COUNTY OF LOS ANGELES

MARVIN J. SOUTHARD, D.S.W.
Director

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BOARD OF SUPERVISORS

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DEPARTMENT OF MENTAL HEALTH

http://dmh.lacounty.gov

Reply To: (213) 738-4601
Fax: (213) 386-1297

January 25, 2011

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisors:

APPROVAL TO ENTER INTO MEMORANDUM OF UNDERSTANDING WITH LOCAL SCHOOL DISTRICTS TO RECEIVE FUNDS FOR ASSEMBLY BILL 3632 SERVICES AND RESIDENTIAL PLACEMENT, FEBRUARY 1, 2011 THROUGH JUNE 30, 2011
(ALL SUPERVISORIAL DISTRICTS)
(3 VOTES)

SUBJECT

Request approval to enter into a Memorandum of Understanding with local school districts in Los Angeles County and to receive funds from the participating local school districts for the provision of Assembly Bill 3632 mental health and residential placement services from February 1, 2011 through June 30, 2011.

IT IS RECOMMENDED THAT YOUR BOARD:

1. Authorize the Director of Mental Health (Director) or his designee to enter into a Memorandum of Understanding (MOU), substantially similar to Attachment I, with all school districts in Los Angeles County, including Los Angeles County Office of Education.

2. Authorize the Director, or his designee, on behalf of Los Angeles County, including Department of Children and Family Services (DCFS), to receive funding from the school districts that have entered into the MOU for the provision of Assembly Bill (AB) 3632 and residential placement services from February 1, 2011 through June 30, 2011.

3. Delegate authority to the Director, or his designee, to amend and/or extend the term of the MOU based on mutual agreement, provided that funding is available.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

Approval of the requested actions will allow the Department of Mental Health (DMH) to continue to deliver educationally related mental health services, and DCFS to provide residential placement, without disruption from February 1, 2011 through June 30, 2011, funded by the local school districts. These services include mental health services consultation, assessment and re-assessment, associated reporting, Individualized Education Program (IEP) team meeting attendance and participation, referrals and distribution of referral packets, monitoring and placement, and contracting with residential facilities and other mental health service providers, as needed without disruption from February 1, 2011 through June 30, 2011.

DCFS, in accordance with the governing regulations [CCR 60200 (f)], has established and maintained a payment mechanism and procedure for the room and board portion of AB 3632 residential placements since 1986. Due to the urgency of time, and the inability of school districts to rapidly develop and implement new contracts with residential care agencies, the proposed MOU includes DCFS continuation of the existing payment procedure, but funded exclusively by local school districts.

Implementation of Strategic Plan Goals

The recommended actions support the County's Strategic Plan Goals 2, Children, Family and Adult Well-Being and 4, Health and Mental Health.

FISCAL IMPACT/FINANCING

The school districts will fully fund the County for the continuance of AB 3632 services to which children are entitled for the period of February 1, 2011 through June 30, 2011, due to the suspension of the AB 3632 mandate. However, if a final and binding legal decision finds that the mandate was not suspended this fiscal year, the County will reimburse the school districts for all monies paid by the school districts to the County under the terms of the MOU. In turn, the County will seek reimbursement from the State.

This action will not impact DMH's appropriation and there is no impact to net County cost.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

In 1984, the State passed AB 3632 which shifted responsibility for providing mental health services for special education students from local education agencies to county mental health departments. Under provisions of AB 3632, county mental health departments have been required to provide a range of mental health services as identified in a student's IEP. A 1996 amendment to the legislation, Assembly Bill 2726 (AB 2726), was passed requiring counties to also provide out-of-county residential care when necessary to enable special education students to benefit from their educational programs. Beginning in Fiscal Year 2006-07, a MOU was mandated by the State as the required mechanism for transferring federal Individuals with Disabilities Education Act (IDEA) funds to counties for special education services, with the MOU serving as a revenue agreement between the two parties.

