



## *Special Education Law Update*

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### WHAT IS A SCHOOL DISTRICT TO DO ABOUT AB 3632 SERVICES?

On Friday, October 8, 2010, Governor Arnold Schwarzenegger signed the overdue California State Budget. He also used his "blue pencil" to reduce \$133 million dollars which had been set aside for the payment of claims by county mental health agencies for costs incurred in 2004-05 through 2008-09 for mental health services to pupils with disabilities (AB 3632, Chapter 1747/1984). In his veto message, Governor Schwarzenegger said, "My policy is to suspend mandates not related to elections, law enforcement or property taxes in order to maintain a prudent General Fund reserve."

The federal Individuals with Disabilities Education Act (IDEA) requires mental health services to be provided to students with disabilities who need such mental health services in order to access their education. Since 1984 and the enactment of AB 3632, the mandate has been on county mental health agencies to provide the service. Governor Schwarzenegger's veto does not repeal the law. The Legislature did not agree to suspend the mandate.

#### **What happened next.**

On October 18, 2010, the California Department of Education sent an e-mail reminding local educational agencies across the state that if county mental health agencies fail to provide and pay for special education and related services, federal law requires that the "local education agencies provide or pay for the services in a timely manner."

Thereafter, on October 21, 2010, a federal class action lawsuit was filed to preserve mental health services for more than 20,000 students in Los Angeles County. The lawsuit was filed by Public Counsel, Disability Rights California, Mental Health Advocacy Services and Gibson, Dunn

& Crutcher.<sup>1</sup> The lawsuit was filed against Arnold Schwarzenegger, in his official capacity as Governor of the State of California, the California Department of Education, Jack O'Connell, in his official capacity as California Superintendent of Public Instruction, Los Angeles Unified School District, Torrance Unified School District, Los Angeles County Office of Education and Los Angeles County Department of Mental Health.

Additionally, on November 5, 2010, a lawsuit was filed in Sacramento County Superior Court by 23 of California's 58 counties against the State of California seeking an Order relieving the Plaintiff counties from the requirement to provide mental health services to students with disabilities. According to the Complaint, the Governor's veto of AB 3632 funding and his unilateral suspension of the mandate, coupled with the Legislature's failure to override that veto, resulted in a failure to fund the mandate. Kern County was not one of the 23 counties named in the Sacramento Superior Court lawsuit.

### **What should Kern County Local Educational Agencies Do?**

Currently, the Kern County Department of Mental Health Director, James Waterman, has informed the Kern County Superintendent of Schools that the County Department of Mental Health has not and will not cancel AB 3632 services and they are operating "as usual." Director Waterman and others from Kern County Mental Health have indicated that Kern County is continuing to take referrals for AB 3632 assessments and is continuing to provide mental health services to students pursuant to AB 3632. Therefore, at this time, there is no reason for school districts to change their referral process to Kern County Mental Health and neither should the receipt of mental health services for your students under AB 3632 change.

However, if you are a local educational agency that has a child who may have been adopted or a dependent of another county, such as Los Angeles County, those children may not be as well protected. If a child is a dependent, a ward or adopted from a county other than Kern County, the child's county of origin is the county where the child became a dependent or a ward. As an example, if a child were a dependent from Los Angeles County and that child was placed in a foster home in Kern County and/or he was adopted by Kern County residents, that child's AB 3632 services must be agreed upon and paid for by Los Angeles County Department of Mental Health since Los Angeles County was the county of origin for the child. At present, there is a Temporary Restraining Order in the Los Angeles Federal Court case which is agreed upon by Los

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<sup>1</sup> Public Counsel is the nation's largest pro bono law office, Mental Health Advocacy Services is a non-profit organization, Disability Rights California impacts at least 50,000 Californians a year through its advocacy, lawsuits, and trainings and Gibson, Dunn & Crutcher LLP is a large law firm.

Angeles County Department of Mental Health which requires the Los Angeles County Department of Mental Health to resume and continue to provide and monitor educationally-related mental health services under AB 3632 if Los Angeles County Department of Education disburses the IDEA funds which are to be released to all the County Departments of Education in the State. Therefore, it is likely that such students will resume their educationally-related mental health services sometime in December 2010 when this payment is made.

Since this is a fluid state of events at this time, we are recommending that if you have any students that are placed in a nonpublic school pursuant to AB 3632, please contact our office. Since Governor Schwarzenegger's action, there is much volatility and concern as to whether any AB 3632 students, *especially those placed in nonpublic schools*, will receive their mental health services. We want to assure you that Schools Legal Services is here to assist you with any concerns regarding AB 3632 services. We will keep you updated as we are made aware of further actions by the Courts or the Legislature which may affect your agencies.

Please contact us if you need assistance with AB 3632 services for your students.

– STACY L. INMAN

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