

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
2 FOR THE COUNTY OF LOS ANGELES  
3 JUVENILE DEPENDENCY DIVISION

4 IN THE MATTER OF:

) COURT DEPT: \_\_\_\_\_

) CASE NO. \_\_\_\_\_

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6 )  
7 ) MINOR(S)  
8 )

) NOTICE OF MOTION; MOTION FOR  
) JOINDER, W&IC §§ 362(a), 319.1 AND  
) 5694.7; MEMORANDUM OF POINTS AND  
) AUTHORITIES; ORDER  
9 )

10 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

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12 PLEASE TAKE NOTICE that on \_\_\_\_\_, 1999 at \_\_\_\_\_ a.m./p.m., or as soon  
13 thereafter, in Department \_\_\_\_\_, Superior Court of the State of California, located at 201  
14 Centre Plaza Dr., #3, Monterey Park, CA 91754, the Minor will move the Court pursuant to Welf.  
15 & Inst. Code §§ 362(a), 5694.7, and 319.1 for an order joining the Los Angeles Department of  
16 Mental Health and the \_\_\_\_\_ School District as parties to these  
17 proceedings and directing them to comply with their obligations to provide mental health  
18 assessment and treatment services and special education related services to the Minor, including  
19 residential care and home and community based mental health services.  
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22 Dated:

Respectfully Submitted,

23 \_\_\_\_\_  
24 Attorney for Minor  
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1 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
2 FOR THE COUNTY OF LOS ANGELES  
3 JUVENILE DEPENDENCY DIVISION

4 IN THE MATTER OF: )

COURT DEPT: \_\_\_\_\_

5 ) CASE NO. \_\_\_\_\_

6 )  
7 ) MINOR(S) )

MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF ORDER  
FOR JOINDER, W&IC §§ 362(a), 319.1 AND  
5694.7

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10 **INTRODUCTION**

11 The requested order requires two agencies -- the Los Angeles County Department of  
12 Mental Health (LAC DMH) and the \_\_\_\_\_ School District -- to appear before this Court and  
13 to carry out their duties to the minor. Because the minor is eligible for Medi-Cal services and  
14 under age 21, s/he is eligible for intensive mental health services to be provided by LAC DMH,  
15 which also has a special duty to assess the child's needs when requested to do so by the Juvenile  
16 Court pursuant to Welf. & Inst. Code § 5694.7. In addition, the child has special education rights  
17 to mental health services, including residential placement, to be provided by the school district  
18 and/or LAC DMH under the Individuals with Disabilities Education Act (IDEA) 20 U.S.C. § 1412  
19 et. seq. The two agencies have been unclear about their respective duties to provide these  
20 services.

21 **I. JUVENILE COURTS HAVE AUTHORITY TO JOIN LAC DMH AND THE**  
22 **\_\_\_\_\_ SCHOOL DISTRICT AS PARTIES IN DEPENDENCY PROCEEDINGS.**

23 The juvenile court has broad authority under Welf. & Inst. Code § 362(a) to "join in the  
24 juvenile court proceedings any agency that the court determines has failed to meet a legal  
25 obligation to provide services to the minor." This authority extends to the agencies at issue here,  
26 as the legislative history of Section 362 makes clear. One legislative committee noted that the  
27 amendment addresses the needs of the most difficult to serve population of dependent children and  
28 wards of the court -- children with multiple service needs [who are] legally entitled to services

1 from several public agencies. The fact that multiple agencies are involved often results in a failure  
2 to provide legally mandated services: the buck gets passed from agency to agency without the  
3 child getting any services. Senate Committee Report on Judiciary Bill No. AB 3553 (June 23,  
4 1992). Another committee analysis specifically named the agencies typically involved as “the  
5 Department of Education, Department of Mental Health, Department of Health Services,  
6 Department of Rehabilitation, and Regional Centers.” Assembly Committee Analysis of Judiciary  
7 Bill No. AB 3553 (April 8, 1992).

8 Here, the two agencies involved in providing mental health services are unclear about their  
9 respective duties to the dependent child. Without a joinder order under Welf. & Inst. Code §  
10 362(a), there is a real danger that “the buck [will] get[] passed from agency to agency without the  
11 child getting any services.” *Id.* With both agencies present, this court need only order them jointly  
12 to deliver the needed services, leaving it to the agencies themselves to sort out specific  
13 responsibilities.

## 14 **II. LAC DMH HAS THE DUTY TO ASSESS A CHILD’S NEED FOR MENTAL** 15 **HEALTH SERVICES.**

16 Under Welf. & Inst. Code § 5694.7, when requested to do so by the juvenile court, the  
17 county mental health director must... assess whether or not the child is seriously emotionally  
18 disturbed as well as to determine the level of involvement in the case needed to assure access to  
19 appropriate mental health treatment services and whether appropriate treatment is available . . .  
20 through another agency, and to ensure access to services available within the county’s program.  
21 Welf. & Inst. Code § 5694.7 (emphasis added). This statute imposes a duty on LAC DMH to  
22 assess a child’s needs for mental health services even if these services are not provided by the  
23 county. Accordingly, the county has an obligation to develop a treatment plan which addresses all  
24 the child’s needs, including needs for mental health services from the school district or from other  
25 programs or agencies.

