



## *Special Education Law Update*

---

TEL: 661.636.4830  
FAX: 661.636.4843  
E-mail: sls@kern.org  
www.schoolslegalservice.org

June 10, 2011

### UPDATE ON AB 3632 MENTAL HEALTH SERVICES

In 1984, the Legislature passed AB 3632, adding Chapter 26.5 to the Government Code. Although school districts remained ultimately responsible for making a Free Appropriate Public Education available to a pupil needing mental health services, Chapter 26.5 divided responsibility for the delivery of mental health services to special education students between the Superintendent of Public Instruction and the Secretary of Health and Human Services. (Govt. Code § 7570.) Chapter 26.5 emphasizes that the provision of mental health services is the joint responsibility of both agencies.

On October 8, 2010, Governor Arnold Schwarzenegger released local agencies, including mental health agencies acting pursuant to Chapter 26.5, from providing mandated services during the 2010-2011 fiscal year, as a corollary to his line-item veto of appropriations for reimbursement for local mandated programs in the annual State Budget Act. On February 25, 2011, the California Court of Appeal for the Second Appellate District, in *California School Boards Ass'n v. Edmund G. Brown, Jr. Governor* (2011) 192 Cal.App.4<sup>th</sup> 1507, affirmed the constitutionality of the Governor's authority to suspend the mandate. In a sweeping analysis, the Court of Appeal held that the Governor's authority to reduce or eliminate an item of appropriation in the State Budget Act passed by the Legislature extends to a lump-sum appropriation intended for multiple purposes. In reaching its decision, the Court of Appeal reconciled the Governor's line-item veto authority with the ballot initiative that resulted in a constitutional amendment releasing local agencies from state-mandated responsibilities when deprived of state funding. The Court of Appeal determined that Governor Schwarzenegger was authorized to exercise his authority to do so pursuant to the California Constitution.

The Court of Appeal relied upon the California Constitution which provided that, for a mandate, the Legislature must either appropriate, in the annual State Budget Act, the full payable amount that has not been previously paid or suspend the operation of the mandate for the fiscal year for which the annual State Budget Act is applicable. Based upon the amount of sums set forth in the schedule created by the Legislature for reimbursement of state mandates, including Chapter 26.5 services, the Court concluded that the Legislature intended to allocate the full amount. As required by the California Constitution, the mandate was suspended when Governor Schwarzenegger reduced the full amount allocated by his line-item veto.

When the Court of Appeal determined that Governor Schwarzenegger's exercise of his line-item veto was constitutional, it effectively released local mental health agencies from implementing state mandates, i.e., the Kern County Department of Mental Health's mandate to provide mental health services was suspended (as of October 8, 2010). At that time, Kern County Mental Health's Chapter 26.5 mandate reverted back to the school districts, the local educational agencies were then responsible for providing students with FAPE. Therefore, due to the current state of the case law, the Kern County Mental Health Department is no longer legally responsible for providing students with FAPE for this fiscal school year.

School Districts should now concentrate on the 2011-2012 school year. At present, funding for mental health services is in Governor Jerry Brown's budget; however, the plan is that these services are going to be transitioned from county mental health agencies to school districts. There is an appropriation in the 2011-2012 budget for the transition of the mental health services to school districts in the amount of \$98.2 million, but as it is set up now, the money will still flow first to the county mental health agencies, even though they are no longer mandated to provide AB 3632 services. The Legislation is also looking to fund such services yearly for approximately \$221 million dollars. There is currently no mechanism in place for school districts to draw down those funds from the county mental health agencies in order to provide the mental health services. Additionally, the State is looking at the transition of mental health services to school district responsibility to occur either on January 1, 2012, or on July 1, 2011.

At a recent California Council of School Attorneys' conference, school district lawyers discussed what services would be required in the absence of AB 3632, and they came to the conclusion that the IDEA does not spell that out well. What is known is that it is the responsibility of school district(s) to assess and make placement decisions, including residential placement, for these students. The attorneys' group believes that the current obligation to have a county mental health employee on the IEP team has been eliminated. The group discussed the likelihood that school districts will need to integrate mental health services, such as providing mental health therapy at the school sites, with the student's educational program. However, many school districts remain leery about the provision of such future mental health services to students, as county mental health departments in the past provided medically necessary services, and this is very likely not a responsibility of school districts.

Due to this new Budget provision, it is important for our client school districts to realize that mental health services are soon going to be the responsibility of school districts. Districts can choose to provide such services in-house and/or through vendors, including county mental health departments. There has also been discussion that SELPAs and LEAs may consider forming Joint Power Agreements to provide for such mental health services.

UPDATE ON AB 3632 MENTAL HEALTH SERVICES

Education Law Update

June 10, 2011

Page 3

---

At the current time, until a new State Budget Act is actually passed by the State Legislature, there continues to be no funding for AB 3632 services and, therefore, any County Department of Mental Health could, and can, require school districts to fund the provision of mental health services to their students.

We are following this closely and will be providing more information in the future. Please begin preparations for providing mental health services for your students, including residential placements.

– STACY L. INMAN

---

*Education Law Updates are intended to alert clients to developments in legislation, opinions of courts and administrative bodies and related matters. They are not intended as legal advice in any specific situation. Please consult legal counsel as to how the issue presented may affect your particular circumstances.*