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*Commission on
State Mandates*

JOHN CHIANG
California State Controller

LATE FILING

October 3, 2014

Heather Halsey
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Re: Notice of Revised Complete Filing
Incorrect Reduction Claim (IRC), 11-9705-I-02
*Seriously Emotionally Disturbed (SED) Pupils: Out-of-State
Mental Health Services (97-TC-05)*
Government Code Section 7576; Statutes 1996, Chapter 654
Fiscal Years: 2000-2001, 2001-2002, 2002-2003, 2003-2004, 2004-2005, and 2005-2006
County of Orange, Claimant

Dear Ms. Halsey:

The State Controller's Office is transmitting our response to the above-entitled IRC.

If you have any questions, please contact me by telephone at (916) 323-5849.

Sincerely,

JIM L. SPANO, Chief
Mandated Cost Audits Bureau
Division of Audits

**RESPONSE BY THE STATE CONTROLLER'S OFFICE
TO THE INCORRECT REDUCTION CLAIM (IRC) BY
ORANGE COUNTY**

**Seriously Emotionally Disturbed Pupils:
Out-of-State Mental Health Services Program**

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Note: References to Exhibits relate to the county’s IRC filed on November 9, 2011, and updated by an October 21, 2013 filing as follows:

- Exhibit A – PDF page 17
- Exhibit B – PDF page 55
- Exhibit C – PDF page 71
- Exhibit D – PDF page 176

Tab 1

1 **OFFICE OF THE STATE CONTROLLER**

2 300 Capitol Mall, Suite 1850

3 Sacramento, CA 94250

4 Telephone No.: (916) 445-6854

5 BEFORE THE

6 COMMISSION ON STATE MANDATES

7 STATE OF CALIFORNIA

8
9 No.: CSM 11-9705-I-02

10 INCORRECT REDUCTION CLAIM ON:

11 Seriously Emotionally Disturbed Pupils: Out-
12 of-State Mental Health Services Program

13 Chapter 654, Statutes of 1996

14 ORANGE COUNTY, Claimant

AFFIDAVIT OF BUREAU CHIEF

15
16 I, Jim L. Spano, make the following declarations:

- 17 1) I am an employee of the State Controller's Office (SCO) and am over the age of 18 years.
- 18 2) I am currently employed as a Bureau Chief, and have been so since April 21, 2000. Before that, I was employed as an audit manager for two years and three months.
- 19 3) I am a California Certified Public Accountant (CPA).
- 20 4) I reviewed the work performed by the SCO auditor.
- 21 5) Any attached copies of records are true copies of records, as provided by Orange County or retained at our place of business.
- 22 6) The records include claims for reimbursement, along with any attached supporting documentation, explanatory letters, or other documents relating to the above-entitled
- 23 Incorrect Reduction Claim.
- 24
- 25

- 1 7) A field audit of the claims for fiscal year (FY) 2000-01 and FY 2001-02 was completed
2 on November 12, 2008.
- 3 8) A field audit of the claims for FY 2002-03, FY 2003-04, and FY 2004-05 was
4 completed on November 12, 2008.
- 5 9) A field audit of the claim for FY 2005-06 was completed on September 17, 2010.

6 I do declare that the above declarations are made under penalty of perjury and are true and
7 correct to the best of my knowledge, and that such knowledge is based on personal
8 observation, information, or belief.

9 Date: May 14, 2013

10 OFFICE OF THE STATE CONTROLLER

11 By: Jim L. Spano
12 Jim L. Spano, Chief
13 Mandated Cost Audits Bureau
14 Division of Audits
15 State Controller's Office

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Tab 2

**STATE CONTROLLER'S OFFICE ANALYSIS AND RESPONSE
TO THE INCORRECT REDUCTION CLAIM BY
ORANGE COUNTY**

**For Fiscal Year (FY) 2000-01, FY 2001-02,
FY 2002-03, FY 2003-04, FY 2004-05, and FY 2005-06**

**Seriously Emotionally Disturbed Pupils: Out-of-State Mental Health Services Program
Chapter 654, Statutes of 1996**

SUMMARY

The following is the State Controller's Office's (SCO) response to the Incorrect Reduction Claim (IRC) that Orange County filed on November 9, 2011, and updated on October 21, 2013. The SCO audited the county's claims for costs of the legislatively mandated Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services Program for the period of July 1, 2000, through June 30, 2006. The SCO issued its final reports on November 12, 2008, for FY 2000-01 and FY 2001-02, on November 12, 2008, for FY 2002-03, FY 2003-04, and FY 2004-05, and on September 17, 2010, for FY 2005-06 (**Exhibit C**).

The county submitted reimbursement claims totaling \$13,864,661 (\$13,878,661 less a \$14,000 penalty for filing late claims)—\$1,225,194 for FY 2000-01 (\$1,224,194 less a \$1,000 penalty for filing a late claim); \$1,538,794 for FY 2001-02 (\$1,539,794 less a \$1,000 penalty for filing a late claim); \$1,692,143 for FY 2002-03 (\$1,693,143 less a \$1,000 penalty for filing a late claim); \$1,497,555 for FY 2003-04; \$3,802,568 for FY 2004-05 (\$3,803,568 less a \$1,000 penalty for filing a late claim); and \$4,108,407 (\$4,118,407 less a \$10,000 penalty for filing a late claim) (**Exhibit D**). Subsequently, the SCO audited these claims and determined that \$10,890,835 is allowable and \$2,973,826 is unallowable. The county claimed unallowable costs primarily because it claimed vendor payments for out-of-state residential placement of SED pupils in facilities that are owned and operated for profit.

The following table summarizes the audit results:

<u>Cost Elements</u>	<u>Actual Costs Claimed</u>	<u>Allowable per Audit</u>	<u>Audit Adjustment</u>
<u>July 1, 2000, through June 30, 2001</u>			
Ongoing costs:			
Mental health service:			
Vendor reimbursements	\$ 1,125,732	\$ 3,422,815	\$ (223,705)
Travel	100,462	129,112	28,650
Subtotal	1,226,194	1,030,139	(195,055)
Less late filing penalty	(1,000)	(1,000)	—
Total program costs	<u>\$ 1,125,194</u>	1,030,139	<u>\$ (195,055)</u>
Less amount paid by the State ¹		(33,556)	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 996,583</u>	

<u>Cost Elements</u>	<u>Actual Costs Claimed</u>	<u>Allowable per Audit</u>	<u>Audit Adjustment</u>
<u>July 1, 2001, through June 30, 2002</u>			
Ongoing costs:			
Mental health service:			
Vendor reimbursements	\$ 1,423,385	\$ 1,045,374	\$ (378,011)
Case management	116,409	180,900	64,491
Subtotal	1,539,794	1,226,274	(313,520)
Less late filing penalty	(1,000)	(1,000)	—
Total program costs	<u>\$ 1,538,794</u>	1,228,274	<u>\$ (313,520)</u>
Less amount paid by the State ¹		—	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 1,228,274</u>	
<u>July 1, 2002, through June 30, 2003</u>			
Ongoing costs:			
Mental health service:			
Vendor reimbursements	\$ 1,397,575	\$ 1,177,273	\$ (220,302)
Case management	295,568	295,568	—
Subtotal	1,693,143	1,472,841	(220,302)
Less late filing penalty	(1,000)	(1,000)	—
Total program costs	<u>\$ 1,692,143</u>	1,471,841	<u>\$ (220,302)</u>
Less amount paid by the State ¹		(105)	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 1,471,736</u>	
<u>July 1, 2003, through June 30, 2004</u>			
Ongoing costs:			
Mental health service:			
Vendor reimbursements	\$ 2,036,041	\$ 1,749,756	\$ (286,285)
Case management	362,791	362,791	—
Net ongoing costs	2,398,832	2,112,547	(286,285)
Less reimbursements	(901,277)	(901,277)	—
Total program costs	<u>\$ 1,497,555</u>	1,211,270	<u>\$ (286,285)</u>
Less amount paid by the State ¹		—	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 1,211,270</u>	
<u>July 1, 2004, through June 30, 2005</u>			
Ongoing costs:			
Mental health service:			
Vendor reimbursements	\$ 5,043,632	\$ 4,235,573	\$ (808,059)
Case management	443,489	443,489	—
Net ongoing costs	5,487,121	4,679,062	(808,059)
Less reimbursements	(1,683,553)	(1,683,553)	—
Total costs	3,803,568	2,995,509	—
Less late claim penalty	(1,000)	(1,000)	—
Total program costs	<u>\$ 3,802,568</u>	2,994,509	<u>\$ (808,059)</u>
Less amount paid by the State ¹		(2,994,509)	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ —</u>	

<u>Cost Elements</u>	<u>Actual Costs Claimed</u>	<u>Allowable per Audit</u>	<u>Audit Adjustment</u>
<u>July 1, 2005, through June 30, 2006</u>			
Ongoing costs:			
Mental health service:			
Vendor reimbursements	\$ 5,736,818	\$ 4,586,213	\$ (1,150,605)
Case management	494,891	494,891	—
Net ongoing costs	6,231,709	5,081,104	(1,150,605)
Less reimbursements	(2,113,302)	(2,113,302)	—
Total costs	4,118,407	2,967,802	(1,150,605)
Less late claim penalty	(10,000)	(10,000)	—
Total program costs	<u>\$ 4,108,407</u>	2,957,802	<u>\$ (1,150,605)</u>
Less amount paid by the State ¹		(2,957,802)	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ —</u>	
<u>Summary: July 1, 2000, through June 30, 2006</u>			
Ongoing costs:			
Mental health service:			
Vendor reimbursements	\$ 16,763,183	\$ 13,696,216	\$ (3,066,967)
Case management	1,813,610	1,813,610	93,141
Net ongoing costs	18,576,793	15,602,967	(2,973,826)
Less reimbursements	(4,698,132)	(4,698,132)	—
Total costs	13,878,661	10,904,835	(2,973,826)
Less late filing penalty	(14,000)	(14,000)	—
Total program costs	<u>\$ 13,864,661</u>	10,890,835	<u>\$ (2,973,826)</u>
Less amount paid by the State ¹		(5,985,972)	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 4,904,863</u>	

The county contests the portion of Finding 1 that relates to the out-of-state residential placement of SED pupils in facilities that are organized and operated for profit. The audit adjustment for all findings totals \$2,973,826 for the audit period—\$195,055 for FY 2000-01, \$313,520 for FY 2001-02, \$220,302 for FY 2002-03, \$286,285 for FY 2003-04, \$808,059 for FY 2004-05, and \$1,150,605 for FY 2005-06. However, the net audit adjustment relative to Finding 1 from each of the three audit reports is \$3,066,967 for the audit period—\$223,705 for FY 2000-01, \$378,011 for FY 2001-02, \$220,302 for FY 2002-03, \$286,285 for FY 2003-04, \$808,059 for FY 2004-05, and \$1,150,605 for FY 2005-06.

The county believes that residential placement costs resulting from the placement of SED pupils in facilities owned and operated for profit are eligible and reimbursable under the state-mandated cost program.

¹ Payment information as of April 15, 2013.

A following table summarizes the IRC audit adjustment related to residential placement:

Finding 1	Fiscal Year						Total
	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06	
Ineligible placements:							
Treatment							
For-profit	\$ (223,705)	\$(378,011)	\$(220,302)	\$(286,285)	\$ (390,970)	\$ (616,320)	\$ (2,115,593)
In-state	-	-	-	-	-	(1,179)	(1,179)
Board and care	-	-	-	-	(418,905)	(603,751)	(1,022,656)
Prior year costs	-	-	-	-	-	(2,037)	(2,037)
Omitted costs	-	-	-	-	1,816	6,566	8,382
Realignment adjustment	-	-	-	-	-	66,116	66,116
Totals	<u>\$ (223,705)</u>	<u>\$(378,011)</u>	<u>\$(220,302)</u>	<u>\$(286,285)</u>	<u>\$ (808,059)</u>	<u>\$ (1,150,605)</u>	<u>\$ (3,066,967)</u>

I. SCO REBUTTAL TO STATEMENT OF DISPUTE – CLARIFICATION OF REIMBURSABLE ACTIVITIES, CLAIM CRITERIA, AND DOCUMENTATION REQUIREMENTS

Parameters and Guidelines

On May 26, 2000, the Commission on State Mandates (CSM) determined that Chapter 654, Statutes of 1996, imposed a state mandate reimbursable under Government Code section 17561 (Tab 3). The CSM adopted the program's parameters and guidelines on October 26, 2000 (Tab 4), corrected it on July 21, 2006 (Tab 5), and amended it on October 26, 2006 (Tab 6). The correction clarified out-of-state residential placement costs of Seriously Emotionally Disturbed (SED) pupils, stating that vendor reimbursements include mental health services, and board and care costs. The amendment relates to closing out the program after FY 2005-06. Beginning in FY 2006-07, the program became part of the consolidated parameters and guidelines that is made up of the Handicapped and Disabled Students, Handicapped and Disabled Students II, and SED Pupils: Out-of-State Mental Health Services Programs.

Following are excerpts from the SED Pupils: Out-of-State Mental Health Services Program's parameters and guidelines that are applicable to the audit period (Tab 6).

Section I, SUMMARY OF MANDATES, provides a summary of the mandate. It states:

I. SUMMARY OF MANDATES

Government Code section 7576, as amended by Statutes of 1996, Chapter 654, established new fiscal and programmatic responsibilities for counties to provide mental health services to Seriously Emotionally Disturbed (SED) pupils placed in out-of-state residential programs. In this regard, Title 2, Division 9, Chapter 1 of the California Code of Regulations, sections 60000 through 60610, were amended to further define counties' fiscal and programmatic responsibilities including those set forth under section 60100 entitled "LEA Identification and Placement of a Seriously Emotionally Disturbed Pupil," providing that residential placements for a SED pupil may be made out-of-state only when no in-state facility can meet the pupil's needs, and under section 60200 entitled "Financial Responsibilities," detailing county mental health and LEA financial responsibilities regarding the residential placements of SED pupils.

On May 25, 2000, the Commission on State Mandates (Commission) adopted its Statement of Decision on the subject test claim, finding the following activities to be reimbursable:

- Payment of out-of state residential placements for SED pupils. (Gov. Code, § 7576, Cal. Code Regs., tit. 2, §§ 60100, 60110)

- Case management of out-of-state residential placements for SED pupils. Case management includes supervision of mental health treatment and monitoring of psychotropic medications. (Gov. Code, § 7576, Cal. Code Regs., tit. 2, § 60110.)
- Travel to conduct quarterly face-to-face contacts at the residential facility to monitor level of care, supervision, and the provision of mental health services as required in the pupil's Individualized Education Plan (IEP). (Cal. Code Regs., tit. 2, § 60110.)
- Program management, which includes parent notifications, as required, payment facilitation, and all other activities necessary to ensure a county's out-of-state residential placement program meets the requirements of Government Code section 7576 and Title 2, California Code of Regulations, subdivision 60000- 60610. (Gov. Code, § 7576; Cal. Code of Regs., tit. 2, §§ 60100, 60110.)

These parameters and guidelines are effective for reimbursement claims filed for costs incurred through the 2005-06 fiscal year. Commencing with the 2006-2007 fiscal year, reimbursement claims shall be filed through the consolidated parameters and guidelines for *Handicapped and Disabled Students (04-RL-4282-10)*, *Handicapped and Disabled Students II (02-TC-40/02-TC-49)*, and *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services (97-TC-05)*.

Section III, PERIOD OF REIMBURSEMENTS, defines the reimbursable period. It states:

III. PERIOD OF REIMBURSEMENTS

Section 17557 of the Government Code, prior to its amendment by Statutes of 1998, Chapter 681, stated that a test claim must be submitted on or before December 31 following a given fiscal year to establish eligibility for that year. This test claim was filed by the County of Los Angeles on December 22, 1997. Statutes of 1996, Chapter 654, was enacted on September 19, 1996 and became effective on January 1, 1997. Therefore, costs incurred in implementing Chapter 654, Statutes of 1996 on or after January 1, 1997, are eligible for reimbursement.

Actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to section 17561, subdivision (d)(1) of the Government Code, all claims for reimbursement of initial years' costs shall be submitted within 120 days of notification by the State Controller of the enactment of the claims bill.

If total costs for a given year do not exceed \$200, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

Section IV, REIMBURSABLE ACTIVITIES, identifies the reimbursable activities. It states:

IV. REIMBURSABLE ACTIVITIES

The direct and indirect costs of labor, materials and supplies, contracted services, equipment, training, and travel incurred for the following mandate components are eligible for reimbursement:

A. One-Time Costs

1. To develop policies, procedures and contractual arrangements, necessary to implement a county's new fiscal and programmatic responsibilities for SED pupils placed in out-of-state residential programs.
2. To conduct county staff training on the new policies, procedures and contractual arrangements, necessary to implement a county's new fiscal and programmatic responsibilities for SED pupils placed in out-of-state residential programs.

B. Continuing Costs

1. Mental Health Service Vendor Reimbursements

To reimburse counties for payments to service vendors providing mental health services to SED pupils in out-of-state residential placements as specified in Government Code section 7576 and Title 2, California Code Regulations, sub divisions 60100 and 60110. Included in this activity is the cost for out-of-state residential board and care of SED pupils.

2. Case Management

To reimburse counties for case management of SED pupils in out-of-state residential placements, including supervision of mental health treatment and monitoring of psychotropic medications as specified in Government Code section 7576 and Title 2, California Code of Regulations, sub division 60110, including the costs of treatment related litigation (including administrative proceedings) over such issues as placement and the administration of psychotropic medication. Litigation (including administrative proceedings) alleging misconduct by the county or its employees, based in negligence or intentional tort, shall not be included.

3. Travel

To reimburse counties for travel costs necessary to conduct quarterly face-to-face contacts at the residential facility to monitor level of care, supervision, and the provision of mental health services as required in the pupil's IEP as specified in Title 2, California Code of Regulations, subdivision 60110.

4. Program Management

To reimburse counties for program management costs, which include the costs of parent notifications as required, payment facilitation, and all other activities necessary to ensure a county's out-of-state residential placement program meets the requirements of Government Code section 7576 and Title 2, California Code of Regulations, sub divisions 60100 and 60110.

Section VI, SUPPORTING DATA, identifies documentation requirements that must be maintained. It states:

VI. SUPPORTING DATA

For auditing purposes, all costs claimed shall be traceable to source documents (e.g., invoices, receipts, purchase orders, contracts, worksheets, calendars, declarations, etc.) that show evidence of the validity of such costs and their relationship to the state mandated program. All documentation in support of the claimed costs shall be made available to the State Controller's Office, as may be requested. Pursuant to Government Code section 17558.5, these documents must be kept on file by the agency submitting the claim for a period of no less than two years after the later of (1) the end of the calendar year in which the reimbursement claim is filed or last amended, or (2) if no funds are appropriated for the fiscal year for which the claim is made, the date of initial payment of the claim. All claims shall identify the number of pupils in out-of-state residential programs for the costs being claimed.

Section VII, OFFSETTING REVENUES AND OTHER REIMBURSEMENTS, identifies applicable offset requirements. It states:

VII. OFFSETTING REVENUES AND OTHER REIMBURSEMENTS

Any offsetting savings the claimant experiences as a direct result of the subject mandate must be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, including but not limited to federal funds and other state funds, shall be identified and deducted from this claim.

SCO Claiming Instructions

In compliance with Government Code section 17558, the SCO issues claiming instructions for mandated programs in order to assist local agencies and school districts in claiming reimbursable costs. The SCO issued claiming instructions for Chapter 654, Statutes of 1996 in January 2001 (**Exhibit B**). The county used this version to file its reimbursement claims (**Exhibit D**).

II. COUNTY OVERSTATED COSTS BY CLAIMING UNALLOWABLE OUT-OF-STATE RESIDENTIAL PLACEMENT COSTS

Issue

The county IRC contests Finding 1 in the SCO's final audit reports issued on November 12, 2008, for FY 2000-01 and FY 2001-02; on November 12, 2008, for FY 2002-03, FY 2003-04, and FY 2004-05; and on September 17, 2010, for FY 2005-06. The county contests findings related to unallowable out-of-state residential placement of SED pupils in for-profit facilities for the audit period totaling \$3,066,967. However, the IRC filed by the county inadvertently identified the adjustment related to all of the findings rather than only the finding related to vendor payments for residential placement costs resulting from the placement of SED pupils in facilities owned and operated for profit.

The SCO concluded that vendor payments for residential placement costs resulting from the placement of SED pupils in facilities owned and operated for profit are not reimbursable under the state-mandated program.

The county believes that residential placement costs resulting from the placement of SED pupils in facilities owned and operated for profit are eligible and reimbursable under the state-mandated cost program.

SCO Analysis

The county did not support that costs claimed for eight out-of-state facilities were incurred for placement of SED pupils in non-profit residential placement facilities. Based on documentation the county provided and our analysis, the county placed SED pupils in out-of-state residential facilities that are organized and operated for profit.

The program's parameters and guidelines (Reimbursable Activities, section IV. B.) applicable to the audit period specify the following services eligible for reimbursement (**Tab 6**):

1. Mental Health Service Vendor Reimbursements

To reimburse counties for payments to service vendors providing mental health services to SED pupils in out-of-state residential placements as specified in Government Code section 7576 and Title 2, California Code Regulations, sub divisions 60100 and 60110. Included in this activity is the cost for out-of-state residential board and care of SED pupils.

2. Case Management

To reimburse counties for case management of SED pupils in out-of-state residential placements, including supervision of mental health treatment and monitoring of psychotropic medications as specified in Government Code section 7576 and Title 2, California Code of Regulations, sub division 60110, including the costs of treatment related litigation (including administrative proceedings) over such issues as placement and the administration of psychotropic medication. Litigation (including administrative proceedings) alleging misconduct by the county or its employees, based in negligence or intentional tort, shall not be included.

3. Travel

To reimburse counties for travel costs necessary to conduct quarterly face-to-face contacts at the residential facility to monitor level of care, supervision, and the provision of mental health services as required in the pupil's IEP as specified in Title 2, California Code of Regulations, subdivision 60110.

4. Program Management

To reimburse counties for program management costs, which include the costs of parent notifications as required, payment facilitation, and all other activities necessary to ensure a county's out-of-state residential placement program meets the requirements of Government Code section 7576 and Title 2, California Code of Regulations, sub divisions 60100 and 60110.

The parameters and guidelines, as noted in item 1 above, provides for reimbursement to counties for payments to service vendors providing mental health services to SED pupils in out-of-state residential placements as specified in Government Code section 7576 and Title 2, *California Code of Regulations*, sections 60100 and 60110.

The program's parameters and guidelines do not provide reimbursement for out-of-state residential placement of SED pupils in facilities that are organized and operated for profit. The underlying regulation, Title 2, *California Code of Regulations*, section 60100, subdivision (h), specifies that out-of-state residential placements shall be made only in residential programs that meet the requirements of Welfare and Institutions Code section 11460(c)(2) through (3) (Tab 7). Welfare and Institutions Code section 11460, subdivision (c)(3), states that reimbursement shall only be paid to a group home organized and operated on a non-profit basis (Tab 8).

County's Response

The County disputes the State's Findings in Audit 1, Audit 2 and Audit 3 – unallowable vendor payments – because the California Code of Regulations Title 2 section 60100(h) and Welfare and Institutions Code 11460(c)(3) cited by the State is in conflict with requirements of federal law, including the Individuals with Disabilities Education Act (IDEA) and Section 472(c)(2) of the Social Security Act (42 U.S.C.672(c)(2)). The Parameters and Guidelines which are included as an integral part of the Claiming Instructions attached hereto as Item 9, Exhibit B cite the State law referenced above which is in conflict with the requirements of federal law. Moreover the State ignores the administrative decisions of its own Office of Administrative Hearings (OAH) and recent affirming United States District Court decision in its disallowance of the County of Orange claims. Please see the following argument in support of County's position that the subject claims, for Audit Periods 1, 2, and 3, were incorrectly reduced by \$2,973,826.00.

SCO's Comments

Our objective was to determine whether the costs of county-filed claims are reimbursable under the program's parameters and guidelines adopted by the CSM. We did not assess the appropriateness or need for services provided in light of federal regulations.

The county arguments are presented in bold below and our response follows.

A. California For-Profit Placement Restriction is Incompatible With IDEA's "Most Appropriate Placement" Requirement and Placement Provisions.

The parameters and guidelines (section IV.B.1) specify that the mandate is to reimburse counties for payments to service vendors providing mental health services to SED pupils in out-of-state residential placements as specified in Government Code section 7576 and Title 2, *California Code of Regulations* (CCR), sections 60100 and 60110. Title 2, CCR, section 60100, subdivision (h), specifies that out-of-state residential placements shall be made only in residential programs that meet the requirements of Welfare and Institutions Code section 11460, subdivision (c)(2) through (3). Welfare and Institutions Code section 11460, subdivision (c)(3), states that reimbursement shall only be paid to a group home organized and operated on a non-profit basis. The program's parameters and guidelines do not provide reimbursement for out-of-state residential placements made outside of the regulation.

We agree that there is inconsistency between California law and federal law related to IDEA funds. Furthermore, we do not dispute the assertion that California law is more restrictive than federal law in terms of out-of-state residential placement of SED pupils; however, this is a State-mandated cost program and the county filed a claim seeking reimbursement from the State under the provisions of Title 2, CCR, section 60100.

We also agree that Education Code sections 56366.1 and 56365 do not restrict local educational agencies (LEAs) from contracting with for-profit schools for educational services. These sections specify that educational services must be provided by a school certified by the California Department of Education.

B. California Office of Administrative Hearings Special Education Division Corroborates HCA's [County's Health Care Agency's] Contention that For-Profit Placement Restriction Is Incompatible With IDEA's "Most Appropriate Placement" Requirement and Placement Provisions.

Office of Administrative Hearings (OAH) Case No. N 2007090403. (Tab 9) is not precedent setting and has no legal bearing. In this case, the administrative law judge found that not placing the student in an appropriate facility was to deny the student a free and appropriate public education (FAPE) under federal regulations. The issue of funding residential placements made outside of the regulation was not specifically addressed in the case.

Alternatively, in OAH Case No. N 2005070683 (Tab 10), the administrative law judge found that the county Department of Behavioral Health could not place a student in an out-of-state residential facility that is owned and operated for profit. Basically, the judge found that the county is statutorily prohibited from funding a residential placement in a for-profit facility. Further, the administrative law judge opined that the business relationship between Aspen Solutions, a non-profit entity, and Youth Care, a for-profit residential facility, did not grant the latter non-profit status.

Nevertheless, this is a State-mandated cost program and the county filed a claim seeking reimbursement from the State under the provisions of Title 2, CCR, section 60100, and Welfare and Institutions Code section 11460, subdivision (c)(3). Residential placements made outside of the regulation are not reimbursable under the State-mandated cost program.

C. United States District Court has Affirmed the California Office of Administrative Hearings Special Education Division of *Student v. Riverside Unified School District and Riverside County Department of Mental Health*.

United States District Court Case No. EDCV 08-0503-SGL (Tab 11) has no impact concerning the reimbursement of State-mandated vendor costs. In the case, the judge found that the provision of Title 2, CCR, section 60100, and Welfare and Institutions Code section 11460, subdivision (c)(3) "Does not set forth a requirement so much as a limitation upon reimbursement for costs of such placement." As such, the judge determined counties are not prohibited from placing clients in for-profit facilities. However, the issue of funding residential placements made outside of the regulation was not specifically addressed in the case.