26 Finally as noted below, for children such as the dependent here, LAC DMH also has a duty  
27 to provide mental health services in conjunction with the child’s special education rights, pursuant  
28 to Assembly Bill (AB) 3632/882 as amended by AB 2726 and codified as Cal. Gov. Code §§

1 7570-7588 (hereinafter, "AB3632").

2 **III. THE SCHOOL DISTRICT HAS A DUTY TO PROVIDE RELATED MENTAL**  
3 **HEALTH SERVICES INCLUDING RESIDENTIAL PLACEMENT.**

4 Children who are seriously emotionally disturbed ("SED") have a right to special  
5 education "related services" including psychological counselling for the child and/or family if  
6 necessary to benefit from the child's education or residential placement in a non-public school  
7 setting. AB3632. If in the course of developing a child's Individual Educational Plan (IEP) the  
8 child is identified as SED, a referral must be made to the county mental health department for an  
9 assessment and provision of mental health related services, including residential services.

10 More generally, the education rights of children with disabilities are governed by the  
11 Individuals with Disabilities Education Act (IDEA) 20 U.S.C. § 1412 et. seq. The 1997  
12 amendments to IDEA clarified that local school districts are ultimately responsible for services  
13 needed by pupils even when another public agency other than the educational agency is otherwise  
14 obligated to provide or pay for services that are considered special education related services. If  
15 that other agency fails to provide or pay for these services, the local school district must fulfill the  
16 obligation either directly or through contract or through some other arrangement. 20 U.S.C.  
17 1412(a)(12)(B)(i) & (ii). Consequently, if mental health and/or residential services are necessary  
18 for a child to benefit from his education, the school district must provide the services if there is a  
19 delay in providing related mental health services from county mental health through the AB 3632  
20 process and while waiting for AB 3632 services to begin.<sup>1</sup>

21 It is a violation of federal law to require that a child be made a ward or dependent of the  
22 court in order to obtain residential care needed to benefit from educational services, since this will

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25 <sup>1</sup>The federal regulations implementing the 997 amendments to IDEA were effective May  
11, 1999 and speak clearly to this issue. The new regulations provide that:

26 "If a public agency other than an educational agency fails to provide or pay for the  
27 special education and related services . . . , the LEA . . . shall provide or pay for  
28 these services to the child in a timely manner. The LEA or State agency may then  
claim reimbursement for the services from the non-educational public agency that  
failed to provide or pay . . ."

34 C.F.R. § 300.142(b)(ii)(2), 48 Fed. Reg. 12406, 12430 (March 12, 1999).

1 involve a cost to the parent. Federal law provides that “[i]f placement in a public or private  
2 residential program is necessary to provide special education and related services to a handicapped  
3 child, the program, including non-medical care and room and board, must be at no cost to the  
4 parents of the child.” 34 C.F.R. § 300.302.

5           In *Christopher T. v. San Francisco United School District*, 553 F.Supp. 1107 (U.S.D.C.,  
6 N.D.Cal. 1982), the federal court ruled that the school district was financially responsible for the  
7 costs of residential placement for two children who were made dependents of the Juvenile Court  
8 and placed by the Department of Social Services. *Id.* At 1119-20. The court found that the school  
9 district failed to provide adequate mental health services in the children’s Individual Education  
10 Plan, particularly the residential placement which the children needed.

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Dated: \_\_\_\_\_

Respectfully Submitted

\_\_\_\_\_  
Attorney for Minor

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
2 FOR THE COUNTY OF LOS ANGELES  
3 JUVENILE DEPENDENCY DIVISION

4 IN THE MATTER OF:

) COURT DEPT: \_\_\_\_\_

) CASE NO. \_\_\_\_\_

) JOINDER ORDER UNDER W&IC §§ 362(a),  
319.1 AND 5694.7

7 MINOR(S)

9  
10  
11 ORDER

12 This court finds that the minor, \_\_\_\_\_ is a person described by  
13 Welf. & Inst. Code § 300 and that the minor may need specialized mental health treatment and  
14 special education services while the minor is unable to reside in her/his natural home.

15 THE COURT HEREBY ORDERS the joinder of the Director of the Los Angeles County  
16 Department of Mental Health (LAC DMH) and the \_\_\_\_\_ School District as parties to this  
17 proceeding pursuant to Welf. & Inst. Code §§ 362(a) and 5694.7.

18 THE COURT FURTHER ORDERS as follows:

19 1. Pursuant to Welf. & Inst. Code § 5694.7, the Director of LAC DMH shall assess the  
20 minor's need for mental services including those available through Medi-Cal and under the state  
21 and federal special educational laws and shall develop a treatment plan which includes these  
22 services where clinically appropriate; and shall report back to this Court within 30 days on the  
23 progress made in complying with the order set forth herein.

24 2. Pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1412 et.  
25 seq. and Assembly Bill (AB) 3632/882 as amended by AB 2726 and codified as Cal. Gov. Code  
26 §§ 7570-7588, the \_\_\_\_\_ School District shall determine which related services, including mental

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1 health services and residential care, are necessary for the minor to benefit from education services  
2 and to provide these services or assure that they are provided by LAC DMH.

3 Date: \_\_\_\_\_

4 \_\_\_\_\_  
5 The Honorable \_\_\_\_\_  
6 Judge/Commissioner/Referee  
7 Los Angeles Superior Court  
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