



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: RESIDENTIAL CARE FOR STUDENTS WITH DISABILITIES

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. This may include residential care when the individualized education program (IEP) team determines those services are necessary for the student to benefit from his or her education.

The Individuals with Disabilities Education Act (IDEA) authorizes residential care for students with disabilities in Section 300.104 of Title 34 of the *Code of Federal Regulations* (CFR):

If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the child.

For all residential placements of students with disabilities both in and out of state that, pursuant to an IEP, exist as of the date of this letter, the LEA may enter into the necessary contractual agreements to maintain those placements. The LEA may include the costs associated with the residential care facility in the master contract with a California-certified nonpublic, nonsectarian school (NPS) or Individual Services Agreement (ISA), if applicable, or the LEA may also contract directly with the residential care facility. A residential care facility that is currently serving a student placed pursuant to an IEP, who was placed in that facility prior to the date of this letter, is not required to seek additional certification from the California Department of Education (CDE) at this time, as it meets the requirements of Section 3051 of Title 5 of the *California Code of Regulations* (CCR). However, as of July 1, 2012, LEAs must ensure that each

residential care facility continues to meet the requirements of Section 3051 of Title 5 of the *CCR* and must maintain documentation supporting the facility's status as a residential care facility that is either: (1) associated or affiliated with a California-certified NPS (via the master contract or ISA); (2) a California-certified nonpublic, nonsectarian agency (NPA); or (3) a vendor or contractor of the State Department of Mental Health, or any designated local mental health agency.

For all residential placements of students with disabilities, pursuant to an IEP, that are initiated after the date of this letter, LEAs may consider the following options when contracting for residential care:

1. Contract with a Residential Care Facility that is Affiliated with a California-certified Nonpublic School Through a Master Contract or Individual Services Agreement

To the extent that a California-certified NPS is owned, operated by, or associated with a California Licensed Children's Institution¹ (LCI) or residential care facility outside of California, and placement in the affiliated LCI or residential care facility is determined by the IEP team to be the least restrictive environment and necessary for the student's educational benefit, LEAs may include residential care in the master contract with the California-certified NPS. Any residential care provider attached to or associated with a California-certified NPS must be lawfully authorized to provide residential care services in its respective state. A waiver pursuant to Section 56366.2 of the *Education Code (EC)* is not required before adding residential care to the master contract with the NPS. The residential care should be listed in the master contract and/or ISA as a related service provided

¹ "Licensed Children's Institution" is defined in Section 56155.5 of the California *Education Code*: (a) As used in this article, "Licensed Children's Institution" means a residential facility that is licensed by the state, or other public agency having delegated authority by contract with the state to license, to provide non-medical care to children, including, but not limited to, individuals with exceptional needs. "Licensed Children's Institution" includes a group home as defined by subdivision (g) of Section 80001 of Title 22 of the *California Code of Regulations*. As used in this article and Article 3 (commencing with Section 56836.16) of Chapter 7.2, a "Licensed Children's Institution" does not include any of the following: (1) a juvenile court school, juvenile hall, juvenile home, day center, juvenile ranch, or juvenile camp administered pursuant to Article 2.5 (commencing with Section 48645) of Chapter 4 of Part 27; (2) a county community school program provided pursuant to Section 1981; (3) any special education programs provided pursuant to Section 56150; (4) any other public agency.

(b) As used in this article, "foster family home" means a family residence that is licensed by the state, or other public agency having delegated authority by contract with the state to license, to provide 24-hour non-medical care and supervision for not more than six foster children, including, but not limited to, individuals with exceptional needs. "Foster family home" includes a small family home as defined in paragraph (6) of subdivision (a) of Section 1502 of the Health and Safety Code.

pursuant to the IEP, with the respective service activities and rates readily identifiable. In accordance with Section 56366 (a)(5) of the *EC*, if the provider of residential care is a separately named entity that is attached to or affiliated with the NPS, it should be identified as such in the master contract or ISA.

The requirements of Section 56366.1(l) relating to separation of educational and residential costs still apply. A common entity operating both an NPS and an LCI or other residential care facility (outside of California) must maintain separate financial records for each and ensure that costs associated with various aspects of each program are distinguishable. Section 56366.1(l)(D) requires:

The relationship between various entities operated by the same entity are documented, defining the responsibilities of the entities. The documentation shall clearly identify the services to be provided as part of each program, for example, the residential or medical program, the mental health program, or the educational program. The entity shall not seek funding from a public agency for a service, either separately or as part of a package of services, if the service is funded by another public agency, either separately or as part of a package of services.

The master contract and/or ISA should reflect this requirement of a clear delegation of costs associated with each part of the program to be funded by the LEA. The LEA is not responsible for costs of residential care associated with the placement of a student with a disability if it, or another LEA, was not part of the placement decision or if it, or another LEA, was not the placing agency. Section 7581 of the *GC* specifies:

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

The residential care provider attached to or affiliated with a California-certified NPS is not currently required to seek separate certification from the CDE. The NPS currently provides information about the residential care provider on the application for certification, pursuant to Section 3060(c)(22) of Title 5 of the *CCR*:

(22) For each nonpublic school with a residential component the application shall include: (A) the name of the residential program attached to the nonpublic school; (B) the proprietary status of the residential program; (C) a list of all residential facilities affiliated with the nonpublic school; (D) the total capacity of all the residential facilities affiliated with the nonpublic school; and (E) the rate of care level (California schools only) for each residential facility affiliated with the nonpublic school.

2. Contract with a Residential Care Facility that is a California-certified Nonpublic Agency

In addition to contracting for residential care through an NPS, an LEA may contract directly with a residential care facility, either in or out of state, that is certified as an NPA by the CDE, pursuant to sections 56365–56366 of the *EC*, when placement in the residential care facility is determined by the IEP team to be the least restrictive environment and necessary for the student's educational benefit. Contracts with NPAs are subject to the specific contracting requirements in sections 56365–56366 of the *EC*. Residential care facilities, both in and out of state, wishing to seek certification as an NPA, should visit the CDE NPS/A Certifications Applications Web page at <http://www.cde.ca.gov/sp/se/ds/npsacrtapp.asp> or contact the Interagency-Nonpublic Schools/Agencies Unit, Special Education Division, by phone at 916-327-0141, or by e-mail at npsa@cde.ca.gov.

3. Contract with a Residential Care Facility that is a Vendor or Contractor of the State Department of Mental Health or any Designated Local Mental Health Agency

LEAs may contract directly with a residential care facility, both in and out of state, that is a vendor or contractor of the State Department of Mental Health, or any designated local mental health agency (5 *CCR* §3051) when placement in the residential care facility is determined by the IEP team to be the least restrictive environment and necessary for the student's educational benefit. Such contracts are not subject to the specific contracting requirements of *EC* sections 56365–56366 (relating to NPSs and NPAs). LEAs may work with their counties to obtain a current list of vendors or contractors who provide residential care. As a source of information, LEAs may also visit the following Web page search engine for residential care facilities licensed by the California Department of Social Services at http://ccld.ca.gov/docs/ccld_search/ccld_search.aspx (Outside Source). Residential care facilities that are vendors or contractors of the State Department of Mental Health, or any designated local mental health agency, are not required

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to seek certification as an NPA through CDE at this time. When conducting its monitoring process, the 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 the CCR.

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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