D. County Contracted with Nonprofit Out-of-State Residential Program For SED Pupils.

As previously noted, the mandate reimburses counties for payments to service vendors (group homes) providing mental health services to SED pupils in out-of-state residential placements that are organized and operated on a non-profit basis. The unallowable costs relative to vendor payments involve eight facilities as follows:

- For two of the eight residential facilities—Youth Care of Utah and Charter Provo Canyon School (later identified as UHS of Provo Canyon)—the county claimed payments made to California non-profit entities. The California non-profit entities—Aspen Solutions, Inc. and Mental Health Systems, Inc.—contracted with the for-profit facilities located in Utah to provide residential placement services (**Tabs 12, 13 and 14**). The Youth Care of Utah and Charter Provo Canyon School's Utah residential facilities are not organized and operated on a non-profit basis.
- For four of the eight residential facilities—Aspen Ranch, Island View, Sunhawk Academy, and Logan River, LLC—the county asserted that the for-profit residential facilities had similar arrangements with either Aspen Solutions, Inc. or Mental Health Systems, Inc. (**Tab 15**). The county did not provide any documentation to support the non-profit status of the four residential facilities. Further, the county did not provide any documentation illustrating a business relationship between the residential facilities and the California non-profits.
- For one of the eight residential facilities—National Deaf Academy—the county acknowledged that it is a for-profit entity and did not provide any documentation in support of its non-profit status (**Tab 15**).
- For one of the eight residential facilities—Kids Behavioral Health of Alaska, Inc.—the county provided a Certificate of Good Standing from the State of Alaska (**Tab 16**) and a Certificate of Registration from the State of Utah (**Tab 17**). The documentation provided does not support that the Utah business entity is organized and operated as a non-profit for the period that the vendor costs were claimed (FY 2005-06). Specifically, the State of Utah Certificate of Registration of a foreign non-profit was filed and approved December 7, 2007, outside of the audit period. The county also has not provided any information as to the existence of a business relationship between Kids Behavioral Health of Alaska, Inc. and the Utah residential facility Copper Hills Youth Center, the facility where clients were placed. Per a Utah government website, the business named Copper Hills Youth Center was registered November 5, 2003 and remained in business through November 4, 2009, operating a health services facility (**Tab 18**). Per the same website, Kids Behavioral Health of Alaska, Inc. was registered December 7, 2007 and is identified as active, managing companies and enterprises (**Tab 19**).

E. Counties Face Increased Litigation if Restricted to Nonprofit Residential Facilities

Refer to previous response.

F. Federal and State Law Do Not Impose Tax Status Requirements on Provider Treatment Services.

We do not dispute that Government Code section 7572 requires mental health services to be provided by qualified mental health professionals. As noted in our previous response, the mandate reimburses counties for payments to service vendors (group homes) that provide mental health services to SED pupils in out-of-state residential facilities that are organized and operated on a non-profit basis. The treatment and board-and-care vendor payments claimed result from the placement of clients in non-reimbursable out-of-state residential facilities. The program's parameters and guidelines do not include a provision for the county to be reimbursed for vendor payments made outside of the regulation.

G. The State's Interpretation of WIC Section 11460(c)(3) Would Result in Higher State Reimbursement Costs.

The focus of our audit was to assess whether county-filed claims represent eligible costs in accordance with the program's parameters and guidelines, inclusive of the underlying regulations. We did not perform any procedures to validate the county's assertion regarding the relative treatment costs of for-profit versus non-profit facilities. In reference to board and care costs, there is no difference between for-profit and non-profit facilities, as each receives a standardized rate based upon a rate classification level.

III. CONCLUSION

The SCO audited Orange County's claims for costs of the legislatively mandated SED Pupils: Out-of-State Mental Health Services Program (Chapter 654, Statutes of 1996) for the period of July 1, 2000, through June 30, 2006. The county claimed \$13,864,661 for the mandated program. Our audit disclosed that \$10,890,835 is allowable and \$2,973,826 is unallowable. The costs are unallowable primarily because the county claimed ineligible out-of-state residential placement of SED pupils in facilities that are organized and operated for profit.

The county is challenging the SCO's adjustment totaling \$2,973,826, primarily for the ineligible out-of-state residential placement of SED pupils in facilities that are organized and operated for profit.

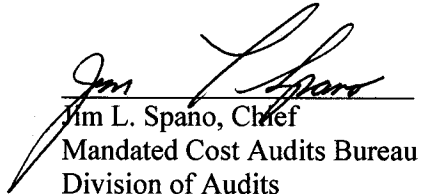
The parameters and guidelines do not provide reimbursement for out-of-state residential placement of SED pupils in facilities that are organized and operated for profit. The county is not eligible to receive reimbursement for vendor payments made to ineligible out-of-state residential facilities for the placement of SED pupils. The underlying regulations do not provide for reimbursement of out-of-state residential placements made outside of the regulation. As such, vendor payments to for-profit facilities are not eligible for reimbursement under the state-mandated cost program.

The CSM should find that: (1) the SCO correctly reduced the county's FY 2000-01 claim by \$195,055; (1) the SCO correctly reduced the county's FY 2000-01 claim by \$195,055; (2) the SCO correctly reduced the county's FY 2001-02 claim by \$220,302; (3) the SCO correctly reduced the county's FY 2002-03 claim by \$286,285; (4) the SCO correctly reduced the county's FY 2003-04 claim by \$286,285; (5) the SCO correctly reduced the county's FY 2004-05 claim by \$808,059; and (6) the SCO correctly reduced the county's FY 2005-06 claim by \$195,055;

IV. CERTIFICATION

I hereby certify by my signature below that the statements made in this document are true and correct of my own knowledge, or, as to all other matters, I believe them to be true and correct based upon information and belief.

Executed on May 14, 2013, at Sacramento, California, by:


Jim L. Spano, Chief
Mandated Cost Audits Bureau
Division of Audits
State Controller's Office

Tab 3

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Government Code Section 7576, as amended
by Statutes of 1996, Chapter 654;

California Code of Regulations, Title 2,
Division 9, Chapter 1, Sections 60000-60610;
and

California Department of Mental Health
Information Notice Number 86-29

Filed on December 22, 1997

By the County of Los Angeles, Claimant.

No. 97-TC-05

*Seriously Emotionally Disturbed (SED) Pupils:
Out-of-State Mental Health Services*


STATEMENT OF DECISION PURSUANT
TO GOVERNMENT CODE SECTION
17500 ET SEQ. ; TITLE 2, CALIFORNIA
CODE OF REGULATIONS, DIVISION 2,
CHAPTER 2.5, ARTICLE 7

(Adopted on May 25, 2000)

STATEMENT OF DECISION

The attached Statement of Decision of the Commission on State Mandates is hereby adopted in the above-entitled matter.

This Decision shall become effective on May 26, 2000.



Paula Higashi, Executive Director

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Government Code Section 7576, as amended
by Statutes of 1996, Chapter 654;

California Code of Regulations, Title 2,
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STATEMENT OF DECISION PURSUANT
TO GOVERNMENT CODE SECTION
17500 ET SEQ.; TITLE 2, CALIFORNIA
CODE OF REGULATIONS, DIVISION 2,
CHAPTER 2.5, ARTICLE 7

(Adopted on May 25, 2000)

STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this test claim on April 27, 2000 during a regularly scheduled hearing. Leonard Kaye, Paul McIver, Gurubanda Khalsa, and Robert Ulrich appeared for the County of Los Angeles and Daniel Stone appeared for the Department of Finance.

The law applicable to the Commission's determination of a reimbursable state mandated program is Government Code section 17500 et seq., article XIII B, section 6 of the California Constitution and related case law.

The Commission, by a vote of 7-0, approved this test claim.

BACKGROUND AND FINDINGS

This test claim alleges reimbursable costs mandated by the state regarding the monitoring and paying for out-of-state residential placements for seriously emotionally disturbed (SED) pupils as detailed in Government Code section 7576, California Code of Regulations sections 60000-60610, and the California Department of Mental Health Information Notice Number 86-29.

Prior law provided that any community mental health agency shall be responsible for the provision of psychotherapy or other mental health services, as defined by regulation, when required in an individual's IEP. Specifically, Government Code section 7576 as amended by Statutes of 1985, Chapter 1247 provided:

"Notwithstanding any other provision of law, the State Department of Mental Health, or any community mental health service designated by the State Department of Mental Health, shall be responsible for the provision of psychotherapy or other mental health services, as defined by regulation by the State Department of Mental Health, developed in consultation with the State Department of Education, when required in the child's [IEP]. This service shall be provided directly or by contracting with another public agency, qualified individual, or a state-certified nonpublic, nonsectarian school or agency. "

Regulations in effect immediately before the enactment of the test claim legislation prohibited county mental health agencies from providing psychotherapy and other mental health services in those cases where out-of-state residential placement was required. Section 60200 provided:

"(b) The local [county] mental health program shall be responsible for:

"(1) Provision of mental health services as recommended by a local mental health program representative and included in an [IEP]. Services shall be provided directly or by contract. . . . *The services must be provided within the State of California.*" (Emphasis added.)

In contrast, LEAs were required to provide mental health services for students placed outside of California under subdivision (c) of section 60200, which provided:

"(c) [LEAs] shall be responsible for:

"(3) *Mental health services when an individual with exceptional needs is placed in a nonpublic school outside of the State of California.*" (Emphasis added.)

Thus, the law in effect immediately before the enactment of the test claim legislation did not require county mental health agencies to pay or monitor the mental health component of out-of-state residential placements for SED pupils.¹

The Test Claim Legislation

The Legislature, in section 1 of Statutes of 1996, Chapter 654, expresses its intent that:

"The *fiscal and program* responsibilities of community mental health services shall be the same *regardless of the location of placement*. . . . [LEAs] and community mental health services *shall make out-of-state placements . . . only* if other options have been considered and are determined inappropriate. . . . "²
(Emphasis added .)

Before the enactment of Chapter 654, counties were only required to provide mental health services to SED pupils placed in out-of-home (in-state) residential facilities. However, section 1 now requires counties to have fiscal and programmatic responsibility for SED pupils

¹ Title 2, California Code of Regulations, section 60200, subdivision (c)(3).

² Statutes of 1996, Chapter 654.

regardless of placement - i.e., regardless of whether SED pupils are placed out-of-home (in-state) or out-of-state.

Chapter 654 also added subdivision (g) to Government Code section 7576, which provides:

“Referrals shall be made to the community mental health service in the county in which the pupil lives. If the pupil has been placed into residential care from another county, the community mental health service receiving the referral shall forward the referral immediately to the community mental health service of the county of origin which shall have fiscal and programmatic responsibility for providing or arranging for provision of necessary services. . . . ” (Emphasis added.)

California Code of Regulations, sections 60100 and 60200, amended in response to section 7576, further define counties’ “fiscal and programmatic responsibilities” for SED pupils placed in out-of-state residential care. Specifically, section 60 100 entitled “LEA Identification and Placement of a Seriously Emotionally Disturbed Pupil” reflects the Legislature’s intent behind the test claim statute by providing that residential placements for a SED pupil may be made out-of-state only when no in-state facility can meet the pupil’s needs. Section 60200 entitled “Financial Responsibilities” details county mental health and LEA financial responsibilities regarding the residential placements of SED pupils.

In particular, amended section 60200 removes the requirement that LEAs be responsible for the out-of-state residential placement of SED pupils. Subdivision (c) of section 60200 now provides that the county mental health agency of origin shall be “responsible for the provision of assessments and mental health services included in an IEP in accordance with [section 601001.” Thus, as amended, section 60200 replaces the LEA with the *county of origin* as the entity responsible for paying the mental health component of *out-of-state* residential placement for SED pupils.

Therefore, the Commission found that under the test claim legislation and implementing regulations, county mental health agencies now have the fiscal and programmatic responsibility for the mental health component of a SED pupil’s IEP whenever such pupils are referred to a community mental health agency by an IEP team.

Issue 1: Does the Test Claim Legislation Impose a New Program or Higher Level of Service Within an Existing Program Upon County Offices of Education Within the Meaning of Section 6, Article XIII B of the California Constitution by Requiring County Mental Health Agencies to Pay for Out-of-State Residential Placement for Seriously Emotionally Disturbed Pupils?

In order for a statute or executive order, which is the subject of a test claim, to impose a reimbursable state mandated program, the language: (1) must direct or obligate an activity or task upon local governmental entities; and (2) the required activity or task must be new, thus constituting a “new program, ” or it must create an increased or “higher level of service” over the former required level of service. The court has defined a “new program” or “higher level of service” as a program that carries out the governmental function of providing services to the public, or a law, which to implement a state policy, imposes unique requirements on local

agencies or school districts that do not apply generally to all residents and entities in the state. To determine if a required activity is new or imposes a higher level of service, a comparison must be undertaken between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim legislation. Finally, the newly required activity or increased level of service must be state mandated.³

The test claim legislation involves the paying and monitoring of the mental health component of out-of-state residential placement for SED pupils. These placements are deemed necessary by an IEP team to ensure that the pupil receives a free appropriate public education. Public education in California is a peculiarly governmental function administered by local agencies as a service to the public. Moreover, the test claim legislation imposes unique requirements upon county mental health agencies that do not apply generally to all residents and entities of the state. Therefore, the Commission found that paying and monitoring of the mental health component of out-of-state residential placements for SED pupils constitutes a "program" within the meaning of section 6, article XIII B of the California Constitution.⁴

Does A Shift of Costs and Activities Between Local Governmental Entities Create a New Program or Higher Level of Service?

The Commission found that immediately before the enactment of the test claim legislation, LEAs were responsible for paying and monitoring the mental health component of out-of-state residential placements for SED pupils. The test claim legislation shifted these responsibilities to county mental health agencies. The Government Code considers both LEAs and county mental health agencies local agencies for purposes of mandates law. Thus, the question arises whether a shift of program responsibilities from one local agency to another constitutes a state mandate. This question was recently addressed in *City of San Jose v. State of California*?

In *City of San Jose*, the issue was whether Government Code section 29550, which gave counties the discretion to charge cities and other local agencies for the costs of booking persons arrested by a city or other local agency into county jails, constituted a state mandate. The City of San Jose (City) contended that because the statute allowed counties to charge cities and other local agencies for booking fees, the statute imposed a new program under article XIII B, section 6. Thus, the City maintained that the *Lucia Mar*⁷ decision governed the claim.

³ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

⁴ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 172.

⁵ *City of San Jose, supra* (1996) 45 Cal.App.4th 1802.

⁶ The Commission noted that the *Handicapped and Disabled Students Test Claim*, which also involved a shift of funding and activities from one local agency to another, was decided six years before the *City of San Jose* decision. Therefore, the analysis the Commission relied on in deciding the *Handicapped and Disabled Students Test Claim* is inapplicable to the present test claim.

⁷ *Lucia Mar, supra* (1988) 44 Cal.3d 830, involved Education Code section 59300, enacted in 1981. That section required local school districts to contribute part of the cost of educating district students at state schools for the severely handicapped while the state continued to administer the program. Prior to 1979, the school districts had been required by statute to contribute to the education of students in their districts who attended state schools.

The *City of San Jose* court disagreed with the City's contention. The court held that the shift in funding was not from the state to the local agency, but from the county to the city and, thus, *Lucia Mar* was inapposite. The court stated:

"The flaw in the City's reliance on *Lucia Mar* is that in our case the shift in funding is not from the state to the local entity but from the county to the city. In *Lucia Mar*, prior to the enactment of the statute in question, the program was funded and operated entirely by the state. Here, however, at the time section 29550 was enacted, and indeed long before that statute, the financial and administrative responsibility associated with the operation of county jails and detention of prisoners was borne entirely by the county. "⁸ (Emphasis added.)

The *City of San Jose* court concluded that:

"Nothing in article XIII B prohibits the shifting of costs between local governmental entities. "⁹ (Emphasis added.)

The requirement to provide for and monitor the mental health component of a SED pupil in an out-of-state residential placement was not shifted to county mental health agencies by LEAs - LEAs have no such power. Rather, the shift in activities was performed by the state. *City of San Jose* applies if it can be shown that LEAs initiated the shift of costs to counties. However, this is not the case. Although a shift between local agencies occurred, the state required the shift. Moreover, the shift entailed both costs and activities.

As explained above, the legislation at issue in *City of San Jose* permitted counties to charge cities and other local agencies for the costs of booking persons arrested by a city or other local agency into county jails. The counties, in turn, enacted ordinances that required cities and other local agencies to pay booking fees. Under these facts, the county not the state, imposed costs upon cities and other local agencies. While the state enabled counties with the authority to charge booking fees to cities or other local agencies, the state did not require the imposition of such fees.

The same cannot be said for the test claim legislation. Before the enactment of the test claim legislation, LEAs were required to provide for the mental health component of a SED pupil in an out-of-state residential placement. Under the test claim legislation, the state shifted those responsibilities from LEAs to county mental health agencies. This scenario is different from

However, those statutes were repealed following the passage of Proposition 13 in 1978. In 1979, the state assumed full responsibility for funding the schools. At the time section 59300 was enacted in 1981, the state had full financial responsibility for operating state schools.

The California Supreme Court found that the primary financial and administrative responsibility for state handicapped schools rested with the state at the time the test claim statute was enacted. The court stated that "[t]he intent of [section 6] would plainly be violated if the state could, while retaining administrative control of programs it has supported with state tax money, simply shift the cost of the programs to local government. . . ." (Emphasis added.) Thus, the court found that, under the circumstances of the case, the transfer of financial responsibility from the state to local school districts imposed a new program under section 6.

⁸ *City of San Jose*, *supra* (1996) 45 Cal.App.4th 1802, 1812.

⁹ *Id.* at 1815.

the one in *City of San Jose*, in which the court recounted: "in our case the shift in *funding* is not from the State to the local entity but from county to city. "¹⁰ (Emphasis added.)

Based on the foregoing, the Commission found that *City of San Jose* does not apply to the present test claim. The shift in responsibilities regarding the mental health component of SED pupils in out-of-state residential placements represents a shift performed by the state. In addition, there is a shift of *costs and activities*.

Issue 2: Does the Requirement That Counties Pay and Monitor the Mental Health Component of Out-of-State Residential Placements for SED Pupils Represent Costs Mandated by the State?

The Commission noted that the issue of whether federal special education law requires counties to pay and monitor the mental health component of out-of-state residential placements for SED pupils must be addressed to determine whether there are costs mandated by the state.

Overview of Federal Special Education Law - The Individuals with Disabilities Education Act (IDEA)

The Commission noted that the Education for All Handicapped Children Act (Act) of 1975 is the backbone of the federal statutory provisions governing special education.¹¹ The express purpose of the Act is to assist state and local educational efforts to assure equal protection of the law and that children with disabilities have available special education and related services designed to meet their unique needs.

The Act requires: "that all children with disabilities have available to them a free appropriate public education [FAPE] that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living."¹² The Act defines FAPE as "special education" and "related services" that: (1) are provided at public expense,* under public supervision and direction, and without charge; (2) meet the standards of the state educational agency; (3) include an appropriate preschool, elementary, or secondary school education in the state involved; and (4) are provided in conformity with the individualized education program (IEP) required under federal law.

The Commission further noted that every disabled child must have an IEP. The IEP is a written statement developed in a meeting between the school, the teacher, and the parents. It includes the child's current performance, the annual goals and short-term instructional objectives, specific educational services that must be provided, and the objective criteria and evaluation procedures to determine whether the objectives are being achieved. Special education services include both *special education*, defined as specially designed instruction to meet the unique needs of a child with disabilities, and *related services*, defined as such developmental, corrective, and other supportive services as may be require;! to assist a child

¹⁰ *City of San Jose, supra* (1996) 45 Cal.App.4th 1802, 1812.

¹¹ In 1990, Congress changed the title of the Act to the "Individuals with Disabilities Education Act."

¹² *Ibid.*

with disabilities to benefit from special education. The federal definition of a "child with a disability" includes children with serious emotional disturbances.

Are Counties Responsible for Paying and Monitoring the Mental Health Component of Out-of-State Residential Placements for SED Pupils Under Federal Law?

As discussed in the previous section, federal law requires that every child receive a FAPE. The Commission found that SED pupils are no exception to this requirement.¹³ The test claim legislation requires counties to be responsible for the mental health component of out-of-state residential placements for SED pupils. A SED pupil's IEP team, which includes a county mental health representative, directs such placements.¹⁴ The purpose of a SED pupil's IEP is to ensure they receive a FAPE in the least restrictive environment. In those cases where out-of-state residential placements are required, it is because an IEP team has determined that no school site, school district, or out-of-home (in-state) residential placement is adequate to provide the necessary special education services to meet the federal FAPE requirement.¹⁵

The Commission found that when an IEP team recommends an out-of-state residential placement for a SED pupil, the requirement to provide such placement is a federal, not state requirement. Such placements are made to ensure pupils receive a FAPE, not in response to any state program. However, the fact that federal law requires the state to provide a FAPE to all disabled children begs the question: Does federal law require county mental health agencies to pay and monitor the mental health component of out-of-state residential placements for SED pupils?

The Commission found that federal law does not require counties to provide out-of-state placements. The Commission recognized that federal law defines "local educational agency" as:

"A public board of education or other public authority legally constituted within a State for either *administrative control or direction of*, or to *perform a service function for*, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools. . . . The term includes -

¹³ The claimant agrees: "As previously noted, of the 1,000 pupils who receive residential care, only a few, about 100, are placed out-of-state. But the rights of the few are no less than the rights of the many. [SED] pupils placed in out-of-state residential program [sic] are also entitled to a [FAPE]." See claimant's Test Claim filing dated December 22, 1997 at page 3.

¹⁴ Education Code section 56345 requires school districts or county offices of education to provide the services that are recommended in the student's IEP.

¹⁵ The Commission noted that title 2, California Code of Regulations, section 60100 provides that when an IEP team member recommends residential placement, the IEP team is expanded to include a county mental health representative. Before determining that residential placement is required, the expanded IEP team must consider other, less restrictive alternatives - such as a full-time behavioral aide in the classroom and/or parent training. The IEP team must document the alternatives considered and why they were rejected. Section 60100 goes on to provide that: "Residential placements for a [SED pupil] may be made out of California only when no in-state facility can meet the pupil's needs. "

“(i) an educational service agency . . . ; and

“(ii) any other public institution or agency having administrative control and direction of a public elementary or secondary school. ”¹⁶

The Commission found that, as the above definition demonstrates, federal law does not consider counties to be “local educational agencies. ”¹⁷ Counties are not legally constituted in the state for “either *administrative control or direction of, or to perform a service function for, public elementary or secondary schools.* ” Under the test claim legislation counties are only providing services *on an individual basis.*

Furthermore, the Commission found that counties are not recognized by the state as an administrative agency having control and direction of a public elementary or secondary school. It is LEAs that continue to control a SED pupil’s IEP. LEAs determine when a county mental health agency representative must join a pupil’s IEP team. The county acts in a responsive manner to the determinations of the LEA, not in a proactive manner. Therefore, the Commission concluded that counties do not have administrative control and direction of public elementary or secondary schools, let alone SED pupils.

Moreover, the Commission recognized that federal law defines public agency to include:

“ [State Educational Agencies-J, LEAs, [educational service agencies (ESA)], public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and *any other political subdivisions of the State that are responsible for providing education to children with disabilities.* ”¹⁸
(Emphasis added.)

The Commission found that the federal definition of “public agency” does not include counties for purposes of this test claim. Since counties are not included in the federal definition of LEAs, the question remains whether counties are “responsible for providing education to children with disabilities. ” To answer this question it is necessary to review the state’s requirements under the test claim legislation. Here, under the test claim legislation, counties are not responsible for providing education to children with disabilities. Rather, the test claim legislation limits counties’ responsibilities to paying for and monitoring the mental health component of out-of-state residential placements of SED pupils. Under the test claim legislation, LEAs continue to be responsible for the educational aspects of a SED pupil’s IEP. This is evidenced by regulation section 60110, subdivision (b)(2), which provides that: “The LEA shall be responsible for providing or arranging for the special education and non-mental health related services needed by the pupil.” Moreover, there is no reference to counties in federal special education law that would support a finding that counties, under the program outlined in the test claim legislation, are required to pay for and monitor out-of-state residential placements of SED pupils. Therefore, the Commission concluded that federal law does not

¹⁶ Title 20, United States Code, section 1401, subdivision (15).

¹⁷ The definition of “local educational agency” is identical in the federal regulations. See 34 Code of Federal Regulations, section 300.18.

¹⁸ 34 Code of Federal Regulations, section 300.22.

require counties to pay for and monitor the mental health component of out-of-state residential placements for SED pupils.

CONCLUSION

Based on the foregoing, the Commission concluded that the test claim legislation, regulations, and information notice impose new programs or higher levels of service within an existing program upon counties within the meaning of section 6, article XIII B of the California Constitution and Government Code section 17514 for the following activities:

- Payment of out-of-state residential placements for SED pupils. (Gov. Code, § 7576; Cal. Code Regs., tit. 2, §§ 60100, 60110.)
- Case management of out-of-state residential placements for SED pupils. Case management includes supervision of mental health treatment and monitoring of psychotropic medications. (Gov. Code, § 7576; Cal. Code Regs., tit. 2, § 60110.)
- Travel to conduct quarterly face-to-face contacts at the residential facility to monitor level of care, supervision, and the provision of mental health services as required in the pupil's IEP. (Cal. Code Regs., tit. 2, § 60110.)
- Program management, which includes parent notifications as required, payment facilitation, and all other activities necessary to ensure a county's out-of-state residential placement program meets the requirements of Government Code section 7576 and Title 2, California Code of Regulations, sections 60000-60610. (Gov. Code, § 7576; Cal. Code of Regs., tit. 2, §§ 60100, 60110.)

Tab 4

COMMISSION ON STATE MANDATES

980 NINTH STREET, SUITE 300
SACRAMENTO, CA 95814
PHONE: (916) 323-3562
FAX: (916) 445-0278
E-mail: csminfo@csm.ca.gov



October 31, 2000

Mr. Leonard Kaye, Esq.
SB 90 Coordinator
County of Los Angeles
500 West Temple Street, Room 525
Los Angeles, California 90012-2766

Mr. Paige Vorhies
State Controller's Office
Division of Accounting and Reporting
3301 C Street, Suite 500
Sacramento, California 95816

And Affected State Agencies and Interested Parties (See Enclosed Mailing List)

RE: **Adopted Parameters and Guidelines**
Seriously Emotionally Disturbed (SED) Pupils:
Out-Of-State Mental Health Services, CSM 97-TC-05
Government Code Section 7576,
Statutes of 1996, Chapter 654
Title 2, Division 9, Chapter 1, California Code of Regulations,
Sections 60000-60610
California Department of Mental Health Information Notice Number 86-29

Dear Mr. Kaye:

Enclosed are the final Parameters and Guidelines adopted by the Commission on State Mandates on October 26, 2000. The Parameters and Guidelines are effective on October 31, 2000.

Commission staff will begin development of a Statewide Cost Estimate. Please contact Piper Rodrian at (916) 323-5869 with questions.

Sincerely,

A handwritten signature in cursive script that reads "Shirley Opie".

4 PAULA HIGASHI
Executive Director

cc: Mailing list

Enclosure: Adopted Parameters and Guidelines

f:/mandates/1997/97tc05/ps&gs/pgadopttr

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Government Code Section 7576, as amended
by Statutes of 1996, Chapter 654;
California Code of Regulations, Title 2,
Division 9, Chapter 1, Sections 60000-60610;
and
California Department of Mental Health
Information Notice Number 86-29

Filed on December 22, 1997

By the County of Los Angeles, Claimant.

No. 97-TC-05

*Seriously Emotionally Disturbed (SED)
Pupils: Out-of-State Mental Health Services*

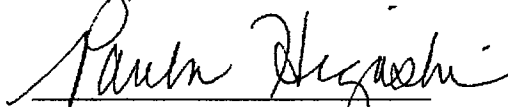
ADOPTION OF PARAMETERS AND
GUIDELINES PURSUANT TO
GOVERNMENT CODE SECTION 17557
AND TITLE 2, CALIFORNIA CODE OF
REGULATIONS, SECTION 1183.12

(Adopted on October 26, 2000)

PARAMETERS AND GUIDELINES

The Commission on State Mandates adopted Parameters and Guidelines for the above-entitled matter on October 26, 2000.

This Decision shall become effective on October 31, 2000.


