

**MEMORANDUM OF UNDERSTANDING
AMONG
CONTRA COSTA COUNTY
AND
THE CONTRA COSTA SELPA AND ITS MEMBER DISTRICTS,
THE WEST CONTRA COSTA SELPA, THE MT. DIABLO SELPA,
AND THE SAN RAMON SELPA, REGARDING
FUNDING AND PROVISION OF EDUCATIONALLY RELATED
MENTAL HEALTH SERVICES TO STUDENTS ELIGIBLE UNDER
THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT**

THIS MEMORANDUM OF UNDERSTANDING (MOU), is made by and between the County of Contra Costa, including but not limited to, Mental Health Services (hereinafter referred to as County), the Contra Costa County SELPA, a multi-district SELPA (including Contra Costa County Office of Education, and the following fifteen school districts: Acalanes Union High School District, Antioch Unified School District, Brentwood Union School District, Byron Union School District, Canyon School District, John Swett Unified School District, Knightsen Elementary School District, Lafayette School District, Liberty Union High School District, Martinez Unified School District, Moraga School District, Oakley Union School District, Orinda School District, Pittsburg Unified School District, and Walnut Creek School District), and the West Contra Costa SELPA, Mt. Diablo SELPA, and San Ramon SELPA, each of which is a single-district SELPA, with respect to the provision of educationally-related mental health services by the District under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400, et seq. to students who reside within the boundaries, attend a school of the District, or are otherwise the responsibility of the District and funded through the SELPA, and the provision of mental health services by the County under applicable California law (e.g. Bronzan-McCorquodale Act, Mental Health Services Act (Proposition 63), Mental Health Services Fund, and Children's Mental Health Services Act) (collectively referred to herein as "State law") to that same population. The four SELPAs are collectively referred to below as "SELPA" or "LEA"; the County and the SELPAs are collectively referred to as "Parties."

RECITALS

WHEREAS, the Local Education Agency (LEA) and the County each have obligations to provide specified mental health services to children residing within LEA and/or County, with the LEA's obligation arising under the IDEA and the County's obligation arising under State law;

WHEREAS, since 1986, County has been responsible to arrange and/or provide educationally-related mental health assessments and services to eligible special education students upon referrals by LEA pursuant to Section 26.5 of Division 7 of the California

Government Code sections 7570-7590 and the implementing regulations (entitled "Interagency Responsibilities for Providing Services to Children with Disabilities" and commonly known as and referred to hereinafter collectively as "AB 3632"). AB 3632 defined educationally related mental health services to include: individual or group psychotherapy, collateral services, medication monitoring, day treatment, day rehabilitation, case management, transportation, and residential placement.

WHEREAS, the IDEA requires local educational agencies to provide a free, appropriate public education ("FAPE") to eligible students with disabilities residing within its boundaries, but does not define, further specify, or provide for a process for mental health assessment, services or placements to eligible students, and only requires the provision of related services, including psychological services, social work services, and counseling services, as required to assist a child with a disability to benefit from special education;

WHEREAS, the process for educationally related mental health assessment, services or placements to eligible students in the State of California was previously governed by AB 3632;

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 ("the veto") and stated that "[t]his mandate is suspended";

WHEREAS, at the time of the veto, AB 3632 remained codified and required counties and their mental health departments to conduct mental health assessments under the IDEA and to provide necessary educationally related mental health-related services, including residential care-based treatment (i.e., placement including the provision of psychotherapy and other needed mental health services), day treatment, and outpatient counseling to students with disabilities, as identified within the student's individualized education programs ("IEP"), pursuant to Government Code sections 7570, 7572, and 7572.5, and imputed county departments of mental health's recommendations for mental health services onto the IEP which had referred the student to the counties for assessment;

WHEREAS, shortly after the veto, litigation ensued among, by, or against the State Department of Education, State Department of Mental Health, the Governor, LEAs, and counties, regarding the force and effect of the Governor's veto on the AB 3632 mandate and the respective parties rights and responsibilities thereunder;

WHEREAS, pursuant to that litigation, the Superior Court in Sacramento and the California Court of Appeal have held that the Governor's October 8, 2010 veto suspended the AB 3632 mandate for 2010-11;

WHEREAS, AB 3632 is referred to in the Governor's Revised Budget Summary for the 2011-12 Budget as "repealed" and legislation provides that AB 3632 is inoperative as of July 1, 2011 and repealed effective January 1, 2012, and at the time of this MOU, there is no pending legislation known to the Parties to amend the Education Code or otherwise enact state statutory law to govern the provision of educationally related mental health services;

WHEREAS, under State law, the County is obligated to provide medically necessary mental health services to Medi-Cal eligible individuals, including seriously emotionally disturbed children in Contra Costa County, who have qualifying mental health needs; some of these services are the same services that the LEA may be obligated to provide under the IDEA and some of the same individuals who also qualify for educationally related mental health services from the LEA under the IDEA;

WHEREAS, in March 2011, the Legislature passed AB 100, amending the Mental Health Services Act (MHSA) and Children's Mental Health Services Act, among others, to provide MHSA funding to counties for mental health services for educationally related mental health services (ERMHS) and requiring the Controller to distribute to counties ninety-eight million five hundred eighty-six thousand dollars (\$98,586,000) from the Mental Health Services Fund for mental health services for special education pupils.

