

SPECIAL EDUCATION RIGHTS AND RESPONSIBILITIES

Chapter 9

Information on Interagency Services (AB 3632)

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Chapter 9

Introduction

In October, 2010, using budget line-item veto authority, California Governor Arnold Schwarzenegger unilaterally removed State Department of Community Mental Health funding for the mental health services required by Government Code 26.5 (AB 3632) from the state budget. Since that time, Governor Jerry Brown and the California Legislature have not reinstated funding. The state statutes governing AB 3632 remain in state law - AB 3632 has not been repealed. However, legal challenges to Governor Schwarzenegger's action have been unsuccessful. THEREFORE, THE STATUTES AND REGULATIONS PERTAINING TO MENTAL HEALTH SERVICES IN GOVERNMENT CODE 26.5 (AB 3632) ARE INOPERATIVE AT THIS TIME. THE STATUTES AND REGULATIONS IN GOVERNMENT CODE 26.5 PERTAINING TO THE PROVISION OF OCCUPATIONAL THERAPY AND PHYSICAL REMAIN IN EFFECT.

Most importantly, in a policy clarification memo, the California Department of Education (CDE) has made clear that school districts are ultimately responsible for services provided under AB 3632 and that the determination of prospective mental health services and/or any changes to current AB 3632 services must take place within the Individual Education Program (IEP) process. See *LEAs' Responsibilities for Ensuring the Continuous Delivery of Mental Health Services* and *Frequently Asked Questions About Services Previously Provided Through Community Mental Health Agencies* at www.cde.ca.gov/sp/se/ac/

Even though the mental health service requirements in Government Code 26.5 (AB 3632) are inoperative, all assessment and service determination procedures required by special education law must be followed if a student may need psychological services available through federal and state special education law or other mental health services previously provided through Government Code 26.5 (AB 3632). School districts are responsible for educationally-related psychological services (including residential treatment services) needed by any student eligible for special education. Parents and professionals serving students with disabilities should address student need for psychological services as part of the assessment and IEP process. [34 C.F.R. Sections 300.34 (c)(10) & 104; Cal. Ed. Code Section 56363 (b)(10).] See Chapter 5, *Information on Related Services*.

References to mental health statutes and regulations that were previously in effect remain in Chapter 9 because school districts and community mental health agencies may continue utilize those provisions through contract or Memorandums of Understanding. Contact your school district to determine the procedures that will be used by your district to assess and provide mental health services in the IEP process. Contact CASE or Disability Rights California for an update on the current legal status of AB 3632.

1. What are interagency related services?

Interagency related services for special education are sometimes referred to as Assembly Bill (AB) 3632 services or Government Code Chapter 26.5 services. The most common name for these services, AB 3632, is the name that will be used in this chapter to refer to any of the interagency-related services. In 1986, the California Legislature decided to use state and county agencies — other than the school district — to provide certain related services to maximize and better coordinate public resources to support students with disabilities.

Rather than have districts responsible for certain health and mental health services, the Legislature decided to enter into interagency agreements with other state agencies to provide services to students. The primary interagency related services are physical and occupational therapy (PT/OT), which are offered by California

Children’s Services (CCS), and psychological or mental health services, which are delivered by “community mental health” (CMH) agencies — sometimes called “county mental health.”

2. Where can I find the laws for interagency related services?

The laws are contained in California Government Code (Cal. Gov. Code) Sections (Secs.) 7570 - 7588, and in Title 2 of the California Code of Regulations (C.C.R.) Sections 60000-60610. In addition, school districts are required to develop interagency agreements with local mental health and CCS agencies. [2 C.C.R. Secs. 60030(a) & 60310(c).] These agreements must contain the details necessary to facilitate provision of services. Parents and advocates having difficulty accessing services should get a copy of the interagency agreement. Interagency agreements cannot be inconsistent with state or federal law — nor provide any less in the way of services.

3. Is AB 3632 the only way a California special education student can receive mental health services or occupational or physical therapy?

No. School districts are responsible for providing these related services, if not provided by other agencies, and are needed in order for a student to benefit from special education. **Districts cannot refuse to include services in an IEP just because a funding source has not been identified.** [Cal. Gov. Code Sec. 7572(d).] AB 3632 specifically states that services not found to be needed for *medical* reasons by CCS must be provided by the local school if the services are necessary for the child to benefit from special education. [Cal. Gov. Code Sec. 7575(a)(2).] OT/PT and psychological services are, and have always been, listed among the special education related services under state law [Cal. Ed. Code Secs. 56363(b)(6) & (10)] and federal law [34 C.F.R. Secs. 300.34(c)(6)(9) & (10)] when they are necessary for *educational* reasons. That is, these services must be provided by school districts if they are necessary for a child to benefit from special education, even when, because of their own rules or eligibility requirements, CMH

or CCS agencies do not provide them. [34 C.F.R. Sec. 300.34(a); Cal. Ed. Code Sec. 56031.]

If other agencies that are supposed to provide these services stop providing them for any reason, the school district must assume responsibility. [20 U.S.C. Sec. 1412(a)(12)(B)(ii).] In addition, federal law requires that during periods of disputes over services that a non-educational agency had been providing, the state must ensure that the services continue. [20 U.S.C. Sec. 1412(a)(12)(A).] You should always try to have these services identified in the IEP as educationally necessary — or necessary for a student to benefit from special education. It is ultimately the responsibility of the Superintendent of Public Instruction to ensure that state interagency services are carried out. [Gov. Code Sec. 7570.]

For any of these related services, a parent may always obtain and submit an independent evaluation, and it must be considered by the IEP team. [Gov. Code Sec. 7572(d)(2).] For information on how to obtain an independent evaluation at public expense, see Chapter 2, *Information on Evaluations/Assessments*.

