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June 4, 2008

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

DEPARTMENT OF MENTAL HEALTH: AUTHORIZATION TO SIGN A MEMORANDUM OF UNDERSTANDING WITH LOS ANGELES COUNTY OFFICE OF EDUCATION FOR FISCAL YEAR 2007-08
(ALL SUPERVISORIAL DISTRICTS)
(3 VOTES)

SUBJECT

Request to ratify the Department of Mental Health's prior acceptance of a Memorandum of Understanding with the Los Angeles County Office of Education to expend $13,832,574 of federal Individuals with Disabilities Education Act funds for mental health services to eligible students with disabilities and with an Individual Education Plan for Fiscal Year 2007-08.

IT IS RECOMMENDED THAT YOUR BOARD:

1. Ratify the Department of Mental Health's (Department or DMH) prior acceptance of a Memorandum of Understanding (MOU) with Los Angeles County Office of Education (LACOE) that ensures the Department will receive $13,832,574 in Individuals with Disabilities Education Act (IDEA) funds for Fiscal Year (FY) 2007-08 to enable DMH to accept IDEA funds for mental health services to

eligible students identified with disabilities and with an Individual Education Plan (IEP). The IDEA funds were allocated to LACOE by the California Department of Education in accordance with Assembly Bill (AB) 1807 (Chapter 74, Statutes 2006), and will be fully transferred to the County of Los Angeles on behalf of DMH for FY 2007-08 upon Board approval. These funds are included in DMH's FY 2007-08 Adopted Budget.

2. Delegate authority to the Director of DMH, or his designee, to extend and/or amend the existing MOU, and sign and execute a new MOU to receive additional funds and/or to continue funding in future fiscal years provided that the MOU remains substantially similar to the Attachment, and so long as prior approval is received from County Counsel and the Chief Executive Office (CEO), and notification of acceptance of future IDEA funding is provided to your Board.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTIONS

The recommended action will ratify DMH's prior acceptance of the attached MOU and allow DMH to extend, amend or enter into new MOUs for the use of IDEA funding allocation from LACOE to DMH to provide State-mandated mental health services (referred to as "AB 3632" or "Chapter 26.5 services"), without interruption, to eligible students identified with disabilities and with an IEP, pursuant to Government Code Section 7570 et seq. (Chapter 1747, Statutes of 1984). AB 1807 provides federal IDEA funds for mental health services, pursuant to Government Code Section 7570 et seq., through LACOE.

Ratification of the Department's acceptance of the MOU for FY 2007-08 with LACOE meets the exemption criteria No. 2, "The County's receiving funds (normally from a higher level of government)," noted in the CEO's September 7, 2000, memo regarding your Board's policy on timely submission for Board approval.

Implementation of Strategic Plan Goals

The recommended Board actions are consistent with the principals of the Countywide Strategic Plan's Programmatic Goal 5, "Children and Families' Well-Being" and Goal 7 "Health and Mental Health." Board approval will maintain the level of special education services for eligible students with disabilities and both improve mental health outcomes and maximize utilization of available resources.

FISCAL IMPACT/FINANCING

There is no impact on net County cost.

Federal IDEA funds in the amount of $13,832,574 are included in DMH's FY 2007-08 Adopted Budget to pay for mandated Chapter 26.5 services. Continued funding will be budgeted for future fiscal years at the levels provided in the MOU.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

In California, counties are responsible for providing mental health services to students when required in the student's IEP under statute and regulation (Government Code Section 7570 et seq.). This is a federal mandate under IDEA.

Prior to FY 2002-03, a total of $12 million had been budgeted for counties statewide as categorical funding to pay for mandated services under Chapter 26.5. Since the costs incurred by counties in providing those services far exceeded the categorical funding, counties were reimbursed excess costs through the Senate Bill (SB) 90 mandate reimbursement process. However, the FY 2002-03 State Budget eliminated the $12 million categorical funding. Further, the State placed an indefinite moratorium on SB 90 mandate reimbursements to local governments. This created an acute financial hardship on local governments, who are mandated to pay for mental health services to more than 27,000 disabled students statewide, including approximately 6,000 in Los Angeles County.

Proposition 1A, which was approved by voters in November 2004, amended the California Constitution to require the State to provide full funding to local governments for programs and services mandated by the State. The Budget Act of 2007-08 (SB 77) provides $69 million of federal IDEA funds statewide, of which $13,832,574 are allocated for Los Angeles County.

The requirement for DMH to receive this funding through LACOE is determined by AB 1807 and is allocated to local education agencies. The funds are granted to the County Office of Education of each county to transfer to the local County Department of Mental Health. The allocation amount to each county is determined by the amount of funding each county received in FY 2004-05.