WHEREAS, AB 100 provides MHSA funding for ERMHS services to qualifying special education pupils in the 2011-2012 school year but does not address the rights and/or obligations of LEAs and/or counties to provide mental health services to special education pupils, or otherwise codify a division or coordination of responsibility between the LEAs and counties in the provision of mental health services to special education pupils, and further does not refer to reinstating the AB 3632 legislation, division of responsibility, or obligations;

WHEREAS, by this MOU the Parties intend to ensure that AB 100 funds are utilized so that special education pupils residing in the LEA continue to be identified, assessed and provided with ERMHS services required by the IDEA and to identify the rights and obligations of the Parties in conformity with AB 100 and after AB 3632 becomes inoperative and/or repealed;

WHEREAS, the Parties 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 party's rights, including any right to seek reimbursement from the other party for all costs incurred in providing educationally related mental health services under the IDEA to eligible students;

OPERATIVE PRINCIPLES

Accordingly, and in light of the foregoing recitals, the Parties agree that this MOU is to be implemented, interpreted and viewed in light of the following Operative Principles:

- LEA is responsible under the IDEA for the provision of FAPE to eligible students, including the provision of educationally related mental health services, and County is obligated under State law, subject to funding and eligibility, to provide mental health services to Medi-Cal eligible children in Contra Costa County.
- There is no federal IDEA obligation or state law obligation on County to provide FAPE, and there is no federal or state law obligation for LEA to provide mental health services that are not educationally related, and this MOU is not intended to create any such

obligations. This MOU is not intended to make County a "public agency" within the meaning of IDEA and/or subject to the IDEA's dispute resolution provisions

- Absent reinstatement of and appropriation of funding by the State for AB 3632 services, there is no statutory mandate on County to provide AB 3632 services or on the LEA to refer students to the County for mental health assessments and services under AB 3632.
- The provision of funds to County pursuant to AB 100 for ERMHS services for special education pupils does not create a statutory obligation on County to provide FAPE, and County is not otherwise required to provide educationally related mental health services, except to the extent State law provides for the provision of the same or similar mental health services to the same or similar students.
- The Parties anticipate that County will be transitioning the provision of educationally related mental health services to school LEAs within the County, including the LEA, and that County intends the transition to be completed by June 30, 2012. The parties intend to not interrupt the provision of services and to make a good faith effort to ensure a smooth and seamless transition of the provision of educationally related mental health services from the County to the LEA by June 30, 2012.

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

1. Referrals and Assessment Reports: LEA may refer students with suspected educationally related mental health needs arising from a qualifying IDEA disability to County for mental health assessment, and County will process and complete that assessment and an assessment report within 60 days of parental consent on an assessment plan. County may only recommend educationally related mental health services and such determinations will only be advisory to and not otherwise binding upon the LEA. Referrals for Medi-Cal eligible students must meet medical necessity criteria as set forth by Medi-Cal in order to receive specialty mental health services regardless of enrolled status.

2. Array of Services: Upon request from the LEA, and pursuant to IEPs developed and reviewed by the LEA, County agrees to provide educationally related mental health services to LEA students during the term of this MOU pursuant to this MOU. These services may include mental health services consultation, assessment and re-assessment, preparation of reports, IEP team meeting attendance, participation, and acknowledgement of its attendance and/or participation, referrals and processing referral packets, monitoring and placement and related travel and staff cost. LEAs will provide a signed assessment plan and have mental health assess for all appropriate referrals which may result in contracting with mental health service providers, placement as needed, including day treatment and outpatient counseling, and participation in the defense of any due process hearings and compliance complaints which may arise from the provision of mental health services for students served by CMH as determined by the LEA. The array of services will be provided for a child with a disability, as defined under the IDEA, in paragraph (3) of Section 1401 of

Title 20 of the United States Code, and shall include necessary 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 California Education Code.