Paula Higashi, Executive Director

Parameters and Guidelines

Government Code Section 7576
Statutes of 1996, Chapter 654

California Code of Regulations, Title 2, Division 9, Chapter 1, Sections 60000-60610
California Department of Mental Health Information Notice Number 86-29

Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services

I. SUMMARY OF MANDATE

Government Code section 7576, as amended by Statutes of 1996, Chapter 654, established new fiscal and programmatic responsibilities for counties to provide mental health services to Seriously Emotionally Disturbed (SED) pupils placed in out-of-state residential programs. In this regard, Title 2, Division 9, Chapter 1 of the California Code of Regulations, sections 60000 through 60610, were amended to further define counties' fiscal and programmatic responsibilities including those set forth under section 60100 entitled "LEA Identification and Placement of a Seriously Emotionally Disturbed Pupil," providing that residential placements for a SED pupil may be made out-of-state only when no in-state facility can meet the pupil's needs, and under section 60200 entitled "Financial Responsibilities," detailing county mental health and LEA financial responsibilities regarding the residential placements of SED pupils.

On May 25, 2000, the Commission on State Mandates (Commission) adopted its Statement of Decision on the subject test claim, finding the following activities to be reimbursable:

- Payment of out-of state residential placements for SED pupils. (Gov. Code, § 7576, Cal. Code Regs., tit. 2, §§ 60100, 60110)
- Case management of out-of-state residential placements for SED pupils. Case management includes supervision of mental health treatment and monitoring of psychotropic medications. (Gov. Code, § 7576, Cal. Code Regs., tit. 2, § 60110.)
- Travel to conduct quarterly face-to-face contacts at the residential facility to monitor level of care, supervision, and the provision of mental health services as required in the pupil's Individualized Education Plan (IEP). (Cal. Code Regs., tit. 2, § 60110.)
- Program management, which includes parent notifications, as required, payment facilitation, and all other activities necessary to ensure a county's out-of-state residential placement program meets the requirements of Government Code section 7576 and Title 2, California Code of Regulations, subdivision 60000- 60610. (Gov. Code, § 7576; Cal. Code of Regs., tit. 2, §§ 60100, 60110.)

II. ELIGIBLE CLAIMANTS

Counties.

III. PERIOD OF REIMBURSEMENT

Section 17557 of the Government Code, prior to its amendment by Statutes of 1998, Chapter 681, stated that a test claim must be submitted on or before December 31 following a given fiscal year to establish eligibility for that year. This test claim was filed by the County of Los Angeles on December 22, 1997. Statutes of 1996, Chapter 654, was enacted on September 19, 1996 and became effective on January 1, 1997. Therefore, costs incurred in implementing Chapter 654, Statutes of 1996 on or after January 1, 1997, are eligible for reimbursement.

Actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to section 17561, subdivision (d)(1) of the Government Code, all claims for reimbursement of initial years' costs shall be submitted within 120 days of notification by the State Controller of the enactment of the claims bill.

If total costs for a given year do not exceed \$200, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

IV. REIMBURSABLE ACTIVITIES

The direct and indirect costs of labor, materials and supplies, contracted services, equipment, training, and travel incurred for the following mandate components are eligible for reimbursement:

A. One-Time Costs

1. To develop policies, procedures and contractual arrangements, necessary to implement a county's new fiscal and programmatic responsibilities for SED pupils placed in out-of-state residential programs.
2. To conduct county staff training on the new policies, procedures and contractual arrangements, necessary to implement a county's new fiscal and programmatic responsibilities for SED pupils placed in out-of-state residential programs.

B. Continuing Costs

1. Mental Health Service Vendor Reimbursements

To reimburse counties for payments to service vendors providing mental health services to SED pupils in out-of-state residential placements as specified in Government Code section 7576 and Title 2, California Code Regulations, sub divisions 60100 and 60110.

2. Case Management

To reimburse counties for case management of SED pupils in out-of-state residential placements, including supervision of mental health treatment and monitoring of psychotropic medications as specified in Government Code section 7576 and Title 2, California Code of Regulations, sub division 60110, including the costs of treatment

related litigation (including administrative proceedings) over such issues as placement and the administration of psychotropic medication. Litigation (including administrative proceedings) alleging misconduct by the county or its employees, based in negligence or intentional tort, shall not be included.

3. Travel

To reimburse counties for travel costs necessary to conduct quarterly face-to-face contacts at the residential facility to monitor level of care, supervision, and the provision of mental health services as required in the pupil's IEP as specified in Title 2, California Code of Regulations, subdivision 60110.

4. Program Management

To reimburse counties for program management costs, which include the costs of parent notifications as required, payment facilitation, and all other activities necessary to ensure a county's out-of-state residential placement program meets the requirements of Government Code section 7576 and Title 2, California Code of Regulations, subdivisions 60100 and 60110.

V. CLAIM PREPARATION AND SUBMISSION

Each claim for reimbursement must be timely filed and identify each cost element for which reimbursement is claimed under this mandate. Claimed costs must be identified to each reimbursable activity identified in Section IV. of these Parameters and Guidelines.

A. Direct Costs

Direct costs are defined as costs that can be traced to specific goods, services, units, programs, activities or functions.

Claimed costs shall be supported by the following cost element information:

1. Salaries and Benefits

Identify the employee(s), and/or show the classification of the employee(s) involved. Describe the reimbursable activities performed and specify the actual time devoted to each reimbursable activity by each employee, productive hourly rate and related fringe benefits.

Reimbursement for personnel services includes compensation paid for salaries, wages and employee fringe benefits. Employee fringe benefits include regular compensation paid to an employee during periods of authorized absences (e.g., annual leave, sick leave) and the employer's contribution to social security, pension plans, insurance, and worker's compensation insurance. Fringe benefits are eligible for reimbursement when distributed equitably to all job activities which the employee performs.

2. Materials and Supplies

Only expenditures that can be identified as direct costs of this mandate may be claimed. List the cost of the materials and supplies consumed specifically for the purposes of this mandate. Purchases shall be claimed at the actual price after deducting cash discounts, rebates and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged based on a recognized method of costing, consistently applied.

3. Contract Services

Provide the name(s) of the contractor(s) who performed the services, including any fixed contract for services. Describe the reimbursable activity(ies) performed by each named contractor and give the number of actual hours spent on the activities, if applicable. Show the inclusive dates when services were performed and itemize all costs for those services.

4. Fixed Assets

List the costs of the fixed assets that have been acquired specifically for the purpose of this mandate. If the fixed asset is utilized in some way not directly related to the mandated program, only the pro-rata portion of the asset which is used for the purposes of the mandated program is eligible for reimbursement.

5. Travel

Travel expenses for mileage, per diem, lodging, and other employee entitlements are eligible for reimbursement in accordance with the rules of the local jurisdiction. Provide the name(s) of the traveler(s), purpose of travel, inclusive dates and times of travel, destination points, and travel costs.

6. Training

The cost of training an employee to perform the mandated activities, as specified in Section IV of these Parameters and Guidelines, is eligible for reimbursement. Identify the employee(s) by name and job classification. Provide the title and subject of the training session, the date(s) attended, and the location. Reimbursable costs may include salaries and benefits, registration fees, transportation, lodging, and per diem.

B. Indirect Costs

Indirect costs are defined as costs which are incurred for a common or joint purpose, benefiting more than one program and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both: (1) overhead costs of the unit performing the mandate; and (2) the costs of central government services distributed to other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the OMB A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) for the department if the indirect cost rate exceeds 10%. If more than one department is claiming indirect costs for the mandated program, each department must have its own ICRP prepared in accordance with OMB A-87. An ICRP must be submitted with the claim when the indirect cost rate exceeds 10%.

VI. SUPPORTING DATA

For auditing purposes, all costs claimed shall be traceable to source documents (e.g., invoices, receipts, purchase orders, contracts, worksheets, calendars, declarations, etc.) that show evidence of the validity of such costs and their relationship to the state mandated program. All

documentation in support of the claimed costs shall be made available to the State Controller's Office, as may be requested. Pursuant to Government Code section 17558.5, these documents must be kept on file by the agency submitting the claim for a period of no less than two years after the later of (1) the end of the calendar year in which the reimbursement claim is filed or last amended, or (2) if no funds are appropriated for the fiscal year for which the claim is made, the date of initial payment of the claim. All claims shall identify the number of pupils in out-of-state residential programs for the costs being claimed.

VII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENTS

Any offsetting savings the claimant experiences as a direct result of the subject mandate must be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, including but not limited to federal funds and other state funds, shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S OFFICE REQUIRED CERTIFICATION

An authorized representative of the claimant shall be required to provide a certification of the claim, as specified in the State Controller's Office claiming instructions, for those costs mandated by the State contained herein.

Commission on State Mandates

List Date: 12/26/1997

Mailing Information Proposed Parameters and Guidelines

Mailing List

Claim Number 97-TC-05 **Claimant** County of Los Angeles
Subject Amending CG 7576
1747/84, 1274/85, 654/96
Issue Seriously Emotionally Disturbed (SED) Pupils: Out-of-State mental Health Svcs.

Mr. Scott Berenson (A-31),
Department of Mental Health

1600 9th Street, Room 150
Sacramento CA 95814

Tel: (916) 654-2988
FAX: (916) 653-6486

Mr. Allan Burdick,
DMG-MAXIMUS

4320 Auburn Blvd. Suite 2000
Sacramento CA 95841

Tel: (916) 485-8102
FAX: (916) 485-0111

Ms. Annette Chinn,
Cost Recovery Systems

1750 Creekside Oaks Drive, Suite 290
Sacramento CA 95833-3640

Tel: (916) 939-7901
FAX: (916) 939-7801

Mr. Phillip Crandall, Director
Humboldt County Mental Health

1711 3rd Street
Ukiah CA 95501

Tel: (707) 268-2835
FAX: (707) 445-7270

Mr. Jim Cunningham, Leg. Mandate Spclst.
San Diego City Schools

4100 Normal Street Room 3159
San Diego CA 92103-2682

Tel: (619) 725-7565
FAX: (619) 725-7580

Claim Number

97-TC-05

Claimant

County of Los Angeles

Amending CG 7576

Subject

1747/84, 1274/85, 654/96

Issue

Seriously Emotionally Disturbed (SED) Pupils: Out-of-State mental Health Svcs.

Mr. William A. Doyle, Mandated Cost Administrator
San Jose Unified School District

1153 El Prado Drive
San Jose CA 95120

Tel: (408) 997-2500
FAX: (408) 997-3171

Dr. Eleanor Fritz, Chief of Childrens Services
Ventura County Behavioral Health

300 N. Hillmont Avenue Suite 252
Ventura Ca 93003

Tel: (805) 652-3288
FAX: (805) 652-6160

Mr. Leonard Kaye, Esq.,
County of Los Angeles

Auditor-Controller's Office
500 W. Temple Street, Room 603
Los Angeles CA 90012

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FAX: (213) 617-8106

Mr. James Lombard (A-15), Principal Analyst
Department of Finance

915 L Street
Sacramento CA 95814

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FAX: (916) 327-0225

Dr. Merna McMillan, PHD, Director
Santa Barbara County Mental Health

300 North San Antonio Road, Bldg 3
Santa Barbara CA 93110

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FAX: (805) 681-5262

Ms. Laurie McVay,
DMG-MAXIMUS

4320 Auburn Blvd. Suite 2000
Sacramento CA 95841

Tel: (916) 485-8102
FAX: (916) 485-0111

Claim Number

97-TC-05

Claimant

County of Los Angeles

Amending CG 7576

Subject

1747/84, 1274/85, 654/96

Issue

Seriously Emotionally Disturbed (SED) Pupils: Out-of-State mental Health Svcs.

Mr. Paul Minney,
Girard & Vinson

1676 N. California Blvd. Suite 450
Walnut Creek CA 94596

Tel: (925) 746-7660
FAX: (925) 935-7995

Mr. Joseph D. Mullender, Jr.,
Attorney at Law

89 Rivo Alto Canal
Long Beach CA 90803

Tel: (562) 439-6376
FAX: (562) 962-7102

Mr. Andy Nichols,
Vavrinek Trine Day & Co., LLP

12150 Tributary Point Drive, Suite 150
Gold River CA 95670

Tel: (916) 353-1050
FAX: (916) 351-1020

Mr. Keith B. Petersen, President
Sixten & Associates

5252 Balboa Avenue Suite 807
San Diego CA 92117

Tel: (619) 514-8605
FAX: (619) 514-8645

Ms. Linda Powell (A-31), Deputy Director
Dept. of Mental Health

1600 9th Street Room 250
Sacramento CA 95814

Tel: (916) 654-2378
FAX: (916) 654-2440

Ms. Sandy Reynolds, President (Interested Person)
Reynolds Consulting, Inc.

P.O. Box 987
Sun City CA 92586

Tel: (909) 672-9964
FAX: (909) 672-9963

Claim Number

97-TC-05

Claimant

County of Los Angeles

Amending CG 7576

Subject

1747/84, 1274/85, 654/96

Issue

Seriously Emotionally Disturbed (SED) Pupils: Out-of-State mental Health Svcs.

Rima Singh,
Santa Clara County Counsel's Office

70 West Hedding Street, East Wing 9th Floor
San Jose CA 95110

Tel: (408) 299-2111
FAX: (408) 292-7240

Mr. Steve Smith, CEO (Interested Person)
Mandated Cost Systems

2275 Watt Avenue Suite C
Sacramento CA 95825

Tel: (916) 487-4435
FAX: (916) 487-9662

Jim Spano,
State Controller's Office
Division of Audits (B-8)

300 Capitol Mall, Suite 518 P.O. Box 942850
Sacramento CA 95814

Tel: (916) 323-5849
FAX: (916) 324-7223

Mr. Daniel G. Stone (D-8), Assistant Attorney General
Attorney General's Office

Government Law Section
1300 I Street 17th Floor
Sacramento CA 95814

Tel: (916) 324-5499
FAX: (916) 324-8835

Mr. Henry Tarke, Assistant Deputy Director
Health and Human Services Agency

Heartbeat Bureau (P 531A) P.O. Box 85524
San Diego CA 92186-5524

Tel: (619) 692-5578
FAX: (619) 692-8674

Mr. Paige Vorhies (B-8), Bureau Chief
State Controller's Office

Division of Accounting & Reporting
3301 C Street Suite 500
Sacramento CA 95816

Tel: (916) 445-8756
FAX: (916) 323-4807

Claim Number

97-TC-05

Claimant

County of Los Angeles

Amending CG 7576

Subject

1747/84, 1274/85, 654/96

Issue

Seriously Emotionally Disturbed (SED) Pupils: Out-of-State mental Health Svcs.

Mr. David Wellhouse,
Wellhouse & Associates

9175 Kiefer Blvd Suite 121
Sacramento CA 95826

Tel: (916) 368-9244
FAX: (916) 368-5723

DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

October 31, 2000, I served the:

Adopted Parameters and Guidelines

Seriously Emotionally Disturbed (SED) Pupils:

Out-Of-State Mental Health Services, CSM 97-TC-05

Government Code Section 7576,

Statutes of 1996, Chapter 654

Title 2, Division 9, Chapter 1, California Code of Regulations,

Sections 60000-60610

California Department of Mental Health Information Notice Number 86-29

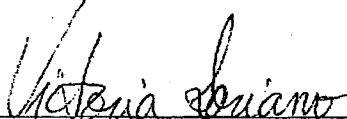
by placing a true copy thereof in an envelope addressed to:

Mr. Leonard Kaye, Esq.
SB 90 Coordinator
County of Los Angeles
500 West Temple Street, Room 525
Los Angeles, California 90012-2766

State Agencies and Interested Parties (See attached mailing list);

and by sealing and depositing said envelope in the United States mail at Sacramento, California, with postage thereon fully paid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on October 31, 2000, at Sacramento, California


Victoria Soriano

Tab 5

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Government Code Section 7576, as amended by Statutes of 1996, Chapter 654; California Code of Regulations, Title 2, Division 9, Chapter 1, Sections 60000-60610; and California Department of Mental Health Information Notice Number 86-29

Filed on December 22, 1997

By the County of Los Angeles, Claimant.

No. 97-TC-05

*Seriously Emotionally Disturbed (SED)
Pupils: Out-of-State Mental Health Services*

ADOPTION OF PARAMETERS AND GUIDELINES PURSUANT TO GOVERNMENT CODE SECTION 17557 AND TITLE 2, CALIFORNIA CODE OF REGULATIONS, SECTION 1183.12

(Adopted on October 26, 2000; Corrected on July 21, 2006)

CORRECTED PARAMETERS AND GUIDELINES

On October 26, 2000, the Commission adopted the staff analysis and proposed parameters and guidelines for this program. Page 5 of the analysis adopted by the Commission states the following:

Residential Costs

It is the County of Santa Clara's position that the proposed Parameters and Guidelines do not provide reimbursement for "residential costs" of out-of-state placements. Staff disagrees. *The Commission, in its Statement of Decision for this mandate, found that payment of out-of state residential placements for SED pupils is reimbursable.* The Commission's regulations require Parameters and Guidelines to describe specific costs that are reimbursable, including one-time and on-going costs, and the most reasonable methods of complying with the mandate.¹ It is staff's position that *the cost of out-of-state residential placement of SED pupils would reasonably include the board and care of that pupil while they are out-of-state, and therefore, staff finds that residential costs are covered under payment of out-of-state residential placement for SED pupils.* Staff does not propose any changes to Claimant's Revised Proposed Parameters and Guidelines, since Section IV., entitled "Reimbursable Activities, B. Continuing Costs, 1. Mental Health Service Vendor Reimbursements," already provides for reimbursement to counties for "payments to service vendors providing mental health services to SED pupils in out-of-state residential placements as specified in Government Code section 7576 and the California Code Regulations, Title 2, subsections 60100 and 60110." It is staff's position that *under Section IV., the*

¹ Title 2, California Code of Regulations, section 1183.1 (a) (4).

term “payments to service vendors providing mental health services to SED pupils in out-of-state residential placements” includes reimbursement for “residential costs” of out-of-state placements. (Emphasis added.)

In order for the parameters and guidelines to conform to the findings of the Commission, this correction is being issued. The following underlined language is added to Section IV (B), Reimbursable Activities:

1. Mental Health Service Vendor Reimbursements

To reimburse counties for payments to service vendors providing mental health services to SED pupils in out-of-state residential placements as specified in Government Code section 7576 and Title 2, California Code Regulations, sub divisions 60100 and 60110. Included in this activity is the cost for out-of-state residential board and care of SED pupils.

Dated: _____

Paula Higashi, Executive Director

Corrected Parameters and Guidelines

Government Code Section 7576
Statutes of 1996, Chapter 654

California Code of Regulations, Title 2, Division 9, Chapter 1, Sections 60000-60610
California Department of Mental Health Information Notice Number 86-29

Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services

I. SUMMARY OF MANDATE

Government Code section 7576, as amended by Statutes of 1996, Chapter 654, established new fiscal and programmatic responsibilities for counties to provide mental health services to Seriously Emotionally Disturbed (SED) pupils placed in out-of-state residential programs. In this regard, Title 2, Division 9, Chapter 1 of the California Code of Regulations, sections 60000 through 60610, were amended to further define counties' fiscal and programmatic responsibilities including those set forth under section 60100 entitled "LEA Identification and Placement of a Seriously Emotionally Disturbed Pupil," providing that residential placements for a SED pupil may be made out-of-state only when no in-state facility can meet the pupil's needs, and under section 60200 entitled "Financial Responsibilities," detailing county mental health and LEA financial responsibilities regarding the residential placements of SED pupils.

On May 25, 2000, the Commission on State Mandates (Commission) adopted its Statement of Decision on the subject test claim, finding the following activities to be reimbursable:

- Payment of out-of state residential placements for SED pupils. (Gov. Code, § 7576, Cal. Code Regs., tit. 2, §§ 60100, 60110)
- Case management of out-of-state residential placements for SED pupils. Case management includes supervision of mental health treatment and monitoring of psychotropic medications. (Gov. Code, § 7576, Cal. Code Regs., tit. 2, § 60110.)
- Travel to conduct quarterly face-to-face contacts at the residential facility to monitor level of care, supervision, and the provision of mental health services as required in the pupil's Individualized Education Plan (IEP). (Cal. Code Regs., tit. 2, § 60110.)
- Program management, which includes parent notifications, as required, payment facilitation, and all other activities necessary to ensure a county's out-of-state residential placement program meets the requirements of Government Code section 7576 and Title 2, California Code of Regulations, subdivision 60000- 60610. (Gov. Code, § 7576; Cal. Code of Regs., tit. 2, §§ 60100, 60110.)

II. ELIGIBLE CLAIMANTS

Counties.

III. PERIOD OF REIMBURSEMENT

Section 17557 of the Government Code, prior to its amendment by Statutes of 1998, Chapter 681, stated that a test claim must be submitted on or before December 31 following a given fiscal year to establish eligibility for that year. This test claim was filed by the County of Los Angeles on December 22, 1997. Statutes of 1996, Chapter 654, was enacted on September 19, 1996 and became effective on January 1, 1997. Therefore, costs incurred in implementing Chapter 654, Statutes of 1996 on or after January 1, 1997, are eligible for reimbursement.

Actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to section 17561, subdivision (d)(1) of the Government Code, all claims for reimbursement of initial years' costs shall be submitted within 120 days of notification by the State Controller of the enactment of the claims bill.

If total costs for a given year do not exceed \$200, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

IV. REIMBURSABLE ACTIVITIES

The direct and indirect costs of labor, materials and supplies, contracted services, equipment, training, and travel incurred for the following mandate components are eligible for reimbursement:

B. One-Time Costs

1. To develop policies, procedures and contractual arrangements, necessary to implement a county's new fiscal and programmatic responsibilities for SED pupils placed in out-of-state residential programs.
2. To conduct county staff training on the new policies, procedures and contractual arrangements, necessary to implement a county's new fiscal and programmatic responsibilities for SED pupils placed in out-of-state residential programs.

C. Continuing Costs

1. Mental Health Service Vendor Reimbursements

To reimburse counties for payments to service vendors providing mental health services to SED pupils in out-of-state residential placements as specified in Government Code section 7576 and Title 2, California Code Regulations, sub divisions 60100 and 60110. Included in this activity is the cost for out-of-state residential board and care of SED pupils.

2. Case Management

To reimburse counties for case management of SED pupils in out-of-state residential placements, including supervision of mental health treatment and monitoring of psychotropic medications as specified in Government Code section 7576 and Title 2, California Code of Regulations, sub division 60110, including the costs of treatment related litigation (including administrative proceedings) over such issues as placement

and the administration of psychotropic medication. Litigation (including administrative proceedings) alleging misconduct by the county or its employees, based in negligence or intentional tort, shall not be included.

3. Travel

To reimburse counties for travel costs necessary to conduct quarterly face-to-face contacts at the residential facility to monitor level of care, supervision, and the provision of mental health services as required in the pupil's IEP as specified in Title 2, California Code of Regulations, subdivision 60110.

4. Program Management

To reimburse counties for program management costs, which include the costs of parent notifications as required, payment facilitation, and all other activities necessary to ensure a county's out-of-state residential placement program meets the requirements of Government Code section 7576 and Title 2, California Code of Regulations, subdivisions 60100 and 60110.

V. CLAIM PREPARATION AND SUBMISSION

Each claim for reimbursement must be timely filed and identify each cost element for which reimbursement is claimed under this mandate. Claimed costs must be identified to each reimbursable activity identified in Section IV. of these Parameters and Guidelines.

A. Direct Costs

Direct costs are defined as costs that can be traced to specific goods, services, units, programs, activities or functions.

Claimed costs shall be supported by the following cost element information:

1. Salaries and Benefits

Identify the employee(s), and/or show the classification of the employee(s) involved. Describe the reimbursable activities performed and specify the actual time devoted to each reimbursable activity by each employee, productive hourly rate and related fringe benefits.

Reimbursement for personnel services includes compensation paid for salaries, wages and employee fringe benefits. Employee fringe benefits include regular compensation paid to an employee during periods of authorized absences (e.g., annual leave, sick leave) and the employer's contribution to social security, pension plans, insurance, and worker's compensation insurance. Fringe benefits are eligible for reimbursement when distributed equitably to all job activities which the employee performs.

2. Materials and Supplies

Only expenditures that can be identified as direct costs of this mandate may be claimed. List the cost of the materials and supplies consumed specifically for the purposes of this mandate. Purchases shall be claimed at the actual price after deducting cash discounts, rebates and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged based on a recognized method of costing, consistently applied.

3. Contract Services

Provide the name(s) of the contractor(s) who performed the services, including any fixed contract for services. Describe the reimbursable activity(ies) performed by each named contractor and give the number of actual hours spent on the activities, if applicable. Show the inclusive dates when services were performed and itemize all costs for those services.

4. Fixed Assets

List the costs of the fixed assets that have been acquired specifically for the purpose of this mandate. If the fixed asset is utilized in some way not directly related to the mandated program, only the pro-rata portion of the asset which is used for the purposes of the mandated program is eligible for reimbursement.

5. Travel

Travel expenses for mileage, per diem, lodging, and other employee entitlements are eligible for reimbursement in accordance with the rules of the local jurisdiction. Provide the name(s) of the traveler(s), purpose of travel, inclusive dates and times of travel, destination points, and travel costs.

6. Training

The cost of training an employee to perform the mandated activities, as specified in Section IV of these Parameters and Guidelines, is eligible for reimbursement. Identify the employee(s) by name and job classification. Provide the title and subject of the training session, the date(s) attended, and the location. Reimbursable costs may include salaries and benefits, registration fees, transportation, lodging, and per diem.

B. Indirect Costs

Indirect costs are defined as costs which are incurred for a common or joint purpose, benefiting more than one program and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both: (1) overhead costs of the unit performing the mandate; and (2) the costs of central government services distributed to other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the OMB A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) for the department if the indirect cost rate exceeds 10%. If more than one department is claiming indirect costs for the mandated program, each department must have its own ICRP prepared in accordance with OMB A-87. An ICRP must be submitted with the claim when the indirect cost rate exceeds 10%.

VI. SUPPORTING DATA

For auditing purposes, all costs claimed shall be traceable to source documents (e.g., invoices, receipts, purchase orders, contracts, worksheets, calendars, declarations, etc.) that show evidence of the validity of such costs and their relationship to the state mandated program. All documentation in support of the claimed costs shall be made available to the State Controller's Office, as may be requested. Pursuant to Government Code section 17558.5, these documents must be kept on file by the agency submitting the claim for a period of no less than two years after the later of (1) the end of the calendar year in which the reimbursement claim is filed or last amended, or (2) if no funds are appropriated for the fiscal year for which the claim is made, the

date of initial payment of the claim. All claims shall identify the number of pupils in out-of-state residential programs for the costs being claimed.

VII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENTS

Any offsetting savings the claimant experiences as a direct result of the subject mandate must be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, including but not limited to federal funds and other state funds, shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S OFFICE REQUIRED CERTIFICATION

An authorized representative of the claimant shall be required to provide a certification of the claim, as specified in the State Controller's Office claiming instructions, for those costs mandated by the State contained herein.

Tab 6

Amended Parameters and Guidelines

Government Code Section 7576
Statutes of 1996, Chapter 654

California Code of Regulations, Title 2, Division 9, Chapter 1, Sections 60000-60610
California Department of Mental Health Information Notice Number 86-29

Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services

EFFECTIVE FOR REIMBURSEMENT CLAIMS FILED FOR COSTS INCURRED THROUGH THE 2005-2006 FISCAL YEAR

I. SUMMARY OF MANDATE

Government Code section 7576, as amended by Statutes of 1996, Chapter 654, established new fiscal and programmatic responsibilities for counties to provide mental health services to Seriously Emotionally Disturbed (SED) pupils placed in out-of-state residential programs. In this regard, Title 2, Division 9, Chapter 1 of the California Code of Regulations, sections 60000 through 60610, were amended to further define counties' fiscal and programmatic responsibilities including those set forth under section 60100 entitled "LEA Identification and Placement of a Seriously Emotionally Disturbed Pupil," providing that residential placements for a SED pupil may be made out-of-state only when no in-state facility can meet the pupil's needs, and under section 60200 entitled "Financial Responsibilities," detailing county mental health and LEA financial responsibilities regarding the residential placements of SED pupils.