Assembly Bill 1807 also required that the California Department of Education and California Department of Mental Health develop a template for an MOU between the local offices of education and county mental health plans. The MOU was to affect the transfer of funds and data regarding the provision of mental health services to disabled pupils in all 58 counties for FY 2007-08. The statute required that MOUs be signed by the respective offices of education and County Mental Health and be submitted to the

California Department of Mental Health by May 15, 2007; however, the State agencies took longer than expected to develop the template. Because of the urgency to meet the deadline, LACOE and DMH executed the revised version of the MOU to ensure the transfer of funds.

The CEO and County Counsel have reviewed the proposed action.

IMPACT ON CURRENT SERVICES

Board ratification of the attached MOU will allow DMH to accept federal IDEA funds totaling $13,832,574 for FY 2007-08 from LACOE to provide State mandated mental health services to eligible students identified with disabilities and with an IEP so that they may benefit from public education.

Board approval will also allow DMH to receive federal IDEA funds from LACOE for future fiscal years.

CONCLUSION

The Department of Mental Health requests one copy of the adopted Board actions. It is requested that the Executive Officer, Board of Supervisors, notify the Department of Mental Health, Contracts Development and Administration Division, at (213) 738-4684 when this document is available.

Respectfully submitted,

WILLIAM T FUJIOKA
Chief Executive Officer

WTF:SRH:SAS
MLM:JS:yb

Attachment

c: County Counsel
Director, Department of Mental Health
Chairperson, Mental Health Commission

060408_DMH_LACOE

MEMORANDUM OF UNDERSTANDING BETWEEN THE LOS ANGELES COUNTY DEPARTMENT OF MENTAL HEALTH (LAC-DMH) AND THE LOS ANGELES COUNTY OFFICE OF EDUCATION (LACOE) FOR CHILDREN'S MENTAL HEALTH SERVICES

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 and local department of mental health 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 LAC-DMH 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 (CDMH) to the Los Angeles County Office of Education (LACOE) 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 2007-2008; and

NOW, THEREFORE, it is agreed as follows:

1. Transfer of Funds Pursuant to the Budget Act. The LACOE shall transfer federal IDEA funds to the LAC-DMH within five (5) business days of the COE's receipt of the federal IDEA funds as prescribed under Senate Bill (SB) 1895, Section 9, Chapter 493, Statutes of 2004.

LACOE will pay LAC-DMH 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. LACOE will pay LAC-DMH 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. LAC-DMH will provide LACOE 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, 2007, through December 31, 2007, and will be provided by February 1, 2008. The second accounting of expenditures will cover the period of January 1, 2008, through June 30, 2008, and will be provided by September 1, 2008.

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 LACOE to establish a link between the services claimed and the individual student's IEP. LAC-DMH 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. LAC-DMH and LACOE 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. LAC-DMH and LACOE 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. LAC-DMH and LACOE shall ensure that all activities undertaken under this MOU will conform to the requirements of these laws.

6. Indemnity. LAC-DMH and LACOE 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 LAC-DMH or LACOE may have under law and/or the MOU.

7. Integration. This MOU represents the entire understanding of LACOE and LAC-DMH 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 Los Angeles, 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 LACOE and LAC-DMH.

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, 2007, through June 30, 2008. This MOU shall terminate as of the close of business on June 30, 2008. 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, LAC-DMH 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 LACOE shall provide LAC-DMH with a copy of any amendments to the General Assurances and Federal Funds Conditions for LAC-DMH review. Within ten (10) days of receiving any amendments to the General Assurances and Federal Funds Conditions, LAC-DMH shall execute the General Assurances and Federal Funds Conditions and return a signed copy.

13. Dispute Resolution. LAC-DMH and LACOE 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 2007, and for any extension of this MOU beyond 2008, LAC-DMH and LACOE 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 LAC-DMH and LACOE 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 LAC-DMH and LACOE 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 LAC-DMH and LACOE.

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 majeur 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.

IN WITNESS WHEREOF, the parties have caused this MOU to be executed by their duly authorized officers in the County of, Los Angeles, California.

This Agreement is entered into this 25 day of April 2007 by and between the undersigned parties.

LOS ANGELES COUNTY DEPARTMENT OF MENTAL HEALTH

Marvin J. Southard, D.S.W.
Director of Mental Health

5-1-07
Dated:

LOS ANGELES COUNTY OFFICE OF EDUCTION

Darline P. Robles, Ph.D.
Superintendent

4-25-07
Dated: