

Advocacy Tools

School District & County Mental Health

State law assigns responsibility for providing services to individuals with psychiatric disabilities to more than one agency. Understanding each agency's responsibility and the ways in which interagency disputes can be resolved, will help insure that students with mental health needs will receive the services they need in a timely fashion.

This information letter discusses coordination of mental health services between county departments of mental health (CMH) and local school districts for students with disabilities.

Empowerment Resources #08

Mental Health Services for Students with Disabilities

✦ Overview of Statute and Regulations Covering Mental Health Services for Students with Disabilities

AB 3632 is a law that requires agencies to coordinate the services provided to students with disabilities. This law took effect in 1986, but the implementing regulations did not become final until July 1999. The law is contained in Government Code Sections 7570-7588 and the regulations are found in the California Code of Regulations Sections 60000-60610. Patients' Rights Advocates can easily access the law and regulations through the following websites:

Regulations - www.calregs.com

Statutes - www.leginfo.ca.gov/html/wic_table_of_contents.html

In addition to the laws and regulations, a local interagency agreement must be developed between the local school district and the county department of mental health. Because local agreements often further define procedures for obtaining services, it would be good practice for the advocates to obtain a copy of the local agreements.

✦ Who Is Responsible For Providing Mental Health Services?

Under AB 3632, local school districts are responsible for providing those services that can be provided by the school's counseling and guidance services to meet the

child's needs. The county mental health department is responsible for providing mental health services necessary for the child to benefit from special education which are beyond the capacity of the school's counseling and guidance services.

✎ **When Can A School District Refer A Student With Disabilities To The County Department of Mental Health?**

AB 3632 and the applicable regulations set out eligibility criteria for the referral of a student to CMH for mental health services. The criteria include:

The student has a disability, is eligible for special education and is suspected of needing mental health services;

The pupil has emotional or behavioral characteristics which: impede the pupil's education; are significant as indicated by their rate of occurrence and intensity; are not associated with "social maladjustment" or the absence of a mental disorder; and are not solely temporary adjustment problems.

The pupil's functioning, including cognitive functioning, is at a level sufficient to enable the pupil to benefit from mental health services; and

The school has provided counseling and guidance services that meet the pupil's need, or the IEP team determined those services to be inappropriate.

✎ **What Is County Mental Health's Obligation To Assess Students With Disabilities?**

Within five (5) days of receiving a referral for assessment from a local school district, CMH must determine if the assessment is appropriate or necessary. If CMH determines assessment is not necessary, it must notify the school district and the parents within one working day of making that determination. A parent can appeal this decision.

IF CMH agrees to assess the child, it must give the parent a consent form and assessment plan within 15 calendar days of receiving the referral. As soon as the parent returns the signed consent form, CMH has one working day to contact the school to schedule an IEP meeting to discuss the results of the assessment no later than 50 days from receiving the parent's written consent.

The parent must receive a copy of the assessment report at least two days prior to the IEP meeting

✎ **What Happens At The Individualized Educational Program (IEP) Meeting?**

The CMH assessor must attend the IEP meeting if requested to do so by the parent. The recommendations of CMH become the recommendation of the school district IEP team members. In other words, school district representatives cannot make different mental health service recommendations other than those made by the CMH representative.

The IEP must include the following information concerning mental health services: a description of the student's social and emotional performance; the goals and objectives of mental health services; the types of mental health services to be provided; the initiation date, duration and frequency of mental health services; and a separate parent consent form for the mental health services

✎ **What Mental Health Services Can Be Provided Under AB 3632?**

Mental health services include the following services when necessary for the student to benefit from his/her special education: individual or group psychotherapy; medication monitoring; intensive day treatment, day rehabilitation and case management.

✎ **Can A Child Be Placed On A Waiting List To Receive AB 3632 Mental Health Services?**

No. Under federal law all services specified in a student's IEP must be provided. Neither school districts nor CMH can maintain waiting lists for services. It also is not permissible to delay providing services based on the acuteness of the student's disabilities. Although CMH managed care plans may make decisions to delay services based on the acuteness of the disability; such delay is not permissible under AB 3632.

✓ **If A Child Is Identified As Seriously Emotionally Disturbed, Which Agency Is Responsible For Providing Residential Placement?**

If a student is identified as emotionally disturbed and any member of the IEP team, including the parent, recommends residential placement, the IEP team must be expanded to include a representative from the county department of mental health. This expanded IEP team must meet within 30 days of the date that residential placement was recommended.

The expanded IEP team then reviews information about the student and determines whether residential placement is necessary, or whether the child's needs can be met through nonresidential services. Some of the nonresidential services the IEP team must consider include: a behavior specialist and full-time behavioral aide in the classroom; additional mental health services and training to assist the parent in managing the child's behavior at home.

If the expanded IEP team determines that residential placement is necessary, the IEP must identify CMH as the lead case manager. These case management responsibilities can be delegated to the county welfare department. The case manager must convene a meeting with the parents and education agency to identify an appropriate residential placement. The case manager also assists the family with the child's placement from home to facility, conducts quarterly face-to-face contacts with the pupil at the facility and schedules and attends an expanded IEP meeting every six months.