On May 25, 2000, the Commission on State Mandates (Commission) adopted its Statement of Decision on the subject test claim, finding the following activities to be reimbursable:

- Payment of out-of state residential placements for SED pupils. (Gov. Code, § 7576, Cal. Code Regs., tit. 2, §§ 60100, 60110)
- Case management of out-of-state residential placements for SED pupils. Case management includes supervision of mental health treatment and monitoring of psychotropic medications. (Gov. Code, § 7576, Cal. Code Regs., tit. 2, § 60110.)
- Travel to conduct quarterly face-to-face contacts at the residential facility to monitor level of care, supervision, and the provision of mental health services as required in the pupil's Individualized Education Plan (IEP). (Cal. Code Regs., tit. 2, § 60110.)
- Program management, which includes parent notifications, as required, payment facilitation, and all other activities necessary to ensure a county's out-of-state residential placement program meets the requirements of Government Code section 7576 and Title 2, California Code of Regulations, subdivision 60000- 60610. (Gov. Code, § 7576; Cal. Code of Regs., tit. 2, §§ 60100, 60110.)

These parameters and guidelines are effective for reimbursement claims filed for costs incurred through the 2005-2006 fiscal year. Commencing with the 2006-2007 fiscal year, reimbursement claims shall be filed through the consolidated parameters and guidelines for *Handicapped and Disabled Students* (04-RL-4282-10), *Handicapped and Disabled Students II* (02-TC-40/02-TC-49), and *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services* (97-TC-05).

II. ELIGIBLE CLAIMANTS

Counties.

III. PERIOD OF REIMBURSEMENT

Section 17557 of the Government Code, prior to its amendment by Statutes of 1998, Chapter 681, stated that a test claim must be submitted on or before December 31 following a given fiscal year to establish eligibility for that year. This test claim was filed by the County of Los Angeles on December 22, 1997. Statutes of 1996, Chapter 654, was enacted on September 19, 1996 and became effective on January 1, 1997. Therefore, costs incurred in implementing Chapter 654, Statutes of 1996 on or after January 1, 1997, are eligible for reimbursement.

Actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to section 17561, subdivision (d)(1) of the Government Code, all claims for reimbursement of initial years' costs shall be submitted within 120 days of notification by the State Controller of the enactment of the claims bill.

If total costs for a given year do not exceed \$200, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

IV. REIMBURSABLE ACTIVITIES

The direct and indirect costs of labor, materials and supplies, contracted services, equipment, training, and travel incurred for the following mandate components are eligible for reimbursement:

A. One-Time Costs

1. To develop policies, procedures and contractual arrangements, necessary to implement a county's new fiscal and programmatic responsibilities for SED pupils placed in out-of-state residential programs.
2. To conduct county staff training on the new policies, procedures and contractual arrangements, necessary to implement a county's new fiscal and programmatic responsibilities for SED pupils placed in out-of-state residential programs.

B. Continuing Costs

1. Mental Health Service Vendor Reimbursements

To reimburse counties for payments to service vendors providing mental health services to SED pupils in out-of-state residential placements as specified in Government Code section 7576 and Title 2, California Code Regulations, sub divisions 60100 and 60110. Included in this activity is the cost for out-of-state residential board and care of SED pupils.

2. Case Management

To reimburse counties for case management of SED pupils in out-of-state residential placements, including supervision of mental health treatment and monitoring of psychotropic medications as specified in Government Code section 7576 and Title 2, California Code of Regulations, sub division 60110, including the costs of treatment related litigation (including administrative proceedings) over such issues as placement and the administration of psychotropic medication. Litigation (including administrative proceedings) alleging misconduct by the county or its employees, based in negligence or intentional tort, shall not be included.

3. Travel

To reimburse counties for travel costs necessary to conduct quarterly face-to-face contacts at the residential facility to monitor level of care, supervision, and the provision of mental health services as required in the pupil's IEP as specified in Title 2, California Code of Regulations, subdivision 60110.

4. Program Management

To reimburse counties for program management costs, which include the costs of parent notifications as required, payment facilitation, and all other activities necessary to ensure a county's out-of-state residential placement program meets the requirements of Government Code section 7576 and Title 2, California Code of Regulations, sub divisions 60100 and 60110.

V. CLAIM PREPARATION AND SUBMISSION

Each claim for reimbursement must be timely filed and identify each cost element for which reimbursement is claimed under this mandate. Claimed costs must be identified to each reimbursable activity identified in Section IV. of these Parameters and Guidelines.

A. Direct Costs

Direct costs are defined as costs that can be traced to specific goods, services, units, programs, activities or functions.

Claimed costs shall be supported by the following cost element information:

1. Salaries and Benefits

Identify the employee(s), and/or show the classification of the employee(s) involved. Describe the reimbursable activities performed and specify the actual time devoted to each reimbursable activity by each employee, productive hourly rate and related fringe benefits.

Reimbursement for personnel services includes compensation paid for salaries, wages and employee fringe benefits. Employee fringe benefits include regular compensation paid to an employee during periods of authorized absences (e.g., annual leave, sick leave) and the employer's contribution to social security, pension plans, insurance, and worker's compensation insurance. Fringe benefits are eligible for reimbursement when distributed equitably to all job activities which the employee performs.

2. Materials and Supplies

Only expenditures that can be identified as direct costs of this mandate may be claimed. List the cost of the materials and supplies consumed specifically for the purposes of this mandate. Purchases shall be claimed at the actual price after deducting cash discounts, rebates and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged based on a recognized method of costing, consistently applied.

3. Contract Services

Provide the name(s) of the contractor(s) who performed the services, including any fixed contract for services. Describe the reimbursable activity(ies) performed by each named contractor and give the number of actual hours spent on the activities, if applicable. Show the inclusive dates when services were performed and itemize all costs for those services.

4. Fixed Assets

List the costs of the fixed assets that have been acquired specifically for the purpose of this mandate. If the fixed asset is utilized in some way not directly related to the mandated program, only the pro-rata portion of the asset which is used for the purposes of the mandated program is eligible for reimbursement.

5. Travel

Travel expenses for mileage, per diem, lodging, and other employee entitlements are eligible for reimbursement in accordance with the rules of the local jurisdiction. Provide the name(s) of the traveler(s), purpose of travel, inclusive dates and times of travel, destination points, and travel costs.

6. Training

The cost of training an employee to perform the mandated activities, as specified in Section IV of these Parameters and Guidelines, is eligible for reimbursement. Identify the employee(s) by name and job classification. Provide the title and subject of the training session, the date(s) attended, and the location. Reimbursable costs may include salaries and benefits, registration fees, transportation, lodging, and per diem.

B. Indirect Costs

Indirect costs are defined as costs which are incurred for a common or joint purpose, benefiting more than one program and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both: (1) overhead costs of the unit performing the mandate; and (2) the costs of central government services distributed to other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the OMB A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) for the department if the indirect cost rate exceeds 10%. If more than one department is claiming indirect costs for the mandated program, each department must have its own ICRP prepared in accordance with OMB A-87. An ICRP must be submitted with the claim when the indirect cost rate exceeds 10%.

VI. SUPPORTING DATA

For auditing purposes, all costs claimed shall be traceable to source documents (e.g., invoices, receipts, purchase orders, contracts, worksheets, calendars, declarations, etc.) that show evidence of the validity of such costs and their relationship to the state mandated program. All documentation in support of the claimed costs shall be made available to the State Controller's Office, as may be requested. Pursuant to Government Code section 17558.5, these documents must be kept on file by the agency submitting the claim for a period of no less than two years after the later of (1) the end of the calendar year in which the reimbursement claim is filed or last amended, or (2) if no funds are appropriated for the fiscal year for which the claim is made, the date of initial payment of the claim. All claims shall identify the number of pupils in out-of-state residential programs for the costs being claimed.

VII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENTS

Any offsetting savings the claimant experiences as a direct result of the subject mandate must be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, including but not limited to federal funds and other state funds, shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S OFFICE REQUIRED CERTIFICATION

An authorized representative of the claimant shall be required to provide a certification of the claim, as specified in the State Controller's Office claiming instructions, for those costs mandated by the State contained herein.

Tab 7



Welcome to the online source for the California Code of Regulations

2 CA ADC § 60100

§ 60100. LEA Identification and Placement of a Seriously Emotionally Disturbed Pupil.

Term

2 CCR § 60100

Cal. Admin. Code tit. 2, § 60100

Barclays Official California Code of Regulations [Currentness](#)

Title 2. Administration

Division 9. Joint Regulations for Pupils with Disabilities

Chapter 1. Interagency Responsibilities for Providing Services to Pupils with Disabilities

Article 3. Residential Placement

→ § 60100. LEA Identification and Placement of a Seriously Emotionally Disturbed Pupil.

(a) This article shall apply only to a pupil with a disability who is seriously emotionally disturbed pursuant to paragraph (i) of Section 3030 of Title 5 of the California Code of Regulations.

(b) When an IEP team member recommends a residential placement for a pupil who meets the educational eligibility criteria specified in paragraph (4) of subsection (c) of Section 300.7 of Title 34 of the Code of Federal Regulations, the IEP shall proceed in the following manner:

(1) An expanded IEP team shall be convened within thirty (30) days with an authorized representative of the community mental health service.

(2) If any authorized representative is not present, the IEP team meeting shall be adjourned and be reconvened within fifteen (15) calendar days as an expanded IEP team with an authorized representative from the community mental health service participating as a member of the IEP team pursuant to Section 7572.5 of the Government Code.

(3) If the community mental health service or the LEA determines that additional mental health assessments are needed, the LEA and the community mental health service shall proceed in accordance with Sections 60040 and 60045.

(c) Prior to the determination that a residential placement is necessary for the pupil to receive special education and mental health services, the expanded IEP team shall consider less restrictive alternatives, such as providing a behavioral specialist and full-time behavioral aide in the classroom, home and other community environments, and/or parent training in the home and community environments. The IEP team shall document the alternatives to residential placement that were considered and the reasons why they were rejected. Such alternatives may include any combination of cooperatively developed educational and mental health services.

(d) When the expanded IEP team recommends a residential placement, it shall document the pupil's educational and mental health treatment needs that support the recommendation for residential placement. This documentation shall identify the special education and related mental health services to be provided by a residential facility listed in Section 60025 that cannot be provided in a less restrictive environment pursuant to Title 20, United States Code Section 1412(a)(5).

(e) The community mental health service case manager, in consultation with the IEP team's administrative designee, shall identify a mutually satisfactory placement that is acceptable to the parent and addresses the pupil's educational and mental health needs in a manner that is cost-effective for both public agencies, subject to the requirements of state and federal special education law, including the requirement that the placement be appropriate and in the least restrictive environment.

(f) The residential placement shall be in a facility listed in Section 60025 that is located within, or in the county adjacent to, the county of residence of the parents of the pupil with a disability, pursuant to paragraph (3) of subsection (a) of Section 300.552 of Title 34 of the Code of Federal Regulations. When no nearby placement alternative which is able to implement the IEP can be identified, this determination shall be documented, and the community mental health service case manager shall seek an appropriate placement which is as close to the parents' home as possible.

(g) Rates for care and supervision shall be established for a facility listed in Section 60025 in accordance with Section 18350 of the Welfare and Institutions Code.

(h) Residential placements for a pupil with a disability who is seriously emotionally disturbed may be made out of California only when no in-state facility can meet the pupil's needs and only when the requirements of subsections (d) and (e) have been met. Out-of-state placements shall be made only in residential programs that meet the requirements of Welfare and Institutions Code Sections 11460(c)(2) through (c)(3). For educational purposes, the pupil shall receive services from a privately operated non-medical, non-detention school certified by the California Department of Education.

(i) When the expanded IEP team determines that it is necessary to place a pupil with a disability who is seriously emotionally disturbed in residential care, the community mental health service shall ensure that:

(1) The mental health services are specified in the IEP in accordance with Title 20, United States Code Section 1414(d)(1)(A)(vi).

(2) Mental health services are provided by qualified mental health professionals.

(j) When the expanded IEP team determines that it is necessary to place a pupil with a disability who is seriously emotionally disturbed in a facility listed in Section 60025, the expanded IEP team shall ensure that placement is in accordance with admission criteria of the facility.

Note: Authority cited: Section 7587, Government Code. Sections 10553, 10554, 11462(i) and (j) and 11466.1, Welfare and Institutions Code. Reference: Sections 7576(a) and 7579, Government Code; Sections 11460(c)(2)-(c)(3), 18350 and 18356, Welfare and Institutions Code; Sections 1412 and 1414, Title 20, United States Code; and Sections 300.7 and 300.552, Title 34, Code of Federal Regulations.

HISTORY

1. New section refiled 5-1-87 as an emergency; designated effective 5-1-87 (Register 87, No. 30). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8-31-87.

2. Division 9 (Chapter 1, Articles 1-9, Sections 60000-60610, not consecutive) shall not be subject to automatic repeal until the final regulations take effect on or before June 30, 1988 pursuant to Item 4440-131-001(b)(2), Chapter 135, Statutes of 1987 (Register 87, No. 46).

3. Division 9 (Chapter 1, Articles 1-9, Sections 60000-60610, not consecutive) shall not be subject to automatic repeal until the final regulations take effect on or before June 30, 1997, pursuant to Government Code section 7587, as amended by Stats. 1996, c. 654 (A.B. 2726, s4.) (Register 98, No. 26).

4. Division 9 (Chapter 1, Articles 1-9, Sections 60000-60610, not consecutive) repealed June 30, 1997, by operation of Government Code section 7587, as amended by Stats. 1996, c. 654 (A.B. 2726, s4.) (Register 98, No. 26).

5. New article 3 (sections 60100-60110) and section filed 6-26-98 as an emergency; operative 7-1-98 (Register 98, No. 26). A Certificate of Compliance must be transmitted to OAL by 10-29-98 or emergency language will be repealed by operation of law on the following day.

6. Editorial correction restoring prior Histories 1-2, adding new Histories 3-4, and renumbering and amending existing History 1 to new History 5 (Register 98, No. 44).

7. New article 3 (sections 60100-60110) and section refiled 10-26-98 as an emergency; operative 10-29-98 (Register 98, No. 44). A Certificate of Compliance must be transmitted to OAL by 2-26-99 or emergency language will be repealed by operation of law on the following day.

8. New article 3 (sections 60100-60110) and section refiled 2-25-99 as an emergency; operative 2-26-99 (Register 99, No. 9). A Certificate of Compliance must be transmitted to OAL by 6-28-99 or emergency language will be repealed by operation of law on the following day.

9. Certificate of Compliance as to 2-25-99 order, including amendment of section heading, amendment of subsections (b)-(b)(2), (d) and (i)(1) and amendment of Note, transmitted to OAL 6-25-99 and filed 8-9-99 (Register 99, No. 33).

2 CCR § 60100, ←2 CA ADC § 60100 →

This database is current through 12/24/10 Register 2010, No. 52

END OF DOCUMENT

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Tab 8

(c) If an amount collected as child or spousal support represents payment on the required support obligation for future months, the amount shall be applied to such future months. However, no such amounts shall be applied to future months unless amounts have been collected which fully satisfy the support obligation assigned under subdivision (a) of Section 11477 for the current months and all past months.

11458. The county may cancel, suspend or revoke aid under this chapter for cause. Upon instructions from the department, the county shall cancel, suspend or revoke aid under this chapter.

Upon request of the department, an immediate report of every suspension of aid shall be made to the department stating the reason for the suspension and showing the action of the county in approving the suspension.

11460. (a) Foster care providers shall be paid a per child per month rate in return for the care and supervision of the AFDC-FC child placed with them. The department is designated the single organizational unit whose duty it shall be to administer a state system for establishing rates in the AFDC-FC program. State functions shall be performed by the department or by delegation of the department to county welfare departments or Indian tribes, consortia of tribes, or tribal organizations that have entered into an agreement pursuant to Section 10553.1.

(b) "Care and supervision" includes food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, reasonable travel to the child's home for visitation, and reasonable travel for the child to remain in the school in which he or she is enrolled at the time of placement. Reimbursement for the costs of educational travel, as provided for in this subdivision, shall be made pursuant to procedures determined by the department, in consultation with representatives of county welfare and probation directors, and additional stakeholders, as appropriate.

(1) For a child placed in a group home, care and supervision shall also include reasonable administration and operational activities necessary to provide the items listed in this subdivision.

(2) For a child placed in a group home, care and supervision may also include reasonable activities performed by social workers employed by the group home provider which are not otherwise considered daily supervision or administration activities.

(c) It is the intent of the Legislature to establish the maximum level of state participation in out-of-state foster care group home program rates effective January 1, 1992.

(1) The department shall develop regulations that establish the method for determining the level of state participation for each out-of-state group home program. The department shall consider all of the following methods:

(A) A standardized system based on the level of care and services per child per month as detailed in Section 11462.

(B) A system which considers the actual allowable and reasonable costs of care and supervision incurred by the program.

(C) A system which considers the rate established by the host state.

(D) Any other appropriate methods as determined by the department.

(2) State reimbursement for the AFDC-FC group home rate to be paid to an out-of-state program on or after January 1, 1992, shall only be paid to programs which have done both of the following:

(A) Submitted a rate application to the department and received a determination of the level of state participation.

(i) The level of state participation shall not exceed the current fiscal year's standard rate for rate classification level 14.

(ii) The level of state participation shall not exceed the rate determined by the ratesetting authority of the state in which the facility is located.

(iii) The level of state participation shall not decrease for any child placed prior to January 1, 1992, who continues to be placed in the same out-of-state group home program.

(B) Agreed to comply with information requests, and program and fiscal audits as determined necessary by the department.

(3) State reimbursement for an AFDC-FC rate paid on or after January 1, 1993, shall only be paid to a group home organized and operated on a nonprofit basis.

(d) A foster care provider that accepts payments, following the effective date of this section, based on a rate established under this section, shall not receive rate increases or retroactive payments as the result of litigation challenging rates established prior to the effective date of this section. This shall apply regardless of whether a provider is a party to the litigation or a member of a class covered by the litigation.

(e) Nothing shall preclude a county from using a portion of its county funds to increase rates paid to family homes and foster family agencies within that county, and to make payments for specialized care increments, clothing allowances, or infant supplements to homes within that county, solely at that county's expense.

11461. (a) For children or, on and after January 1, 2012, nonminor dependents placed in a licensed or approved family home with a capacity of six or less, or in an approved home of a relative or nonrelated legal guardian, or the approved home of a nonrelative extended family member as described in Section 362.7, or, on and after January 1, 2012, a supervised independent living setting, as defined in subdivision (w) of Section 11400, the per child per month rates in the following schedule shall be in effect for the period July 1, 1989, through December 31, 1989:

Age	Basic rate
0-4.....	\$294
5-8.....	319
9-11.....	340
12-14.....	378
15-20.....	412

(b) (1) Any county that, as of October 1, 1989, has in effect a basic rate that is at the levels set forth in the schedule in subdivision (a), shall continue to receive state participation, as specified in subdivision (c) of Section 15200, at these levels.

(2) Any county that, as of October 1, 1989, has in effect a basic rate that exceeds a level set forth in the schedule in subdivision (a), shall continue to receive the same level of state participation as it received on October 1, 1989.

(c) The amounts in the schedule of basic rates in subdivision (a)

Tab 9

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
SPECIAL EDUCATION DIVISION
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

Petitioner,

v.

RIVERSIDE UNIFIED SCHOOL
DISTRICT and RIVERSIDE COUNTY
DEPARTMENT of MENTAL HEALTH,

Respondents.

OAH CASE NO. N 2007090403

DECISION

Administrative Law Judge Judith L. Pasewark, Office of Administrative Hearings, Special Education Division, State of California (OAH), heard this matter by written stipulation and joint statement of facts presented by the parties, along with written argument and closing briefs submitted by each party.

Heather D. McGunigle, Esq., of Disability Rights Legal Center, and Kristelia Garcia, Esq., of Quinn Emanuel Urquhart Oliver & Hedges, represented Student (Student).

Ricardo Soto, Esq., of Best Best & Krieger, represented Riverside Unified School District (District).

Sharon Watt, Esq., of Filarsky & Watt, represented Riverside County Department of Mental Health (CMH).

Student filed his first amended Request for Due Process Hearing on September 25, 2007. At the pre-hearing conference on December 7, 2007, the parties agreed to submit the matter on a written Joint Stipulation of Facts, and individual written closing arguments. The documents were received, the record closed, and matter was submitted for decision on December 31, 2007.

ISSUE

May the educational and mental health agencies place Student in an out-of-state for-profit residential center under California Code of Regulations section 60100, subdivision (h), and California Welfare and Institutions Code section 11460, subdivision (c)(2) and (3), when no other appropriate residential placement is available to provide Student a FAPE?

CONTENTIONS

All parties agree that Student requires a therapeutic residential placement which will meet his mental health and communication needs pursuant to his October 9, 2007 Individual Educational Plan (IEP). The District and CMH have conducted a nation-wide search and have been unable to locate an appropriate non-profit residential placement for Student.

Student contends that, as the District and CMH's searches for an appropriate non-profit residential placement have been exhausted, the District and CMH are obligated to place Student in an appropriate out-of-state for-profit residential program in order to provide Student with a free and appropriate public education (FAPE).

Both the District and CMH contend that they do not have the authority to place Student at an out-of-state for-profit residential program.

JOINT STIPULATION OF FACTS¹

1. Student is 17 years old and resides with his Mother (Mother) within the District in Riverside County, California. Student's family is low-income and meets Medi-Cal eligibility requirements.
2. Student is deaf, has impaired vision and an orthopedic condition known as legg-perthes. Student has been assessed as having borderline cognitive ability. His only effective mode of communication is American Sign Language (ASL). Student also has a long history of social and behavioral difficulties. As a result, Student is eligible for special education and related services and mental health services through AB2726/3632 under the category of emotional disturbance (ED), with a secondary disability of deafness.
3. Student requires an educational environment in which he has the opportunity to interact with peers and adults who are fluent in ASL. Student attended the California

¹ The parties submitted a Stipulated Statement of Undisputed Facts and Evidence which is admitted into evidence as Exhibit 67, and incorporated herein. The stipulated facts have been consolidated and renumbered for clarity in this decision. As part of the same document, the parties stipulated to the entry of the joint Exhibits 1 through 66, which are admitted into evidence.

School for the Deaf, Riverside (CSDR) between January 2005 and September 2006, while a resident of the Monrovia Unified School District.

4. CSDR does not specialize in therapeutic behavior interventions. In January 2005, CSDR terminated Student's initial review period due to his behaviors. CSDR removed Student from school as suicide prevention because Student physically harmed himself. At that time, both CSDR and Monrovia USD believed Student to be a danger to himself and others. They, therefore, placed him in home-hospital instruction.

5. Between June 2005 and October 2005, Student's behaviors continued to escalate. Student was placed on several 72-hour psychiatric holds for which he missed numerous days of school. On one occasion, Student was hospitalized for approximately two weeks. On another occasion, he was hospitalized at least a week.

6. Pursuant to a mental health referral, on September 14, 2006, Monrovia USD and Los Angeles County Department of Mental Health (LACDMH) met, and determined that Student had a mental disturbance for which they recommended residential placement.² At that time, Amy Kay, Student's ASL-fluent therapist through LACDMH's AB2726 program, recommended a residential placement at the National Deaf Academy (NDA). Ms. Kay specifically recommended that Student be placed in a residential placement at NDA due to his need for a higher level of care to address his continuing aggressive and self-injurious behaviors. Additionally, the rehabilitation of these behaviors would be unsuccessful without the ability for Student to interact with deaf peers and adults. Ms. Kay further indicated that the use of an interpreter did not provide an effective method for Student to learn due to his special needs.

7. On August 5, 2006, NDA sent Student a letter of acceptance into its program. Monrovia USD and LACDMH, however, placed Student at Willow Creek/North Valley Non-public School. This placement failed as of March 2007, at which time both Monrovia USD and LACDMH indicated they were unable to find a residential placement for Student that could meet his mental health and communication needs. They did not pursue the residential treatment center at NDA because of its for-profit status.

8. Student and his mother moved to the District and Riverside County in April 2007.

9. On April 20, 2007, the District convened an IEP meeting to develop Student's educational program. The District staff, CMH staff, staff from CSDR, Student, his mother and attorney attended and participated in the IEP meeting. The IEP team changed Student's primary disability classification from emotional disturbance to deafness with social-emotional overlay. The parties agreed to this change in eligibility as CSDR required that

² As noted in Student's prior IEP, Student also required an educational environment which provided instruction in his natural language and which facilitated language development in ASL.

deafness be listed as a student's primary disability in order to be admitted and no other appropriate placements were offered. The IEP team offered placement at CSDR for a 60-day assessment period, individual counseling, speech and language services through CSDR, and individual counseling through CMH. The IEP team also proposed to conduct an assessment to determine Student's current functioning and to make recommendations concerning his academic programming based upon his educational needs.

10. CSDR suspended Student within its 60-day assessment period. CSDR subsequently terminated Student when, during his suspension, Student was found in the girl's dormitory following an altercation with the staff.

11. On May 23, 2007, the District convened another IEP meeting to discuss Student's removal from CSDR. The IEP team recommended Student's placement at Oak Grove Institute/Jack Weaver School (Oak Grove) in Murrieta, California, with support from a deaf interpreter pending the assessment agreed to at the April 2007 IEP meeting. CMH also proposed conducting an assessment for treatment and residential placement for Student.

12. On August 3, 2007, the District convened an IEP meeting to develop Student's annual IEP, and to review the assessments from CSDR and CMH. District staff, Oak Grove staff, CMH staff, Student's mother and attorney attended the IEP meeting. Based upon the information reviewed at the meeting, the IEP team proposed placement at Oak Grove with a signing interpreter, deaf and hard of hearing consultation and support services from the District, and individual counseling with a signing therapist through CMH. Mother and her attorney agreed to implementation of the proposed IEP, but disagreed that the offer constituted an offer of FAPE due to its lack of staff, teachers and peers who used ASL.

13. On October 9, 2007, the District convened another IEP meeting to review Student's primary disability. District staff, Oak Grove staff, CMH staff, Student's mother and attorney attended the IEP meeting. At this meeting, the IEP team once again determined Student's primary special education eligibility category as emotional disturbance with deafness as a secondary condition. The IEP team recommended placement in a residential treatment program, as recommended by CMH. Placement would remain at Oak Grove with a signing interpreter pending a residential placement search by CMH. Mother consented to the change in eligibility and the search for a residential placement. Mother also requested that Student be placed at NDA.

14. CMH made inquiries and pursued several leads to obtain a therapeutic residential placement for Student. CMH sought placements in California, Florida, Wyoming, Ohio and Illinois. All inquiries have been unsuccessful, and Student has not been accepted in any non-profit residential treatment center. At present CMH has exhausted all leads for placement of Student in a non-profit, in-state or out-of-state residential treatment center.

15. Student, his mother and attorney have identified NDA as an appropriate placement for Student. NDA, located in Mount Dora, Florida, is a residential treatment center for the treatment of deaf and hard-of-hearing children with the staff and facilities to

accommodate Student's emotional and physical disability needs. NDA also accepts students with borderline cognitive abilities. In addition, nearly all of the service providers, including teachers, therapists and psychiatrists are fluent in ASL. The residential treatment center at NDA is a privately owned limited liability corporation, and is operated on a for-profit basis. The Charter School at NDA is a California certified non-public school. All parties agree that NDA is an appropriate placement which would provide Student a FAPE.

16. Student currently exhibits behaviors that continue to demonstrate a need for a residential treatment center. Student has missed numerous school days due to behaviors at home. As recently as December 11, 2007, Student was placed in an emergency psychiatric hold because of uncontrollable emotions and violence to himself and others.

LEGAL CONCLUSIONS

1. Under *Schaffer v. Weast* (2005) 546 U.S. 49 [126 S.Ct. 528], the party who files the request for due process has the burden of persuasion at the due process hearing. Student filed this due process request and bears the burden of persuasion.