4. How do school districts participate in this process when other agencies are involved in providing services?

After referral by the IEP team, the appropriate agency, CMH or CCS, conducts an assessment in accordance with the special education timelines required under state and federal law. When the assessment is completed, the district holds an IEP meeting for students and invites the representatives of CMH or CCS to attend and explain assessment results and discuss service needs. If the other agency representative cannot attend in person, the representative must provide a written recommendation concerning the need for the service. Conference calls, together with written recommendations, are acceptable forms of participation. If the other agency cannot participate, the district must provide a qualified substitute to explain and interpret the assessment. [Cal. Gov. Code Sec. 7572(e).] The district must adopt the recommendations of the CMH or CCS representative. [Cal. Gov. Code Secs. 7572(d)(1) & (2).]

5. If CMH or CCS conducts an assessment, what should be included in the written report?

Non-educational agencies must follow the same procedures as set out in the federal and state special education law. California Education Code, Section 56327 requires that the report shall include, but it is not limited to, all of the following:

- (1) Whether the student may need special education and related services;
- (2) The basis for making the determination;
- (3) The relevant behavior noted during the observation of the student in an appropriate setting;
- (4) The relationship of that behavior to the student's academic and social functioning;
- (5) The educationally relevant health and development and medical findings, if any;
- (6) For students with learning disabilities, whether there is such a discrepancy between achievement and ability that cannot be corrected without special education and related services;
- (7) A determination concerning the effects of environmental, cultural, or economic disadvantage, where appropriate; and
- (8) The need for specialized services, materials, and equipment for students with low incidence disabilities.

Not all of these will be appropriate in AB 3632 assessments for related services and reports prepared by CMH or CCS, depending on the student's individual needs. See Chapter 2, *Information on Evaluations/Assessments*.

6. How do non-education agencies participate?

CCS or CMH must review and discuss assessment results with the parent and appropriate members of the IEP team before the team meeting. If there is disagreement between the parent and the other agency about that recommendation,

the parent shall be notified in writing and can require that the person who conducted the evaluation attend the IEP meeting. [Cal. Gov. Code Sec. 7572(d)(1).] Similarly, if a parent obtains an *independent* evaluation, that evaluation must be considered by the person conducting the CMH or CCS evaluation and that person can also be required to attend the IEP meeting if requested by the parent. [Cal. Gov. Code Sec. 7572(d)(2).]

7. Do the special education due process and compliance complaint procedures apply to disagreements or problems with these other agencies?

Disagreements between you and the other agency concerning your child's eligibility for the other agency's services (or the amount or kind of services offered by the other agency), may be resolved through the special education due process system. [Cal. Gov. Code Secs. 7572(d)(3) & 7586(a).] All due process hearing requests shall result in one hearing with all responsible state or local agencies joined as parties. [Cal. Gov. Code Sec. 7586(c).]

For failures of the non-educational agency to comply with interagency regulations or to provide services specified in a student's IEP, you can use the Compliance Complaint process. [2 C.C.R. Sec. 60560; 5 C.C.R. Sec. 4650(a)(7)(D).] See Chapter 6, *Information on Due Process/Compliance Procedures*.

In addition, when a service listed in your child's IEP is not being provided (even if written into the IEP with the agreement of the non-educational agency) and where the dispute is not about whether he needs the service, but which agency should provide or pay for it, you can file a notification of that failure with either the Superintendent of Public Instruction or with the Secretary of the Health and Human Services Agency. [Cal. Gov. Code Sec. 7585.]

Superintendent of Public Instruction
California Department of Education
1430 N Street

Sacramento, CA 95814

Secretary of the California Health and Human Services Agency
1600 Ninth Street, Room 460
Sacramento, CA 95814

Enclose a copy of the IEP (or mediation agreement or due process hearing decision) that specifies the particular interagency service the notification of failure. When either agency receives the notification, it must transmit it to the other agency and the two must meet within 15 days to resolve the issue. You must receive a written resolution within 10 days of that meeting. If you are not satisfied with that resolution, you can appeal to the Director of the Office of Administrative Hearings (OAH).

If the agencies cannot resolve the issue, they must submit their dispute to the Director of OAH. The Director has 30 days to issue a binding decision on all parties. If your child has been receiving services from one of the agencies at the time you file your notification, the services must continue pending resolution of the dispute. [Cal. Gov. Code Sec. 7585; 2 C.C.R. Secs. 60600 & 60610.] The entire process must be completed within 60 days from receipt of notification by either agency.

When the service is included in the IEP without the recommendation of the non-educational agency, the dispute is only between you and the school district. The above notification process cannot be used. Instead, you must use the Compliance Complaint process discussed above.

8. Can a non-education agency (CCS or CMH) change a service written into my child's IEP without obtaining my consent?

No. Federal law requires that a public agency (including a school district, CCS and CMH) must give a reasonable notice before it proposes to initiate or change the identification, evaluation, or educational placement of your child, or the

provision of a “free appropriate public education” or FAPE (including related services). [34 C.F.R. Sec. 300.2.] The “prior written notice” must describe the action the agency proposes to take; why it is taking that action; what alternatives were considered and why they were rejected; a description of each evaluation, procedure, test, record or report on which the proposed action is based; and a description of your right to challenge the proposed reduction or termination. [34 C.F.R. Secs. 300.503 & 300.504.] Any change is then subject to the IEP process and due process procedures if necessary. While due process procedures are pending, your child must continue to receive the services that were being provided before the proposed change. [20 U.S.C. Sec. 1415(j); 34 C.F.R. Sec. 300.518(a); Cal. Ed. Code Sec. 56505(d).] See Chapter 4, *Information on IEP Process*.

