



CALIFORNIA
DEPARTMENT OF
EDUCATION

TOM TORLAKSON
STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

September 13, 2011

Dear County and District Superintendents, Special Education Local Plan Area Directors, Special Education Administrators at County Offices of Education, Charter School Administrators, Principals, and Nonpublic School Directors:

ASSEMBLY BILL 114: NONPUBLIC AGENCY CERTIFICATION

On June 30, 2011, Assembly Bill 114, Chapter 43, Statutes of 2011, was signed into law. Under AB 114, several sections of Chapter 26.5 of the *California Government Code (GC)* were amended or rendered inoperative, thereby ending the state mandate on county mental health agencies to provide mental health services to students with disabilities. With the passage of AB 114, it is clear that local educational agencies (LEAs) are now solely responsible for ensuring that students with disabilities receive special education and related services, including some services previously arranged for or provided by county mental health agencies. As LEAs arrange for the provision of related services, clarification has been requested concerning the circumstances under which related service providers must obtain certification as Nonpublic Agencies (NPAs) or Nonpublic Schools (NPSs).

Title 5, Section 3051(a)(4) of the *California Code of Regulations (CCR)* establishes that individuals and entities providing related services may be any one of the following:

- A. Employees of the school district or county office of education
- B. Employed under (NPA or NPS) contract pursuant to *California Education Code (EC)* sections 56365–56366
- C. Employees, vendors, or contractors of the State Departments of Health Services or Mental Health, or any designated local public health or mental (health) agency

In the following bullets, options A, B, and C explore whether NPA or NPS certification is required in each of the three scenarios:

- **Option A—Employees of a School District or County Office of Education**

LEAs may directly employ individuals to provide related services. LEAs must ensure that those individuals hold the appropriate license or credential for their assignments, but such individuals are not required to obtain NPA or NPS certification.

- **Option B–Nonpublic Schools or Nonpublic Agencies**

An LEA may contract directly with an entity or individual that is certified as an NPA or NPS to provide related services.

- **Option C–Employees, Vendors, or Contractors of the Department of Mental Health or Designated Local Public Mental Health Agencies**

An LEA may secure the provision of related services directly from a state or local public mental health agency through a provider that is a direct employee, contractor, or vendor of that agency. NPA or NPS certification is not required. Alternatively, an LEA may secure the provision of related services directly from a contractor or vendor of a state or local public mental health agency. NPA or NPS certification is not required. When conducting its monitoring process, the California Department of Education (CDE) will verify that the LEA has documentation that such contractors or vendors are contractors or vendors of a state or local public mental health agency in the current fiscal year. In addition, LEAs are responsible for ensuring and maintaining documentation that the entities providing related services are qualified pursuant to Sections 3060–3065 of Title 5 of the *CCR*.

Information on obtaining NPA or NPS Certification is available on the CDE NPS/A Certification Applications Web page at <http://www.cde.ca.gov/sp/se/ds/npsactapp.asp>, or you may contact the Interagency Nonpublic Schools and Agencies Unit, Special Education Division, by phone at 916-327-0141 or by e-mail at npsa@cde.ca.gov.

Relevant portions of Section 3065 of Title 5, *CCR*, describing the staff qualification requirements for related services, are enclosed with this correspondence.

Please note that LEAs are not precluded from seeking a waiver, pursuant to Section 56366.2 of the *EC*, for any scenario that is not addressed by the content of this notice.

If you have any general questions regarding this subject, please contact the Policy and Program Services Unit of the Special Education Division by phone at 916-323-2409, or the Interagency Nonpublic Schools and Agencies Unit of the Special Education Division by phone at 916-327-0141.

Sincerely,

Original signed by Fred Balcom. Hard copy of the signed document is available by contacting the Special Education Division's Director's Office at 916-445-4602.

Fred Balcom, Director
Special Education Division

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Enclosure

5 CCR §3065: Staff Qualifications and Related Services

To be eligible for certification to provide designated instruction and related services to individuals with exceptional needs, nonpublic schools and agencies shall meet the following requirements:

- (a)(1) "Adapted physical education" means:
 - (A) a modified general physical education program, or a specially designed physical education program in a special class; or
 - (B) consultative services provided to pupils, parents, teachers, or other school personnel for the purpose of identifying supplementary aids and services or modifications necessary for successful participation in the general physical education program or specially designed physical education programs.
- (a)(2) Adapted physical education shall be provided only by personnel who possess a credential issued by the California Commission on Teacher Credentialing that authorizes service in adapted physical education.
- (b)(1) "Assistive technology service" means any service that directly assists an individual with exceptional needs in the selection or use of an assistive technology device that is educationally necessary. The term includes the evaluation of the needs of an individual with exceptional needs including a functional evaluation of the individual in the individual's customary environment; coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education programs and rehabilitation plans and programs; training or technical assistance for an individual with exceptional needs or, where appropriate, the family of an individual with exceptional needs or, if appropriate, that individual's family; and training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of individuals with exceptional needs.
- (b)(2) Assistive technology services shall be provided only by personnel who possess a:
 - (A) license in Physical Therapy issued by a licensing agency within the Department of Consumer Affairs, where the utilization of

assistive technology services falls within the scope of practice of physical therapy as defined in Business and Professions Code section 2620 and implementing regulations; or

- (B) license in Occupational Therapy issued by a licensing agency within the Department of Consumer Affairs; or
 - (C) license in Speech-Language Pathology issued by a licensing agency within the Department of Consumer Affairs or a valid document, issued by the California Commission on Teacher Credentialing, where the function of the assistive technology service is augmentative communication; or
 - (D) baccalaureate degree in engineering with emphasis in assistive technology; or
 - (E) baccalaureate degree in a related field of engineering with a graduate certificate in rehabilitation technology or assistive technology; or
 - (F) certification from the Rehabilitation Engineering and Assistive Technology Society of North America and Assistive Technology Provider (RESNA/ATP); or
 - (G) a certificate in assistive technology applications issued by a regionally accredited post-secondary institution; or
 - (H) a credential that authorizes special education of physically handicapped, orthopedically handicapped, or severely handicapped pupils.
- (c)(1) "Audiological services" means aural rehabilitation (auditory training, speech reading, language habilitation, and speech conservation) and habilitation with individual pupils in the general classroom; monitoring hearing levels, auditory behavior, and amplification for all pupils requiring personal or group amplification in the instructional setting; planning, organizing, and implementing an audiology program for individuals with auditory dysfunctions, as specified in the IEP [individualized education program]; or consultative services regarding test finding, amplification needs and equipment, otological referrals, home training programs, acoustic treatment of rooms, and coordination of educational services to hearing-impaired individuals.
- (c)(2) Audiological services shall be provided only by personnel who possess:

- (A) a license in Audiology issued by a licensing agency within the Department of Consumer Affairs; or
 - (B) a credential authorizing audiology services.
- (d) Behavior intervention shall be designed or planned only by personnel who have:
- (1) pupil personnel services credential that authorizes school counseling or school psychology; or
 - (2) credential authorizing the holder to deliver special education instruction; or
 - (3) license as a Marriage and Family Therapist certified by the Board of Behavioral Sciences, within the Department of Consumer Affairs; or
 - (4) license as a Clinical Social Worker by the Board of Behavioral Sciences, within the Department of Consumer Affairs; or
 - (5) license as an Educational Psychologist issued by a licensing agency within the Department of Consumer Affairs; or
 - (6) license in psychology regulated by the Board of Psychology, within the Department of Consumer Affairs; or
 - (7) master's degree issued by a regionally accredited post-secondary institution in education, psychology, counseling, behavior analysis, behavior science, human development, social work, rehabilitation, or in a related field.
- (e) To be eligible for certification to provide behavior intervention, including implementation of behavior modification plans, but not including development or modification of behavior intervention plans, a nonpublic school or agency shall deliver those services utilizing personnel who:
- (1) possess the qualifications under subdivision (d); or
 - (2)(A) are under the supervision of personnel qualified under subdivision (d); and
 - (B) possess a high school diploma or its equivalent; and

- (C) receive the specific level of supervision required in the pupil's individualized educational program (IEP).
- (f)(1) "Counseling and guidance" means educational counseling in which the pupil is assisted in planning and implementing his or her immediate and long-range educational program; career counseling in which the pupil is assisted in assessing his or her aptitudes, abilities, and interests in order to make realistic career decisions; personal counseling in which the pupil is helped to develop his or her ability to function with social and personal responsibility; or counseling with parents and staff members on learning problems and guidance programs for pupils.
- (f)(2) Counseling and guidance shall be provided only by personnel who possess a:
 - (A) license as a Marriage and Family Therapist, or Marriage, and Family Intern under supervision of either a Marriage and Family Therapist, licensed Clinical Social Worker, licensed Psychologist, or a Physician who is certified in psychiatry by either the Medical Board of California, the Board of Behavioral Sciences, or the Board of Psychology, within the Department of Consumer Affairs; or
 - (B) license as a Clinical Social Worker, or Associate Clinical Social Worker under supervision of either a licensed Clinical Social Worker or a licensed Mental Health Professional by the Board of Behavioral Sciences, within the Department of Consumer Affairs; or
 - (C) license as an Educational Psychologist issued by a licensing agency within the Department of Consumer Affairs; or
 - (D) license in psychology, or who are working under supervision of a licensed psychologist, both regulated by the Board of Psychology, within the Department of Consumer Affairs; or
 - (E) pupil personnel services credential, which authorizes school counseling or school psychology.
- (g)(1) "Early education programs for children with disabilities" means the program and services specified by Education Code, part 30, section 56425 et seq.
- (g)(2) Early education programs for children with disabilities shall be provided only by personnel who meet the appropriate personnel

- qualifications set forth in this article and comply with all other requirements of Education Code, chapter 4.4 commencing with section 56425.
- (h) An “educational interpreter” provides communication facilitation between students who are deaf or hard of hearing, and others, in the general education classroom and for other school related activities, including extracurricular activities, as designated in a student's IEP.
- (1) Interpreters for deaf and hard of hearing pupils shall meet the following qualification standards:
- (A) By July 1, 2008, an educational interpreter shall be certified by the national Registry for Interpreters of the Deaf (RID), or equivalent; in lieu of RID certification or equivalent, an educational interpreter shall have achieved a score of 3.0 or above on the Educational Interpreter Performance Assessment (EIPA), the Educational Sign Skills Evaluation–Interpreter and Receptive (ESSE-I/R), or the National Association of the Deaf/American Consortium of Certified Interpreters (NAD/ACCI) assessment. If providing Cued Language transliteration, a transliterator shall possess Testing, Evaluation and Certification Unit, Inc., (TECUnit) certification, or have achieved a score of 3.0 or above on the EIPA–Cued Speech.
- (B) By July 1, 2009, and thereafter, an educational interpreter shall be certified by the national RID, or equivalent; in lieu of RID certification or equivalent, an educational interpreter shall have achieved a score of 4.0 or above on the EIPA, the ESSE-I/R, or the NAD/ACCI assessment. If providing Cued Language transliteration, a transliterator shall possess TECUnit certification, or have achieved a score of 4.0 or above on the EIPA–Cued Speech;
- (i)(1) “Health and nursing services” means:
- (A) managing the child's health problems on the school site;
- (B) consulting with pupils, parents, teachers, and other personnel;
- (C) group and individual counseling with parents and pupils regarding health problems;

- (D) maintaining communication with health agencies providing care to individuals with disabilities; or
 - (E) providing services by qualified personnel.
- (i)(2) Health and nursing services shall be provided only by personnel who possess:
- (A) a license as a Registered Nurse, issued by a licensing agency within the Department of Consumer Affairs; or
 - (B) a license as a Vocational Nurse, issued by a licensing agency within the Department of Consumer Affairs, under the supervision of a licensed Registered Nurse; or
 - (C) a school nurse credential; or
 - (D) demonstrated competence in cardio-pulmonary resuscitation, current knowledge of community emergency medical resources, and skill in the use of equipment and performance of techniques necessary to provide specialized physical health care services for individuals with exceptional needs. In addition, possession of training in these procedures to a level of competence and safety that meet the objectives of the training as provided by the school nurse, public health nurse, licensed physician and surgeon, or other training programs. "Demonstrated competence in cardio-pulmonary resuscitation" means possession of a current valid certificate from an approved program; or
 - (E) a valid license, certificate, or registration appropriate to the health service to be designated, issued by the California agency authorized by law to license, certificate, or register persons to practice health service in California.
- (j)(1) "Home and hospital services" means instruction delivered to children with disabilities, individually, in small groups, or by teleclass, whose medical condition such as those related to surgery, accidents, short-term illness or medical treatment for a chronic illness prevents the individual from attending school.
- (j)(2) Home or hospital instruction shall be provided only by personnel who possess a credential issued by the California Commission on Teacher Credentialing authorizing the holder to deliver special

education instruction according to age range and disabling condition of the individual(s).