3. Anticipation of Transition of Educationally Related Mental Health Services to LEA:

It is understood and agreed that as part of the anticipated transition of the provision of educationally related mental health services to LEA, and in anticipation of the State no longer providing funding to counties to provide educationally related mental health services to special education pupils, the County may reduce the amounts and/or types of services it offers accordingly subject to the limitations set forth herein. Upon the request of and at no cost to the LEA, the County will provide consultation and/or training services to the LEA to aid in the transitioning of the provision of the educationally related mental health services to LEA during the FY 2011-2012. To the extent legally permissible, County may use AB 100 funding to pay for these services. These consultations may range in format from individual LEA training to multiple LEA group forums. The County will endeavor to schedule a group forum, at no cost to LEA. In no circumstances will County terminate a service without at least 20 school days notice to the LEA nor may County terminate services such that the LEA does not receive the full benefit of AB 100 funds earmarked for mental health services for eligible special education students. County understands that in some circumstances the LEA may need to convene an IEP meeting to effect a change in service previously provided by County and County will not terminate those services pending the IEP unless otherwise agreed to by student's parents.

4. Student Records: County and SELPA will collaborate on an ongoing basis to record implementation and cost data for educationally related mental health services provided to LEA students by the County through their IEPs and pursuant to this MOU. County agrees to provide data in a mutually agreeable electronic format.

5. LEA's Provision of FAPE: It is understood and agreed that the LEA has the right and obligation under IDEA to determine educationally related mental health services needed for an eligible student to receive FAPE and that County will provide ERMHS services requested by the LEA in conformity with the IEP, pursuant to this MOU only. LEA may use County to provide educationally related mental health services or may independently, or through a third party vendor, provide for educationally related mental health services.

6. Individual Services Agreement Execution: County agrees to provide information and/or records to demonstrate services, implementation and the progress made with those services.

7. As an addendum, County shall provide the cost of the educationally related mental health services set forth in paragraph 2, It is understood and agreed that provision of services and costs is subject to SELPA approval and in no case shall administrative fees exceed 18% over the SMA. County shall provide an accounting to demonstrate the funding used for services as further set forth in paragraph 8.

8. Funding and Reimbursement: To the extent legally permissible, County shall identify and use all alternate funding sources including Early and Periodic Screening, Diagnosis, and Treatment (“EPSDT”) and Mental Health Services Act (AB100). AB 100 funds will be proportionately credited to each LEA’s cost for purchasing, from the County, educationally related mental health services. Counties shall either use the funds for educationally related mental health services or shall return the funding to the state for reallocation to other counties. Once AB 100 funds are exhausted, LEA shall bear the costs of and pay County for the provision of educationally related ERMHS services provided, in accordance with this MOU, to LEA students; County shall reimburse LEA to the extent that any such services are paid for by other state or federal funding sources (e.g., Medi-Cal (EPSTD) or MHSA funds AB100).

9. Reconciliation and Cost of Service: Every month during the term of this MOU, County shall provide an invoice to each SELPA and LEA identifying the funds expended on non Medi-Cal LEA students, A final accounting shall be completed by County when Medi-Cal approvals are finalized and the State has issued its Cost Report Reconciliation and Settlement to the County and in no event later than January 31, 2013. Any funds owed to County will be paid by each SELPA at the time of the final reconciliation.

10. Cooperation in Administrative Proceedings: Although County will not be named by the LEA as a party to due process proceedings under the IDEA’s procedural safeguards, County agrees to fully cooperate with the SELPA with regard to all administrative or other legal proceedings involving special education students receiving services from County pursuant to this MOU.

11. Privacy: County and SELPA 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 of student information. County and LEA shall ensure that all activities and communications undertaken under this MOU will conform to the requirements of these laws.

12. 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.

13. Integration: This MOU represents the entire understanding of SELPA 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 and signed by both Parties hereto. This is an integrated MOU.

14. 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.

15. Third Party Rights: Nothing in this MOU shall be construed to confer any rights or benefits to anyone other than the Parties hereto nor shall any of the provisions be construed as an admission by either the LEA or the County of a duty or obligations to anyone other than the Parties hereto. This document shall not be an exhibit to any proceeding other than between the Parties hereto.

16. 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.

17. Term: The term of this Agreement shall commence on July 1, 2011, and shall continue from month to month until terminated by either party, however in no event shall this MOU extend beyond June 30, 2012. At that time it is expected that LEA shall be capable of and shall provide the educationally related services provided by County under this MOU.

18. Termination: This MOU may be terminated at any time upon the mutual agreement of the Parties or by either party upon 30 days advanced written notice to the other party. Unless otherwise prohibited by law, should any AB 100 funds or other allocation of funds to which the LEA is entitled remain with the County at the time of termination of the MOU, such funds shall be transferred to the LEA within sixty (60) days.

19. Dispute Resolution: County and SELPA agree that upon the mutual consent of the Parties the following process will be used to address disputes pertaining to the implementation of the MOU. It is understood that these dispute resolution procedure shall not preclude or otherwise interfere with the right to bring an action as conferred in paragraph 14 and does not pertain to special education due process hearing complaints.