9. Which students receive their occupational or physical therapy services from CCS?

If, after a district has evaluated a student, an IEP team suspects she may need occupational or physical therapy for both medical and educational reasons, the team will likely refer her to CCS for an OT or PT assessment. [Cal. Gov. Code Secs. 7572(a) & 7575(a)(1).] Only students referred to CCS who are found to need one of these therapies for medical reasons will receive the services from CCS. If the IEP team does not think there is a medical need for therapy or if CCS, after assessment, does not believe the student needs therapy for medical reasons, the student will receive therapy from the district, following an assessment by school personnel, if it is educationally necessary. [Cal. Gov. Code Sec. 7575(a)(2).]

Medical necessity means that the therapy is needed to achieve or prevent further loss of functional skills or reduce the incidence and severity of physical disability. [2 C.C.R. Sec. 60300(n).] In addition to having a medical need for therapy, your child must also meet CCS medical condition eligibility requirements. The most common conditions for special education students are: cerebral palsy, neuromuscular diseases that produce muscle weakness and atrophy, such as poliomyelitis, myasthenias, and muscular dystrophy, and chronic musculoskeletal diseases, deformities or injuries, such as osteogenesis imperfecta, arthrogryposis,

rheumatoid arthritis, amputation, and contractures resulting from burns. [2 C.C.R. Sec. 60300(j).] Other conditions eligible for OT or PT treatment by CCS are listed in the regulations. [22 C.C.R. Secs. 41515.1 and following.] The CCS assessment focus will be on addressing functional life skill deficits or physical limitations, and not necessarily on academic or other educational tasks, although for some special education students these skills and tasks may often overlap.

Federal and state special education laws have broader eligibility criteria for OT/PT than CCS. Under the so-called “educational necessity” standard, OT/PT shall be provided when required to help a student “benefit from special education.” [34 C.F.R. Sec. 300.34(a).] Physical therapy is simply defined as services provided by a qualified physical therapist. [34 C.F.R. Sec. 300.34(c)(9).] Occupational therapy is defined by federal law as services provided by a qualified occupational therapist and includes improving, developing or restoring functions impaired or lost through illness, injury, or deprivation; improving ability to perform tasks for independent functioning if functions are impaired or lost; and preventing, through early intervention, initial or further impairment or loss of function. [34 C.F.R. Sec. 300.34(c)(6).]

10. What are the interagency services a student might receive from CCS?

The services include: 1) Treatment — individual or group occupational or physical therapy; 2) Consultation — occupational or physical therapist provides information and instruction to parents, caregivers, school staff, or other medical service providers regarding therapy activities; and 3) Monitoring — regular re-evaluation of the student’s physical status and review of the therapy activities provided by parents and school staff, and updating of the therapy plan. [2 C.C.R. Sec. 60300(k).]

11. How can my child get CCS referral, assessment and services?

Following an IEP team referral, CCS determines if your child has a program-eligible condition, as described above. If he has an eligible condition, the next step is a therapy assessment. (If CCS finds he is *ineligible*, the evaluation process stops.) If the therapy assessment determines your child needs CCS program services, the agency prepares a report and a therapy plan for by discussion at an IEP team meeting.

The report and plan must include the following information:

- (1) Statement of your child's present level of functional performance;
- (2) Proposed functional, measurable goals to be achieved or recommendation for services to prevent loss of present functioning;
- (3) Specific therapy services required by your child, including the type of therapy, intervention, treatment, consultation, and monitoring;
- (4) Proposed initiation, frequency, and duration of the services; and
- (5) Proposed date of medical evaluation.

[2 C.C.R. Sec. 60325(a).]

The district then convenes an IEP meeting, and, if the team agrees with the CCS report and therapy plan, it will determine whether CCS services are needed in order for your child to benefit from special education. If so, the team will write IEP goals related to the activities identified in the report. [2 C.C.R. Sec. 60325.] The service initiation date, frequency, location, and duration must also be written into the IEP. [20 U.S.C. Sec. 1414(d)(1)(A)(i)(VII); 34 C.F.R. Sec. 300.320(a)(7); Cal. Ed. Code 56345(a)(7).]

If CCS determines that your child does not need OT or PT for medical reasons, it must provide you and the district a copy of the assessment report which explains the reasons for that determination. [2 C.C.R. Sec. 60320(i).]

CCS must give you five days written notice of any decision to increase, decrease, stop, or change the services and an IEP meeting must then be held. [2 C.C.R. Sec. 60325(c).]

If you obtain a *private physician's* referral of a child for a therapy assessment, any private referral must contain the following information:

- (1) The diagnosed neuromuscular, musculoskeletal, or physically disabling condition;
- (2) The referring physician's treatment goals and objectives;
- (3) The basis for determining those goals and objectives, including how they will improve or ameliorate the student's condition;
- (4) The relationship between the student's medical condition to his need for special education and related services; and
- (5) Any relevant medical records.

[Cal. Gov. Code Sec. 7575(b).]

12. What criteria must be met for a student to be referred to CMH for mental health services?

The IEP team must make the referral of a special education-eligible student to CMH for mental health services. The requirements for referral include each of the following::

- (1) The student has been assessed by the district for social and emotional status and must be suspected of needing mental health services. [34 C.F.R. Sec. 300.304(c)(4); Cal. Ed. Code Sec. 56320(f)];
- (2) The school district has obtained parental consent for the referral to CMH and for the release of information to CMH and for the observation of the student by mental health professionals in an educational setting (the school must provide CMH a referral packet containing all the necessary documents to process the referral within five days of receiving the parent's consent for the referral);

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- (3) The student's functioning, including cognitive functioning, is at a level sufficient to enable the student to benefit from mental health services; and
- (4) The district has provided counseling, psychological, or guidance services to the student under its service structure, and the IEP team has determined that the services do not meet the student's educational needs; or, in cases where these services are clearly inappropriate, the IEP team has documented which of these services were considered and why they were determined to be inappropriate.

In addition to all of the above, the student must have emotional or behavioral characteristics that:

- (1) Are observed by qualified educational staff as defined in Title 5 of the California Code of Regulations, Section 3001(y): certified, licensed or registered in the area in which he/she is providing special education or related services in educational and other settings;
- (2) Impede the student from benefiting from educational services; and
- (3) Are significant, as indicated by their rate of occurrence and intensity.