Following extended efforts by the State legislature and then-Governor Arnold Schwarzenegger ("Governor") to arrive at a budget agreement for Fiscal Year 2010-11, the new budget was signed into law on October 8, 2010. In signing the budget, the Governor used his line item veto authority to eliminate State funding for AB 3632 programs effective Fiscal Year 2010-11. The mandate for county mental health departments to provide AB 3632 services was suspended by the Governor at the same time. Suspension of the mandate effectively ended county mental health departments' required role in providing special education mental health services, with the federal requirement remaining in place for State schools to provide those services using federal IDEA funding.

On November 5, 2010, IDEA funds were allocated to the County Office of Education and will be transferred in their entirety to DMH to enable DMH and DCFS to sustain program services temporarily. Your Board directed DMH and DCFS to cease all AB 3632 programs when remaining available County funding is exhausted, estimated to be approximately January 31, 2011, unless alternative funding arrangements are made.

Since the actions of the Governor on October 8, 2010, DMH, County Counsel, and representatives of Los Angeles Unified School District, Los Angeles County Office of Education and Special Education Local Planning Area (SELPA) directors have been engaged in negotiations to develop a mechanism and procedure to enable DMH to continue to deliver services from February 1, 2011 until the end of this fiscal year, with funding from the local school districts and Medi-Cal. The attached MOU, for which your Board's approval is requested, will enable services to continue without disruption to vulnerable disabled children and families who are residents of Los Angeles County.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

Approval of the MOU and acceptance of funds from local school districts will enable the County to maintain the current level of Special Education related mental health services to children and adolescents who are residents of the County.

Respectfully submitted,

MARVIN J. SOUTHARD, D.S.W.
Director of Mental Health

MJS:BM:RK

Enclosures

c: Chief Executive Officer
County Counsel
Executive Officer, Board of Supervisors
Department of Children's and Family Services
Chairperson, Mental Health Commission

ATTACHMENT I

MEMORANDUM OF UNDERSTANDING BETWEEN LOS ANGELES UNIFIED SCHOOL DISTRICT, AND LOS ANGELES COUNTY DEPARTMENT OF MENTAL HEALTH REGARDING FUNDING AND THE PROVISION OF EDUCATIONALLY-RELATED AB 3632 MENTAL HEALTH SERVICES

THIS MEMORANDUM OF UNDERSTANDING ("MOU"), is made by and between the Los Angeles Unified School District (hereinafter referred to as "District" or "LAUSD" or "LEA") and the Los Angeles County Department of Mental Health (hereinafter referred to as "COUNTY") with respect to the provision of educationally-related mental health services under the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. ' ' 1400, et seq., and Section 26.5 of Division 7 of title 1 of the California Government Code, sections 7570-7590, commonly known as "AB 3632."

RECITALS

WHEREAS, on October 8, 2010, California Governor Arnold Schwarzenegger ("Governor") vetoed a fiscal year 2010-11 appropriation for educationally-related mental health services mandated by AB 3632, and stated in doing so that "[t]his mandate is suspended."

WHEREAS, Government Code Section 7570 et seq. (AB 3632) and its implementing regulations remain codified; which state that counties and their Mental Health Divisions are required to conduct mental health assessments and to provide necessary mental health-related services, including residential care-based treatment (placement including the provision of psychotherapy) to students with disabilities, as identified within the individualized education programs, pursuant to Government Code sections 7570, 7572, and 7572.5.

