



Changes to Educationally-related Mental Health Services Fact Sheet

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How has the law changed?

Effective July 1, 2011, the California Legislature repealed Assembly Bill 3632 (AB 3632). Previously, under AB 3632, the state funded educationally-related mental health services to special education students through county mental health agencies. Under AB 3632, educationally-related mental health services included, among other services, case management, counseling, medication management, and residential placement and sometimes out-of-state residential placement.

Now that AB 3632 has been repealed, California has returned responsibility for funding and providing educationally-related mental health services to school districts.

What does this mean? How does this affect educationally-related mental health services for my child?

The change in this law means that **your school district** will now be responsible for all of the services that used to be provided jointly by your school and your county department of mental health. This does not change your child's right to receive the mental health services that they need to benefit from education.

The California Department of Education (CDE) has stated that although state law has changed, school districts have a continuing obligation under the Federal Individuals with Disabilities Education Act (IDEA) to provide mental health services as provided in a student's Individualized Education

Plan (IEP). CDE's FAQ on Mental Health Services is available through their website:

<http://www.cde.ca.gov/sp/se/ac/mhsfaq.asp>

School districts are receiving millions of dollars from the federal and state governments to provide these services to students. The right to receive school-based mental health services has **NOT** ended. Some school districts may enter into an agreement with a county, so that the county mental health agency will continue to provide the services. Other school districts will provide the mental health services directly or contract with another agency to provide the service.

Does this mean my child will have fewer services?

No. Under federal law, your child still has the right to receive mental health services needed to benefit from education. If your child's IEP includes mental health services, your child should continue to receive the same services unless you and the rest of your child's IEP team agree that your child no longer needs the same type, frequency or level of mental health services. In theory, with school districts being responsible for mental health services, there should be quicker access to initial assessment and services, consistent services despite the change in law, and no changes in providers unless an appropriate transition plan has been developed. Please seek advice from legal counsel or advocates if assessments are taking longer than 60 days.

My child's school district says they are not required to provide a psychiatrist who can prescribe my child's medication. Is this true?

This is an unsettled question. Under AB 3632, state law required medication monitoring as a related service. With the repeal of AB 3632, federal law applies and federal law does not *necessarily* require medication monitoring as a related service. School districts are being advised to determine whether the school district has responsibility for medication monitoring on a case-by-case basis. Here are some guidelines parents

should consider for children requiring medication monitoring to access education:

State regulation that requires medication monitoring, 2 CCR § 60020(f), remains in effect. So it is not certain that school districts no longer have responsibility for prescribing, administering, dispensing, and monitoring medication to alleviate the symptoms of mental illness.

Psychiatric services — including medication monitoring — are required if they are part of an integrated program of educational, emotional, behavioral, and medical services designed for educational purposes.

Schools may argue that the “medical exclusion” rule under federal law applies, which states that services exclusively provided by a licensed physician — other than for diagnosis or evaluation purposes — are not required related services under IDEA.

Parents may respond to the “medical exclusion” rule by stating that a licensed physician may prescribe medication in the context of performing an assessment.

This change in law does not affect children who require assistance with taking medication while at school.

What should I do to ensure my child gets needed mental health services?

You should always make sure these services are listed in the IEP. They should be listed as educationally necessary — or necessary for a student to benefit from special education.

My child’s IEP currently includes educationally-related mental health services. What do I do if the school district tells me they are going to change or stop services?

Your school district **CANNOT** change your child’s services solely because AB 3632 has been repealed. Moreover, your school district **CANNOT**

change any of your child's services until they hold an IEP meeting **and you agree** with the changes they propose. If you do not agree with the changes proposed by the school district, your child has a right to continue to get the services. This right is called "stay put" because it is your child's right to stay put with their current services and placement until you and the school agree on new placements or services. If you do not agree with the changes your school proposes, **you have the right to say no. You can refuse to agree to provisions in the IEP that you disagree with such as, a change in placement or type of mental health services. You have the right to request that your child stay in her current placement with her current services.**

If the school district refuses to keep your child in the same placement or with the same services, you may need to file a due process request for hearing to protect your child's stay put rights and to resolve the placement or service issues. See below for a sample stay put motion. **However, if the placement no longer exists then you have a right to a comparable placement but you would not be able to force the school district to maintain the placement through "stay put."**

For more information check our website:

http://www.disabilityrightsca.org/issues/specialeducation_pubs.html

Where can I get help if I need it?

If you have any questions about this change in the law or if the school district will not agree to keep your child in stay put or you run into any other problems, call Disability Rights California at 1-800-776-5746 for advice. The California Office of Administrative Hearings also keeps a list of free and low-cost attorneys who can help parents. You can call them to request a copy at (916) 263-0550, or if you have internet access, a copy is available online at:

<http://www.documents.dgs.ca.gov/oah/SE/SE%20advocacy%20list.pdf>

Disability Rights California is funded by a variety of sources, for a complete list of funders, go to <http://www.disabilityrightsca.org/Documents/ListofGrantsAndContracts.html>.