However, the emotional or behavioral characteristics cannot be associated with "social maladjustment" or a temporary adjustment problem that can be resolved with less than three months of school counseling. Social maladjustment is demonstrated by: deliberate noncompliance with accepted social rules, an ability to control unacceptable behavior, and the lack of a treatable mental disorder. [Cal. Gov. Code Sec. 7576(b); 2 C.C.R. Sec. 60040.]

If the IEP team has agreed to make a referral to CMH, the referral packet must include information that addresses each of the factors listed above as well as any information in the student's records that show she meets these factors. Providing a complete referral packet will reduce the possibility that CMH will delay processing the referral and/or determine that the student is ineligible for CMH services. [Cal. Gov. Code Sec. 7576(c).]

If the IEP team does not believe a student meets all the above factors, and refuses to make a referral to CMH, the parent may file for due process to challenge the

district's refusal to make the referral. See Chapter 6, *Information on Due Process/Compliance Procedures*.

13. If CMH rejects the IEP referral, is the District still responsible for providing psychological or mental health services?

If CMH rejects the referral, the school district is still responsible for assessing a student in all areas of suspected disability. The district cannot contend that it does not suspect educational needs in the area of mental health after it has just referred a child for assessment to CMH.

Even when a student's psychological needs, which are inhibiting educational benefit, do not meet CMH criteria for eligibility, the district is still responsible for meeting the unique needs of the student with a disability. [20 U.S.C. Sec. 1401(29); 34 C.F.R. Sec. 300.39(a)(i).]

14. Can CMH deny psychological or mental health services solely due to a student's developmental delay?

No. Although state law lists "sufficient cognitive functioning" as a criterion for eligibility, neither districts nor CMH can automatically determine that every student who is a regional center client (or who has a certain IQ or diagnostic label) is ineligible for mental health services under AB 3632. Each student referred should be individually considered in terms of her ability to benefit from one or more of the services offered by CMH. In addition, the regulations specifically include students with mental retardation or autism in the definition of students with disabilities for purposes of implementation of AB 3632 services. [2 C.C.R. Sec. 60010(q).]

15. Can children with disabilities ages 0 - 5 receive mental health services under AB 3632?

Yes. Districts cannot refuse to refer children to CMH — and CMH cannot refuse to evaluate children simply because they are very young. Children younger than three years old, and one through three to five years old are considered eligible for purposes of AB 3632 services. [Cal. Gov. Code Sec. 7584; Cal. Ed. Code Sec. 56026(c).] Whether a child of that age actually needs mental health services in order to receive educational benefit is a question to be addressed by the CMH assessment and determined by the IEP team.

16. Once AB 3632 services are written into the IEP, can CMH delay providing those services?

No. Related services must begin “as soon as possible.” [34 C.F.R. Sec. 300.323(c)(2); Cal. Ed. Code Sec. 56344(b).] If mental health services are specified in your child’s IEP, and CMH refuses to provide the services, federal law requires that the *district* provide the services. [20 U.S.C. Secs. 1412(a)(12)(A) & (B).] Disagreement between CMH and the district regarding responsibility for initiating services can be resolved through interagency dispute procedures. [Cal. Gov. Code Sec. 7585.]

In addition, CMH may not delay services based on the acuteness (severity or intensity) of the student’s disability. A student whose IEP specifies that she is to receive mental health services is entitled to receive those services without delay. [34 C.F.R. Sec. 300.323; 5 C.C.R. Sec. 3040(a).]

17. Can only students identified as eligible for special education be referred to CMH for AB 3632 services?

No. If based on the preliminary results of a school district assessment, the district suspects that a student will ultimately be found eligible for special education — and may need mental health services — the district can initiate a referral to CMH if

the student meets all the other AB 3632 eligibility criteria listed above. [Cal. Gov. Code Sec. 7576(d); 2 C.C.R. Sec. 60040(c).] This referral will save time in getting mental health services started for a student who obviously will qualify for special education. Referral packets must include all the necessary documents and must be given to CMH within one work day. [2 C.C.R. Sec. 60040(c).]

18. What are the mental health services available from CMH?

Services include: initial mental health assessment, psychotherapy (individual or group), medication monitoring, intensive day treatment, day rehabilitation and case management. [2 C.C.R. Sec. 60020(i).] Medication monitoring includes all medication support services, but does not include the medications themselves or the laboratory work. Medication support services include prescribing, administering, dispensing, and monitoring of the medications. [2 C.C.R. Sec. 60020(f).] Interagency mental health services may also include residential placement and, in exceptional cases, *out-of-state* residential placement [Cal. Gov. Code Secs. 7572.5 & 7572.55; 2 C.C.R. Secs. 60100(a)-(h).]

19. If a student lives in a different county than his parents, to which county mental health agency should a referral be made?

Referrals should be made to the CMH in the county where the student lives. This is called the “host county.” The “county of origin” means the county where the student’s parent lives. If the student is a ward or dependent of the court, an adopted child receiving adoption assistance or under a conservatorship, the county of origin is the county where that legal proceeding took place.

If the student is in residential care (group home, foster care placement or residential school setting) in a county which is not his county of origin, this “host county” must forward the referral to the county of origin. The county of origin is programmatically and financially responsible for assessment and services. In no event shall these procedures delay the referral and assessment process.

The host county must make its provider network available to the county of origin. Counties of origin must negotiate with host counties to access limited resources. The county of origin may also contract directly with providers. [Cal. Gov. Code 7576(g); 2 C.C.R. Secs. 60020(b) & (d), 60045(h) and 60200(c).]