2. A child with a disability has the right to a free appropriate public education (FAPE) under the Individuals with Disabilities Education Act (IDEA or the Act) and California law. (20 U.S.C. § 1412(a)(1)(A); Ed. Code, § 56000.) The Individuals with Disabilities Education Improvement Act of 2004 (IDEIA), effective July 1, 2005, amended and reauthorized the IDEA. The California Education Code was amended, effective October 7, 2005, in response to the IDEIA. Special education is defined as specially designed instruction provided at no cost to parents and calculated to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); Ed. Code, § 56031.)

3. In *Board of Education of the Hendrick Hudson Central School District, et. al. v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L. Ed.2d 690] (*Rowley*), the Supreme Court held that "the 'basic floor of opportunity' provided by the IDEA consists of access to specialized instruction and related services which are individually designed to provide educational benefit to a child with special needs." *Rowley* expressly rejected an interpretation of the IDEA that would require a school district to "maximize the potential" of each special needs child "commensurate with the opportunity provided" to typically developing peers. (*Id.* at p. 200.) Instead, *Rowley* interpreted the FAPE requirement of the IDEA as being met when a child receives access to an education that is "sufficient to confer some educational benefit" upon the child. (*Id.* at pp. 200, 203-204.) The Court concluded that the standard for determining whether a local educational agency's provision of services substantively provided a FAPE involves a determination of three factors: (1) were the services designed to address the student's unique needs, (2) were the services calculated to provide educational benefit to the student, and (3) did the services conform to the IEP. (*Id.* at p.176; *Gregory K. v. Longview Sch. Dist.* (9th Cir. 1987) 811 F. 2d 1307, 1314.) Although the IDEA does not require that a student be provided with the best available education or services or that the services maximize each child's potential, the "basic floor of opportunity"

of specialized instruction and related services must be individually designed to provide some educational benefit to the child. De minimus benefit or trivial advancement is insufficient to satisfy the *Rowley* standard of "some" benefit. (*Walczak v. Florida Union Free School District* (2d Cir. 1998) 142 F.3d at 130.)

4. Under California law, "special education" is defined as specially designed instruction, provided at no cost to parents, that meets the unique needs of the child. (Ed. Code, § 56031.) "Related services" include transportation and other developmental, corrective, and supportive services as may be required to assist a child to benefit from special education. State law refers to related services as "designated instruction and services" (DIS) and, like federal law, provides that DIS services shall be provided "when the instruction and services are necessary for the pupil to benefit educationally from his or her instructional program." (Ed. Code, § 56363, subd. (a).) Included in the list of possible related services are psychological services other than for assessment and development of the IEP, parent counseling and training, health and nursing services, and counseling and guidance. (Ed. Code, § 56363, subd. (b).) Further, if placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parent of the child. (34 C.F.R § 300.104.) Thus, the therapeutic residential placement and services that Student requests are related services/DIS that must be provided if they are necessary for Student to benefit from special education. (20 U.S.C. § 1401(22); Ed. Code, § 56363, subd. (a).) Failure to provide such services may result in a denial of a FAPE.

5. A "local educational agency" is generally responsible for providing a FAPE to those students with disabilities residing within its jurisdictional boundaries. (Ed. Code, § 48200.)

6. Federal law provides that a local educational agency is not required to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made a free appropriate public education available to the child and the parents elected to place the child in such private school or facility. (20 U.S.C. § 1412(a)(10)(C)(i).)

7. Under California law, a residential placement for a student with a disability who is seriously emotionally disturbed may be made outside of California only when no in-state facility can meet the student's needs and only when the requirements of subsections (d) and (e) have been met. (Cal. Code Regs., tit. 2, § 60100, subd. (h).) An out-of-state placement shall be made only in residential programs that meet the requirements of Welfare and Institutions Code sections 11460, subdivisions (c)(2) through (c)(3).

8. When a school district denies a child with a disability a FAPE, the child is entitled to relief that is "appropriate" in light of the purposes of the IDEA. (*School Comm. of the Town of Burlington v. Dept. of Educ.* (1985) 471 U.S. 359, 374 [105 S.Ct. 1996].) Based on the principle set forth in *Burlington*, federal courts have held that compensatory education is a form of equitable relief which may be granted for the denial of appropriate

special education services to help overcome lost educational opportunity. (See e.g. *Parents of Student W. v. Puyallup Sch. Dist.* (9th Cir. 1994) 31 F.3d 1489, 1496.) The purpose of compensatory education is to “ensure that the student is appropriately educated within the meaning of the IDEA.” (*Id.* at p. 1497.) The ruling in *Burlington* is not so narrow as to permit reimbursement only when the placement or services chosen by the parent are found to be the exact proper placement or services required under the IDEA. (*Alamo Heights Independent Sch. Dist. v. State Bd. of Educ.* (6th Cir. 1986) 790 F.2d 1153, 1161.) However, the parents’ placement still must meet certain basic requirement of the IDEA, such as the requirement that the placement address the child’s needs and provide him educational benefit. (*Florence County Sch. Dist. Four v. Carter* (1993) 510 U.S. 7, 13-14 [114 S.Ct. 361].)

Determination of Issues

9. In summary, based upon Factual Findings 2, 3, and 6 through 16, all parties agree that the placement in the day program at Oak Grove NPS with an interpreter cannot meet Student’s unique educational needs because it does not sufficiently address his mental health and communication needs and does not comport with his current IEP. All parties agree that Student requires a therapeutic residential placement in order to benefit from his education program. Further, all parties agree that the nationwide search by the District and CMH for an appropriate non-profit residential placement with a capacity to serve deaf students has been exhausted, and Student remains without a residential placement. Lastly, all parties agree that the National Deaf Academy can meet both Student’s mental health and communication needs. Further, the charter school at NDA is a California certified NPS.

10. The District and CMH rely upon Legal Conclusion 7 to support their contentions that they are prohibited from placing Student in an out-of-state for-profit residential placement, even if it represents the only means of providing Student with a FAPE.

11. As administrative law precedent, CMH cites *Yucaipa-Calimesa Joint Unified School District and San Bernardino County Department of Behavioral Health (Yucaipa)*, OAH Case No. N2005070683 (2005), which determined that the District and County Mental Health were statutorily prohibited from funding an out-of-state for-profit placement. The *Yucaipa* case can be distinguished from the one at hand. Clearly, the ruling in *Yucaipa*, emphasized that the regulation language used the mandatory term “shall,” and consequently there was an absolute prohibition from funding a for-profit placement. The ALJ, however, did not face a resulting denial of FAPE for Student. In *Yucaipa*, several non-profit placement options were suggested, including residential placement in California, however, the parent would not consider any placement other than the out-of-state for-profit placement. In denying Student’s requested for-profit placement, the ALJ ordered that the parties continue to engage in the IEP process and diligently pursue alternate placements. In the current matter, however, pursuant to Factual Findings 12 through 14, CMH has conducted an extensive multi-state search, and all other placement possibilities for Student have been exhausted. Pursuant to Factual Finding 15, NDA is the only therapeutic residential placement remaining, capable of providing a FAPE for Student.

12. “When Congress passed in 1975 the statute now known as the Individuals with Disabilities Act (IDEA or Act), it sought primarily to make public education available to handicapped children. Indeed, Congress specifically declared that the Act was intended to assure that all children with disabilities have available to them. . . appropriate public education and related services designed to meet their unique needs, to assure the rights of children with disabilities and their parents or guardians are protected. . . and to assess and assure the effectiveness of efforts to educate children with disabilities.” (*Hacienda La Puente Unified School District v. Honig* (1992) 976 F.2d 487, 490.) The Court further noted that the United States Supreme Court has observed that “in responding to these programs, Congress did not content itself with passage of a simple funding statute...Instead, the IDEA confers upon disabled students an enforceable substantive right to public education in participating States, and conditions federal financial assistance upon a State’s compliance with the substantive and procedural goals of the Act.” (*Id.* at p. 491.)

13. California maintains a policy of complying with IDEA requirements in the Education Codes, sections 56000, et seq. With regard to the special education portion of the Education Code, the Legislature intended, in relevant part, that every disabled child receive a FAPE. Specifically, “It is the further intent of the Legislature to ensure that all individuals with exceptional needs are provided their rights to appropriate programs and services which are designed to meet their unique needs under the Individuals with Disabilities Education Act.” (Ed. Code, § 56000.)

14. California case law explains further, “although the Education Code does not explicitly set forth its overall purpose, the code’s primary aim is to benefit students, and in interpreting legislation dealing with our educational systems, it must be remembered that the fundamental purpose of such legislation is the welfare of the children.” (*Katz v. Los Gatos-Saratoga Joint Union High School Dist.* (2004) 117 Cal.App. 4th 47, 63.)

15. Pursuant to Legal Conclusion 6, a district is not required to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if the district made a free appropriate public education available to the child. All parties concur, in Factual Findings 12 through 15, that the District has been unable to provide a FAPE to Student because no appropriate placement exists except in an out-of-state for-profit residential program.

16. Assuming the District’s interpretation of section 60100, subdivision (h) of Title 2 of the California Code of Regulations is correct, it is inconsistent with the federal statutory and regulatory law by which California has chosen to abide. California education law itself mandates a contrary response to Welfare and Institutions Code section 11460, subdivision (c)(3), where no other placement exists for a child. Specifically, “It is the further intent of the Legislature that this part does not abrogate any rights provided to individuals with exceptional needs and their parents or guardians under the federal Individuals with Disabilities Education Act.” (Ed. Code, § 56000, subd. (e) (Feb. 2007).) A contrary result

would frustrate the core purpose of the IDEA and the companion state law, and would prevent Student from accessing educational opportunities.³

17. Regardless of whether the District and CMH properly interpreted Legal Conclusion 7, Student has ultimately been denied a FAPE since May 23, 2007, when he was terminated from attending CSDR, as indicated in Factual Findings 10 through 16. Pursuant to Factual Findings 6 and 16, Student's need for therapeutic residential placement with ASL services continues. As a result of this denial of FAPE, Student is entitled to compensatory education consisting of immediate placement at the National Deaf Academy through the 2008-2009 school years. The obligation for this compensatory education shall terminate forthwith in the event Student voluntarily terminates his attendance at NDA after his 18th birthday, or Student's placement is terminated by NDA.

ORDER

The District has denied Student a free appropriate public education as of May 23, 2007. The District and CMH are to provide Student with compensatory education consisting of immediate placement at the National Deaf Academy and through the 2008-2009 school year. The obligation for this compensatory education shall terminate forthwith in the event Student voluntarily terminates his attendance at NDA after his 18th birthday, or Student's placement is terminated by NDA.

PREVAILING PARTY


Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. Student has prevailed on the single issue presented in this case.

³ Further, there appears to be no argument that had Mother completely rejected the District's IEP offer, and privately placed Student at NDA, she would be entitled to reimbursement of her costs from the District, if determined that the District's offer of placement did not constitute a FAPE. By all accounts, Student's low income status prevented placement at NDA, and therefore precluded Student from receiving a FAPE via reimbursement by the District.

RIGHT TO APPEAL THIS DECISION

The parties to this case have the right to appeal this Decision to a court of competent jurisdiction. If an appeal is made, it must be made within 90 days of receipt of this Decision. (Ed. Code, § 56505, subd. (k).)

Dated: January 15, 2008


JUDITH L. PASEWARK
Administrative Law Judge
Special Education Division
Office of Administrative Hearings

Tab 10

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
SPECIAL EDUCATION DIVISION
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

Petitioner,

vs.

YUCAIPA-CALIMESA JOINT UNIFIED
SCHOOL DISTRICT

and

SAN BERNARDINO COUNTY
DEPARTMENT OF BEHAVIORAL
HEALTH,

Respondents.

OAH NO. N2005070683

DECISION

This matter came on regularly for hearing, before Administrative Law Judge Roy W. Hewitt, Office of Administrative Hearings, at Yucaipa, California on September 2 and 6, 2005.

Student (student) was represented by advocate Jillian Bonnington.

Ms. Gail Lindberg, program manager for the East Valley Special Education Local Plan Area, represented the Yucaipa-Calimesa Joint Unified School District (district).

Scott M. Runyan, Esq. represented the San Bernardino County Department of Behavioral Health (DBH).

Oral and documentary evidence was received, the record was left open, and the matter was continued for good cause to allow the parties to submit written closing arguments/briefs. The parties' written arguments/briefs were received, read, and considered, and the matter was deemed submitted on September 27, 2005.

During the continuance period, from the date the parties rested their cases, September 7, 2005 until the matter was deemed submitted on September 27, 2005, petitioner filed the

following motions: a motion for reconsideration of the denial of petitioner's motion for a "stay put" order; and a motion for sanctions against the district. Those motions and the briefs filed by respondents in opposition were read and considered. The rulings on the motions follow:

1. Petitioner's motion for reconsideration of her "stay put" request is denied. Petitioner's original motion for a "stay put" order was heard, and denied, by ALJ William O. Hoover on July 29, 2005. Petitioner then filed a motion for reconsideration of ALJ Hoover's order. That motion for reconsideration was heard on the record, and denied, by ALJ Hewitt on the first day of the hearing, September 2, 2005. Petitioner's current motion for reconsideration of ALJ Hoover's and ALJ Hewitt's rulings was filed on September 14, 2005. This, petitioner's third attempt to obtain a "stay put" order, also fails. The basis for denial of petitioner's current motion for reconsideration will become evident from the facts, conclusions, and order resulting from the instant due process hearing.

2. Petitioner's motion for sanctions against the district is also denied based on petitioner's failure to present competent evidence that district representatives engaged in any bad faith actions during the instant litigation.

PROPOSED ISSUES

1. Was petitioner provided with a Free and Appropriate Public Education (FAPE) from June 6, 2005 through the present?

2. Did respondents properly implement and fund student's Individualized Education Plan (IEP) as described in the June 6, 2005 and June 27, 2005 IEP documents?

3. Did respondents offer services and instruction designed to meet student's unique needs?

4. Is the district obligated to fund student's current placement if DBH is statutorily prohibited from funding the placement?

INTRODUCTION

The reason the previous section is titled "proposed issues" is because all of the issues delineated by petitioner really hinge on one, key issue. All parties agree on the relevant underlying facts. The key issue is whether, given the facts of the instant case, respondents are statutorily prohibited from funding student's current placement. If so, then respondents have not "denied" student a FAPE because, they have no discretion to "deny" funding the placement. If, however, respondents are not statutorily prohibited from funding petitioner's current placement then DBH is ready and willing to fund petitioner's placement, retroactive to June 6, 2005.

ISSUE

1. Are respondents statutorily prohibited from funding student's current placement?

FACTUAL FINDINGS

1. Student, whose date of birth is May 4, 1989, is a 16-year-old female.
2. Student attended school in the district during the 2002-2003 and 2003-2004 school years. During these periods student was not identified as a special education student.
3. Student's parents are currently separated and student's mother has sole legal and physical custody of student.
4. In 2004, student's mother relocated student to Arizona. Student's parents remained in California. On December 19, 2004, student's mother placed student at Youth Care, Inc. (Youth Care) due to student's emotional instability. Youth Care is a Delaware corporation located in, and doing business in, Draper, Utah. Youth Care is a group home/residential care facility that provides in-house care for mentally disturbed youths.
5. Student's mother contacted the district to inquire about special education services that may be available to student since student's parents live within district boundaries. On February 17, 2005, the district sent its school psychologist to Utah to conduct a psycho educational assessment of student. Upon completion of the assessment the district concluded that student was eligible for special education under the category of emotional disturbance (ED), but did not qualify as a student with a specific learning disability (SLD).
6. On March 18, 2005 an Individualized Education Program (IEP) team was convened to discuss student's needs. As a result of the meeting, the district offered to place student at the district's Yucaipa High School in a Special Class for ED students. Student's mother disagreed with the placement and requested an AB2726 residential placement¹. The district informed mother that DBH needed to conduct an assessment before an AB2726 placement could be offered. Student's mother signed an authorization form allowing release of information to DBH and the district referred the matter to DBH.
7. DBH conducted an assessment of student, as requested.
8. On June 6, 2005, the IEP team again met to discuss student's situation. The IEP team agreed that "residential care under AB2726 is appropriate at this time." (Petitioner's Exhibit 2.) Student's mother was adamant in her assertion that student's current placement at Youth Care is an appropriate placement for student. DBH was receptive to mother's request; however, DBH needed proof that Youth Care is a nonprofit entity. This request was based on

¹ This refers to a mental health services placement.

DBH's belief, as will be discussed in the Legal Conclusions section of this decision, that DBH was statutorily prohibited from funding placements in out-of-state "for profit" entities. As stated in student's June 6, 2005 IEP, "[DBH] has made [student] eligible for AB2726 as of this date 6/6/05. Once Youth Care provides information to DBH regarding funding for placement and their non-profit status, DBH will make it effective today." (Petitioner's Exhibit 2.) The IEP also states: "The District offer of FAPE for educational placement for the 30 days interim until the next IEP meeting is the NPS placement." (Petitioner's Exhibit 2.) Due to the uncertainty of Youth Care's profit/non-profit status, other placement options were discussed at the IEP meeting. The following alternative placements were suggested: Provo Canyon, a Utah placement; Cinnamon Hills, a Utah placement; and an in-state, California placement. Student's mother refused to consider any of the suggestions. Instead, student's mother insisted that student remain in her current placement at Youth Care.

9. On June 27, 2005, a "follow-up" IEP team meeting was held. Again, Youth Care's profit/non-profit status was discussed. In fact, Youth Care's profit/non-profit status was the key discussion. All parties agreed that Youth Care was an appropriate placement for student unless its profit/non-profit status precluded funding. Consequently, DBH again requested documentation of Youth Care's profit/non-profit status.

10. Ultimately, it was established that Youth Care is a "for-profit" entity that provides direct services to student. Youth Care has a business relationship with Aspen Solutions, Inc. (Aspen Solutions), a non-profit, California corporation. Youth Care and Aspen Solutions are associated through a "Management Agreement," dated January 1, 2003. That agreement reflects that Aspen Solutions "is engaged in the business of providing certain management and administrative services to providers of health care services." (Petitioner's Exhibit 3.). Youth Care is such a "provider of health care services" and Aspen Solutions has contracted with Youth Care to: provide administrative coordination and support to Youth Care; establish bookkeeping and accounting systems for Youth Care, including preparation, distribution and recordation of all bills and statements for services rendered by Youth Care; and prepare cost reports. Aspen Solutions is responsible for recruiting, hiring, and compensating its employees, employees who are responsible for performing Aspen Solutions' previously listed responsibilities. Aspen Solutions has no role in hiring Youth Care employees and Youth Care, not Aspen Solutions, is responsible for the "supervision of all Youth [Care] staff with regards to therapeutic activities..." (Petitioner's Exhibit 3). Aspen Solutions plays no part in the daily activities at Youth Care. Aspen Education Group Vice President Ruth Moore's testimony established that: "the finance department of Youth Care sets rates for services. The management fee charged by Aspen Solutions is a percentage for each facility. The amounts collected can vary although the percentage is standardized across the facilities." Aspen Solutions plays no role in Youth Care's rate setting and does not mandate that services billed through Aspen Solutions be provided by Youth Care on a non-profit basis.

11. By letter, dated July 7, 2005, DBH notified mother that DBH can not fund student's placement at Youth Care because Youth Care is a "for-profit" entity and DBH is prohibited by California Code of Regulations, title 2 (Regulations), section 60100, subdivision

(h) and California Welfare and Institutions Code (Code) section 11460, subdivision (c), subsections (2) and (3), from funding a "for-profit" placement.

12. Other county agencies in California have made AB2726 placements at Youth Care. In fact, there are several agencies that currently have such placements at Youth Care. There was no evidence that Youth Care's "profit/non-profit" status was ever considered by the California county agencies that currently fund AB2726 placements at Youth Care. In the present instance, when DBH originally requested information concerning Youth Care's profit/non-profit status, it received documents concerning Aspen Solutions. Those documents reveal that Aspen Solutions is a non-profit corporation.

LEGAL CONCLUSIONS

1. California Government Code sections 7570 through 7588 shifts responsibility for certain services from local education agencies to other state agencies, such as DBH in the present instance, to provide services, such as occupational therapy, physical therapy, nursing services, mental health services, and residential placements. In pertinent part, Regulations section 60100 provides:

(h) Residential placements for a pupil with a disability who is seriously emotionally disturbed may be made out of California only when no in-state facility can meet the pupil's needs and only when the requirements of subsections (d) and (e) have been met. Out-of-state placements shall be made only in residential programs that meet the requirements of Welfare and Institutions Code Sections 11460(c)(2) through (c)(3). For educational purposes, the pupil shall receive services from a privately operated non-medical, non-detention school certified by the California Department of Education. (Emphasis added.)

Code section 11460, subdivision (c), subsection (3), provides:

State reimbursement for an AFDC-FC rate paid on or after January 1, 1993, shall only be made to a group home organized and operated on a nonprofit basis. (Emphasis added.)

As set forth in Findings 4 and 10, Youth Care is an out-of-state group home/residential care facility that operates on a profit basis. It is not operated on a nonprofit basis. Accordingly, DBH and district are prohibited from funding student's Youth Care placement. Code section 11460(c)(3) states that reimbursements for placements "shall only be made to a group home organized and operated on a nonprofit basis." The statute uses the mandatory term "shall;" consequently, there is an absolute prohibition against funding Youth Care, a group home organized and operated on a profit basis.

2. Petitioner asserts that based on the business relationship between Youth Care and Aspen Solutions, Youth Care falls within Aspen Solutions' non-profit status; thereby avoiding the Code's funding prohibition. Petitioner highlights the fact that similar placements at Youth Care have been, and currently are, funded by other California county agencies; therefore, such placements must be permissible. Petitioner's assertion lacks merit. As set forth in Finding 5, while it is true that other California county agencies have placed individuals at Youth Care, it seems that the placements were made without a full understanding of Youth Care's status and its true relationship with Aspen Solutions. DBH discovered, as set forth in Finding 10, that Aspen Solutions and Youth Care are distinct legal entities; Aspen Solutions merely acts as Youth Care's bookkeeper. Code section 11460(c)(3) states in pertinent part that agencies, such as DBH and the district, may only make payments to "a group home organized and operated on a nonprofit basis." Youth Care is the group home/residential facility, not Aspen Solutions. Youth care is the entity providing services to student, not Aspen Solutions. Youth Care's profit/nonprofit status is what is important, not Aspen Solutions'. Youth Care is "for profit" and cannot magically become "nonprofit" by virtue of its management agreement with Aspen Solutions. Consequently, the determinations that DBH and district are absolutely prohibited from funding student's current placement, and that petitioner's "stay put" requests were properly denied are, and were, appropriate.

3. As indicated by Finding 4, mother unilaterally elected to place student in the current Youth Care placement. Mother and her advocate knew, as early as June 6, 2005, that DBH was concerned about Youth Care's profit/nonprofit status and its effect on respondents' abilities to fund the placement (Finding 8). Nonetheless, mother elected to continue with the placement. By doing so, she assumed the risk that she would not be reimbursed for costs of the placement. Additionally, because DBH and district are statutorily prohibited from funding the Youth Care placement, they are equally prohibited from making any retroactive reimbursements to mother for the placement.

4. Under both state law and the federal Individuals with Disabilities Education Act (IDEA), students with disabilities have the right to a free appropriate public education (FAPE). (20 U.S.C. § 1400; Educ. Code § 56000.) The term "free appropriate public education" means special education and related services that are available to the student at no cost to the parents, that meet state educational standards, and that conform to the student's individualized education program (IEP). (20 U.S.C. § 1401(9).) In the present instance, DBH and the district have worked in good faith to develop an appropriate program for student. DBH is ready and willing to fund an appropriate placement. In fact, DBH is ready and willing, but unable, to fund student's current placement at Youth Care. Consequently, respondents have not denied student a FAPE because there is no current IEP in effect with which to conform, and respondents are diligently pursuing other reasonable alternatives to student's Youth Care Placement. Student's mother is encouraged to work with respondents to find an appropriate placement by considering other, viable alternatives.

5. Petitioner asserts that if DBH fails to fund student's current placement, then the district should fund the placement under the "single line of authority" doctrine. It is unnecessary to discuss the "single line" doctrine because, district, like DBH falls within the

purview of Regulations section 60100 and Code section 11460. Accordingly, both DBH and district are statutorily barred from funding student's placement at any out-of-state "for-profit" residential facility.

6. California Education Code section 56507, subdivision (d) requires that the extent to which each party prevailed on each issue heard and decided must be indicated in the hearing decision. In the present case, respondents prevailed on the controlling issue and all sub-issues.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

1. Student's petition is denied.
2. The parties shall continue to engage in the IEP process and diligently pursue placement alternatives to Youth Care.

Dated: November 2, 2005

ROY W. HEWITT
Administrative Law Judge
Special Education Division
Office of Administrative Hearings

Note: Pursuant to California Education Code section 56505, subdivision (k), the parties have a right to appeal this Decision to a court of competent jurisdiction within 90 days of receipt of this Decision.

Tab 11

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JS - 6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - EASTERN DIVISION

RIVERSIDE COUNTY DEPARTMENT
OF MENTAL HEALTH,

Plaintiff,

v.

ANTHONY SULLIVAN et al,

Defendants.

CASE NO. EDCV 08-0503-SGL (RCx)

ORDER AFFIRMING ADMINISTRATIVE
LAW JUDGE'S DECISION

CONSOLIDATED CASES:

MONICA VALENTINE,

Plaintiff,

v.

RIVERSIDE UNIFIED SCHOOL
DISTRICT et al,

Defendants.

RIVERSIDE UNIFIED SCHOOL
DISTRICT,

Plaintiff,

v.

ANTHONY SULLIVAN et al,

Defendants.

1 At its core, the case before the Court presents a simple question: Is a school
2 district excused from its duty under the federal Individuals with Disabilities Education Act
3 ("IDEA") to provide a free, appropriate public education ("FAPE") where certain state
4 administrative code provisions prohibit the reimbursement of expenses associated with
5 placement at an out-of-state for-profit facility but where that facility is the only one
6 identified as an appropriate placement? As set forth below, the Court rejects arguments
7 that the ALJ exceeded the scope of her authority, that California law prohibits the
8 recommended placement, and that a limited waiver made by the student does not
9 preclude the remedy imposed and, in the end, the Court concludes that such a funding
10 structure does not excuse the school district from its duty.

11 I. INTRODUCTION

12 This case arises from a dispute regarding the provision of educational services to
13 a disabled individual, defendant Anthony Sullivan ("Sullivan"). Plaintiffs Riverside
14 County Department of Mental Health ("DMH") and Riverside Unified School District
15 ("RUSD") seek the reversal of the January 15, 2008, decision of Administrative Law
16 Judge Judith L. Pasewark ("ALJ"), Office of Administrative Hearings, Special Education
17 Division, State of California ("OAH"), in *Anthony Sullivan v. Riverside Unified School*
18 *District and Riverside County Department of Mental Health*, and ask the Court to find
19 that Sullivan was not entitled to an order directing placement at the National Deaf
20 Academy ("NDA") under the Individuals with Disabilities Education Act ("IDEA"), 20
21 U.S.C. § 1400 *et seq.*, or California special education law, California Education Code
22 section 56000 *et seq.* See Administrative Record ("A.R.") 780-89.

23 Sullivan filed his First Amended Request for Due Process Hearing on September
24 25, 2007. A.R. 780. At the pre-hearing conference on December 7, 2007, the parties
25 agreed to have the matter decided by the ALJ without oral argument based stipulation
26 facts, stipulated evidence, and written closing arguments. *Id.* Ultimately, in the decision
27 that is the subject of the current appeal, the ALJ decided that defendant had been
28 denied a free, appropriate public education ("FAPE"), and ordered immediate placement

1 of defendant at an out-of-state residential facility. In a separate decision (which is also
2 the subject of the present appeal), the ALJ denied a motion for reconsideration based
3 on an issue of waiver.

4 Upon review of the ALJ's decision, the ALJ's Order Denying Motion for
5 Reconsideration, the pleadings, and the administrative record, the Court **AFFIRMS** the
6 ALJ's decisions.