A. Dispute Resolution

Timely communication between Mental Health and SELPA personnel will occur whenever disputes related to the Program Plan / MOU arise. Every effort will be made to resolve disputes informally at the lowest possible level and shall be referred to the agency liaisons for initial formal action as needed.

Any dispute regarding this Agreement will be mediated between the lead administrators for each agency.

Any audit will be conducted by the County Regional Clinic Manager

and/or the Mental Health Program Chief in collaboration with the LEA.

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 Program Plan and to assist in any dispute resolution.

20. Indemnification: To the fullest extent permitted by law, LEA shall defend, indemnify, and hold harmless County, its agents, representatives, officers, consultants, employees, trustees, and volunteers from any and all losses, liabilities, claims, suits, and actions of any kind, nature, and description, including, but not limited to, attorneys' fees and costs, that arise out of or result from the exclusive negligent, wrongful or willful acts or omissions of the LEA, its employees, agents, subcontractors, independent contractors, consultants, or other representatives; and, in the event any action or proceeding in any forum is brought against the County for any such acts or omissions of the LEA, LEA shall defend the same at LEA's expense, including retaining counsel.

To the fullest extent permitted by law, County shall defend, indemnify, and hold harmless LEA, its agents, representatives, officers, consultants, employees, trustees, and volunteers from any and all losses, liabilities, claims, suits, and actions of any kind, nature, and description, including, but not limited to, attorneys' fees and costs, that arise out of or result from the exclusive negligent, wrongful or willful acts or omissions of the County, its employees, agents, subcontractors, independent contractors, consultants, or other representatives; and, in the event any action or proceeding in any forum is brought against the LEA for any such acts or omissions of the County, County shall defend the same at County's expense, including retaining counsel acceptable to SELPA.

21. 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 MOU 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 party 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.

22. 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 SELPA and shall be addressed to:

Laura VanDuyn, Ed.D, Director
Contra Costa SELPA
2520 Stanwell Drive, Suite 270
Concord, CA 94520

Steve Collins, Director
West Contra Costa SELPA
2465 Dolan Way
San Pablo, CA 94806

Karen Heilbronner, Director
Secondary Special Education
San Ramon Unified School District
699 Old Orchard Drive
Danville, CA 94526

Linda Rowley Thom, Director
Elementary Special Education
San Ramon Valley Unified School District
699 Old Orchard Drive
Danville, CA 94526-1058

Mildred D. Browne, Ph.D,
Asst. Superintendent
Pupil Services Mt. Diablo Unified SELPA/LEA
1936 Carlotta Drive
Concord, CA 94519

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

Vern Wallace, LMFT
Mental Health Program Chief
Child and Adolescent System of Care
Contra Costa County Health Services
Behavioral Health Division
Mental Health Services
1340 Arnold Dr. #200
Martinez, CA (94553)

23. 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.

24. 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.

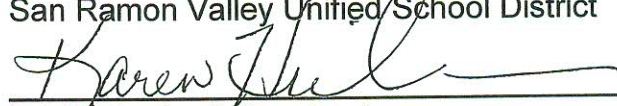
IN WITNESS WHEREOF, the Parties hereto have executed this agreement for Fiscal Year 2011-2012, in entirety, as of the dates of their signatures.

EDUCATION

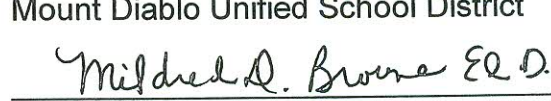
Linda Rowley Thom, Director
Elementary Special Education
San Ramon Valley Unified School District


By (Authorized Signature) 2/6/12
Date

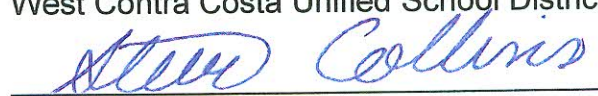
Karen Heilbronner, Director
Secondary Special Education
San Ramon Valley Unified School District


By (Authorized Signature) 2/6/12
Date

Mildred Browne, Ed. D.,
Asst. Superintendent
Pupil Services/Special Education/SELPA
Mount Diablo Unified School District


By (Authorized Signature) 2/6/2012
Date

Steve Collins, Director
Special Education Local Area Plan
West Contra Costa Unified School District


By (Authorized Signature) 2/8/12
Date

CONTRA COSTA COUNTY

William Walker 1/20/12
By Dr. William Walker, M.D. Date
Health Services Director
Health Department
Contra Costa County

Cynthia Belon, LCSW 1/26/12
By Cynthia Belon, LCSW Date
Behavioral Health Director
Health Services Department
Contra Costa County
1340 Arnold Way #200
Martinez, CA 94553

Suzanne Tavano, PhD 1/25/12
By Suzanne Tavano, PhD Date
Acting Mental Health Director
Behavioral Health Division
Health Services Department
Contra Costa County
1340 Arnold Way #200
Martinez, CA 94553

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