20. Once the IEP team makes a referral to CMH, what procedures must the agency follow?

Within five days of receiving a referral for assessment, CMH must determine if the assessment is necessary or appropriate. It must notify the school district and the parents within one working day of determining that assessment is unnecessary or inappropriate and document the reasons for the reject. If the referral packet is incomplete, CMH must notify the district within one working day and return the referral.

If CMH agrees to assess the student, it must give the parent a consent form and assessment plan within 15 *calendar* days of receiving the referral. The assessment plan must include at a minimum: review of the student's school records and district assessment reports, and observation of the student in her educational setting, when appropriate. Upon receiving the signed consent form, CMH has one working day to contact the district to schedule an IEP meeting to discuss the assessment results. The meeting must be held within 60 days of receipt of the signed consent. The 60-day time line may only be extended upon the parent's written request.

The CMH must provide a written copy of the assessment report to all members of the IEP team. Parents must receive their copy at least two days prior to the meeting. The CMH assessor shall review and discuss the agency's recommendation with the parent and appropriate members of the IEP team. If the parent disagrees with the assessor's recommendation, the assessor must attend the meeting if requested to do so by the parent. CMH's recommendation becomes the recommendation of the school district IEP team members. In other words, district members cannot make mental health service recommendations which are different from those made by the CMH representative. [2 C.C.R. Sec. 60045.]

21. What should be included in the mental health portion of an IEP?

The IEP section on mental health services must include:

- (1) A description of the student's present levels of social and emotional performance;
- (2) Goals and objectives of the mental health services with objective criteria and evaluation procedures to determine whether they are being achieved;
- (3) A description of the types of mental health services to be provided;
- (4) Initiation, duration, frequency and location of services; and
- (5) Parental approval of specific mental health services (in addition to signing the IEP).

[Cal. Ed. Code Sec. 56345(a)(7); 2 C.C.R. Sec. 60050.]

22. Who is responsible for providing mental health services once they are written into an IEP?

County Mental Health is responsible for providing mental health services that a qualified assessor recommends are necessary for the child to benefit from special education and that are beyond the capacity of the school's counseling and guidance services to meet the child's needs. County Mental Health may provide these services directly to the child or by contracting with another entity. [Cal. Gov. Code Secs. 7572(c) & 7576(a); Cal. Ed. Code Sec. 56363; 2 C.C.R. Sec. 60020(i).]

Under its general obligation to make available a free appropriate public education, the district must ensure that all components of an IEP are implemented. It must also provide psychological services not provided by CMH when they are needed by students to benefit from special education. [20 U.S.C. Secs. 1401(9) & (26); Cal. Ed. Code Secs. 56031 & 56363; Cal. Gov. Code Sec. 7573.]

23. My child may need a residential placement in order to be educated appropriately. Under AB 3632, how will this process work?

The AB 3632 procedure for obtaining residential placement applies only to children who meet the criteria for (serious) emotional disturbance. See Chapter 3, Information on Eligibility Criteria. For all students with disabilities not identified as emotionally disturbed, the school district is responsible for any educationally necessary residential placement. See Chapter 4, Information on IEP Process.

If your child meets special education criteria for “seriously emotionally disturbed” or “emotionally disturbed” and any member of the IEP team, including you, recommends residential placement based on relevant assessment information, the team must be expanded to include a CMH representative (if CMH is not already on the team). [Cal. Gov. Code Sec. 7572.5(a).] The expanded IEP team must convene within 30 days to review assessment information and determine whether your child’s needs can be met through any combination of nonresidential services, and if not, whether residential services are necessary for the child to benefit from education. It also will determine whether residential services are available which address the needs identified in the assessment and which will ameliorate the conditions leading to the seriously emotionally disturbed designation. [Cal. Gov. Code Secs. 7572.5(b)(1)-(3); 2 C.C.R. Sec. 60100(a)-(c).]

Nonresidential services may include: a behavioral specialist and full-time behavioral aide in the classroom, home or other community environments; and/or parent training in the home or community environments. Alternatives may also include any cooperatively developed educational and mental health services. The IEP team must document the alternatives to residential placement that were considered and the reasons why they were rejected. [2 C.C.R. Sec. 60100(c).]

If it is determined that your child needs residential placement in order to benefit from special education, the IEP must document the educational and mental health treatment needs that support this recommendation. [2 C.C.R. Sec. 60100(d).] The IEP must designate CMH as the lead case manager. Lead case management

responsibility can be delegated by CMH to the county welfare department. [Cal. Gov. Code Sec. 7572.5(c)(1).]

If CMH does not agree that residential placement is necessary, but the parent disagrees with this recommendation, the parent can file for due process. See Chapter 6, *Information on Due Process/Compliance Procedures*.

24. What are the mental health case management services for a student in residential placement?

The case manager coordinates the residential placement plan of the student, which becomes part of the IEP. The plan shall include provisions for care, supervision, mental health treatment, psychotropic medication monitoring, if required, and the education of the student with a disability. The case manager must convene a meeting with the parents and school district to identify an appropriate residential placement. The placement cannot be made in a public inpatient facility, private psychiatric hospital, or in a state hospital facility. [2 C.C.R. Sec. 60110(c)(1).]

The case manager must work with the IEP team's administrative designee to identify a specific placement that is acceptable to the parent and addresses the student's educational and mental health needs in the least restrictive environment. [2 C.C.R. Sec. 60110(c)(2).] She also handles all the paperwork and responsibility for enrollment and payment. The case manager must develop a plan to assist the family with the student's social and emotional transition from home to facility and the transition back home. She also coordinates transportation. [2 C.C.R. Secs. 60110(c)(5)-(7).]

The case manager must also: (1) conduct quarterly face-to-face contacts with the student at the facility to monitor the level of care and supervision and the provision of mental health services as required by the IEP; (2) notify the parent and district if there is a discrepancy between the services actually being provided and the IEP; and (3) schedule and attend an expanded IEP team meeting every six months to review the case and whether the student continues to need residential placement. [2 C.C.R. Secs. 60110(c)(8)-(10); Cal. Gov. Code Sec. 7572.5(c).]