7 **II. FACTUAL BACKGROUND**

8 At the time of the administrative hearing, Sullivan was seventeen years old and
9 resided with his mother, Monica Valentine ("Valentine"), within the RSUD in Riverside
10 County, California.¹ His family was considered low-income. Sullivan is deaf, has
11 impaired vision, and an orthopedic condition affecting the hip known as legg-perthes.
12 His only effective mode of communication is American Sign Language ("ASL"). He has
13 also been assessed as having borderline cognitive ability and a long history of social
14 and behavioral difficulties. As a result, Sullivan was eligible for special education and
15 related services and mental health services under the category of emotional disturbance
16 ("ED"), with a secondary disability of deafness.

17 Sullivan requires an education environment in which he has an opportunity to
18 interact with peers and adults who are fluent in ASL. Between January, 2005, and
19 September, 2006, he was a resident of the Monrovia Unified School District ("MUSD")
20 and attended the California School for the Deaf, Riverside ("CSDR"). CSDR did not
21 specialize in therapeutic behavior interventions. Sullivan was removed from CSDR for
22 suicide prevention because he physically harmed himself and was placed in home-
23 hospital instruction. Between June, 2005, and October, 2005, Sullivan was placed on
24 several 72-hour psychiatric holds.

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26
27 ¹ As part of the Request for Due Process Hearing, the Parties filed a joint
28 Stipulated Statement of Undisputed Facts and Evidence to the ALJ. A.R. 731 - 738.
The facts presented here are contained in the Parties' joint stipulation, which was relied
upon by the ALJ. See A.R. 781 - 784.

1 On September 14, 2006, MUSD and the Los Angeles County Department of
2 Mental Health ("LACDMH") held a meeting and recommended residential placement for
3 Sullivan. It was recommended that Sullivan be placed at National Deaf Academy
4 ("NDA") because of his need for a higher level of care to address his continuing
5 aggressive and self-injurious behaviors and to interact with deaf peers and adults
6 without the use of an interpreter. On August 5, 2006, Sullivan was accepted by NDA,
7 but was instead placed at Willow Creek/North Valley Non-public School. The placement
8 failed in March, 2007; MUSD and LACDMH indicated they were unable to find a
9 residential placement for Sullivan that could meet his mental health and communication
10 needs. As explained more fully below, NDA was not considered an option for MUSD
11 and LACDMH because of NDA's for-profit status.

12 In April, 2007, defendants moved into Riverside County and RUSD. On April 20,
13 2007, RUSD convened an Individual Education Plan ("IEP") meeting. The IEP team
14 changed Sullivan's primary disability classification from ED to deafness with social-
15 emotional overlay to enroll him in CSDR for a 60-day assessment period, which was the
16 only appropriate placement. CSDR terminated Sullivan's placement for poor behavior
17 within the 60-day assessment period.

18 On May 23, 2007, RUSD convened another IEP meeting to discuss Sullivan's
19 termination from CSDR. It was recommended that Sullivan be placed at Oak Grove
20 Institute/Jack Weaver School ("Oak Grove") and have support from a deaf interpreter.
21 On August 3, 2007, RUSD convened another IEP meeting to develop an annual IEP.
22 The IEP team proposed placement at Oak Grove with a signing interpreter, deaf and
23 hard-of-hearing consultation, and support services provided by RUSD and DMH.
24 Sullivan, his mother, and his attorney agreed to the proposed IEP, but disagreed that
25 the offer constituted a FAPE due to Oak Grove's lack of staff, teachers, and peers who
26 used ASL.

27 On October 9, 2007, RUSD convened another IEP and it was determined that
28 Sullivan's primary special education eligibility category should be changed back to ED

1 with deafness as a secondary condition. It was recommended by the IEP team that
2 Sullivan be placed in a residential treatment program and, until a proper residential
3 placement was found, he would remain at Oak Grove. DMH made inquiries to find a
4 proper non-profit residential placement for Sullivan, including schools in California,
5 Florida, Wyoming, Ohio, and Illinois, but was unsuccessful.

6 Sullivan, his mother, and his attorney all identified NDA as an appropriate
7 placement for Sullivan. NDA is a residential treatment center for the treatment of deaf
8 and hard-of-hearing children with the staff and facilities to accommodate Sullivan's
9 emotional and physical disability needs. NDA also accepts students with borderline
10 cognitive abilities. Also, nearly all of the service providers, including teachers,
11 therapists and psychiatrists are fluent in ASL. The Charter School at NDA is a
12 California certified non-public school and is operated on a for-profit basis. All parties
13 agree that NDA is an appropriate placement and would provide Sullivan with a FAPE.

14 Notwithstanding this agreement, the RSUD and DMH took the position that they
15 could not place Sullivan at NDA because it is operated by a for-profit entity. Sullivan
16 filed for a due process hearing to resolve the issue.

17 III. THE ALJ'S DECISION

18 As noted previously, the matter was submitted to the ALJ by stipulation. The
19 parties stipulated to a single issue, which was articulated as:

20 Must RUSD and RCDMH place Anthony at the
21 National Deaf Academy or other appropriate therapeutic
22 residential placement that can meet both his mental health
23 and communication needs, regardless of whether the facility
24 is run on a for-profit basis, in the absence of existing
25 alternatives?

26 A.R. 724. In articulating this issue, the parties noted their agreement on a number of
27 key points: (1) Sullivan's current placement at Oak Grove did not constitute a FAPE;
28 (2) Sullivan required therapeutic residential placement; (3) despite a nationwide search,

1 no appropriate non-for-profit residential placement could be found; and (4) placement at
2 NDA, would constitute a FAPE.

3 On January 15, 2008, the ALJ issued her decision in favor of Sullivan. A.R. 788.
4 She found that Sullivan had been denied a FAPE since May 23, 2007, when he was
5 removed from CSDR, that his need for therapeutic residential placement with ASL
6 service continued, and that he was "entitled to compensatory education consisting of
7 immediate placement at the National Deaf Academy." A.R. 788.

8 On January 28, 2008, RUSD submitted a Motion for Reconsideration of Decision
9 and Order. A.R. 791-97. The motion challenged the propriety of the remedy ordered by
10 the ALJ – immediate placement at NDA, in light of the fact that such a remedy was not
11 sought by the parties' stipulation, and in light of the fact that Sullivan had agreed to
12 waive all claims for a compensatory education for the period April, 2007, through
13 October 9, 2007. The existence of a waiver was not disputed by Sullivan. The ALJ, on
14 February 20, 2008, denied the Motion for Reconsideration. A.R. 818-20.

15 In response, Plaintiffs filed the instant action.

16 IV. THE IDEA

17 THE IDEA guarantees all disabled children a FAPE "that emphasizes special
18 education and related services designed to meet their unique needs and prepare them
19 for further education, employment, and independent living." 20 U.S.C. § 1400(d)(1)(A).
20 A FAPE is defined as special education and related services that: (1) are available to
21 the student at public expense, under public supervision and direction, and without
22 charge; (2) meet the state education standards; (3) include an appropriate education in
23 the state involved; and (4) conform with the student's IEP. 20 U.S.C. § 1401(9).

24 "Special education" is defined as instruction specially designed to meet a
25 disabled student's unique needs, at no cost to parents, whether it occurs in the
26 classroom, at home, or in other settings. 20 U.S.C. § 1401(29); Cal. Educ. Code
27 § 56031. "Related services" include developmental, corrective, and supportive services,
28 such as speech-language services, needed to assist a disabled child in benefitting from

1 education, and to help identify disabling conditions. 20 U.S.C. § 1401(26); Cal. Educ.
2 Code § 56363.

3 The primary tool for achieving the goal of providing a FAPE to a disabled student
4 is the IEP. *Van Duyn ex rel. Van Duyn v. Baker School Dist.* 5J, 502 F.3d 811, 818 (9th
5 Cir. 2007). An IEP is a written statement containing the details of the individualized
6 education program for a specific child, which is crafted by a team that includes the
7 child's parents and teacher, a representative of the local education agency, and,
8 whenever appropriate, the child. 20 U.S.C. § 1401(14), § 1414(d)(1)(B). An IEP must
9 contain: (1) Information regarding the child's present levels of performance; (2) a
10 statement of measurable annual goals; (3) a statement of the special educational and
11 related services to be provided to the child; (4) an explanation of the extent to which the
12 child will not participate with non-disabled children in the regular class; and (5) objective
13 criteria for measuring the child's progress. 20 U.S.C. § 1414(d)(1)(A).

14 The IDEA contains numerous procedural safeguards to ensure that the parents
15 or guardians of a disabled student be kept informed and involved in decisions regarding
16 the child's education. 20 U.S.C. § 1415. As part of this procedural scheme, the local
17 educational agency must give parents an opportunity to present complaints regarding
18 the provision of a FAPE to the child. 20 U.S.C. § 1415(b)(6). Upon the presentation of
19 such a complaint, the parent or guardian is entitled to an impartial due process
20 administrative hearing conducted by the state or local educational agency. 20 U.S.C.
21 § 1415(f).

22 V. JUDICIAL REVIEW OF ADMINISTRATIVE DECISIONS

23 The IDEA provides that a party aggrieved by the findings and decisions made in
24 a state administrative due process hearing has the right to bring an original civil action
25 in federal district court. 20 U.S.C. § 1415(i)(2). The party bringing the administrative
26 challenge bears the burden of proof in the administrative proceeding. *Schaffer ex rel.*
27 *Schaffer v. Weast*, 546 U.S. 49, 62 (2005). Similarly, the party challenging the
28 administrative decision bears the burden of proof in the district court. *Hood v. Encinitas*

1 *Union Sch. Dist.*, 486 F.3d 1099, 1103 (9th Cir. 2007).

2 The standard for district court review of an administrative decision under the
3 IDEA is set forth in 20 U.S.C. § 1415(i)(2), which provides as follows:

4 In any action brought under this paragraph the court --
5 (i) shall receive the records of the administrative
6 proceedings; (ii) shall hear additional evidence at the request
7 of a party; and (iii) basing its decision on the preponderance
8 of the evidence, shall grant such relief as the court
9 determines is appropriate.

10 20 U.S.C. § 1415(i)(2)(C). Thus, judicial review of IDEA cases is quite different from
11 review of most other agency actions, in which the record is limited and review is highly
12 deferential. *Ojai Unified Sch. Dist. v. Jackson*, 4 F.3d 1467, 1471 (9th Cir. 1993).

13 Courts give "due weight" to administrative proceedings, *Board of Educ. of the Hendrick*
14 *Hudson Central Sch. Dist. Westchester County v. Rowley*, 458 U.S. 176, 206 (1982),
15 but how much weight is "due" is a question left to the court's discretion, *Gregory K. v.*
16 *Longview Sch. Dist.*, 811 F.2d 1307, 1311 (9th Cir. 1987). In exercising this discretion,
17 the Court considers the thoroughness of the hearing officer's findings and award more
18 deference where the hearing officer's findings are "thorough and careful." *Capistrano*
19 *Unified Sch. Dist. v. Wartenberg*, 59 F.3d 884, 891 (9th Cir. 1995).

20 A hearing officer's findings are treated as "thorough and careful when the officer
21 participates in the questioning of witnesses and writes a decision contain[ing] a
22 complete factual background as well as a discrete analysis supporting the ultimate
23 conclusions." *R.B., ex rel. F.B. v. Napa Valley Unified Sch. Dist.*, 496 F.3d 932, 942 (9th
24 Cir. 2007) (internal quotation marks and citations omitted).²

25
26 ² Plaintiffs contend that the Court, when reviewing purely legal questions such as
27 those at issue here, must subject the ALJ's decision to *de novo* review. Plaintiffs'
28 contention is not without support. See *Paul K. ex rel. Joshua K. v. Hawaii*, 567
F.Supp.2d 1231, 1234 (D. Hawai'i 2008) (setting forth standard of review in IDEA case
by stating, *inter alia*, "[s]tatutory interpretation is reviewed de novo," and collecting

1 **VI. CHALLENGES TO THE ALJ DECISIONS**

2 Plaintiffs oppose the decisions of the ALJ on three grounds: (1) First, they argue
3 that the remedy the ALJ ordered was beyond the scope of the order to which the parties
4 stipulated, and thus, should not have been decided by the ALJ; (2) next, California law
5 is an absolute bar to a placement at NDA; and (3) finally, that Sullivan waived his rights
6 to a compensatory education for the time period April, 2007, through October 9, 2007.

7 In the end, the Court rejects each of these challenges.

8 **A. The Remedy Ordered by the ALJ was Proper**

9 Plaintiffs assert that the ALJ overstepped her authority by awarding
10 compensatory education to Sullivan. Essentially, plaintiffs contend that the ALJ was
11 limited by the stipulation before her to the issue of the duty of plaintiffs regarding
12 placement of Sullivan in light of certain California Administrative Code provisions.

13 The ALJ rejected plaintiffs' argument in her February 20, 2008, Order Denying
14 Motion for Reconsideration. The ALJ found that "[n]one of the documents filed in this
15 matter indicate that Student's Request for Due Process Hearing had been restructured
16 as a request of Declaratory Relief only." A.R. 820. The Court agrees with the ALJ's
17 assessment.

18 When the ALJ ordered that Sullivan be placed at NDA, she ordered the natural
19 remedy that flowed from her determination that Sullivan was denied a FAPE and that
20 the California Administrative Code provisions relied upon by plaintiffs did not excuse
21 them from providing one. All the parties agreed that Sullivan was not receiving a FAPE,
22 and they agreed that NDA was the only facility, despite a nationwide search that could
23 provide him with a FAPE. Upon the presentation of the issue to the ALJ, the parties
24 should have understood that any affirmative response by the ALJ would result in an
25 order setting forth an appropriate remedy.

26 The suggestion that the ALJ was limited to sending the issue back to the parties

27 _____
28 cases). Nevertheless, because the Court's own analysis would lead it to the same
conclusion as that reached by the ALJ, the Court need not resolve this issue.

1 for another IEP process is absurd in light of the agreement as to the only appropriate
2 placement. Sullivan would be forced to litigate an issue that he was entitled to a
3 particular placement when an ALJ had already effectively determined the issue. Such
4 an outcome is horribly inefficient; it would be a waste of administrative and judicial
5 resources, and would result in a wholly avoidable delay in the only appropriate
6 placement identified for Sullivan.

7 Accordingly, this Court finds that the issue of a compensatory education was
8 presented to the ALJ and she did not overstep her authority by granting Sullivan a
9 remedy after finding that he had been denied a FAPE.

10 **B. California Law Does Not Prohibit Placement at NDA and Does Not Excuse**
11 **Compliance with the IDEA**

12 The heart of the present appeal is represented by plaintiffs' argument regarding
13 funding for Sullivan's placement at NDA. As alluded to earlier, the difficulty in placing
14 Sullivan at that facility is in its for-profit status.

15 The Court begins with Cal. Adm. Code tit. 2, § 60100(h), relating to "Interagency
16 Responsibility for Providing Services to Pupils with Disabilities" in the area of
17 "Residential Placement" such as that considered for Sullivan:

18 (h) Residential placements for a pupil with a disability who is
19 seriously emotionally disturbed may be made out of
20 California only when no in-state facility can meet the pupil's
21 needs and only when the requirements of subsections (d)
22 and (e) have been met. Out-of-state placements shall be
23 made only in residential programs that meet the
24 requirements of Welfare and Institutions Code Sections
25 11460(c)(2) through (c)(3). For educational purposes, the
26 pupil shall receive services from a privately operated
27 non-medical, non-detention school certified by the California
28 Department of Education.

1 Id. This provision has many requirements, but no party contends that the student is not
2 “seriously emotionally disturbed,” that there is an “instate-facility [that] can meet [his]
3 needs,” that the requirements of subsection (d) (relating to documentation for residential
4 placement) have not been met, or that the requirements of subsection (e) (relating to a
5 mental health service case manager assessment) have not been met. Rather, plaintiffs
6 focus on the requirement that out-of-state placements meet the requirements of Cal.
7 Welfare & Inst. Code § 11460(c)(2)-(3) have not been met.

8 In relevant part, § 11460(c)(2)-(3) provides that “(3) State reimbursement for an
9 AFDC-FC rate paid on or after January 1, 1993, shall only be paid to a group home
10 organized and operated on a nonprofit basis.”³

11 Reading these statutes together, the Court, like the ALJ, can discern no outright
12 prohibition under California law on Sullivan’s placement at NDA. To be sure,
13 § 60100(h) speaks in terms of conditions precedent to out-of-state placements when it
14 provides as follows: “Out-of-state placements *shall be made only* in residential
15 programs that meet the requirements of Welfare and Institutions Code Sections
16 11460(c)(2) through (c)(3),” but the subsection upon which plaintiffs focus, subsection
17 (c)(3) does not set forth a requirement so much as a limitation upon reimbursement for
18 the costs of such placement.⁴ This is especially so when viewed in light of § 60000,
19 which provides that the intent of the chapter of the Administrative Code in which
20 § 60100 appears “is to assure conformity with the federal Individuals with Disabilities
21 Education Act or IDEA.” That section provides guidance on interpretation of the Code
22 provisions that follow it:

23 _____
24 ³ The parties cite to subsection (c)(2) and (c)(3), but the “for-profit” non-
25 placement provision is found only in subsection (c)(3).

26 ⁴ This incorporation of the requirements makes much more sense as to
27 subsection (c)(2), which sets forth certain conditions relating to the operations of the
28 facility. Plaintiffs do not argue that these requirements have not been met; their
argument is that they are prohibited from placing Sullivan at NDA because of its for-
profit status.

1 Thus, provisions of this chapter shall be construed as
2 supplemental to, and in the context of, federal and state laws
3 and regulations relating to interagency responsibilities for
4 providing services to pupils with disabilities.

5 *Id.*

6 Plaintiffs reliance on *Yucaipa-Calimesa Joint Unified School District and San*
7 *Bernardino County Department of Behavioral Health*, OAH Case No. N2005070683
8 (2005), does not compel a contrary result. The ALJ properly distinguished that case on
9 the grounds that other acceptable placements were identified for the student. No such
10 alternative placements have been identified for Sullivan, and therefore the cited case is
11 unpersuasive.

12 What was apparent to the ALJ, and what is apparent to this Court, is that
13 whatever funding limitations plaintiffs may face, the duty under the IDEA to provide to
14 Sullivan a FAPE is clear and cannot be diminished. Equally clear from the record
15 before the ALJ, and before this Court, is that Sullivan can receive a FAPE through
16 placement at NDA, and that no other alternative placement has been identified.

17 **C. Sullivan's Waiver Was Limited and Does not Affect the ALJ-Ordered**
18 **Remedy**

19 The waiver was limited to the time period of April, 2007, through October 9, 2007.
20 Rights for the time period thereafter are expressly reserved. DMH Compl., Exh. D.
21 ("Parent does not waive any claims of any kind from October 9, 2007 forward.")

22 The compensatory education ordered by the ALJ only applied to the period from
23 the date of her decision, January 15, 2008, through the 2008- 2009 school year, several
24 months after the Defendants' waiver expired. A.R. 788. The ALJ's order of
25 compensatory education was a prospective equitable remedy that did not require RUSD
26 and DMH to provide any compensation for the time period before January 15, 2008.

27
28 **VI. CONCLUSION**

1 Accordingly, and for the foregoing reasons, the Court **AFFIRMS** the ALJ's
2 January 15, 2008, decision requiring RUSD and DMH provide Sullivan with a
3 compensatory education consisting of immediate placement at the National Deaf
4 Academy. The Court also **AFFIRMS** ALJ's February 20, 2008 Order Denying Motion for
5 Reconsideration.

6 Counsel for defendants shall lodge a proposed judgment that complies with Fed.
7 R. Civ. P. 54(a) within five days of the entry of this Order. A motion for attorney fees
8 may be filed in accordance with the schedule previously set by the Court.

9 **IT IS SO ORDERED.**

10 DATE: July 20, 2009



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12 STEPHEN G. LARSON
13 UNITED STATES DISTRICT JUDGE
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Tab 12

MANAGEMENT AGREEMENT

This MANAGEMENT AGREEMENT (the "Agreement") is made and entered into as of the 1st day of January, 2003, by and between Aspen Solutions Inc., a California nonprofit mutual benefit company ("ASI"), and Youth Care of Utah, Inc., a Delaware corporation ("Youth"). ASI and Youth are sometimes referred to herein collectively as the "Parties" and individually as a "Party."

RECITALS

WHEREAS, ASI is engaged in the business of providing certain management and administrative services to providers of health care services;

WHEREAS, Youth is a Delaware corporation whose employees provide therapeutic services in the state of Utah;

WHEREAS, Youth desires to retain ASI to manage and administer certain aspects of Youth's business relating to the therapeutic services provided by Youth; and

WHEREAS, Youth and ASI recognize that Youth has sole and complete responsibility for the provision of professional services.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties hereto agree as follows:

ARTICLE 1

DUTIES OF ASI

Notwithstanding anything to the contrary in this Agreement, the parties hereto understand and agree that Youth has the sole responsibility for provision of therapeutic services. ASI does not itself provide therapeutic services to the clients of Youth and shall not exercise control over or interfere in any way with the exercise of professional judgment by Youth or Youth's employees in connection with Youth's therapeutic services. The parties agree that the benefits hereunder to Youth do not require, are not payment for, and are not in any way contingent upon the referral or any other arrangement for the provision of any item or service offered by ASI or any of its affiliates or any other providers which may be managed by ASI. The following non-therapeutic services shall be performed by ASI on behalf of Youth:

1.1 General Management and Administration.

1.1.1 ASI shall be responsible for performing, supervising or paying for all business services, resources and other aspects of Youth's business as addressed in greater detail in the remainder of this Article 1.

1.1.2 Providing administrative coordination and support to Youth.

1.2 Financial Services. ASI's responsibilities under this Agreement shall include the following:

1.2.1 Establishing bookkeeping and accounting systems, including the maintenance and supervision of all of Youth's business records and the preparation, distribution and recordation of all bills and statements for services rendered by Youth, and the billing and completion of reports and forms required by insurance companies, governmental agencies and other third party payors, as applicable.

1.2.2 Providing Youth access to any and all books and records maintained by ASI on behalf of Youth upon five (5) business days notice in writing by Youth to ASI.

1.2.3 Preparing and furnishing cost reports as necessary.

1.3 Personnel Services: Payroll and Other Services. ASI's responsibilities under this Agreement shall include:

1.3.1 Recruiting, hiring, compensating, training and discharging all personnel necessary for the performance of the terms of this Agreement who shall be employees of ASI. Supervision of all Youth staff with regards to therapeutic activities shall be the right and responsibility of Youth's director.

ARTICLE 2

COMPENSATION

Youth shall pay to ASI those amounts set forth on Exhibit A hereto for services rendered by ASI hereunder. Said compensation shall be paid monthly and shall be due and payable on the fifteenth (15th) day of the month following the month in which service is provided.

ARTICLE 3

TERM AND TERMINATION

3.1 Term. The initial term of this Agreement shall commence on the date first written above and shall continue in effect until December 31, 2023 unless sooner terminated pursuant to the provisions of this Agreement. Thereafter, this Agreement shall automatically renew for successive periods of one (1) year each, unless terminated as provided herein.

3.2 Termination With Cause by Either Party. In the event of a material breach of this Agreement by either party, the other party shall provide written notice to the defaulting party (the "Default Notice") specifying the nature of the breach. In the event such breach is not cured to the reasonable satisfaction of the non-defaulting party within thirty (30) days after service of the Default Notice, this Agreement shall automatically terminate at the election of the non-defaulting party upon the giving of a written notice of termination to the defaulting party not later than sixty (60) days after service of the Default Notice; provided, however, that if the nature of the breach is such that it cannot be reasonably cured within thirty (30) days, this Agreement cannot be terminated by the non-defaulting party so long as the defaulting party is taking or has taken

reasonable steps within said thirty (30) day period to cure the breach and such steps are being diligently pursued.

3.3 Termination for Insolvency. Either party may terminate this Agreement immediately and without notice in the event that an application is made by the other party for the appointment of a receiver, trustee or custodian for any of the other party's assets; a petition under any section or chapter of the federal Bankruptcy Code or any similar law or regulation is filed by or against the other party and is not dismissed within sixty (60) days; the other party makes an assignment for the benefit of his creditors; or the other party becomes insolvent or fails generally to pay his debts as they become due.

3.4 Termination for Jeopardizing Client Care. Either party may terminate this Agreement immediately if: (a) the action or inaction of the other party constitutes an immediate and serious threat to the therapeutic services being provided; (b) the non-breaching party has given the other party prior written notice specifying such action or inaction; and (c) the breaching party has not within twenty-four (24) hours after being given such notice corrected the action or inaction. Notwithstanding anything herein to the contrary, during the 24-hour period described in the preceding sentence, Youth shall be entitled to take such other actions as are reasonably necessary to ensure the safety of the clients it provides therapeutic services for.

3.5 Termination for Change in Law. Subject to Section 3.6, either party may terminate this Agreement immediately if any change in the law or regulations governing the parties renders performance of this Agreement unenforceable or illegal by its terms.

3.6 Reformation of Agreement. If any provision in the Agreement is in violation of any law or regulation, the parties will amend, to the extent possible, the Agreement as necessary to correct such offending term or terms, while preserving the underlying economic and financial arrangements between the parties and without substantial economic detriment to either party.

3.7 Books and Records. Within fifteen (15) days of termination under this Article 3, ASI shall return to Youth all books, records and intangible property it has in its possession relating to Youth and its operations.

ARTICLE 4

COVENANTS OF ASI

4.1 Corporate Status. ASI covenants and agrees that it is presently, and shall remain throughout the initial term of this agreement and each renewal term thereof, a California nonprofit mutual benefit corporation in good standing with the California Secretary of State.

4.2 Insurance. ASI covenants and agrees that it shall maintain in effect during the initial term and each renewal term thereof, adequate comprehensive general liability and other insurance coverage to cover any loss, liability or damage which may result out of the activities of ASI or its officers, agents or employees. Youth shall be entitled to receive not less than thirty (30) calendar days' prior written notice of any reduction or cancellation in such insurance coverage by ASI. Evidence of the policies described above shall be provided to Youth upon request.

ARTICLE 5

COVENANTS OF YOUTH

5.1 Corporate Status. Youth covenants and agrees that:

5.1.1 it is presently and shall remain throughout the initial term of this Agreement and each renewal term thereof, a corporation or limited liability company in good standing in the state of its incorporation or organization, as the case may be; and

5.1.2 it shall retain reasonable control over the manner in which it furnishes services.

5.2 Insurance.

5.2.1 Youth covenants and agrees that it shall obtain and maintain in effect throughout the initial term of this Agreement and each renewal term thereof and pay the cost, of such policies of comprehensive general liability insurance and professional liability insurance with coverage in the minimum amount of Three Million Dollars (\$3,000,000) per occurrence and Three Million Dollars (\$3,000,000) in the annual aggregate to insure it and its employees against liability for damages directly or indirectly related to the performance of any services provided, the use of any property and facilities provided by Youth and activities performed by Youth. ASI shall be entitled to receive not less than thirty (30) days written notice of any reduction or cancellation of such insurance coverage by Youth. Evidence of the insurance policies described above shall be provided to ASI upon request.

5.2.2 ASI covenants and agrees that it shall obtain and maintain in effect policies of workers' compensation and other insurance to the extent required by applicable law.

5.3 Cooperation. Youth covenants and agrees that it shall provide ASI access to all records and information and the use of such facilities as is required by ASI to perform its services hereunder subject to all applicable confidentiality laws. Youth further covenants that it shall grant ASI such authority as may be necessary or desirable to ensure ASI's ability to perform its duties hereunder.

5.4 Compliance With Law. Youth represents and warrants that it has not within the past three (3) years been cited for a material violation of any federal, state, local or other statute, law or regulation, and that Youth employees are duly licensed to provide therapeutic services to the extent required by applicable law.

