

## MEMORANDUM OF UNDERSTANDING #037-M0911

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This Memorandum of Understanding (MOU) #037-M0911, made and entered into by and between the El Dorado County Mental Health Department (hereinafter referred to as "EDCMH"), and the El Dorado County Office of Education (hereinafter referred to as "EDCOE");

**WITNESSETH**

**WHEREAS**, Government Code Section 7570 et seq. (AB 3632) requires counties and their Mental Health Divisions to conduct mental health assessments and to provide necessary mental health-related services, including residential care-based treatment, required by students with disabilities who are identified within the individualized education program, pursuant to Government Code sections 7570, 7572, and 7572.5;

**WHEREAS**, the State Legislature, in the Budget Act provides federal Individuals with Disabilities Education Act (IDEA) local assistance funding for the provision of mental health services pursuant to Government Code Section 7570 et seq. by transmitting the funds to county offices of education;

**WHEREAS**, the Budget Act requires each county office of education (COE) and county mental health agency (CMHA) to enter into a memorandum of understanding (MOU) for the purpose of transferring these federal grant funds, subject to the fulfillment of the grant's terms and conditions, to the CMHA for specified mental health services that are provided for eligible students in the school districts;

**WHEREAS**, these federal IDEA funds are to be allocated according to the allocation plan developed by the California Department of Mental Health (DMH) to the El Dorado County Office of Education and are required to be used exclusively for the purpose of funding mental health services identified within an individualized education program (IEP), and for which expenses have been or will be incurred in Fiscal Year 2008-2009; and

**NOW, THEREFORE**, it is agreed as follows:

1. Transfer of Funds Pursuant to the Budget Act. The El Dorado County Office of Education (EDCOE) shall transfer federal IDEA funds to El Dorado County Mental Health (EDCMH) within five (5) business days of the EDCOE's receipt of the federal IDEA funds as prescribed under Senate Bill (SB) 1895, Section 9, Chapter 493, Statutes of 2004.

EDCOE will pay EDCMH as mandated by Assembly Bill (AB) 1807, Section 80, Chapter 74, Statutes of 2006, a minimum of 50 percent of federal grant funds by January 1 of each year. EDCOE will pay EDCMH a minimum of 75 percent of federal grant funds by March 1 as

mandated by AB 1807 upon fulfillment of the grant terms and conditions and in accordance with the federal Cash Management Improvement Act. Up to twenty-five percent of the remaining funds will be paid as specified in the grant terms and conditions and in accordance with the federal Cash Management Improvement Act.\*

In accordance with SB 1895, any county mental health agency allocation that exceeds actual documented costs for allowable services shall be reallocated within six months after the end of each fiscal year on a pro rata basis to other counties where actual costs exceed the allocation.

\*The federal Cash Management Improvement Act of 1990 (CMIA) was enacted by Public Law 101-453 and codified at United States Code, Title 31, sections 3335, 6501, and 6503. The implementing regulations are provided in Title 31 of the Code of Federal Regulations (CFR) Part 205. In accordance with Title 31 CFR Part 205.10, the California Department of Education (CDE) must institute procedures to project or reconcile estimates with actual and immediate cash needs. Consequently, all CDE, Special Education Division (SED), grant allocations must be limited to the minimum amounts needed and must be timed to the actual, immediate cash requirements of the grantee. The mid-year and year-end expenditure reports provide SED with actual cost and service data to determine the actual cost need of each grantee's scheduled mid-year and year-end payments (see paragraph 2 below).

2. Records. EDCMH will provide EDCOE with an accounting of expenditures incurred pursuant to this MOU two times for the Fiscal Year. The first accounting of expenditures will cover the period of July 1, 2008, through December 31, 2008, and will be provided by February 1, 2009. The second accounting of expenditures will cover the period of January 1, 2009, through June 30, 2009, and will be provided by September 1, 2009.

The accounting will include for each student the following data: the school district of residence, as provided most recently in writing by the district; the service function code only of the services provided pursuant to Government Code Section 7570 et seq.; the units of service; and the cost per unit. The student's name, date of birth, provider name, date of service, unit/minutes/mode, estimated cost per unit, and Service Function Code (SFC) in sufficient detail to enable EDCOE to establish a link between the services claimed and the individual student's IEP. EDCMH is responsible for maintaining all required documentation in accordance with current practice for audit purposes.

3. Array of services. The array of services will be provided for a child with a disability, as defined in paragraph (3) of Section 1401 of Title 20 of the United States Code, and shall include those related services as defined in paragraph (26) of Section 1401 of Title 20 of the United States Code, and designated instruction and services, as defined in Section 56363 of the Education Code, the California Code of Regulations, Title 2, Division 9, Section 60020(i); and in the most current version of the State Mandates Claims Parameters and Guidelines for this program.

4. Referrals and assessment reports. EDCMH and EDCOE agree to abide by the policies and procedures for making student referrals and providing the necessary assessment reports as mandated in Government Code Section 7576 and clarified in Title 2, Division 9, California Code of Regulations Section 60040.

5. Privacy. EDCMH and EDCOE acknowledge the protections afforded to student health information under regulations adopted pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Pub. L. No. 14-109, students records under the Family Educational Rights and Privacy Act (FERPA), 20 USC Section 1232g; and under provisions of state law relating to privacy. EDCMH and EDCOE shall ensure that all activities undertaken under this MOU will conform to the requirements of these laws.