> Chapter 26.5, Section 7570, established that the provision of related services as defined in paragraph (22) of Section 1401 of Title 20 of the United States Code, to children and youth with a disability shall be the joint responsibility of the Superintendent of Public Instruction and the Secretary of Health and Human Services and further provides that the Secretary of Health and Human Services appoint an agency in each county to assume the responsibility of providing these services;

WHEREAS, Section 6 of Article XIIIB of the California Constitution requires the State to provide a subvention of funds to reimburse local governments for State mandated programs, such as AB 3632;

WHEREAS, LAUSD and COUNTY disagree as to the impact of the Governor's veto on AB 3632 requirements. While LAUSD believes AB 3632 remains in full force and effect, notwithstanding the Governor's veto, COUNTY contends its mandate under AB 3632 is suspended. Both Parties nevertheless wish to ensure that while such disagreement is being resolved, LEA students continue to receive an AB 3632 assessment and services they may require under the IDEA;

WHEREAS, LAUSD and COUNTY intend to reserve all rights each may have at the time this MOU is executed, and agree that nothing in this MOU shall waive or limit either parties rights

including any right to seek reimbursement from the other party for all costs incurred in providing services to students under AB 3632 and nothing in this MOU is intended to establish or impose upon COUNTY any legal obligation under IDEA to provide these services;

WHEREAS, prior to the Governor's appropriation veto, county mental health agencies and Special Education Local Plan Areas (SELPA) had previously entered into an Interagency Agreement ("IA") for mental health services pursuant to Title 2 Division 9 Section 60030, which COUNTY contends is no longer operative.. LAUSD continues to believe the Interagency Agreement is in full force and effect and reserves the right to enforce that IA and COUNTY disputes such;

WHEREAS, the State Legislature, in the Budget Act provides federal IDEA local assistance funding for the provision of mental health services by transmitting the funds to county offices of education through the California Department of Education (CDE);

WHEREAS, the Budget Act authorizes each county office of education (COE) and county mental health agency (CMHA) to enter into a memorandum of understanding (MOU) for the purpose of transferring these federal grant funds, subject to the fulfillment of the grant's terms and conditions, to the CMHA for AB3632 mental health services that are provided for eligible students in the school districts and Los Angeles County Office of Education (LACOE) has entered into such MOU with COUNTY;

WHEREAS, these federal IDEA funds are to be allocated by the CDE to LACOE for the purpose of funding mental health services identified within individualized education programs (IEP) of resident students, and for which expenses have been and will continue to be incurred in Fiscal Year 2010-2011; and

WHEREAS, the intent of this MOU is that the parties, despite their disagreement regarding their respective rights and obligations under the law, intend to preserve in all respects the COUNTY's service level status quo regarding the provision of AB 3632 services and that the LEA will fully fund the COUNTY for the continuance of these programs and services as hereinafter provided for in this MOU, subject to LEA's reservation of rights including the right to claim reimbursement, from February 1, 2011 through and including June 30, 2011, unless this MOU is terminated earlier by its own terms;

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

1. Referrals and assessment reports: COUNTY and LEA agree to abide by the policies and procedures for making student referrals and providing the necessary assessment reports, as provided in Title 2, Division 9, of the California Code of Regulations Section 60040. LAUSD will refer all students with suspected mental health needs to COUNTY for assessment, and COUNTY will process and complete that assessment as it had before the Governor's veto on October 8, 2010.

2. Array of services: COUNTY agrees to maintain the level of AB 3632 services currently being provided during the term of this MOU, which shall include mental health services

consultation, assessment and re-assessment, reports, IEP team meeting attendance and participation, referrals and sending out referral packets, monitoring and placement, contracting with residential facilities and other mental health service providers, as needed and participation in the defense of any due process hearings and compliance complaints which may arise from the provision of AB 3632 services. The array of services will be provided for a child with a disability, as defined in paragraph (3) of Section 1401 of Title 20 of the United States Code, and shall include those related services as defined in paragraph (26) of Section 1401 of Title 20 of the United States Code, and designated instruction and services, as defined in Section 56363 of the Education Code, the California Code of Regulations, Title 2, Division 9, Section 60020(i).

