFR)* Section 74.27 and 34 *CFR* Section 80.22, and the Office of Management and Budget circulars applicable to my entity.

I further certify that the applicant will comply with the expenditure requirements set forth in the federal Education Department General Administrative Regulations (EDGAR) contained in Title 34 of the *CFR*.

Records

As the duly authorized representative of the applicant, I certify that the applicant will make reports to the state or federal agency designated in the application as may reasonably be necessary to enable those agencies to perform their duties. The applicant will maintain and provide access to all records used in the preparation of such reports for a period of five years. Such records shall include, but not be limited to, records which fully disclose the amount and disposition by the recipient of funds, the total cost of the activity for which the funds are used, the share of the cost provided from other sources, and such other records as will facilitate an effective audit. The recipient shall maintain such records for five years after the completion of the activities for which the funds are used.

Applicable Law

As the duly authorized representative of the applicant, I certify that the applicant will comply with all state and federal statutes, regulations, program plans, and eligibility requirements applicable to each program under which federal and state funds are made available through the application.

CDE-100A (Revised Aug-2005) - California Department of Education

Questions: Funding Master Plan | fm@cdede.ca.gov | 916-323-1544

Last Reviewed: Friday, August 20, 2010