ARTICLE 6

RECORDS

6.1 Business Records. All business records, papers and documents of Youth are the property of Youth.

ARTICLE 7

ARBITRATION

In the event of any dispute arising out of or relating to this Agreement, any Party will have the right to demand that such dispute be resolved by binding arbitration, pursuant to California Code of Civil Procedure Section 1280 et seq. (the "Arbitration Statute"), including Section 1283.05 regarding discovery. Such Party will serve a written notice to arbitrate pursuant to this Article 7 on the other Party to the dispute. An arbitration hearing will be held before a single arbitrator jointly selected by the Parties. The arbitrator will be selected from a list of retired superior court judges from the Counties of Los Angeles or Orange. If the parties fail within ten (10) calendar days to agree on the appointment of a single arbitrator, then each party will appoint one arbitrator (who need not be a retired superior court judge) within three (3) days thereafter and the two arbitrators will select a third arbitrator (who must be a retired superior court judge) who will serve as the sole arbitrator of the dispute. The arbitrator will decide the dispute in accordance with the procedure set forth in the Arbitration Statute within fifteen (15) days following the conclusion of the hearing. The prevailing party in such action will be entitled to recover all reasonable incurred costs and expenses accorded by the arbitrator, including reasonable attorneys fees and legal costs, incurred by such party in connection with such action. The decision of the arbitrator will be final and binding on both parties for any and all purposes. Judgment upon any award rendered by the arbitrator may be entered in any court of competent jurisdiction. Notwithstanding any other provision of this Agreement, in the case of a dispute involving a claim for equitable relief, a court with equitable jurisdiction may grant temporary restraining orders and preliminary injunctions to preserve the status quo existing before the events that are the subject of the dispute. Any final equitable or other relief will be ordered in the arbitration proceeding.

ARTICLE 8

INDEMNIFICATION

8.1 By ASI. ASI shall indemnify, defend, protect and hold Youth and its officers, directors, employees, agents and representatives ("Youth Released Parties") harmless from and against any and all liabilities, losses, damages, claims, causes of action, costs and expenses, including reasonable attorney's fees, (hereinafter each referred to as a "Claim") caused by reason of any injury to person or property resulting from the acts or omissions of ASI or ASI's employees or agents which occur in the course of performance of its duties under this Agreement or by reason of ASI's breach hereof, provided, however, that ASI shall have no responsibility to indemnify, protect and hold any Youth Released Parties harmless from and against any Claim occurring through the negligence of Youth or any of Youth's employees or agents and provided further that such indemnification obligation shall not apply with respect to any Claim covered by either Party's existing insurance policies.

8.2 By Youth. Youth shall indemnify, defend, protect and hold ASI and its officers, directors, employees, agents and representatives ("ASI Released Parties") harmless from and against any and all liabilities, losses, damages, claims, causes of action, costs and expenses, including reasonable attorney's fees, (hereinafter each referred to as a "Claim") caused by reason

of any injury to person or property resulting from the acts or omissions of Youth or Youth's employees or agents which occur in the course of performance of its duties under this Agreement or by reason of Youth's breach hereof, provided, however, that Youth shall have no responsibility to indemnify, protect and hold any ASI Released Parties harmless from and against any Claim occurring through the negligence of ASI or any of ASI's employees or agents.

ARTICLE 9

INDEPENDENT CONTRACTOR

In the performance of the work, duties and obligations described hereunder, it is mutually understood and agreed that each party is at all times acting and performing as an independent contractor with respect to the other and that no relationship of partnership, joint venture or employment is created by this Agreement. Neither party, nor any other person performing services on behalf of either party pursuant to this Agreement, shall have any right or claim against the other party under this Agreement for social security benefits, workers' compensation benefits, disability benefits, unemployment insurance benefits, health benefits, vacation pay, sick leave or any other employee benefits of any kind. Each party agrees to be responsible for, to pay, and to hold the other party harmless from and indemnify the other party against, all such compensation, social security, workers, compensation, disability, unemployment and other benefits, and tax withholding and similar obligations related to those persons employed or engaged by such party.

ARTICLE 10

NOTICES

All notices required to be given hereunder shall be in writing and shall be deemed delivered if personally delivered or dispatched by certified or registered mail, return receipt requested, postage prepaid, addressed to the parties as follows:

Youth: Youth Care of Utah, Inc.
17777 Center Court Drive, Suite 300
Cerritos, California 90703
Attn: Susan Burden
Facsimile No. 562-467-5511

ASI: Aspen Solutions, Inc.
17777 Center Court Drive, Suite 300
Cerritos, California 90703
Attn: Ginny Romig
Facsimile No. 562-467-5574

with a copy to:

Nathaniel Weiner, Esq.

Aspen Education Group, Inc.
17777 Center Court Drive, Suite 300
Cerritos, California 90703
Facsimile No. 562-402-7036

Notice shall be deemed given on the date it is deposited in the mail in accordance with the foregoing. Any party may change the address to which to send notices by notifying the other party of such change of address in writing in accordance with the foregoing.

ARTICLE 11

MISCELLANEOUS

11.1 Severability. Any terms or provisions of this Agreement which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other term or provisions herein and such remaining terms and provisions shall remain in full force and effect.

11.2 Attorneys' Fees. In the event that either party to this Agreement shall bring any action at law or in equity to enforce any term, covenant or condition of this Agreement, the prevailing party in such action shall be entitled to recover all costs and expenses, including reasonable attorney's fees, incurred by such party in connection with such action.

11.3 Governing Law. The existence, validity and construction of this Agreement shall be governed by laws of the State of California.

11.4 Assignment. Neither party shall have the right to assign this Agreement without the prior written consent of the other party, provided that any assignment to an entity under common control shall not require such consent. Any attempted assignment of this Agreement in contravention of this Section 11.4 shall be null and void and without any effect whatsoever.

11.5 Successors and Assigns. Subject to the provisions of this Agreement regarding assignment, the terms, covenants and conditions contained herein shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

11.6 Waiver. The waiver by either party to this Agreement of any one or more defaults, if any, on the part of the other, shall not be construed to operate as a waiver of any other or future defaults, under the same or different terms, conditions or covenants contained in this Agreement.

11.7 Caption and Headings. The captions and headings throughout this Agreement are for convenience of reference only and shall in no way be held or deemed to be a part of or affect the interpretation of this Agreement.

11.8 No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended or shall be construed to confer upon any person, firm or corporation other than the parties hereto and their respective successors or assigns, any remedy or claim under or by reason of this Agreement or any term, covenant or condition hereof, as third party beneficiaries or

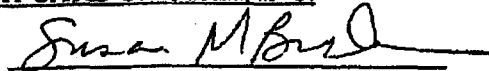
otherwise, and all of the terms, covenants and conditions hereof shall be for the sole and exclusive benefit of the parties hereto and their successors and assigns.

11.9 Entire Agreement; Amendments. This Agreement states the entire contract between the parties in respect to the subject matter of this Agreement and supersedes any oral or written proposals, statements, discussions, negotiations or other agreements before or contemporaneous to this Agreement. The parties acknowledge that they have not been induced to enter into this Agreement by any oral or written representations or statements not expressly contained in this Agreement. This Agreement may be modified only by mutual agreement of the parties provided that, before any modification shall be operative or valid, it be reduced to writing and signed by both parties.

IN WITNESS WHEREOF, the parties hereto have executed this Management Agreement on that day and year set forth hereinabove.

YOUTH CARE OF UTAH, INC.

By:


Susan Burden
Vice President

ASPEN SOLUTIONS, INC.

By:

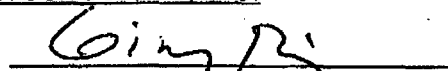

Ginny Romig
President

EXHIBIT A

MANAGEMENT FEE PROVISIONS

In return for services as provided for hereunder by Aspen Solutions, Inc., Youth Care of Utah, Inc. shall compensate Aspen Solutions, Inc. an amount equal to 2% of the monthly gross revenue billed by ASI on behalf of Youth, payable in arrears on a monthly basis.

Tab 13

file

**AGREEMENT TO PROVIDE
MENTAL HEALTH SERVICES**

This Agreement is executed this 1st day of July, 1998, by and between Mental Health System, Inc. ("MHS"), a California non-profit corporation and Charter Provo Canyon School, LLC ("Provo Canyon") a Delaware for-profit limited liability company.

RECITALS

A. MHS is certified as a Short-Doyle/Medi-Cal Mental Health Rehabilitation Services Provider, which desires to contract with Provo Canyon to provide care to children and adolescents who have been authorized by certain County Mental Health Departments of California as listed on Exhibit C to receive mental health services;

B. Provo Canyon has been approved by the certain County Mental Health Departments for the State of California (as listed on Exhibit C) as a provider of services to children and adolescents residing in California and desires to contract with MHS for the purpose of obtaining certain funds distributed by California State Social Services and California County Mental Health Departments;

C. MHS seeks to contract with qualified professionals to assure that appropriate care is provided to those persons authorized to receive mental health services;

D. Provo Canyon has agreed to provide the services of qualified professionals to provide care to those persons authorized to receive mental health services.

IT IS THEREFORE AGREED by the parties as follows:

1. Definitions.

A. **Beneficiary** shall mean any person authorized by any of the certain County Mental Health Departments of California (as listed on Exhibit C which may be amended from time to time as appropriate and upon mutual agreement of the parties) to receive Mental Health Services and who has been properly placed at Provo Canyon for the provision of services pursuant to Chapter 26.5 of Division 7 of Title 1 of the Government Code.

B. **Mental Health Services** shall mean all inpatient mental health services.

C. **Covered Services** are those services covered by California State Social Service funding or by California County Mental Health Departments, as identified on Exhibit A.

D. **Professional** shall mean an employee, or independent contractor of Provo Canyon qualified to provide services as required pursuant to this Agreement.

2. Provision of Covered Services. Provo Canyon will employ Professionals who shall provide Covered Services to Beneficiaries in accordance to this Agreement. Provo Canyon shall insure that Covered Services are rendered in a manner which assures availability, adequacy, and continuity of care to Beneficiaries.

Provo Canyon shall operate continuously throughout the term of this Agreement with at least the minimum number and type of staff which meet applicable State and Federal requirements, and which are necessary for the provision of the services hereunder.

All Covered Services rendered hereunder shall be provided by Provo Canyon under the general supervision of MHS. MHS shall have the right to monitor the kind, quality, appropriateness, timeliness and the amount of Covered Services to be provided, however all decisions pertaining to the Mental Health Services to be rendered to any Beneficiary shall be based on the individual Beneficiary's medical needs as initially determined by Provo Canyon. Provo Canyon shall remain solely responsible for the quality of all Mental Health Services and Covered Services provided.

3. Compliance with Laws.

A. Nondiscrimination. Provo Canyon shall not discriminate in providing any services based on the sex, race, national origin, religion, or disability of any Beneficiary.

B. Child Abuse Reporting and Related Personnel Requirements. Provo Canyon, and all persons employed by Provo Canyon, shall comply with all child abuse and neglect laws of the State of Utah and shall report all known or suspected instances of child abuse to an appropriate child protective agency, as mandated by the laws of Utah. Provo Canyon shall assure that any person who enters into employment as a care custodian of minor children, or who enters into employment as a health or other practitioner, prior to commencing employment, and as a prerequisite to that employment, shall sign a statement on a form provided by MHS in accordance with the above laws to the effect that such person has knowledge of, and will comply with, these laws. For the safety and welfare of minor children, Provo Canyon shall, to the maximum extent permitted by law, ascertain arrest and conviction records for all current and prospective employees and shall not employ or continue to employ any person convicted of any crime involving any harm to minor children. Provo Canyon shall not employ or continue to employ, or shall take other appropriate action to fully protect all persons receiving services under this Agreement concerning, any person whom Provo Canyon knows, or reasonably suspects, has committed any acts which are inimical to the health, morals, welfare, or safety of minor children, or which otherwise make it inappropriate for such person to be employed by Provo Canyon.

C. Fair Labor Standards. Provo Canyon shall comply with all applicable provisions of the Federal Fair Labor Standards Act, and shall indemnify, defend and hold harmless MHS, its officers, employees and agents, from any and all liability, including, but not limited to, wages, overtime pay, liquidated damages, penalties, court costs, and attorney's fees arising under any wage and hour law, including, but not limited to the Federal Fair Labor Standards Act, for services performed by Provo Canyon's employees for which MHS may be found jointly or solely liable.

D. Licensure. Provo Canyon certifies that it is licensed as a Residential Treatment Center and that each of its Professionals is licensed and/or certified in good standing to practice his or her profession in the State of Utah. Provo Canyon, its Professionals, officers, agents, employees and subcontractors shall, throughout the term of this Agreement, maintain all necessary licenses, permits, approvals, certificates, waivers and exemptions necessary for the provision of the services hereunder and required by the laws or regulations of the United States, Utah and all other applicable government jurisdictions or agencies. Provo Canyon agrees to immediately notify MHS in the event that Provo Canyon or any Professional has his/her license placed on probation, suspended, or terminated.

4. Insurance. Without limiting Provo Canyon's indemnification as provided herein, at all times during the course of this Agreement, Provo Canyon shall maintain professional liability insurance at least in the amount of [\$2,000,000 per occurrence and \$6,000,000 annual aggregate]. Provo Canyon shall also maintain customary and reasonable workers compensation insurance and general liability insurance. The costs for said policies, deductible amounts, uncovered liabilities, defense costs, loss adjustment expenses, and settlements arising out of or from any services provided by Provo Canyon (including those services rendered by Provo Canyon Professionals or personnel who are acting under the direction or supervision of Provo Canyon) shall be payable by Provo Canyon, to the extent not covered by insurance proceeds. The costs for said policies, deductible amounts, uncovered liabilities, defense costs, loss adjustment expenses, and settlements arising out of services provided by MHS shall be payable by MHS, to the extent not covered by insurance proceeds.

Provo Canyon shall provide evidence of such coverage prior to the effective date of this Agreement and thereafter as requested by MHS. Provo Canyon's insurance shall include MHS as an additional insured with respect to the operations which Provo Canyon performs under contract with MHS. It is agreed that any insurance maintained by MHS shall apply in excess of and not contribute with, insurance provided by this policy. Provo Canyon's insurance shall not be canceled, limited or non-renewed until after thirty (30) days written notice has been given to MHS at the address first noted in this Agreement.

In the event that any Professional or Provo Canyon is sued as a result of any services provided to a Beneficiary pursuant to this Agreement, Provo Canyon shall immediately notify MHS. Provo Canyon shall notify MHS, in writing, within sixteen (16) hours of becoming aware of any occurrence of a serious nature which may expose MHS to liability. Such occurrences shall include, but not be limited to deaths, accidents or injuries to any Beneficiary, or acts of negligence of Provo Canyon or one of its Professionals.

5. Prohibition on Billing Beneficiaries. MHS shall be the sole source of payment to Provo Canyon for those Covered Services rendered to the Beneficiaries for which MHS obtains funding from California State Social Services and/or California County Mental Health Departments. Provo Canyon agrees that in no event shall it seek payment from the Beneficiaries for any Covered Service except in those instances where there is a co-payment amount or for incremental costs, as outlined in the financial policies of Provo Canyon, including medical and ancillary expenses not covered under routine room and board. If Provo Canyon desires to seek such payment from the Beneficiaries for either a co-payment or for incremental costs, Provo Canyon shall seek such payment directly without any involvement from MHS. Provo Canyon agrees that it and not MHS will have full responsibility for Provo Canyon's collection of money for such co-payments or incremental costs.

6. Total Quality Management/Utilization Review. Provo Canyon agrees to cooperate fully with MHS in assuring total quality management and utilization review in accordance with MHS's policies. This includes, but is not limited to, permitting MHS to observe the operation of Provo Canyon and to review the records of individual Beneficiaries, in accordance with all applicable laws, to assure that the care which is provided is appropriate.

7. Release of Medical Information. MHS, as applicable and appropriate, shall obtain from Beneficiaries appropriate authorization for release of medical information by MHS. Provo Canyon, as applicable and appropriate, shall obtain from Beneficiaries appropriate authorization for release of medical information by Provo Canyon.

8. Indemnification. Except as provided herein, MHS agrees to indemnify and hold Provo Canyon, its officers, directors, employees, agents, successors and assigns harmless from and against any claim, damage, loss, expense, liability, obligation, action or cause of action, including reasonable attorney's fees and reasonable costs of investigation, which Provo Canyon may sustain, pay, suffer or incur by reason of any act, omission, or negligence of MHS in performing its obligations under this Agreement.

Except as provided herein, Provo Canyon agrees to indemnify and hold MHS, its officers, directors, employees, agents, successors and assigns harmless from and against any claim, damage, loss, expense, liability, obligation, action or cause of action, including reasonable attorney's fees and reasonable costs of investigation, which MHS may sustain, pay, suffer or incur by reason of any act, omission, or negligence of Provo Canyon in performing its obligations under this Agreement.

Immediately after either Party has notice of a claim or potential claim relating either directly or indirectly to any Beneficiary as defined by this Agreement, that party shall give notice to the other of any claim or other matter with respect to which indemnity may be sought pursuant to this provision, and of the commencement of any legal proceedings or action with respect to such claim, and shall permit the other party at its own expense to assume the handling and defense of any such claim, proceeding or action. Neither party shall pay or settle any claim or action subject to the indemnity hereunder without the prior written consent of the other party.

Failure to give such notice, or the payment or settlement without written consent, shall vitiate the indemnity provided herein.

9. **Maintenance of Records.** Provo Canyon agrees to maintain standard financial and medical records for Beneficiaries for at least a five-year period (or longer if required by law or by any funding source) and to comply with all applicable provisions of federal and state law concerning confidentiality of such records. In the event a Beneficiary chooses another mental health services provider, Provo Canyon shall forward such records to the new mental health services provider upon Provo Canyon's receipt of the Beneficiary's signed consent and authorization in a timely manner at no cost to the Beneficiary or MHS.

10. **Access to Records.** This Section is included herein because of the possible application of Section 1861(v)(1)(I) of the Social Security Act to this Agreement. If such Section 1861(v)(1)(I) should not be found applicable to this Agreement under the terms of such Section and the regulations promulgated thereunder, then this Section of the Agreement will be deemed not to be a part of this Agreement and will be null and void. Until the expiration of four years after the furnishing of services under this Agreement, Provo Canyon will make available to MHS, the California County Mental Health Departments listed on Exhibit C, U.S. Department of Health and Human Services, and the Comptroller General this Agreement and all related books, documents and records. Unless required by law, Provo Canyon shall not otherwise disclose the terms and conditions of this Agreement to any third parties, except to its attorneys or accountants who shall be similarly bound.

11. **Audits.** Provo Canyon will permit MHS and those California County Mental Health Departments listed on Exhibit C, upon written request and during reasonable business hours, to have access to its business, financial and client records related to services provided to Beneficiaries related to this Agreement for the purpose of auditing Provo Canyon's bills and for conducting quality and utilization review.

12. **Required Notification.** Provo Canyon shall notify MHS within five days of any of the following occurrences:

A. Provo Canyon or a Professional's license is suspended, revoked, voluntarily relinquished, or subject to terms of probation or other restrictions;

B. Provo Canyon or a Professional is suspended from participation in the Medicare or Medicaid programs;

C. Provo Canyon's insurance as set forth in Section 5 is terminated or the limits of coverage are decreased for any reason;

D. When a Professional who is a member of the medical staff has his/her privileges limited or terminated in any manner;

E. Provo Canyon or a Professional is named in a professional liability action or any other action involving a Beneficiary or related to the services provided by Provo Canyon or its Professionals to any Beneficiary.

13. Compliance with Medicare and Medicaid/No Referrals. The parties to this Agreement expressly acknowledge that it has been and continues to be their intent to comply fully with all federal, state, and local laws, rules and regulations. It is not a purpose, nor is it a requirement, of this Agreement or of any other agreement between the parties, to offer or receive any remuneration of any patient, payment of which may be made in whole or in part by Medicare or Medicaid. Neither party shall make or receive any payment that would be prohibited under state or federal law.

14. Compensation. MHS will pay Provo Canyon in accordance with the procedures and terms set forth in Exhibit B ("Fee Schedule and Compensation Procedure").

Provo Canyon shall only be entitled to compensation from MHS for those services for which MHS has received remuneration from the California State Social Services or from a California County Mental Health Department. Provo Canyon shall not be entitled to any compensation from MHS for any services for which MHS does not receive remuneration from the California State Social Services or California County Mental Health Department. By way of illustration and not limitation, MHS may not receive remuneration, and therefore Provo Canyon shall not be entitled to any compensation for the following:

- A. services rendered prior to receipt of any required advance approval to provide services;
- B. services which are not Covered Services as set forth on Exhibit A;
- C. unnecessary services as determined by MHS in accordance with its utilization policies and procedures.

In consideration of the compensation which Provo Canyon receives under this Agreement, Provo Canyon agrees to cooperate with MHS and to amend this Agreement from time to time as MHS may reasonably request in order to comply with various contractual obligations which MHS may need to satisfy in order to receive California State Social Services or California County Mental Health Department funding.

15. **Costs.** All costs incurred in the provision of Provo Canyon's services, including but not limited to the Covered Services, shall be born by Provo Canyon and not by MHS. Any costs incurred by MHS for the purpose of providing Total Quality Management/Utilization Review as set forth in Section 6, hereto or conducting Audits as set forth in Section 11 hereto shall be born by MHS, provided however, that any additional costs incurred by MHS which result from any delay or complication for which Provo Canyon is responsible shall be born by Provo Canyon. Provo Canyon shall reimburse MHS for all such costs within thirty (30) days of receiving from MHS a written account of all such additional costs.

16. **Patient Disputes.** If there are any disputes between MHS and Provo Canyon for itself or its Professionals, the dispute must be discussed directly between Provo Canyon and MHS and at no point shall the Beneficiary become aware of or participate in these discussions.

17. **Termination.** The term of this Agreement is one (1) year and shall renew automatically unless terminated in accordance with the provisions of this Section.

A. Either party may terminate this Agreement without cause upon thirty days written notice. In the event that this Agreement is terminated, the parties will work together to bring forth the smooth transition of Beneficiaries' care which, by way of demonstration but not exclusion, may include providing interim services not to exceed sixty (60) days in accordance with all terms of this Agreement.

B. The Agreement shall be terminated automatically upon Provo Canyon having its license suspended or revoked or its ability to participate in the Medicare/Medicaid program suspended or terminated.

C. Either party may immediately terminate this Agreement with cause if the other party materially breaches this Agreement. Under such circumstances, the nonbreaching party may give notice of the breach and the Agreement shall terminate within fifteen (15) days unless the breach is corrected within such time.

18. **Effect of Termination.** Upon termination, the provisions of Section 4 ("Insurance"), Section 8 ("Indemnification"), Section 10 ("Access to Records"), Section 11 ("Audits"), Section 14 ("Compensation"), Section 15 ("Costs") and Section 16 ("Patient Disputes") shall remain in effect.

19. **Non-Exclusivity.** Nothing contained herein shall restrict the right of Provo Canyon or Professional to participate in providing services to other patients, regardless of the payor for such services.

20. **Jeopardy.** In the event the performance by either party hereto of any term, covenant, condition or provision of this Agreement should (i) jeopardize (A) the licensure of either party, any employee or any individual providing services hereunder or any provider owned and/or operated by either party or any corporate affiliate of such party (a "Covered Party"); (B) any Covered Party's participation in or reimbursement from Medicare, Medicaid or other reimbursement of payment programs; or (C) any Covered Party's full accreditation by JCAHO or any successor accrediting agency, or (ii) if the continuance of this Agreement should be in violation of any statute, ordinance, or otherwise deemed illegal or be deemed unethical by any recognized body, agency or association in the medical or behavioral health care fields (collectively, "Jeopardy Event"), then the parties shall use their best efforts to meet forthwith in an attempt to negotiate an amendment to this Agreement to remove or negate the effects of the Jeopardy Event. In the event the parties are unable to negotiate such an amendment within fifteen (15) days following written notice by either party of the Jeopardy Event, then either party may terminate this Agreement immediately upon written notice to the other party, notwithstanding any severability provisions hereto to the contrary.

21. **Notices.** All notices required under this Agreement shall be provided in writing as follows:

MHS:

Mental Health Systems, Inc.
9845 Erma Road, Suite 300
San Diego, CA 92131
Attn: Bill Eastwood

With a copy to:

Gray Cary Ware & Freidenrich
4365 Executive Drive, Suite 1600
San Diego, CA 92121-2189
Attention: T. Knox Bell, Esq.

Provo Canyon:

Charter Provo Canyon School, LLC
1350 East 750 North
Orem, UT 84097
Attn: Administration

With a copy to:

Charter Provo Canyon School, LLC
c/o Charter Behavioral Health Systems, LLC
1105 Sanctuary Parkway, Suite 400
Alpharetta, Georgia 30004
Attn: General Counsel

22. **Independent Status.** Provo Canyon is, and shall at all times be deemed to be, an independent contractor and shall be wholly responsible for the manner in which it performs the services or Covered Services required of it by the terms of this Agreement. Provo Canyon is entirely responsible for compensating its Professionals and other staff, subcontractors and consultants employed by Provo Canyon. The parties are independent of each other and this Agreement shall not be construed as creating the relationship of employer and employee, or principal and agent, between MHS and Provo Canyon or any of Provo Canyon's Professionals, other employees, agents, consultants or subcontractors. Provo Canyon assumes exclusively the responsibility for the acts of its Professionals, employees, agents, consultants and/or subcontractors as they relate to the services and Covered Services to be provided during the course and scope of their employment. Provo Canyon will remain an independent contractor responsible for all taxes and/or payments made by MHS. Nothing contained in this Agreement shall constitute or be construed to be or to create a partnership, joint venture or lease between Provo Canyon and MHS with respect to Charter Provo Canyon School or any equity interest in Charter Provo Canyon School on the part of MHS.

23. **Assignment.** This Agreement shall not be subcontracted or assigned except to an affiliate or purchaser of Provo Canyon. If MHS wishes to assign this Agreement, it must notify Provo Canyon in writing and obtain its written consent.

24. **Organization, Power and Authority.** MHS hereby represents, warrants and covenants that it is a non-profit corporation duly organized, validly existing and in good standing under the laws of the State of California, is qualified or otherwise has met all lawful requirements to transact business in the State of Utah, and has all requisite corporate power and authority to execute and deliver this Agreement, to perform its obligations under this Agreement, and this Agreement is valid, binding and enforceable in accordance with its terms.

Provo Canyon hereby represents, warrants and covenants that it is a for-profit limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, is qualified or otherwise has met all lawful requirements to transact business in the State of Utah, and has all requisite power and authority to execute and deliver this Agreement, to perform its obligations under this Agreement, and this Agreement is valid, binding and enforceable in accordance with its terms.

25. **Nonassumption of Liabilities.** By entering into and performing this Agreement, neither party shall become liable for any of the existing or future obligations, liabilities or debts of the other party.

26. **Rights Cumulative, No Waiver.** No right or remedy herein conferred upon or reserved to either of the parties hereto is intended to be exclusive of any right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder, or now or hereafter legally existing upon the occurrence of an event of default thereunder. The failure of either party hereto to insist at any time upon the strict observance or performance of any of the provisions of this Agreement or to exercise any right or remedy as provided in this Agreement shall not impair any such right or remedy or be construed as a waiver or relinquishment thereof. Every right and remedy given by this Agreement to the parties hereto may be exercised from time to time and as often as may be deemed expedient by the parties hereto, as the case may be.

27. **Captions and Headings.** The captions and headings throughout this Agreement are for convenience and reference only, and the words contained therein shall in no way be held or deemed to define, limit, describe, explain, modify, amplify or add to the interpretation, construction or meaning of any provision of or the scope or intent of this Agreement nor in any way affect the Agreement.

[Remainder of Page intentionally left blank]

28. **Counterparts.** This Agreement may be executed in counterparts, each of which will be treated as an original, but all of which together will constitute one and the same instrument.

29. **Entire Agreement.** This Agreement contains the entire agreement of the parties and can only be modified by documents signed by both the parties.

Entered into this on the date first noted above.

