

**MEMORANDUM OF UNDERSTANDING  
BETWEEN MONTEREY COUNTY HEALTH DEPARTMENT,  
BEHAVIORAL HEALTH BUREAU AND THE MONTEREY COUNTY  
SPECIAL EDUCATION LOCAL PLAN AREA  
FOR PSYCHOLOGICAL SERVICES**

This Memorandum of Understanding is made and entered into between the Monterey County Special Education Local Plan Area (hereinafter SELPA), on behalf of its member Local Education Agencies (LEAs), and the Monterey County Health Department, Behavioral Health Bureau (hereinafter MCBH). SELPA, on behalf of its member LEAs and MCBH collectively may be referred to as "the Parties."

WHEREAS, on October 8, 2010, California Governor Arnold Schwarzenegger vetoed a fiscal year 2010-11 appropriation for educationally-related mental health services mandated by AB 3632, and stated in doing so that "[t]his mandate is suspended;"

WHEREAS, AB 114, Statutes of 2011, Chapter 43 (AB 114) became effective July 1, 2011, and placed the responsibility for provision of mental health services for students with disabilities with LEAs;

WHEREAS, SELPA is authorized to obligate its member LEAs to the terms of this Memorandum of Understanding;

WHEREAS, SELPA acknowledges that the LEAs are mandated to provide services necessary to ensure students a free and appropriate public education (FAPE), including mental health services (hereinafter Psychological Services), pursuant to student's Individualized Education Plan (IEP), the federal Individuals with Disabilities Education Act (IDEA) and state law;

WHEREAS, MCBH offers outpatient mental health services by qualified professionals;

WHEREAS, SELPA requests that MCBH facilitate the provision of Psychological Services to students of the LEAs within SELPA who are eligible and where such services provided by MCBH are deemed necessary in the IEP;

NOW, THEREFORE, it is agreed as follows:

1. MCBH agrees to provide Psychological Services from July 1, 2012 through and including June 30, 2013 to students of the LEAs within SELPA pursuant to the guidelines set forth in the attached Interagency Agreement Between the Monterey County Special Education Local Plan Area and the Monterey County Health Department, Behavioral Health Bureau, 2012-2013 (Exhibit A) (Interagency Agreement), and at the service rates set forth in the Psychological Services Billing Structure (Exhibit B). For purposes of this Memorandum of Understanding and the attached Interagency Agreement, the parties agree that "Psychological Services" may include the following services provided pursuant to an IEP: individual and group counseling provided to a student; individual or group counseling provided to parents of special education students; consultative services

Exhibit B: MOU Between SELPA and Monterey County Health Department, Behavioral Health Bureau

provided to parents, students, teachers and other school personnel; planning and implementing a program of psychological counseling for special education students and parents; as well as all services described in Exhibit B. MCBH agrees to provide only those Psychological Services identified in a student's IEP at the frequency, location, and duration identified in the IEP. Moreover, as requested by the LEA, MCBH agrees to attend and participate in IEP team meetings. To offset the total costs to SELPA, MCBH will use any and all available and allowable alternative funding sources under the Bronzan-McCorquodale Act, Mental Health Services Fund, MHSA, Medi-Cal, EPSDT and/or any other county, state, and/or federal funding sources. MCBH shall not be responsible for any costs related to transportation and travel of the student and the student's parents to and from any and all Psychological Services, including residential placement, as specified in the IEP.

2. MCBH agrees to contribute \$95,000 of Mental Health Services Act (MHSA) Funds toward the provision of Psychological Services. MCBH will offset costs otherwise due SELPA with MHSA dollars. The parties agree and acknowledge that this MCBH contribution is independent of any legal obligation and creates no responsibility on the part of MCBH beyond providing the services enumerated in this Memorandum of Understanding.
3. Funds provided to MCBH through SELPA, including federal IDEA and state allocations, shall only be used for Psychological Services provided pursuant to this Memorandum of Understanding for eligible students, including payment for residential placement.
4. In the event that the total cost of Psychological Services provided through this Memorandum of Understanding exceeds funding received by MCBH and SELPA to cover such Psychological Services costs, each student's LEA of residence shall be responsible for covering the excess costs for that student.
5. Invoicing: SELPA will reimburse MCBH for the provision of Psychological Services rendered from July 1, 2012 to June 30, 2013 in accordance with the Psychological Services Billing Structure as identified in Exhibit B and the availability of any and all funding sources available to MCBH pursuant to Paragraphs 1 and 2 of this Memorandum of Understanding. This amount shall be referred to as the "Costs." The service rates shall not exceed those identified in Exhibit B. MCBH will bill SELPA quarterly based on actual costs and estimated revenues within thirty (30) days after the end of each quarter for Psychological Services under this Memorandum of Understanding as identified in Exhibit B. Funds will be transferred for the payment of these services in a timely manner, once they have been received from the California Department of Education.
6. Records: MCBH will provide SELPA and LEAs with a report of the Psychological Services provided by MCBH staff incurred pursuant to this Memorandum of Understanding four times during the fiscal year. The first report will cover the period of July 1, 2012 through September 30, 2013, and will be provided on or before October 31, 2012 or upon signature of this Memorandum of Understanding. The second report will cover the period of October 1, 2012 through December 31, 2013, and will be provided on

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or before January 31, 2013. The third report will cover the period of January 1, 2013 through March 31, 2012 and will be provided no later than April 30, 2013. The final reporting period will cover the period of April 1, 2013 through June 30, 2013, and will be provided on or before July 31, 2013.

