



Legislation Text

File #: 10-1236, **Version:** 1

Health Services Department recommending the Board authorize the Director of Health Services to send appropriate documents to terminate Memorandum of Understanding (MOU) 093-M1011 with the El Dorado County Office of Education in accordance with the terms of the MOU and upon approval by County Counsel. (Refer 10-0972, 10/5/10)

Background:

The federal Individuals with Disabilities Education Act (IDEA) entitles children with disabilities to a free and appropriate public education. Prior to 1984, school districts were responsible for providing all special education services to children. In 1984, the Legislature enacted AB 3632, the Special Education Pupils Program, which, among other things, transferred responsibility for providing mental health services to special education pupils from school districts to county mental health departments. While counties have been performing these services under state law (Title 1, Division 7, Chapter 26.5 of the Government Code, §7570-7590), the services they provide allow public education to fulfill its mandate under federal law to provide an education to students with special needs.

The County has historically entered into an MOU with the El Dorado County Office of Education (EDCOE) in order to set forth the responsibilities of each agency participating in providing mental health services to students with disabilities per the student's Individualized Education Program. The latest such MOU (093-M1011) was approved and executed by the Board of Supervisors on October 5, 2010, with a term extending through June 30, 2011. The MOU outlines the division of responsibilities: County Mental Health provides mental health services, County Human Services provides the placement component, and EDCOE provides the education component.

The October 5, 2010 agenda item for this MOU noted that "it remains uncertain whether AB 3632 services will be continued and adequately funded as a part of the State budget for FY 2010/11. Should the State suspend or repeal the AB 3632 mandate, the responsibility for providing these services would revert back to the schools due to the federal IDEA requirement. This Agreement would need to be reevaluated should this occur." It is now time for that re-evaluation to occur.

Reason for Recommendation:

On October 8, 2010, Governor Schwarzenegger signed the final State Budget bill passed by the Legislature; however, the Governor line item vetoed funding to reimburse counties for complying with the AB 3632 mandate. In vetoing this funding, the Governor declared that the AB 3632 mandate on counties for FY 2010/11 is suspended. El Dorado County joined a lawsuit that was filed in Sacramento County on November 4, 2010, along with 23 other counties, seeking court confirmation that the AB 3632 mandate has been suspended and the County has been relieved of the obligation to provide the related services due to the Legislature's failure to override the Governor's veto of the budget line item that would have funded AB 3632 services.

As a result of the Governor's actions, and our present belief that the mandate has been suspended, the Health Services Department recommends termination of MOU 093-M1011 that, in its present form, would obligate the County to perform AB 3632 program services without remuneration. The

State currently owes the County over \$3 million for prior year AB 3632 mandate claims; the Department is not in a financial position to continue to fund services that it believes are no longer mandated to be performed by the County. The present MOU includes a provision for any party to terminate the Agreement, without cause, upon thirty (30) days written notice. The Department recommends that appropriate documents to terminate the MOU be provided to EDCOE by December 1, 2010.

To ensure the continued provision of mental health services that are included within students' Individualized Education Programs, the Department is actively engaged in discussions with EDCOE to establish a new MOU under which the County would provide substantially the same services, but would receive compensation for those services from EDCOE. The Department anticipates bringing this proposed MOU to the Board in December 2010, with a term commencing January 1, 2011.

Actions to be taken following Board approval:

1. Department to develop and send appropriate documents to terminate MOU 093-M1011 with EDCOE in accordance with the terms of the MOU and upon approval by County Counsel.
2. Department to continue discussions with EDCOE to establish a new MOU under which the County would provide substantially the same services, but would receive compensation for those services from EDCOE and return to Board in December 2010 with a proposed new MOU and/or status update relative to this issue.

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Concurrences: County Counsel