"MHS"
Mental Health Services, Inc.:

"Provo Canyon"
Charter Provo Canyon School, LLC:

Bill Eastwood

Title: Executive Director

Title: _____

Tab 14



9465 Farnham Street
San Diego, CA 92123
Tel 858\573-2600
Fax 858\573-2602

FAX TRANSMITTAL SHEET

COVER SHEET PLUS 13 PAGES

DATE: 6-23-07
FROM: Claudia Oyuela on behalf of Michael Hawkey
TO: Monica Rossow
FAX #: 714-834-4450

The original of this transmitted document will be sent via:

Regular Mail UPS/FedEx Other _____

X This will be the only form of delivery

Fax Disclaimer: This fax transmittal and any pages transmitted with it are confidential and are intended solely for the use of the individual to whom or entity to which they are addressed. This communication may contain material protected by the attorney-client privilege. If you are not the intended recipient or the person responsible for delivering the fax to the intended recipient, be advised that you have received this fax in error and that any use, dissemination, forwarding, printing, or copying of this fax or it's attachments is strictly prohibited. If you have received this fax in error, please notify the sender immediately.

MESSAGE: _____

Administration

MAY 07 2007

Internal Revenue Service

Date: April 28, 2007

MENTAL HEALTH SYSTEMS INC
9465 FARNHAM ST
SAN DIEGO CA 92123

Department of the Treasury
P. O. Box 2508
Cincinnati, OH 45201

Person to Contact:
T. Buckingham 29-70700
Customer Service Representative
Toll Free Telephone Number:
877-829-5500
Federal Identification Number:
95-3302967

Dear Sir or Madam:

This is in response to your request of April 26, 2007, regarding your organization's tax-exempt status.

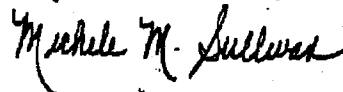
In November 1982 we issued a determination letter that recognized your organization as exempt from federal income tax. Our records indicate that your organization is currently exempt under section 501(c)(3) of the Internal Revenue Code.

Our records indicate that your organization is also classified as a public charity under section 509(a)(2) of the Internal Revenue Code

Our records indicate that contributions to your organization are deductible under section 170 of the Code, and that you are qualified to receive tax deductible bequests, devises, transfers or gifts under section 2055, 2106 or 2522 of the Internal Revenue Code.

If you have any questions, please call us at the telephone number shown in the heading of this letter.

Sincerely,



Michele M. Sullivan, Oper. Mgr.
Accounts Management Operations 1

AGREEMENT TO PROVIDE MENTAL HEALTH SERVICES

This agreement is executed this 5th day of December, 2006, by and between MHS, Inc. ("MHS"), a California non-profit corporation and UHS of Provo Canyon, Inc. ("Provo Canyon") a Delaware for-profit limited liability company.

RECITALS

- A. MHS is certified as a Short-Doyle/Medi-Cal Mental Health Rehabilitation Services Provider, which desires to contract with Provo Canyon to provide care to children and adolescents who have been authorized by certain County Mental Health Departments of California as listed on Exhibit C to receive mental health services;
- B. Provo Canyon has been approved by the certain County Mental Health Departments for the State of California (as listed on Exhibit C) as a provider of services to children and adolescents residing in California and desires to contract with MHS for the purpose of obtaining certain funds distributed by California State Social Services and California County Mental Health Departments;
- C. MHS seeks to contract with qualified professionals to assure that appropriate care is provided to those persons authorized to receive mental health services;
- D. Provo Canyon has agreed to provide the services of qualified professionals to provide care to those persons authorized to receive mental health services.

IT IS THEREFORE AGREED by the parties as follows:

1. Definitions.

- A. **Beneficiary** shall mean any person authorized by any of the certain County Mental Health Departments of California (as listed on Exhibit C which may be amended from time to time as appropriate and upon mutual agreement of the parties) to receive Mental Health Services and who has been properly placed at Provo Canyon for the provision of services pursuant to Chapter 26.5 of Division 7 of title 1 of the Government Code.
- B. **Mental Health Services** shall mean all inpatient mental health services.
- C. **Covered Services** are those services covered by California State Social Service funding or by California County Mental Health Departments, as identified on Exhibit A.
- D. **Professional** shall mean an employee, or independent contractor of Provo Canyon qualified to provide services as required pursuant to this Agreement.

2. Provision of Covered Services.

Provo Canyon will employ Professionals who shall provide Covered Services to Beneficiaries in accordance to this Agreement. Provo Canyon shall insure that Covered Services are rendered in a manner which assures availability, adequacy, and continuity if care to Beneficiaries.

Provo Canyon shall operate continuously throughout the term of this Agreement with at least the minimum number and type of staff which meet applicable State and Federal requirements, and which are necessary for the provision of the services hereunder.

All Covered Services rendered hereunder shall be provided by Provo Canyon under the general supervision of MHS. MHS shall have the right to monitor the kind, quality, appropriateness, timeliness and the amount of Covered Services to be provided, however all decisions pertaining to the Mental Health Services to be rendered to any Beneficiary shall be based on the individual Beneficiary's medical needs as initially determined by Provo Canyon. Provo Canyon shall remain solely responsible for the quality of all Mental Health Services and Covered Services provided.

3. Compliance with Laws.

A. **Nondiscrimination.** Provo Canyon shall not discriminate in providing any services based on sex, race, national origin, religion, or disability of any Beneficiary.

B. **Child Abuse Reporting and Related Personnel Requirements.** Provo Canyon, and all persons employed by Provo Canyon, shall comply with all child abuse and neglect laws of the State of Utah and shall report all known or suspected instances of child abuse to an appropriate child protective agency, as mandated by the laws of Utah. Provo Canyon shall assure that any person who enters into the employment as a care custodian of minor children, or who enters into employment as a health practitioner, prior to commencing employment, and as a prerequisite to that employment, shall sign a statement on a form provided by MHS in accordance with the above laws to the effect that such person has knowledge of, and will comply with, these laws. For the safety and welfare of minor children, Provo Canyon shall, to the maximum extent permitted by law, ascertain arrest and conviction records for all current and prospective employees and shall not employ or continue to employ any person convicted of any crime involving any harm to minor children. Provo Canyon shall not employ or continue to employ, or shall take other appropriate action to fully protect all persons receiving services under this Agreement concerning, any person whom Provo Canyon knows, or reasonably suspects, has committed any acts which are inimical to the health, morals, welfare, or safety of minor children, or which otherwise make it inappropriate for such person to be employed by Provo Canyon.

C. **Fair Labor Standards.** Provo Canyon shall comply with all applicable provisions of the Federal Fair Labor Standards Act, and shall indemnify, defend and hold harmless MHS, its officers, employees and agents, from any and all liability, including, but not limited to, wages, overtime pay, liquidated damages, penalties, court costs, and attorney" fees arising under any wage and hour law, including, but not limited to the Federal Fair Labor Standards Act, for services performed by Provo Canyon's employees for which MHS may be found jointly or solely liable.

D. **Licensure.** Provo Canyon certifies that it is licensed as a Residential Treatment Center and that each of its Professionals is licensed and/or certified in good standing to practice his or her profession in the State of Utah. Provo Canyon, its Professionals, officers, agents, employees and subcontractors shall, throughout the term of this Agreement, maintain all necessary licenses, permits, approvals, certificates, waivers and exemptions necessary for the provision of the services hereunder and required by the laws or regulations of the United States, Utah and all other applicable government jurisdictions or agencies. Provo Canyon agrees to immediately notify MHS in the event that Provo Canyon or any Professional has his/her license placed on probation, suspended, or terminated.

4. **Insurance.**

Without limiting Provo Canyon's indemnification as provided herein, at all times during the course of this Agreement, Provo Canyon shall maintain professional liability insurance at least in the amount of \$2,000,000 per occurrence and \$6,000,000 annual aggregate. Provo Canyon shall also maintain customary and reasonable workers compensation insurance and general liability insurance. The costs for said policies, deductible amounts, uncovered liabilities, defense costs, loss adjustment expenses and settlements arising out of or from any services provided by Provo Canyon (including those services rendered by Provo Canyon Professionals or personnel who are acting under the direction or supervision of Provo Canyon) shall be payable by Provo Canyon, to the extent not covered by insurance proceeds. The costs for said policies, deductible amounts, uncovered liabilities, defense costs, loss adjustment expenses, and settlements arising out of services provided by MHS shall be payable by MHS, to the extent not covered by insurance proceeds.

Provo Canyon shall provide evidence of such coverage prior to the effective date of this Agreement and thereafter as requested by MHS. Provo Canyon's insurance shall include MHS as an additional insured with respect to the operations which Provo Canyon performs under contract with MHS. It is agreed that any insurance maintained by MHS shall apply in excess of and not contribute with, insurance provided by this policy. Provo Canyon's insurance shall not be canceled, limited or non-renewed until thirty (30) days written notice has been given to MHS at the address first noted in this Agreement.

In the event that any Professional or Provo Canyon is sued as a result of any services provided to a Beneficiary pursuant to this Agreement, Provo Canyon shall immediately notify MHS. Provo Canyon shall notify MHS, in writing, within sixteen

(16) hours of becoming aware of any occurrence of a serious nature which may expose MHS to liability. Such occurrences shall include, but not be limited to deaths, accidents or injuries to any Beneficiary, or acts of negligence of Provo Canyon or one of its Professionals.

5. Prohibition on Billing Beneficiaries.

MHS shall be the sole source of payment to Provo Canyon for those Covered Services rendered to the Beneficiaries for which MHS obtains funding from California State Social Services and/or California County Mental Health Departments. Provo Canyon agrees that in no event shall it seek payment from the Beneficiaries for any Covered Service except in those instances where there is a co-payment amount or for incremental costs, as outlined in the financial policies of Provo Canyon, including medical and ancillary expenses not covered under routine room and board. If Provo Canyon desires to seek such payment from the Beneficiaries for either a co-payment or for incremental costs, Provo Canyon shall seek such payment directly without any involvement from MHS. Provo Canyon agrees that it and not MHS will have full responsibility for Provo Canyon's collection of money for such co-payments or incremental costs.

6. Total Quality Management/Utilization Review.

Provo Canyon agrees to cooperate fully with MHS in assuring total quality management and utilization review in accordance with MHS's policies. This includes, but is not limited to, permitting MHS to observe the operation of Provo Canyon and to review the records of individual Beneficiaries, in accordance with all applicable laws, to assure that the care which is provided is appropriate.

7. Release of Medical Information.

MHS, as applicable and appropriate, shall obtain from Beneficiaries appropriate authorization for release of medical information by MHS. Provo Canyon, as applicable and appropriate, shall obtain from Beneficiaries appropriate authorization for release of medical information by Provo Canyon.

8. Indemnification.

Except as provided herein, MHS agrees to indemnify and hold Provo Canyon, its offices, directors, employees, agents, successors and assigns harmless from and against any claim, damage, loss, expense, liability, obligation, action or cause of action, including reasonable attorney's fees and reasonable costs of investigation, which Provo Canyon may sustain, pay, suffer or incur by reason of any act, omission, or negligence of MHS in performing its obligations under this Agreement.

Immediately after either Party has notice of a claim or potential claim relating either directly or indirectly to any Beneficiary as defined by this Agreement, that party

shall give notice to the other of any claim or other matter with respect to which indemnity may be sought pursuant to this provision, and of the commencement of any legal proceedings or action with respect to such claim, and shall permit the other party at its own expense to assume the handling and defense of any such claim, proceeding or action. Neither party shall pay or settle any claim or action subject to the indemnity hereunder without the prior written consent of the other party. Failure to give such notice, or the payment or settlement without written consent, shall vitiate the indemnity provided herein.

9. Maintenance of Records.

Provo Canyon agrees to maintain standard financial and medical records for Beneficiaries for at least a five-year period (or longer if required by law or by any funding source) and to comply with all applicable provisions of federal and state law concerning confidentiality of such records. In the event a Beneficiary chooses another mental health services provider, Provo Canyon shall forward such records to the new mental health services provider upon Provo Canyon's receipt of the Beneficiary's signed consent and authorization in a timely manner at no cost to the Beneficiary or MHS.

10. Access to Records.

This Section is included herein because of the possible application of Section 1861(v) (1) (1) of the Social Security Act to this Agreement. If such Section and the regulations promulgated thereunder, then this Section of the Agreement will be deemed not to be a part of this Agreement and will be null and void. Until the expiration of four years after the furnishing of services under this Agreement, Provo Canyon will make available to MHS, the California County Mental Health Departments listed on Exhibit C, U.S. Department of Health and Human Services, and the Controller General this Agreement and all related books, documents, and records. Unless required by law, Provo Canyon shall not otherwise disclose the terms and conditions of this Agreement to any third parties, except to its attorneys or accountants who shall be similarly bound.

11. Audits.

Provo Canyon will permit MHS and those California County Mental Health Departments listed on Exhibit C, upon written request and during reasonable business hours, to have access to its business, financial and client records related to services provided to Beneficiaries related to this Agreement for the purpose of auditing Provo Canyon's bills and for conducting quality and utilization review.

12. Required Notification.

Provo Canyon shall notify MHS within five days of any of the following occurrences:

- A. Provo Canyon or a Professional's license is suspended, revoked, voluntarily relinquished, or subject to terms of or other restrictions;
- B. Provo Canyon or a Professional is suspended from participation in the Medicare or Medicaid programs;
- C. Provo Canyon's insurance as set forth in Section 5 is terminated or the limits of coverage are decreased for any reason;
- D. When a Professional who is a member of the medical staff has his/her privileges limited or terminated in any manner;
- E. Provo Canyon or a Professional is named in a professional liability action or any other action involving a Beneficiary or related to the services provided by Provo Canyon or its Professionals to any Beneficiary.

13. Compliance with Medicare and Medicaid/No Referrals.

The parties to this Agreement expressly acknowledge that it has been and continues to be their intent to comply fully with all federal, state, and local laws, rules and regulations. It is not a purpose, nor is it a requirement, of this Agreement or of any other agreement between the parties, to offer or receive any remuneration of any patient, payment of which may be made in whole or in part by Medicare or Medicaid. Neither party shall make or receive any payment that would be prohibited under state or federal law.

14. Compensation.

MHS will pay Provo Canyon in accordance with the procedures and terms set forth in Exhibit B ("Fee Schedule and Compensation Procedure").

Provo Canyon shall only be entitled to compensation from MHS for those services for which MHS has received remuneration from the California State and Social Services or from a California County Mental Health Department. Provo Canyon shall not be entitled to any compensation from MHS for any services for which MHS does not receive remuneration from the California State Social Services or California County Mental Health Department. By the way of illustration and not limitation, MHS may not receive remuneration, and therefore Provo Canyon shall not be entitled to any compensation for the following:

- A. Services rendered prior to receipt of any required advance approval to provide services;
- B. Services which are not Covered Services as set forth on Exhibit A;

C. Unnecessary services as determined by MHS in accordance with its utilization policies and procedures.

In consideration of the compensation which Provo Canyon receives under this Agreement, Provo Canyon agrees to cooperate with MHS and to amend this Agreement from time to time as MHS may reasonably request in order to comply with various contractual obligations which MHS may need to satisfy in order to receive California State Social Services or California County Mental Health Department funding.

15. Costs.

All costs incurred in the provision of Provo Canyon's services, including but not limited to the Covered Services, shall be born by Provo Canyon and not MHS. Any costs incurred by MHS for the purpose of providing Total Quality Management/Utilization Review as set forth in Section 6, hereto or conducting Audits as set forth in Section 11 hereto shall be born by MHS, provided however, that any additional costs incurred by MHS which result from any delay or complication for which Provo Canyon is responsible shall be born by Provo Canyon. Provo Canyon shall reimburse MHS for all such costs within thirty (30) days of receiving from MHS a written account of all such additional costs.

16. Patient Disputes.

If there are any disputes between MHS and Provo Canyon for itself or its Professionals, the dispute must be discussed directly between Provo Canyon and MHS and at no point shall the Beneficiary become aware of or participate in these discussions.

17. Termination.

The term of this Agreement is one (1) year and shall renew automatically unless terminated in accordance with the provisions of this Section.

A. Either party may terminate this Agreement without cause upon thirty days written notice. In the event that this Agreement is terminated, the parties will work together to bring forth the smooth transition of Beneficiaries' care which, by way of demonstration but not exclusion, may include providing interim services not to exceed sixty (60) days in accordance with all terms of this Agreement.

B. The Agreement shall be terminated automatically upon Provo Canyon having its license suspended or revoked or its ability to participate in the Medicare/Medicaid program, suspended or terminated.

C. Either party may immediately terminate this Agreement with cause if the other party materially breaches this Agreement. Under such circumstances, the non-breaching party may give notice of the breach and the Agreement shall terminate within fifteen (15) days unless the breach is corrected within such time.

18. Effect of Termination.

Upon termination, the provisions of Section 4 ("Insurance"), Section 8 ("Indemnification"), Section 10 ("Access to Records"), Section 11 ("Audits"), Section 14 ("Compensation"), Section 15 ("Costs") and Section 16 ("Patient Dispute") shall remain in effect.

19. Non-Exclusivity.

Nothing contained herein shall restrict the right of Provo Canyon or Professional to participate in providing services to other patients, regardless of the payor for such services.

20. Jeopardy.

In the event the performance by either party hereto of any term, covenant, condition or provision of this Agreement should (I) jeopardize (A) the licensure of either party, any employee or any individual providing services hereunder or any provider owned and/or operated by either party or any corporate affiliate of such party (a "Covered Party"); (B) any Covered Party's participation in or reimbursement from Medicare, Medicaid or other reimbursement of payment programs; or (c) any Covered Party's full accreditation by JCAHO or any successor accrediting agency, or (ii) if the continuance of this Agreement should be in violation of any statute, ordinance, or otherwise deemed illegal or be deemed unethical by any recognized body, agency, or association in the medical or behavioral health care fields (collectively, "Jeopardy Event"), then the parties shall use their best efforts to meet forthwith in an attempt to negotiate an amendment to this Agreement to remove or negate the effects of the Jeopardy Event. In the event the parties are unable to negotiate such an amendment within fifteen (15) days following written notice by either party of the Jeopardy Event, then either party may terminate this Agreement immediately upon written notice to the other party, notwithstanding any severability provisions hereto to the contrary.

21. Notices.

All notices required under this Agreement shall be provided in writing as follows:

MHS:

Mental Health Systems, Inc.
9465 Farnham Street
San Diego, CA 92123
Attn: Kimberly Bond

With a copy to:

DLA Piper
4365 Executive Drive, Suite 1600
San Diego, CA 92121-2189
Attention: T. Knox Bell, Esp.

Provo Canyon:

UHS of Provo Canyon, Inc.
1350 East 750 North
Orem, UT 84097
Attn: Administration

22. Independent Status.

Provo Canyon is, and shall at all times be deemed to be, an independent contractor and shall be wholly responsible for the manner in which it performs the services or Covered Services required of it by the terms of this Agreement. Provo Canyon is entirely responsible for compensating its Professional and other staff, subcontractors and consultants employed by Provo Canyon. The parties are independent of each other and this Agreement shall not be construed as creating the relationship of employer and employee, or principal and agent, between MHS and Provo Canyon or any of Provo Canyon's Professionals, other employees, agents, consultants or subcontractors. Provo Canyon assumes exclusively the responsibility for the acts of its Professional, employees, agents, consultants and/or subcontractors as they relate to the services and Covered Services to be provided during the course and scope of their employment. Provo Canyon will remain an independent contractor responsible for all taxes and/or payments made by MHS. Nothing contained in this Agreement shall constitute or be construed to be or to create a partnership, joint venture or lease between Provo Canyon and MHS with respect to UHS of Provo Canyon, Inc. or any equity interest in UHS of Provo Canyon, Inc. on the part of MHS.

23. Assignment.

This Agreement shall not be subcontracted or assigned except to an affiliate or purchaser of Provo Canyon. If MHS wishes to assign this Agreement, it must notify Provo Canyon in writing and obtain its written consent.

24. Organization, Power and Authority.

MHS hereby represents, warrants and covenants that it is a non-profit corporation duly organized, validly existing and in good standing under the laws of the State of California, is qualified or otherwise has met all lawful requirements to transact business in the State of Utah, and has all requisite corporate power and authority to execute and

deliver this Agreement, to perform its obligations under this Agreement, and this Agreement is valid, binding and enforceable in accordance with its terms.

Provo Canyon hereby represents, warrants and covenants that it is a for-profit limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, is qualified or otherwise has met all lawful requirements to transact business in the State of Utah, and has all requisite power and authority to execute and deliver this Agreement, to perform its obligations under this Agreement, and this Agreement is valid, binding and enforceable in accordance with its terms

25. Non-assumption of Liabilities.

By entering into and performing this Agreement, neither party shall become liable for any of the existing or future obligations, liabilities or debts of the other party.

26. Rights Cumulative, No Waiver.

No right or remedy herein conferred upon or reserved to either of the parties hereto is intended to be exclusive of any right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder, or now or hereafter legally existing upon the occurrence of an event of default thereunder. The failure of either party hereto to insist at any time upon the strict observance or performance of any of the provisions of this Agreement or to exercise any right or remedy as provided in this Agreement shall not impair any such right or remedy or be construed by as a waiver or relinquishment thereof. Every right and remedy given by this Agreement to the parties hereto may be exercised from time to time and as often as may be deemed expedient by the parties hereto, as the case may be.

27. Captions and Headings.

The captions and headings throughout this Agreement are for convenience and reference only, and the words contained therein shall in no way be held or deemed to define, limit, describe, explain, modify, amplify, or add to the interpretation, construction or meaning of any provision of or the scope or intent of this Agreement nor in any way affect the Agreement.

28. Counterparts.

This Agreement may be executed in counterparts, each of which will be treated as an original, but all of which together will constitute one and the same instrument.

29. Entire Agreement.

This Agreement contains the entire agreement of the parties and can only be modified by documents signed by both the parties.

Entered into this on the date first noted above.

"MHS"
Mental Health Systems, Inc.

"Provo Canyon"
UHS of Provo Canyon, Inc.

Title: _____

Title: _____

EXHIBIT A: COVERED SERVICES

Provo Canyon will provide the following services and facilities: Room and board; first aid supplies and nursing services; laundry services; supervised use of recreational equipment and facilities; supervised work projects; and, all routine therapeutic and behavioral modification services and testing.

Tab 15

Exhibit A

List of Providers for the Provision of Mental Health Outpatient Services for Fiscal Years 2002-03, 2003-04, and 2004-05:

- Alpine Academy
- Aspen Solutions Inc.
 - Aspen Ranch – (For Profit – under Aspen Solutions corporate umbrella)
 - Island View – (under Aspen Solutions corporate umbrella)
 - SunHawk Academy – (under Aspen Solutions corporate umbrella)
 - Youth Care – (under Aspen Solutions corporate umbrella)
- Buckeye Ranch – (Letter of Agreement – non-profit from IRS.gov website)
- Cathedral Home for Children
- Chileda Institute, Inc.
- Colorado Boys' Ranch
- Daystar Residential, Inc.
- Devereux Foundation Arizona
- Devereux Cleo Wallace
- Devereux Texas Treatment Network
- Excelsior Youth Center
- Forest Heights Lodge
- Griffith Centers for Children, Inc.
- Heritage Schools, Inc.
- Intermountain – (Letter of Agreement)
- Mental Health Systems Inc. (Logan River)
- Mental Health Systems Inc. (Provo Canyon)
- National Deaf Academy – (Letter of Agreement – For Profit – Mediation Settlement)
- The Pathway School
- Yellowstone Boys and Girls Ranch

Tab 16

G.14

Alaska Entity # 78003D

State of Alaska
Department of Commerce, Community, and Economic
Development

CERTIFICATE
OF
GOOD STANDING

THE UNDERSIGNED, as Commissioner of Commerce, Community, and Economic Development of the State of Alaska, and custodian of corporation records for said state, hereby certifies that

KIDS BEHAVIORAL HEALTH OF ALASKA, INC.

on the 12th day of November, 2002 filed in this office its Articles of Incorporation, as a Nonprofit Corporation organized under the laws of this state.

I FURTHER CERTIFY that said Nonprofit Corporation is in good standing, having fully complied with all the requirements of this office.

No information is available in this office on the financial condition, business activity or practices of this corporation.



IN TESTIMONY WHEREOF, I execute this certificate and affix the Great Seal of the State of Alaska on the 7th day of December, 2007.

Emil Notti
Commissioner

Tab 17



Francine Giani
Executive Director
Department of Commerce

Jon M. Huntsman, Jr.
Governor
State of Utah

Kathy Berg
Director
Division of Corporations
& Commercial Code

STATE OF UTAH
DEPARTMENT OF COMMERCE
DIVISION OF CORPORATIONS & COMMERCIAL CODE
CERTIFICATE OF REGISTRATION

CT CORPORATION SYSTEM
KIDS BEHAVIORAL HEALTH OF ALASKA, INC.
136 E SOUTH TEMPLE STE 2100
SALT LAKE CITY UT 84111

Access Code
Code: 4361694



State of Utah
Department of Commerce
Division of Corporations & Commercial Code

CERTIFICATE OF REGISTRATION

Corporation - Foreign - Non-Profit

This certifies that KIDS BEHAVIORAL HEALTH OF ALASKA, INC. has been filed and approved on December 07, 2007 and has been issued the registration number 6840462-0141 in the office of the Division and hereby issues this Certification thereof.

KATHY BERG
Division Director

Tab 18

Utah Business Search - Details

COPPER HILLS YOUTH CENTER

Entity Number: 5401811-0151

Company Type: DBA

Address: 5899 W RIVERDELL DR West Jordan, UT 84088

State of Origin:

Registered Agent: C T CORPORATION SYSTEM

Registered Agent Address:

1108 E SOUTH UNION AVE

Midvale, UT 84047

Status: Expired

Status: Expired as of 12/04/2012

Status Description: Failure to File Renewal

Employment Verification: Not Registered with Verify Utah

History

Registration Date: 11/05/2003

Last Renewed: 11/04/2009

Additional Information

NAICS Code: 6219 **NAICS Title:** 6219-Other Ambulatory Health Care Servic

Refine your search by:

- Search by:
- Business Name
- Number
- Executive Name
- Search Hints

Name:

Tab 19

Utah Business Search - Details

KIDS BEHAVIORAL HEALTH OF ALASKA, INC.

Entity Number: 6840462-0141

Company Type: Corporation - Foreign - Non-Profit

Address: 367 S GULPH RD KING OF PRUSSIA, PA 19406

State of Origin: AK

Registered Agent: C T CORPORATION SYSTEM

Registered Agent Address:

1108 E SOUTH UNION AVE

Midvale, UT 84047

Status: Active

Status: Active as of 03/07/2011

Renew By: 12/31/2013

Status Description: Good Standing

The "Good Standing" status represents that a renewal has been filed, within the most recent renewal period, with the Division of Corporations and Commercial Code.

Employment Verification: Not Registered with Verify Utah

History

Registration Date: 12/07/2007

Last Renewed: 10/16/2012

Additional Information

NAICS Code: 5511 **NAICS Title:** 5511-Management of Companies and Enterpr

Refine your search by:

- Search by:
- Business Name
- Number
- Executive Name
- Search Hints

Name:

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On October 8, 2014, I served the:

SCO Comments

Incorrect Reduction Claim (IRC), 11-9705-I-02

Seriously Emotionally Disturbed (SED) Pupils: Out-of State Mental Health Services (97-TC-05)

Government Code Section 7576; Statutes 1996, Chapter 654

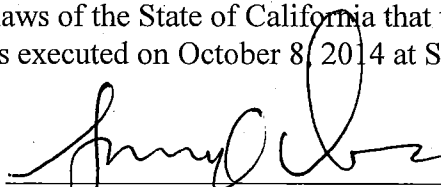
California Code of Regulations, Title 2, Division 9, Chapter 1,

Fiscal Years 2000-2001, 2001-2002, 2002-2003, 2003-2004, 2004-2005, and 2005-2006

County of Orange, Claimant

By making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on October 8, 2014 at Sacramento, California.



Lorenzo Duran
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 10/8/14

Claim Number: 11-9705-I-02

Matter: Seriously Emotionally Disturbed Pupils (SEDS): Out-of-State Mental Health Services

Claimant: County of Orange

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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