

DEPARTMENT OF SOCIAL SERVICES

44 "P" Street, Sacramento, CA 95814



March 6, 1986

ALL-COUNTY INFORMATION NOTICE I-20-86

TO: ALL COUNTY WELFARE DIRECTORS
ALL PROBATION DEPARTMENTS

SUBJECT: STATUS OF AB 3632/AB 882 IMPLEMENTATION

The purpose of this letter is to provide information regarding the provisions of AB 3632/AB 882 and the current status of implementation activities. AB 3632 (Chapter 1747/Statutes of 1984), as amended by AB 882 (Chapter 1274/Statutes of 1985), was enacted to ensure maximum utilization of all state and federal resources available to provide handicapped children with a free appropriate public education and related services. AB 3632/AB 882 assigns to specific agencies responsibility for providing educationally related services for handicapped children, including seriously emotionally disturbed (SED) children, pursuant to an individualized education program (IEP). Attached for your information is an annotated copy of the provisions of AB 3632 and AB 882 (Attachment 1).

Implementation of AB 3632/AB 882 is the joint responsibility of the State Department of Mental Health (SDMH), the State Department of Education (SDE) and the State Department of Social Services (SDSS). The primary responsibility of SDSS and county welfare departments (CWDs) will be to administer the issuance of payments for out-of-home care costs for SED children who are placed pursuant to an IEP. In addition to this responsibility, when requested, CWDs will be responsible for assisting the IEP team in identifying appropriate residential facilities. An overview of agency roles and responsibilities for SED children is attached (Attachment 2). The operative date for DSS and CWD responsibilities pertaining to AB 3632/AB 882 is July 1, 1986.

IEP Process

A brief overview of the IEP process, as amended by AB 3632/AB 882, is as follows: Upon receiving a written referral of a child with possible exceptional needs, the local education agency develops an assessment plan and obtains the parent's written consent. An assessment of educational needs is conducted and an IEP team consisting of educational representatives and the parent determine eligibility for special education. If the child is found to be eligible, an IEP is developed. If the child is determined to

be seriously emotionally disturbed and the IEP team has determined that local education program options cannot implement the IEP, the team may consider a recommendation of residential placement. In this case, the team must be expanded to include a county mental health (CMH) department member. The expanded IEP team must attempt to meet the child's needs through any combination of nonresidential educational and mental health services in order to prevent an out-of-home placement. The expanded IEP team can designate residential placement on the IEP only when out-of-home care is necessary for the child to benefit from educational services and such residential services which address the child's needs are available.

CWDs should contact the local education agency if additional clarification on the IEP process is needed. A copy of the "Referral, Assessment and Placement Process and Timeline" (Attachment 3) is attached for your information.

Interagency Agreements

To facilitate the provision of services to handicapped children, AB 3632 emergency regulations, as adopted by DMH and DOE, require interagency agreements between the county mental health (CMH) department and county superintendent of schools. CWDs are not required to enter into interagency agreements with the CMH and local education agencies. However, CWDs are encouraged to meet with these agencies in order to set up lines of communication, share information and determine responsibilities and procedures at the local level. Written agreements may facilitate the implementation of AB 3632/AB 882.

Referring Dependents for Assessment

AB 882 provides for funds to be appropriated to SDMH for the purpose of conducting mental health assessments for IEP meetings from March 1 through June 30, 1986. It is essential that children adjudicated under Welfare and Institutions Code Section 300 (a) who have current IEPs with serious emotional disability as a primary diagnosis or who are suspected of needing mental health services in order to benefit from their education be identified and referred during this period. Referrals and subsequent IEP assessments are necessary in order to determine the size of the residential placement population which will be served by the AB 3632 Payment System and the appropriation needed to fund out-of-home care. Within the next few weeks, SDSS will be issuing instructions on referring dependent children.

Guidelines For Placing Handicapped Children in Residential Facilities

AB 3632, as amended by AB 882, requires that, prior to placing a handicapped child or a child suspected of being handicapped in a residential facility, the court or other placing agency must notify the special education local plan area (SELPA) administrator (Government Code Section 7576). The SELPA administrator will provide the court or placing agency with information about the availability of appropriate special education programs in the area in which the facility is located. Attached is a copy of "Guidelines For Placing Handicapped Children in Residential Facilities" (Attachment 4) which specifies both CWD and SELPA responsibilities.

Status of Implementation Activities

SDMH and SDE have adopted emergency regulations, effective January 1, 1986, and are in the process of preparing permanent regulations for implementation of AB 3632/AB 882. Training sessions on the emergency regulations have been conducted throughout the state for all agencies which have responsibility for the SED population. Statutory provisions impacting SDSS and CWDs are self implementing; additional, more specific instructions will be provided to CWDs and probation departments via All County Letter (ACL) in the near future.

SDSS staff are currently working with SDMH and SDE to clarify and resolve several pertinent issues before additional instructions are issued. Such issues include out-of-county and out-of-state placements, Medi-Cal for non-dependents/ wards, payment authorization format and procedures, quality control/audit and overpayment responsibilities, data collection needs and movement between the AFDC-FC and AB 3632 payment systems. In addition, SDSS has been working with a County Welfare Directors Association Ad Hoc Committee on AB 3632 to resolve funding, claiming and program concerns.

If you have any questions on the information contained in this ACIN, please contact Lisa Foster at (916) 445-0813, ATSS 485-0813.



ROBERT A. HOREL

Deputy Director

Attachments

cc: CWDA

INTERAGENCY RESPONSIBILITIES FOR
RELATED SERVICES

(Government Code)

(AB 3632 - Chapter 1747, Statutes of 1984, As
Amended by AB 882 - Chapter 1274, Statutes of
1985)

SECTION 1. The Legislature hereby finds and declares that a number of state and federal programs make funds available for the provision of education and related services to children with handicaps who are of school age. The Legislature further finds and declares that California has not maximized, or sufficiently coordinated existing state programs, in providing supportive services which are necessary to assist a handicapped child to benefit from special education.

It is the intent of the Legislature that existing services rendered by state and local government agencies serving handicapped children be maximized and coordinated. It is the further intent of the Legislature that specific state and local interagency responsibilities be clarified by this act in order to better serve the educational needs of the state's handicapped children.

- Legislative Findings and
Intent

CHAPTER 26. INTERAGENCY RESPONSIBILITIES
FOR PROVIDING SERVICES TO
HANDICAPPED CHILDREN

7570. Ensuring maximum utilization of all state and federal resources available to provide handicapped children, as defined in subsection (1) of Section 1401 of Title 20 of the United States Code, with a free appropriate public education, the provision of related services, as defined in subsection (17) 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, to handicapped children, shall be the joint responsibility of the Superintendent of Public Instruction and the Secretary of Health and Welfare. The Superintendent of Public Instruction shall ensure that this chapter is carried out through monitoring and supervision.

7571. The Secretary of Health and Welfare may designate a department of state government to assume the responsibilities described in Section 7570. The secretary, or his or her designee, shall also designate a single agency in each county to coordinate the service responsibilities described in Section 7572.

7572. (a) A child shall be assessed in all areas related to the suspected handicap by those qualified to make a determination of the child's need for the service before any action is taken with respect to the provision of related services or designated instruction and services to a child, including, but not limited to, services in the areas of, occupational therapy, physical therapy, psychotherapy, and other mental health assessments. All assessments required or conducted pursuant to this section shall be governed by the assessment procedures contained in Article 2 (commencing with Section 56320) of Chapter 4 of Part 30 of Division 4 of the Education Code.

(b) Occupational therapy and physical therapy assessments shall be conducted by qualified medical personnel as specified in regulations developed by the State Department of Health Services in consultation with the State Department of Education.

(c) Psychotherapy and other mental health assessments shall be conducted by qualified mental health professionals as specified in regulations developed by the State Department of

- Joint Responsibility

- Secretary May Designate
Department to Assume
Responsibilities

- Child Assessed in All Areas:
Related to Suspected
Handicap

- OT/PT Assessments

- Psychotherapy Assessment

Mental Health, in consultation with the State Department of Education, pursuant to this chapter.

(d) A related service or designated instruction and service shall only be added to the child's individualized education program by the individualized education program team, as described in Part 30 (commencing with Section 56000) of the Education Code, if a formal assessment has been conducted pursuant to this section, and a qualified person conducting the assessment recommended the service in order for the child to benefit from special education. In no case shall the inclusion of necessary related services in a pupil's individualized education plan be contingent upon identifying the funding source. Nothing in this section shall prevent a parent from obtaining an independent assessment in accordance with subdivision (b) of Section 56329 of the Education Code, which shall be considered by the individualized education program team.

- Adding to IEP

(1) Whenever an assessment has been conducted pursuant to subdivision (b) or (c), the recommendation of the person who conducted the assessment shall be reviewed and discussed with the parent and with appropriate members of the individualized education program team prior to the meeting of the individualized education program team. When the proposed recommendation of the person has been discussed with the parent and there is disagreement on the recommendation pertaining to the related service, the parent shall be notified in writing and may require the person who conducted the assessment to attend the individualized education program team meeting to discuss the recommendation. The person who conducted the assessment shall attend the individualized education program team meeting if requested. Following this discussion and review, the recommendation of the person who conducted the assessment shall be the recommendation of the individualized education program team members who are attending on behalf of the local educational agency.

- Related Service Recommendation

(2) If an independent assessment for the provision of related services or designated instruction and services is submitted to the individualized education program team, review of that assessment shall be conducted by the person specified in subdivisions (b) and (c). The recommendation of the person who reviewed the independent assessment shall be reviewed and

- Independent Assessment

discussed with the parent and with appropriate members of the individualized education program team prior to the meeting of the individualized education program team. The parent shall be notified in writing and may request the person who reviewed the independent assessment to attend the individualized education program team meeting to discuss the recommendation. The person who reviewed the independent assessment shall attend the individualized education program team meeting if requested. Following this review and discussion, the recommendation of the person who reviewed the independent assessment shall be the recommendation of the individualized education program team members who are attending on behalf of the local agency.

(3) Any disputes between the parent and team members representing the public agencies regarding a recommendation made in accordance with paragraphs (1) and (2) shall be resolved pursuant to Chapter 5 (commencing with Section 56500) of Part 30 of Division 4 of the Education Code.

(e) Whenever a related service or designated instruction and service specified in subdivision (b) or (c) is to be considered for inclusion in the child's individualized education program, the local education agency shall invite the responsible public agency representative to meet with the individualized education program team to determine the need for the service and participate in developing the individualized education program. If the responsible public agency representative cannot meet with the individualized education program team, then the representative shall provide written information concerning the need for the service pursuant to subdivision (d) of this section. Conference calls, together with written recommendations, are acceptable forms of participation. If the responsible public agency representative will not be available to participate in the individualized education program meeting, the local educational agency shall ensure that a qualified substitute is available to explain and interpret the evaluation pursuant to subdivision (d) of Section 56341 of the Education Code. A copy of the information shall be provided by the responsible public agency to the parents or any adult pupil for whom no guardian or conservator has been appointed.

7572.5. (a) When an assessment is conducted pursuant to Article 2 (commencing with Section

- Resolving Recommendation Disputes

- Participation in Developing IEP

- Expanded IEP Team and* Residential Recommendation

*(Section Amended in 1985)

56320) of Chapter 4 of Part 30 of Division 4 of the Education Code, which determines that a child is seriously emotionally disturbed, as defined in Section 300.5 of Title 34 of the Code of Federal Regulations, and any member of the individualized education program team recommends residential placement based on relevant assessment information, the individualized education program team shall be expanded to include a representative of the county mental health department.

(b) The expanded individualized education program team shall review the assessment and determine whether:

- Review Assessment

(1) The child's needs can reasonably be met through any combination of nonresidential services, preventing the need for out-of-home care.

(2) Residential care is necessary for the child to benefit from educational services.

(3) Residential services are available which address the needs identified in the assessment and which will ameliorate the conditions leading to the seriously emotionally disturbed designation.

(c) If the review required in subdivision (b) results in an individualized education program which calls for residential placement, the individualized education program shall include all the items outlined in Section 56345 of the Education Code, and shall also include:

- IEP Content

(1) Designation of the county mental health department as lead case manager. Lead case management responsibility may be delegated to the county welfare department by agreement between the county welfare department and the designated mental health department. The mental health department shall retain financial responsibility for provision of case management services.

(2) Provision for a review of the case progress, the continuing need for out-of-home placement, the extent of compliance with the individualized education program, and progress toward alleviating the need for out-of-home care, by the full individualized education program team at least every six months.

(3) Identification of an appropriate residential facility for placement with the assistance of the county welfare department as necessary.

7573. The Superintendent of Public Instruction shall ensure that local education agencies provide special education and those related

- LEA Responsibility

services and designated instruction and services contained in a child's individualized education program that are necessary for the child to benefit educationally from his or instructional program. Local education agencies shall be responsible only for the provision of those services which are provided by qualified personnel whose employment standards are covered by the Education Code and implementing regulations.

7575. (a) (1) Notwithstanding any other provision of law, the State Department of Health Services, or any designated local agency administering the California Children's Services, shall be responsible for the provision of medically necessary occupational therapy and physical therapy, as specified by Section 250 et seq. of the Health and Safety Code, by reason of medical diagnosis and when contained in the child's individualized education program.

- Responsibility for Pro-
vision of OT/PT

(2) Related services or designated instruction and services not deemed to be medically necessary by the State Department of Health Services, which the individualized education program team determines are necessary in order to assist a child to benefit from special education, shall be provided by the local education agency by qualified personnel whose employment standards are covered by the Education Code and implementing regulations.

(b) The department shall determine whether a California Children's Services eligible pupil, or a pupil with a private medical referral needs medically necessary occupational therapy or physical therapy. A medical referral shall be based on a written report from a licensed physician and surgeon who has examined the pupil. The written report shall include the following:

- Determination For Medically
Necessary Therapy

(1) The diagnosed neuromuscular, musculoskeletal, or physical handicapping condition prompting the referral.

(2) The referring physician's treatment goals and objectives.

(3) The basis for determining the recommended treatment goals and objectives, including how these will ameliorate or improve the pupil's diagnosed condition.

(4) The relationship of the medical disability to the pupil's need for special education and related services.

(5) Relevant medical records.

(c) The department shall provide the service directly or by contracting with another public agency, qualified individual, or a state-certified nonpublic nonsectarian school or agency.

(d) Local education agencies shall provide necessary space and equipment for the provision of occupational therapy and physical therapy in the most efficient and effective manner.

(e) The department shall also be responsible for providing the services of a home health aide when the local education agency considers a less restrictive placement from home to school for a pupil for whom both of the following conditions exist:

(1) The California Medical Assistance Program provides a life-supporting medical service via a home health agency during the time in which the pupil would be in school or traveling between school and home.

(2) The medical service provided requires that the pupil receive the personal assistance or attention of a nurse, home health aide, parent or guardian, or some other specially trained adult in order to be effectively delivered.

7576. Notwithstanding any other provision of law, the State Department of Mental Health, or any community mental health service designated by the State Department of Mental Health, shall be responsible for the provision of psychotherapy or other mental health services, as defined by regulation by the State Department of Mental Health, developed in consultation with the State Department of Education, when required in the child's individualized education program. This service shall be provided directly or by contracting with another public agency, qualified individual, or a state-certified nonpublic, nonsectarian school or agency.

7577. (a) The State Department of Rehabilitation and the State Department of Education shall jointly develop assessment procedures for determining client eligibility for State Department of Rehabilitation services for handicapped pupils in secondary schools to help them make the transition from high school to work. The assessment procedures shall be distributed to local education agencies.

(b) The State Department of Rehabilitation shall maintain the current level of services to secondary school pupils in project work ability and shall seek ways to augment services with funds which may become available.

- Providing the Service

- Space and Equipment

- Services of a Home Health Aide

- Responsibility for Provision* of Psychotherapy

- Assessment Procedures for Rehabilitation Services

- Project Work Ability

7578. The provision of special education programs and related services for handicapped children residing in state hospitals shall be ensured by the State Department of Developmental Services, the State Department of Mental Health and the Superintendent of Public Instruction in accordance with Chapter 8 (commencing with Section 56850) of Part 30 of Division 4 of Title 2 of the Education Code.

7579. (a) Prior to placing a handicapped child or a child suspected of being handicapped in a residential facility, outside the child's home, a court, regional center for the developmentally disabled, or public agency other than an educational agency, shall notify the administrator of the special education local plan area in which the residential facility is located. The administrator of the special education local plan area shall provide the court or other placing agency with information about the availability of an appropriate public or nonpublic, nonsectarian special education program in a special education local plan area where the residential facility is located.

(b) Notwithstanding Section 56159 of the Education Code, the involvement of the administrator of the special education local plan area in the placement discussion, pursuant to subdivision (a), shall in no way obligate a public education agency to pay for the residential costs and the cost of noneducational services for a child placed in a licensed children's institution or foster family home.

(c) It is the intent of the Legislature that this section will encourage communication between the courts and other public agencies which engage in referring children to, or placing children in, residential facilities, and representatives of local education agencies. It is not the intent of this section to hinder the courts or public agencies in their responsibilities for placing handicapped children in residential facilities when appropriate.

7580. Prior to licensing a community care facility, as defined in Section 1502 of the Health and Safety Code, in which a handicapped child may be placed, or prior to a modification of such a facility's license to permit expansion of the facility, the State Department of Social Services shall consult with the administrator of the special education local plan area in order to consider the impact of licensure upon local education agencies.

- Programs for State Hospital Children

- Prior Notification on* Residential Placements

- Involvement of SELPA Administrator

- Encourage Communication - Not Hinder Placement

- Community Care Facility Impact on Education

7581. The residential and noneducational costs of a child placed in a medical or residential facility by a public agency, other than a local education agency, or independently placed in a facility by the parent of the child, shall not be the responsibility of the state or local education agency, but shall be the responsibility of the placing agency or parent.

7582. Assessments and therapy treatment services provided under programs of the State Department of Health Services or the State Department of Mental Health, or their designated local agencies, rendered to a child referred by a local education agency for an assessment or a handicapped child with an individualized education program, shall be exempt from financial eligibility standards and family repayment requirements for these services when rendered pursuant to this chapter.

7583. Each local agency affected by this chapter shall estimate expenditures which were previously borne by the agency which will, as a result of enactment of this chapter, shift to another agency, or shall identify and estimate its responsibility for expenditures which will be acquired by the agency as a result of enactment of this chapter. The agency shall report the estimated shifts in responsibility in costs through appropriate state agencies by March 15, 1985, and report actual shifts in expenditures annually by March 15 in subsequent years. The appropriate state agencies shall submit this information to the Department of Finance annually by April 30.

(b) The Department of Finance shall, in the annual Budget Act, recommend appropriate adjustments, if any, in allocations and entitlements to local agencies to reflect any shifts in expenditures caused by this chapter.

(c) Any reductions in state allocations for local educational agencies resulting from this chapter shall be applied equally on a pro rata basis by the Superintendent of Public Instruction.

(d) By January 15, 1985, the superintendent and the Secretary of Health and Welfare shall jointly develop uniform data collection forms to be used by local agencies in reporting under this section.

(e) This section shall remain in effect only until July 1, 1986, and as of that date is repealed, unless a later enacted statute, which is chaptered before July 1, 1986, deletes or extends this date.

- Responsibility for Residential/Noneducational Costs

- Exemption from Financial* Eligibility Standards/Repayment

- Estimate Expenditures*

- Department of Finance Recommends Appropriate Adjustments

- Reductions in State Allocations Applied on Pro Rata Basis

- Uniform Data Forms

- July 1, 1986 Repeal Date

*(Sections Amended in 1985)

7584. As used in this chapter, "handicapped children", "child," or "pupil" means individuals with exceptional needs as defined in Section 56026 of the Education Code.

7585. (a) Whenever any department or any local agency designated by that department fails to provide a related service or designated instruction instruction and service required pursuant to Section 7575 or 7576, and specified in the child's individualized education program, the parent, adult pupil, or any local education agency referred to in this chapter, shall submit a written notification of the failure to provide the service to the Superintendent of Public Instruction or the Secretary of Health and Welfare.

(b) When either the Superintendent of Public Instruction or the Secretary of Health and Welfare receives a written notification of the failure to provide a service as specified in subdivision (a), a copy shall immediately be transmitted to the other party. The superintendent, or his or her designee, and the secretary, or his or her designee, shall meet to resolve the issue within 15 calendar days of receipt of the notification. A written copy of the meeting resolution shall be mailed to the parent, the local education agency, and affected departments, within 10 days of the meeting.

(c) If the issue cannot be resolved within 15 calendar days to the satisfaction of the superintendent and the secretary, they shall jointly submit the issue in writing to the Director of the Office of Administrative Hearings, or his or her designee, in the State Department of General Services.

(d) The Director of the Office of Administrative Hearings, or his or her designee, shall review the issue and submit his or her findings in the case to the superintendent and the secretary within 30 calendar days of receipt of the case. The decision of the Director of the Office of Administrative Hearings, or his or her designee, shall be binding on the departments and their designated agencies who are parties to the dispute.

(e) If the meeting, conducted pursuant to subdivision (b), fails to resolve the issue to the satisfaction of the parent or local education agency, either party may appeal to the Director of the Office of Administrative Hearings, whose decision shall be the final administrative determination and binding on all parties.

- Definition of "Handicapped Children"

- Failure to Provide a Service

- Superintendent and Secretary of Health and Welfare Meet to Resolve Issue

- Submit Unresolved Issue to Office of Administrative Hearings

- Decision Binding

- Appeal

(f) Whenever notification is filed pursuant to subdivision (a), the pupil affected by the dispute shall be provided with the appropriate related service or designated instruction and service pending resolution of the dispute, if the pupil had been receiving the service. The Superintendent of Public Instruction and the Secretary of Health and Welfare shall ensure that funds are available for provision of the service pending resolution of the issue pursuant to subdivision (e).

(g) Nothing in this section prevents a parent or adult pupil from filing for a due process hearing under Section 7586.

(h) The Superintendent of Public Instruction and the Secretary of Health and Welfare shall submit to the Legislature on July 1 of each year a joint report on the written notifications received pursuant to subdivision (a) on the failure of departments or their designated local agencies to provide occupational therapy, physical therapy, or psychotherapy. This joint report shall include, but not be limited to, a description of the nature of these disputes, a summary of the outcomes of these disputes, and any recommendations for changes to the procedure set forth in subdivision (a) or with regard to any interagency agreement and regulations which might exist as a result of the implementation of this chapter.

(i) The contract between the State Department of Education and the Office of Administrative Hearings for conducting due process hearings shall include payment for services rendered by the Office of Administrative Hearings which are required by this section.

7586. (a) All state departments, and their designated local agencies shall be governed by the procedural safeguards required in Section 1415 of Title 20 of the United States Code. A due process hearing arising over a related service or designated instruction and service shall be filed with the Superintendent of Public Instruction. Resolution of all issues shall be through the due process hearing process established in Chapter 5 (commencing with Section 56500) of Part 30 of Division 4 of the Education Code. The decision issued in the due process hearing shall be binding on the department having responsibility for the services in issue as prescribed by this chapter.

(b) Upon receipt of a request for a due process hearing involving an agency other than an

- Services Pending Dispute Resolution

- Due Process Hearing

- Report to Legislature

- Payment for Office of Administrative Hearings' Services

- Procedural Safeguards

- Notification of Hearing Request

educational agency, the Superintendent of Public Instruction shall immediately notify the state and local agencies involved by sending a copy of the request to the agencies.

(c) All hearing requests that involve multiple services that are the responsibility of more than one state department shall give rise to one hearing with all responsible state or local agencies joined as parties.

(d) No public agency, state or local, may request a due process hearing pursuant to Section 56501 of the Education Code against another public agency.

7586.5. Not later than January 1, 1988, the Superintendent of Public Instruction and the Secretary of Health and Welfare shall jointly submit to the Legislature and the Governor a report on the implementation of this chapter. The report shall include, but not be limited to, information regarding the number of complaints and due process hearings resulting from this chapter.

7586.7. The Superintendent of Public Instruction and the Secretary of Health and Welfare shall jointly prepare and implement within existing resources a plan for in-service training of state and local personnel responsible for implementing the provisions of this chapter.

7587. By January 1, 1986, each state department named in this chapter shall develop regulations, as necessary, for the department or designated local agency to implement this act. All regulations shall be reviewed by the Superintendent of Public Instruction prior to filing with the Office of Administrative Law, in order to ensure consistency with federal and state laws and regulations governing the education of handicapped children. The directors of each department shall adopt all regulations pursuant to this section as emergency regulations in accordance with the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For the purpose of the Administrative Procedure Act, the adoption of the regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare. These regulations shall not be subject to the review and approval of the Office of Administrative Law shall not be subject to automatic repeal until 180 days after the regulations take effect; and shall become effective immediately upon filing

- Notification of Hearing Request
- One Hearing
- Restriction on Public Agency Hearing Requests
- Report on Implementation* of Law
- In-Service Training*
- Regulations**

*(Sections Added in 1985)

** (Section Amended in 1985)

with the Secretary of State. Regulations adopted pursuant to this section shall be developed with the maximum feasible opportunity for public participation and comments.

7588. This chapter shall become operative on July 1, 1986, except Section 7583 which shall become operative on January 1, 1985.

SEC. 15.5. (a) The Legislature recognizes that current estimates of the number of severely emotionally disturbed children in the state who need 24-hour out-of-home care may be less than the number of children in need of such care as determined appropriate through the Individual Education Plan (IEP) process established under Chapter 1747, of the Statutes of 1984.

(b) Therefore, the State Department of Social Services and the State Department of Education shall jointly report to the Joint Legislative Budget Committee by January 1, 1988, regarding any growth in the number of severely emotionally disturbed children determined to need 24-hour out-of-home care as a result of Chapter 1747 of the Statutes of 1984. This report shall include documentation of the cost impacts on the state, county, and federal governments for the cost of 24-hour out-of-home care for these children.

SEC. 16. Funds not to exceed the total amount reported by the State Department of Education, as verified by the Department of Finance pursuant to Section 7583 of the Government Code and Section 4 of Chapter 1747 of the Statutes of 1984, shall be transferred July 1, 1986, from the State Department of Education to the state departments responsible for services specified in Chapter 26 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code and designated in each pupil's individualized education program.

SEC. 18. The sum of one million six hundred thousand dollars (\$1,600,000) is hereby appropriated from the General Fund to the State Department of Mental Health for purposes of conducting assessments and participating in developing individualized education programs as required by Chapter 26 (commencing with Section 7570 of Division 7 of Title 1 of the Government Code, during the period of March 1, 1986 through June 30, 1986. Notwithstanding Section 5705 of the Welfare and Institutions Code, expenditures made by a community mental health service designated by the State Department of Mental Health to provide the services described in this section shall be financed on a basis of 100 percent state funds during the period from March 1, 1986, to June 30, 1986, inclusive.

- July 1, 1986 Operative
Date

- Report on Growth in Number*
of Seriously Emotionally
Disturbed Children
Needing Out-of-Home Care

- Transfer of Funds*

- Appropriation for Mental*
Health Assessments

*(Noncodified Sections Added
in 1985)

SERIOUSLY EMOTIONALLY DISTURBED
OUT-OF-HOME CARE

(Welfare and Institutions Code)
(AB 882 - Chapter 1274, Statutes of 1985)

CHAPTER 6. SERIOUSLY EMOTIONALLY DISTURBED
CHILDREN: 24-HOUR OUT-OF-HOME CARE

- 24-HOUR OUT-OF-HOME CARE*

18350. (a) Payments for 24-hour out-of-home care shall be provided under this chapter on behalf of any seriously emotionally disturbed child who has been placed out-of-home pursuant to an individualized education program developed under Section 7572.5 of the Government Code. These payments shall not constitute an aid payment or aid program.

- Payments

(b) Payments shall only be made to children placed in privately operated residential facilities licensed in accordance with the Community Care Facilities Act.

(c) Payments shall be based on rates established in accordance with Sections 11461, 11462, and 11463 and shall be based on providers' actual allowable costs.

(d) Payments for 24-hour out-of-home care under this section shall not result in any cost to the seriously emotionally disturbed child or his or her parent or parents.

18351. (a) Payments shall be issued by the county welfare department to residential care providers upon receipt of authorization documents from the State Department of Mental Health or a designated county mental health agency. The county welfare department located in the same county as the county mental health agency designated to provide case management services shall be responsible for payment under this section. Authorization documents shall be submitted directly to the county welfare department clerical unit responsible for issuance of warrants and shall include information sufficient to demonstrate that the child meets all eligibility criteria established in regulations by the State Department of Mental Health, developed in consultation with the State Department of Education.

- Issued by County Welfare
Department

(b) The county welfare department shall submit reports to the State Department of Social Services for reimbursement of payments issued to seriously emotionally disturbed children for 24-hour out-of-home care.

18352. County welfare departments may, at their option and with approval of the State Department of Social Services and other appropriate agencies, enter into agreements with other local agencies for the delivery of a single payment for all related services for a seriously emotionally disturbed child to a residential care provider.

18353. When an individualized education program calls for 24-hour out-of-home care, the county welfare department shall provide assistance, as necessary, in identifying a facility suited to the child's needs and in placing the child in the facility.

18354. (a) If a provider of 24-hour out-of-home care to a child who has been placed pursuant to Section 7572.5 of the Government Code in a 24-hour out-of-home placement disputes an action of the designated county mental health agency regarding the providers eligibility for payment, the provider may request a review of the issue by the designated county mental health agency. Designated county mental health agencies may establish policies and procedures, as may be necessary, to implement this subdivision.

(b) If the issue remains unresolved after the review by the designated county mental health agency, then the provider may request a review of the issue by the State Department of Mental Health. The Director of Mental Health may establish policies and procedures, as may be necessary, to implement this subdivision. The review under this subdivision shall be limited to the issue of whether the eligibility for payment criteria established by the State Department of Mental Health was correctly applied.

18355. Notwithstanding any other provision of the law, 24-hour out-of-home care for seriously emotionally disturbed children who are placed in accordance with Section 7572.5 of the Government Code shall be funded from a separate appropriation in the budget of the State Department of Social Services in order to fund both 24-hour out-of-home care payment and local administrative costs. Reimbursement for 24-hour out-of-home care payment costs shall be from that appropriation, subject to the same sharing ratio as prescribed in subdivision (c) of Section 15200, and available funds. Reimbursements for local administrative costs shall also be from that appropriation, subject to the same sharing ratio as prescribed in Section 15204.2 for the Aid to Families with Dependent Children program, and available funds.

- Agreements for Single Payment

- Provide Assistance in Identifying Facility

- Disputes Regarding the Providers Eligibility For Payment

- Separate Appropriation

- For SED children who are not dependents (300's), CWD involvement in the IEP team process will be limited to providing assistance, as needed and requested by the IEP team, in identifying an appropriate facility. [Government Code Section 7572.5(b)(3), Welfare and Institutions Code Section 18353]
- To assist CWDs, SDSS will distribute the "AFDC-FC Group Home Rate Notification Listing" directly to CMHs on a regular basis.
- When an IEP team meeting is conducted for a court dependent or ward, absent any specific court order to the contrary, the agency which has been assigned care, custody and control by the court is responsible for functioning as the child's legally responsible agent for educational purposes, including consenting to assessments and the content of the IEP in writing. This responsibility cannot be delegated. (However, when reunification is anticipated, the child's parents should also be encouraged to participate in the IEP process.)
- Except for those WIC 300(a) children for whom dependencies will be dismissed as the result of an IEP designation of residential placement, children who are already placed out-of-home as a result of being adjudicated court dependents or wards and who are determined to be SED will continue to be served under the Aid to Families with Dependent Children-Foster Care (AFDC-FC) Program. The agency vested with care, custody and control by the court (CWD or probation department) will continue to be responsible for case management of required child welfare and AFDC-FC services. The IEP team will be responsible for ensuring that related educational, including mental health, services designated in the IEP are provided.

February 1986

ATTACHMENT 2

AB 3632/AB 882: ROLES AND RESPONSIBILITIES

Payments

- In order to qualify for SDSS funded out-of-home care payments, the expanded IEP team must place SED children in facilities licensed by Community Care Licensing which have a rate set by SDSS. Payments to licensed facilities for out-of-home care will be the same rates as those established for AFDC-FC children. [Welfare and Institutions Code Section 18350]
- SDMH will determine uniform payment eligibility criteria to be applied by all county mental health (CMH) departments. (SDMH is developing a model payment authorization format for CMH use.)
 - The CMH case manager will confirm the SED child's eligibility, verify the provider rate and submit payment authorization documents directly to the CWD clerical unit responsible for issuance of warrants. [Welfare and Institutions Code Section 18351]
- SDSS is setting up the AB 3632 Payment System for SED children who are placed out-of-home pursuant to an IEP and will supervise CWD payment issuance.
 - The CWD will issue payments based on CMH authorization and submit claims to SDSS for reimbursement of payments. Payments will be funded from a separate closed-ended appropriation in the SDSS budget. Reimbursements for both out-of-home care and local administrative costs will be subject to that appropriation and the same sharing ratios as established for the AFDC-FC Program. [Welfare and Institutions Code Section 18355]

Services

- When out-of-home care is determined to be required by the expanded IEP team, the CMH will provide case management and supervision of SED children. Case management and supervision responsibilities may be delegated to the CWD by agreement with the CMH. However, the CMH retains financial responsibility for provision of case management services. [Government Code Section 7572.5(b)(1)]
- CMH case management responsibilities include locating the appropriate facility and coordinating the placement process, including transportation. The local education agency is responsible for providing transportation to a nonpublic school placement.



INDIVIDUALIZED EDUCATION PROGRAM:

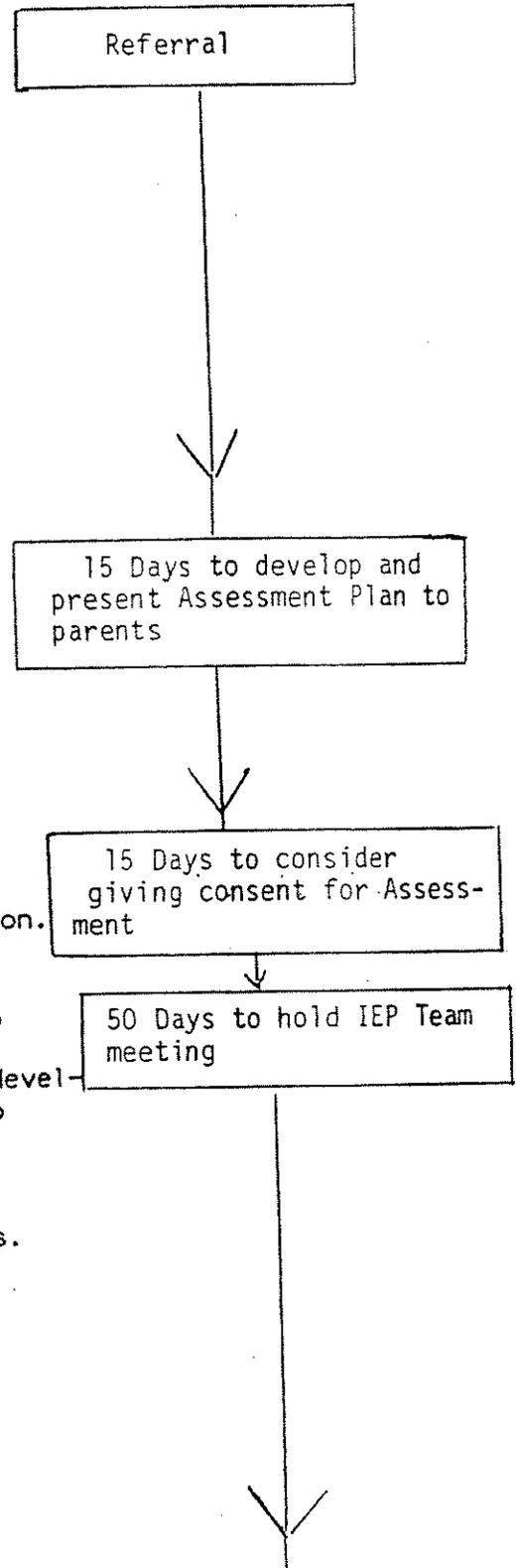
REFERRAL, ASSESSMENT AND PLACEMENT

Process

1. Referral - A Referral may be initiated by a parent, teacher or another person. It must be made in writing. Procedures for handling referrals are determined by each local education agency, special education local plan area or county office of education. When a referral is made by the local welfare department personnel, the referral shall include the reasons that the pupil is suspected of being handicapped and in need of special education. The referral should also identify the name, address and telephone number of the person who is legally responsible for making the educational decision regarding the pupil.
2. Assessment Plan - Within 15 calendar days of the referral, an assessment plan is developed to assess the pupil in all areas of suspected disability. A copy of the assessment plan is given to the parents. This plan explains the assessment instruments to be used, the purpose, the personnel responsible to give and interpret tests and the rationale for its necessity. The "Parents Rights" shall be included with the assessment plan.
3. Parent Consent - The parent's written consent must be obtained before conducting any assessments. Parents have 15 calendar days to arrive at a decision.
4. IEP Team - Within 50 calendar days of receipt of the parent's written consent to assess, an Individualized Education Program Team meeting must be held and an individual education program (IEP) developed for an eligible pupil. Parents are invited to all meetings regarding eligibility or individual education program development for their child. Parents must be given reasonable advance notice to ensure that they may be able to attend the meetings. (10 day notice is suggested).

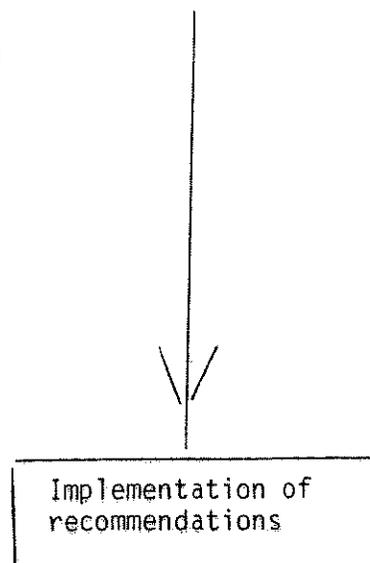
The mandated members of the Team are 1) an Administrator/Designee knowledgeable about program options, 2) Pupil's teacher, and 3) one or both parents. The pupil and others, at the discretion of the Team, may be included. The

Timeline



education agency must assure that at least one individual who has conducted an assessment of the pupil or who is knowledgeable about the assessment procedures and interpretation of the assessment data is present at the meeting. The Team must consider a continuum of program options when deciding upon the educational placement.

5. Parent Consent - Parent's written consent must be obtained for the contents, the implementation of the individual education program and the educational placement.
6. Placement - The recommended program placement and services should begin as soon as possible from the date of parent's written consent to the IEP.
7. Annual Review - Each Special Education pupil's IEP must be reviewed at least annually.
8. Re-evaluation - At least every 3 years a Special Education pupil shall have a complete re-evaluation to determine continuing need for special education.



WB:me
02/28/86

ATTACHMENT 4

GUIDELINES FOR PLACING HANDICAPPED CHILDREN
IN RESIDENTIAL FACILITIES

As part of the implementation of Chapter 1747, Statutes of 1984, (AB 3632) amended by Chapter 1274, Statutes of 1985 (AB 882) the Department of Social Services (DSS) at the request of the State Department of Education (SDE) agreed to provide county welfare departments (CWDs) with informational guidelines for notifying the special education local plan area administrator prior to placing a handicapped child or a child suspected of being handicapped in a residential facility.

When a single agency (CWD) places a handicapped child or a child suspected of being handicapped in a residential facility, the placing agency should consider the child's educational needs. To accomplish this goal the SDE has asked for CWD cooperation to ensure notification of the special education local area plan administrator 10 days or as early as is practicable prior to placing a handicapped child or a child suspected of being handicapped in a residential facility for reasons other than the child's educational needs. The notification should include all the relevant information that the CWD has in the child's case record, such as:

- (1) The name of the last school attended by the child, the contact person at that school, and available educational records.
- (2) The name, address, and telephone number of the individual with designated responsibility to represent the child in educational matters. The designated individual must be other than the care provider if the provider operates, is affiliated with, or controls a nonpublic school;
- (3) A copy or summary of the most recent psychological and medical records relevant to educational planning which are maintained by the CWD.
- (4) When applicable, notification of the child's history of being dangerous to self and others;
- (5) The address and telephone number of the residential placement under consideration for the child.
- (6) A description of any special considerations related to transporting the pupil.

As you are aware, prior to releasing any of the above confidential information the CWD must have a signed release from a parent, guardian, or the Juvenile Court.

When the CWD makes an emergency placement to protect the physical, mental health, or safety of the child, the CWD should furnish the special education local plan area administrator the required information within three calendar days after the placement.

The special education local plan area administrator, upon receipt of a notice from a CWD should communicate to the CWD within seven calendar days, stating the range of program alternatives available to individuals with exceptional needs within the special education local plan area.

When no appropriate special education placements exist with the special education local plan area, the child's placement options may be home instruction or instruction in a public or nonpublic facility located in another special education local plan area, until an appropriate placement can be developed. When the CWD places a child in a residential facility which has an on-ground, certified, nonpublic, nonsectarian school, the child may continue to attend the education program only if the special education local plan area's individualized education program team has determined that:

- (A) There is no appropriate public education program in the community, and
- (B) The on-ground program is appropriate and can implement the pupil's individualized education program.

When a child suspected of being handicapped is placed in a residential facility, the child shall be enrolled with the local education agency within whose jurisdiction the residential facility is located.

- (1) The administrator of the residential facility shall refer the child for assessment to determine the pupil's eligibility for special education.
- (2) The local education agency shall proceed in accordance with Education Code, Part 30, Chapter 4.