25. What role does the District have when a student is placed in a residential facility through the IEP?

The district is responsible for providing or arranging for the special education and non-mental health related services needed by the student. [2 C.C.R. Sec. 60110(b)(2).] The district must also ensure that the student's IEP is reviewed by the full team every six months. This review should consider case progress, the continuing need for out-of-home placement, the extent of compliance with the IEP and progress towards alleviating the need for out-of-home placement. [Cal. Gov. Code Sec. 7572.5(c)(2).]

26. Under what circumstances can an IEP team place a student in an out-of-state residential facility?

Out-of-state residential placements may be made only after the IEP team considers in-state alternatives and finds that they do not meet the child's needs. The school district must document the in-state alternatives that were considered and the reasons why they were rejected. Unless it is in "the best educational interest of the child" to remain in an out-of-state school, a plan must be developed for using in-state alternatives and less restrictive alternatives as soon as they become available. [Cal. Gov. Code Sec. 7572.55.] The out-of-state placement shall only be made in privately operated non-medical, non-detention school certified by CDE. In addition, an out-of-state placement facility must be organized and operated on a nonprofit basis and the rates it charges must have been approved by the California Department of Social Services. [2 C.C.R. Sec. 60100(h); Welf. & Inst. Code Sec. 11460(c).]

27. My child was placed in a facility in another state by a public agency but not through the school district or other educational agency. Who is responsible for his educational, residential, and treatment costs?

Any public agency, other than an education agency, that places your child with a disability (or one who is suspected of having a disability) in a facility out of state without the involvement of the school district, special education local plan area (SELPA) or county office of education in which the parent or guardian resides, must assume all financial responsibility for your child’s residential placement, special education program, and related services costs in the other state — unless a state or local agency in the other state assumes responsibility. [Cal. Gov. Code Sec. 7579(d).]

28. My child is temporarily placed in a psychiatric hospital in another county and may need a residential treatment setting. Who is responsible for educational services, and who is responsible for any necessary mental health assessments and services she may need?

Special education students who are placed in a public hospital, state licensed children’s hospital, psychiatric hospital, proprietary hospital or a health facility for medical purposes are the *educational* responsibility of the school district, SELPA, or county office of education in which the hospital or facility is located. [Cal. Ed. Code Sec. 56167.] A SELPA may be made up of a district, a collection of districts, or a county office of education,

Responsibility for *mental health services* for a student in this situation is not so clear. If the county in which the student and facility are located (the “host county”) is different from the county in which the parent resides — and if the placement is temporary — this probably does not qualify as a “transfer” under state regulations. [2 C.C.R. Sec. 60055.] A “transfer” would change responsibility for mental health services to the county in which the student is located. A student in this situation would continue to be the responsibility of her “county of origin” for

mental health services. The county of origin is the county in which the student's parent resides or, for wards or dependents of the court, the county where their legal proceedings take place. [2 C.C.R. Sec. 60020(b).]

The CMH from the county of origin is responsible for the student's assessment and services and must provide them either directly or through contractors. [2 C.C.R. Sec. 60200(c).] The host county must make its provider network available to the county of origin as well a list of appropriate providers from its managed care plan [2 C.C.R. Sec. 60200(c)(1).]

If a student is not yet identified as a special education student, but is placed in a psychiatric hospital in another school district or county, educational responsibility lies with the district in which the parent resides. [Cal. Ed. Code Sec. 48200; Cal. Gov. Code Sec. 244(d).] The district in the county of origin would therefore be responsible for initiating a special education assessment and a referral to the county of origin's CMH for mental health assessment and services.

29. If a student needs residential treatment to benefit from education, must he be made a ward or dependent of the court? Does the parent have to pay for part of the cost of residential treatment?

No. It is a violation of federal law to require that your child be made a ward or dependent of the court if he needs residential care in order to benefit from educational services. [See, *Christopher T. v. San Francisco Unified School District*, 553 F. Supp. 1107 (N.D. Cal. 1982).] Also, a parent cannot be required to pay for any part of the cost of residential treatment if the placement is made through the IEP process and is necessary to provide special education and related services. [34 C.F.R. Sec. 300.104.]

30. How will a court-ordered residential placement for my child be different from an AB 3632 placement?

If your child is a dependent or a ward of the court, placement options may be very much the same – but the court, not you, will make the decision where to place your

child. The court, at its discretion, may allow you to retain educational rights so that you may participate in the IEP at the residential site if your child is in special education. As part of the dependency process, you may lose your parental rights for the duration of the placement.

There is a critical difference in the financial responsibility for the cost of the placement. A placement under AB 3632 is at no cost to the parent. A court placement is at the cost of the court, but the court must seek reimbursement from the parents in the form of a support order based upon the court's determination of the parents' ability to pay. [Cal. Welf. & Inst. Code Sec. 903.] This may result in a substantial financial burden to any parent, unless the family income is minimal.

If at the time of residential placement your child was a dependent or ward of the court, and it can be shown he should have been placed under AB 3632 procedures for educational purposes, the county has no right to recover the residential costs from you. [See, *County of Los Angeles v. Smith* (1999) 74 Cal.App.4th 500; 88 Cal.Rptr.2d 159.] If the residential placement was needed for educational purposes, these actions would violate the "at no cost" requirement of federal law. [20 U.S.C. Sec. 1401(9)(A) and 1401(29).]

If your child is placed in residential treatment through AB 3632, all student and parental rights and protections guaranteed by law will be available to you, and no placement or services can be provided to your child without your approval and written consent.

Responsibility for implementing the IEP of a court-placed child is with the school district where the child is placed, not the parent's district. The responsibility for an AB 3632-placed child is with the district and CMH that made the placement, which typically is the parent's school district and county.

