

## **A Sample of California Special Education Regulations Related to Students with Emotional Disturbances**

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### **5 CCR 3030 - Eligibility Criteria**

- (i) Because of a serious emotional disturbance, a pupil exhibits one or more of the following characteristics over a long period of time and to a marked degree, which adversely affect educational performance:
    - (1) An inability to learn which cannot be explained by intellectual, sensory, or health factors.
    - (2) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.
    - (3) Inappropriate types of behavior or feelings under normal circumstances exhibited in several situations.
    - (4) A general pervasive mood of unhappiness or depression.
    - (5) A tendency to develop physical symptoms or fears associated with personal or school problems.
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### **2 CCR 60040 - Referral to Community Mental Health Services for Related Services**

- (a) A LEA, IEP team, or parent may initiate a referral for assessment of a pupil's social and emotional status pursuant to Section 56320 of the Education Code. Based on the results of assessments completed pursuant to Section 56320, an IEP team may refer a pupil who has been determined to be an individual with exceptional needs or suspected of being an individual with exceptional needs as defined in Section 56026 of the Education Code and who is suspected of needing mental health services to a community mental health service when a pupil meets all of the criteria in paragraphs (1) through (5) below. Referral packages shall include all documentation required in subsection (b) and shall be provided within five (5) working days of the LEA's receipt of parental consent for the referral of the pupil to the community mental health service.
  - (1) The pupil has been assessed by school personnel in accordance with Article 2, commencing with Section 56320, of Chapter 4 of Part 30 of the Education Code.
  - (2) The LEA has obtained written parental consent for the referral of the pupil to the community mental health service, for the release and exchange of all relevant information between the LEA and the community mental health service, and for the observation of the pupil by qualified mental health professionals in an educational setting.
  - (3) The pupil has emotional or behavioral characteristics that:
    - (A) Are observed by qualified educational staff as defined in subsection (x) of Section 3001 of Title 5 of the California Code of Regulations in educational and other settings, as appropriate.
    - (B) Impede the pupil from benefiting from educational services.
    - (C) Are significant, as indicated by their rate of occurrence and intensity.
    - (D) Are associated with a condition that cannot be described solely as a social maladjustment as demonstrated by deliberate noncompliance with accepted social rules, a demonstrated ability to control unacceptable behavior and the absence of a treatable mental disorder.
    - (E) Are associated with a condition that cannot be described solely as a temporary adjustment problem that can be resolved with less than three months of school counseling.

- (4) As determined using educational assessments, the pupil's functioning, including cognitive functioning, is at a level sufficient to enable the pupil to benefit from mental health services.
  - (5) The LEA has provided counseling, psychological, or guidance services to the pupil pursuant to Section 56363 of the Education Code, and the IEP team has determined that the services do not meet the pupil's educational needs; or, in cases where these services are clearly inappropriate, the IEP team has documented which of these services were considered and why they were determined to be inappropriate.
- (b) When referring a pupil to a community mental health service in accordance with subsection (a), the LEA or the IEP team shall provide the following documentation:
- (1) Copies of the current IEP, all current assessment reports completed by school personnel in all areas of suspected disabilities pursuant to Article 2, commencing with Section 56320, of Chapter 4 of Part 30 of the Education Code, and other relevant information, including reports completed by other agencies.
  - (2) A copy of the parent's consent obtained as provided in subsection (a)(2).
  - (3) A summary of the emotional or behavioral characteristics of the pupil, including documentation that the pupil meets the criteria in paragraphs (3) and (4) of subsection (a).
  - (4) A description of the school counseling, psychological, and guidance services, and other interventions that have been provided to the pupil, including the initiation, duration and frequency of the services, or an explanation of why a service was considered for the pupil and determined to be inappropriate.
- (c) Based on preliminary results of assessments performed pursuant to Section 56320 of the Education Code, a LEA may refer a pupil who has been determined to be or is suspected of being an individual with exceptional needs, and is suspected of needing mental health services, to a community mental health service when a pupil meets the criteria in paragraphs (1) and (2) below. Referral packages shall include all documentation required in subsection (d) and shall be provided within one (1) working day to the community mental health service.
- (1) The pupil meets the criteria in paragraphs (2) through (4) of subsection (a).
  - (2) School counseling, psychological and guidance services are clearly inappropriate in meeting the pupil's needs.
- (d) When referring a pupil to a community mental health service in accordance with subsection (c), the LEA shall provide the following documentation:
- (1) Results of preliminary assessments, including those conducted by school personnel in accordance with Article 2, commencing with Section 56320, of Chapter 4 of Part 30 of the Education Code, to the extent they are available, and other relevant information, including reports completed by other agencies.
  - (2) A copy of the parent's consent obtained as provided in paragraph (2) of subsection (a).
  - (3) A summary of the emotional or behavioral characteristics of the pupil, including documentation that the pupil meets the criteria in paragraphs (3) and (4) of subsection (b).
  - (4) An explanation as to why school counseling, psychological and guidance services are clearly inappropriate in meeting the pupil's needs.
- (e) The procedures set forth in this chapter are not designed for use in responding to psychiatric emergencies or other situations requiring immediate response. In these situations, a parent may seek services from other

public programs or private providers, as appropriate. Nothing in this subsection changes the identification and referral responsibilities imposed on local education agencies under Article 1, commencing with Section 56300, of Chapter 4 of Part 30 of the Education Code.

- (f) The community mental health service shall accept all referrals for mental health assessments made pursuant to subsections (a) and (c).
- (g) If the community mental health service receives a referral for a pupil with a different county of origin, the community mental health service receiving the referral shall forward the referral within one (1) working day to the county of origin, which shall have programmatic and fiscal responsibility for providing or arranging for provision of necessary services. The procedures described in this subsection shall not delay or impede the referral and assessment process.

[Authority cited: Section 7587, Government Code.] [Reference: Sections 56026, 56300 et seq., 56320 et seq., and 56363, Education Code; Section 3001, Title 5, California Code of Regulations.]

## **2 CCR 60050 - Individualized Education Program for Mental Health Services**

- (a) When it is determined, in accordance with Section 7572 of the Government Code, that a mental health service is necessary for a pupil with a disability to benefit from special education, the following documentation shall be included in the mental health portion of the IEP:
  - (1) A description of the present levels of social and **emotional** performance;
  - (2) The goals and objectives of the mental health services with objective criteria and evaluation procedures to determine whether they are being achieved;
  - (3) A description of the types of mental health services to be provided; and
  - (4) The initiation, duration and frequency of the mental health services.
  - (5) Parental approval for the provision of mental health services. This signed consent for treatment is in addition to the signed IEP.
- (b) When completion or termination of IEP specified health services is mutually agreed upon by the parent and the community mental health service, or when the pupil is no longer participating in treatment, the community mental health service shall notify the parent and the LEA which shall schedule the IEP team meeting to discuss and document this proposed change if it is acceptable to the IEP team.

[Authority cited: Section 7587, Government Code.] [Reference: Section 300.347, Title 34, Code of Federal Regulations.]

## **2 CCR 60100 - LEA Identification and Placement of a Seriously Emotionally Disturbed Pupil**

- (a) This article shall apply only to a pupil with a disability who is seriously emotionally disturbed pursuant to paragraph (i) of Section 3030 of Title 5 of the California Code of Regulations.
- (b) When an IEP team member recommends a residential placement for a pupil who meets the educational eligibility criteria specified in paragraph (4) of subsection (c) of Section 300.7 of Title 34 of the Code of Federal Regulations, the IEP shall proceed in the following manner:

- (1) An expanded IEP team shall be convened within thirty (30) days with an authorized representative of the community mental health service.
  - (2) If any authorized representative is not present, the IEP team meeting shall be adjourned and be reconvened within fifteen (15) calendar days as an expanded IEP team with an authorized representative from the community mental health service participating as a member of the IEP team pursuant to Section 7572.5 of the Government Code.
  - (3) If the community mental health service or the LEA determines that additional mental health assessments are needed, the LEA and the community mental health service shall proceed in accordance with Sections 60040 and 60045.
- (c) Prior to the determination that a residential placement is necessary for the pupil to receive special education and mental health services, the expanded IEP team shall consider less restrictive alternatives, such as providing a behavioral specialist and full-time behavioral aide in the classroom, home and other community environments, and/or parent training in the home and community environments. The IEP team shall document the alternatives to residential placement that were considered and the reasons why they were rejected. Such alternatives may include any combination of cooperatively developed educational and mental health services.
  - (d) When the expanded IEP team recommends a residential placement, it shall document the pupil's educational and mental health treatment needs that support the recommendation for residential placement. This documentation shall identify the special education and related mental health services to be provided by a residential facility listed in Section 60025 that cannot be provided in a less restrictive environment pursuant to Title 20, United States Code Section 1412(a)(5).
  - (e) The community mental health service case manager, in consultation with the IEP team's administrative designee, shall identify a mutually satisfactory placement that is acceptable to the parent and addresses the pupil's educational and mental health needs in a manner that is cost-effective for both public agencies, subject to the requirements of state and federal special education law, including the requirement that the placement be appropriate and in the least restrictive environment.
  - (f) The residential placement shall be in a facility listed in Section 60025 that is located within, or in the county adjacent to, the county of residence of the parents of the pupil with a disability, pursuant to paragraph (3) of subsection (a) of Section 300.552 of Title 34 of the Code of Federal Regulations. When no nearby placement alternative which is able to implement the IEP can be identified, this determination shall be documented, and the community mental health service case manager shall seek an appropriate placement which is as close to the parents' home as possible.
  - (g) Rates for care and supervision shall be established for a facility listed in Section 60025 in accordance with Section 18350 of the Welfare and Institutions Code.
  - (h) Residential placements for a pupil with a disability who is seriously emotionally disturbed may be made out of California only when no in-state facility can meet the pupil's needs and only when the requirements of subsections (d) and (e) have been met. Out-of-state placements shall be made only in residential programs that meet the requirements of Welfare and Institutions Code Sections 11460 (c)(2) through (c)(3). For educational purposes, the pupil shall receive services from a privately operated non-medical, non-detention school certified by the California Department of Education.
  - (i) When the expanded IEP team determines that it is necessary to place a pupil with a disability who is seriously emotionally disturbed in residential care, the community mental health service shall ensure that:
    - (1) The mental health services are specified in the IEP in accordance with Title 20, United States Code Section 1414(d)(1)(A)(vi).
    - (2) Mental health services are provided by qualified mental health professionals.

- (j) When the expanded IEP team determines that it is necessary to place a pupil with a disability who is seriously emotionally disturbed in a facility listed in Section 60025, the expanded IEP team shall ensure that placement is in accordance with admission criteria of the facility.

[Authority cited: Section 7587, Government Code. Sections 10553, 10554, 11462(i) and (j) and 11466.1, Welfare and Institutions Code.] [Reference: Sections 7576(a) and 7579, Government Code. Sections 11460(c)(2)-(c)(3), 18350, and 18356, Welfare and Institutions Code. Sections 1412 and 1414, Title 20, United States Code. Sections 300.7 and 300.552, Title 34, Code of Federal Regulations.]

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## 2 CCR 60020 - Mental Health Definitions

- (a) "Community mental health service" means a mental health program established by a county in accordance with the Bronzan-McCorquodale Act, Part 2 (commencing with Section 5600) of Division 5 of the Welfare and Institutions Code.
- (b) "County of origin" for mental health services is the county in which the parent of a pupil with a disability resides. If the pupil is a ward or dependent of the court, an adoptee receiving adoption assistance, or a conservatee, the county of origin is the county where this status currently exists. For the purposes of this program the county of origin shall not change for pupils who are between the ages of 18 and 22.
- (c) "Expanded IEP team" means an IEP team constituted in accordance with Section 7572.5 of the Government Code. This team shall include a representative of the community mental health service authorized to make placement decisions.
- (d) "Host county" means the county where the pupil with a disability is living when the pupil is not living in the county of origin.
- (e) "Local mental health director" means the officer appointed by the governing body of a county to manage a community mental health service.
- (f) "Medication monitoring" includes all medication support services with the exception of the medications or biologicals themselves and laboratory work. Medication support services include prescribing, administering, dispensing and monitoring of psychiatric medications or biologicals necessary to alleviate the symptoms of mental illness.
- (g) "Mental health assessment" is a service designed to provide formal, documented evaluation or analysis of the nature of the pupil's emotional or behavioral disorder. It is conducted in accordance with California Code of Regulations, Title 9, Section 543(b), and Sections 56320 through 56329 of the Education Code by qualified mental health professionals employed by or under contract with the community mental health service.
- (h) "Mental health assessment plan" means a written statement developed for the individual evaluation of a pupil with a disability who has been referred to a community mental health service to determine the need for mental health services in accordance with Section 56321 of the Education Code.
- (i) "Mental health services" means mental health assessments and the following services when delineated on an IEP in accordance with Section 7572(d) of the Government Code: psychotherapy as defined in Section 2903 of the Business and Professions Code provided to the pupil individually or in a group, collateral services, medication monitoring, intensive day treatment, day rehabilitation, and case management. These services shall be provided directly or by contract at the discretion of the community mental health service of the county of origin.
- (j) "Qualified mental health professional" includes the following licensed practitioners of the healing arts: a psychiatrist; psychologist; clinical social worker; marriage, family and child counselor; registered nurse, mental health rehabilitation specialist, and others who have been waived under Section 5751.2 of the Welfare and Institutions Code. Such individuals may provide mental health services, consistent with their scope of practice.

[Authority cited: Section 7587, Government Code.] [Reference: Section 56320, Education Code. Sections 542 and 543 of Title 9, California Code of Regulations.]

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