3. Student Records: LEA will provide data to COUNTY regarding LEA students eligible for AB 3632 services according to LEA records which COUNTY will verify based on its records. Thereafter, COUNTY will obtain and provide LEA with student IEP and service data in order to verify that LAUSD is the applicable district of residence for each individual student for payment purposes by the 15th day of the month following the month of service for residentially placed students. County and LEA will collaborate on an ongoing basis to verify students receiving outpatient AB 3632 services within specific LEA districts in order to reconcile County's costs associated with the individual LEA students.

4. Individual Services Agreement Execution: This MOU shall include an Individual Services Agreement ("ISA") template which shall be used to develop an ISA for each eligible LEA student to whom COUNTY is to provide AB 3632 educationally-related mental health services. Within ten (10) days of COUNTY's receipt of ISA for AB 3632 eligible students, COUNTY shall verify or provide the required information to LEA to complete the ISA.

5. Individual Services Agreement Expenditures: COUNTY will provide LEA with an accounting of expenditures incurred pursuant to this MOU two times during the term of this MOU. The first accounting of expenditures will cover the period of February 1, 2011 through March 31, 2011, and will be provided by April 30, 2011. The second accounting of expenditures will cover the period of April 1, 2011 through June 30, 2011, and will be provided by July 31, 2011.

6. COUNTY Mental Health Services and Case Management Cost Oversight: An oversight committee comprised of representative(s) of LEA, SELPA, and COUNTY will be formed to monitor and audit costs associated with this MOU and to assist in any dispute resolution as identified in paragraph 17. The oversight committee shall not exceed 13 representatives.

7. Funding and Reimbursement: The ISA shall serve as the invoice for services provided to each LEA student under this MOU and is incorporated by reference herein County represents that it will have expended all available AB 3632 funding as of January 31, 2011 and LEA relies upon this representation. To the extent legally permissible, COUNTY will seek Medi-Cal reimbursement for all eligible students. LEA shall fully reimburse COUNTY all its costs incurred in providing all AB 3632 services which are not reimbursed by Medi-Cal or Early and Periodic Screening, Diagnosis, and Treatment ("EPSDT"). Fully reimbursable costs for continuing the AB 3632 program shall include both direct and indirect costs incurred but in no event shall it include items of cost not previously deemed allowable costs as part of COUNTY's

prior SB 90 claims to the State of California. Indirect costs include attorney fees incurred by County Counsel associated with defending due process claims but do not include the cost of an award of attorneys fees to a complaining party. COUNTY represents that the federal IDEA funds distributed November of 2010 have been exhausted and agrees to utilize all other available non-County funding sources to offset the direct and indirect costs.

8. LEA Reimbursement: If a final and binding legal decision finds that the mandate was not suspended this Fiscal Year, COUNTY agrees to reimburse the LEA for all monies paid by the LEA to COUNTY pursuant to this MOU and LEA will reasonably cooperate with COUNTY to enable COUNTY to seek State of California reimbursement, e.g. an SB 90 claim. If COUNTY receives funding for this purpose from any non-County source to provide AB 3632 services during the term of this MOU, COUNTY agrees to reimburse LEA its proportional share of these funds.

9. **Reconciliation:** COUNTY will use its Annual Cost Report to reconcile all services provided during the term of this MOU and will provide a final reconciliation to LEA by September 30, 2011 or other date agreed mutually agreed upon. All parties to this MOU agree to pay any difference of costs as determined by the final reconciliation without waiver of its right to seek use of the oversight committee set forth in paragraph 6 and dispute resolution process set forth in paragraph 17 to dispute the final reconciliation, or other remedies provided by law. County shall also provide to the LEA an accounting regarding its expenditure of all available AB 3632 funding for fiscal year 2010-11. If requested this accounting will be available as part of the reconciliation process under paragraph 9 and if necessary, the Dispute Resolution process under paragraph 17.

10. Privacy: COUNTY and LEA 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 (FERPA), 20 USC Section 1232g; and under provisions of state law relating to privacy. COUNTY and LEA shall ensure that all activities undertaken under this MOU will conform to the requirements of these laws.