✓ **Are There Any Limitations On The Types of Placements Made Pursuant to AB 3632?**

Yes. The placement cannot be made in a public inpatient facility, private psychiatric facility, or in a state hospital.

✓ **If A Student Needs Residential Placement In Order To Benefit From His/Her Education Must The Child Be Made A Ward Of The Court?**

It violates federal law to require that a student be made a ward or dependent of the court if she/he needs residential care in order to benefit from educational services. Further, parents cannot be required to pay for any cost of the residential treatment

when the placement is necessary to provide special education and related services when the student has been placed pursuant to an IEP.

✎ **When A Child Is Temporarily Placed In A Psychiatric Hospital In Another County Who Is Responsible For Providing Education and Mental Health?**

Students with disabilities who are placed in a public or private hospital, state licensed children's hospital, psychiatric hospital or a health facility for medical purposes are the educational responsibility of the district, special education local plan area, or county office of education in which the hospital or facility is located.

Responsibility for mental health services for the child is not as clear. If the facility the child is placed in is out of the child's county, and if the placement is temporary, it is likely that the county where the child's parent resides (or if the child is a ward or dependent of the court) the county where that status currently exists is responsible for providing mental health services.

✎ **What Happens If A Local School District And County Mental Health Cannot Agree On Which Agency Is Responsible For Providing (Or Paying For) Services Specified In A Pupil's IEP?**

If a child is not receiving the mental health services specified in his/her IEP because of a dispute over which agency is responsible for the services, the parent (or advocate acting on the parent's behalf) can file a notice of failure to provide related services with the Superintendent of Public Instruction or the Secretary of Health and Welfare. The Government Code requires the agencies to meet within 15 days to resolve who will provide the services. Written complaints should be sent to:

Secretary of Health & Welfare
1600 Ninth Street, 4th Floor
Sacramento, CA 95814

Superintendent of Public Instruction
721 Capitol Mall, Room 524
Sacramento, CA 95814

If the issue cannot be resolved within 15 days to the satisfaction of the involved department, it can be appealed to the Office of Administrative Hearings (OAH). OAH is required to review the issue and submit findings within 30 days. OAH's decision is binding on all parties to the dispute.

✎ **What Recourse Is There If the Parent and School District/Mental Health Disagree With The Need For Services?**

If a parent disagrees with the mental health services offered and/or the need for residential placement, the parent can appeal that decision. The parent can appeal the decision by filing a request for a hearing with:

Special Education Hearing Office
Institute for Administrative Justice
McGeorge School of Law
3200 Fifth Avenue
Sacramento, CA 95817
(916)739-7053

ADVOCACY ROLE

1. When representing children with disabilities in commitment hearings you may want to look at the following:

Was the student referred for AB 3632 services? This can most easily be ascertained by looking at the child/young adult's IEP. Often the parent, or the social worker if the child is a dependent of the court, can provide the advocate with a copy of the IEP.

Were the AB 3632 services provided? The child/young adult or his/her parent may know if they received any mental health services at school. The IEP will at least tell the advocate if services were supposed to be provided. Remember that under AB 3632, children/young adults cannot be placed on a waiting list for services

Was the child/young adult ever referred for residential placement under AB 3632 and if so the status of that request. AB 3632 residential services cannot be provided in a public or private psychiatric inpatient facility or state hospital and thus may help insure that a child/young adult receives services in the less restrictive setting.

If the required AB 3632 procedures have not been followed or an AB 3632 referral is in process, the advocate should bring this information to the attention of the hearing officer. This information may provide the basis for identifying community resources that may be used instead of placement in an inpatient facility.

If an AB 3632 referral has not been made, the advocate may want to assist the child/young adult or their family in making such a referral as a means of insuring that the child can have access to additional sources of community support.

2. You may want to monitor the records of children/young adults placed on psychiatric inpatient units to ascertain if AB 3632 services have been considered. It would be good practice for the facilities records to include this information. In looking at the records, the advocate may want to consider the same questions discussed under one above.
3. You may want to provide training to CMH staff and/or facility staff regarding the availability of services under AB 3632 as a means of insuring that children/young adults receive services in the least restrictive placement.
4. You may want to consider reviewing CMH case manager quarterly reports for children placed in AB 3632 residential placements or working with CMH staff to insure that patients' rights issues identified during the quarterly face-to-face meetings are discussed with the advocate. This may be particularly important if the case management responsibilities are assigned to county welfare department staff who may be less knowledgeable about patients' rights issues.
5. You may want to obtain a copy of the local interagency agreement(s) between CMH and local school districts concerning AB 3632 services and review the agreement(s) to insure that they contain provisions for protecting patients' rights.

The next Empowerment Resource will discuss coordination of services between regional centers and county departments of mental health for individuals with both mental health needs and developmental disabilities.