The accounting records will include the following data for each student: the school district of residence, the Service Function Codes (SFC) of the services provided as described in the student's IEP. Exhibit B identifies the CASEMIS code that aligns with the SFC. The report will also include the units of service, the student's name, date of birth, provider name, date of service, unit/minutes/mode, and SFC in sufficient detail to enable SELPA to establish a link between the services provided and the individual student's IEP. MCBH is responsible for maintaining all required documentation in accordance with current practice for audit purposes.

7. **Final Accounting:** A statement of actual costs and revenues, including agreed upon administrative costs, and supporting accounting documentation, will be submitted within ninety (90) days of the expiration of this Memorandum of Understanding. The statement will reflect actual costs incurred and revenues claimed for the entire fiscal year. SELPA and MCBH must agree upon the amount of any adjustment pursuant to this paragraph. No adjustment may be claimed by MCBH, or will be agreed to by SELPA, if a shortfall in revenues is attributable to any delay, failure, or negligence on the part of MCBH. MCBH agrees to reimburse SELPA for payments received in excess of the actual costs of services based on the statement of costs and revenues. MCBH will reimburse SELPA within sixty (60) days of SELPA's receipt of the statement.
8. **Condition Precedent:** This Memorandum of Understanding shall not be effective unless and until each of the Parties execute this Memorandum of Understanding through their respective agency procedures. However, if this Memorandum of Understanding is executed, the effective date of this Memorandum of Understanding is July 1, 2012.
9. **Audit:** SELPA auditors will have access to MCBH records supportive of claims filed related to Psychological Services provided by MCBH pursuant to this Memorandum of Understanding if required for audit purposes as allowed by state and federal law. MCBH will be responsible for the costs resulting from any audit exceptions and/or disallowed claims filed pursuant to this Memorandum of Understanding for fiscal year 2012-2013 regarding services provided by MCBH that are not Psychological Services or services provided by MCBH that are not described in a student's IEP. SELPA will be responsible for the costs of any audit exceptions and/or disallowed claims filed pursuant to this Memorandum of Understanding for fiscal year 2012-2013 which are the responsibility of SELPA. In the event of the need for an audit appeal, MCBH and SELPA will mutually agree upon the most expedient process for resolution. This audit provision shall survive the term of this Memorandum of Understanding.
10. **Referrals and Assessment Reports:** MCBH and SELPA agree to abide by the policies and procedures for making student referrals and providing the necessary assessment reports as provided in the attached Interagency Agreement (Exhibit A).

Exhibit B: MOU Between SELPA and Monterey County Health Department, Behavioral Health Bureau

11. Interagency Agreement (Exhibit A): SELPA and MCBH agree that the attached Interagency Agreement Between the Monterey County Special Education Local Plan Area and the Monterey County Health Department, Behavioral Health Bureau, 2012-2013 is an integral part of this Memorandum of Understanding and further agree that in the event of a conflict between the Memorandum of Understanding and the Interagency Agreement, the Interagency Agreement shall prevail.
12. Privacy: MCBH and SELPA acknowledge the protections afforded to student health information under regulations adopted pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Pub. L. No. 14-109; student records under the Family Educational Rights and Privacy Act (FERPA); Section 1232g of Title 20 of the United States Code; and under provisions of California law relating to privacy. MCBH and SELPA shall ensure that all activities undertaken under this Memorandum of Understanding will conform to the requirements of these laws to the extent they are applicable.
13. Indemnification:
  - A. General: Except as expressly provided below in subparagraph B, SELPA shall indemnify, defend, and hold harmless the County of Monterey (hereinafter County), its officers, agents, and employees from any claim, liability, loss, injury, or damage arising out of, or in connection with, performance of this Memorandum of Understanding by SELPA and/or its agents, members, employees, or sub-contractors, excepting only loss, injury, or damage caused by the negligence or willful misconduct of personnel employed by the County. It is the intent of the parties to this Memorandum of Understanding to provide the broadest possible indemnification for the County. SELPA shall reimburse the County for all costs, attorneys' fees, expenses, and liabilities incurred by the County with respect to any litigation in which SELPA is obligated to indemnify, defend, and hold harmless the County under this Memorandum of Understanding.