31. My child's case is pending before the juvenile court. Can I do anything to avoid or minimize the consequences of a court-ordered residential placement?

Yes. You may be able to convince the judge to delay placement pending the AB 3632 process. You can argue that an AB 3632 placement will not only be in your interest, but in the court's as well – allowing it to avoid financial and legal responsibility for your child. You could also tell the judge that court placement may delay or prevent the implementation of mental health services. It would be helpful if you have already made the appropriate referral for residential placement to the school district and CMH.

If the judge insists on placing your child, you can at least try to convince the court to allow you to retain educational rights so you can continue to participate in the educational planning for your child. If the judge has already placed a dependent or ward, you may file a petition to change or modify the residential placement order if there are changed circumstances. Anyone can file this petition.

Since your child is currently involved in the court system, these arguments are best made by a private attorney or public defender who is knowledgeable about the AB 3632 process or who has help from a special education advocate.

32. My child has been placed in a juvenile facility by the court. Who is responsible for providing services to him?

The county board of education is responsible for the administration and operation of juvenile court schools, juvenile hall, juvenile homes, day centers, ranches or camps, and county community schools. [Cal. Ed. Code Secs. 48645.2 & 56150.] The county superintendent of schools may contract with the county board of supervisors for this responsibility. In addition, each SELPA must develop a local plan that describes the process for coordinating and providing services for students placed in juvenile court schools or county community schools. [Cal. Ed. Code Sec. 56195.7(g).] You should obtain a copy of the local plan.

Special education is often not provided to students in juvenile hall or other juvenile detention settings. Since various agencies responsible for ensuring special education in these settings, often no one agency assumes responsibility for ensuring that IEPs are implemented. If special education law or the SELPA plan is not being followed, or the SELPA does not address the coordination and provision of services, you can file complaints against the county with CDE to compel compliance. You may also wish to consider due process proceedings against counties and/or SELPAs. See Chapter 6, *Information on Due Process/Compliance Procedures*.

33. If my child is committed to the California Youth Authority, will she continue to receive her special education services?

Yes. A juvenile court may not order a special education student to the California Youth Authority (now known as Division of Juvenile Justice) until the student's IEP has been given to the Youth Authority. In addition, the court must ensure that the student's probation officer communicates with appropriate staff at the juvenile court school, county office of education, or SELPA to make sure that the IEP is transferred. [Cal. Welf. & Inst. Code Sec. 1742.]

34. Can a court help me get special education services for my child?

Yes. If and when a child is made a dependent of the court (in cases of parental abuse or neglect), the judge may make any and all reasonable orders for the care, supervision, custody, maintenance and support of the child. The judge may also order the appearance in court of any agency, which she has determined has failed to meet a legal obligation to provide services to a child – such as the right to special education services or compliance with the provisions of AB 3632. [Cal. Welf. & Inst. Code Secs. 362 & 727.]

35. Will AB 3632 services end when my child turns 18?

No. Eligibility for special education related mental health services from CMH county mental health department does not end at age 18. County Mental Health must use the same age eligibility requirements as the school district which is from birth until a student reaches 22 years of age. [34 C.F.R. Secs. 300.2(b)(1)(iii) & 300.102; Cal. Ed. Code Sec. 56026; Cal. Gov. Code Sec. 7584; 2 C.C.R. Sec. 60010(q).]

36. Who makes decisions for a special education student whose parents' rights have been terminated or who has no parent involved in his life?

When there is no one to act as a parent for a student with disabilities, the school district or the juvenile court must appoint a responsible adult for making educational decisions. Under AB 3632, the responsible adult is known as a “surrogate parent”.

This individual, usually a volunteer, is appointed by the school district to represent students in the IEP process if one or more of the following is true:

- (1) The student is a dependent or ward of the court; the court has limited the parent or guardian's rights to make educational decisions; and the court has not appointed a responsible adult to represent the student in the IEP process.
- (2) No parent for the student can be identified.
- (3) After reasonable efforts, the district cannot locate a parent.

The district must make “reasonable efforts” to appoint a surrogate within 30 days of determining that a parent surrogate is necessary. In addition, the responsible adult appointed by the district cannot have any conflict of interest with the student. A conflict means any interest that might restrict or bias the ability to advocate for all of the services required to ensure that the student has FAPE. [Cal. Gov. Code Secs. 7579.5(a) & (i).]

If the student is subject to the authority of the juvenile *court*, the judge appoints someone to make educational decisions for a dependent or ward of the court. The court may leave decision-making authority with the parent if that parent is still part of the student's life. However, it has the power to limit the parent's authority regarding educational decisions through a court order, but only to the extent necessary to protect the student.

- (1) If the court limits parental rights, it must also appoint a responsible adult to make those decisions until the following occurs:
- (2) The student turns 18 (unless she chooses to assign her educational decision-making authority to someone else or is the court finds the student to be "incompetent");
- (3) Another responsible adult is appointed to make educational decisions;
- (4) The parent's rights to make decisions are restored;
- (5) A guardian is appointed for the student; or
- (6) The student is placed in long-term foster care and the foster parent is given educational decision-making authority.

Just like the school district, the court must also appoint a responsible adult who does not have any conflict of interest with the student. For the court, a conflict of interest means any interest that might restrict or bias the ability to make educational decisions. The adult cannot receive compensation or attorneys' fees for making these decisions. [Cal. Welf. & Inst. Code Secs. 361(a) & 726(b).]

37. Who can serve as a surrogate parent and what are their responsibilities?

The district must appoint a surrogate parent for students who are not wards of the court if no parent can be identified, or if the district, after making reasonable efforts, cannot locate the parent. [34 C.F.R. Sec. 300.519(a); Cal. Gov. Code Secs. 7579.5(a)(2) & (3).] The district must first appoint a relative caretaker as the surrogate. If there is no relative caretaker, the district must look to a foster parent or court-appointed special advocate (CASA) willing and able to serve. If there is

no foster parent or CASA, the district may choose the surrogate. If the student's surrogate has been a relative caretaker or foster parent and leaves the home of that surrogate, the district must appoint a new surrogate, if necessary, to ensure adequate representation. [Cal. Gov. Code Sec. 7579.5(b).]