- (k)(1) "Language and speech development and remediation" means screening, assessment, IEP development and direct speech and language services delivered to children with disabilities who demonstrate difficulty understanding or using spoken language to such an extent that it adversely affects their educational performance and cannot be corrected without special education and related services.
- (k)(2) Language and speech development and remediation shall be provided only by personnel who possess:
- (A) a license in Speech-Language Pathology issued by a licensing agency within the Department of Consumer Affairs; or
 - (B) a credential authorizing language or speech services.
- (l)(1) "Occupational therapy" means the use of various treatment modalities including self-help skills, language and educational techniques as well as sensory motor integration, physical restoration methods, and pre-vocation exploration to facilitate physical and psychosocial growth and development.
- (l)(2) Occupational therapy shall be provided only by personnel who possess a license in occupational therapy issued by a licensing agency within the Department of Consumer Affairs. Services provided by a Certified Occupational Therapist Assistant (COTA) shall be supervised by a registered occupational therapist in accordance with professional standards outlined by the American Occupational Therapy Association.
- (m)(1) "Orientation and mobility instruction" means specialized instruction for individuals in orientation and mobility techniques or consultative services to other educators and parents regarding instructional planning and implementation of the IEP relative to the development of orientation and mobility skills and independent living skills.
- (m)(2) Orientation and mobility instruction shall be provided only by personnel who possess a credential that authorizes services in orientation and mobility instruction.
- (n)(1) "Parent counseling and training" means assisting parents in understanding the special needs of their child and providing parents with information about child development.

(n)(2) Parent counseling and training shall be provided only by personnel who possess a:

- (A) credential that authorizes special education instruction; or
 - (B) credential that authorizes health and nursing services; or
 - (C) license as a Marriage and Family Therapist, or Marriage, and Family Intern under supervision of either a Marriage and Family Therapist, licensed Clinical Social Worker, licensed Psychologist, or a Physician who is certified in psychiatry by either the Medical Board of California, the Board of Behavioral Sciences, or the Board of Psychology, within the Department of Consumer Affairs; or
 - (D) license as a Clinical Social Worker, or Associate Clinical Social Worker under supervision of either a licensed Clinical Social Worker or a licensed Mental Health Professional by the Board of Behavioral Sciences, within the Department of Consumer Affairs; or
 - (E) license as an Educational Psychologist, issued by a licensing agency within the Department of Consumer Affairs; or
 - (F) license as a psychologist, or who are working under the supervision of a licensed psychologist, both regulated by the Board of Psychology, within the Department of Consumer Affairs; or
 - (G) pupil personnel services credential that authorizes school counseling or school psychology or school social work.
- (o)(1) "Physical therapy" means the:
- (A) administration of active, passive, and resistive therapeutic exercises and local or general massage, muscle training and corrective exercises and coordination work;
 - (B) administration of hydrotherapy treatments;
 - (C) assistance in administering various types of electrotherapy including ultraviolet, infrared, diathermy and inductothermy;

- (D) teaching of parents of hospitalized pupils exercises which are to be continued at home and interpret to them the significance of physical therapy services; and
 - (E) instruction in walking, standing, balance, use of crutches, cane, or walker and in the care of braces and artificial limbs.
- (o)(2) Physical therapy shall be provided only by personnel who possess a valid license in Physical Therapy issued by a licensing agency within the Department of Consumer Affairs.
- (p)(1) "Psychological services" means:
- (A) the application of psychological principles and methods including, but not limited to, procedures on interviewing, psycho-educational assessment, diagnosis of specific learning and behavioral disabilities, and amelioration of learning and behavioral problems of individuals or groups through applied psychotherapy.
 - (B) This term does not include assessment services and the development of an IEP.
- (p)(2) Psychological services required by a student's IEP may be rendered by any of the following professionals employed by a nonpublic school or agency who possess the credential or license required by law for the performance of particular psychological services by members of that profession:
- (A) Educational Psychologist pursuant to Business and Professions Code section 4989.14;
 - (B) Marriage and Family Therapist pursuant to Business and Professions Code section 4980.02;
 - (C) Licensed Clinical Social Worker pursuant to Business and Professions Code section 4996.9; or
 - (D) Licensed Psychologist pursuant to Business and Professions Code section 2903.
 - (E) pupil personnel services credential that authorizes school psychology.
- (q)(1) "Recreation services" means:

- (A) therapeutic recreation and specialized instructional programs designed to assist pupils to become as independent as possible in leisure activities, and when possible and appropriate, facilitate the pupil's integration into general recreation programs;
 - (B) recreation programs in schools and the community which are those programs that emphasize the use of leisure activity in the teaching of academic, social, and daily living skills and the provision of nonacademic and extracurricular leisure activities and the utilization of community recreation programs and facilities; or
 - (C) leisure education programs which are those specific programs designed to prepare the pupil for optimum independent participation in appropriate leisure activities, and developing awareness of personal and community leisure resources.
- (q)(2) Recreation services shall be provided only by personnel who possess a:
- (A) certificate, issued by the California Board of Recreation and Park Certification; or
 - (B) certificate issued by the National Council for Therapeutic Recreation; or
 - (C) the National Recreation and Park Association, authorizing services in recreation or therapeutic recreation.
- (r)(1) "Social worker services" means:
- (A) individual and group counseling with the individual and his or her immediate family;
 - (B) consultation with pupils, parents, teachers, and other personnel regarding the effects of family and other social factors on the learning and developmental requirements of children with disabilities; or
 - (C) developing a network of community resources, making appropriate referral and maintaining liaison relationships among the school, the pupil, the family, and the various agencies providing social income maintenance, employment development, mental health, or other developmental services.

- (r)(2) Social worker services shall be provided only by personnel who possess a:
- (A) license as a Clinical Social Worker, or Associate Clinical Social Worker under supervision of either a licensed Clinical Social Worker or a licensed Mental Health Professional by the Board of Behavioral Sciences, within the Department of Consumer Affairs; or
 - (B) license as a Marriage and Family Therapist, or Marriage, and Family Intern under supervision of either a Marriage and Family Therapist, licensed Clinical Social Worker, licensed Psychologist, or a Physician who is certified in psychiatry by either the Medical Board of California, the Board of Behavioral Sciences, or the Board of Psychology, within the Department of Consumer Affairs; or
 - (C) credential authorizing school social work.
- (s)(1) "Specialized driver training instruction" means instruction to children with disabilities to supplement the general driver-training program.
- (s)(2) Specialized driver education and driver training shall be provided only by personnel who possess a credential that authorizes service in driver education and driver training.
- (t)(1) "Specially designed vocational education and career development" means:
- (A) providing prevocational programs and assessing work-related skills, interests, aptitudes, and attitudes;
 - (B) coordinating and modifying the general vocational education program;
 - (C) assisting pupils in developing attitudes, self-confidence, and vocational competencies to locate, secure, and retain employment in the community or shelter environment, and to enable such individuals to become participating members of the community;
 - (D) establishing work training programs within the school and community;
 - (E) assisting in job placement;

- (F) instructing job trainers and employers as to the unique needs of the individuals;
 - (G) maintaining regularly scheduled contract with all work stations and job-site trainers; or
 - (H) coordinating services with the Department of Rehabilitation, the Employment Development Department and other agencies as designated in the IEP.
- (t)(2) Specially designed vocation education and career development shall be provided only by personnel who possess a:
- (A) adult education credential with a career development authorization; or
 - (B) credential that authorizes instruction in special education or vocational education; or
 - (C) pupil personnel services credential that authorizes school counseling.
- (u)(1) "Specialized services for low-incidence disabilities" means:
- (A) specially designed instruction related to the unique needs of pupils with low-incidence disabilities; or
 - (B) specialized services related to the unique needs of individuals with low-incidence disabilities.
- (u)(2) Specialized services for pupils with low-incidence disabilities shall be provided only by personnel who possess a credential that authorizes services in special education or clinical or rehabilitation services in the appropriate area of disability.
- (v) Transcribers for visually impaired pupils shall have a certificate issued by the Library of Congress as a Braille Transcriber.
- (w)(1) "Vision services" means:
- (A) adaptations in curriculum, media, and the environment, as well as instruction in special skills; or
 - (B) consultative services to pupils, parents, teachers, and other school personnel.

- (w)(2) Vision services shall be provided only by personnel who possess:
 - (A) a license as an Optometrist, Ophthalmologist, Physician or Surgeon, issued by a licensing agency within the Department of Consumer Affairs and authorizing the licensee to provide the services rendered, or
 - (B) a valid credential authorizing vision instruction or services.
- (x) Other related services not identified in this section shall only be provided by staff who possess a:
 - (1) license issued by an entity within the Department of Consumer Affairs or another state licensing office; or
 - (2) credential issued by the California Commission on Teacher Credentialing authorizing the service.