

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

833



FROM: Department of Mental Health

SUBMITTAL DATE:

May 13, 2010

SUBJECT: Approve the Agreement with Riverside County Superintendent of Schools for disbursement of Individuals with Disabilities Education Act (IDEA) Funds.

RECOMMENDED MOTION: Move that the Board of Supervisors:

1. Approve FY 2010/2011 Agreement between Riverside County Superintendent of Schools and Department of Mental Health (DOMH);
2. Authorize the Chairman of the Board to sign this Agreement; and
3. Authorize the Director of DOMH to administer the terms and conditions of the FY 2010/2011 agreement; and to sign ministerial amendments with Riverside County Superintendent of Schools for IDEA funds.

BACKGROUND: California Government Code Sections 7570 et seq. makes available Individuals with Disabilities Education Act (IDEA) Funds for local Departments of Mental Health to provide specific mental health services to minors in Special Education. A student receiving special education has an Individual Educational Plan (IEP), which includes mental health services, as appropriate. The IEP is developed collaboratively between the Department and a school district to meet the unique educational and special needs of each program participant. The interagency agreement ensures reimbursement for the mental health services that the local mental health departments provide to the identified student.

(Continued on Page 2)

JW:DF

Jerry Wengerd

Jerry Wengerd, Director
Department of Mental Health

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 2,939,260	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	10/11

SOURCE OF FUNDS: Federal 100%	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION: APPROVE

County Executive Office Signature
BY: *Debra Cournoyer*
Debra Cournoyer

ATTACHMENTS FILED WITH THE CLERK OF THE BOARD
 FORM APPROVED COUNTY COUNSEL BY: *Janisa R. Johnson* 5/12/10
 DATE: _____
 Department of _____
 Dep't Recomm.: Consent Policy
 Per Exec. Ofc.: Consent Policy

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SUBJECT: Approve the Agreement with Riverside County Superintendent of Schools for disbursement of Individuals with Disabilities Education Act (IDEA) Funds.

BACKGROUND (CONT'D)

In 2006, the California Legislature passed AB1807 (Chapter 74, Statutes of 2006) which requires the California Department of Mental Health (DMH), in collaboration with the California Department of Education (CDE), and in consultation with County Mental Health Departments (CMH) and County Offices of Education (COE), to develop a standardized agreement template for use by CMHs and COEs for the issuance of IDEA funds.

AB 1807 requires the agreement template to contain, at a minimum, certain data elements to be reported by CMHs to meet federal reporting requirements under IDEA, and a description of the array of service to be delivered is consistent with assessments and Individualized Education Plans (IEP). Additionally, AB 1807 establishes specific timing criteria for the disbursement of funds upon fulfillment of the grant terms and conditions which are reflected in the agreement template.

On June 9, 2009, Agenda Item 3.34, the Board of Supervisors signed the IDEA funding agreement with Riverside County Superintendent of Schools for FY 2009/2010, and authorized the Director of the Department of Mental Health to administer the terms and conditions of the IDEA funding agreement. Riverside County Superintendent of Schools has historically issued this agreement for IDEA funds to the DOMH annually. Therefore, the DOMH is requesting that the Chairman of the Board of Supervisors sign the FY 2010/2011 Agreement between the DOMH and the Riverside County Superintendent of Schools, and authorize the Director of the DOMH to administer the terms and conditions of the agreement for FY 2010/2011.

PERFORMANCE PERIOD:

The period of performance for the FY 2010/2011 agreement is July 1, 2010 through June 30, 2011. Future agreements may be executed annually by both parties through June 30, 2013 upon availability of IDEA funds.

FISCAL PROVISIONS:

Riverside County's share of the FY 2010/2011 IDEA funding is \$2,939,260. This agreement is 100% federally funded and no additional County funds are required.

RIVERSIDE COUNTY SUPERINTENDENT OF SCHOOLS
3939 Thirteenth Street/P.O. Box 868
Riverside, California 92502

AGREEMENT FOR CHILDREN'S MENTAL HEALTH SERVICES

This Agreement, made and entered into this 1st day of April, 2010, by and between **Riverside County Superintendent of Schools**, hereinafter referred to as the "COE", and **The Riverside County – Mental Health Agency**, hereinafter referred to as the "CMHA";

AGREEMENTS

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 Riverside 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 2010-2011**.

NOW, THEREFORE, it is agreed as follows:

1. **Transfer of Funds Pursuant to the Budget Act.** The Riverside COE shall transfer federal IDEA funds to the Riverside CMHA 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.

Riverside COE will pay Riverside CMHA 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. Riverside COE will pay Riverside CMHA 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.** Riverside CMHA will provide Riverside COE 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, 2010, through December 31, 2010, and will be provided by February 1, 2011. The second accounting of expenditures will cover the period of January 1, 2011, through June 30, 2011, and will be provided by September 1, 2011.

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 Riverside COE to establish a link between the services claimed and the individual student's IEP. Riverside CMHA 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.** Riverside CMHA and Riverside COE 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.** Riverside CMHA and Riverside COE 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. Riverside CHMA and Riverside COE shall ensure that all activities undertaken under this MOU will conform to the requirements of these laws.
6. **Indemnity.** Riverside CMHA and Riverside COE 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 Riverside CMHA or Riverside COE may have under law and/or the MOU.

7. **Integration.** This MOU represents the entire understanding of Riverside COE and Riverside CMHA 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 Riverside, 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 Riverside COE and Riverside CMHA.
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, 2010, through June 30, 2011.** This MOU shall terminate as of the close of business on June 30, 2011. 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, Riverside CMHA 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 Riverside COE shall provide Riverside CMHA with a copy of any amendments to the General Assurances and Federal Funds Conditions for Riverside CMHA's review. Within ten (10) days of receiving any amendments to the General Assurances and Federal Funds Conditions, Riverside CMHA shall execute the General Assurances and Federal Funds Conditions and return a signed copy.
13. **Dispute Resolution.** Riverside CMHA and Riverside COE 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 2010, and for any extension of this MOU beyond 2010, Riverside CMHA and Riverside COE 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 Riverside CMHA and Riverside COE 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 Riverside CMHA and Riverside COE 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 Riverside CMHA and Riverside COE.
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. This agreement constitutes the entire agreement between the parties and supersedes all prior or contemporaneous oral or written agreements.

COUNTY:

County of Riverside
Department of Mental Health
4095 County Circle Drive
Riverside, CA 92503

By: _____
Marion Ashley, Chairman
Riverside County Board of Supervisors

Date: _____

Attest by: _____
Kecia Harper-Ihem
Clerk of the Board

COUNTY COUNSEL
PAMELA J. WALLS
County Counsel
Approved as to Form

By Jarin R. McCall 5/10/10
Deputy County Counsel

Larisa R. McKerr

CONTRACTOR:

Riverside County Superintendent of Schools
3939 Thirteenth/ P.O. Box 868
Riverside, CA 92502

Signature: Paul C. Jessup

Print Name: Paul C. Jessup

Title: Deputy Superintendent

Date: 04.14.10