The law allows retired teachers, social workers or probation officers, who do not work for a public agency involved in the education or care of the student, to be appointed as surrogates. An employee of a private agency may be appointed as long as the agency does not provide educational services to the student. A person otherwise qualified to be a surrogate is not considered an employee of the district even if the district pays the surrogate for his services. [Cal. Gov. Code Sec. 7579.5(j).]

A district may not appoint a surrogate if he has a conflict of interest with the student. A conflict of interest means any interest that might restrict or bias the ability to advocate for all of the services required to ensure that the student receives FAPE. If practical, the surrogate should be culturally sensitive to his assigned student. [Cal. Gov. Code Secs. 7579.5(e) & (i).]

A surrogate parent has all the powers of a parent or guardian of a special education student. He may consent to IEPs, non-emergency medical services, mental health treatment, and occupational or physical therapy services. [Cal. Gov. Code Sec. 7579.5(c).]

Although the surrogate is given complete parental authority, he is only required to meet with the child once. To competently fulfill the role, the surrogate should meet with the student more than once, attend IEP meetings, review student records and consult with teachers and others involved in the student's education, all of which is permitted under law. The surrogate must comply with federal and state student record confidentiality laws and use discretion when sharing information with appropriate persons. [Cal. Gov. Code Secs. 7579.5(d) & (f).]

38. How long should an appointed surrogate parent serve?

The surrogate may represent the student until she no longer needs special education or turns 18, until another responsible adult is appointed to replace the surrogate, or the parent's right to make educational decisions is restored. [Cal. Gov. Code Sec. 7579.5(k).] However, if at age 18 a student chooses not to begin making her own educational decisions, or a court finds her to be "incompetent" to make these decisions, the surrogate may remain in place or the student could designate another adult as an educational representative. The district must replace a surrogate if she is not properly performing the duties or has a conflict of interest with the student. [Cal. Gov. Code Secs. 7579.5(h) & (i).]

If some individual in the student's life — such as a care facility operator, social worker, probation officer, foster parent or other advocate — believes that a surrogate is not acting in the student's interest, but rather acting more in the interests of the school district or another agency serving the student, he may ask that the district appoint a different surrogate. If the district refuses, the law allows a student (who is a ward or dependent of the court, an emancipated minor, or for whom no parent can be identified or located) to file for due process to challenge the appropriateness of the surrogate. However, the student can file only after a hearing officer determines that the district has either not appointed a surrogate or has appointed one who has a conflict of interest. [Cal. Ed. Code Sec. 56501(a).]

39. I am a foster parent for a special education student. What are my rights?

Both state and federal law recognize a foster parent's right to act in place of a parent in the IEP process if the parent's educational rights have been terminated. [34 C.F.R. Secs. 300.30(a)(2) & (b); Cal. Ed. Code Sec. 56028(a)(2).] In addition, California law makes it clear that a foster parent must be given preference — after a relative caretaker and before a CASA — when a district appoints a surrogate parent. [Cal. Gov. Code Sec. 7579.5(c).]

40. I am a special education student’s grandparent and the child lives with me. Am I authorized to act as the “parent” in the special education process?

A grandparent in this situation is authorized to act as the parent in the IEP and other special education processes under federal and state law. In fact, any individual acting in the place of a biological or adoptive parent, with whom the child lives, may also assume this role. This includes a stepparent, other relative caretaker, a guardian, etc. [34 C.F.R. Sec. 300.30(a)(4); Cal. Ed. Code Sec. 56028(a)(4).] A parent or guardian may designate another adult to represent the student. [Cal. Gov. Code Sec. 7579.5(n).]

41. Can probation officers or social workers attend IEP meetings without parental consent?

Probation officers and social workers are not among those individuals specifically listed as part of the IEP team. [20 U.S.C. Sec. 1414(d)(1)(B); 34 C.F.R. Sec. 300.321; Cal. Ed. Code Sec. 56341.] However, if in the view of the person inviting them, they have special expertise or knowledge regarding your child, they can attend the IEP if invited by the school district, the surrogate parent, or you. [Cal. Ed. Code Sec. 56341(b)(6).]

42. Can a probation officer or social worker authorize services for my child on an IEP?

No. California allows only “retired teachers, social workers, and probation officers . . . who are not employees of . . . any . . . agency that is involved in the . . . care of the child” to be surrogate parents. [Gov. Code Sec. 7579.5(j).] If the legislature excluded social workers and probation officers from being appointed by school districts to be surrogate parents, it is unlikely the legislature intended that courts appoint these individuals as substitute decision makers for special education students either. Moreover, both state and federal special education law prohibit the

state, when the child is a ward of the state, from acting in the role of the parent. [Cal. Ed. Code Sec. 56028(c); 34 C.F.R. Secs. 300.30(a)(3) & 300.519(d)(2).]

43. Other than County Mental Health and CCS agencies, are there any other interagency services for special education students under AB 3632?

For Medi-Cal eligible students, the Medi-Cal program can provide life-supporting medical services through a home health aide to enable a child to attend school who would otherwise have to be educated at home. The time for this service is limited to the time the child is in school or traveling to or from school. The student's condition must be such that he/she requires the personal assistance or attention of a nurse, home health aide, or parent (or some other specially trained adult) in order to be effective. For purposes of this service, the child must need "life supporting medical services," which means that the child is dependent on a medical technology or device that compensates for loss of the normal use of vital bodily function and who requires daily skilled nursing care to avoid further disability or death. [Cal. Gov. Code Sec. 7575(e); 2 C.C.R. Sec. 60400.]