6. Indemnity. EDCMH and EDCOE shall each defend, hold harmless and indemnify the other party, its governing board, officers, administrators, agents, employees, independent contractors, subcontractors, consultants, and other representatives from and against any and all liabilities, claims, demands, costs, losses, damages, or expenses, including reasonable attorneys' fees and costs, and including but not limited to consequential damages, loss of use, extra expense, cost of facilities, death, sickness, or injury to any person(s) or damage to any property, from any cause whatsoever arising from or connected with its service hereunder, that arise out of or result from, in whole or in part, the negligent, wrongful or willful acts or omissions of the indemnifying party, its employees, agents, subcontractors, independent contractors, consultants, or other representatives.

This indemnity provision shall survive the term of this MOU and is in addition to any other rights or remedies that EDCMH or EDCOE may have under law and/or the MOU.

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

8. Laws and Venue. This MOU shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this MOU, the action shall be brought in a state or federal court situated in the County of El Dorado, State of California, unless otherwise specifically provided for under California law.

9. Third Party Rights. Nothing in this MOU shall be construed to give any rights or benefits to anyone other than EDCOE and EDCMH.

10. Severability. The unenforceability, invalidity or illegality of any provision(s) of this MOU shall not render the other provisions unenforceable, invalid, or illegal.

11. Term. This MOU shall cover the period of July 1, 2008, through June 30, 2009. This MOU shall terminate as of the close of business on June 30, 2009. However, this MOU may be extended by the parties' mutual written consent if an extension is required to transfer additional federal IDEA funds made available by the State for the same purpose.

12. General Assurances. As a condition of receiving funds under this MOU, EDCMH has reviewed and executed the General Assurances and Federal Funds Conditions as required by the California Department of Education as stated in the grant letter of intent (a copy is attached and incorporated). The EDCOE shall provide EDCMH with a copy of any amendments to the General Assurances and Federal Funds Conditions for EDCMH review. Within ten (10) days of receiving any amendments to the General Assurances and Federal Funds Conditions, EDCMH shall execute the General Assurances and Federal Funds Conditions and return a signed copy.

13. Dispute Resolution. EDCMH and EDCOE agree that the following process will be used to address disputes on the implementation of the MOU only after collaborative efforts have been attempted at the lowest possible level.

By July 1 of 2008, and for any extension of this MOU beyond 2009, EDCMH and EDCOE will name a mutually agreed upon administrator of a county department or agency to assist to resolve disputes using a process of facilitated communication through non-binding EDCMH and EDCOE mediation. The parties will use the following process:

- A written notice of the request for dispute resolution, including a description of the concerns to be addressed, shall be forwarded by the agency initiating the dispute to the non-initiating party.
- If the issue is not resolved within 5 business days, the agency initiating the dispute shall request that the outside party be contacted to schedule a meeting between the agencies.
- No later than sixty (60) calendar days from the date mediator is contacted, a resolution plan between the two agencies will be developed.
- The responsible EDCMH and EDCOE personnel services shall be responsible for assuring the agreements included in the resolution plan are implemented.
- The costs for this service shall be shared equally between the EDCMH and EDCOE.

14. The signatories of this MOU or their designee shall be responsible for assuring the agreements included in the resolution plan are implemented.

Neither party shall be deemed to be in default of the terms of this MOU if either party is prevented from performing the terms of this Agreement by causes beyond its control, including without being limited to: acts of God; any laws and/or regulations of State or Federal government; or any catastrophe resulting from flood, fire, explosion, or other causes beyond the control of the defaulting party. If any of the stated contingencies occur, the party delayed by force majeure shall immediately give the other parties written notice of the cause for delay. The party delayed by force majeure shall use reasonable diligence to correct the cause of the delay, if correctable, and if the condition that caused the delay is corrected, the party delayed shall immediately give the other parties written notice thereof and shall resume performance of the terms of this MOU.

Neither party shall be liable for any excess costs if the failure to perform the MOU arises from any of the contingencies listed above.

15. The County Officer or employee with responsibility for administering this MOU is John Bachman, Director, El Dorado County Mental Health Department, or successor

16. EDCOE is covered for its general liability, automobile liability, property, and workers compensation liability. EDCOE will furnish certificate of its insurance coverage to EDCMH upon request.

**IN WITNESS WHEREOF**, the parties hereto have executed this memorandum of understanding on the dates indicated below, the latest of which shall be deemed to be the effective date of this Memorandum of Understanding.

**-- COUNTY OF EL DORADO --**

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Chair  
Board of Supervisors  
"County"

ATTEST:  
Cindy Keck,  
Clerk of the Board of Supervisors

By: \_\_\_\_\_

**-- MENTAL HEALTH DEPARTMENT --**


Dated: 8/12/08

By: John Bachman

John Bachman,  
Director  
County of El Dorado  
Mental Health Department  
"EDCMH"

--EL DORADO COUNTY OFFICE OF EDUCATION--

Dated: \_\_\_\_\_

By:  \_\_\_\_\_

Francie Heim  
Deputy Superintendent  
El Dorado County Office of Education  
"Contractor"

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