Except as expressly provided below in subparagraph B, County shall indemnify, defend, and hold harmless the SELPA, its officers, agents, and employees from any claim, liability, loss, injury, or damage arising out of, or in connection with, performance of this Memorandum of Understanding by County and/or its agents, members, employees, or sub-contractors, excepting only loss, injury, or damage caused by the negligence or willful misconduct of personnel employed by the SELPA. It is the intent of the parties to this Memorandum of Understanding to provide the broadest possible indemnification for the SELPA. County shall reimburse SELPA for all costs, attorneys' fees, expenses, and liabilities incurred by SELPA with respect to any litigation in which County is obligated to indemnify, defend, and hold harmless SELPA under this Memorandum of Understanding.

B. Due Process Claims: LEAs shall defend, indemnify and hold harmless the County from all due process claims filed by parents on behalf of their children with respect to any and all claims arising out of this MOU and/or the assessment and determination of whether or not to provide treatment or Psychological Services as described in this MOU. Under no circumstances shall the County be a liable party to administrative or judicial litigation involving Psychological Services. In the event,

however, that an LEA becomes party to administrative or judicial litigation involving Psychological Services subject to this Agreement, the County agrees that it will use reasonable efforts to cooperate in preparation of such cases for resolution sessions, mediation, due process hearing, trial or other such proceedings. Such cooperation may include attendance and/or participation and such proceedings, meeting with LEA staff, counsel, and other advisors, or other assistance as deemed appropriate by the LEA and County. The parties shall confer in good faith regarding appropriate reimbursement for County staff time needed for such cooperation.

14. **Laws and Venue:** This Memorandum of Understanding shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Memorandum of Understanding, the action shall be brought in a state court situated in the County of Monterey, State of California, unless otherwise specifically provided for under California law.
15. **Third Party Rights:** Nothing in this Memorandum of Understanding shall be construed to give any rights, benefits, or obligations to anyone other than SELPA, MCBH, and LEAs.
16. **Severability:** The unenforceability, invalidity, or illegality of any provision(s) of this Memorandum of Understanding shall not render the other provisions unenforceable, invalid, or illegal.
17. **Term:** This Memorandum of Understanding shall cover the period of July 1, 2012 through and including June 30, 2013. This Memorandum of Understanding shall terminate as of the close of business on June 30, 2013. However, prior to May 1, 2013, this Memorandum of Understanding may be extended by the parties' mutual written consent for any reason.
18. **Dispute Resolution:** MCBH and SELPA agree that the Interagency Agreement Dispute Resolution described in Exhibit A to this Memorandum of Understanding shall be used to address disputes on the implementation of the Memorandum of Understanding, as well as disputes arising under the Interagency Agreement.
19. **Integration:** This Memorandum of Understanding, including Exhibits A and B, represents the entire understanding of SELPA and MCBH as to those matters contained herein, and supersedes and cancels any prior oral or written understanding, promises, or representations with respect to those matters covered herein. This Memorandum of Understanding may not be modified or altered except in writing signed by both parties hereto. This is an integrated Memorandum of Understanding.
20. **Signatories:** The signatories of this Memorandum of Understanding or their designee shall be responsible for assuring the Memorandum of Understanding is implemented. Neither party shall be deemed to be in default of the terms of this Memorandum of Understanding if either party is prevented from performing the terms of this Memorandum of Understanding by causes beyond its control, including, but not limited to, acts of God; changes in any laws and/or regulations of state or federal government; or any catastrophe resulting from flood, fire, explosion, or other causes beyond the control

IN WITNESS WHEREOF, the Parties have caused this Memorandum of Understanding to be executed by their duly authorized officers in the County of Monterey, State of California. This Memorandum of Understanding is effective July 1, 2012 by and between the undersigned parties.

**COUNTY OF MONTEREY:**

By: \_\_\_\_\_  
Ray Bullick  
Director of Health

Date: \_\_\_\_\_

**MONTEREY COUNTY SPECIAL  
EDUCATION LOCAL PLAN AREA:**

By: Carol Lankford  
Carol Lankford  
Executive Director

Date: 3/14/13

**APPROVED AS TO LEGAL FORM:**

By: Stacy Saetta  
Stacy Saetta  
Deputy County Council

Date: 5/7/13

By: Deneen Newman  
Deneen Newman  
Executive Committee Chair

Date: 3-14-13

**APPROVED AS TO FISCAL PROVISIONS:**

By: Gary Giboney  
Gary Giboney  
Auditor-Controller

Date: 5-10-13

**APPROVED AS TO CONTENT:**

By: Wayne Clark  
Wayne Clark  
Behavioral Health Director

Date: 3/22/13

RISK MANAGEMENT  
COUNTY OF MONTEREY  
APPROVED AS TO INDEMNITY/  
INSURANCE LANGUAGE

By: [Signature]  
Date: 5/10/13