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

12. Integration: This MOU represents the entire understanding of LEA and COUNTY as to those matters contained herein, and supersedes and cancels any prior oral or written understanding, promises or representations with respect to those matters covered hereunder. This MOU may not be modified or altered except in writing signed by both parties hereto. This is an integrated MOU.

13. Laws and Venue: This MOU contains the complete and final understanding of the parties' rights, duties and obligations with respect to the transaction discussed in this MOU and supersedes all prior MOUs, contracts, understandings and commitments whether oral or written

with respect to the subject matter of this MOU. This MOU shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this MOU, the action shall be brought in a state or federal court with the jurisdiction for the Los Angeles County, State of California.

14. Third Party Rights: Nothing in this MOU shall be construed to give any rights or benefits to anyone other than LEA and COUNTY.

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

16. Term: This MOU shall cover the period of February 1, 2011, through June 30, 2011. This MOU shall terminate as of the close of business on June 30, 2011,subject to the provisions of paragraph 21. However, this MOU may be extended by the parties' mutual written consent.

17. Dispute Resolution: COUNTY and LEA 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. It is understood that these dispute resolution procedures shall have no application to any right of the LEA to seek recovery should there be a determination that the AB 3632 remains in full force and effect. This dispute resolution does not pertain to due process complaints.

COUNTY and LEA shall name a mutually agreed upon neutral party (hereinafter "outside party") to assist to resolve disputes using a process of facilitated communication through non-binding mediation between COUNTY and LEA 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 aggrieved agency initiating the dispute to the non-initiating party.
- If the issue is not resolved within 10 business days of the date of the written notice of the request for dispute resolution, the notice shall be submitted to the committee formed pursuant to paragraph 6 for possible resolution
- If the issue is not resolved within 10 business days of the date of the written notice of the request for dispute resolution, the aggrieved agency initiating the dispute shall request that the outside party be contacted to schedule a meeting between the agencies.
- No later than thirty (30) calendar days from the date outside party is contacted, a resolution plan between the three agencies will be developed with the assistance of the outside party. The signatories of this MOU or their designees shall be responsible for assuring the agreements included in the resolution plan are implemented.

- Each party shall bear its own costs related to the use of this dispute resolution service except for those costs for the outside party shall be shared equally between the LEA and COUNTY.

18. Force Majeure: Neither party shall be deemed to be in default of the terms of this MOU if either party is prevented from performing the terms of this Agreement 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.

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

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

Sharyn Howell, Executive Director
Los Angeles Unified School District
Division of Special Education
333 S. Beaudry Avenue, 17th Floor
Los Angeles, CA 90017
(213) 241-3373
sharyn.howell@lausd.net

All notices related to this MOU shall be mailed to COUNTY shall be addressed to:

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

21. Termination: This MOU may be terminated at anytime upon the mutual agreement of the parties or by either party upon 30 days advanced written notice to the other party.

If AB 3632 is found to remain in full force and effect by a court of competent jurisdiction, notwithstanding the Governor's veto, this MOU shall immediately terminate and COUNTY will resume providing AB 3632 services as it had before the veto.

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

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

LOS ANGELES UNIFIED SCHOOL DISTRICT

_____

By (Authorized Signature) (Date)
Superintendent
Los Angeles Unified School District

LOS ANGELES COUNTY DEPARTMENT OF MENTAL HEALTH

_____

By (Authorized Signature) (Date)

Los Angeles County Department of Mental Health

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO:

LOS ANGELES COUNTY BOARD OF SUPERVISORS

_____

Tom Sherry, MFT
Director of Human Services
Los Angeles County Mental Health Services

_____

By (Authorized Signature) (Date)

(Print Name) _____
Chairman, Los Angeles County Board of Supervisors

_____
By (Authorized Signature) (Date)
(Print Name) _____
Los Angeles County Counsel, Approved as a form

_____
By (Authorized Signature) (Date)
(Print Name) _____
Clerk of the Board of Supervisors